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GOVERNMENT GAZETTE

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THE PRESIDENCY

No. 1320.

6 December 2000

It is hereby notified that the President has assented to the following Act which is hereby published for general information:—

No. 59 of 2000: Revenue Laws Amendment Act, 2000.

DIE PRESIDENSIE

No. 1320.

6 Desember 2000

Hierby word bekend gemaak dat die President sy goedkeuring geheg het aan die onderstaande Wet wat hierby ter algemene inligting gepubliseer word:—

No. 59 van 2000: Wysigingswet op Inkomstewette, 2000.

GENERAL EXPLANATORY NOTE:

- [] Words in bold type in square brackets indicate omissions from existing enactments.
- Words underlined with a solid line indicate insertions in existing enactments.

(English text signed by the President.)
(Assented to 29 November 2000.)

ACT

To amend the Estate Duty Act, 1955, so as to insert a definition; to amend the Income Tax Act, 1962, so as to delete certain definitions; to amend certain definitions; to insert certain definitions; to make certain decisions of the Commissioner subject to objection and appeal; to further regulate rebates in respect of foreign taxes on income; to further regulate income deemed to have been received or accrued to a person subsequent to any donation, settlement or other disposition; to further regulate the recovery and recoupment of certain deductions and allowances; to further regulate income deemed to be from a source in the Republic; to repeal a section relating to investment income of foreign investment companies; to repeal a section relating to taxation of investment income from foreign sources; to further regulate the taxation of income of controlled foreign entities; to further regulate the taxation of foreign dividends received by or accrued to residents; to regulate income received by or accrued to residents from foreign sources; to make provision for the exemption of amounts received or accrued from the social security system of any other country and foreign pensions; to make provision for further exemptions and to withdraw an exemption; to further regulate an exemption relating to services rendered outside the Republic; to further regulate the exemption of certain amounts received from the State; to further regulate the deduction of expenses and losses; to further regulate the allowances of depreciation of assets used in a taxpayer's trade to take into account the period of use of such assets in a trade which was not previously taxable; to repeal a section relating to the deduction of expenses incurred in appointing agents outside the Republic; to further regulate the deductibility of contributions to any medical scheme to include medical schemes registered under the laws of any other country; to further regulate the set off of assessed losses to provide that foreign losses may not be set off against income from a trade carried on in the Republic; to further regulate the acquisition of trading stock; to further regulate the limitation of certain deductions; to further regulate gains or losses on foreign exchange transactions; to further regulate the taxation of trusts and beneficiaries of trusts; to make provision for the determination of taxable income or losses in foreign currency; to further regulate the determination of taxable income of certain persons in respect of international transactions; to further regulate the taxation of persons who derive income from royalties or similar payments; to further regulate the levy and recovery of secondary tax on companies; to further regulate certain

ALGEMENE VERDUIDELIKENDE NOTA:

[] Woorde in vet druk tussen vierkantige hake dui skappings uit bestaande verordenings aan.

_____ Woorde met 'n volstreep daaronder, dui invoegings in bestaande verordenings aan.

*(Engelse teks deur die President geteken.)
(Goedgekeur op 29 November 2000.)*

WET

Tot wysiging van die Boedelbelastingwet, 1955, ten einde 'n omskrywing in te voeg; tot wysiging van die Inkomstebelastingwet, 1962, ten einde sekere omskrywings te skrap; sekere omskrywings te wysig; sekere omskrywings in te voeg; sekere beslissings van die Kommissaris onderhewig te maak aan beswaar en appèl; die kortings ten opsigte van buitelandse belastinge op inkomste verder te reël; inkomste wat geag word ontvang te gewees het deur of toe te geval het aan 'n persoon na aanleiding van 'n skenking, oormaking of ander beskikking verder te reël; om die verhaling of vergoeding van sekere aftrekkings en verminderinge verder te reël; inkomste geag uit 'n bron in die Republiek te wees verder te reël; 'n artikel met betrekking tot beleggingsinkomste van buitelandse beleggingsmaatskappye te herroep; 'n artikel met betrekking tot belasting van beleggingsinkomste uit buitelandse bronne te herroep; die belasting van inkomste van beheerde buitelandse entiteite verder te reël; die belasting van buitelandse dividende ontvang deur of toegeval aan inwoners verder te reël; inkomste ontvang deur of toegeval aan inwoners uit buitelandse bronne te reël; voorsiening te maak vir die vrystelling van bedrae ontvang of toegeval van die bestaansbeveiligingsstelsel van 'n ander land en buitelandse pensioene; voorsiening te maak vir verdere vrystellings; 'n vrystelling te herroep; 'n vrystelling met betrekking tot dienste buite die Republiek gelewer verder te reël; die vrystelling van sekere bedrae van die Staat ontvang verder te reël; die aftrekking van onkoste en verliese verder te reël; die verminderinge van waardevermindering van bates in 'n belastingpligtige se bedryf gebruik verder te reël om die tydperk van gebruik van daardie bates in 'n bedryf wat nie voorheen belasbaar was nie in ag te neem; 'n artikel met betrekking tot die aftrekking van onkoste aangegaan by aanstelling van agente buite die Republiek te herroep; die aftrekbaarheid van bydraes tot enige mediese skema verder te reël om mediese skemas kragtens die wette van 'n ander land geregistreer, in te sluit; die verrekening van aangeslane verliese verder te reël om te bepaal dat buitelandse verliese nie teen inkomste van 'n bedryf in die Republiek beoefen, verreken kan word nie; die verkryging van handelsvoorraad verder te reël; die beperking van sekere aftrekkings verder te reël; winste of verliese op buitelandse valutatransaksies verder te reël; die belasting van trusts en begunstigdes van trusts verder te reël; voorsiening te maak vir die vasstelling van belasbare inkomste of verliese in buitelandse valuta; die vasstelling van belasbare inkomste van sekere persone ten opsigte van internasionale transaksies verder te reël; die belasting van persone wat inkomste uit tantième of soorgelyke betalings verkry verder te reël; die heffing en verhaling van sekondêre belasting op maatskappye verder te reël; sekere bedrae wat as dividende geag word verder te reël; voorsiening te maak vir die indiening van opgawes met betrekking tot die deelnemende regte in 'n beheerde buitelandse entiteit; appèlle na die spesiaal ingestelde raad verder te reël; voorsiening te maak dat buitelandse belastinge in berekening gebring word in die vasstelling van rente betaalbaar ten opsigte van

amounts deemed to be dividends; to make provision for the submission of returns relating to the participation rights in a controlled foreign entity; to further regulate appeals to the specially constituted board; to provide that foreign taxes be taken into account in the determination of interest payable on underpayments and overpayments of provisional tax; to provide that restraint of trade payments be included in remuneration for the purposes of the determination of employees' tax to be deducted; to provide that where an employer is not a resident the representative taxpayer of such employer shall be obliged to deduct or withhold employees' tax; to provide that the Commissioner may take into account any rebates of foreign tax when prescribing deduction tables for the purposes of employees' tax; to provide that there shall be included in "net remuneration" any annuity provided by a pension fund, provident fund or benefit fund even if such annuity is not payable by such fund; to provide that the Commissioner may take into account any rebates of foreign tax when prescribing tables for optional use by provisional taxpayers; to make provision in the definition of "official rate of interest" for any loan which is denominated in a foreign currency; to delete certain references to obsolete provisions; and to effect certain consequential and textual amendments; to amend the Customs and Excise Act, 1964, so as to make provision for non-reciprocal preferential tariff treatment of goods exported from the Republic; and to effect certain consequential amendments; to amend the Stamp Duties Act, 1968, so as to make provision for an exemption; to amend the Value-Added Tax Act, 1991, so as to amend certain definitions; and to further regulate appeals to the specially constituted board; to amend the Tax on Retirement Funds Act, 1996, so as to effect certain consequential amendments; and to delete certain references to obsolete provisions; to amend the Skills Development Levies Act, 1999, so as to make provision for the application of certain provisions of the Income Tax Act, 1962; and to amend the Taxation Laws Amendment Act, 2000, so as to rectify a reference to an incorrect date; to further regulate the deductibility of donations made to public benefit organisations; to further regulate the exemption from income tax of the receipts and accruals of public benefit organisations; to further regulate the payment of air passenger tax; and to amend Schedule 1 to that Act to amend a definition; and to provide for matters in connection therewith.

BE IT ENACTED by the Parliament of the Republic of South Africa, as follows:—

Amendment of section 1 of Act 45 of 1955, as amended by section 1 of Act 59 of 1957, section 1 of Act 65 of 1960, section 7 of Act 77 of 1964, section 3 of Act 92 of 1971, section 9 of Act 106 of 1980, section 5 of Act 86 of 1987, section 7 of Act 87 of 1988, section 6 of Act 97 of 1993, section 2 of Act 140 of 1993, section 8 of Act 88 of 1996, section 5 of Act 27 of 1997, section 34 of Act 34 of 1997, section 7 of Act 53 of 1999 and section 6 of Act 30 of 2000

1. (1) Section 1 of the Estate Duty Act, 1955, is hereby amended by the insertion after the definition of "South African Revenue Service" of the following definition: 10

" 'spouse', in relation to any deceased person, includes a person who at the time of death of such deceased person was the partner of such person—

- (a) in a marriage recognised in terms of the laws of the Republic;
- (b) in a marriage entered into in accordance with any system of religious law which is recognised in the Republic; or
- (c) in a permanent same-sex life relationship." 15

(2) Subsection (1) shall be deemed to have come into operation on 27 April 1994.

oor- en onderbetalings van voorlopige belasting; voorsiening te maak dat handelsbeperkingsbetalings ingesluit word by besoldiging vir dié doeleindes van die vasstelling van werknemersbelasting wat afgetrek staan te word; voorsiening te maak dat waar 'n werkgever nie 'n inwoner is nie die verteenwoordigende belastingpligtige van daardie werkgever verplig moet wees om werknemersbelasting af te trek of terug te hou; voorsiening te maak dat die Kommissaris enige kortings ten opsigte van buitelandse belasting in berekening kan bring wanneer die aftrekkingsstabelle vir die doeleindes van werknemersbelasting voorgeskryf word; voorsiening te maak dat enige annuïteit wat deur 'n pensioenfonds, voorsorgfonds of bystandsfonds voorsien word by "netto besoldiging" ingesluit word al is daardie annuïteit nie deur daardie fonds betaalbaar nie; voorsiening te maak dat die Kommissaris enige kortings van buitelandse belasting in berekening kan bring wanneer die tabelle vir opsionele gebruik deur voorlopige belastingpligtiges voorgeskryf word; om in die omskrywing van "amptelike rentekoers" voorsiening te maak vir 'n lening wat in 'n buitelandse geldeenheid aangedui word; sekere verwysings na bepalinge wat in onbruik verval het, te skrap; en sekere gevolglike en tekstuele wysigings aan te bring; tot wysiging van die Doeane- en Aksynswet, 1964, ten einde voorsiening te maak vir nie-wederkerige voorkeurtariefbehandeling van goedere uit die Republiek uitgevoer; en sekere gevolglike wysigings aan te bring; tot wysiging van die Wet op Seëlregte, 1968, ten einde vir 'n vrystelling voorsiening te maak; tot wysiging van die Wet op Belasting op Toegevoegde Waarde, 1991, ten einde sekere omskrywings te wysig; en appèlle na die spesiaal ingestelde raad verder te reël; tot wysiging van die Wet op Belasting op Uittreefondse, 1996, ten einde sekere gevolglike wysigings aan te bring; en sekere verwysings na bepalinge wat in onbruik verval het, te skrap; tot wysiging van die "uMthetho weZibisontela wokuThuthukisa aMakhono, 1999", ten einde voorsiening te maak vir die toepassing van sekere bepalinge van die Inkomstebelastingwet, 1962; en tot wysiging van die Wysigingswet op Belastingwette, 2000, ten einde 'n verwysing na 'n inkorrekte datum reg te stel; die aftrekbaarheid van skenkings aan openbare weldaadsorganisasies gemaak verder te reël; die vrystelling van inkomstebelasting van die ontvangste en toevallings van openbare weldaadsorganisasies verder te reël; die betaling van lugpassasiersbelasting verder te reël; en Bylae 1 by daardie Wet te wysig deur 'n omskrywing te wysig; en om voorsiening te maak vir aangeleenthede wat daarmee in verband staan.

DAAR WORD BEPAAL deur die Parlement van die Republiek van Suid-Afrika, soos volg:—

Wysiging van artikel 1 van Wet 45 van 1955, soos gewysig deur artikel 1 van Wet 59 van 1957, artikel 1 van Wet 65 van 1960, artikel 7 van Wet 77 van 1964, artikel 3 van Wet 92 van 1971, artikel 9 van Wet 106 van 1980, artikel 5 van Wet 86 van 1987, artikel 7 van Wet 87 van 1988, artikel 6 van Wet 97 van 1993, artikel 2 van Wet 140 van 1993, artikel 8 van Wet 88 van 1996, artikel 5 van Wet 27 van 1997, artikel 34 van Wet 34 van 1997, artikel 7 van Wet 53 van 1999 en artikel 6 van Wet 30 van 2000

- 10 1. (1) Artikel 1 van die Boedelbelastingwet, 1955, word hierby gewysig deur die volgende omskrywing na die omskrywing van "familiemaatskappy" in te voeg:

- "'gade', met betrekking tot 'n oorlede persoon, ook 'n persoon wat op die tydstip van dood van bedoelde oorlede persoon die maat van daardie persoon was—
- 15 (a) in 'n huwelik wat ingevolge die wette van die Republiek erken word;
- (b) in 'n huwelik wat aangegaan is ingevolge enige stelsel van godsdienereg wat in die Republiek erken word; of
- (c) in 'n permanente selfde-geslag lewensverhouding."
- (2) Subartikel (1) word geag op 27 April 1994, in werking te getree het.

Amendment of section 1 of Act 58 of 1962, as amended by section 3 of Act 90 of 1962, section 1 of Act 6 of 1963, section 4 of Act 72 of 1963, section 4 of Act 90 of 1964, section 5 of Act 88 of 1965, section 5 of Act 55 of 1966, section 5 of Act 95 of 1967, section 5 of Act 76 of 1968, section 6 of Act 89 of 1969, section 6 of Act 52 of 1970, section 4 of Act 88 of 1971, section 4 of Act 90 of 1972, section 4 of Act 65 of 1973, section 4 of Act 85 of 1974, section 4 of Act 69 of 1975, section 4 of Act 103 of 1976, section 4 of Act 113 of 1977, section 3 of Act 101 of 1978, section 3 of Act 104 of 1979, section 2 of Act 104 of 1980, section 2 of Act 96 of 1981, section 3 of Act 91 of 1982, section 2 of Act 94 of 1983, section 1 of Act 30 of 1984, section 2 of Act 121 of 1984, section 2 of Act 96 of 1985, section 2 of Act 65 of 1986, section 1 of Act 108 of 1986, section 2 of Act 85 of 1987, section 2 of Act 90 of 1988, section 1 of Act 99 of 1988, Government Notice No. R.780 of 14 April 1989, section 2 of Act 70 of 1989, section 2 of Act 101 of 1990, section 2 of Act 129 of 1991, section 2 of Act 141 of 1992, section 2 of Act 113 of 1993, section 2 of Act 21 of 1994, section 2 of Act 21 of 1995, section 2 of Act 36 of 1996, section 2 of Act 28 of 1997, section 19 of Act 30 of 1998, section 10 of Act 53 of 1999 and section 13 of Act 30 of 2000

2. Section 1 of the Income Tax Act, 1962, is hereby amended—

- (a) by the deletion of the definition of “domestic company”;
- (b) by the deletion of the definition of “external company”;
- (c) by the substitution for the words preceding paragraph (a) of the definition of “gross income” of the following words:

“‘gross income’, in relation to any year or period of assessment, means—

- (i) in the case of any **[person]** resident, the total amount, in cash or otherwise, received by or accrued to or in favour of such **[person]** resident; or

- (ii) in the case of any person other than a resident, the total amount, in cash or otherwise, received by or accrued to or in favour of such person from a source within or deemed to be within the Republic, during such year or period of assessment **[from a source within or deemed to be within the Republic]**, excluding receipts or accruals of a capital nature, but including, without in any way limiting the scope of this definition, such amounts (whether of a capital nature or not) so received or accrued as are described hereunder, namely—”;

- (d) by the substitution for paragraph (gA) of the definition of “gross income” of the following paragraph:

“(gA) any amount received or accrued from another person as consideration (or payment of like nature) for the imparting of or the undertaking to impart any scientific, technical, industrial or commercial knowledge or information **[for use in the Republic]**, or for the rendering of or the undertaking to render any assistance or service in connection with the application or utilization of such knowledge or information;”;

- (e) by the substitution for paragraph (k) of the definition of “gross income” of the following paragraph:

“(k) any amount received or accrued by way of dividends including any amount determined in accordance with the provisions of section 9E in respect of any foreign dividend received by or accrued to any person who is a resident **[as defined in such section]**;”;

- (f) by the insertion in subsection (1) after the definition of “insolvent estate” of the following definition:

“‘international headquarter company’ means a company—

- (a) the entire equity share capital of which is held by persons who are not residents or trusts;
- (b) where any indirect interest of residents and of any trust in such equity share capital does not exceed five per cent in aggregate of the total equity share capital of such company; and

Wysiging van artikel 1 van Wet 58 van 1962, soos gewysig deur artikel 3 van Wet 90 van 1962, artikel 1 van Wet 6 van 1963, artikel 4 van Wet 72 van 1963, artikel 4 van Wet 90 van 1964, artikel 5 van Wet 88 van 1965, artikel 5 van Wet 55 van 1966, artikel 5 van Wet 95 van 1967, artikel 5 van Wet 76 van 1968, artikel 6 van 5 Wet 89 van 1969, artikel 6 van Wet 52 van 1970, artikel 4 van Wet 88 van 1971, artikel 4 van Wet 90 van 1972, artikel 4 van Wet 65 van 1973, artikel 4 van Wet 85 van 1974, artikel 4 van Wet 69 van 1975, artikel 4 van Wet 103 van 1976, artikel 4 van Wet 113 van 1977, artikel 3 van Wet 101 van 1978, artikel 3 van Wet 104 van 1979, artikel 2 van Wet 104 van 1980, artikel 2 van Wet 96 van 1981, artikel 3 van 10 Wet 91 van 1982, artikel 2 van Wet 94 van 1983, artikel 1 van Wet 30 van 1984, artikel 2 van Wet 121 van 1984, artikel 2 van Wet 96 van 1985, artikel 2 van Wet 65 van 1986, artikel 1 van Wet 108 van 1986, artikel 2 van Wet 85 van 1987, artikel 2 van Wet 90 van 1988, artikel 1 van Wet 99 van 1988, Goewermentskennisgewing No. R.780 van 14 April 1989, artikel 2 van Wet 70 van 1989, artikel 2 van Wet 101 15 van 1990, artikel 2 van Wet 129 van 1991, artikel 2 van Wet 141 van 1992, artikel 2 van Wet 113 van 1993, artikel 2 van Wet 21 van 1994, artikel 2 van Wet 21 van 1995, artikel 2 van Wet 36 van 1996, artikel 2 van Wet 28 van 1997, artikel 19 van Wet 30 van 1998, artikel 10 van Wet 53 van 1999 en artikel 13 van Wet 30 van 2000

2. Artikel 1 van die Inkomstebelastingwet, 1962, word hierby gewysig—

- 20 (a) deur die omskrywing van “binnelandse maatskappy” te skrap;
 (b) deur die woorde wat paragraaf (a) van die omskrywing van “bruto inkomste” voorafgaan deur die volgende woorde te vervang:
 “‘bruto inkomste’, met betrekking tot ’n jaar of tydperk van aanslag—
 [en]
 25 (i) in die geval van enige [persoon] inwoner, die totale bedrag, hetsy in kontant of andersins, ontvang deur of toegeval aan of ten gunste van so ’n [persoon] inwoner; of
 (ii) in die geval van enige persoon behalwe ’n inwoner, die totale
 30 bedrag, hetsy in kontant of andersins, ontvang deur of toegeval aan of ten gunste van so ’n persoon uit ’n bron in die Republiek of geag in die Republiek te wees,
 gedurende bedoelde jaar of tydperk van aanslag **[uit ’n bron in die Republiek of geag in die Republiek te wees]**, met uitsluiting van ontvangste of toevallings van ’n kapitale aard, maar ook, sonder afbreuk
 35 op enigerlei wyse aan die strekking van hierdie omskrywing, sodanige bedrae (hetsy van ’n kapitale aard al dan nie) aldus ontvang of toegeval as wat hieronder beskryf word, te wete—”;
 (c) deur paragraaf (gA) van die omskrywing van “bruto inkomste” deur die volgende paragraaf te vervang:
 40 “(gA) ’n bedrag ontvang of toegeval van ’n ander persoon as vergoeding (of ’n betaling van dergelike aard) vir die meedeling van wetenskaplike, tegniese, industriële of kommersiële kennis of inligting **[vir gebruik in die Republiek]**, of vir die onderneming om sulke kennis of inligting mee te deel, of vir die verlening van
 45 hulp of die lewering van ’n diens in verband met die aanwending of benutting van bedoelde kennis of inligting, of vir die onderneming om sulke hulp te verleen of om so ’n diens te lewer;”;
 (d) deur paragraaf (k) van die omskrywing van “bruto inkomste” deur die volgende paragraaf te vervang:
 50 “(k) ’n bedrag ontvang of toegeval by wyse van dividende, met inbegrip van ’n bedrag ooreenkomstig die bepalinge van artikel 9E bepaal ten opsigte van enige buitelandse dividend ontvang deur of toegeval aan enige persoon wat ’n inwoner is **[soos in daardie artikel omskryf]**”;
 55 (e) deur die omskrywing van “buitelandse maatskappy” te skrap;
 (f) deur die omskrywing van “gebied” te skrap;
 (g) deur die volgende omskrywings na die omskrywing van “insolvente boedel” in te voeg:

- (c) where 90 per cent of the value of the assets of such company represents interests in the equity share capital and loan capital of subsidiaries (which are not residents) of such company in which such company holds a beneficial interest of at least 50 per cent;";
- (g) by the substitution for item (ee) of subparagraph (ii) of paragraph (c) of the definition of "pension fund" of the following item: 5
- “(ee) for the administration of the fund in such a manner as to preclude the employer from controlling the management or assets of the fund and from deriving any monetary advantage from moneys paid into or out of the fund, except— 10
- (A) any monetary advantage approved by the Registrar of Pension Funds; or
- (B) that where the employer is a partnership, a member of the partnership may be permitted to derive such monetary advantage if he was previously an employee and, on becoming a partner, was permitted to retain his membership of the fund as though he had not ceased to be an employee, his contributions being based upon his pensionable emoluments during the 12 months which ended on the day on which he ceased to be an employee and his benefits from the fund being calculated accordingly;”;
- (h) by the insertion after the definition of "Republic" of the following definition: 20
- “ ‘resident’ means any—
- (a) natural person who is— 25
- (i) ordinarily resident in the Republic; or
- (ii) not at any time during the year of assessment ordinarily resident in the Republic, if such person was physically present in the Republic—
- (aa) for a period or periods exceeding 91 days in aggregate during the relevant year of assessment, as well as for a period or periods exceeding 91 days in aggregate during each of the three years of assessment preceding such year of assessment; and 30
- (bb) for a period or periods exceeding 549 days in aggregate during such three preceding years of assessment: 35
- Provided that—
- (A) for the purposes of items (aa) and (bb) a day shall include a part of a day; and
- (B) where a person who is a resident in terms of this subparagraph is physically outside the Republic for a continuous period of at least 330 full days immediately after the day on which such person ceases to be physically present in the Republic, such person shall be deemed not to have been a resident from the day on which such person so ceased to be physically present in the Republic; or 40
- (b) person (other than a natural person) which is incorporated, established or formed in the Republic or which has its place of effective management in the Republic (but excluding any international headquarter company);”;
- (i) by the deletion of the definition of "South African company"; and 45
- (j) by the deletion of the definition of "territory". 50

“ ‘internasionale hoofkantoormaatskappy’ ’n maatskappy—

- (a) waarvan die totale ekwiteitsaandelekapitaal deur persone wat nie inwoners of trusts is nie, gehou word;
- (b) waar enige indirekte belang van inwoners en trusts in daardie ekwiteitsaandelekapitaal nie in total vyf persent van die totale ekwiteitsaandelekapitaal van daardie maatskappy te bowe gaan nie; en
- (c) waar 90 persent van die waarde van die bates van daardie maatskappy belange in die ekwiteitsaandelekapitaal en leningskapitaal van filiale (wat nie inwoners is nie) van daardie maatskappy waarin daardie maatskappy ’n voordelige belang van ten minste 50 persent hou, verteenwoordig;

“ ‘inwoner’ ’n—

- (a) natuurlike persoon wat—
- (i) gewoonlik in die Republiek woonagtig is; of
- (ii) nie op enige tydstop gedurende die jaar van aanslag gewoonlik in die Republiek woonagtig is nie, indien daardie persoon fisies in die Republiek teenwoordig was—
- (aa) vir ’n tydperk of tydperke wat 91 dae in totaal gedurende die betrokke jaar van aanslag, sowel as vir ’n tydperk of tydperke wat 91 dae in totaal gedurende elk van die drie jare van aanslag wat die jaar van aanslag voorafgaan, te bowe gaan; en
- (bb) vir ’n tydperk of tydperke wat 549 dae in totaal gedurende daardie drie voorafgaande jare van aanslag te bowe gaan:
- Met dien verstande dat—
- (A) by die toepassing van items (aa) en (bb) ’n dag ’n gedeelte van ’n dag insluit; en
- (B) waar ’n persoon wat ingevolge hierdie subparagraaf ’n inwoner is, fisies buite die Republiek is vir ’n aaneenlopende tydperk van minstens 330 volle dae onmiddellik na die dag waarop daardie persoon ophou om fisies in die Republiek teenwoordig te wees, daardie persoon geag word nie ’n inwoner te wees nie vanaf die dag waarop daardie persoon aldus opgehou het om fisies in die Republiek teenwoordig te wees; of
- (b) persoon (behalwe ’n natuurlike persoon) wat in die Republiek ingelyf, ingestel of opgerig is of wat sy plek van effektiewe bestuur in die Republiek het (behalwe ’n internasionale hoofkantoormaatskappy);”;

- (h) deur item (ee) van subparagraaf (ii) van paragraaf (c) van die omskrywing van “pensioenfonds” deur die volgende item te vervang:

“(ee) dat die fonds op so ’n wyse bestuur sal word dat die werkgewer nie die bestuur of bates van die fonds sal kan beheer nie en geen geldelike voordeel uit geld wat in die fonds gestort of uit die fonds uitbetaal word sal kan trek nie, behalwe—

(A) enige geldelike voordeel deur die Registrateur van Pensioenfondse goedgekeur; of

(B) dat waar die werkgewer ’n vennootskap is, ’n lid van die vennootskap toegelaat kan word om bedoelde geldelike voordeel te trek indien hy voorheen ’n werknemer was en by toelating as vennoot toegelaat was om sy lidmaatskap van die fonds te behou asof hy nie opgehou het om ’n werknemer te wees nie, en sy bydraes gebaseer word op sy pensioengewende besoldiging gedurende die 12 maande wat geëindig het op die dag waarop hy opgehou het om ’n werknemer te wees en sy voordele uit die fonds dienooreenkomstig bereken word;” en

- (i) deur die omskrywing van “Suid-Afrikaanse maatskappy” te skrap.

Amendment of section 3 of Act 58 of 1962, as amended by section 3 of Act 141 of 1992, section 3 of Act 21 of 1994, section 3 of Act 21 of 1995 and section 20 of Act 30 of 1998

3. Section 3 of the Income Tax Act, 1962, is hereby amended by the substitution for subsection (4) of the following subsection:

“(4) Any decision of the Commissioner under the definitions of ‘benefit fund’, ‘pension fund’, ‘provident fund’ and ‘retirement annuity fund’ in section 1, section 6, section 8(4)(b), (c), (d) and (e), [section 9C] section 9D, section 9F, section 10(1)[(cB)] (cH), [(cI), (cJ)] (cK), (e), (iA), (j) and (nB), section 11(e), (f), (g), (gA), (j), (l), (t), (u) and (w), section 12C, section 13, section 14, section 15, section 22(1), (3) and (5), section 24(2), section 24A(6), section 24C, section 24D, section 24I, section 25D, section 27, section 31, section 35(2), section 38(4), section 57, paragraphs 6, 7, 9, 13, 13A, 14, 19 and 20 of the First Schedule, paragraph (b) of the definition of ‘formula A’ in paragraph 1 and paragraph 4 of the Second Schedule, paragraphs 18, 19(1), 20, 21, 22, 24 and 27 of the Fourth Schedule and paragraphs 2, 3, 6, 9 and 11 of the Seventh Schedule, shall be subject to objection and appeal.”.

Substitution of section 6quat of Act 58 of 1962, as inserted by section 5 of Act 85 of 1987 and amended by section 5 of Act 28 of 1997, section 12 of Act 53 of 1999 and section 16 of Act 30 of 2000

4. The following section is hereby substituted for section 6quat of the Income Tax Act, 1962:

“Rebate in respect of foreign taxes on income

6quat. (1) Subject to the provisions of subsection (2), [there] a rebate determined in accordance with this section shall be deducted from the normal tax payable by any resident [of the Republic or any person contemplated in section 9C(2)(b) or any shareholder who is a ‘resident’ as defined in section 9E] in whose taxable income there is included—

- (a) any income received by or accrued to such resident [or person] from any [country other than] source outside the Republic (other than any foreign dividend contemplated in paragraph (d)) which is—
 - (i) not deemed to be from a source within the Republic; or
 - (ii) deemed to be from a source within the Republic in terms of section 9(1)(cA), (e) or (fA); or
- (b) any proportional amount [of investment income] contemplated in section 9D; or
- [(c) any income payable to such resident from the Republic, where such income is deemed to be from a source within the Republic in terms of the provisions of paragraphs (d), (d)bis and (f) of section 9(1); or]
- (d) any foreign dividend contemplated in section 9E [a rebate determined in accordance with this section].

(1A) For the purposes of subsection (1), the rebate shall be an amount equal to the sum of any taxes on income proved to be payable, without any right of recovery by any person (other than a right of recovery in terms of any entitlement to carry back losses arising during any year of assessment to any year of assessment prior to such year of assessment), by—

- [(i)](a) such resident [of the Republic] in respect of—
 - (i) any income contemplated in subsection (1)(a); or
 - (ii) any dividend contemplated in subsection (1)(d); and
- [(ii)](b) any controlled foreign entity, as contemplated in section 9D, in respect of such proportional amount contemplated in subsection (1)(b); or
- [(b) such person contemplated in section 9C(2)(b); or
- (c) (i) such shareholder in respect of any dividend contemplated in subsection (1)(d); and
- (ii)](c) any company in respect of any profits from which [such] any dividend contemplated in subsection (1)(d) is declared or deemed to have been declared; or

Wysiging van artikel 3 van Wet 58 van 1962, soos gewysig deur artikel 3 van Wet 141 van 1992, artikel 3 van Wet 21 van 1994, artikel 3 van Wet 21 van 1995 en artikel 20 van Wet 30 van 1998

3. Artikel 3 van die Inkomstebelastingwet, 1962, word hierby gewysig deur subartikel (4) deur die volgende subartikel te vervang:

“(4) ’n Beslissing van die Kommissaris kragtens die omskrywings van ‘bystandsfonds’, ‘pensioenfonds’, ‘uittredingannuïteitsfonds’ en ‘voorsorgsfonds’ in artikel 1, artikel 6, artikel 8(4)(b), (c), (d) en (e), **[artikel 9C]** artikel 9D, artikel 9E, artikel 10(1)**[(cB)]** (cH), **[(cI), (cJ)]** (cK), (e), (iA), (j) en (nB), artikel 11(e), (f), (g), (gA), (j), (l), (t), (u) en (w), artikel 12C, artikel 13, artikel 14, artikel 15, artikel 22(1), (3) en (5), artikel 24(2), artikel 24A(6), artikel 24C, artikel 24D, artikel 24I, artikel 25D, artikel 27, artikel 31, artikel 35(2), artikel 38(4), artikel 57, paragrafe 6, 7, 9, 13, 13A, 14, 19 en 20 van die Eerste Bylae, paragraaf (b) van die omskrywing van ‘formule A’ in paragraaf 1 en paragraaf 4 van die Tweede Bylae, paragrafe 18, 19(1), 20, 21, 24 en 27 van die Vierde Bylae en paragrafe 2, 3, 6, 9 en 11 van die Sewende Bylae, is aan beswaar en appèl onderhewig.”.

Vervanging van artikel 6quat van Wet 58 van 1962, soos ingevoeg deur artikel 5 van Wet 85 van 1987 en gewysig deur artikel 5 van Wet 28 van 1997, artikel 12 van Wet 53 van 1999 en artikel 16 van Wet 30 van 2000

- 20 4. Artikel 6quat van die Inkomstebelastingwet, 1962, word hierby deur die volgende subartikel vervang:

“Korting ten opsigte van buitelandse belastinge op inkomste

25 6quat. (1) Behoudens die bepalings van subartikel (2), word daar ’n korting ooreenkomstig hierdie artikel bepaal, afgetrek van die normale belasting betaalbaar deur ’n inwoner **[van die Republiek of enige persoon in artikel 9C(2)(b) beoog of enige aandeelhouer wat ’n ‘inwoner’ is soos in artikel 9E omskryf]** in wie se belasbare inkomste daar ingesluit is—

30 (a) enige inkomste ontvang deur of toegeval aan daardie inwoner **[of persoon uit ’n ander land as]** uit ’n bron buite die Republiek (behalwe ’n buitelandse dividend in paragraaf (d) bedoel) wat—

(i) nie geag word uit ’n bron in die Republiek te wees nie; of

(ii) geag word uit ’n bron in die Republiek te wees ingevolge artikel 9(1)(cA), (e) of (fA); of

35 (b) enige proporsionele bedrag **[van beleggingsinkomste]** in artikel 9D beoog; of

40 **[(c) enige inkomste aan daardie inwoner vanuit die Republiek betaalbaar, waar daardie inkomste ingevolge die bepalings van paragrafe (d), (d)bis en (f) van artikel 9(1) geag word uit ’n bron in die Republiek te wees; of]**

(d) enige buitelandse dividend in artikel 9E bedoel **[’n korting ooreenkomstig hierdie artikel bepaal, afgetrek]**.

(1A) By die toepassing van subartikel (1), is die korting gelyk aan die som van enige belastinge op inkomste wat bewys word deur—

45 **[(i)](a)** bedoelde inwoner **[van die Republiek]** ten opsigte van—

(i) enige inkomste in subartikel (1)(a) bedoel; of

(ii) enige dividend in subartikel (1)(d) bedoel; en

[(ii)](b) enige beheerde buitelandse entiteit, soos beoog in artikel 9D, ten opsigte van gemelde proporsionele gedeelte in subartikel (1)(b) bedoel; of

50 **[(b) bedoelde persoon in artikel 9C(2)(b) beoog,**

(c) (i) bedoelde aandeelhouer ten opsigte van enige dividend in subartikel (1)(d) bedoel; en

55 **[(ii)](c)** enige maatskappy ten opsigte van enige winste waaruit [bedoelde] enige dividend in subartikel (1)(d) bedoel verklaar is of geag verklaar te gewees het; of

- (d) any company in respect of the proportional amount of any profits from which any dividend is declared or deemed to have been declared to a controlled foreign entity as defined in section 9D, and which dividend relates to any proportional amount **[of investment income]** included in the income of such **[shareholder]** resident as contemplated in subsection (1)(b), 5

to the government of any country other than the Republic in respect of the amount of income **[derived from such country]** or proportional amount contemplated in subsection (1)(b), which is so included in that resident's **[or person's or shareholder's]** taxable income: Provided that where such resident is a member of any partnership or a beneficiary of any trust and such partnership or trust is liable for tax as a separate entity in such other country, a proportional amount of any tax payable by such entity, which is attributable to the interest of such resident in such partnership or participation right of such resident in such trust, shall be deemed to have been payable by such resident. 10 15

(1B) Notwithstanding the provisions of subsection (1A)—

- (a) the rebate or rebates of any tax proved to be payable to the government of any other country or countries shall not in aggregate exceed an amount which bears to the total normal tax payable the same ratio as the total taxable income attributable to the income or proportional amount contemplated in subsection (1)(b), derived from such country or countries, which is [so] included as contemplated in subsection (1), bears to the total taxable income: [and 20

- (b) where such sum of any taxes payable to the government of any such other country exceeds the rebate as determined in paragraph (a) (hereinafter referred to as the excess amount), such excess amount may— 25

- (i) in the case of any excess amount which relates to any amount included in the income of any company as contemplated in paragraph (a), (c) or (d) of subsection (1), be deducted from any Secondary Tax on Companies which becomes payable by such company after the determination of such excess amount, limited to an amount determined by applying the rate of the Secondary Tax on Companies to the profits attributable to the inclusion of the income contemplated in such paragraphs; or 30 35
- (ii) in the case of any excess amount relating to any amount included in the income of any company as contemplated in paragraph (b) of subsection (1), be deducted from any Secondary Tax on Companies which becomes payable by such company on the distribution of any profits derived by way of dividends declared to such company by such controlled foreign entity from profits that relate to any amount of investment income so included in terms of paragraph (b), limited to an amount determined by applying the rate of the Secondary Tax on Companies to the amount of the taxable income attributable to the inclusion of the income contemplated in such paragraph, after the deduction of— 40 45

(aa) any normal tax paid or payable; or

(bb) such sum of taxes payable to the government of any such other country, 50

whichever amount is the greater:]

Provided that—

- [(A) the amount of any] (i) where such sum of any taxes payable to the government of any such other country exceeds the rebate as 55

(d) enige maatskappy ten opsigte van die proporsionele gedeelte van enige winste waaruit enige dividend aan 'n beheerde buitelandse entiteit soos in artikel 9D omskryf verklaar is of geag verklaar te gewees het en welke dividend betrekking het op enige proporsionele bedrag [van beleggingsinkomste] wat in die inkomste van bedoelde [aandeelhouer] inwoner ingesluit is soos in subartikel (1)(b) bedoel, sonder enige reg van verhaal deur 'n persoon (behalwe 'n reg van verhaal ingevolge 'n reg om enige verliese wat gedurende enige jaar van aanslag ontstaan na 'n jaar van aanslag wat bedoelde jaar van aanslag voorafgaan, terug te dra), aan die regering van enige land behalwe die Republiek betaalbaar is ten opsigte van die bedrag aan inkomste [vanaf daardie land verkry] of proporsionele bedrag in subartikel (1)(b) bedoel wat aldus in daardie inwoner [of persoon of aandeelhouer] se belasbare inkomste ingesluit is: Met dien verstande dat waar bedoelde inwoner 'n lid van 'n vennootskap of 'n begunstigde van 'n trust is en daardie vennootskap of trust in bedoelde ander land as 'n aparte entiteit vir belasting aanspreeklik is, 'n proporsionele bedrag van enige belasting wat deur daardie entiteit betaalbaar is, wat toeskryfbaar is aan die belang van daardie persoon in daardie vennootskap of die deelnemende reg van daardie persoon in bedoelde trust, geag word deur bedoelde inwoner betaalbaar te wees.

(1B) Ondanks die bepalings van subartikel (1A)—

(a) mag die korting of kortings van enige belasting wat bewys word aan die regering van enige ander land of lande betaalbaar is, nie in totaal 'n bedrag wat tot die totale normale belasting betaalbaar in dieselfde verhouding staan as wat die totale belasbare inkomste toeskryfbaar aan die inkomste of proporsionele bedrag in subartikel (1)(b) bedoel vanaf daardie land of lande verkry wat [aldus] soos in subartikel (1) beoog, ingesluit is tot die totale belasbare inkomste staan, te bowe gaan nie: [en

(b) waar bedoelde bedrag van belastings betaalbaar aan die regering van enige bedoelde ander land die korting soos bepaal in paragraaf (a) (hieronder die oorskotbedrag genoem), te bowe gaan, kan bedoelde oorskotbedrag—

(i) in die geval van enige oorskotbedrag met betrekking tot enige bedrag in die inkomste van enige maatskappy soos bedoel in paragraaf (a), (c) of (d) van subartikel (1) ingesluit, afgetrek word van die Sekondêre Belasting op Maatskappye wat deur bedoelde maatskappy betaalbaar word na die vasstelling van bedoelde oorskotbedrag, beperk tot 'n bedrag vasgestel deur die koers van Sekondêre Belasting op Maatskappye toe te pas op die winste wat toeskryfbaar is aan die insluiting van die inkomste in bedoelde paragrafe; of

(ii) in die geval van enige oorskotbedrag met betrekking tot enige bedrag in die inkomste van enige maatskappy soos bedoel in paragraaf (b) van subartikel (1) ingesluit, afgetrek word van die Sekondêre Belasting op Maatskappye wat deur bedoelde maatskappy betaalbaar word by die uitkering van enige winste verkry by wyse van dividende wat aan bedoelde maatskappy deur bedoelde beheerde buitelandse entiteit verklaar is uit winste wat betrekking het op enige bedrag beleggingsinkomste aldus ingevolge paragraaf (b) ingesluit, beperk tot 'n bedrag vasgestel deur die koers van die Sekondêre Belasting op Maatskappye toe te pas op die belasbare inkomste wat toeskryfbaar is aan die insluiting van die inkomste in daardie paragraaf bedoel, na die aftrekking van—

(aa) enige normale belasting betaal of betaalbaar; of

(bb) bedoelde som van die belastings betaalbaar aan die regering van bedoelde ander land,

welke bedrag die grootste is:]

Met dien verstande dat—

[(A) die bedrag van] (i) waar bedoelde bedrag van belastings betaalbaar aan die regering van enige bedoelde ander land die korting

so determined (hereinafter referred to as the excess amount), such excess amount **[as exceeds the amount of any Secondary Tax on Companies as contemplated in subparagraph (i) or (ii)]** may—

[(AA)](aa) be carried forward to the immediately succeeding year of assessment and shall be deemed to be a tax on income paid to the government of **[such]** any other country in such year; and

[(BB)](bb) be set off against the amount of any normal tax payable by such **[company]** resident during such year of assessment in respect of any amount derived from **[such]** any other country which is included in the taxable income of such **[shareholder]** resident during such year, as contemplated in paragraph (a), (b) [(c)] or (d) of subsection (1), after any tax payable **[by such company]** to the government of **[such]** any other country in respect of **[the]** any amount so included during such year of assessment which may be deducted in terms of subsections (1) and (1A), has been **[set off against]** deducted from the amount of—

(AAA) such normal tax payable in respect of such amount of income or proportional amount contemplated in subsection (1)(b); and

[(BBB)] any Secondary Tax on Companies as contemplated in subparagraph (i) or (ii) which becomes payable during such year; and

(B)(ii) the excess amount **[contemplated in this paragraph]** shall not be allowed to be carried forward for more than **[three]** seven years reckoned from the year of assessment when such excess amount was for the first time carried forward;

(c) the amount of any tax which—

(i) becomes payable to the government of any other country in respect of any amount which—

[(aa)] is declared to any **[company which is a]** resident as a foreign dividend which is exempt from tax in terms of section 9E(7)(e); **[or**

(bb) would, but for the provisions of section 9D(9)(f), have been included in any income of such company which is a resident;] and

(ii) has not been taken into account as a rebate against any normal tax payable by such **[company]** resident in respect of such amount previously included in his taxable income in terms of section 9D, may be deducted from any **[Secondary Tax on Companies]** normal tax which becomes payable by such **[company on the distribution of any profits]** resident during any year of assessment that any income is derived by way of dividends declared to such **[company]** resident by any controlled foreign entity from profits relating to any **[investment income]** amount so previously included;

(d) no rebate shall be allowed as a deduction from the tax payable by any **[shareholder]** resident, in respect of any tax contemplated in subsection (1A)(c)**[(ii)]** or (d), which is payable by—

(i) any company distributing any dividend to such **[shareholder]** resident, if such **[shareholder]** resident (in the case of a company, together with any other company in a group of companies of which such company forms part) holds for his or its

soos aldus bepaal (hieronder die oorskotbedrag genoem), te bowe gaan, bedoelde oorskotbedrag [wat die bedrag van enige Sekondêre Belasting op Maatskappye soos bedoel in subparagraaf (i) of (ii) te bowe gaan kan]—

- 5 [(AA)](aa) oorgedra kan word na die onmiddellik daaropvolgende jaar van aanslag en word geag 'n belasting op inkomste betaal aan die regering van [daardie] 'n ander land te wees in bedoelde jaar; en
- 10 [(BB)](bb) verreken word teen die bedrag van enige normale belasting betaalbaar deur bedoelde [maatskappy] inwoner gedurende bedoelde jaar van aanslag ten opsigte van enige bedrag vanaf [bedoelde] 'n ander land verkry wat in die belasbare inkomste van bedoelde [aandeelhouer] inwoner in bedoelde jaar ingesluit is, soos in paragraaf (a), (b) [(c)] of (d) van subartikel (1) bedoel, na enige belasting betaalbaar [deur bedoelde maatskappy] aan die regering van [bedoelde] 'n ander land gedurende bedoelde jaar van aanslag ten opsigte van [die] enige bedrag aldus ingesluit in daardie jaar van aanslag, [verreken is, teen] wat ingevolge subartikels (1) en (1A) afgetrek kan word, afgetrek is van die bedrag van—
- 15 (AAA)] bedoelde normale belasting ten opsigte van bedoelde bedrag van inkomste of proporsionele bedrag in subartikel (1)(b) bedoel, betaalbaar; en
- 20 [(BBB) enige Sekondêre Belasting op Maatskappye soos in subparagraaf (i) of (ii) bedoel wat gedurende bedoelde jaar betaalbaar word; en
- 30 (B)](ii) die oorskotbedrag [in hierdie paragraaf bedoel] nie vir langer as [drie] sewe jaar, gereken vanaf die jaar van aanslag waarop bedoelde oorskotbedrag vir die eerste maal oorgedra is, oorgedra mag word nie;
- 35 (c) kan die bedrag van enige belasting wat—
- (i) aan die regering van enige ander land betaalbaar word met betrekking tot enige bedrag wat—
- 40 [(aa)] aan enige [maatskappy wat 'n] inwoner [is] as 'n buitelandse dividend verklaar word wat ingevolge artikel 9E(7)(e) van belasting vrygestel is; [of
- (bb) by ontstentenis van die bepalinge van artikel 9D(9)(f) by enige inkomste van bedoelde maatskappy wat 'n inwoner is ingesluit sou word;] en
- 45 (ii) nie as 'n korting teen enige normale belasting betaalbaar deur bedoelde [maatskappy] inwoner ten opsigte van bedoelde bedrag voorheen ingesluit in sy belasbare inkomste ingevolge artikel 9D in berekening gebring is nie,
- afgetrek word van enige [Sekondêre Belasting op Maatskappye] normale belasting wat deur bedoelde [maatskappy] inwoner betaalbaar word [by die uitkeer van enige winste wat] gedurende enige jaar van aanslag wat inkomste verkry word by wyse van dividende aan bedoelde [maatskappy] inwoner deur enige beheerde buitelandse entiteit verklaar uit winste wat verband hou met enige [beleggingsinkomste] bedrag aldus voorheen ingesluit, verkry is;
- 55 (d) word geen korting toegelaat as 'n aftrekking van die belasting betaalbaar deur enige [aandeelhouer] inwoner nie, ten opsigte van enige belasting in subartikel (1A)(c)](ii) of (d) bedoel, wat betaalbaar is deur —
- 60 (i) enige maatskappy wat 'n dividend aan daardie [aandeelhouer] inwoner uitkeer, indien daardie [aandeelhouer] inwoner (in die geval van 'n maatskappy, tesame met enige ander maatskappy in 'n groep maatskappye waarvan bedoelde maatskappy deel uit-

- own benefit less than 10 per cent of the equity share capital in such company; or
- (ii) any company in respect of any profits from which the dividend is declared or deemed to have been declared, if such **[shareholder]** resident does not hold a qualifying interest in such company; and 5
- (e) no rebate shall be allowed in respect of any tax payable on any amount contemplated in subsection (1)(d), if the **[shareholder]** resident has made an election as contemplated in section 9E(6).
- (2) The rebate under subsection (1) shall not be granted in addition to any relief to which the resident **[of the Republic]** is entitled under any 10 agreement between the governments of the Republic and the said other country for the prevention of or relief from double taxation, but may be granted in substitution for the relief to which the resident **[of the Republic]** would be so entitled.
- (3) For the purposes of this section— 15
 'controlled company' means a controlled company as defined in section 9E;
 'controlling company' means a controlling company as defined in section 9E;
 'group of companies' means a group of companies as defined in section 9E;
 'qualifying interest' means any qualifying interest as defined in section 9E; 20
['resident of the Republic' means—
- (a) any natural person who is ordinarily resident in the Republic; and
 (b) any person, other than a natural person, which is incorporated or has its place of effective management in the Republic.]
- (4) For the purposes of this section the amount of any foreign tax proved 25 to be payable as contemplated in subsection (1A) in respect of any amount which is included in the taxable income of any resident during any year of assessment, shall be converted to the currency of the Republic by applying—
- (a) the ruling exchange rate on the day on which such foreign tax is 30 actually paid; or
- (b) if such foreign tax has not been paid by the last day of such year of assessment the ruling exchange rate on the last day of such year of assessment:
- Provided that where such foreign tax is payable in respect of the amount of 35 any foreign dividend which is included in the taxable income of such resident as contemplated in subsection (1)(d), such foreign tax shall be converted to the currency of the Republic by applying the exchange rate at which the amount of such foreign dividend is converted as contemplated in section 9E. 40
- (5) Where any amount of tax, which was proved to be payable to the government of any other country, was allowed as a rebate in terms of this section against the normal tax payable by any resident in any previous year of assessment, and—
- (a) it is proved by such resident that the amount of such tax actually 45 payable to such government exceeds the amount which was so allowed as a rebate; or
- (b) the Commissioner is satisfied that the amount of such tax actually payable to such government is less than the amount which was so 50 allowed as a rebate,
- the Commissioner may, notwithstanding the provisions of section 79 or section 81(5), issue a reduced or additional assessment, as the case may be, reflecting the amount of the rebate which shall be allowed against normal tax: Provided that the Commissioner shall not issue any such reduced or 55 additional assessment after the expiration of six years from the date of the assessment in terms of which the rebate of the amount of tax proved to be

maak) minder as 10 persent van die ekwiteitsaandelekapitaal in bedoelde maatskappy vir sy eie belang hou; of

- (ii) enige maatskappy ten opsigte van enige winste waaruit die dividend uitgekeer of geag uitgekeer te gewees het, indien daardie **[aandeelhouer]** inwoner nie 'n kwalifiserende belang in bedoelde maatskappy hou nie; en

- (e) word geen korting toegelaat ten opsigte van enige belasting betaalbaar ten opsigte van enige bedrag in subartikel (1)(d) bedoel, indien die **[aandeelhouer]** inwoner 'n keuse soos in artikel 9E(6) bedoel, uitgeoefen het nie.

(2) Die korting ingevolge subartikel (1) word nie benewens enige verligting waarop die inwoner **[van die Republiek]** geregtig is ingevolge 'n ooreenkoms tussen die regerings van die Republiek en genoemde ander land ter voorkoming of verligting van dubbele belasting toegestaan nie, maar kan in die plek van die verligting waarop die inwoner **[van die Republiek]** aldus geregtig sou gewees het, toegestaan word.

(3) By die toepassing van hierdie artikel beteken-
'beheerde maatskappy' 'n beheerde maatskappy soos in artikel 9E omskryf;

'beherende maatskappy' 'n beherende maatskappy soos in artikel 9E omskryf;

'groep maatskappye' 'n groep maatskappye soos in artikel 9E omskryf;
['inwoner van die Republiek']—

- (a) **enige natuurlike persoon wat gewoonlik in die Republiek woonagtig is; en**

- (b) **enige persoon, behalwe 'n natuurlike persoon, wat ingelyf is in of sy plek van effektiewe bestuur binne die Republiek het;]**

'kwalifiserende belang' 'n kwalifiserende belang soos in artikel 9E omskryf.

(4) By die toepassing van hierdie artikel word die bedrag van enige buitelandse belasting wat bewys word betaalbaar te wees soos in subartikel (1A) beoog ten opsigte van enige bedrag wat gedurende enige jaar van aanslag in die belasbare inkomste van 'n inwoner ingesluit is, na die geldeenheid van die Republiek omgeskakel deur—

- (a) die heersende wisselkoers op die dag waarop die buitelandse belasting werklik betaal word; of

- (b) indien daardie buitelandse belasting nie teen die laaste dag van bedoelde jaar van aanslag betaal is nie, die heersende wisselkoers op die laaste dag van daardie jaar van aanslag,

toe te pas: Met dien verstande dat waar daardie buitelandse belasting betaalbaar is ten opsigte van die bedrag van enige buitelandse dividend wat in die belasbare inkomste van daardie inwoner ingesluit is soos in subartikel (1)(d) bedoel, daardie buitelandse belasting na die geldeenheid van die Republiek omgeskakel word deur die wisselkoers waarteen die bedrag van daardie buitelandse dividend omgeskakel is soos in artikel 9E beoog, toe te pas.

(5) Waar enige bedrag belasting wat bewys word aan die regering van enige ander land betaalbaar te wees, ingevolge hierdie artikel teen die normale belasting deur enige inwoner betaalbaar gedurende enige vorige jaar van aanslag as 'n korting toegelaat is, en—

- (a) dit deur daardie inwoner bewys word dat die bedrag van daardie belasting werklik aan daardie regering betaalbaar die bedrag wat as 'n korting toegelaat is oorskry; of

- (b) die Kommissaris oortuig is dat die bedrag van daardie belasting werklik betaalbaar aan daardie regering minder is as die bedrag wat aldus toegelaat is as 'n korting,

kan die Kommissaris, ondanks die bepalinge van artikel 79 of artikel 81(5), 'n verminderde of addisionele aanslag, na gelang van die geval, doen wat die bedrag van die korting wat toegelaat word teen normale belasting uiteensit: Met dien verstande dat die Kommissaris nie so 'n verminderde of addisionele aanslag doen nie na verstryking van ses jaar vanaf die datum van die aanslag ingevolge waarvan die korting van die bedrag van belasting wat bewys betaalbaar te wees aldus toegelaat is, tensy die

payable was so allowed, unless the Commissioner is satisfied that the fact that the amount of tax proved to be payable to such other government was incorrectly reflected was due to fraud or misrepresentation or non-disclosure of material facts.

Amendment of section 7 of Act 58 of 1962, as amended by section 5 of Act 90 of 1962, section 8 of Act 88 of 1965, section 9 of Act 55 of 1966, section 7 of Act 94 of 1983, section 2 of Act 30 of 1984, section 5 of Act 90 of 1988, section 5 of Act 70 of 1989, section 4 of Act 101 of 1990, section 7 of Act 129 of 1991, section 5 of Act 141 of 1992, section 6 of Act 21 of 1995, section 23 of Act 30 of 1998 and section 13 of Act 53 of 1999

5. Section 7 of the Income Tax Act, 1962, is hereby amended by the addition of the following subsections:

“(8) Where by reason of or in consequence of any donation, settlement or other disposition (other than a donation, settlement or other disposition to a foreign entity, as defined in section 9D, of a public character) made by any resident, income is received by or accrued to any person who is not a resident (other than a controlled foreign entity as defined in section 9D in relation to such resident), there shall be included in the income of such resident so much of the amount of any income as is attributable to such donation, settlement or other disposition: Provided that any amount of income received by or accrued to such person by way of foreign dividends, shall for the purposes of this section be determined in accordance with the provisions of section 9E, as if such person had been a shareholder who is a resident.

(9) Where any asset has been disposed of for a consideration which is less than the market value of such asset, the amount by which such market value exceeds such consideration shall for the purposes of this section be deemed to be a donation.

(10) Any resident who, at any time during any year of assessment makes any donation, settlement or other disposition as contemplated in this section, shall disclose such fact to the Commissioner in writing when submitting his return of income for such year and at the same time furnish such information as may be required by the Commissioner for the purposes of this section.”.

Amendment of section 8 of Act 58 of 1962, as amended by section 6 of Act 90 of 1962, section 6 of Act 90 of 1964, section 9 of Act 88 of 1965, section 10 of Act 55 of 1966, section 10 of Act 89 of 1969, section 6 of Act 90 of 1972, section 8 of Act 85 of 1974, section 7 of Act 69 of 1975, section 7 of Act 113 of 1977, section 8 of Act 94 of 1983, section 5 of Act 121 of 1984, section 4 of Act 96 of 1985, section 5 of Act 65 of 1986, section 6 of Act 85 of 1987, section 6 of Act 90 of 1988, section 5 of Act 101 of 1990, section 9 of Act 129 of 1991, section 6 of Act 141 of 1992, section 4 of Act 113 of 1993, section 6 of Act 21 of 1994, section 8 of Act 21 of 1995, section 6 of Act 36 of 1996, section 6 of Act 28 of 1997, section 24 of Act 30 of 1998, section 14 of Act 53 of 1999 and section 17 of Act 30 of 2000

6. Section 8 of the Income Tax Act, 1962, is hereby amended—

(a) by the substitution for the words preceding subparagraph (i) of paragraph (b) of subsection (4) of the following words:

“(b) If any amount referred to in paragraph (a) of this subsection is an amount which has been recovered or recouped during any year of assessment by a [person referred to in section 9(1)(c)] resident who carries on any business as owner or charterer of any ship as a result of the loss, sale or disposal in any other manner by that person of a ship, and if that person satisfies the Commissioner that—”; and

(b) by the insertion after subsection (4) of the following subsection:

“(4A) The provisions of subsection (4)(a), (e), (f) or (k) shall not apply in respect of any amount which is deemed to have been allowed as a deduction in terms of subparagraph (ix) of the proviso to section 11(e),

Kommissaris oortuig is dat die feit dat die bedrag van die belasting bewys betaalbaar te wees aan daardie ander regering foutief weergegee is, te wyte is aan bedrog of wanvoorstelling of verswyging van ter sake dienende feite.

- 5 Wysiging van artikel 7 van We 58 van 1962, soos gewysig deur artikel 5 van Wet 90 van 1962, artikel 8 van Wet 88 van 1965, artikel 9 van Wet 55 van 1966, artikel 7 van Wet 94 van 1983, artikel 2 van Wet 30 van 1984, artikel 5 van Wet 90 van 1988, artikel 5 van Wet 70 van 1989, artikel 4 van Wet 101 van 1990, artikel 7 van Wet 129 van 1991, artikel 5 van Wet 141 van 1992, artikel 6 van Wet 21 van 1995, 10 artikel 23 van Wet 30 van 1998 en artikel 13 van Wet 53 van 1999

5. Artikel 7 van die Inkomstebelastingwet, 1962, word hierby gewysig deur die volgende subartikels by te voeg:

- 15 “(8) Waar vanweë of as gevolg van enige skenking, oormaking of ander beskikking (behalwe ’n skenking, oormaking of ander beskikking aan ’n buitelandse entiteit, soos in artikel 9D omskryf, van ’n openbare aard) deur ’n inwoner, inkomste ontvang word of toeval aan ’n persoon wat nie ’n inwoner is nie (behalwe ’n beheerde buitelandse entiteit soos in artikel 9D omskryf met betrekking tot daardie inwoner), word daar in die inkomste van bedoelde inwoner ingesluit soveel van die bedrag aan inkomste wat aan bedoelde skenking, 20 oormaking of ander beskikking toeskryfbaar is: Met dien verstande dat enige bedrag aan inkomste ontvang deur of toegeval aan daardie persoon by wyse van buitelandse dividende, by die toepassing van hierdie artikel bepaal word ingevolge die bepalinge van artikel 9E, asof daardie persoon ’n aandeelhouer is wat ’n inwoner is.
- 25 (9) Waar ’n bate van die hand gesit is teen vergoeding wat minder is as die markwaarde van bedoelde bate, word die bedrag waarmee bedoelde markwaarde bedoelde vergoeding te bowe gaan, by die toepassing van die artikel geag ’n skenking te wees.
- 30 (10) ’n Inwoner wat op enige tydstip gedurende ’n jaar van aanslag ’n skenking, oormaking of ander beskikking doen soos in hierdie artikel beoog, moet sodanige feit skriftelik aan die Kommissaris openbaar wanneer hy sy opgawe van inkomste vir bedoelde jaar indien en terselfdertyd die inligting verstrek wat deur die Kommissaris by die toepassing van hierdie artikel vereis word.”

- 35 Wysiging van artikel 8 van Wet 58 van 1962, soos gewysig deur artikel 6 van Wet 90 van 1962, artikel 6 van Wet 90 van 1964, artikel 9 van Wet 88 van 1965, artikel 10 van Wet 55 van 1966, artikel 10 van Wet 89 van 1969, artikel 6 van Wet 90 van 1972, artikel 8 van Wet 85 van 1974, artikel 7 van Wet 69 van 1975, artikel 7 van Wet 113 van 1977, artikel 8 van Wet 94 van 1983, artikel 5 van Wet 121 van 1984, artikel 4 van Wet 96 van 1985, artikel 5 van Wet 65 van 1986, artikel 6 van Wet 40 85 van 1987, artikel 6 van Wet 90 van 1988, artikel 5 van Wet 101 van 1990, artikel 9 van Wet 129 van 1991, artikel 6 van Wet 141 van 1992, artikel 4 van Wet 113 van 1993, artikel 6 van Wet 21 van 1994, artikel 8 van Wet 21 van 1995, artikel 6 van Wet 36 van 1996, artikel 6 van Wet 28 van 1997, artikel 24 van Wet 30 van 1998, artikel 14 van Wet 53 van 1999 en artikel 17 van Wet 30 van 2000

- 45 6. Artikel 8 van die Inkomstebelastingwet, 1962, word hierby gewysig—
- (a) deur die woorde wat subparagraaf (i) van paragraaf (b) van subartikel (4) voorafgaan deur die volgende woorde te vervang:
- 50 “(b) Indien ’n in paragraaf (a) van hierdie subartikel bedoelde bedrag ’n bedrag is wat gedurende ’n jaar van aanslag deur ’n [in artikel 9(1)(c) bedoelde persoon] inwoner wat ’n besigheid bedryf as eienaar of bevrachter van ’n skip as gevolg van die verlies, verkoop of vervreemding op ’n ander wyse van ’n skip deur daardie persoon verhaal of aan hom vergoed is, en indien daardie persoon die Kommissaris daarvan oortuig dat—”; en
- 55 (b) deur die volgende subartikel na subartikel (4) in te voeg:
- “(4A) Die bepalinge van subartikel (4)(a), (e), (f) of (k) is nie van toepassing nie ten opsigte van enige bedrag wat geag word as ’n aftrekking toegelaat te gewees het ingevolge subparagraaf (ix) van die voorbehoudsbepaling by artikel 11(e), artikel 11(o)(bb), artikel

section 11(o)(bb), section 12B(4B), section 12C(4A), section 12D(3A),
section 13(1A), section 13bis(3A) or section 13ter(6A)."

Amendment of section 9 of Act 58 of 1962, as amended by section 7 of Act 90 of 1962, section 6 of Act 72 of 1963, section 7 of Act 90 of 1964, section 9 of Act 95 of 1967, section 12 of Act 89 of 1969, section 6 of Act 65 of 1973, section 9 of Act 85 of 1974, section 8 of Act 103 of 1976, section 9 of Act 121 of 1984, section 5 of Act 96 of 1985, section 6 of Act 65 of 1986, section 2 of Act 108 of 1986, section 7 of Act 85 of 1987, section 36 of Act 9 of 1989, section 10 of Act 129 of 1991, section 7 of Act 141 of 1992, section 5 of Act 113 of 1993, section 3 of Act 140 of 1993, section 7 of Act 21 of 1994, section 9 of Act 21 of 1995, section 7 of Act 28 of 1997, section 25 of Act 30 of 1998 and section 15 of Act 53 of 1999

7. Section 9 of the Income Tax Act, 1962, is hereby amended—

- (a) by the deletion of paragraphs (a), (b), (bA), (c), (cB), (d), (d)bis and (f) of subsection (1);
- (b) by the substitution for subparagraph (i) of paragraph (e) of subsection (1) of the following subparagraph:
 - “(i) any services rendered by such person to or work or labour done by such person for or on behalf of **[the] any employer in the national or provincial sphere of government [including any provincial administration] or any local authority in the Republic or [the South African Tourist Corporation or the Council for Scientific and Industrial Research] any national or provincial public entity if not less than 80 per cent of the expenditure of such entity is defrayed directly or indirectly from funds voted by Parliament, notwithstanding that such services are rendered or that such work or labour is done outside the Republic, provided such services are rendered or such work or labour is done in accordance with a contract of employment entered into with the Government [or such administration] or local authority or [that Corporation or that Council] national or provincial public entity; or”;**
- (c) by the substitution for the proviso to paragraph (e) of subsection (1) of the following proviso:
 - “Provided that nothing in this paragraph shall be construed as imposing liability for taxation under this Act upon any payment made to any such person who is stationed outside the Republic, by way of an allowance for the purpose of meeting expenditure (other than domestic or private expenditure) incurred by such person in connection with his official duties outside the Republic;”;
- (d) by the substitution for subsection (1A) of the following subsection:
 - “(1A) For the purposes of paragraph (g)(ii) the services referred to in **[paragraphs (d), (d)bis, (f) and] paragraph (fA)** shall be deemed to have been performed within the Republic.”; and
- (e) by the deletion of subsection (5).

Repeal of section 9A of Act 58 of 1962, as inserted by section 8 of Act 85 of 1987 and amended by section 8 of Act 141 of 1992, section 8 of Act 21 of 1994 and section 8 of Act 28 of 1997

8. Section 9A of the Income Tax Act, 1962, is hereby repealed.

Repeal of section 9C of Act 58 of 1962, as inserted by section 9 of Act 28 of 1997, amended by section 27 of Act 30 of 1998 and section 18 of Act 30 of 2000

9. Section 9C of the Income Tax Act, 1962, is hereby repealed.

12B(4B), artikel 12C(4A), artikel 12D(3A), artikel 13(1A), artikel 13bis(3A) of artikel 13ter(6A)."

Wysiging van artikel 9 van Wet 58 van 1962, soos gewysig deur artikel 7 van Wet 90 van 1962, artikel 6 van Wet 72 van 1963, artikel 7 van Wet 90 van 1964, artikel 9 van Wet 95 van 1967, artikel 12 van Wet 89 van 1969, artikel 6 van Wet 65 van 1973, artikel 9 van Wet 85 van 1974, artikel 8 van Wet 103 van 1976, artikel 9 van Wet 121 van 1984, artikel 5 van Wet 96 van 1985, artikel 6 van Wet 65 van 1986, artikel 2 van Wet 108 van 1986, artikel 7 van Wet 85 van 1987, artikel 36 van Wet 9 van 1989, artikel 10 van Wet 129 van 1991, artikel 7 van Wet 141 van 1992, artikel 5 van Wet 113 van 1993, artikel 3 van Wet 140 van 1993, artikel 7 van Wet 21 van 1994, artikel 9 van Wet 21 van 1995, artikel 7 van Wet 28 van 1997, artikel 25 van Wet 30 van 1998 en artikel 15 van Wet 53 van 1999

7. Artikel 9 van die Inkomstebelastingwet, 1962, word hierby gewysig—
- (a) deur paragrafe (a), (b), (bA), (c), (cB), (d) (d)bis en (f) van subartikel (1) te skrap;
- (b) deur subparagraaf (i) van paragraaf (e) van subartikel (1) deur die volgende subparagraaf te vervang:
- “(i) dienste deur so ’n persoon bewys aan of werk of arbeid deur so ’n persoon verrig vir of ten behoeve van [die Regering met inbegrip van ’n provinsiale administrasie, of] enige werkgever in die nasionale of provinsiale regeringsfeer of ’n plaaslike bestuur in die Republiek of [die Suid-Afrikaanse Toeristekorporasie, of die Wetenskaplike en Nywerheidsnavorsingsraad] enige nasionale of provinsiale openbare entiteit indien minstens 80 persent van die onkoste van bedoelde entiteit direk of indirek uit fondse deur die Parlement bewillig, gedelg word, al word dié dienste bewys of dié werk of arbeid verrig buite die Republiek, mits dié dienste bewys of dié werk of arbeid verrig word ooreenkomstig ’n dienskontrak aangegaan met die Regering [of so ’n administrasie] of plaaslike bestuur of [dié Korporasie of dié Raad] nasionale of provinsiale openbare entiteit; of”;
- (c) deur die voorbehoudsbepaling by paragraaf (e) van subartikel (1) deur die volgende voorbehoudsbepaling te vervang:
- “Met dien verstande dat die bepalings van hierdie paragraaf nie uitgelê word in die sin dat dit aanspreeklikheid vir belasting kragtens hierdie Wet opleë op ’n betaling gemaak aan so iemand wat buite die Republiek gestasioneer is, by wyse van ’n toelae ter bestryding van onkoste (behalwe huishoudelike of privaat onkoste) deur so iemand in verband met sy ampspligte buite die Republiek aangegaan nie;”;
- (d) deur subartikel (1A) deur die volgende subartikel te vervang:
- “(1A) By die toepassing van paragraaf (g)(ii) word die dienste bedoel in [paragrafe (d), (d)bis, (f) of] paragraaf (fA), geag dienste te wees wat binne die Republiek verrig is.”; en
- (e) deur subartikel (5) te skrap.

Herroeping van artikel 9A van Wet 58 van 1962, soos ingevoeg deur artikel 8 van Wet 85 van 1987 en gewysig deur artikel 8 van Wet 141 van 1992, artikel 8 van Wet 21 van 1994 en artikel 8 van Wet 28 van 1997

8. Artikel 9A van die Inkomstebelastingwet, 1962, word hierby herroep.

Herroeping van artikel 9C van Wet 58 van 1962, soos ingevoeg deur artikel 9 van Wet 28 van 1997, gewysig deur artikel 27 van Wet 30 van 1998 en artikel 18 van Wet 30 van 2000

9. Artikel 9C van die Inkomstebelastingwet, 1962, word hierby herroep.

Amendment of section 9D of Act 58 of 1962, as inserted by section 9 of Act 28 of 1997 and amended by section 28 of Act 30 of 1998, section 17 of Act 53 of 1999 and section 19 of Act 30 of 2000

10. (1) Section 9D of the Income Tax Act, 1962, is hereby amended—

(a) by the insertion in subsection (1) before the definition of “controlled foreign entity” of the following definition:

“ ‘business establishment’, in relation to a controlled foreign entity, means a place of business with—

(a) an office, shop, factory, warehouse, farm or other structure which is used or will continue to be used by the controlled foreign entity for a period of not less than one year;

(b) a mine, oil or gas well, a quarry or any other place of extraction of natural resources; or

(c) a site for the construction or installation of buildings, bridges, roads, pipelines, heavy machinery or other projects of comparable magnitude which lasts for a period of not less than six months, whereby the business of such entity is carried on, and where—

(i) such place of business is suitably equipped with on-site operational management, employees, equipment and other facilities for the purposes of conducting the primary operations of such business; and

(ii) such place of business is utilised outside the Republic for a *bona fide* business purpose (other than the avoidance, postponement or reduction of any liability for payment of any tax, duty or levy imposed by this Act or by any other law administered by the Commissioner);”;

(b) by the insertion in subsection (1) after the definition of “controlled foreign entity” of the following definition:

“ ‘designated country’ means any designated country as defined in section 9E;”;

(c) by the substitution in subsection (1) for the definition of “foreign entity” of the following definition:

“ ‘foreign entity’ means any person (other than a natural person or a trust) which **[has its place of effective management in a country other than the Republic]** is not a resident, or which is a resident but where such entity is as a result of the application of the provisions of any agreement entered into by the Republic for the avoidance of double taxation is treated as not being a resident;”;

(d) by the deletion of the definition of “investment income” in subsection (1);

(e) by the deletion of the definition of “resident” in subsection (1);

(f) by the substitution for subsection (2) of the following subsection:

“(2) There shall be included in the income for the year of assessment of any resident contemplated in the definition of ‘controlled foreign entity’ in subsection (1), **[a]** an amount equal to the proportional amount of **[any investment]** the net income **[received by or accrued to]** of such entity for the foreign tax year of such entity which ends during such year of assessment of such resident, which bears to the total **[investment]** net income **[received by or accrued to]** of such entity during such foreign tax year, the same ratio as the percentage of the participation rights of such resident in relation to such entity bears to the total participation rights in relation to such entity: Provided that—

(a) the provisions of this subsection shall not apply **[to any amount of investment income to which the provisions of subsection (4) are applicable]** where such resident (together with any connected person in relation to such resident) in aggregate at all times during the foreign tax year holds less than 10 per cent of the participation rights and is entitled to exercise less than 10 per cent of the voting rights in such controlled foreign entity **[and**

(b) the amount of any investment income received by or accrued to such entity by way of foreign dividends, shall for the purposes of

Wysiging van artikel 9D van Wet 58 van 1962, soos ingevoeg deur artikel 9 van Wet 28 van 1997 en gewysig deur artikel 28 van Wet 30 van 1998, artikel 17 van Wet 53 van 1999 en artikel 19 van Wet 30 van 2000

10. (1) Artikel 9D van die Inkomstebelastingwet, 1962, word hierby gewysig—
- 5 (a) deur in subartikel (1) die volgende omskrywing voor die omskrywing van “beheerde buitelandse entiteit” in te voeg:
- “ ‘aangewese land’ ’n aangewese land soos in artikel 9E omskryf;”;
- (b) deur die omskrywing van “beleggingsinkomste” in subartikel (1) te skrap;
- 10 (c) deur in subartikel (1) die volgende omskrywing na die omskrywing van “beleggingsinkomste” in te voeg:
- “ ‘besigheidsaak’, met betrekking tot ’n beheerde buitelandse entiteit, ’n besigheidsplek met—
- (a) ’n kantoor, winkel, fabriek, pakhuis, plaas of ander struktuur wat deur die beheerde buitelandse entiteit gebruik word of aangehou gebruik staan te word vir ’n termyn van minstens een jaar;
- 15 (b) ’n myn, olie- of gasbron, ’n steengroef of enige ander plek van ontginning van natuurlike hulpbronne; of
- (c) ’n terrein vir die konstruksie of installasie van geboue, brûe, paaie, pyplyne, swaar masjinerie of ander projekte van gelyke omvang wat vir minstens ses maande duur,
- 20 waardeur die besigheid van bedoelde entiteit bedryf word, en waar—
- (i) daardie besigheidsplek gepas toegerus is met op-terrein operasionele bestuur, werknemers, toerusting en ander fasiliteite vir die doeleindes van die beoefening van die primêre bedrywighede van daardie besigheid; en
- 25 (ii) daar die besigheidsplek gebruik word buite die Republiek vir ’n *bonafide*-besigheidsrede (behalwedievermyding, uitstel of vermindering van enige aanspreeklikeheid vir betaling van enige belasting, reg of heffing deur hierdie Wet of enige ander wet wat deur die Kommissaris geadministreer word, opgelê);”;
- 30 (d) deur in subartikel (1) die omskrywing van “buitelandse entiteit” deur die volgende omskrywing te vervang:
- “ ‘buitelandse entiteit’ enige persoon (behalwe ’n natuurlike persoon of ’n trust) wat [sy plek van effektiewe bestuur in ’n ander land as die Republiek het] nie ’n inwoner is nie, of wat ’n inwoner is maar waar daardie entiteit weens die toepassing van die bepalings van enige ooreenkoms deur die Republiek aangegaan vir die voorkoming van dubbele belasting behandel word as nie ’n inwoner te wees nie;”;
- 35 (e) deur die omskrywing van “inwoner” in subartikel (1) te skrap;
- 40 (f) deur subartikel (2) deur die volgende subartikel te vervang:
- “(2) Daar word ingesluit in die inkomste vir die jaar van aanslag van ’n inwoner in die omskrywing van ‘beheerde buitelandse entiteit’ in subartikel (1) beoog, ’n bedrag gelyk aan die proporsionele [gedeelte] bedrag van [enige beleggingsinkomste ontvang deur of toegeval aan] die netto inkomste van bedoelde entiteit vir die buitelandse belastingjaar van bedoelde entiteit wat eindig gedurende daardie jaar van aanslag van bedoelde inwoner, wat tot die totale [bedrag van beleggingsinkomste deur] netto inkomste van bedoelde entiteit [ontvang of toegeval] gedurende daardie buitelandse belastingjaar, in dieselfde verhouding staan as wat die persentasie van bedoelde inwoner se deelnemende regte met betrekking tot bedoelde entiteit tot die totale deelnemende regte met betrekking tot bedoelde entiteit staan: Met dien verstande dat[—
- (a)] die bepalings van hierdie subartikel nie van toepassing is nie [ten opsigte van ’n bedrag beleggingsinkomste waarop die bepalings van subartikel (4) van toepassing is] waar daardie inwoner (tesame met enige verbonde persoon met betrekking tot daardie inwoner) te alle tye gedurende die buitelandse belastingjaar in totaal minder as 10 persent van die deelnemende regte in bedoelde beheerde buitelandse entiteit hou en geregtig is om minder as 10 persent van die stemreg uit te oefen; [en
- 55 (b) die bedrag van enige beleggingsinkomste ontvang deur of toegeval aan bedoelde entiteit by wyse van buitelandse divi-
- 60

this section be determined in accordance with the provisions of section 9E, as if such entity had been a resident].”;

(g) by the insertion after subsection (2) of the following subsection:

“(2A) For the purposes of this section the ‘net income’ of a controlled

foreign entity shall be an amount equal to the taxable income of such entity determined in accordance with this Act as if such controlled foreign entity had been a resident: Provided that—

(a) any deductions or allowances which may be allowed, or any amounts which may be set off against, the income of such entity in terms of this Act shall be limited to the amount of such income;

(b) any amount whereby such deductions or allowances or amounts exceed the amount of such income, shall be carried forward to the immediately succeeding year of assessment and be deemed to be a balance of assessed loss which may be set off against the income of such entity in such succeeding year for the purposes of section 20; and

(c) no deduction shall be allowed in respect of any interest, royalties or rental paid by such entity to any other controlled foreign entity in relation to the resident, as contemplated in subsection (9)(fA).”;

(h) by the deletion of subsections (3), (4), (4A) and (5);

(i) by the substitution for subsection (6) of the following subsection:

“(6) The amount **[apportioned to]** included in the income of any resident under the provisions of this section, shall be converted **[at a date not later than the end of the financial year of the resident]** to the currency of the Republic on the last day of the foreign tax year of the controlled foreign entity and the ruling exchange rate at that date, or any other exchange rate or rates as the Commissioner may approve, determined with reference to the ruling exchange rates during such year, shall be applied to determine the value of the amount to be included in the income of such resident.”;

(j) by the deletion of subsections (7) and (8);

(k) by the substitution for paragraphs (a) and (b) of subsection (9) of the following paragraphs:

“(a) in respect of **[investment income other than income from foreign dividends]** receipts and accruals of any controlled foreign entity which is a company, where **[the foreign tax actually paid or payable without any right of recovery by any person (other than a right of recovery in terms of any entitlement to carry back losses arising during any year of assessment to any year of assessment prior to such year of assessment) in any country other than the Republic, relating to the proportional amount contemplated in subsection (2) or (4) after taking into consideration any deductions or allowances under the taxation provisions of such other country determined at the ratio as contemplated in subsection (2) or (4) as the case may be, is more than 85 per cent of the normal tax payable in the Republic: Provided that for the purposes of the determination of the tax payable in the Republic on such proportional amount, such tax shall be an amount which bears to the total normal tax payable the same ratio as the taxable income attributable to the inclusion of such proportional amount bears to the total taxable income in relation to such resident]** such receipts and accruals have been or will be subject to tax on income in a designated country at a statutory rate of at least 27 per cent (after taking into account the application of the relevant agreement for the avoidance of double taxation, if any) without any right of recovery by any person (other than a right of recovery in terms of an

dende, by die toepassing van hierdie artikel ooreenkomstig die bepalings van artikel 9E bepaal word, asof bedoelde entiteit 'n inwoner was.];”;

(g) deur die volgende subartikel na subartikel (2) in te voeg:

- 5 “(2A) By die toepassing van hierdie artikel is die ‘netto inkomste’ van ’n beheerde buitelandse entiteit ’n bedrag gelyk aan die belasbare inkomste van bedoelde entiteit bepaal ingevolge hierdie Wet asof daardie beheerde buitelandse entiteit ’n inwoner was: Met dien ver-
- 10 (a) enige aftrekkings of verminderings wat toegelaat kan word of enige bedrae wat verreken kan word teen die inkomste van daardie entiteit ingevolge hierdie Wet, nie die bedrag van daardie inkomste te bowe gaan nie;
- 15 (b) enige bedrag waarmee bedoelde aftrekkings of verminderings of bedrae die bedrag van daardie inkomste te bowe gaan, oorgedra word na die onmiddellike daaropvolgende jaar van aanslag en geag word ’n balans van ’n vasgestelde verlies te wees wat teen die inkomste van daardie entiteit in daardie daaropvolgende jaar by die toepassing van artikel 20 verreken kan word; en
- 20 (c) geen aftrekking toegelaat word nie ten opsigte van enige rente, tantième of huurgeld deur bedoelde entiteit betaal aan enige ander beheerde buitelandse entiteit met betrekking tot daardie inwoner, soos in subartikel (9)(fA) beoog.”;

(h) deur subartikels (3), (4), (4A) en (5) te skrap;

25 (i) deur subartikel (6) deur die volgende subartikel te vervang:

“(6) Die bedrag [toegedeel aan] in die inkomste van ’n inwoner kragtens die bepalings van hierdie artikel ingesluit, word [op ’n datum nie later nie as die einde van die boekjaar van die inwoner] omgeskakel in die geldeenheid van die Republiek op die laaste dag van

30 die buitelandse belastingjaar van die beheerde buitelandse entiteit en die heersende wisselkoers op daardie datum, of enige ander wisselkoers of -koerse wat die Kommissaris goedkeur, met inagneming van die heersende wisselkoerse gedurende daardie jaar bepaal, word toegepas om die waarde van die bedrag wat in die inkomste van die inwoner ingesluit moet word, vas te stel.”;

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(j) deur subartikels (7) en (8) te skrap;

(k) deur paragrawe (a) en (b) van subartikel (9) deur die volgende paragrawe te vervang:

“(a) ten opsigte van [beleggingsinkomste behalwe inkomste van buite- landse dividende] ontvangste en toevallings van enige beheerde buite-

40 landse entiteit wat ’n maatskappy is, waar [die buitelandse belasting werklik betaal of betaalbaar sonder enige reg van verhaal deur enige persoon (behalwe ’n reg van verhaal ingevolge ’n reg om enige verliese wat gedurende enige jaar van aanslag ontstaan na ’n jaar van aanslag wat bedoelde jaar van aanslag voorafgaan, terug te dra) in ’n ander land as die Republiek, met betrekking tot die proporsionele bedrag bedoel in subartikel (2) of (4) na inagneming van enige aftrekkings of verminderings kragtens die belastingbe- palings van bedoelde ander land vasgestel in die verhouding soos in

50 subartikel (2) of (4) beoog, na gelang van die geval, 85 persent van die normale belasting in die Republiek betaalbaar, te bowe gaan: Met dien verstande dat vir die doeleindes van die vasstelling van die belasting in die Republiek op bedoelde proporsionele bedrag be- taalbaar, bedoelde belasting ’n bedrag is wat tot die totale normale

55 belasting betaalbaar in dieselfde verhouding staan as wat die belasbare inkomste toeskryfbaar aan die insluiting van bedoelde proporsionele bedrag tot die totale belasbare inkomste met betrek- king tot bedoelde inwoner staan] daardie ontvangste en toevallings onderhewig is of sal wees aan belasting op inkomste in ’n aangewese

60 land teen ’n statutêre koers van minstens 27 persent (na inagneming van die toepassing van die betrokke ooreenkoms ter voorkoming van dubbele belasting, as daar is) sonder enige reg van verhaal deur enige persoon (behalwe ’n reg van verhaal ingevolge ’n reg om enige verliese

entitlement to carry back losses arising during any year of assessment to any year of assessment prior to such year of assessment), notwithstanding the fact that such entity may, as a result of any foreign assessed tax loss incurred by such entity during such year or any previous year of assessment, not be liable for the payment of any tax: Provided that where such designated country imposes tax on that company on a progressive scale of statutory rates of tax, the statutory rate shall for the purposes of this paragraph be deemed to be the highest rate on such scale; 5

(b) where the **[investment income arises from and is effectively connected to the business activities of a substantive business enterprise]** net income of any controlled foreign entity which is a company is attributable to any business establishment of [any] such controlled foreign entity **[conducted through a permanent establishment as defined in section 9C(1) of such controlled foreign entity]** in any country other than the Republic **[where such permanent establishment is suitably equipped for conducting the principal business of such substantive business enterprise]**: Provided that the provisions of this paragraph shall not apply to any receipts and accruals— 10 15 20

(i) derived from any transaction relating to the supply of goods or services by or to such controlled foreign entity with any connected person (in relation to such controlled foreign entity), who is a resident, unless the consideration in respect of such transaction reflects an arm's length price that is consistent with the provisions of section 31; or 25

(ii) derived from—

(aa) any sale of goods by such controlled foreign entity to any connected person (in relation to such controlled foreign entity) who is a resident, unless— 30

(A) such controlled foreign entity purchased such goods within the country of residence of such controlled foreign entity from any person who is not a connected person in relation to such controlled foreign entity; 35

(B) the creation, extraction, production, assembly, repair or improvement of goods undertaken by such controlled foreign entity amount to more than minor assembly or adjustment, packaging, repackaging and labeling; or 40

(C) such controlled foreign entity sells a significant quantity of goods of the same or a similar nature to persons who are not connected persons in relation to such controlled foreign entity, at comparable prices (after accounting for the level of the market, volume discounts and costs of delivery); or 45

(bb) any sale of goods by such controlled foreign entity to a person, other than a connected person (in relation to such controlled foreign entity) who is a resident, where such controlled foreign entity initially purchased such goods or any tangible intermediary inputs thereof from one or more connected persons (in relation to such controlled foreign entity) who are residents, unless— 50

(A) such goods or tangible intermediary inputs thereof purchased from connected persons (in relation to such controlled foreign entity) who are residents amount to an insignificant portion of the total tangible intermediary inputs of such goods; 55

wat gedurende enige jaar van aanslag ontstaan na 'n jaar van aanslag wat bedoelde jaar van aanslag voorafgaan, terug te dra), ondanks die feit dat daardie entiteit, as gevolg van enige buitelandse aangeslane belastingverlies deur daardie entiteit gedurende daardie jaar of enige vorige jaar van aanslag gely, nie vir die betaling van enige belasting aanspreeklik was nie: Met dien verstande dat waar daardie aangewese land belasting op daardie maatskappy oplê teen 'n progressiewe skaal van statutêre koerse, word die statutêre koers by die toepassing van hierdie paragraaf geag die hoogste koers op daardie skaal te wees;

(b) waar die **[beleggingsinkomste ontstaan uit en effektief verbonde is aan die besigheidsaktiwiteite van 'n substantiewe besigheidsonderneming]** netto inkomste van 'n beheerde buitelandse entiteit wat 'n maatskappy is toeskryfbaar is aan enige besigheidsaak van [']n daardie beheerde buitelandse entiteit **[deur 'n permanente saak soos in artikel 9C(1) omskryf van daardie beheerde buitelandse entiteit, bedryf]** in 'n ander land as die Republiek **[waar bedoelde permanente saak gepas toegerus is vir die bedryf van die vernaamste besigheid van bedoelde substantiewe besigheidsonderneming]**: Met dien verstande dat die bepalinge van hierdie paragraaf nie van toepassing is nie ten opsigte van enige ontvangste en toevallings—

(i) verkry uit enige transaksie met betrekking tot die verskaffing van goed of dienste deur of aan bedoelde beheerde buitelandse entiteit met 'n verbonde persoon (met betrekking tot bedoelde beheerde buitelandse entiteit), wat 'n inwoner is, tensy die vergoeding ten opsigte van daardie transaksie 'n prys onder uiterste voorwaardes beding, weergee wat in ooreenstemming is met die bepalinge van artikel 31; of

(ii) verkry uit—

(aa) 'n verkoop van goed deur bedoelde beheerde buitelandse entiteit aan enige verbonde persoon (met betrekking tot die beheerde buitelandse entiteit) wat 'n inwoner is, tensy—

(A) daardie beheerde buitelandse entiteit daardie goed binne die land van verblyf van die beheerde buitelandse entiteit aangekoop het van 'n persoon wat nie 'n verbonde persoon met betrekking tot bedoelde beheerde buitelandse entiteit is nie;

(B) die skepping, ontginning, produksie, montering, herstel of verbetering van goed deur daardie beheerde buitelandse entiteit onderneem meer as minimale montering of verwerking, verpakking, herverpakking en etikettering uitmaak; of

(C) daardie beheerde buitelandse entiteit 'n aansienlike hoeveelheid goed van dieselfde of soortgelyke aard aan persone wat nie verbonde persone met betrekking tot die beheerde buitelandse entiteit is nie, teen vergelykbare pryse verkoop (na inagneming van die vlak van die mark, hoeveelheidskorting en koste van aflewering); of

(bb) enige verkoop van goed deur daardie beheerde buitelandse entiteit aan 'n persoon, behalwe 'n verbonde persoon (met betrekking tot daardie beheerde buitelandse entiteit) wat 'n inwoner is, waar daardie beheerde buitelandse entiteit aanvanklik daardie goed of enige tasbare intermediêre insette van een of meer verbonde persone (met betrekking tot daardie beheerde buitelandse entiteit) wat inwoners is, gekoop het, tensy—

(A) daardie goed of tasbare intermediêre insette daarvan aangekoop van verbonde persone (met betrekking tot daardie beheerde buitelandse entiteit) wat inwoners is 'n onbenullige gedeelte van die totale tasbare intermediêre insette van daardie goed uitmaak;

- (B) the creation, extraction, production, assembly, repair or improvement of goods undertaken by such controlled foreign entity amount to more than minor assembly or adjustment, packaging, repackaging and labeling; or 5
- (C) the products are sold by such controlled foreign entity to persons who are not connected persons in relation to such controlled foreign entity, for delivery within the country of residence of such controlled foreign entity; or 10
- (cc) any service performed by such controlled foreign entity to a connected person (in relation to such controlled foreign entity) who is a resident, unless such service is performed outside the Republic and— 15
- (A) such service relates directly to the creation, extraction, production, assembly, repair or improvement of goods utilised within one or more countries outside the Republic; or
- (B) such services relate directly to the sale or marketing of goods of a connected person (in relation to such controlled foreign entity) who is a resident and such goods are sold to persons who are not connected persons in relation to such controlled foreign entity for delivery within the country of residence of such controlled foreign entity; 20
- (iii) in the form of dividends, interest, royalties, rental, annuities, insurance premiums or income of a similar nature, except where such receipts and accruals— 25
- (aa) do not in total exceed five per cent of the total receipts and accruals of such controlled foreign entity; or 30
- (bb) arise from the principal trading activities of any banking or financial services, insurance or rental business, excluding any such receipts and accruals from any—
- (A) connected person (in relation to such controlled foreign entity) who is a resident; or 35
- (B) resident to the extent that such receipts and accruals are produced as part of a scheme for the purpose of avoiding the liability for any tax, duty or levy imposed in terms of this Act or any other law administered by the Commissioner;” 40
- (l) by the deletion of paragraphs (c) and (d) of subsection (9);
- (m) by the substitution for paragraphs (e) and (f) of subsection (9) of the following paragraphs:
- “(e) to **[investment income]** the net income of any controlled foreign entity **[which is—** 45
- (i) **deemed to have accrued to the entity from a source in the Republic in terms of section 9(1)(b) or (bA); or**
- (ii) **to the extent that such net income is included in the taxable income of the entity;**
- (f) in relation to the proportional amount of **[investment income relating]** an amount equal to the net income attributable to any resident, to the extent that it relates to any foreign dividend contemplated in section 9E declared to or deemed to have been declared to a controlled foreign entity **[which is attributable to any resident, to the extent that the profits from which the dividend is declared or deemed to have been declared relate to any proportional amount of investment income which has been included in the income of such resident in terms of the** 50 55

- 5 (B) die skepping, ontginning, produksie, montering, herstel of verbetering van goed deur daardie beheerde buitelandse entiteit onderneem meer as minimale montering of verwerking, verpakking, herverpakking en etikettering uitmaak; of
- 10 (C) die produkte deur daardie beheerde buitelandse entiteit verkoop is aan persone wat nie verbonde persone met betrekking tot daardie beheerde buitelandse entiteit is nie vir aflewering binne die land van verblyf van daardie beheerde buitelandse entiteit; of
- 15 (cc) enige diens deur daardie beheerde buitelandse entiteit verrig aan 'n verbonde persoon (met betrekking tot daardie beheerde buitelandse entiteit) wat 'n inwoner is, tensy daardie diens buite die Republiek gelewer is en—
- (A) daardie diens direk verband hou met die skepping, ontginning, vervaardiging, montering, herstel of verbetering van goed wat in een of meer lande buite die Republiek gebruik word; of
- 20 (B) daardie dienste direk verband hou met die verkoop of bemarking van goed van 'n verbonde persoon (met betrekking tot daardie beheerde buitelandse entiteit) wat 'n inwoner is en daardie goed verkoop word aan persone wat nie verbonde persone met betrekking tot daardie beheerde buitelandse entiteit is nie vir aflewering binne die land van verblyf van daardie beheerde buitelandse entiteit;
- 25 (iii) in die vorm van dividende, rente, tantième, huurgeld, jaargelde, versekeringspremies of inkomste van dergelike aard, behalwe waar daardie ontvangste en toevallings—
- 30 (aa) nie in totaal vyf persent van die totale ontvangste en toevallings van bedoelde beheerde buitelandse entiteit te bowe gaan nie; of
- 35 (bb) verkry word uit die hoofbedryfsaktiwiteite van enige bank- of finansiële dienste, versekerings- of verhuuringsbesigheid, uitgesonderd enige sodanige ontvangste en toevallings van enige—
- (A) verbonde persoon (met betrekking tot daardie beheerde buitelandse entiteit) wat 'n inwoner is; of
- 40 (B) inwoner in die mate wat daardie ontvangste en toevallings opgelewer word as deel van 'n skema vir die doel van die vermyding van die aanspreeklikheid vir enige belasting, reg of heffing ingevolge hierdie Wet of enige ander wet deur die Kommissaris geadministreer, opgelê;”;
- 45 (l) deur paragrawe (c) en (d) van subartikel (9) te skrap;
- (m) deur paragrawe (e) en (f) van subartikel (9) deur die volgende paragrawe te vervang:
- 50 “(e) op [beleggingsinkomste] die netto inkomste van 'n beheerde buitelandse entiteit [wat—
- (i) **geag word het aan die entiteit uit 'n bron in die Republiek toe te geval ingevolge artikel 9(1)(b) of (bA); of**
- (ii) in die mate wat daardie netto inkomste in die belasbare inkomste van die entiteit ingesluit is;
- 55 (f) met betrekking tot die proporsionele bedrag [beleggingsinkomste wat] van 'n bedrag gelyk aan die netto inkomste wat aan enige inwoner toeskryfbaar is in die mate wat dit betrekking het op enige buitelandse dividend in artikel 9E beoog, verklaar of geag verklaar te gewees het aan 'n beheerde buitelandse entiteit [wat aan enige inwoner toeskryfbaar is, in die mate wat die winste waaruit die dividend verklaar is of geag verklaar te gewees het betrekking het op enige proporsionele bedrag beleggingsinkomste wat ingevolge die bepaling van
- 60

provisions of this section] which is a company, by any other company which is a controlled foreign entity in relation to such resident; or”;

- (n) by the insertion after paragraph (f) of subsection (9) of the following paragraph:

“(fA) in relation to the proportional amount of an amount equal to the net income of a controlled foreign entity which is attributable to any resident, to the extent that it relates to any interest, royalties or rental which is paid to such entity by any other controlled foreign entity in relation to such resident;”;

- (o) by the deletion of paragraph (g) of subsection (9);

- (p) by the addition of the following subsections:

“(10) For the purposes of subsection (9)(b)(ii) the Minister may—

- (a) by notice in the *Gazette* determine that one or more foreign countries be treated as one if such foreign countries comprise a single economic market and such treatment will not lead to an unacceptable erosion of the tax base; or
- (b) in consultation with the Commissioner grant exemption to any person from the application of subsection (9)(b)(ii), to the extent that its application will unreasonably prejudice national economic policies or South African international trade and such exemption will not lead to an unacceptable erosion of the tax base.

(11) The provisions of subsection (9)(b), (f) and (fA) shall not apply in respect of any resident, where such resident fails to comply with the provisions of section 72A.”.

- (2) Subsection (1)(k) shall, in so far as it amends paragraph (a) of subsection (9) of section 9D, come into operation on 1 January 2001.

- (3) In so far subsection (1)(m)—

- (a) amends paragraph (f) to delete the words “investment income relating” and inserts the words “an amount equal to the net income attributable to any resident, to the extent that it relates”, it shall come into operation on 1 January 2001, and shall apply in respect of years of assessment commencing on or after that date;

- (b) amends the rest of paragraph (f), it shall come into operation on 1 January 2001, and shall apply in respect of any dividend declared on or after that date.

- (4) Subsection (1)(h) shall, in so far as it deletes section 9D(3), come into operation on 1 March 2001.

Amendment of section 9E of Act 58 of 1962, as inserted by section 20 of Act 30 of 2000

- 11. (1)** Section 9E of the Income Tax Act, 1962, is hereby amended—

- (a) by the substitution in subsection (1) for the words preceding paragraph (a) of the definition of “foreign dividend” and the words preceding the proviso to paragraph (a) of the following words and paragraph:

“‘foreign dividend’ means any dividend received by or which accrued to any person from any company [to the extent that the dividend is declared from profits derived by such company from a source outside the Republic which are not deemed to be from a source within the Republic, or from profits which are deemed to be from a source within the Republic which have not been subject to tax in the Republic] which is either a foreign entity as defined in section 9D, or a resident to the extent that the dividend is declared from profits derived by such company before such company became a resident, and includes the following amounts which shall be deemed to be a dividend declared by such company to such person—

- (a) any amount deemed to have been distributed as contemplated in section 64C(3)(a), (b), (c) or (d) by any company which is a controlled foreign entity to such person or any resident who is a

hierdie artikel in die inkomste van daardie inwoner ingesluit is] wat 'n maatskappy is, deur enige ander maatskappy wat 'n beheerde buitelandse entiteit met betrekking tot daardie inwoner is; of";

(n) deur die volgende paragraaf na paragraaf (f) van subartikel (9) in te voeg:

5 “(fA) met betrekking tot die proporsionele bedrag van 'n bedrag gelyk aan die netto inkomste van 'n beheerde buitelandse entiteit wat toeskryfbaar is aan enige inwoner, in die mate wat dit verband hou met enige rente, tantième of huurgeld wat aan daardie entiteit betaal word deur enige ander beheerde buitelandse entiteit met betrekking tot daardie inwoner;”;

10 (o) deur paragraaf (g) van subartikel (9) te skrap; en

(p) deur die volgende subartikels by te voeg:

 “(10) By die toepassing van subartikel (9)(b)(ii) kan die Minister—

15 (a) by kennisgewing in die *Staatskoerant* bepaal dat een of meer ander lande as een behandel word indien daardie ander lande 'n enkele ekonomiese mark uitmaak en daardie behandeling nie tot 'n onaanvaarbare erodering van die belastingbasis aanleiding sal gee nie; of

 (b) in oorleg met die Kommissaris vrystelling verleen aan enige persoon van die toepassing van subartikel (9)(b)(ii) in die mate wat die toepassing daarvan nasionale ekonomiese beleid of Suid-Afrikaanse internasionale handel onredelik sal benadeel en daardie vrystelling nie tot 'n onaanvaarbare erodering van die belastingbasis aanleiding sal gee nie.

25 (11) Die bepalings van subartikel (9)(b), (f) en (fA) is nie van toepassing nie ten opsigte van enige inwoner waar daardie inwoner versuim om te voldoen aan die bepalings van artikel 72A.”.

(2) Subartikel (1)(k) tree, vir sover dit paragraaf (a) van subartikel (9) van artikel 9D wysig, in werking op 1 Januarie 2001.

(3) Vir sover subartikel (1)(m)—

30 (a) paragraaf (f) wysig om die woorde “beleggingsinkomste wat” te skrap en die woorde “van 'n bedrag gelyk aan die netto inkomste wat aan enige inwoner toeskryfbaar is in die mate wat dit” in te voeg, tree dit in werking op 1 Januarie 2001, en is van toepassing ten opsigte van jare van aanslag wat op of na daardie datum 'n aanvang neem; en

35 (b) die res van paragraaf (f) wysig, tree dit in werking op 1 Januarie 2001, en is van toepassing ten opsigte van enige dividend op of na daardie datum verklaar.

(4) Subartikel (1)(h) tree, vir sover dit artikel 9D(3) skrap, op 1 Maart 2001 in werking.

40 **Wysiging van artikel 9E van Wet 58 van 1962, soos ingevoeg deur artikel 20 van Wet 30 van 2000**

11. (1) Artikel 9E van die Inkomstebelastingwet, 1962, word hierby gewysig—

45 (a) deur in subartikel (1) die woorde wat paragraaf (a) van die omskrywing van “buitelandse dividend” voorafgaan en die woorde wat die voorbehoudsbepaling by paragraaf (a) voorafgaan deur die volgende woorde en paragraaf te vervang:

 “ ‘buitelandse dividend’ enige dividend ontvang deur of toegeval aan 'n persoon vanaf 'n maatskappy [in die mate wat die dividend verklaar is uit winste deur bedoelde maatskappy uit 'n bron buite die Republiek verkry wat nie geag word van 'n bron binne die Republiek te wees nie, of uit winste wat geag word van 'n bron binne die Republiek te wees en wat nie onderhewig is aan belasting in die Republiek nie] wat óf 'n buitelandse entiteit is soos omskryf in artikel 9D, óf 'n inwoner is in die mate wat die dividend verklaar is uit winste deur daardie maatskappy verkry voordat daardie maatskappy 'n inwoner geword het, en ook die volgende bedrae, wat geag word 'n dividend deur bedoelde maatskappy aan bedoelde persoon verklaar te gewees het—

60 (a) 'n bedrag geag deur 'n maatskappy wat 'n beheerde buitelandse entiteit is, uitgekeer te gewees het soos in artikel 64C(3)(a), (b), (c) of (d) beoog aan bedoelde persoon of 'n inwoner wat 'n verbonde

- connected person in relation to such person to the extent that such company could have distributed a dividend to such person from profits **[derived from a source outside the Republic which are not deemed to be from a source within the Republic, or from profits which are deemed to be from a source within the Republic]** which have not been subject to tax in the Republic, and none of the provisions contained in section 64C(4) apply.”;
- (b) by the substitution in subsection (1) for the words preceding the proviso to paragraph (b) of the definition of “foreign dividend” of the following words: 10
 “any amount derived by any person from the disposal by such person of any share or interest in the fixed capital in a company to the extent that such company or any subsidiary of such company has any undistributed profits **[which were derived from a source outside the Republic which are not deemed to be from a source within the Republic, or from profits deemed to be from a source within the Republic]** which have 15
 not been subject to tax in the Republic, which were directly or indirectly available for distribution to such person (including any amount deemed in terms of the definition of ‘dividend’ in section 1 to be a profit available for distribution):”;
- (c) by the substitution for the words preceding the proviso to paragraph (iii) of the 20
 proviso to paragraph (b) of the definition of “foreign dividend” of the following words:
 “where such person, or if the seller is a controlled foreign entity in relation to any resident, such resident, retains the same effective interest in the equity share capital or fixed capital of the company as prior to the 25
 disposal:”;
- (d) by the deletion of the definition of “resident” in subsection (1);
- (e) by the deletion of subsection (2);
- (f) by the insertion after subsection (5) of the following subsection: 30
 “(5A) Notwithstanding the provisions of sections 11(a) and 23(g)—
 (a) there shall be allowed to be deducted from any income of a resident which is derived during any year of assessment from taxable foreign dividends, an amount of any interest actually incurred by such resident in the production of income in the form of foreign dividends: Provided that such deduction shall be limited to the 35
 amount of foreign dividends included in the gross income of such resident during such year; and
 (b) any amount whereby such interest exceeds the amount of any such foreign dividends shall be reduced by the amount of any foreign dividends received by or accrued to such resident during such year of assessment which are not included in the taxable income of such 40
 resident, and the balance shall—
 (i) be carried forward to the immediately succeeding year of assessment; and
 (ii) be deemed to be an amount of interest actually incurred by 45
 such resident during such succeeding year of assessment in the production of income in the form of foreign dividends.”;
- (g) by the deletion of paragraphs (a) and (b) of subsection (7);
- (h) by the substitution for subparagraph (ii) of paragraph (d) of subsection (7) of 50
 the following subparagraph:
 “(ii) are or will be subject to tax at a statutory rate of at least 27 per cent (after taking into account the application of the relevant agreement for the avoidance of double taxation, if any) without any right of 55
 recovery by any person (other than a right of recovery in terms of an entitlement to carry back losses arising during any year of assessment to any year of assessment prior to such year of

- persoon met betrekking tot bedoelde persoon is in die mate wat bedoelde maatskappy 'n dividend aan bedoelde persoon kon uitgekeer het uit winste **[uit 'n bron buite die Republiek verkry wat nie geag word uit 'n bron binne die Republiek te wees nie, of uit winste wat geag word uit 'n bron binne die Republiek te wees en]** wat nie onderhewig is aan belasting in die Republiek nie, en geen van die bepalings in artikel 64C(4) vervat van toepassing is nie.”;
- (b) deur in subartikel (1) die woorde wat die voorbehoudsbepaling by paragraaf (b) van die omskrywing van “buitelandse dividend” voorafgaan deur die volgende woorde te vervang:
- “enige bedrag deur 'n persoon verkry uit die vandiehandsetting deur bedoelde persoon van 'n aandeel of belang in die vaste kapitaal van 'n maatskappy, in die mate wat bedoelde maatskappy of 'n filiaal van bedoelde maatskappy oor enige nie-verdeelde winste beskik **[wat uit 'n bron buite die Republiek verkry is wat nie geag word uit 'n bron binne die Republiek te wees nie, of uit winste wat geag word uit 'n bron binne die Republiek te wees en]** wat nie onderhewig is aan belasting in die Republiek nie, wat direk of indirek vir uitkering aan bedoelde persoon beskikbaar was (met inbegrip van enige bedrag wat ingevolge die omskrywing van ‘dividend’ in artikel 1 geag word 'n wins beskikbaar vir uitkering te wees).”;
- (c) deur die woorde wat die voorbehoudsbepaling by subparagraaf (iii) van die voorbehoudsbepaling by paragraaf (b) van die omskrywing van “buitelandse dividend” voorafgaan deur die volgende woorde te vervang:
- “waar bedoelde persoon, of waar die verkoper 'n beheerde buitelandse entiteit met betrekking tot enige inwoner is, daardie inwoner, dieselfde effektiewe belang behou in die ekwiteitsaandelekapitaal of vaste kapitaal van die maatskappy as voor die vandiehandsetting:”;
- (d) deur die omskrywing van “inwoner” in subartikel (1) te skrap;
- (e) deur subartikel (2) te skrap;
- (f) deur die volgende subartikel na subartikel (5) in te voeg:
- “(5A) Ondanks die bepalings van artikels 11(a) en 23(g)—
- (a) word daar van die inkomste van 'n inwoner gedurende 'n jaar van aanslag by wyse van belasbare buitelandse dividende verkry, 'n aftrekking toegelaat van 'n bedrag van enige rente werklik deur daardie inwoner aangegaan in die voortbrenging van inkomste in die vorm van buitelandse dividende: Met dien verstande dat daardie aftrekking beperk word tot die bedrag van die buitelandse dividende wat in die bruto inkomste van daardie inwoner gedurende daardie jaar van aanslag ingesluit is; en
- (b) enige bedrag waarby bedoelde rente die bedrag van bedoelde buitelandse dividende te bowe gaan, word verminder met die bedrag van enige buitelandse dividende wat gedurende daardie jaar van aanslag deur daardie inwoner ontvang is, of wat aan daardie inwoner toeval, wat nie in die belasbare inkomste van daardie inwoner ingesluit is nie, en word die balans—
- (i) oorgedra na die onmiddellike daaropvolgende jaar van aanslag; en
- (ii) geag 'n bedrag van rente te wees wat werklik deur daardie inwoner in daardie daaropvolgende jaar van aanslag aangegaan is in die voortbrenging van inkomste in die vorm van buitelandse dividende.”;
- (g) deur paragrafe (a) en (b) van subartikel (7) te skrap;
- (h) deur subparagraaf (ii) van paragraaf (d) van subartikel (7) deur die volgende subparagraaf te vervang:
- “(ii) aan belasting onderhewig is of sal word teen 'n statutêre koers van minstens 27 persent na inagneming van die toepassing van die betrokke ooreenkoms ter voorkoming van dubbele belasting, as daar is, sonder enige reg van verhaal deur 'n persoon (behalwe 'n reg van verhaal ingevolge 'n reg om enige verliese wat gedurende enige jaar van aanslag ontstaan na 'n jaar van aanslag wat bedoelde jaar van aanslag voorafgaan, terug te dra):

- assessment): Provided that where such designated country imposes tax on that company at a progressive scale of statutory rates, the statutory rate shall for the purposes of this paragraph be deemed to be the highest rate on such scale; or”;
- (i) by the deletion of the word “or” at the end of paragraph (d) of subsection (7); 5
- (j) by the substitution for subparagraph (i) of paragraph (e) of subsection (7) of the following subparagraph:
- “(i) relate to any amount of **[investment]** income which has or will be included in the income of the shareholder of such company in terms of section 9D; or”; 10
- (k) by the substitution for subparagraph (ii) of paragraph (e) of subsection (7) of the following subparagraph:
- “(ii) have been or will be **[included in the taxable income of such company]** subject to tax in the Republic in terms of this Act; or”; 15
- (l) by the addition of the word “or” at the end of subparagraph (iii) of paragraph (e) of subsection (7); 15
- (m) by the addition to paragraph (e) of subsection (7) of the following subparagraph:
- “(iv) arose directly or indirectly from any dividends declared by any company which is a resident; or”; 20
- (n) by the addition to subsection (7) of the following paragraph:
- “(f) any company out of profits derived by such company by way of any foreign dividend which is exempt from tax in terms of the provisions of this subsection.”; 25
- (o) by the deletion of paragraph (a) of subsection (8); 25
- (p) by the insertion after subsection (8) of the following subsections:
- “(8A) The Minister may, by notice in the *Gazette* to such extent as he may deem necessary in the national interest and subject to such conditions as he may prescribe, grant exemption from the application of this section in respect of any dividend received by or accrued to a resident, which is remitted to the Republic, to the extent that such dividend is declared from profits derived from any project approved by the Minister, having regard to—
- (a) the economic benefits of such project for the Republic; 30
- (b) the extent to which goods and services will be provided in respect of such project from the Republic; 35
- (c) the potential effect such project may have on the South African tax base;
- (d) other assistance granted by the State or organ of State in respect of such project; and 40
- (e) such other criteria which the Minister may prescribe by notice in the *Gazette*.
- (8B) The Minister may withdraw any exemption granted in terms of subsection (8A), where he is satisfied that any condition imposed in terms of that subsection has not been complied with.”; and 45
- (q) by the addition of the following subsection:
- “(10) The amount of any foreign dividend to be included in the gross income of any resident in terms of subsection (3), shall be converted to the currency of the Republic at the ruling exchange rate applicable on the date on which such dividend accrued to such resident.”. 50
- (2) (a) Subsection (1)(a), (b), (d), (e), (g) and (j) shall come into operation on 1 January 2001, and shall apply in respect of any dividend declared on or after that date.
- (b) Subsection (1)(c), (f), (h), (i), (k), (l), (m), (n) and (q) shall be deemed to have come into operation on 23 February 2000.
- (c) Subsection (1)(o) shall come into operation on 1 January 2001. 55
- (d) Subsection (1)(p) shall come into operation on the date of promulgation of this Act.

Met dien verstande dat waar daardie aangewese land belasting op daardie maatskappy oplê teen 'n progressiewe skaal van statutêre koerse word die statutêre koers by die toepassing van hierdie paragraaf geag die hoogste koers op daardie skaal te wees; of"

- 5 (i) deur die woord "of" aan die einde van paragraaf (d) van subartikel (7) te skrap;
- (j) deur subparagraaf (i) van paragraaf (e) van subartikel (7) deur die volgende subparagraaf te vervang:
- 10 "(i) betrekking het op enige [beleggingsinkomste] inkomste wat by die inkomste van die aandeelhouer van bedoelde maatskappy ingevolge artikel 9D ingesluit is of staan te word; of"
- (k) deur subparagraaf (ii) van paragraaf (e) van subartikel (7) deur die volgende subparagraaf te vervang:
- 15 "(ii) [by die belasbare inkomste van bedoelde maatskappy] onderhewig aan belasting in die Republiek is of sal wees ingevolge hierdie Wet [ingesluit is of sal word]; of";
- (l) deur die woord "of" aan die einde van subparagraaf (iii) van paragraaf (e) van subartikel (7) by te voeg;
- 20 (m) deur die volgende subparagraaf by paragraaf (e) van subartikel (7) te voeg:
- "(iv) direk of indirek ontstaan uit enige dividende verklaar deur 'n maatskappy wat 'n inwoner is; of";
- (n) deur die volgende paragraaf by subartikel (7) te voeg:
- 25 "(f) enige maatskappy uit die winste deur daardie maatskappy verkry by wyse van enige buitelandse dividend wat ingevolge die bepalinge van hierdie artikel van belasting vrygestel is."
- (o) deur paragraaf (a) van subartikel (8) te skrap;
- (p) deur die volgende subartikels na subartikel (8) in te voeg:
- 30 "(8A) Die Minister kan by kennisgewing in die Staatskoerant tot die mate wat hy nodig ag in nasionale belang en behoudens daardie voorwaardes wat hy mag oplê, vrystelling verleen van die toepassing van hierdie artikel ten opsigte van enige dividend ontvang deur of toegeval aan 'n inwoner, wat na die Republiek oorgeplaas is, in die mate wat daardie dividend verklaar is uit winste verkry uit enige projek deur die Minister goedgekeur, met inagneming van—
- 35 (a) die ekonomiese voordele van daardie projek vir die Republiek;
- (b) die mate wat goed en dienste ten opsigte van die projek uit die Republiek verskaf sal word;
- 40 (c) die potensiele effek wat die projek op die Suid-Afrikaanse belastingbasis mag hê;
- (d) ander bystand deur die Staat of 'n Staatsorgaan toegestaan ten opsigte van daardie projek; en
- (e) die ander kriteria wat die Minister by kennisgewing in die Staatskoerant kan voorskryf.
- 45 (8B) Die Minister kan enige verlening van vrystelling ingevolge subartikel (8A) terugtrek, waar hy tevrede is dat enige voorwaarde in daardie subartikel opgelê nie nagekom is nie."; en
- (q) deur die volgende subartikel by te voeg:
- 50 "(10) Die bedrag van enige buitelandse dividend wat ingevolge subartikel (3) in die bruto inkomste van enige inwoner ingesluit staan te word, word omgeskakel na die geldeenheid van die Republiek teen die heersende wisselkoers van toepassing op die datum wat bedoelde dividend aan daardie inwoner toeval."
- (2) (a) Subartikel (1)(a), (b), (d), (e), (g) en (j) tree op 1 Januarie 2001 in werking en is van toepassing ten opsigte van enige dividend wat op of na daardie datum verklaar word.
- (b) Subartikel (1)(c), (f), (h), (i), (k), (l), (m), (n) en (q) word geag op 23 Februarie 2000 in werking te getree het.
- (c) Subartikel (1)(o) tree op 1 Januarie 2001 in werking.
- 60 (d) Subartikel (1)(p) tree in werking op die datum waarop hierdie Wet afgekondig word.

Insertion of section 9F in Act 58 of 1962

12. The following section is hereby inserted after section 9E of the Income Tax Act, 1962:

“Income from foreign sources

9F. (1) For the purposes of this section ‘designated country’ means a designated country as defined in section 9E. 5

(2) The amount of any income which shall be exempt from tax in terms of the provisions of section 10(1)(kA), shall be so much of any amount received by or accrued during the relevant year of assessment to any company which is a resident from a source outside the Republic, which is not deemed to be from a source in the Republic, which has been or will be subject to tax in any designated country at a statutory rate of at least 27 per cent (after taking into account the application of the relevant agreement for the avoidance of double taxation, if any) without any right of recovery by any person (other than a right of recovery in terms of an entitlement to carry back losses arising during any year of assessment to any year of assessment prior to such year of assessment): Provided that where such designated country imposes tax on a company at a progressive scale of statutory rates, the statutory rate shall for the purposes of this subsection be deemed to be the highest rate on such scale. 10 15 20

(3) Where it is established to the satisfaction of the Commissioner that any amount, or any portion of such amount—

- (a) received by or accrued to any person which is required to be included in the gross income of such person; or
- (b) which is required to be included in the income of any resident in terms of the provisions of section 9D, 25

during any year of assessment, may not be remitted to the Republic during such year of assessment as a result of currency or other restrictions or limitations imposed in terms of the laws of the country where the amount was received or accrued, such amount or any portion thereof shall be deemed not to have been received or accrued to such person or such resident during such year and such amount or portion thereof shall be included in the gross income of such person or such resident during the year of assessment during which such amount or portion thereof may be so remitted to the Republic.”. 30 35

Amendment of section 10 of Act 58 of 1962, as amended by section 8 of Act 90 of 1962, section 7 of Act 72 of 1963, section 8 of Act 90 of 1964, section 10 of Act 88 of 1965, section 11 of Act 55 of 1966, section 10 of Act 95 of 1967, section 8 of Act 76 of 1968, section 13 of Act 89 of 1969, section 9 of Act 52 of 1970, section 9 of Act 88 of 1971, section 7 of Act 90 of 1972, section 7 of Act 65 of 1973, section 10 of Act 85 of 1974, section 8 of Act 69 of 1975, section 9 of Act 103 of 1976, section 8 of Act 113 of 1977, section 4 of Act 101 of 1978, section 7 of Act 104 of 1979, section 7 of Act 104 of 1980, section 8 of Act 96 of 1981, section 6 of Act 91 of 1982, section 9 of Act 94 of 1983, section 10 of Act 121 of 1984, section 6 of Act 96 of 1985, section 7 of Act 65 of 1986, section 3 of Act 108 of 1986, section 9 of Act 85 of 1987, section 7 of Act 90 of 1988, section 36 of Act 9 of 1989, section 7 of Act 70 of 1989, section 10 of Act 101 of 1990, section 12 of Act 129 of 1991, section 10 of Act 141 of 1992, section 7 of Act 113 of 1993, section 4 of Act 140 of 1993, section 9 of Act 21 of 1994, section 10 of Act 21 of 1995, section 8 of Act 36 of 1996, section 9 of Act 46 of 1996, section 10 of Act 28 of 1997, section 29 of Act 30 of 1998, section 18 of Act 53 of 1999 and section 21 of Act 30 of 2000 40 45 50

13. (1) Section 10 of the Income Tax Act, 1962, is hereby amended—

- (a) by the substitution for subparagraph (ii) of paragraph (cA) of subsection (1) of the following subparagraph:

Invoeging van artikel 9F in Wet 58 van 1962

12. Die volgende artikel word hierby na artikel 9E van die Inkomstebelastingwet, 1962, ingevoeg:

“Inkomste uit buitelandse bronne

- 5 **9F.** (1) By die toepassing van hierdie artikel beteken ‘aangewese land’
 ’n aangewese land soos in artikel 9E omskryf.
- 10 (2) Die bedrag van enige inkomste wat ingevolge die bepalings van
 artikel 10(1)(kA) van belasting vrygestel is, is soveel van enige bedrag wat
 gedurende die betrokke jaar van aanslag ontvang word deur of toeval aan
 ’n maatskappy wat ’n inwoner is van ’n bron buite die Republiek, wat nie
 geag word uit ’n bron in die Republiek te wees nie, wat in enige aangewese
 land onderhewig was of sal wees aan belasting teen ’n statutêre koers van
 minstens 27 persent, na inagneming van die toepassing van die betrokke
 ooreenkoms ter voorkoming van dubbele belasting, as daar is, sonder enige
 reg van verhaal deur enige persoon (behalwe ’n reg van verhaal ingevolge
 ’n reg om verliese wat gedurende enige jaar van aanslag ontstaan na ’n jaar
 van aanslag wat bedoelde jaar van aanslag voorafgaan, terug te dra): Met
 dien verstande dat waar daardie aangewese land ’n belasting op ’n
 maatskappy oplê teen ’n progressiewe skaal van statutêre koerse word die
 statutêre koers by die toepassing van hierdie subartikel geag die hoogste
 koers op daardie skaal te wees.
- 20 (3) Waar dit tot die bevrediging van die Kommissaris vasgestel word
 dat enige bedrag, of ’n gedeelte daarvan—
- 25 (a) ontvang deur of toegeval aan enige persoon wat in die bruto
 inkomste van daardie persoon ingesluit staan te word; of
- 30 (b) wat ingevolge die bepalings van artikel 9D in die inkomste van
 enige inwoner ingesluit staan te word,
 gedurende ’n jaar van aanslag, nie gedurende daardie jaar van aanslag na
 die Republiek oorgeplaas kan word nie as gevolg van valuta- of ander
 beperkings of voorbehoude opgelê ingevolge die wette van die land waar
 die bedrag ontvang is of toegeval het, word daardie bedrag of ’n gedeelte
 daarvan geag nie deur daardie persoon of daardie inwoner gedurende
 daardie jaar ontvang of toegeval te gewees het nie en word daardie bedrag
 of gedeelte daarvan ingesluit by die bruto inkomste van daardie persoon of
 daardie inwoner gedurende die jaar van aanslag waartydens daardie bedrag
 of gedeelte daarvan aldus na die Republiek oorgeplaas kan word.”.

40 Wysiging van artikel 10 van Wet 58 van 1962, soos gewysig deur artikel 8 van Wet
 90 van 1962, artikel 7 van Wet 72 van 1963, artikel 8 van Wet 90 van 1964, artikel
 10 van Wet 88 van 1965, artikel 11 van Wet 55 van 1966, artikel 10 van Wet 95 van
 45 1967, artikel 8 van Wet 76 van 1968, artikel 13 van Wet 89 van 1969, artikel 9 van
 Wet 52 van 1970, artikel 9 van Wet 88 van 1971, artikel 7 van Wet 90 van 1972,
 artikel 7 van Wet 65 van 1973, artikel 10 van Wet 85 van 1974, artikel 8 van Wet
 69 van 1975, artikel 9 van Wet 103 van 1976, artikel 8 van Wet 113 van 1977,
 artikel 4 van Wet 101 van 1978, artikel 7 van Wet 104 van 1979, artikel 7 van Wet
 45 104 van 1980, artikel 8 van Wet 96 van 1981, artikel 6 van Wet 91 van 1982, artikel
 9 van Wet 94 van 1983, artikel 10 van Wet 121 van 1984, artikel 6 van Wet 96 van
 1985, artikel 7 van Wet 65 van 1986, artikel 3 van Wet 108 van 1986, artikel 9 van
 Wet 85 van 1987, artikel 7 van Wet 90 van 1988, artikel 36 van Wet 9 van 1989,
 artikel 7 van Wet 70 van 1989, artikel 10 van Wet 101 van 1990, artikel 12 van Wet
 50 129 van 1991, artikel 10 van Wet 141 van 1992, artikel 7 van Wet 113 van 1993,
 artikel 4 van Wet 140 van 1993, artikel 9 van Wet 21 van 1994, artikel 10 van Wet
 21 van 1995, artikel 8 van Wet 36 van 1996, artikel 9 van Wet 46 van 1996, artikel
 10 van Wet 28 van 1997, artikel 29 van Wet 30 van 1998, artikel 18 van Wet 53 van
 1999 en artikel 21 van Wet 30 van 2000

- 55 13. (1) Artikel 10 van die Inkomstebelastingwet, 1962, word hierby gewysig—
 (a) deur subparagraaf (ii) van paragraaf (cA) van subartikel (1) deur die
 volgende subparagraaf te vervang:

- “(ii) any **[South African company]** association, corporation or company contemplated in paragraph (a) of the definition of ‘company’ in section 1, all the shares of which are held by any such institution, board or body, if the operations of such association, corporation or company are ancillary or complementary to the object of such institution, board or body;” 5
- (b) by the substitution for paragraph (cG) of subsection (1) of the following paragraph:
- “(cG) the receipts and accruals of any **[persons (other than a company) who is ordinarily resident in any country other than the Republic or of an external company which is managed and controlled in any such country]** person who is not a resident, which are derived by such person **[or company]** from carrying on business as the owner or charterer of any ship or aircraft, if a similar exemption or equivalent relief is granted by the **[said]** country of which such person is a resident, to any **[person (other than a company) ordinarily resident in the Republic or to any domestic company]** resident in respect of any tax imposed in that country on income which may be derived by such person **[or company]** from carrying on in such country any business as owner or charterer of any ship or aircraft;” 10 15 20
- (c) by the deletion of paragraph (dA) of subsection (1);
- (d) by the insertion after paragraph (gB) of subsection (1) of the following paragraph:
- “(gC) any— 25
- (i) amount received by or accrued to any resident under the social security system of any other country; or
- (ii) pension received by or accrued to any resident from a source outside the Republic, which is not deemed to be from a source in the Republic, in consideration of past employment outside the Republic;” 30
- (e) by the substitution for subparagraphs (i) and (ii) of paragraph (h) of subsection (1) of the following subparagraphs:
- “(i) any person (other than a company) **[not ordinarily resident nor carrying]** who is not a resident and who does not carry on business in the Republic; or 35
- (ii) **[an external]** a company which is not a resident and which does not **[carrying]** carry on business in the Republic;”
- (f) by the substitution for the first proviso to paragraph (h) of subsection (1) of the following proviso: 40
- “Provided that, if in the case of any such stock or securities issued in respect of a loan raised in a country outside the Republic, the Treasury has, with the approval of the Minister of Finance, given an undertaking that the interest derived therefrom by any person **[not ordinarily]** who is not a resident **[in the Republic or by any external company]** shall be exempt from taxes in the Republic, the interest received by or accrued to such a person **[or company]** from such of the said stock or securities as were acquired by such person **[or company]** outside the Republic and paid for by such person **[or company]** in the currency of any country other than the Republic shall be exempt from normal tax even if that person **[or company]** carries on business in the Republic;” 45 50
- (g) by the substitution for the words preceding the proviso to paragraph (hA) of subsection (1) of the following words: 55
- “interest received by or accrued to a person **[(other than a company) who is ordinarily resident outside the Republic or a company which is managed and controlled outside the Republic]** who is not a resident;”
- (h) by the substitution for paragraphs (i) and (ii) of the proviso to paragraph (hA) of subsection (1) of the following paragraphs:

- “(ii) ’n [Suid-Afrikaanse maatskappy] vereniging, korporasie of maatskappy in paragraaf (a) van die omskrywing van ‘maatskappy’ in artikel 1 bedoel, waarvan al die aandele deur bedoelde instelling, raad of liggaam gehou word indien die werksaamhede van bedoelde vereniging, korporasie of maatskappy bykomstig of aanvullend is by die oogmerk van bedoelde instelling, raad of liggaam.”;
- (b) deur paragraaf (cG) van subartikel (1) deur die volgende paragraaf te vervang:
- “(cG) die ontvangste en toevallings van ’n persoon [(behalwe ’n maatskappy) wat nie gewoonlik in die Republiek woonagtig is nie of van ’n buitelandse maatskappy] wat nie ’n inwoner is nie, wat deur bedoelde persoon [of maatskappy] as eienaar of bevrachter van ’n skip of vliegtuig verkry word, indien ’n dergelike vrystelling of gelykstaande verligting deur [genoemde] die land waarvan daardie persoon ’n inwoner is, aan ’n [persoon (behalwe ’n maatskappy) wat gewoonlik in die Republiek woonagtig is of aan ’n binnelandse maatskappy] inwoner verleen word ten opsigte van enige belasting wat in daardie land gehef word op inkomste wat deur bedoelde persoon [of maatskappy] verkry mag word uit die bedryf in daardie land van enige besigheid as eienaar of bevrachter van ’n skip of vliegtuig.”;
- (c) deur paragraaf (dA) van subartikel (1) te skrap;
- (d) deur die volgende paragraaf na paragraaf (gB) van subartikel (1) in te voeg:
- “(gC) enige—
- (i) bedrag ontvang deur of toegeval aan ’n inwoner ingevolge die bestaansbeveiligingstelsel van enige ander land; of
- (ii) pensioen ontvang deur of toegeval aan enige inwoner uit ’n bron buite die Republiek, wat nie geag word uit ’n bron in die Republiek te wees nie, as vergoeding vir dienste in die verlede buite die Republiek gelewer.”;
- (e) deur subparagrafe (i) en (ii) van paragraaf (h) van subartikel (1) deur die volgende subparagrafe te vervang:
- “(i) ’n persoon (behalwe ’n maatskappy) wat nie [gewoonlik in die Republiek woonagtig is of daarin] ’n inwoner is nie en in die Republiek besigheid dryf nie; of
- (ii) ’n [buitelandse] maatskappy wat nie ’n inwoner is nie en wat nie in die Republiek besigheid dryf nie.”;
- (f) deur die eerste voorbehoudsbepaling by paragraaf (h) van subartikel (1) deur die volgende voorbehoudsbepaling te vervang:
- “Met dien verstande dat, indien in die geval van enige sodanige effekte of sekuriteite uitgereik ten opsigte van ’n lening wat in ’n land buite die Republiek opgeneem is, die Tesourie met goedkeuring van die Minister van Finansies ’n waarborg gegee het dat die rente daarop verkry deur ’n persoon wat nie [gewoonlik in die Republiek woonagtig] ’n inwoner is nie [of deur ’n buitelandse maatskappy], van belastinge in die Republiek vrygestel sal wees, die rente ontvang deur of toegeval aan so ’n persoon [of maatskappy] uit sodanige van genoemde effekte of sekuriteite as wat deur [hom] daardie persoon buite die Republiek verkry is en waarvoor [hy] daardie persoon met die betaalmiddel van ’n ander land as die Republiek betaal het, vrygestel is van normale belasting selfs as daardie persoon [of maatskappy] in die Republiek besigheid dryf.”;
- (g) deur die woorde wat die voorbehoudsbepaling by paragraaf (hA) van subartikel (1) voorafgaan deur die volgende woorde te vervang:
- “rente ontvang deur of toegeval aan ’n persoon [(behalwe ’n maatskappy) wat gewoonlik buite die Republiek woonagtig is of ’n maatskappy wat buite die Republiek bestuur en beheer word] wat nie ’n inwoner is nie.”;
- (h) deur paragrafe (i) en (ii) van die voorbehoudsbepaling by paragraaf (hA) van subartikel (1) deur die volgende paragrafe te vervang:

- “(i) the exemption under this section shall not apply to any natural person who was at any time **[ordinarily]** a resident **[in the Republic]** if such person has during the year of assessment carried on business in the Republic;
- (ii) for the purposes of this paragraph **[the expression ‘Republic’ shall include]** any person who is a resident of any country which has for the purposes of applying any regulation made under section 9 of the Currency and Exchanges Act, 1933 (Act No. 9 of 1933), been included in the common monetary area, shall be deemed to be a resident of the Republic;”;
- (i) by the substitution for paragraph (v) of the proviso to paragraph (hA) of subsection (1) of the following paragraph:
- “(v) the exemption under this paragraph shall not apply to any interest received by or accrued to a company which is **[managed and controlled outside the Republic]** not a resident, if such interest is effectively connected with the business carried on by that company in the Republic;”;
- (j) by the substitution for paragraph (iA) of subsection (1) of the following paragraph:
- “(iA) in the case of any unit portfolio referred to in paragraph (e)(i) of the definition of ‘company’ in section 1, so much of the **[interest or foreign dividends contemplated in section 9E]** income received by or accrued to such unit portfolio as has been distributed, or as the Commissioner is satisfied will be distributed, by way of a dividend or a portion of a dividend, to persons who have become entitled to such dividend by virtue of their being registered as holders of units in such unit portfolio on a date falling on or after the first day of April, 1971;”;
- (k) by the substitution for paragraph (aa) of the proviso to subparagraph (i) of paragraph (k) of subsection (1) of the following paragraph:
- “(aa) to dividends (other than those distributed out of profits of a capital nature and those received by or accrued to or in favour of any person **[not ordinarily]** who is neither a resident, nor carrying on business in the Republic) distributed by a fixed property company as defined in section 1 of the Unit Trusts Control Act, 1981 (Act No. 54 of 1981), on shares included in a unit portfolio comprised in any unit trust scheme in property shares authorized under the said Act; or”;
- (l) by the substitution for subparagraph (A) of paragraph (bb) of the proviso to paragraph (k) of subsection (1) of the following subparagraph:
- “(A) out of **[interest]** income derived by such unit portfolio which is exempt from tax in the hands of such unit portfolio under the provision of paragraph (iA); and”;
- (m) by the addition of the word “or” at the end of paragraph (cc) of the proviso to subparagraph (i) of paragraph (k) of subsection (1);
- (n) by the substitution for paragraph (dd) of the proviso to subparagraph (i) of paragraph (k) of subsection (1) of the following item:
- “(dd) to the amount of any foreign dividend contemplated in section 9E received by or accrued to any resident **[as defined in section 9C];**”;
- (o) by the insertion after paragraph (k) of subsection (1) of the following paragraphs:
- “(kA) so much of any amount received by or accrued to any company which is a resident from a source outside the Republic as determined in accordance with the provisions of section 9F(2);
- (l) any amount received by or accrued to any person which amount has been subject to withholding tax in terms of the provisions of section 35;”;

- “(i) die vrystelling ingevolge hierdie paragraaf nie van toepassing is nie op ’n natuurlike persoon wat te eniger tyd [**gewoonlik in die Republiek woonagtig**] ’n inwoner was indien daardie persoon gedurende die jaar van aanslag in die Republiek besigheid gedryf het;
- 5 (ii) by die toepassing van hierdie paragraaf [**die uitdrukking ‘Republiek’**] word ’n persoon wat ’n inwoner is van ’n land [**insluit**] wat by die toepassing van ’n regulasie uitgevaardig kragtens artikel 9 van die Wet op Betaalmiddels en Wisselkoerse, 1933 (Wet No. 9 van 1933), in die gemeenskaplike monetêre gebied ingesluit is, geag ’n inwoner van die Republiek te wees;”;
- 10 (i) deur paragraaf (v) van die voorbehoudsbepaling by paragraaf (hA) van subartikel (1) deur die volgende paragraaf te vervang:
- 15 “(v) die vrystelling kragtens hierdie paragraaf nie van toepassing is nie op enige rente ontvang deur of toegeval aan ’n maatskappy wat [**buite die Republiek bestuur en beheer word**] nie ’n inwoner is nie, indien bedoelde rente effektiewelik aan die besigheid wat deur daardie maatskappy in die Republiek gedryf word, verbonde is;”;
- 20 (j) deur paragraaf (iA) van subartikel (1) deur die volgende paragraaf te vervang:
- “(iA) in die geval van ’n effektegroep in paragraaf (e)(i) van die omskrywing van ‘maatskappy’ in artikel 1, soveel van die [**rente of buitelandse dividende in artikel 9E bedoel**] inkomste ontvang deur of toegeval aan daardie effektegroep as wat by wyse van ’n dividend of ’n gedeelte van ’n dividend uitgekeer is of wat, volgens die oortuiging van die Kommissaris, uitgekeer sal word, aan persone wat op sodanige dividend geregtig geword het uit hoofde van die feit dat hulle, op ’n datum wat op of na die eerste dag van April 1971 val, as besitters van onderaandeel in bedoelde effektegroep geregistreer is;”;
- 25 (k) deur paragraaf (aa) van die voorbehoudsbepaling by subparagraaf (i) van paragraaf (k) van subartikel (1) deur die volgende paragraaf te vervang:
- 35 “(aa) op dividende (behalwe dié uit winste van ’n kapitale aard uitgekeer en dié ontvang deur of toegeval aan of ten gunste van ’n persoon wat nóg [**gewoonlik in die Republiek woonagtig**] ’n inwoner is nóg [daarin] in die Republiek besigheid dryf) deur ’n vaste-eiendomsmaatskappy (soos in artikel 1 van die Wet op Beheer van Effekte-trustskemas, 1981 (Wet No. 54 van 1981), omskryf) uitgekeer op aandele ingesluit by ’n effektegroep bevat in ’n ingevolge genoemde Wet gemagtigde effekte-trustskema in eiendomsaandele; of”;
- 40 (l) deur subparagraaf (A) van paragraaf (bb) van die voorbehoudsbepaling by paragraaf (k) van subartikel (1) deur die volgende subparagraaf te vervang:
- 45 “(A)uit [**rente**] inkomste deur sodanige effektegroep verkry wat ingevolge die bepalings van paragraaf (iA) in die hande van daardie effektegroep van belasting vrygestel is; en”;
- (m) deur die woord “of” aan die einde van paragraaf (cc) van die voorbehoudsbepaling by subparagraaf (i) van paragraaf (k) van subartikel (1) by te voeg;
- 50 (n) deur paragraaf (dd) van die voorbehoudsbepaling by subparagraaf (i) van paragraaf (k) van subartikel (1) deur die volgende paragraaf te vervang:
- “(dd) op die bedrag van enige buitelandse dividend in artikel 9E bedoel, ontvang deur of toegeval aan enige inwoner [**soos in artikel 9C omskryf**];”;
- 55 (o) deur die volgende paragraawe na paragraaf (k) van subartikel (1) in te voeg:
- “(kA) soveel van enige bedrag ooreenkomstig die bepalings van artikel 9F(2) bepaal, wat ontvang is deur of toegeval het aan enige maatskappy wat ’n inwoner is uit ’n bron buite die Republiek;
- 60 (l) enige bedrag ontvang deur of toegeval aan enige persoon welke bedrag ingevolge die bepalings van artikel 35 aan terughoudingsbelasting onderhewig was;”;

- (p) by the substitution for paragraph (o) of subsection (1) of the following paragraph:
- “(o) any remuneration derived by any person—
- (i) as an officer or crew member of a ship engaged—
- [(i)](aa) in the international transportation for reward of 5
passengers or goods; or
- [(ii)](bb) in the prospecting (including surveys and other
exploratory work) for, or the mining of, any minerals
(including natural oils) from the seabed outside the
continental shelf of the Republic as contemplated in 10
section 8 of the Maritime Zones Act, 1994 (Act No.
15 of 1994), where such officer or crew member is
employed on board such ship solely for the purposes
of the ‘passage’ of such ship, as defined in the
Marine Traffic Act, 1981 (Act No. 2 of 1981), 15
if such person was outside the Republic for a period or
periods exceeding 183 full days in aggregate during the
year of assessment; or
- (ii) in respect of services rendered outside the Republic by such
person for or on behalf of any employer, if such person was 20
outside the Republic—
- (aa) for a period or periods exceeding 183 full days in
aggregate during any 12 months period commencing or
ending during a year of assessment; and
- (bb) for a continuous period exceeding 60 full days during 25
such period of 12 months,
and such services were rendered during such period or periods:
Provided that the provisions of this subparagraph shall not
apply in respect of any remuneration derived in respect of the
holding of any office or from services rendered for or on behalf 30
of any employer, as contemplated in section 9(1)(e);”;
- (q) by the substitution for paragraph (p) of subsection (1) of the following
paragraph:
- “(p) any amount received by or accrued to any person who is not
[ordinarily] a resident [in the Republic], for services rendered or 35
work or labour done by him outside the Republic for or on behalf of
any employer in the national or provincial sphere of government
[including the Railway Administration and any provincial
administration] or any local authority in the Republic or [the
South African Tourist Corporation or the Council for Scientific 40
and Industrial Research] any national or provincial public entity if
not less than 80 per cent of the expenditure of such entity is defrayed
directly or indirectly from funds voted by Parliament, if such
amount is chargeable with income tax in the country in which he is 45
ordinarily resident and the income tax so chargeable is borne by
himself and is not paid on his behalf by the Government, the
[provincial administration or] local authority concerned or [the
said Corporation or the said Council] such public entity;”;
- (r) by the deletion of the word “and” at the end of subparagraph (iii) of paragraph
(zH) of subsection (1); and 50
- (s) by the addition to paragraph (zH) of subsection (1) of the following
subparagraphs:
- “(v) the Small, Medium Enterprise Development Programme, which
came into operation on 1 September 2000; and

(p) deur paragraaf (o) van subartikel (1) deur die volgende paragraaf te vervang:
 “(o) enige besoldiging verkry deur ’n persoon—

(i) as ’n offisier of lid van die bemanning van ’n skip besig met—

5 [(i)(aa) die internasionale vervoer van passasiers of goedere vir beloning; of

10 [(ii)(bb) die prospektering (met inbegrip van opnames en ander ontdekkingswerksaamhede) na, of die myn van, enige minerale (met inbegrip van aardolie) vanuit die seebodem buite die vastelandsplat van die Republiek, soos in artikel 8 van die Wet op Maritieme Sones, 1994 (Wet No. 15 van 1994), bedoel, waar daardie offisier of lid van die bemanning aan boord van daardie skip in diens geneem is alleenlik vir die doel van die ‘deurvaart’, soos in die Wet op Seeverkeer, 1981 (Wet No. 2 van 1981), omskryf, van daardie skip,

20 indien bedoelde persoon buite die Republiek was vir ’n tydperk of tydperke wat gesamentlik 183 volle dae gedurende die jaar van aanslag te bowe gaan; of

(ii) ten opsigte van dienste buite die Republiek deur daardie persoon gelewer vir of namens enige werkgever, indien daardie persoon buite die Republiek was—

25 (aa) vir ’n tydperk of tydperke wat in totaal 183 volle dae gedurende enige tydperk van 12 maande wat gedurende ’n jaar van aanslag ’n aanvang neem of eindig, te bowe gaan; en

30 (bb) vir ’n aaneenlopende tydperk wat 60 volle dae gedurende daardie tydperk van 12 maande te bowe gaan,

35 en daardie dienste gedurende daardie tydperk of tydperke gelewer is: Met dien verstande die bepalings van hierdie subparagraaf nie van toepassing is nie ten opsigte van enige besoldiging verkry ten opsigte van die bekleding van enige openbare amp of uit dienste gelewer vir of ten behoeve van enige werkgever, soos in artikel 9(1)(e) bedoel;”;

(q) deur paragraaf (p) van subartikel (1) deur die volgende paragraaf te vervang:

40 “(p) ’n bedrag ontvang deur of toegeval aan ’n persoon wat nie [gewoonlik in die Republiek woonagtig] ’n inwoner is nie, vir dienste wat hy gelewer het of werk of arbeid wat hy verrig het buite die Republiek vir of ten behoeve van [die Regering met inbegrip van die Spoorwegadministrasie en ’n provinsiale administrasie] enige werkgever in die nasionale of provinsiale regeerfeer of ’n plaaslike bestuur in die Republiek of [die Suid-Afrikaanse Toeristekorporasie of die Wetenskaplike en Nywerheidsnavorsingsraad] enige nasionale of provinsiale openbare entiteit indien minstens 80 persent van die onkoste van

45 bedoelde entiteit direk of indirek uit fondse deur die Parlement bewillig, gedelg word, indien bedoelde bedrag in die land waar hy gewoonlik woonagtig is aan inkomstebelasting onderhewig is en die inkomstebelasting aldus vorderbaar deur homself gedra word en nie deur die Regering, die betrokke [administrasie of] plaaslike bestuur of bedoelde [Korporasie of bedoelde Raad] openbare

50 entiteit ten behoeve van hom betaal word nie;”;

(r) deur die woord “en” aan die einde van subparagraaf (iii) van paragraaf (zH) van subartikel (1) te skrap;

(s) deur die volgende subparagraawe by paragraaf (zH) van subartikel (1) by te voeg:

60 “(v) die Klein, Medium Ondernemingsontwikkelingsprogram, wat op 1 September 2000 in werking getree het; en

(vi) the Critical Infrastructure Programme, which came into operation on 1 September 2000."

(2) Subsection (1)(r) and (s) shall be deemed to have come into operation on 1 September 2000.

Amendment of section 10A of Act 58 of 1962, as inserted by section 8 of Act 65 of 1973 and amended by section 11 of Act 85 of 1974, section 8 of Act 113 of 1993, section 11 of Act 21 of 1995, section 11 of Act 28 of 1997 and section 19 of Act 53 of 1999

14. Section 10A of the Income Tax Act, 1962, is hereby amended by the substitution for the words preceding the proviso to subsection (4) of the following words:

"The statutory actuary of an insurer who is a party to an annuity contract shall, before payment of the first annuity amount is made under such contract, or **[where such payment was made before the date on which this section or section 9C comes into operation, within one month after the date, or in either case]** within such period as the Commissioner may allow, make a calculation (with due regard to the provisions of subsection (5)) in the manner prescribed in paragraph (a) of subsection (3) or, if the provisions of paragraph (b) of that subsection are applicable, in accordance with that paragraph, of the capital element of all the annuity amounts to be paid under the said contract."

Amendment of section 11 of Act 58 of 1962, as amended by section 9 of Act 90 of 1962, section 8 of Act 72 of 1963, section 9 of Act 90 of 1964, section 11 of Act 88 of 1965, section 12 of Act 55 of 1966, section 11 of Act 95 of 1967, section 9 of Act 76 of 1968, section 14 of Act 89 of 1969, section 10 of Act 52 of 1970, section 10 of Act 88 of 1971, section 8 of Act 90 of 1972, section 9 of Act 65 of 1973, section 12 of Act 85 of 1974, section 9 of Act 69 of 1975, section 9 of Act 113 of 1977, section 5 of Act 101 of 1978, section 8 of Act 104 of 1979, section 8 of Act 104 of 1980, section 9 of Act 96 of 1981, section 7 of Act 91 of 1982, section 10 of Act 94 of 1983, section 11 of Act 121 of 1984, section 46 of Act 97 of 1986, section 10 of Act 85 of 1987, section 8 of Act 90 of 1988, section 8 of Act 70 of 1989, section 11 of Act 101 of 1990, section 13 of Act 129 of 1991, section 11 of Act 141 of 1992, section 9 of Act 113 of 1993, section 5 of Act 140 of 1993, section 10 of Act 21 of 1994, section 12 of Act 21 of 1995, section 9 of Act 36 of 1996, section 12 of Act 28 of 1997, section 30 of Act 30 of 1998, section 20 of Act 53 of 1999 and section 22 of Act 30 of 2000

15. Section 11 of the Income Tax Act, 1962, is hereby amended—

(a) by the substitution for the words preceding paragraph (a) and paragraph (a) of the following words and paragraph:

"For the purpose of determining the taxable income derived by any person from carrying on any trade **[within the Republic]**, there shall be allowed as deductions from the income of such person so derived—

(a) expenditure and losses actually incurred **[in the Republic]** in the production of the income, provided such expenditure and losses are not of a capital nature;"

(b) by the deletion of paragraph (b);

(c) by the addition to the proviso to paragraph (e) of the following paragraph:

"(ix) where any such machinery, plant, implement, utensil or article was used by the taxpayer during any previous financial year or years for the purposes of any trade carried on by such taxpayer, the receipts and accruals of which were not included in the income of such taxpayer during such year or years, the Commissioner shall take into account the period of use of such asset during such previous year or years in determining the amount by which the value of such machinery, plant, implement, utensil or article has been diminished;"

(vi) die Kritieke Infrastruktuurprogram, wat op 1 September 2000 in werking getree het.”.

(2) Subartikels (r) en (s) word geag op 1 September 2000 in werking te getree het.

Wysiging van artikel 10A van Wet 58 van 1962, soos ingevoeg deur artikel 8 van Wet 65 van 1973 en gewysig deur artikel 11 van Wet 85 van 1974, artikel 8 van Wet 113 van 1993, artikel 11 van Wet 21 van 1995, artikel 11 van Wet 28 van 1997 en artikel 19 van Wet 53 van 1999

14. Artikel 10A van die Inkomstebelastingwet, 1962, word hierby gewysig deur die woorde wat die voorbehoudsbepaling by subartikel (4) voorafgaan deur die volgende woorde te vervang:

“Die statutêre aktuaris van ’n versekeraar wat ’n party by ’n jaargeldkontrak is, moet, voordat betaling van die eerste jaargeldbedrag ingevolge daardie kontrak gemaak word, of [waar daardie betaling gemaak is voor die datum waarop hierdie artikel of artikel 9C in werking tree, binne een maand na daardie datum, of in albei gevalle] binne die tydperk wat die Kommissaris toelaat, ’n berekening maak (met behoorlike inagneming van die bepalings van subartikel (5)), op die wyse voorgeskryf in paragraaf (a) van subartikel (3) of, indien die bepalings van paragraaf (b) van daardie subartikel van toepassing is, ooreenkomstig daardie paragraaf, van die kapitaal-element van al die jaargeldbedrae wat ingevolge bedoelde kontrak betaal staan te word:”.

Wysiging van artikel 11 van Wet 58 van 1962, soos gewysig deur artikel 9 van Wet 90 van 1962, artikel 8 van Wet 72 van 1963, artikel 9 van Wet 90 van 1964, artikel 11 van Wet 88 van 1965, artikel 12 van Wet 55 van 1966, artikel 11 van Wet 95 van 1967, artikel 9 van Wet 76 van 1968, artikel 14 van Wet 89 van 1969, artikel 10 van Wet 52 van 1970, artikel 10 van Wet 88 van 1971, artikel 8 van Wet 90 van 1972, artikel 9 van Wet 65 van 1973, artikel 12 van Wet 85 van 1974, artikel 9 van Wet 69 van 1975, artikel 9 van Wet 113 van 1977, artikel 5 van Wet 101 van 1978, artikel 8 van Wet 104 van 1979, artikel 8 van Wet 104 van 1980, artikel 9 van Wet 96 van 1981, artikel 7 van Wet 91 van 1982, artikel 10 van Wet 94 van 1983, artikel 11 van Wet 121 van 1984, artikel 46 van Wet 97 van 1986, artikel 10 van Wet 85 van 1987, artikel 8 van Wet 90 van 1988, artikel 8 van Wet 70 van 1989, artikel 11 van Wet 101 van 1990, artikel 13 van Wet 129 van 1991, artikel 11 van Wet 141 van 1992, artikel 9 van Wet 113 van 1993, artikel 5 van Wet 140 van 1993, artikel 10 van Wet 21 van 1994, artikel 12 van Wet 21 van 1995, artikel 9 van Wet 36 van 1996, artikel 12 van Wet 28 van 1997, artikel 30 van Wet 30 van 1998, artikel 20 van Wet 53 van 1999 en artikel 22 van Wet 30 van 2000

15. Artikel 11 van die Inkomstebelastingwet, 1962, word hierby gewysig—

(a) deur die woorde wat paragraaf (a) voorafgaan en paragraaf (a) deur die volgende woorde en paragraaf te vervang:

“By die vasstelling van die belasbare inkomste deur ’n persoon verkry uit die beoefening van ’n bedryf [in die Republiek], word daar as aftrekkings van so ’n persoon se aldus verkreeë inkomste toegelaat—

(a) onkoste en verliese werklik [in die Republiek] aangegaan of gely by die voortbrenging van die inkomste, mits sodanige onkoste en verliese nie van ’n kapitale aard is nie;”;

(b) deur paragraaf (b) te skrap;

(c) deur die volgende paragraaf by die voorbehoudsbepaling by paragraaf (e) by te voeg:

“(ix) waar daardie masjinerie, installasie, gereedskap, werktuig of artikel deur die belastingpligtige gedurende enige voorafgaande finansiële jaar of jare gebruik is vir die doeleindes van die beoefening van ’n bedryf deur daardie belastingpligtige waarvan die ontvangste en toevallings nie in die inkomste van bedoelde belastingpligtige gedurende daardie jaar of jare ingesluit is nie, neem die Kommissaris die tydperk van gebruik van daardie bate gedurende daardie voorafgaande jaar of jare in berekening by die vasstelling van die bedrag waarmee die waarde van daardie masjinerie, installasie, gereedskap, werktuig of artikel verminder is;”;

- (d) by the substitution for subparagraph (ii) of paragraph (gA) of the following subparagraph:
- “(ii) in obtaining any patent or the restoration of any patent under the Patents Act, 1978, or the registration of any design under the Designs Act, 1993, or the registration of any trade mark under the Trade Marks Act, 1993, or under similar laws of any other country; or”;
- (e) by the substitution for the words preceding subparagraph (A) of paragraph (cc) of the proviso to paragraph (gA) of the following words:
- “no allowance shall be made in respect of any such invention, patent, design, trade mark, copyright or other property or knowledge so acquired or obtained by the taxpayer on or after 24 June 1988, but prior to 1 July 1993 from any other person who is a resident of the Republic or who is ordinarily resident in a neighbouring country (or, in the case of a company, [a domestic company or a company] is incorporated [managed or controlled] or has its place of effective management in a neighbouring country), if—;
- (f) by the substitution for paragraph (dd) of the proviso to paragraph (gA) of the following paragraph:
- “(dd) where any such invention, patent, design, trade mark, copyright or other property or knowledge was so acquired or obtained by the taxpayer on or after 1 July 1993 from any other person who is a resident of the Republic or who is ordinarily resident in a neighbouring country (or, in the case of a company, [a domestic company or a company] is incorporated [managed or controlled] or has its place of effective management in a neighbouring country), and who is a connected person in relation to the taxpayer, the allowance under this paragraph shall be calculated on an amount not exceeding the lesser of the cost of such invention, patent, design, trade mark, copyright or other property or knowledge to such connected person or the market value thereof as determined on the date upon which such invention, patent, design, trade mark, copyright or other property or knowledge was acquired or obtained by the taxpayer;”
- (g) by the substitution for paragraph (gB) of the following paragraph:
- “(gB) expenditure (other than expenditure which has qualified in whole or part for deduction or allowance under any of the other provisions of this section) actually incurred by the taxpayer during the year of assessment in obtaining the extension of the term of any patent under the Patents Act, 1978 (Act No. 57 of 1978), or the extension of the registration period of any design under the Designs Act, 1993 (Act No. 195 of 1993), or the renewal of the registration of any trade mark under the Trade Marks Act, 1993 (Act No. 194 of 1993), or under similar laws of any other country, if such patent, design or trade mark is used by the taxpayer in the production of his income or income is derived by him therefrom;”;
- (h) by the deletion of paragraph (gC);
- (i) by the substitution for the words following subparagraph (vii) of paragraph (o) and preceding the proviso thereto of the following words:
- “which have been scrapped by such taxpayer during the year of assessment, such allowance to be the excess of the original cost to such taxpayer of such building (or portion thereof), improvements (or portion thereof) to such building, shipbuilding structure, improvements to such shipbuilding structure, residential unit, permanent work, road pavement, ancillary service, machinery, plant, implements, utensils, articles, transmission line or cable or railway line over the total amount arrived at by adding—

(d) deur subparagraaf (ii) van paragraaf (gA) deur die volgende subparagraaf te vervang:

“(ii) by die verkryging van ’n patent of die herstel van ’n patent ingevolge die Wet op Patente, 1978, of die registrasie van ’n model ingevolge die Wet op Modelle, 1993, of die registrasie van ’n handelsmerk ingevolge die Wet op Handelsmerke, 1993, of ingevolge soortgelyke wette van enige ander land; of”;

(e) deur die woorde wat subparagraaf (A) van paragraaf (cc) van die voorbehoudsbepaling by paragraaf (gA) voorafgaan deur die volgende woorde te vervang:

“geen vermindering toegestaan word nie ten opsigte van bedoelde uitvinding, patent, model, handelsmerk, outeursreg of ander goed of kennis wat aldus op of na 24 Junie 1988, maar voor 1 Julie 1993 deur die belastingpligtige aangeskaf of verkry is van ’n ander persoon wat [in] ’n inwoner van die Republiek is of wat gewoonlik in ’n buurstaat woonagtig is (of, in die geval van ’n maatskappy, [’n binnelandse maatskappy of ’n maatskappy wat in ’n buurstaat] wat ingelyf is of sy plek van effektiewe bestuur [of beheer word] in ’n buurstaat het), indien—”;

(f) deur paragraaf (dd) van die voorbehoudsbepaling by paragraaf (gA) deur die volgende paragraaf te vervang:

“(dd) waar bedoelde uitvinding, patent, model, handelsmerk, outeursreg of ander goed of kennis wat aldus op of na 1 Julie 1993 deur die belastingpligtige verkry of bekom is van ’n ander persoon wat [in] ’n inwoner van die Republiek is of wat gewoonlik in ’n buurstaat woonagtig is (of, in die geval van ’n maatskappy, [’n binnelandse maatskappy of ’n maatskappy wat in ’n buurstaat] wat ingelyf is of sy plek van effektiewe bestuur [of beheer word] in ’n buurstaat het), en wat ’n verbonde persoon met betrekking tot die belastingpligtige is, word die vermindering kragtens hierdie paragraaf bereken op ’n bedrag wat nie die minste van die koste van bedoelde uitvinding, patent, model, handelsmerk, outeursreg of ander goed of kennis vir bedoelde verbonde persoon of die markwaarde daarvan soos bepaal op die datum waarop bedoelde uitvinding, patent, model, handelsmerk, outeursreg of ander goed of kennis deur die belastingpligtige verkry of bekom is, te bowe gaan nie;”;

(g) deur paragraaf (gB) deur die volgende paragraaf te vervang:

“(gB) onkoste (behalwe onkoste wat ingevolge enige van die ander bepalinge van hierdie artikel geheel en al of gedeeltelik vir aftrekking of ’n vermindering in aanmerking gekom het) wat werklik deur die belastingpligtige gedurende die jaar van aanslag aangegaan is by die verkryging van die verlenging van die termyn van ’n patent ingevolge die Wet op Patente, 1978 (Wet No. 57 van 1978), of die verlenging van die registrasietermyn van ’n model ingevolge die Wet op Modelle, 1993 (Wet No. 195 van 1993), of die hernuwing van die registrasie van ’n handelsmerk ingevolge die Wet op Handelsmerke, 1993 (Wet No. 194 van 1993), of ingevolge soortgelyke wette van enige ander land, indien sodanige patent, model of handelsmerk deur die belastingpligtige by die voortbrenging van sy inkomste gebruik word of inkomste daaruit deur hom verkry word;”;

(h) deur paragraaf (gC) te skrap;

(i) deur die woorde wat op subparagraaf (vii) van paragraaf (o) volg en die voorbehoudsbepaling daarby voorafgaan deur die volgende woorde te vervang:

“wat gedurende die jaar van aanslag deur die belastingpligtige as uitgedien onttrek is, te wete, ’n vermindering gelyk aan die bedrag wat die oorspronklike koste aan die belastingpligtige van bedoelde gebou (of gedeelte daarvan), verbeterings (of gedeelte daarvan) aan bedoelde gebou, skeepsbouwerk, verbeterings aan bedoelde skeepsbouwerk, wooneenheid, permanente werk, padplaveisel, bykomstige diens, masjinerie, installasie, gereedskap, werktuie, artikels, transmissie lyn of -kabel of spoorlyn meer is as die totale bedrag verkry deur—

- (aa) all the allowances made in respect thereof under the provisions of paragraph (e) of this section, or section 12(1), or section 12(1) as applied by section 12(3), or section 12A(2), or section 12B, or section 12C, or section 12D, or section 13(1), or section 13(1) as applied by section 13(4) or (8), or section 13bis(1), (2) or (3), or section 13ter(2) or (3), or section 14(1)(a) or (b), or the corresponding provisions of any previous Income Tax Act, or section 14bis(1)(a), (b) or (c), or section 24F, or section 24G, or section 27(2)(b) or (d); or 5
- (bb) in the case of any building (or portion thereof), improvements (or portion thereof) to such building, shipbuilding structure, improvements to such shipbuilding structure, residential unit, permanent work, road pavement, ancillary service, machinery, plant, implements, utensils, articles, transmission line or cable or railway line, which was during any previous financial year or years used by the taxpayer in the course of any trade carried on by such taxpayer, the receipts and accruals of which were not included in the income of such taxpayer during such year or years, all the allowances which could have been made in terms of the provisions referred to in item (aa) as if such receipts and accruals had been included in such taxpayer's income, 10 15 20
- to any amount or the value of any advantage accruing to the taxpayer in respect of the sale or other disposal of such building, shipbuilding structure, improvements, residential unit, permanent work, road pavement, ancillary service, machinery, plant, implements, utensils, articles, transmission line or cable or railway line:” 25

Amendment of section 11bis of Act 58 of 1962, as inserted by section 10 of Act 90 of 1962, and amended by section 9 of Act 72 of 1963, section 11 of Act 55 of 1966, section 12 of Act 95 of 1967, section 10 of Act 76 of 1968, section 15 of Act 89 of 1969, section 11 of Act 52 of 1970, section 9 of Act 90 of 1972, section 10 of Act 65 of 1973, section 13 of Act 85 of 1974, section 10 of Act 69 of 1975, section 10 of Act 103 of 1976, section 10 of Act 113 of 1977, section 10 of Act 96 of 1981, section 8 of Act 91 of 1982, section 11 of Act 94 of 1983, section 7 of Act 96 of 1985, section 9 of Act 90 of 1988, section 9 of Act 70 of 1989, section 14 of Act 129 of 1991 and section 1 of Act 49 of 1996 30 35

16. Section 11bis of the Income Tax Act, 1962, is hereby amended—

- (a) by the substitution for paragraph (ii) of the proviso to subsection (3) of the following paragraph: 40
- “(ii) any amount by which the marketing expenditure is reduced under paragraph (i) shall be deemed for the purposes of this section to be an amount of marketing expenditure which was incurred in the succeeding year of assessment and which was allowed to be deducted from his income under section 11 [or 17] during such year.”;
- (b) by the substitution for the words preceding paragraph (a) of subsection (4) of the following words: 45
- “For the purposes of subsection (3) the marketing expenditure on which the marketing allowance is to be calculated shall be so much of the expenditure incurred by the exporter during the year of assessment and allowed to be deducted from his income under [sections] section 11 [and 17] as is proved to the satisfaction of the Commissioner to have been incurred directly—; 50
- (c) by the substitution for the words following paragraph (e) of subsection (4A) of the following words: 55
- “so much of such expenditure as the Commissioner is satisfied was in effect borne by any producer of any pastoral, agricultural or other farming produce exported by the said Association or by any such committee, board, society or company or by some other person under

- (aa) al die verminderings ingevolge die bepalings van paragraaf (e) van hierdie artikel, of artikel 12(1), of artikel 12(1) soos toegepas deur artikel 12(3), of artikel 12A(2), of artikel 12B, of artikel 12C, of artikel 12D, of artikel 13(1), of artikel 13(1) soos toegepas deur artikel 13(4) of (8), of artikel 13bis(1), (2) of (3), of artikel 13ter(2) of (3), of artikel 14(1)(a) of (b), of die ooreenstemmende bepalings van 'n vorige Inkomstebelastingwet, of artikel 14bis(1)(a), (b) of (c), of artikel 24F, of artikel 24G, of artikel 27(2)(b) of (d), ten opsigte daarvan toegestaan; of
- (bb) in die geval van enige gebou (of gedeelte daarvan), verbeterings (of gedeelte daarvan) aan bedoelde gebou, skeepsbouwerk, verbeterings aan bedoelde skeepsbouwerk, wooneenheid, permanente werk, padplaveisel, bykomstige diens, masjinerie, installasie, gereedskap, werktuie, artikels, transmissielyn of -kabel of spoorlyn, wat gedurende enige voorafgaande finansiële jaar of jare deur die belastingpligtige gebruik is in die loop van enige bedryf deur bedoelde belastingpligtige beoefen, waarvan die ontvangste en toevallings nie gedurende daardie jaar of jare in die inkomste van bedoelde belastingpligtige ingesluit is nie, al die verminderings wat ingevolge die bepalings bedoel in item (aa) gemaak sou kon gewees het indien daardie ontvangste en toevallings in die inkomste van die belastingpligtige ingesluit was,
- te voeg by enige bedrag of die waarde van enige voordeel wat aan die belastingpligtige toeval ten opsigte van die verkoop van of ander beskikking oor sodanige gebou, skeepsbouwerk, verbeterings, wooneenheid, permanente werk, padplaveisel, bykomstige diens, masjinerie, installasie, gereedskap, werktuie, artikels, transmissielyn of -kabel of spoorlyn.”.

Wysiging van artikel 11bis van Wet 58 van 1962, soos ingevoeg deur artikel 10 van Wet 90 van 1962, en gewysig deur artikel 9 van Wet 72 van 1963, artikel 11 van Wet 55 van 1966, artikel 12 van Wet 95 van 1967, artikel 10 van Wet 76 van 1968, artikel 15 van Wet 89 van 1969, artikel 11 van Wet 52 van 1970, artikel 9 van Wet 90 van 1972, artikel 10 van Wet 65 van 1973, artikel 13 van Wet 85 van 1974, artikel 10 van Wet 69 van 1975, artikel 10 van Wet 103 van 1976, artikel 10 van Wet 113 van 1977, artikel 10 van Wet 96 van 1981, artikel 8 van Wet 91 van 1982, artikel 11 van Wet 94 van 1983, artikel 7 van Wet 96 van 1985, artikel 9 van Wet 90 van 1988, artikel 9 van Wet 70 van 1989, artikel 14 van Wet 129 van 1991 en artikel 1 van Wet 49 van 1996

16. Artikel 11bis van die Inkomstebelastingwet, 1962, word hierby gewysig—
- (a) deur paragraaf (ii) van die voorbehoudsbepaling by subartikel (3) deur die volgende paragraaf te vervang:
- “(ii) 'n bedrag waarmee die bemarkingskoste ingevolge paragraaf (i) verminder is, by die toepassing van hierdie artikel geag word 'n bedrag aan bemarkingskoste te wees wat in die daaropvolgende jaar van aanslag aangegaan is en wat ingevolge artikel 11 [of 17] in bedoelde jaar as 'n aftrekking van sy inkomste toegestaan is.”;
- (b) deur die woorde wat paragraaf (a) van subartikel (4) voorafgaan deur die volgende woorde te vervang:
- “By die toepassing van subartikel (3) is die bemarkingskoste waarop die bemarkingstoelae bereken moet word soveel van die onkoste deur die uitvoerder gedurende die jaar van aanslag aangegaan wat ingevolge [artikels] artikel 11 [en 17] toegelaat is om van sy inkomste afgetrek te word as wat, na tot bevrediging van die Kommissaris bewys word, regstreeks aangegaan is—”;
- (c) deur die woorde wat op paragraaf (e) van subartikel (4A) volg deur die volgende woorde te vervang:
- “word by die toepassing van hierdie artikel, soveel van bedoelde onkoste as wat volgens oortuiging van die Kommissaris in werklikheid gedra is deur 'n produsent van veeboerdery-, landbou- of ander boerderyprodukte wat deur bedoelde Suikervereniging of deur 'n

marketing arrangements controlled by the said Association or by such committee, board, society or company, shall for the purposes of this section be deemed to be marketing expenditure incurred by such producer, provided such expenditure, had it been incurred directly by such producer, would have ranked for deduction from his income under section 11 [or 17], and, where such expenditure was incurred by any such co-operative agricultural society or company or farmers' special co-operative company, the expenditure shall be excluded from any marketing expenditure taken into account for the purposes of any allowance to such society or company under this section."

Amendment of section 12B of Act 58 of 1962, as inserted by section 11 of Act 90 of 1988 and amended by section 13 of Act 101 of 1990, section 10 of Act 113 of 1993, section 6 of Act 140 of 1993 and section 13 of Act 28 of 1997

17. Section 12B of the Income Tax Act, 1962, is hereby amended by the insertion after subsection (4A) of the following subsection:

"(4B) Where any asset in respect of which any deduction is claimed in terms of this section was during any previous financial year brought into use for the first time by the taxpayer for the purposes of any trade carried on by such taxpayer, the receipts and accruals of which were not included in the income of such taxpayer during such year, any deduction which could have been allowed in terms of this section during such previous year or any subsequent year that such asset was used by such taxpayer shall for the purposes of this section be deemed to have been allowed during such previous year or years as if the receipts and accruals of such trade had been included in the income of such taxpayer."

Amendment of section 12C of Act 58 of 1962, as inserted by section 14 of Act 101 of 1990 and amended by section 11 of Act 113 of 1993, section 7 of Act 140 of 1993, section 11 of Act 21 of 1994 and section 13 of Act 21 of 1995

18. Section 12C of the Income Tax Act, 1962, is hereby amended—

(a) by the insertion after subsection (4) of the following subsection:

"(4A) Where any asset in respect of which any deduction is claimed in terms of this section was during any previous financial year brought into use for the first time by the taxpayer for the purposes of any trade carried on by such taxpayer, the receipts and accruals of which were not included in the income of such taxpayer during such year, any deduction which could have been allowed in terms of this section during such previous year or any subsequent year that such asset was used by such taxpayer shall for the purposes of this section be deemed to have been allowed during such previous year or years as if the receipts and accruals of such trade had been included in the income of such taxpayer."; and

(b) by the substitution for subsection (5) of the following subsection:

"(5) The deductions which may be allowed or deemed to have been allowed in terms of this section and section 11(o) in respect of any asset shall not in the aggregate exceed the cost to the taxpayer of such asset."

Amendment of section 12D of Act 58 of 1962, as inserted by section 23 of Act 30 of 2000

19. (1) Section 12D of the Income Tax Act, 1962, is hereby amended—

(a) by the substitution for subsection (2) of the following subsection:

"(2) In respect of any new and unused affected asset which—

bedoelde komitee, raad, vereniging of maatskappy of deur 'n ander persoon volgens bemarkingsreëlins onder die beheer van bedoelde Suikervereniging of bedoelde komitee, raad, vereniging of maatskappy uitgevoer is, geag bemarkingskoste te wees wat deur daardie produsent aangegaan is, mits daardie onkoste, indien dit regstreeks deur daardie produsent aangegaan was, ingevolge artikel 11 [of 17] vir aftrekking van sy inkomste in aanmerking sou gekom het, en, waar bedoelde onkoste deur bedoelde koöperatiewe landbouvereniging of -maatskappy of spesiale koöperatiewe boeremaatskappy aangegaan is, word dié onkoste uitgesluit van enige bemarkingskoste wat vir die doeleindes van 'n vermindering aan bedoelde vereniging of maatskappy ingevolge hierdie artikel in berekening gebring word.”.

Wysiging van artikel 12B van Wet 58 van 1962, soos ingevoeg deur artikel 11 van Wet 90 van 1988 en gewysig deur artikel 13 van Wet 101 van 1990, artikel 10 van Wet 113 van 1993, artikel 6 van Wet 140 van 1993 en artikel 13 van Wet 28 van 1997

17. Artikel 12B van die Inkomstebelastingwet, 1962, word hierby gewysig deur die volgende subartikel na subartikel (4A) in te voeg:

“(4B) Waar enige bate ten opsigte waarvan 'n aftrekking ingevolge hierdie artikel geëis word gedurende enige voorafgaande finansiële jaar vir die eerste maal deur die belastingpligtige in gebruik geneem is vir die doeleindes van enige bedryf deur bedoelde belastingpligtige beoefen, waarvan die ontvangste en toevallings nie in die inkomste van bedoelde belastingpligtige gedurende daardie jaar ingesluit is nie, word enige aftrekking wat ingevolge hierdie artikel toegelaat sou kon word gedurende daardie voorafgaande jaar of enige daaropvolgende jaar wat die bate deur daardie belastingpligtige gebruik is, by die toepassing van hierdie artikel geag toegelaat te gewees het gedurende daardie vorige jaar of jare, asof die ontvangste en toevallings van daardie bedryf in die inkomste van bedoelde belastingpligtige ingesluit was.”.

Wysiging van artikel 12C van Wet 58 van 1962, soos ingevoeg deur artikel 14 van Wet 101 van 1990 en gewysig deur artikel 11 van Wet 113 van 1993, artikel 7 van Wet 140 van 1993, artikel 11 van Wet 21 van 1994 en artikel 13 van Wet 21 van 1995

18. Artikel 12C van die Inkomstebelastingwet, 1962, word hierby gewysig

(a) deur die volgende subartikel na subartikel (4) in te voeg:

“(4A) Waar enige bate ten opsigte waarvan 'n aftrekking ingevolge hierdie artikel geëis word gedurende enige voorafgaande finansiële jaar vir die eerste maal deur die belastingpligtige in gebruik geneem is vir die doeleindes van enige bedryf deur bedoelde belastingpligtige beoefen, waarvan die ontvangste en toevallings nie in die inkomste van bedoelde belastingpligtige gedurende daardie jaar ingesluit is nie, word enige aftrekking wat ingevolge hierdie artikel toegelaat sou kon word gedurende daardie voorafgaande jaar of enige daaropvolgende jaar wat die bate deur daardie belastingpligtige gebruik is, by die toepassing van hierdie artikel geag toegelaat te gewees het gedurende daardie vorige jaar of jare, asof die ontvangste en toevallings van daardie bedryf in die inkomste van bedoelde belastingpligtige ingesluit was.”; en

(b) deur subartikel (5) deur die volgende subartikel te vervang:

“(5) Die aftrekkings wat kragtens hierdie artikel en artikel 11(o) ten opsigte van 'n bate toegestaan mag word of geag word toegelaat te gewees het, is in totaal nie meer nie as die koste vir die belastingpligtige van die bate.”.

Wysiging van artikel 12D van Wet 58 van 1962, soos ingevoeg deur artikel 23 van Wet 30 van 2000

19. (1) Artikel 12D van die Inkomstebelastingwet, 1962, word hierby gewysig—

(a) deur subartikel (2) deur die volgende subartikel te vervang:

“(2) Ten opsigte van enige nuwe en ongebruikte geaffekteerde bate wat—

- (a) is owned by the taxpayer and is brought into use for the first time by such taxpayer on or after the effective date; and
 (b) is used directly by such taxpayer[—

(i) **in the production of his income; and**

(ii)] in carrying on his sole business of—

[(aa)](i) the transportation of persons, goods, things or natural oil; or

[(bb)](ii) the transmission of electricity or any telecommunication signal,

there shall be allowed to be deducted an allowance in respect of the cost actually incurred by the taxpayer in respect of the acquisition of such asset to the extent that such affected asset is used in the production of his income.”;

- (b) by the insertion after subsection (3) of the following subsection:

“(3A) Where any affected asset in respect of which any deduction is claimed in terms of this section was during any previous financial year brought into use for the first time by the taxpayer for the purposes of any trade carried on by such taxpayer, the receipts and accruals of which were not included in the income of such taxpayer during such year, any deduction which could have been allowed in terms of this section during such previous year or any subsequent year in which such asset was used by such taxpayer shall for the purposes of this section be deemed to have been allowed during such previous year or years as if the receipts and accruals of such trade had been included in the income of such taxpayer.”; and

- (c) by the substitution for subsection (6) of the following subsection:

“(6) The deductions which may be allowed or deemed to have been allowed in terms of this section and any other provision of this Act in respect of the cost of any affected asset shall not in the aggregate exceed the amount of such cost.”.

(2) Subsection (1)(a) shall be deemed to have come into operation on 23 February 2000.

Amendment of section 13 of Act 58 of 1962, as amended by section 12 of Act 90 of 1962, section 5 of Act 6 of 1963, section 11 of Act 72 of 1963, section 12 of act 90 of 1964, section 14 of Act 88 of 1965, section 17 of Act 55 of 1966, section 13 of Act 52 of 1970, section 13 of Act 88 of 1971, section 12 of Act 90 of 1972, section 13 of Act 65 of 1973, section 16 of Act 85 of 1974, section 13 of Act 69 of 1975, section 7 of Act 101 of 1978, section 10 of Act 104 of 1980, section 14 of Act 96 of 1981, section 10 of Act 96 of 1985, section 12 of Act 85 of 1987, section 12 of Act 90 of 1988, section 12 of Act 113 of 1993, section 11 of Act 46 of 1996 and section 22 of Act 53 of 1999

20. Section 13 of the Income Tax Act, 1962, is hereby amended—

- (a) by the insertion after subsection (1) of the following subsection:

“(1A) Where any building in respect of which any deduction of an allowance is claimed in terms of this section was during any previous financial year or years used by the taxpayer for the purposes of any trade carried on by such taxpayer, the receipts and accruals of which were not included in the income of such taxpayer during such year or years, any deduction which could have been allowed during such previous year or years in terms of this section shall for the purposes of this section be deemed to have been allowed during such previous year or years as if the receipts and accruals of such trade had been included in the income of such taxpayer.”; and

- (b) by the substitution for subsection (2) of the following subsection:

“(2) The aggregate of the allowances allowed under subsection (1) or the corresponding provisions of any previous Income Tax Act, or deemed to have been allowed in terms of subsection (1A), in respect of any

- (a) behoort aan die belastingpligtige en op of na die effektiewe datum vir die eerste keer deur bedoelde belastingpligtige in gebruik geneem word; en
- (b) regstreeks gebruik word deur bedoelde belastingpligtige[—
- 5 (i) **in die voortbrenging van sy inkomste; en**
 (ii)] in die beoefening van sy enigste besigheid van—
 [(aa)](i) die vervoer van persone, goed, sake of aardolie; of
 [(bb)](ii) die transmissie van elektrisiteit of enige telekom-
 munikasiesien,
 10 word 'n vermindering ten opsigte van die koste werklik deur die belastingpligtige aangegaan ten opsigte van die verkryging van be-
 doelde bate as 'n aftrekking toegelaat in die mate wat daardie geaffek-
 teerde bate in die voortbrenging van sy inkomste gebruik word.”;
- (b) deur die volgende subartikel na subartikel (3) in te voeg:
- 15 “(3A) Waar enige geaffekteerde bate ten opsigte waarvan 'n aftrek-
 king ingevolge hierdie artikel geëis word gedurende enige voorafgaande
 finansiële jaar vir die eerste maal deur die belastingpligtige in gebruik
 20 geneem is vir die doeleindes van enige bedryf deur bedoelde belasting-
 pligtige beoefen, waarvan die ontvangste en toevallings nie in die
 inkomste van bedoelde belastingpligtige gedurende daardie jaar in-
 gesluit is nie, word enige aftrekking wat ingevolge hierdie artikel
 toegelaat sou kon word gedurende daardie voorafgaande jaar of enige
 daaropvolgende jaar wat die bate deur daardie belastingpligtige gebruik
 25 is, by die toepassing van hierdie artikel geag toegelaat te gewees het
 gedurende daardie vorige jaar of jare, asof die ontvangste en toevallings
 van daardie bedryf in die inkomste van bedoelde belastingpligtige
 ingesluit was.”; en
- (c) deur subartikel (6) deur die volgende subartikel te vervang:
- 30 “(6) Die aftrekkings wat ingevolge hierdie artikel en enige ander
 bepaling van hierdie Wet toegestaan kan word of geag word toegestaan
 te gewees het ten opsigte van die koste van enige geaffekteerde bate, is
 in totaal nie meer nie as die bedrag van bedoelde koste.”.
- (2) Subartikel (1)(a) word geag op 23 Februarie 2000 in werking te getree het.

Wysiging van artikel 13 van Wet 58 van 1962, soos gewysig deur artikel 12 van
 35 Wet 90 van 1962, artikel 5 van Wet 6 van 1963, artikel 11 van Wet 72 van 1963,
 artikel 12 van Wet 90 van 1964, artikel 14 van Wet 88 van 1965, artikel 17 van Wet
 55 van 1966, artikel 13 van Wet 52 van 1970, artikel 13 van Wet 88 van 1971,
 artikel 12 van Wet 90 van 1972, artikel 13 van Wet 65 van 1973, artikel 16 van Wet
 85 van 1974, artikel 13 van Wet 69 van 1975, artikel 7 van Wet 101 van 1978,
 40 artikel 10 van Wet 104 van 1980, artikel 14 van Wet 96 van 1981, artikel 10 van
 Wet 96 van 1985, artikel 12 van Wet 85 van 1987, artikel 12 van Wet 90 van 1988,
 artikel 12 van Wet 113 van 1993, artikel 11 van Wet 46 van 1996 en artikel 22 van
 Wet 53 van 1999

20. Artikel 13 van die Inkomstebelastingwet, 1962, word hierby gewysig—
- 45 (a) deur die volgende subartikel na subartikel (1) in te voeg:
- “(1A) Waar enige gebou ten opsigte waarvan 'n aftrekking van 'n
 vermindering ingevolge hierdie artikel geëis word gedurende enige
 voorafgaande finansiële jaar of jare deur die belastingpligtige in gebruik
 50 geneem is vir die doeleindes van enige bedryf deur bedoelde belasting-
 pligtige beoefen, waarvan die ontvangste en toevallings nie in die
 inkomste van bedoelde belastingpligtige gedurende daardie jaar of jare
 ingesluit is nie, word enige aftrekking wat ingevolge hierdie artikel
 toegelaat sou kon word gedurende daardie voorafgaande jaar of jare by
 55 die toepassing van hierdie artikel geag toegelaat te gewees het ge-
 durende daardie vorige jaar of jare, asof die ontvangste en toevallings
 van daardie bedryf in die inkomste van bedoelde belastingpligtige
 ingesluit was.”; en
- (b) deur subartikel (2) deur die volgende subartikel te vervang:
- 60 “(2) Die totaal van die verminderings toegelaat ingevolge subartikel
 (1) of die ooreenstemmende bepalings van 'n vorige Inkomstebelas-
 tingwet, of geag toegelaat te gewees het ingevolge subartikel (1A), ten

building or improvements shall not exceed the cost (after the deduction of any amount referred to in subsection (3) or the corresponding provisions of any previous Income Tax Act) of such building or improvements, as the case may be, less the aggregate of any allowances made to the taxpayer in respect of such building or improvements, as the case may be, under subsection (7) or section 11(g) or the corresponding provisions of any previous Income Tax Act.” 5

Amendment of section 13bis of Act 58 of 1962, as inserted by section 15 of Act 88 of 1965, and amended by section 18 of Act 55 of 1966, section 14 of Act 95 of 1967, section 14 of Act 88 of 1971, section 14 of Act 69 of 1975, section 13 of Act 94 of 1983, section 46 of Act 97 of 1986, section 13 of Act 90 of 1988, section 13 of Act 113 of 1993 and section 12 of Act 21 of 1994 10

21. Section 13bis of the Income Tax Act, 1962, is hereby amended—

(a) by the insertion of the following subsection after subsection (3):

“(3A) Where any building in respect of which any deduction of an allowance is claimed in terms of this section was during any previous financial year or years used by the taxpayer for the purposes of any trade carried on by such taxpayer, the receipts and accruals of which were not included in the income of such taxpayer during such year or years, any deduction which could have been allowed during such previous year or years in terms of this section shall for the purposes of this section be deemed to have been allowed during such previous year or years as if the receipts and accruals of such trade had been included in the income of such taxpayer.”; and 15 20

(b) by the substitution for subsection (5) of the following subsection: 25

“(5) The aggregate of the allowances under the preceding provisions of this section and subsection (1) of section *thirteen*, as applied by subsection (4) of that section, and the corresponding provisions of any previous Income Tax Act, or any amount deemed to have been allowed in terms of subsection (3A), in respect of the cost of any building or portion thereof or any improvements or portion thereof shall not exceed such cost or, if such allowances have been calculated on a portion of such cost, such portion.”. 30

Amendment of section 13ter of Act 58 of 1962, as inserted by section 13 of Act 91 of 1982, and amended by section 14 of Act 94 of 1983 35

22. Section 13ter of the Income Tax Act, 1962, is hereby amended—

(a) by the insertion after subsection (6) of the following subsection:

“(6A) Where any building in respect of which any deduction of an allowance is claimed in terms of this section was during any previous financial year or years used by the taxpayer for the purposes of any trade carried on by him the receipts and accruals of which were not included in the income of such taxpayer during such year or years, any deduction which could have been allowed during such previous year or years in terms of this section shall for the purposes of this section (excluding the provisions of subsection (7)(a)) be deemed to have been allowed during such previous year or years as if the receipts and accruals of such trade had been included in the income of such taxpayer.”; and 40 45

(b) by the substitution for subsection (10) of the following subsection:

“(10) The aggregate of the allowances allowed or deemed to have been allowed under the preceding provisions of this section in respect of the cost of any residential unit shall not exceed such cost or, if such allowances have been calculated on a portion of such cost, such portion.”. 50

5 opsigte van 'n gebou of verbeterings gaan nie die koste (na aftrekking van enige bedrag in subartikel (3) of die ooreenstemmende bepalings van 'n vorige Inkomstebelastingwet bedoel) van daardie gebou of verbeterings, na gelang van die geval, min die som van enige vermindering aan die belastingpligtige ten opsigte van bedoelde gebou of verbeterings, na gelang van die geval, toegestaan ingevolge subartikel (7) of artikel 11 (g) of die ooreenstemmende bepalings van 'n vorige Inkomstebelastingwet te bowe nie.”.

10 **Wysiging van artikel 13bis van Wet 58 van 1962, soos ingevoeg deur artikel 15 van Wet 88 van 1965, en gewysig deur artikel 18 van Wet 55 van 1966, artikel 14 van Wet 95 van 1967, artikel 14 van Wet 88 van 1971, artikel 14 van Wet 69 van 1975, artikel 13 van Wet 94 van 1983, artikel 46 van Wet 97 van 1986, artikel 13 van Wet 90 van 1988, artikel 13 van Wet 113 van 1993 en artikel 12 van Wet 21 van 1994**

15 **21. Artikel 13bis van die Inkomstebelastingwet, 1962, word hierby gewysig—**
(a) deur die volgende subartikel na subartikel (3) in te voeg:

20 “(3A) Waar enige gebou ten opsigte waarvan 'n aftrekking van 'n vermindering ingevolge hierdie artikel geëis word gedurende enige voorafgaande finansiële jaar of jare deur die belastingpligtige in gebruik geneem is vir die doeleindes van enige bedryf deur bedoelde belastingpligtige beoefen, waarvan die ontvangste en toevallings nie in die inkomste van bedoelde belastingpligtige gedurende daardie jaar of jare ingesluit is nie, word enige aftrekking wat ingevolge hierdie artikel toegelaat sou kon word gedurende daardie voorafgaande jaar of jare by die toepassing van hierdie artikel geag toegelaat te gewees het gedurende daardie vorige jaar of jare, asof die ontvangste en toevallings van daardie bedryf in die inkomste van bedoelde belastingpligtige ingesluit was.”; en

25 (b) deur subartikel (5) deur die volgende subartikel te vervang:
30 “(5) Die totaal van die verminderings ingevolge die voorgaande bepalings van hierdie artikel en subartikel (1) van artikel *dertien*, soos deur subartikel (4) van daardie artikel toegepas, en die ooreenstemmende bepalings van 'n vorige Inkomstebelastingwet, of enige bedrag wat geag word toegelaat te gewees het ingevolge subartikel (3A), ten opsigte van die koste van 'n gebou of gedeelte daarvan of enige verbeterings of gedeelte daarvan gaan nie bedoelde koste of, indien bedoelde vermindering op 'n gedeelte van bedoelde koste bereken is, bedoelde gedeelte, te bowe nie.”.

Wysiging van artikel 13ter van Wet 58 van 1962, soos ingevoeg deur artikel 13 van Wet 91 van 1982, en gewysig deur artikel 14 van Wet 94 van 1983

40 **22. Artikel 13ter van die Inkomstebelastingwet, 1962, word hierby gewysig**
(a) deur die volgende subartikel na subartikel (6) in te voeg:

45 “(6A) Waar enige gebou ten opsigte waarvan 'n aftrekking van 'n vermindering ingevolge hierdie artikel geëis word gedurende enige voorafgaande finansiële jaar of jare deur die belastingpligtige in gebruik geneem is vir die doeleindes van enige bedryf deur bedoelde belastingpligtige beoefen, waarvan die ontvangste en toevallings nie in die inkomste van bedoelde belastingpligtige gedurende daardie jaar of jare ingesluit is nie, word enige aftrekking wat ingevolge hierdie artikel toegelaat sou kon word gedurende daardie voorafgaande jaar of jare by die toepassing van hierdie artikel (uitgesonderd die bepalings van subartikel (7)(a)) geag toegelaat te gewees het gedurende daardie vorige jaar of jare, asof die ontvangste en toevallings van daardie bedryf in die inkomste van bedoelde belastingpligtige ingesluit was.”; en

50 (b) deur subartikel (10) deur die volgende subartikel te vervang:
55 “(10) Die totaal van die verminderings ingevolge die voorgaande bepalings van hierdie artikel toegelaat of geag toegelaat te gewees het ten opsigte van die koste van 'n woonseenheid gaan nie bedoelde koste of, indien bedoelde vermindering op 'n gedeelte van bedoelde koste bereken is, bedoelde gedeelte, te bowe nie.”.

Amendment of section 14 of Act 58 of 1962, as substituted by section 19 of Act 55 of 1966 and amended by section 17 of Act 85 of 1974, section 12 of Act 103 of 1976, section 11 of Act 104 of 1979, section 10 of Act 65 of 1986, section 14 of Act 113 of 1993, section 8 of Act 140 of 1993, section 14 of Act 21 of 1995 and section 14 of Act 28 of 1997

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23. Section 14 of the Income Tax Act, 1962, is hereby amended—

- (a) by the substitution for the words preceding paragraph (a) of subsection (1) of the following words:

“There shall be allowed to be deducted from the income of any **[person referred to in section 9(1)(c)]** resident who carries on any business as owner or charterer of any ship—”;

- (b) by the substitution for the words preceding paragraph (a) of subsection (1C) of the following words:

“Where on or after 1 January 1974 any **[South African company]** association, corporation or company contemplated in paragraph (a) of the definition of ‘company’ in section 1 (being a **[person referred to in section 9(1)(c)]** resident who carries on any business as owner or charterer of any ship) has concluded a contract for the acquisition by it of a ship and such company (hereinafter referred to as the taxpayer company) satisfies the Commissioner that—”; and

- (c) by the substitution for the definition of “South African ship” in subsection (2) of the following definition:

“ ‘South African ship’ means—

- (a) a ship which is owned by a **[person referred to in section 9(1)(c)]** resident who carries on any business as owner or charterer of any ship, if such ship is a South African ship as defined in section 2 of the Merchant Shipping Act, 1951 (Act No. 57 of 1951); or

- (b) if the Minister **[of Finance]**, having regard to the circumstances of the case, so directs, a ship which is owned by a company (in this section referred to as a subsidiary company) which is managed and controlled in the Republic if the sole beneficial shareholder in that company is **[a South African company]** an association, corporation or company contemplated in paragraph (a) of the definition of ‘company’ in section 1 (in this section referred to as a parent company) which is managed and controlled in the Republic.”.

Amendment of section 14bis of Act 58 of 1962, as inserted by section 16 of Act 88 of 1965 and amended by section 15 of Act 141 of 1992, section 15 of Act 113 of 1993, section 9 of Act 140 of 1993 and section 15 of Act 21 of 1995

24. Section 14bis of the Income Tax Act, 1962, is hereby amended—

- (a) by the substitution for the words preceding the proviso to paragraph (b) of subsection (1) of the following words:

“if such person is a **[person referred to in paragraph (c) of subsection (1) of section nine]** resident who carries on any business as owner or charterer of any aircraft and such [person] resident on or after the first day of April, 1965, concludes a contract for the acquisition by him of a new aircraft (whether built or still to be built), or of an aircraft which is not new and is proved to the satisfaction of the Secretary for Transport at all times since its construction to have been maintained in the highest class applicable to an aircraft of its type, and such **[person] resident** satisfies the Commissioner that the aircraft in question is or will be registered by him in the Republic and is or will be used by him in his business of transporting by air and for reward persons, livestock, goods or mail, an allowance in respect of the year of assessment during which such contract is concluded equal to forty per cent of the adjustable cost to such **[person] resident** of that aircraft, or, if at the time at which the allowance under this paragraph has to be made, the cost price of the aircraft has not yet been determined, of the adjustable estimated cost

Wysiging van artikel 14 van Wet 58 van 1962, soos vervang deur artikel 19 van Wet 55 van 1966 en gewysig deur artikel 17 van Wet 85 van 1974, artikel 12 van Wet 103 van 1976, artikel 11 van Wet 104 van 1979, artikel 10 van Wet 65 van 1986, artikel 14 van Wet 113 van 1993, artikel 8 van Wet 140 van 1993, artikel 14 van Wet 21 van 1995 en artikel 14 van Wet 28 van 1997

23. Artikel 14 van die Inkomstebelastingwet, 1962, word hierby gewysig—

(a) deur die woorde wat paragraaf (a) van subartikel (1) voorafgaan deur die volgende woorde te vervang:

10 “Van die inkomste van ’n **[in artikel 9(1)(c) bedoelde persoon]** inwoner wat ’n besigheid as eienaar of bevrachter van ’n skip bedryf, word toegelaat om afgetrek te word—”;

(b) deur die woorde wat paragraaf (a) van subartikel (1C) voorafgaan deur die volgende woorde te vervang:

15 “Waar op of na 1 Januarie 1974 ’n **[Suid-Afrikaanse maatskappy]** vereniging, korporasie of maatskappy in paragraaf (a) van die omskrywing van ‘maatskappy’ in artikel 1 beoog (synde ’n **[persoon in artikel 9(1)(c) bedoel]** inwoner wat ’n besigheid as eienaar of bevrachter van ’n skip bedryf) ’n kontrak gesluit het vir die verkryging deur hom van ’n skip en daardie maatskappy (hieronder die belastingpligtige maatskappy genoem) die Kommissaris oortuig dat—”; en

20 (c) deur die omskrywing van “Suid-Afrikaanse skip” in subartikel (2) deur die volgende omskrywing te vervang:

“ ‘Suid-Afrikaanse skip’—

25 (a) ’n skip waarvan die eienaar ’n **[in artikel 9(1)(c) bedoelde persoon]** inwoner wat ’n besigheid as eienaar of bevrachter van ’n skip bedryf, is, indien daardie skip ’n Suid-Afrikaanse skip is soos in artikel 2 van die Handelskeepvaartwet, 1951 (Wet No. 57 van 1951), omskryf; of

30 (b) indien die Minister **[van Finansies]**, met inagneming van die omstandighede van die geval, aldus gelas, ’n skip waarvan die eienaar ’n maatskappy (in hierdie artikel ’n filiaalmaatskappy genoem) is wat in die Republiek bestuur en beheer word, indien die enigste voordelige aandeelhouer in daardie maatskappy ’n **[Suid-Afrikaanse maatskappy]** vereniging, korporasie of maatskappy in paragraaf (a) van die omskrywing van ‘maatskappy’ in artikel 1 beoog (in hierdie artikel ’n moedermaatskappy genoem) is wat in die Republiek bestuur en beheer word;”.

40 Wysiging van artikel 14bis van Wet 58 van 1962, soos ingevoeg deur artikel 16 van Wet 88 van 1965 en gewysig deur artikel 15 van Wet 141 van 1992, artikel 15 van Wet 113 van 1993, artikel 9 van Wet 140 van 1993 en artikel 15 van Wet 21 van 1995

24. Artikel 14bis van die Inkomstebelastingwet, 1962, word hierby gewysig—

(a) deur die woorde wat die voorbehoudsbepaling by paragraaf (b) van subartikel (1) voorafgaan deur die volgende woorde te vervang:

45 “indien so ’n persoon ’n **[in paragraaf (c) van subartikel (1) van artikel nege bedoelde persoon]** inwoner wat ’n besigheid as eienaar of bevrachter van ’n vliegtuig bedryf, is en dié **[persoon]** inwoner op of na die eerste dag van April 1965 ’n kontrak sluit vir die verkryging deur hom van ’n nuwe vliegtuig (hetsy gebou of nog te word), of van ’n vliegtuig wat nie nuut is nie en ten opsigte waarvan daar tot bevrediging van die Sekretaris van Vervoer bewys word dat dit te alle tye vanaf die bou daarvan binne die hoogste klas toepaslik op vliegtuie van sy soort in stand gehou is, en bedoelde **[persoon]** inwoner die Kommissaris daarvan oortuig dat die betrokke vliegtuig deur hom in die Republiek geregistreer is of sal word en deur hom in sy besigheid van die lugvervoer, vir beloning, van persone, lewende hawe, goedere of pos gebruik word of gebruik sal word, ’n vermindering ten opsigte van die jaar van aanslag waarin bedoelde kontrak gesluit word gelyk aan veertig persent van die veranderbare koste van daardie vliegtuig vir bedoelde **[persoon]** inwoner of, indien op die tydstip wanneer die vermindering

price of that aircraft, provided the said **[person]** resident satisfies the Commissioner that not less than forty per cent of the cost price or of the estimated cost price, as the case may be, of the aircraft will be paid by him within a period of two years, or, if the Commissioner agrees, three years after the end of that year of assessment or, if the said **[person]** resident does not so satisfy the Commissioner, an allowance in respect of any year of assessment equal to forty per cent. of the portion, if any, of the adjustable cost price of the aircraft paid by him during that year of assessment.”;

- (b) by the substitution for paragraph (iii) of the proviso to paragraph (b) of subsection (1) of the following paragraph:

“(iii) if in respect of any year of assessment the Commissioner is no longer satisfied that an aircraft in respect of which an allowance has been made under the preceding provisions of this paragraph (whether in the current or any previous year of assessment) will be registered in the Republic or will be used by the taxpayer as aforesaid, or if in any year of assessment any such aircraft which has been registered in the Republic or has been used by the taxpayer as aforesaid, ceases to be so registered or used, or if in any year of assessment the taxpayer ceases to be a **[person referred to in paragraph (c) of subsection (1) of section nine]** resident, so much of the amount of the said allowance as is not in terms of subsection (4) of section *eight* required to be included in the taxpayer’s income for the current or any other year of assessment and is not in terms of paragraph (a) of subsection (2) of this section required to be deducted from the cost or estimated cost price of a further aircraft acquired to replace such aircraft, less such amount as would, if this paragraph had not been enacted, have been allowed to the taxpayer by way of deductions (in addition to those actually allowed) under paragraph (a) of this section or paragraph (o) of section *eleven*, either in the current or any previous year of assessment, shall in terms of this proviso be included in the income of the taxpayer for the current year of assessment.”;

- (c) by the substitution for subparagraph (i) of paragraph (c) of subsection (1) of the following subparagraph:

“(i) the person is a **[person mentioned in section 9(1)(c)]** resident who carries on any business as owner or charterer of any aircraft, who has acquired a new or used aircraft under a contract concluded by him on or after 1 August 1992;”;

- (d) by the substitution for the words preceding paragraph (a) of subsection (3) of the following words:

“If during any year of assessment any aircraft in respect of which an allowance has been granted to the taxpayer under subsection (1)(c) (whether in the current or any previous year of assessment) ceases to be registered by him in the Republic or ceases to be used by him in his business of transporting by air and for reward persons, livestock, goods or mail, or if the taxpayer to whom such allowance was granted ceases to be a **[person mentioned in section 9(1)(c)]** resident, there shall be included in the taxpayer’s income in such first-mentioned year of assessment the amount (if any) by which the said allowance exceeds the sum of—”.

ingevolge hierdie paragraaf toegestaan moet word, die kosprys van die vliegtuig nog nie vasgestel is nie, van die veranderbare geraamde kosprys van daardie vliegtuig, mits bedoelde **[persoon]** inwoner die Kommissaris daarvan oortuig dat minstens veertig persent van die kosprys of van die geraamde kosprys, na gelang van die geval, van die vliegtuig binne 'n tydperk van twee jaar of, indien die Kommissaris instem, drie jaar na die end van bedoelde jaar van aanslag deur hom betaal sal word, of, indien bedoelde **[persoon]** inwoner die Kommissaris nie aldus oortuig nie, 'n vermindering ten opsigte van enige jaar van aanslag gelyk aan veertig persent van die gedeelte, as daar is, van die veranderbare kosprys van die vliegtuig gedurende daardie jaar van aanslag deur hom betaal:";

(b) deur paragraaf (iii) van die voorbehoudsbepaling by paragraaf (b) van subartikel (1) deur die volgende paragraaf te vervang:

"(iii) indien die Kommissaris ten opsigte van 'n jaar van aanslag nie meer oortuig is nie dat 'n vliegtuig ten opsigte waarvan 'n vermindering (hetsy in die lopende of 'n vorige jaar van aanslag) ingevolge die voorgaande bepalings van hierdie paragraaf toegestaan is, in die Republiek geregistreer of deur die belastingpligtige soos voormeld gebruik sal word, of indien so 'n vliegtuig wat in die Republiek geregistreer of deur die belastingpligtige soos voormeld gebruik is, in 'n jaar van aanslag ophou om aldus geregistreer te wees of gebruik te word, of indien die belastingpligtige in 'n jaar van aanslag ophou om 'n **[in paragraaf (c) van subartikel (1) van artikel nege bedoelde persoon]** inwoner te wees, soveel van die bedrag van bedoelde vermindering as wat nie kragtens die bepalings van subartikel (4) van artikel *agt* by die belastingpligtige se inkomste vir die lopende of 'n ander jaar van aanslag ingereken moet word nie en nie ingevolge paragraaf (a) van subartikel (2) van hierdie artikel van die koste of geraamde kosprys van 'n verdere vliegtuig wat ter vervanging van bedoelde vliegtuig verkry is, afgetrek moet word nie, min so 'n bedrag as wat (hetsy in die lopende of 'n vorige jaar van aanslag) indien hierdie paragraaf nie verorden was nie, ingevolge paragraaf (a) van hierdie artikel of paragraaf (o) van artikel *elf* by wyse van aftrekkings aan die belastingpligtige toegestaan sou gewees het bo en behalwe die aftrekkings werklik toegestaan, ingevolge hierdie voorbehoudsbepaling by die belastingpligtige se inkomste vir die lopende jaar van aanslag ingereken moet word;"

(c) deur subparagraaf (i) van paragraaf (c) van subartikel (1) deur die volgende paragraaf te vervang:

"(i) so 'n persoon 'n **[persoon genoem in artikel 9(1)(c)]** inwoner wat 'n besigheid as eienaar of bevrachter van 'n vliegtuig bedryf, is wat 'n nuwe of gebruikte vliegtuig verkry het ingevolge 'n kontrak wat op of na 1 Augustus 1992 deur hom gesluit is;" en

(d) deur die woorde wat paragraaf (a) van subartikel (3) voorafgaan deur die volgende woorde te vervang:

"Indien gedurende 'n jaar van aanslag 'n vliegtuig ten opsigte waarvan 'n vermindering aan die belastingpligtige ingevolge subartikel (1)(c) toegestaan is (hetsy in die lopende of 'n vorige jaar van aanslag) ophou om deur hom in die Republiek geregistreer te wees of ophou om deur hom gebruik te word in sy besigheid van die lugvervoer, vir beloning, van persone, lewende hawe, goedere of pos, of indien die belastingpligtige aan wie die vermindering toegestaan is, ophou om 'n **[in artikel 9(1)(c) genoemde persoon]** inwoner te wees, word daar by die belastingpligtige se inkomste in bedoelde eersgenoemde jaar van aanslag 'n bedrag (as daar is) ingereken waarmee genoemde vermindering die som van—".

Repeal of section 17 of Act 58 of 1962, as substituted by section 14 of Act 90 of 1962, and amended by section 14 of Act 113 of 1977

25. Section 17 of the Income Tax Act, 1962, is hereby repealed.

Amendment of section 18 of Act 58 of 1962, as inserted by section 12 of Act 104 of 1980 and amended by section 15 of Act 96 of 1981, section 15 of Act 121 of 1984, section 11 of Act 96 of 1985, section 14 of Act 90 of 1988, section 11 of Act 70 of 1989, section 16 of Act 101 of 1990, section 19 of Act 129 of 1991, section 18 of Act 141 of 1992, section 16 of Act 21 of 1995 and section 23 of Act 53 of 1999

26. Section 18 of the Income Tax Act, 1962, is hereby amended by the substitution for paragraph (a) of subsection (1) of the following paragraph:

“(a) any contributions made by him during the year of assessment to any medical scheme registered under the provisions of the Medical Schemes Act, 1998 (Act No. 131 of 1998), or any fund which is registered under any similar provision contained in the laws of any other country where the medical scheme is registered; and”.

Amendment of section 20 of Act 58 of 1962, as amended by section 13 of Act 90 of 1964, section 18 of Act 88 of 1965, section 13 of Act 76 of 1968, section 18 of Act 89 of 1969, section 15 of Act 65 of 1973, section 8 of Act 101 of 1978, section 18 of Act 94 of 1983, section 19 of Act 191 of 1990, section 16 of Act 113 of 1993, section 17 of Act 21 of 1995, section 15 of Act 28 of 1997 and section 20 of Act 30 of 2000

27. Section 20 of the Income Tax Act, 1962, is hereby amended—

(a) by the substitution for the words preceding paragraph (a) of subsection (1) of the following words:

“For the purpose of determining the taxable income derived by any person from carrying on any trade [**within the Republic**], there shall be set off against the income so derived by such person—”;

(b) by the substitution for paragraph (b) of subsection (1) of the following paragraph:

“(b) any assessed loss incurred by the taxpayer during the same year of assessment in carrying on [**in the Republic**] any other trade either alone or in partnership with others, otherwise than as a member of a company the capital whereof is divided into shares.”; and

(c) by the substitution for the proviso to subsection (1) of the following proviso:

“Provided that there shall not be set off against any amount—

(a) distributed to such person by any pension fund or provident fund which is included in the gross income of such person in terms of paragraph (eB) of the definition of ‘gross income’ in section 1, any—

[(a)](i) balance of assessed loss; or

[(b)](ii) ‘assessed loss’ as defined in subsection (2) incurred in such year before taking into account any amount of such distribution; or

(b) derived by any person from the carrying on within the Republic of any trade, any—

(i) assessed loss incurred by such person during such year; or

(ii) any balance of assessed loss incurred in any previous year of assessment,

in carrying on any trade outside the Republic.”.

Herroeping van artikel 17 van Wet 58 van 1962, soos vervang deur artikel 14 van Wet 90 van 1962, en gewysig deur artikel 14 van Wet 113 van 1977

25. Artikel 17 van die Inkomstebelastingwet, 1962, word hierby herroep.

Wysiging van artikel 18 van Wet 58 van 1962, soos ingevoeg deur artikel 12 van
5 Wet 104 van 1980 en gewysig deur artikel 15 van Wet 96 van 1981, artikel 15 van
Wet 121 van 1984, artikel 11 van Wet 96 van 1985, artikel 14 van Wet 90 van 1988,
artikel 11 van Wet 70 van 1989, artikel 16 van Wet 101 van 1990, artikel 19 van
Wet 129 van 1991, artikel 18 van Wet 141 van 1992, artikel 16 van Wet 21 van
1995 en artikel 23 van Wet 53 van 1999

10 26. Artikel 18 van die Inkomstebelastingwet, 1962, word hierby gewysig deur
paragraaf (a) van subartikel (1) deur die volgende paragraaf te vervang:

“(a) enige bydraes deur hom gedurende die jaar van aanslag gedoen aan ’n
mediese skema ingevolge die bepalings van die Wet op Mediese Skemas,
1998 (Wet No. 131 van 1998), geregistreer of enige fonds wat geregistreer is
15 ingevolge enige soortgelyke bepaling wat in die wette van ’n ander land waar
die mediese skema geregistreer is, vervat is; en”.

Wysiging van artikel 20 van Wet 58 van 1962, soos gewysig deur artikel 13 van
Wet 90 van 1964, artikel 18 van Wet 88 van 1965, artikel 13 van Wet 76 van 1968,
artikel 18 van Wet 89 van 1969, artikel 15 van Wet 65 van 1973, artikel 8 van Wet
20 101 van 1978, artikel 18 van Wet 94 van 1983, artikel 19 van Wet 191 van 1990,
artikel 16 van Wet 113 van 1993, artikel 17 van Wet 21 van 1995, artikel 15 van
Wet 28 van 1997 en artikel 20 van Wet 30 van 2000

27. Artikel 20 van die Inkomstebelastingwet, 1962, word hierby gewysig—

(a) deur die woorde wat paragraaf (a) van subartikel (1) voorafgaan deur die
25 volgende woorde te vervang:

“Ten einde die belastbare inkomste deur ’n persoon verkry uit die
beoefening van ’n bedryf [**in die Republiek**] vas te stel, word teen die
aldus verkreeë inkomste van dié persoon in die vergelyking gebring”;

(b) deur paragraaf (b) van subartikel (1) deur die volgende paragraaf te vervang:
30 “(b) ’n vasgestelde verlies deur die belastingpligtige gedurende dieselfde
jaar van aanslag gely by die beoefening [**in die Republiek**] van enige
ander bedryf, hetsy alleen of in vennootskap met andere, anders dan as
lid van ’n maatskappy waarvan die kapitaal in aandele verdeel is.”; en

(c) deur die voorbehoudsbepaling by subartikel (1) deur die volgende voorbe-
35 houdsbepaling te vervang:

“Met dien verstande dat daar nie verreken word nie teen enige bedrag—

(a) aan bedoelde persoon deur enige pensioenfonds of voorsorgsfonds
uitgekeer wat by die bruto inkomste van bedoelde persoon inge-
volge paragraaf (eB) van die omskrywing van ‘bruto inkomste’ in
40 artikel 1 ingesluit is, enige—

[(a)](i) balans van ’n vasgestelde verlies; of

[(b)](ii) ‘vasgestelde verlies’ soos in subartikel (2) omskryf wat in
bedoelde jaar gely is voor enige bedrag van bedoelde
uitkering in berekening gebring is; of

(b) deur enige persoon verkry uit die beoefening van ’n bedryf binne
45 die Republiek, enige—

(i) vasgestelde verlies deur bedoelde persoon in daardie jaar
gely; of

(ii) enige balans van ’n vasgestelde verlies in enige vorige jaar
50 van aanslag gely,

in die beoefening van enige bedryf buite die Republiek.”.

Amendment of section 23F of Act 58 of 1962, as inserted by section 17 of Act 21 of 1994 and substituted by section 30 of Act 30 of 2000

28. (1) Section 23F of the Income Tax Act, 1962, is hereby amended—

(a) by the substitution for paragraph (c) of subsection (1) of the following paragraph:

“(c) it is shown by him that by reason of the loss or destruction of such trading stock or the termination of the agreement in terms of which such trading stock was acquired by him or for any other reason, such trading stock will neither be disposed of nor held by him, to the extent that such expenditure was actually paid.”; and

(b) by the deletion of the words following paragraph (c) of subsection (1).

(2) Subsection (1) shall be deemed to have come into operation on 23 February 2000.

Amendment of section 23H of Act 58 of 1962, as inserted by section 31 of Act 30 of 2000

29. (1) Section 23H of the Income Tax Act, 1962, is hereby amended by the substitution for paragraph (a) of subsection (1) of the following paragraph:

“(a) which is allowable as a deduction in terms of the provisions of section 11(a), [(b)] (c) or (d) or section 28(2)(a) and (c); and”.

(2) In so far as subsection (1)—

(a) deletes the reference to section 11(b), it shall come into operation on 1 January 2001, and apply to years of assessment commencing on or after that date; and

(b) inserts the reference to section 28(2)(a) and (c), it shall be deemed to have come into operation on 23 February 2000, and shall apply in respect of any expenditure incurred on or after that date.

Amendment of section 24F of Act 58 of 1962, as inserted by section 17 of Act 85 of 1987 and amended by section 19 of Act 90 of 1988, section 24 of Act 101 of 1990 and section 26 of Act 129 of 1991

30. Section 24F of the Income Tax Act, 1962, is hereby amended—

(a) by the substitution for the words preceding paragraph (a) of subsection (7) of the following words:

“The amount of any print cost or any marketing expenditure contemplated in section 11*bis* which may be allowed under the provisions of [sections] section 11 [and 17] shall not in the aggregate exceed the total of—”;

(b) by the substitution for the second proviso to subsection (7) of the following proviso:

“Provided further that any amount of print cost or marketing expenditure which has been disallowed in terms of this subsection shall be carried forward and be deemed for the purposes of [sections] section 11 [and 17] to be an amount of print cost or marketing expenditure, as the case may be, incurred in the succeeding year of assessment.”; and

(c) by the substitution for paragraph (b) of the proviso to paragraph (b) of subsection (9) of the following paragraph:

“(b) any amount of such marketing expenditure which has been allowed as a deduction in terms of subsection (7) and which has not been taken into account in the calculation of the marketing allowance by reason of the provisions of paragraph (a) or (b) of this subsection shall be deemed for the purposes of section 11*bis* to be an amount of marketing expenditure incurred in the succeeding year of assessment and allowed as a deduction in that year under the provisions of section 11 [or 17].”.

Wysiging van artikel 23F van Wet 58 van 1962, soos ingevoeg deur artikel 17 van Wet 21 van 1994 en vervang deur artikel 30 van Wet 30 van 2000

28. (1) Artikel 23F van die Inkomstebelastingwet, 1962, word hierby gewysig—

(a) deur paragraaf (c) van subartikel (1) deur die volgende paragraaf te vervang:

5 “(c) daar deur hom bewys word dat omrede die verlies of vernietiging van bedoelde handelsvoorraad of die beëindiging van die ooreenkoms ingevolge waarvan bedoelde handelsvoorraad deur hom verkry is of om enige ander rede, bedoelde
10 handelsvoorraad nóg deur hom van die hand gesit sal word nóg deur hom besit sal word, in die mate wat bedoelde onkoste werklik betaal is.”; en

(b) deur die woorde wat op paragraaf (c) van subartikel (1) volg, te skrap.

(2) Subartikel (1) word geag op 23 Februarie 2000 in werking te getree het.

15 **Wysiging van artikel 23H van Wet 58 van 1962, soos ingevoeg deur artikel 31 van Wet 30 van 2000**

29. (1) Artikel 23H van die Inkomstebelastingwet, 1962, word hierby gewysig deur paragraaf (a) van subartikel (1) deur die volgende paragraaf te vervang:

20 “(a) wat ingevolge die bepalings van artikel 11(a), [(b)] (c) of (d) of artikel 28(2)(a) en (c) as ’n aftrekking toelaatbaar is; en”.

(2) Vir sover subartikel (1)—

(a) die verwysing na artikel 11(b) skrap, tree dit in werking op 1 Januarie 2001 en is van toepassing op jare van aanslag wat op of na daardie jare van aanslag begin; en

25 (b) die verwysing na artikel 28(2)(a) en (c) invoeg, word dit geag op 23 Februarie 2000 in werking te getree het en is van toepassing ten opsigte van enige onkoste op of na daardie datum aangegaan.

30 **Wysiging van artikel 24F van Wet 58 van 1962, soos ingevoeg deur artikel 17 van Wet 85 van 1987 en gewysig deur artikel 19 van Wet 90 van 1988, artikel 24 van Wet 101 van 1990 en artikel 26 van Wet 129 van 1991**

30. Artikel 24F van die Inkomstebelastingwet, 1962, word hierby gewysig—

(a) deur die woorde wat paragraaf (a) van subartikel (7) voorafgaan deur die volgende woorde te vervang:

35 “Die bedrag aan enige afdrukkoste of enige bemarkingskoste in artikel 11bis bedoel wat kragtens die bepalings van [artikels] artikel 11 [en 17] toegelaat kan word, is in totaal nie meer nie as die totaal van—”;

(b) deur die tweede voorbehoudsbepaling by subartikel (7) deur die volgende voorbehoudsbepaling te vervang:

40 “Met dien verstande voorts dat ’n bedrag aan afdrukkoste of bemarkingskoste wat ingevolge hierdie subartikel nie toegestaan is nie, oorge- dra word en by die toepassing van [artikels] artikel 11 [en 17] geag word ’n bedrag aan afdrukkoste of bemarkingskoste te wees, na gelang van die geval, wat in die daaropvolgende jaar van aanslag aangegaan is.”; en

45 (c) deur paragraaf (b) van die voorbehoudsbepaling by paragraaf (b) van subartikel (9) deur die volgende paragraaf te vervang:

50 “(b) ’n bedrag aan bedoelde bemarkingskoste wat ingevolge subartikel (7) as ’n aftrekking toegestaan is en wat as gevolg van die bepalings van paragraaf (a) of (b) van hierdie subartikel nie by die vasstelling van genoemde bemarkingstoelae in aanmerking geneem is nie, by die toepassing van artikel 11bis geag word ’n bedrag aan bemarkingskoste te wees wat in die daaropvolgende jaar van aanslag aangegaan is en wat in daardie jaar ingevolge die bepalings van artikel 11 [of 17] as ’n aftrekking toegestaan is.”.

Amendment of section 24I of Act 58 of 1962, as inserted by section 21 of Act 113 of 1993 and amended by section 11 of Act 140 of 1993, section 18 of Act 21 of 1994, section 13 of Act 36 of 1996, section 18 of Act 28 of 1997, section 35 of Act 30 of 1998 and section 26 of Act 53 of 1999

- 31.** Section 24I of the Income Tax Act, 1962, is hereby amended— 5
- (a) by the substitution for the definition of “foreign currency” in subsection (1) of the following definition: 5
- “‘foreign currency’ means, in relation to any trade carried on by any person—
- (a) within the Republic, any currency which is not legal tender in the 10 Republic, or
- (b) in any country outside the Republic, any currency which is not legal tender in such other country;”;
- (b) by the substitution for the words preceding paragraph (a) of subsection (2) of the following words: 15
- “In determining the taxable income of any person derived from carrying on any trade by him [**within the Republic**] in respect of any year of assessment ending on or after 1 January 1994, there shall be included in or deducted from the income so derived, as the case may be, any transitional exchange difference (but subject to the provisions of 20 subsection (3)) and any exchange difference—”;
- (c) by the substitution for paragraph (b) of subsection (2) of the following paragraph:
- “(b) arising from a loan or advance owing by such person or a debt incurred by such person, where such loan or advance has been 25 utilized or such debt has been incurred in order to finance expenditure incurred by a connected person in relation to such person in the course of the carrying on of any trade [**within the Republic**] by such connected person.”; and
- (d) by the substitution for the words preceding paragraph (a) of subsection (4) of the following words: 30
- “In determining the taxable income of any person derived from carrying on any trade by him [**within the Republic**], there shall in respect of any year of assessment ending on or after 1 January 1994 be included in or deducted from the income so derived, as the case may be—”. 35

Amendment of section 25B of Act 58 of 1962, as inserted by section 27 of Act 129 of 1991 and amended by section 22 of Act 141 of 1992 and section 36 of Act 30 of 1998

- 32.** (1) Section 25B of the Income Tax Act, 1962, is hereby amended—
- (a) by the insertion after subsection (2) of the following subsection: 40
- “(2A) Where during any year of assessment any resident acquires any vested right to any amount representing capital of any trust which is not a resident, and—
- (a) such capital arose from income received by or accrued to such trust in any previous year of assessment during which such resident had a contingent right to such income; and 45
- (b) such income has not been subject to tax in the Republic in terms of the provisions of this Act,
- such amount shall be included in the income of such resident in such year of assessment.”;
- (b) by the substitution for subsection (3) of the following subsection: 50
- “(3) Any deduction or allowance which may be made under the provisions of this Act in the determination of the taxable income derived by way of any income referred to in subsection (1) (but excluding any income contemplated in subsection (2)) shall, to the extent to which such income is under the provisions of that subsection deemed to be income 55 which has accrued to a beneficiary or to the trust, be deemed to be a deduction or allowance which may be made in the determination of the

Wysiging van artikel 24I van Wet 58 van 1962, soos ingevoeg deur artikel 21 van Wet 113 van 1993 en gewysig deur artikel 11 van Wet 140 van 1993, artikel 18 van Wet 21 van 1994, artikel 13 van Wet 36 van 1996, artikel 18 van Wet 28 van 1997, artikel 35 van Wet 30 van 1998 en artikel 26 van Wet 53 van 1999

- 5 **31.** Artikel 24I van die Inkomstebelastingwet, 1962, word hierby gewysig—
- (a) deur die omskrywing van “buitelandse valuta” in subartikel (1) deur die volgende omskrywing te vervang:
- “ ‘buitelandse valuta’, met betrekking tot enige bedryf deur enige
- 10 persoon—
- (a) in die Republiek beoefen, enige valuta wat nie in die Republiek ’n wettige betaalmiddel is nie; of
- (b) in enige land buite die Republiek beoefen, enige valuta wat nie ’n wettige betaalmiddel in daardie ander land is nie;”;
- (b) deur die woorde wat paragraaf (a) van subartikel (2) voorafgaan deur die volgende woorde te vervang:
- 15 “By die vasstelling van die belasbare inkomste deur ’n persoon verkry uit die beoefening van ’n bedryf deur hom **[in die Republiek]** ten opsigte van ’n jaar van aanslag wat op of na 1 Januarie 1994 eindig, word daar by of van die aldus verkreeë inkomste ingesluit of afgetrek, na gelang van die geval, enige oorgangsvalutaverskil (maar behoudens die
- 20 bepalings van subartikel (3)) en enige valutaverskil—”;
- (c) deur paragraaf (b) van subartikel (2) deur die volgende paragraaf te vervang:
- “(b) wat ontstaan het uit ’n lening of voorskot deur bedoelde persoon verskuldig of ’n skuld deur bedoelde persoon aangegaan waar bedoelde lening of voorskot aangewend is of bedoelde skuld aangegaan is ten einde uitgawes aangegaan deur ’n verbonde persoon met betrekking tot bedoelde persoon in die loop van die beoefening van ’n bedryf **[in die Republiek]** deur bedoelde verbonde persoon te finansier.”; en
- 25 (d) deur die woorde wat paragraaf (a) van subartikel (4) voorafgaan deur die volgende woorde te vervang:
- “By die vasstelling van die belasbare inkomste deur ’n persoon verkry uit die beoefening deur hom van ’n bedryf **[in die Republiek]**, word daar ten opsigte van enige jaar van aanslag wat op of na 1 Januarie 1994 eindig, by of van aldus verkreeë inkomste, na gelang van die geval, ingesluit of afgetrek—”.
- 30 35

Vervanging van artikel 25B van 58 van 1962, soos ingevoeg deur artikel 27 van Wet 129 van 1991 en gewysig deur artikel 22 van Wet 141 van 1992 en artikel 36 van Wet 30 van 1998

- 40 **32.** (1) Artikel 25B van die Inkomstebelastingwet, 1962, word hierby gewysig—
- (a) deur die volgende subartikel na subartikel (2) in te voeg:
- “(2A) Waar ’n inwoner gedurende ’n jaar van aanslag ’n gevestigde reg verkry om te deel in ’n bedrag wat kapitaal van ’n trust, wat nie ’n inwoner is nie, verteenwoordig en—
- 45 (a) bedoelde kapitaal ontstaan het uit inkomste ontvang deur of toegeval aan bedoelde trust in ’n voorafgaande jaar van aanslag waartydens bedoelde inwoner ’n voorwaardelike reg gehad het om in bedoelde inkomste te deel; en
- (b) bedoelde inkomste nie aan belasting in die Republiek ingevolge die bepaling van hierdie Wet onderhewig was nie,
- 50 word bedoelde bedrag by die inkomste van bedoelde inwoner in bedoelde jaar van aanslag ingesluit.”;
- (b) deur subartikel (3) deur die volgende subartikel te vervang:
- “(3) Enige aftrekking of vermindering wat kragtens die bepaling van hierdie Wet toegestaan kan word by die vasstelling van die belasbare inkomste verkry by wyse van enige inkomste bedoel in subartikel (1) (maar uitgesonderd inkomste in subartikel (2) bedoel) word, vir sover bedoelde inkomste kragtens die bepaling van daardie subartikel geag word inkomste te wees wat aan ’n begunstigde of die trust toegeval het, geag ’n aftrekking of vermindering te wees wat toegestaan kan word by die vasstelling van die
- 55 60

taxable income derived by such beneficiary or trust, as the case may be.”;

- (c) by the substitution for subsection (5) of the following subsection:

“(5) The amount by which the sum of the deductions and allowances contemplated in subsection (4) exceeds the income contemplated in that subsection, shall— 5

(a) be deemed to be a deduction or allowance which may be made in the determination of the taxable income of the trust during such year of assessment: Provided that the sum of such deductions and allowances shall be limited to the taxable income of such trust during such year of assessment as calculated before allowing any deduction or allowance under this subsection; or 10

(b) where the trust is not subject to tax in the Republic, be carried forward and be deemed to be a deduction or allowance which may be made in the determination of the taxable income derived by such beneficiary by way of income referred to in subsection (1) during the immediately succeeding year of assessment.”; and 15

- (d) by the addition of the following subsection:

“(7) The provisions of subsections (4), (5) and (6) shall not apply in respect of any income which is deemed to have accrued to any beneficiary in terms of subsection (1), where such beneficiary is not subject to tax in the Republic on such income.”. 20

- (2) Subsection (1) shall come into operation on 1 March 2001.

Insertion of section 25D in Act 58 of 1962

33. The following section is hereby inserted after section 25C of the Income Tax Act, 1962: 25

“Determination of taxable income or losses in foreign currency

25D. The amount of any taxable income derived by any resident from a source outside the Republic (other than by way of any foreign dividend as contemplated in section 9E), shall be determined in the relevant currency of the country from where the income is derived and the amount of the taxable income so determined shall be converted on the last day of the relevant year of assessment to the currency of the Republic and the ruling exchange rate at that date, or any other exchange rate or rates as the Commissioner may approve taking into account the ruling exchange rates during such year of assessment, shall be applied to determine the value of the amount of the taxable income so derived.”. 30 35

Amendment of section 27 of Act 58 of 1962, as amended by section 17 of Act 113 of 1977, section 11 of Act 101 of 1978, section 19 of Act 104 of 1980, section 21 of Act 96 of 1981, section 15 of Act 96 of 1985, section 18 of Act 85 of 1987, section 22 of Act 90 of 1988, section 28 of Act 129 of 1991, section 23 of Act 141 of 1992, section 23 of Act 113 of 1993 and section 15 of Act 36 of 1996 40

34. Section 27 of the Income Tax Act, 1962, is hereby amended by the substitution for the proviso to paragraph (a) of subsection (2) of the following proviso:

“Provided that the amounts allowed as deductions under this paragraph shall not in the aggregate exceed an amount which bears to the taxable income of such agricultural co-operative for the year of assessment (as calculated before allowing any deductions under this paragraph and [sections] section 11bis [and 21ter] and before setting off any balance of assessed loss brought forward from a previous year of assessment) the same ratio as the aggregate value of the business conducted by such agricultural co-operative with its members during such year bears to the aggregate value of all business conducted by it during such year;”. 45 50

elasbare inkomste deur daardie begunstigde of trust verkry, na gelang van die geval.”;

(c) deur subartikel (5) deur die volgende subartikel te vervang:

5 “(5) Die bedrag waarmee die som van die aftrekkings en verminderings in subartikel (4) beoog die inkomste in daardie subartikel beoog, oorskry, word—

(a) geag ’n aftrekking of vermindering te wees wat toegestaan kan word by die vasstelling van die belasbare inkomste van die trust gedurende daardie jaar van aanslag; Met dien verstande dat die som van daardie aftrekkings en verminderings beperk word tot die belasbare inkomste van daardie trust gedurende daardie jaar van aanslag, soos bereken voordat enige aftrekking of vermindering kragtens hierdie subartikel toegelaat word; of

10 (b) waar die trust nie onderhewig is aan belasting in die Republiek nie, oorgedra en geag ’n aftrekking of vermindering te wees wat toegestaan kan word by die vasstelling van die belasbare inkomste deur daardie begunstigde verkry by wyse van inkomste bedoel in subartikel (1) in die onmiddellik daaropvolgende jaar van aanslag.”; en

(d) deur die volgende subartikel by te voeg:

20 “(7) Die bepalinge van subartikels (4), (5) en (6) is nie van toepassing nie ten opsigte van enige inkomste wat ingevolge subartikel (1) geag word aan ’n begunstigde toe te geval het, waar daardie begunstigde nie op daardie inkomste aan belasting in die Republiek onderhewig is nie.”.

(2) Subartikel (1) tree op 1 Maart 2001 in werking.

25 Invoeging van artikel 25D in Wet 58 van 1962

33. Die volgende artikel word hierby na artikel 25C van die Inkomstebelastingwet, 1962, ingevoeg:

“Vasstelling van belasbare inkomste of verlies in buitelandse valuta

30 **25D.** Die bedrag van enige belasbare inkomste deur ’n inwoner uit ’n bron buite die Republiek verkry (behalwe by wyse van enige buitelandse dividend soos in artikel 9E bedoel), word vasgestel in die betrokke geldeenheid van die land waaruit die inkomste verkry word en die bedrag van die belasbare inkomste aldus vasgestel, word op die laaste dag van die betrokke jaar van aanslag na die geldeenheid van die Republiek omgeskakel en die heersende wisselkoers op daardie datum, of enige ander wisselkoers of -koerse wat die Kommissaris mag goedkeur met inagneming van die heersende wisselkoerse gedurende daardie jaar van aanslag, word toegepas om die waarde van die bedrag van die belasbare inkomste aldus verkry, vas te stel.”.

40 Wysiging van artikel 27 van Wet 58 van 1962, soos gewysig deur artikel 17 van Wet 113 van 1977, artikel 11 van Wet 101 van 1978, artikel 19 van Wet 104 van 1980, artikel 21 van Wet 96 van 1981, artikel 15 van Wet 96 van 1985, artikel 18 van Wet 85 van 1987, artikel 22 van Wet 90 van 1988, artikel 28 van Wet 129 van 1991, artikel 23 van Wet 141 van 1992, artikel 23 van Wet 113 van 1993 en artikel 45 15 van Wet 36 van 1996

34. Artikel 27 van die Inkomstebelastingwet, 1962, word hierby gewysig deur die voorbehoudsbepaling by paragraaf (a) van subartikel (2) deur die volgende voorbehoudsbepaling te vervang:

50 “Met dien verstande dat die bedrae wat as aftrekkings ingevolge hierdie paragraaf toegelaat word in totaal ’n bedrag is wat hoogstens in dieselfde verhouding staan tot die belasbare inkomste van bedoelde landboukoöperasie vir die jaar van aanslag (soos bereken voordat enige aftrekkings ingevolge hierdie paragraaf en [artikels] artikel 11bis [en 21ter] toegelaat word en voordat enige balans van vasgestelde verlies wat van ’n vorige jaar van aanslag oorgedra is, in vergelyking gebring word) as wat die totale waarde van die besigheid deur bedoelde landboukoöperasie gedoen met sy lede gedurende bedoelde jaar tot die totale waarde van al sy besigheid deur hom gedoen gedurende bedoelde jaar staan;”.

Amendment of section 28bis of Act 58 of 1962, as inserted by section 19 of Act 88 of 1965 and amended by section 25 of Act 89 of 1969, section 25 of Act 85 of 1974, section 18 of Act 113 of 1977, section 23 of Act 94 of 1983 and section 34 of Act 30 of 2000

35. Section 28bis of the Income Tax Act, 1962, is hereby amended by the substitution 5
for paragraphs (a) and (b) of subsection (1) of the following paragraphs:

- “(a) that any company (hereinafter referred to as the subsidiary) which is
[**incorporated, managed and controlled in the Republic**] a resident has
under an arrangement with any other company (hereinafter referred to as the
foreign company) which is [**incorporated, managed and controlled outside** 10
the Republic] not a resident, acquired all the assets and assumed all the
liabilities of the foreign company relating to any industrial, commercial or
other business undertaking of the foreign company in the Republic which has
been transferred by the foreign company to the subsidiary as a going concern;
and 15
(b) that at the time the arrangement was implemented, all the issued shares of the
subsidiary were held for its own benefit by the foreign company or a company
which was [**incorporated, managed and controlled outside the Republic**]
not a resident and was controlled by or controlled the foreign company.”.

**Amendment of section 29A of Act 58 of 1962, as inserted by section 30 of Act 53 of 20
1999**

36. Section 29A of the Income Tax Act, 1962, is hereby amended by the deletion of
paragraph (c) of subsection (1).

**Amendment of section 31 of Act 58 of 1962, as substituted by section 23 of Act 21
of 1995 and amended by section 37 of Act 30 of 1998 and section 31 of Act 53 of 1999 25**

37. Section 31 of the Income Tax Act, 1962, is hereby amended—

- (a) by the substitution for the definition of “international agreement” in
subsection (1) of the following definition:
“ ‘international agreement’ means a transaction, operation or scheme
entered into between— 30
(a) (i) a [**person who, in the case of a natural person, is ordinarily
resident in the Republic or in the case of a person other
than a natural person, is managed or controlled in the
Republic**] resident; and
(ii) any other person who [**in the case of a natural person, is 35
ordinarily resident outside the Republic or in the case of a
person other than a natural person, is managed or
controlled outside the Republic**] is not a resident; or
(b) (i) a person who [**in the case of a natural person, is ordinarily
resident outside the Republic or in the case of a person 40
other than a natural person, is managed or controlled
outside the Republic**] is not a resident; and
(ii) any other person who [**in the case of a natural person, is
ordinarily resident outside the Republic or in the case of a
person other than a natural person, is managed or 45
controlled outside the Republic**] is not a resident,
for the supply of goods or services to or by a permanent
establishment [**as contemplated in section 9C(1)**] of either of such
persons in the Republic; or
(c) (i) a person who [**in the case of a natural person, is ordinarily 50
resident in the Republic or in the case of a person other
than a natural person is managed or controlled in the
Republic**] is a resident; and

Wysiging van artikel 28bis van Wet 58 van 1962, soos ingevoeg deur artikel 19 van Wet 88 van 1965 en gewysig deur artikel 25 van Wet 89 van 1969, artikel 25 van Wet 85 van 1974, artikel 18 van Wet 113 van 1977, artikel 23 van Wet 94 van 1983 en artikel 34 van Wet 30 van 2000

- 5 35. Artikel 28bis van die Inkomstebelastingwet, 1962, word hierby gewysig deur paragrafe (a) en (b) van subartikel (1) deur die volgende paragrafe te vervang:
- “(a) dat ’n maatskappy (hieronder die filiaal genoem) wat **[in die Republiek ingelyf, bestuur en beheer is of word]** ’n inwoner is, ingevolge ’n reëling met ’n ander maatskappy (hieronder die buitelandse maatskappy genoem)
- 10 wat **[buite die Republiek ingelyf, bestuur en beheer is of word]** nie ’n inwoner is nie, al die buitelandse maatskappy se bates verkry en al die buitelandse maatskappy se verpligtinge oorgeneem het in verband met ’n industriële, kommersiële of ander besigheidsonderneming van die buitelandse maatskappy in die Republiek wat deur die buitelandse maatskappy aan
- 15 die filiaal as ’n lopende saak oorgedra is; en
- (b) dat toe die reëling uitgevoer is al die uitgereikte aandele van die filiaal vir sy eie voordeel besit is deur die buitelandse maatskappy of ’n maatskappy wat **[buite die Republiek ingelyf, bestuur en beheer was]** nie ’n inwoner was nie en deur die buitelandse maatskappy beheer was of dit beheer het.”.

- 20 Wysiging van artikel 29A van Wet 58 van 1962, soos ingevoeg deur artikel 30 van Wet 53 van 1999

36. Artikel 29A van die Inkomstebelastingwet, 1962, word hierby gewysig deur paragraaf (c) van subartikel (11) te skrap.

- 25 Wysiging van artikel 31 van Wet 58 van 1962, soos vervang deur artikel 23 van Wet 21 van 1995 en gewysig deur artikel 37 van Wet 30 van 1998 en artikel 31 van Wet 53 van 1999

37. Artikel 31 van die Inkomstebelastingwet, 1962, word hierby gewysig—
- (a) deur die omskrywing van “internasionale ooreenkoms” in subartikel (1) deur die volgende omskrywing te vervang:
- 30 “ ‘internasionale ooreenkoms’ ’n transaksie, handeling of skema aangaan tussen—
- (a) (i) ’n [persoon wat, in die geval van ’n natuurlike persoon, gewoonlik in die Republiek woonagtig is of in die geval van ’n persoon behalwe ’n natuurlike persoon, in die Republiek
- 35 bestuur of beheer word] inwoner; en
- (ii) enige ander persoon wat [in die geval van ’n natuurlike persoon, gewoonlik buite die Republiek woonagtig is of in die geval van ’n persoon behalwe ’n natuurlike persoon, buite die Republiek bestuur of beheer word] nie ’n inwoner is nie; of
- 40 (b) (i) ’n persoon wat [in die geval van ’n natuurlike persoon, gewoonlik buite die Republiek woonagtig is of in die geval van ’n persoon behalwe ’n natuurlike persoon, buite die Republiek bestuur of beheer word] nie ’n inwoner is nie; en
- 45 (ii) enige ander persoon wat [in die geval van ’n natuurlike persoon, gewoonlik buite die Republiek woonagtig is of in die geval van ’n persoon behalwe ’n natuurlike persoon, buite die Republiek bestuur of beheer word] nie ’n inwoner is nie,
- 50 vir die lewering van goedere of dienste aan of deur ’n permanente saak [soos beoog in artikel 9C(1)] van engeen van daardie persone binne die Republiek; of
- (c) (i) ’n persoon wat [in die geval van ’n natuurlike persoon, gewoonlik in die Republiek woonagtig is of in die geval van ’n
- 55 persoon behalwe ’n natuurlike persoon, in die Republiek bestuur of beheer word] ’n inwoner is; en

- (ii) any other person who **[in the case of a natural person, is ordinarily resident in the Republic or in the case of a person other than a natural person is managed or controlled in the Republic]** is a resident,
for the supply of goods or services to or by a permanent establishment **[as contemplated in section 9C(1)]** of either of such persons outside the Republic;” or
- (d) (i) a person who is a resident; and
(ii) any other person who is a resident,
where either of such persons is as a result of the application of the provisions of any agreement entered into by the Republic for the prevention of double taxation, not subject to tax in the Republic; and”;
- (b) by the insertion after the definition of “international agreement” in subsection (1) of the following definition:
- “‘permanent establishment’ means a permanent establishment as defined from time to time in Article 5 of the Model Tax Convention on Income and on Capital of the Organisation for Economic Co-operation and Development;”;
- (c) by the substitution for the words preceding subparagraph (i) of paragraph (a) of subsection (3) and subparagraphs (i) and (ii) of the following words and subparagraphs:
- “Where any **[natural person ordinarily resident outside the Republic or any person other than a natural person who is managed or controlled outside the Republic]** person who is not a resident (hereinafter referred to as the investor) has granted financial assistance contemplated in paragraph (c) of the definition of ‘services’ in subsection (1), whether directly or indirectly, to—
- (i) any connected person (in relation to the investor) who **[in the case of a natural person, is ordinarily resident in the Republic or in the case of a person other than a natural person, is managed or controlled in the Republic]** is a resident; or
- (ii) any other person (in whom he has a direct or indirect interest) other than a natural person, **[who is managed or controlled in the Republic]** which is a resident (hereinafter referred to as the recipient) and, by virtue of such interest, is entitled to participate in not less than 25 per cent of the dividends, profits or capital of the recipient, or is entitled, directly or indirectly, to exercise not less than 25 per cent of the votes of the recipient,”.

Amendment of section 33 of Act 58 of 1962, as amended by section 26 of Act 85 of 1974 and section 28 of Act 113 of 1993

38. Section 33 of the Income Tax Act, 1962, is hereby amended by the substitution for subsection (1) of the following subsection:

“(1) Any person **[(not being a person ordinarily resident in the Republic or a domestic company)]** other than a resident who embarks passengers or loads livestock, mails or goods in the Republic, as an owner or charterer of any ship or aircraft, shall be deemed to have derived therefrom (apart from any taxable income derived by him from other sources) a taxable income of 10 per cent of the amount payable to him or to any agent on his behalf, whether the amount be payable in or outside the Republic, in respect of passengers, livestock, mails and goods so embarked or loaded, but the provisions of this section shall not apply to any such person who renders accounts which satisfactorily disclose the taxable income derived by him from the embarking of passengers or the loading of livestock, mails and goods as aforesaid.”.

- (ii) 'n ander persoon wat **[in die geval van 'n natuurlike persoon, gewoonlik in die Republiek woonagtig is of in die geval van 'n persoon behalwe 'n natuurlike persoon, in die Republiek bestuur of beheer word] 'n inwoner is,**
 5 vir die lewering van goedere of dienste aan of deur 'n permanente saak **[soos beoog in artikel 9C(1)]** van enigeen van daardie persone buite die Republiek; of
- (d) (i) 'n persoon wat 'n inwoner is; en
 10 (ii) enige ander persoon wat 'n inwoner is, waar enigeen van bedoelde persone as gevolg van die toepassing van die bepalings van enige ooreenkoms aangegaan deur die Republiek vir die vermyding van dubbele belasting, nie aan in die Republiek aan belasting onderhewig is nie; en”;
- (b) deur in subartikel (1) die volgende omskrywing na die omskrywing van
 15 “internasionale ooreenkoms” in te voeg:
 “‘permanente saak’ 'n permanente saak soos van tyd tot tyd omskryf in Artikel 5 van die ‘Model Tax Convention on Income and on Capital of the Organisation for Economic Co-operation and Development’;”;
- (c) deur die woorde wat subparagraaf (i) van paragraaf (a) van subartikel (3)
 20 voorafgaan en subparagraawe (i) en (ii) deur die volgende woorde en subparagraawe te vervang:
 “Waar 'n **[natuurlike persoon wat gewoonlik buite die Republiek woonagtig is of 'n persoon behalwe 'n natuurlike persoon wat buite die Republiek bestuur of beheer word]** persoon wat nie 'n inwoner is
 25 nie (hieronder die belegger genoem) finansiële bystand beoog in paragraaf (c) van die omskrywing van ‘dienste’ in subartikel (1), hetsy regstreeks of onregstreeks verleen het, aan—
 (i) 'n verbonde persoon (met betrekking tot die belegger) wat **[in die geval van 'n natuurlike persoon, gewoonlik in die Republiek woonagtig is of in die geval van 'n persoon behalwe 'n natuurlike persoon, in die Republiek bestuur of beheer word] 'n inwoner is;** of
 30 (ii) 'n ander persoon (waarin hy 'n regstreekse of onregstreekse belang het) behalwe 'n natuurlike persoon, wat **[binne die Republiek bestuur of beheer word] 'n inwoner is** (hierna die ontvanger genoem) en, uit hoofde van bedoelde belang, geregtig word om te deel in nie minder nie as 25 persent van die dividende, winste of kapitaal van die ontvanger, of geregtig word om, regstreeks of onregstreeks, nie minder nie as 25
 35 persent van die stemreg van die ontvanger uit te oefen.”.

Wysiging van artikel 33 van Wet 58 van 1962, soos gewysig deur artikel 26 van Wet 85 van 1974 en artikel 28 van Wet 113 van 1993

38. Artikel 33 van die Inkomstebelastingwet, 1962, word hierby gewysig deur subartikel (1) deur die volgende subartikel te vervang:
 45 “(1) 'n Persoon **[(behalwe iemand wat gewoonlik in die Republiek woonagtig is of 'n binnelandse maatskappy)]** behalwe 'n inwoner wat as 'n eienaar of bevrachter van 'n skip of vliegtuig in die Republiek passasiers inskeep of lewende hawe, posstukke of goedere oplaai, word geag daaruit (afgesien van belasbare inkomste deur hom uit ander bronne verkry) 'n belasbare inkomste te verkry het van 10 persent van die bedrag aan hom of aan 'n agent ten behoeve van hom betaalbaar, hetsy in of buite die Republiek, ten opsigte van passasiers, lewende hawe, posstukke en goedere aldus ingeskeep of opgelaa, maar die bepalings van hierdie artikel is nie van toepassing nie op so 'n persoon deur wie rekenings verstrek word wat die belasbare inkomste deur hom uit die inskeep van
 50 passasiers of die oplaai van lewende hawe, posstukke en goedere soos voormeld verkry, op bevredigende wyse aantoon.”.

Amendment of section 35 of Act 58 of 1962, as amended by section 20 of Act 90 of 1962, section 20 of Act 65 of 1973, section 27 of Act 85 of 1974, section 24 of Act 94 of 1983 and section 21 of Act 21 of 1994

39. Section 35 of the Income Tax Act, 1962, is hereby amended—

(a) by the substitution for subsection (1) of the following subsection:

“(1) Any person (other than a resident) by whom any amount is received or to whom any amount accrues by virtue of—

(a) the use or right of use in the Republic of, or the grant of permission to use in the Republic—

(i) any patent as defined in the Patents Act, 1978 (Act No. 57 of 1978), or any design as defined in the Designs Act, 1993 (Act No. 195 of 1993), or any trade mark as defined in the Trade Marks Act, 1993 (Act No. 194 of 1993), or any copyright as defined in the Copyright Act, 1978 (Act No. 98 of 1978), or any model, pattern, plan, formula or process or any other property or right of a similar nature; or

(ii) any motion picture film, or any film or video tape or disc for use in connection with television, or any sound recording or advertising matter used or intended to be used in connection with such motion picture film, film or video tape or disc,

wheresoever such patent, design, trade mark, copyright, model, pattern, plan, formula, process, property, right, motion picture film, film, video tape or disc, sound recording or advertising matter has been produced or made or such right of use or permission has been granted or payment for such use, right of use or grant of permission has been made or is to be made, and whether such payment has been made or is to be made by a person resident in or outside the Republic; or

(b) the imparting of or the undertaking to impart any scientific, technical, industrial or commercial knowledge or information for use in the Republic, or the rendering of or the undertaking to render, any assistance or service in connection with the application or utilisation of such knowledge or information, wheresoever such knowledge or information has been obtained or such knowledge or information has been imparted or is to be imparted or such assistance or service has been rendered or is to be rendered or any such undertaking has been given, and whether payment for such knowledge, information, assistance, service or undertaking has been made or is to be made by a person resident in or outside of the Republic,

shall be liable for tax, to be known as the withholding tax on royalties, which shall be levied and paid for the benefit of the National Revenue Fund at a rate of 12 per cent of such amount: Provided that the provisions of this subsection shall not apply in respect of any amount which is received by or accrues to any—

(i) company which is not a resident, if such amount is derived by such company from any trade carried on through a branch or agency in the Republic and such amount is subject to tax in the Republic;

(ii) person (other than a person whose place of residence is in a neighbouring country) in respect of the use (otherwise than for advertising purposes in connection with any motion picture film or otherwise than in connection with television) in any printed publication of any copyright as aforesaid.”;

(b) by the substitution for the words preceding the proviso to paragraph (a) of subsection (2) of the following words:

“Any person who incurs a liability to pay to any other person [(not being a person] who is [ordinarily] not a resident [in the Republic or a company which has its place of effective management inside the Republic]) any amount referred to in [section 9(1)(b) or (bA)]

Wysiging van artikel 35 van Wet 58 van 1962, soos gewysig deur artikel 20 van Wet 90 van 1962, artikel 20 van Wet 65 van 1973, artikel 27 van Wet 85 van 1974, artikel 24 van Wet 94 van 1983 en artikel 21 van Wet 21 van 1994

39. Artikel 35 van die Inkomstebelastingwet, 1962, word hierby gewysig—

5 (a) deur subartikel (1) deur die volgende subartikel te vervang:

“(1) 'n Persoon (behalwe 'n inwoner) deur wie 'n bedrag ontvang word of aan wie enige bedrag toeval uit hoofde van—

(a) die gebruik of reg van gebruik in die Republiek, of die verlening van toestemming vir die gebruik in die Republiek, van—

10 (i) 'n patent soos in die Wet op Patente, 1978 (Wet No. 57 van 1978), omskryf, of 'n model soos in die Wet op Modelle, 1993 (Wet No. 195 van 1993), omskryf, of 'n handelsmerk soos in die Wet op Handelsmerke, 1993 (Wet No. 194 van 1993), omskryf, of 'n outeursreg soos in die Wet op Outeursreg, 1978 (Wet No. 98 van 1978), omskryf, of 'n ontwerp, patroon, plan, formule of proses of enige ander eiendom of reg van dergelike aard; of

15 (ii) 'n rolprentfilm, of 'n film of videoband of -plaat vir gebruik in verband met beeldradio, of 'n klankopname of advertensiestukke gebruik of bedoel om gebruik te word in verband met sodanige rolprentfilm, film of videoband of -plaat,

20 ongeag waar daardie patent, model, handelsmerk, outeursreg, ontwerp, patroon, plan, formule, proses, eiendom, reg, rolprentfilm, film, videoband of -plaat, klankopname of advertensiestukke voortgebring of gemaak of daardie reg van gebruik of toestemming verleen is of betaling vir bedoelde gebruik, reg van gebruik of verlening van toestemming geskied het of moet geskied, en hetsy sodanige betaling geskied het of moet geskied deur 'n persoon wat in of buite die Republiek woonagtig is; of

25 (b) die mededeling van wetenskaplike, tegniese, industriële of kommersiële kennis of inligting vir gebruik in die Republiek, of die onderneming om sulke kennis of inligting mee te deel, of die verlening van hulp of die lewering van 'n diens in verband met die aanwending of benutting van daardie kennis of inligting, of die onderneming om daardie hulp te verleen of om daardie diens te lewer, ongeag waar daardie kennis of inligting verkry is of daardie kennis of inligting meegedeel is of meegedeel moet word of daardie hulp verleen is of verleen moet word of daardie diens gelewer is of gelewer moet word of 'n bedoelde onderneming gegee is, en hetsy betaling vir daardie kennis, inligting, hulp, diens of onderneming geskied het of moet geskied deur 'n persoon wat in of buite die Republiek woonagtig is,

30 is aanspreeklik vir belasting, bekend as terughoudingsbelasting op tantième, wat ten bate van die Nasionale Inkomstefonds gehef en betaal word teen 'n koers van 12 persent van daardie bedrag: Met dien verstande dat die bepalinge van hierdie subartikel nie van toepassing is nie met betrekking tot 'n bedrag wat ontvang word deur of toeval aan—

35 (i) 'n maatskappy wat nie 'n inwoner is nie, indien daardie bedrag verkry is deur daardie maatskappy uit 'n bedryf deur 'n tak of agentskap in die Republiek beoefen en daardie bedrag in die Republiek aan belasting onderhewig is;

40 (ii) 'n persoon (behalwe 'n persoon wie se verblyfplek in 'n buurstaat is), ten opsigte van die gebruik (andersins as vir reklamedoeleindes in verband met 'n rolprentfilm of andersins as in verband met beeldradio) in 'n gedrukte publikasie van enige outeursreg soos voormeld.”;

45 (b) deur die woorde wat die voorbehoudsbepaling by paragraaf (a) van subartikel (2) voorafgaan deur die volgende woorde te vervang:

50 “'n Persoon wat 'n verpligting oploep om aan 'n ander persoon [(behalwe 'n persoon wat gewoonlik in die Republiek woonagtig is of 'n maatskappy wie se plek van effektiewe bestuur binne die Republiek geleë is) 'n in artikel 9(1)(b) of (bA) bedoelde] wat nie 'n

subsection (1), or who receives payment of any such amount on behalf of such other person, shall within 14 days after the end of the month during which the said liability is incurred or the said payment is received, as the case may be, or within such further period as the Commissioner may approve, make a payment (which shall be **[deemed to be an advance]** a final payment made on behalf of such other person) to the Commissioner in respect of such other person's **[obligation to pay normal]** liability for tax **[for the year of assessment during which the said amount accrues to or is received by such other person, calculated at the rate of 12 per cent of the said amount]** in terms of subsection (1), and shall submit to the Commissioner at the time of such tax payment a declaration in such form as the Commissioner may prescribe:";

- (c) by the substitution for paragraph (ii) of the proviso to paragraph (a) of subsection (2) of the following paragraph:

"(ii) for the purposes of this subsection a person having an address outside the Republic shall until the contrary is proved be deemed not to be **[not ordinarily resident in the Republic or, in the case of a company, to be a company which is not a domestic company]** a resident;" and

- (d) by the substitution for paragraph (c) of subsection (2) of the following paragraph:

"(c) The general provisions contained in Parts I to VI of **[subsection (2) of section five]** this Act shall *mutatis mutandis* apply in respect of payments made to the Commissioner in terms of paragraph (a).";

Substitution of section 54 of Act 58 of 1962, as substituted by section 24 of Act 90 of 1988

40. The following section is hereby substituted for section 54 of the Income Tax Act, 1962:

"Levy of donations tax

54. Subject to the provisions of section 56, there shall be paid for the benefit of the National Revenue Fund a tax (in this Act referred to as donations tax) on the value of any property disposed of (whether directly or indirectly and whether in trust or not) under any donation **[which took or takes effect on or after 16 March 1988]** by any **[person]** resident (in this Part referred to as the donor) **[who, in the case of a person other than a company, is ordinarily resident in the Republic, or, in the case of a company, is a domestic company]."**

Amendment of section 56 of Act 58 of 1962, as amended by section 18 of Act 90 of 1964, section 25 of Act 55 of 1966, section 33 of Act 89 of 1969, section 38 of Act 85 of 1974, section 21 of Act 113 of 1977, section 13 of Act 101 of 1978, section 23 of Act 96 of 1981, section 31 of Act 94 of 1983, section 4 of Act 30 of 1984, section 28 of Act 121 of 1984, section 18 of Act 96 of 1985, section 21 of Act 85 of 1987, section 26 of Act 90 of 1988, section 28 of Act 141 of 1992, section 32 of Act 113 of 1993, section 18 of Act 36 of 1996, section 39 of Act 30 of 1998 and section 38 of Act 30 of 2000

41. Section 56 of the Income Tax Act, 1962, is hereby amended by the substitution for subparagraph (i) of paragraph (g) of subsection (1) of the following subparagraph:

"(i) before the donor **[being a person other than a company]** became **[ordinarily]** a resident **[in]** of the Republic for the first time **[or, in the case of a company, became for the first time, a domestic company]; or"**

- inwoner is nie 'n bedrag in subartikel (1) bedoel, te betaal, of wat betaling van so 'n bedrag ten behoeve van daardie ander persoon ontvang, moet binne 14 dae na die end van die maand waartydens hy dié verpligting oploop of dié betaling ontvang, na gelang van die geval, of
- 5 binne die verdere tydperk wat die Kommissaris mag goedkeur, 'n bedrag (wat **[geag word 'n vooruitbetaling]** 'n finale betaling ten behoeve van daardie ander persoon **[te wees]** is) aan die Kommissaris betaal ten opsigte van daardie ander persoon se aanspreeklikheid vir **[die betaling van normale]** belasting **[vir die jaar van aanslag waartydens genoemde bedrag aan daardie ander persoon toeval of deur hom ontvang word, bereken teen die skaal van 12 persent van genoemde bedrag]** ingevolge subartikel (1) en moet ten tyde van bedoelde belastingbetaling aan die Kommissaris 'n verklaring verstrek in die vorm wat die Kommissaris mag voorskryf.”;
- 10
- 15 (c) deur paragraaf (ii) van die voorbehoudsbepaling by paragraaf (a) van subartikel (2) deur die volgende paragraaf te vervang:
- “(ii) by die toepassing van hierdie subartikel 'n persoon wat 'n adres buite die Republiek het, geag word, totdat die teendeel bewys word, nie **[gewoonlik in die Republiek woonagtig te wees nie of, in die geval van 'n maatskappy, 'n maatskappy te wees wat nie 'n binnelandse maatskappy is]** 'n inwoner te wees nie.”; en
- 20
- (d) deur paragraaf (c) van subartikel (2) deur die volgende paragraaf te vervang:
- “(c) Die algemene bepalinge in Dele I tot VI van **[subartikel (2) van artikel vyf]** hierdie Wet vervat is *mutatis mutandis* van toepassing ten opsigte van betalings ingevolge paragraaf (a) aan die Kommissaris gemaak.”.
- 25

Vervanging van artikel 54 van Wet 58 van 1962, soos vervang deur artikel 24 van Wet 90 van 1988

- 30 40. Artikel 54 van die Inkomstebelastingwet, 1962, word hierby deur die volgende artikel vervang:

“Heffing van belasting op geskenke

- 35 **54.** Behoudens die bepalinge van artikel 56 word daar ten bate van die Nasionale Inkomstefonds 'n belasting (in hierdie Wet belasting op geskenke genoem) betaal op die waarde van eiendom waaroor beskik word (hetsy regstreeks of onregstreeks en hetsy ingevolge 'n trust al dan nie) ingevolge enige skenking **[wat op of na 16 Maart 1988 in werking getree het of tree]** deur **[iemand]** enige inwoner (in hierdie Deel die skenker genoem) **[wat, in die geval van 'n ander persoon as 'n maatskappy, gewoonlik in die Republiek woonagtig is of, in die geval van 'n maatskappy, 'n binnelandse maatskappy is].”.**
- 40

- Wysiging van artikel 56 van Wet 58 van 1962, soos gewysig deur artikel 18 van Wet 90 van 1964, artikel 25 van Wet 55 van 1966, artikel 33 van Wet 89 van 1969, artikel 38 van Wet 85 van 1974, artikel 21 van Wet 113 van 1977, artikel 13 van
- 45 Wet 101 van 1978, artikel 23 van Wet 96 van 1981, artikel 31 van Wet 94 van 1983, artikel 4 van Wet 30 van 1984, artikel 28 van Wet 121 van 1984, artikel 18 van Wet 96 van 1985, artikel 21 van Wet 85 van 1987, artikel 26 van Wet 90 van 1988, artikel 28 van Wet 141 van 1992, artikel 32 van Wet 113 van 1993, artikel 18 van Wet 36 van 1996, artikel 39 van Wet 30 van 1998 en artikel 38 van Wet 30 van 2000

- 50 41. Artikel 56 van die Inkomstebelastingwet, 1962, word hierby gewysig deur subparagraaf (i) van paragraaf (g) van subartikel (1) deur die volgende subparagraaf te vervang:

- “(i) voordat die skenker **[(in die geval van 'n ander persoon as 'n maatskappy) hom]** vir die eerste keer **[metterwoon in die Republiek gevestig het of, in die geval van 'n maatskappy, vir die eerste keer 'n binnelandse maatskappy]** 'n inwoner van die Republiek geword het; of”.
- 55

Amendment of section 64B of Act 58 of 1962, as inserted by section 34 of Act 113 of 1993 and amended by section 12 of Act 140 of 1993, section 24 of Act 21 of 1994, section 29 of Act 21 of 1995, section 21 of Act 36 of 1996, section 13 of Act 46 of 1996, section 25 of Act 28 of 1997, section 35 of Act 53 of 1999 and section 39 of Act 30 of 2000

5

42. (1) Section 64B of the Income Tax Act, 1962, is hereby amended—

(a) by the substitution for subsection (2) of the following subsection:

“(2) There shall be levied and paid for the benefit of the National Revenue Fund a tax, to be known as the secondary tax on companies, which is calculated at the rate of 12,5 per cent of the net amount, as determined in terms of subsection (3), of any dividend declared on or after 14 March 1996 by any company [on or after 14 March 1996] which is a resident.”;

(b) by the substitution for the words preceding the proviso to subsection (3) of the following words:

“The net amount of any dividend referred to in subsection (2) shall be the amount by which such dividend declared by a company exceeds the sum of any dividends (other than any dividends contemplated in subsection (5)(b), (c), (d) and (f) or any foreign dividends as defined in section 9E, but including foreign dividends which are exempt in terms of section 9E(7)[(a), (b)] (c), (d), [or] (e)(ii), (iii) or (iv) or (f)), or section 9E(8A)), which have during the dividend cycle in relation to such firstmentioned dividend accrued to the company:”;

(b) by the deletion of paragraph (h) of subsection (5);

(c) by the substitution for paragraph (a) of subsection (6) of the following paragraph:

“(a) If any dividend subject to the payment of secondary tax on companies has been declared by a company which derives profits from sources within and outside the Republic, the secondary tax on companies in respect of that dividend shall be calculated on an amount which bears to the net amount of that dividend the same ratio as the sum of the net annual profits of the company derived from—

(i) sources within or deemed to be within the Republic in terms of section 9 [9C or 9E]; and

(ii) sources outside the Republic which are not deemed to be from a source in the Republic and which are not exempt from tax in terms of the provisions of section 10(1)(kA).

bears to the total sum of its net annual profits derived from all sources.”.

(2) In so far as subsection (1)(b) amends subsection (3)—

(a) by deleting the reference to paragraphs (a) and (b) of subsection (7) and inserting a reference to section 9E(8A), it shall come into operation on 1 January 2001, and shall apply in respect of any dividend accrued on or after that date; and

(b) by inserting the reference to paragraph (e)(iii) and (iv) and (f), shall be deemed to have come into operation on 23 February 2000, and shall apply in respect of any foreign dividend—

(i) received by or accrued to any company on or after that date; or

(ii) which accrued to the company before 23 February 2000, but which is received on or after that date: Provided that the provisions of this paragraph shall not apply in respect of any foreign dividend which was declared by a company before 23 February 2000, where—

(aa) the company declaring the dividend is listed on a recognised stock exchange; or

(bb) in any other case, the chief executive officer and—

(A) an external auditor of the company declaring the dividend; or

(B) where the company declaring the dividend is situated in a country which does not require compulsory appointment of an

Wysiging van artikel 64B van Wet 58 van 1962, soos ingevoeg deur artikel 34 van Wet 113 van 1993 en gewysig deur artikel 12 van Wet 140 van 1993, artikel 24 van Wet 21 van 1994, artikel 29 van Wet 21 van 1995, artikel 21 van Wet 36 van 1996, artikel 13 van Wet 46 van 1996, artikel 25 van Wet 28 van 1997, artikel 35 van Wet 53 van 1999 en artikel 39 van Wet 30 van 2000

42. Artikel 64B van die Inkomstebelastingwet, 1962, word hierby gewysig—

(a) deur subartikel (2) deur die volgende subartikel te vervang:

“(2) Daar word ten bate van die Nasionale Inkomstefonds ’n belasting gehef en betaal, bekend as die sekondêre belasting op maatskappye, wat bereken word teen die koers van 12,5 persent van die netto bedrag, soos vasgestel ingevolge subartikel (3), van ’n dividend op of na 14 Maart 1996 deur ’n maatskappy [op of na 14 Maart 1996] wat ’n inwoner is, verklaar.”;

(b) deur die woorde wat die voorbehoudsbepaling by subartikel (3) voorafgaan deur die volgende woorde te vervang:

“Die netto bedrag van ’n dividend bedoel in subartikel (2) is die bedrag waarmee daardie dividend deur ’n maatskappy verklaar die som van enige dividende (behalwe enige dividende beoog in subartikel (5)(b), (c), (d) en (f) of enige buitelandse dividende in artikel 9E omskryf, maar met inbegrip van buitelandse dividende wat ingevolge artikel 9E(7)(a), (b)] (c), (d), [of] (e)(ii), (iii) of (iv) of (f), of artikel 9E(8A) vrygestel is), wat gedurende die dividendsiklus met betrekking tot bedoelde eersgenoemde dividend aan die maatskappy toeval, oorskry.”;

(c) deur paragraaf (h) van subartikel (5) te skrap;

(d) deur paragraaf (a) van subartikel (6) deur die volgende paragraaf te vervang:

“(a) Indien ’n dividend onderworpe aan die betaling van sekondêre belasting op maatskappye verklaar is deur ’n maatskappy wat winste verkry uit bronne binne en buite die Republiek, word die sekondêre belasting op maatskappye ten opsigte van daardie dividend bereken op ’n bedrag wat tot die netto bedrag van daardie dividend in dieselfde verhouding staan as wat die totaal van die netto jaarlikse winste van die maatskappy uit—

(i) winste uit bronne binne die Republiek of ingevolge artikel 9 [9C of 9E] geag te wees binne die Republiek verkry; en

(ii) bronne buite die Republiek verkry wat nie geag word uit ’n bron in die Republiek te wees nie en wat nie ingevolge die bepalings van artikel 10(1)(kA) vrygestel is van belasting nie,

staan tot die totale som van sy netto jaarlikse winste uit alle bronne verkry.”.

(2) Vir sover subartikel (1)(b) subartikel (3) wysig—

(a) deur die verwysing na paragrafe (a) en (b) van subartikel (7) te skrap en ’n verwysing na artikel 9E(8A) in te voeg, tree dit op 1 Januarie 2001 in werking en is van toepassing ten opsigte van dividende wat op of na daardie datum toegeval;

(b) deur die verwysing na paragrafe (e)(iii) en (iv) en (f) in te voeg, word dit geag in werking te getree het op 23 Februarie 2000 en is van toepassing op enige buitelandse dividend wat—

(i) op of na daardie datum ontvang is deur of toegeval het aan ’n maatskappy; of

(ii) voor 23 Februarie 2000 aan die maatskappy toegeval het, maar wat op of na daardie datum ontvang word: Met dien verstande dat die bepalings van hierdie paragraaf nie van toepassing is nie ten opsigte van ’n dividend deur ’n maatskappy voor 23 Februarie 2000 verklaar, waar—
(aa) die maatskappy wat die dividend verklaar op ’n erkende aandeelbeurs genoteer is; of

(bb) in enige ander geval, die hoof- uitvoerende beampte en—

(A) ’n eksterne ouditeur van die maatskappy wat die dividend verklaar; of

(B) waar die maatskappy wat die dividend verklaar in ’n land geleë is wat nie die verpligte aanstelling van ’n eksterne ouditeur vereis nie, ’n geregistreerde openbare rekenmeester

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external auditor, a registered public accountant of the same standing as a qualified chartered accountant, have declared under oath or affirmation that such dividend was actually declared by the company before 23 February 2000.

Amendment of section 64C of Act 58 of 1962, as inserted by section 34 of Act 113 of 1993 and amended by section 13 of Act 140 of 1993, section 25 of Act 21 of 1994, section 30 of Act 21 of 1995, section 22 of Act 36 of 1996, section 40 of Act 30 of 1998, section 36 of Act 53 of 1999 and section 40 of Act 30 of 2000

43. (1) Section 64C of the Income Tax Act, 1962, is hereby amended—

(a) by the substitution for paragraph (d) of subsection (4) of the following paragraph:

“(d) to any loan granted[—

(i) **which is denominated in the currency of the Republic]** in respect of which a rate of interest not less than the ‘official rate of interest’, as defined in paragraph 1 of the Seventh Schedule [or

(ii) **which is denominated in a foreign currency, in respect of which a market-related rate of interest]** is payable by the recipient;”;

(b) by the deletion of the word “and” at the end of paragraph (h) of subsection (4);

(c) by the addition of the word “and” at the end of paragraph (i) of subsection (4); and

(d) by the addition to subsection (4) of the following paragraph:

“(j) to any loan granted to any recipient which is a company by any other company which holds for its own benefit, whether directly or indirectly, any of the equity share capital of such recipient company: Provided that the provisions of this paragraph shall not apply where such recipient company holds any of the equity share capital in such other company.”.

(2) Subsection (1)(b), (c) and (d) shall be deemed to have come into operation on 23 February 2000.

Amendment of section 70 of Act 58 of 1962, as amended by section 11 of Act 6 of 1963, section 20 of Act 90 of 1964, section 43 of Act 85 of 1974, section 24 of Act 69 of 1975, section 26 of Act 28 of 1997, section 37 of Act 53 of 1999 and section 42 of Act 30 of 2000

44. Section 70 of the Income Tax Act, 1962, is hereby amended by the substitution for paragraph (b) of subsection (2) of the following paragraph:

“(b) where such dividend represents an amount of any taxable foreign dividend as determined in accordance with the provisions of section 9E and such company is a resident **[as defined in section 9C]**, notify each shareholder who is a resident of the amount of such taxable foreign dividend.”.

Amendment of section 72 of Act 58 of 1962

45. Section 72 of the Income Tax Act, 1962, is hereby amended by the substitution for the words preceding paragraph (a) of the following words:

“Every person who makes a return of his own income or in a representative capacity makes a return of the income of some other person, shall attach to such return a statement in such form as the Commissioner may require, showing fully—”.

Insertion of section 72A in Act 58 of 1962

46. The following section is hereby inserted after section 72 of the Income Tax Act, 1962:

- 5 met dieselfde status as 'n gekwalifiseerde geoktrooieerde rekenmeester,
 onder eed verklaar het of 'n bevestigende verklaring gemaak het dat bedoelde dividend werklik voor 23 Februarie 2000 deur die maatskappy verklaar is.

10 **Wysiging van artikel 64C van Wet 58 van 1962, soos ingevoeg deur artikel 34 van Wet 113 van 1993 en gewysig deur artikel 13 van Wet 140 van 1993, artikel 25 van Wet 21 van 1994, artikel 30 van Wet 21 van 1995, artikel 22 van Wet 36 van 1996, artikel 40 van Wet 30 van 1998, artikel 36 van Wet 53 van 1999 en artikel 40 van Wet 30 van 2000**

43. (1) Artikel 64C van die Inkomstebelastingwet, 1962, word hierby gewysig—

(a) deur paragraaf (d) van subartikel (4) deur die volgende paragraaf te vervang:

“(d) op enige lening toegestaan[—

15 (i) **wat in die geldeenheid van die Republiek aangedui word]** ten opsigte waarvan 'n rentekoers van minstens die ‘amptelike rentekoers’ in paragraaf 1 van die Sewende Bylae omskryf [of

20 (ii) **wat in 'n buitelandse geldeenheid aangedui word, ten opsigte waarvan 'n markverwante rentekoers]** deur die ontvanger betaalbaar is;”;

(b) deur die woord “en” aan die einde van paragraaf (h) van subartikel (4) te skrap;

(c) deur die woord “en” aan die einde van paragraaf (i) van subartikel (4) by te voeg; en

25 (d) deur die volgende paragraaf by subartikel (4) te voeg:

“(j) op enige lening aan 'n ontvanger wat 'n maatskappy is, toegestaan deur enige ander maatskappy wat vir sy eie belang, hetsy direk of indirek, enige van die ekwiteitsaandelekapitaal van bedoelde ontvanger-maatskappy hou: Met dien verstande dat die bepalings van hierdie paragraaf nie van toepassing is nie waar bedoelde ontvanger-maatskappy enige van die ekwiteitsaandelekapitaal in bedoelde ander maatskappy hou nie.”.

30

(2) Subartikel (1)(b), (c) en (d) word geag op 23 Februarie 2000 in werking te getree het.

35 **Wysiging van artikel 70 van Wet 58 van 1962, soos gewysig deur artikel 11 van Wet 6 van 1963, artikel 20 van Wet 90 van 1964, artikel 43 van Wet 85 van 1974, artikel 24 van Wet 69 van 1975, artikel 26 van Wet 28 van 1997, artikel 37 van Wet 53 van 1999 en artikel 42 van Wet 30 van 2000**

40 44. Artikel 70 van die Inkomstebelastingwet, 1962, word hierby gewysig deur paragraaf (b) van subartikel (2) deur die volgende paragraaf te vervang:

“(b) waar bedoelde dividend 'n bedrag van enige belasbare buitelandse dividend ooreenkomstig die bepalings van artikel 9E bepaal, uitmaak en bedoelde maatskappy 'n inwoner [soos omskryf in artikel 9C] is, elke aandeelhouer wat 'n inwoner is van die bedrag van bedoelde belasbare buitelandse dividend in kennis stel.”.

45

Wysiging van artikel 72 van Wet 58 van 1962

45. Artikel 72 van die Inkomstebelastingwet, 1962, word hierby gewysig deur die woorde wat paragraaf (a) voorafgaan deur die volgende woorde te vervang:

50 “Elke persoon wat 'n opgawe van sy eie inkomste of in 'n verteenwoordigende hoedanigheid 'n opgawe van die inkomste van 'n ander persoon doen, moet aan so 'n opgawe 'n verklaring in die vorm wat die Kommissaris mag vereis, heg waarin volledig aangegee word”.

Invoeging van artikel 72A in Wet 58 van 1962

55 46. Die volgende artikel word hierby na artikel 72 van die Inkomstebelastingwet, 1962, ingevoeg:

“Return as to participation right in controlled foreign entity

72A. (1) Every resident who at any time during the relevant year of assessment—

- (a) directly or indirectly holds not less than 10 per cent of the participation or voting rights or control in any controlled foreign entity as contemplated in section 9D; and 5
 - (b) together with any connected person in relation to such resident, in aggregate holds more than 50 per cent of the total participation or voting rights or control in such controlled foreign entity, 10
- shall submit to the Commissioner a return containing the information contemplated in subsection (2) relating to such controlled foreign entity, in such form and within such time as may be prescribed by the Commissioner: Provided that the provisions of this subsection shall not apply to any resident where any person who is a resident and who is a connected person in relation to such first-mentioned resident, holds a greater percentage of the participation rights than such first-mentioned resident. 15

(2) The return contemplated in subsection (1) shall show fully—

- (a) the name, address and country of residence of such controlled foreign entity; 20
- (b) a description of the various classes of participation rights in such controlled foreign entity;
- (c) the percentage and class of participation or voting rights held by such resident whether directly, indirectly or together with connected persons; 25
- (d) the percentage and class of participation rights held by any other resident (who is a connected person in relation to such resident) who directly or indirectly holds not less than 10 per cent of the participation or voting rights in such controlled foreign entity;
- (e) a description of the receipts and accruals of such controlled foreign entity which are— 30
 - (i) included in the income of such resident in terms of the provisions of section 9D;
 - (ii) not included in the income of such resident in terms of the provisions of section 9D(9);
- (f) a description of any amount of tax proved to be payable by such controlled foreign entity to the government of any other country in respect of any income contemplated in paragraph (e)(i), including particulars relating to the country in which such tax was payable and the underlying profits to which such foreign tax relates. 35

(3) Every resident who is required to submit a return contemplated in subsection (1), shall— 40

- (a) submit the relevant information referred to in subsection (2)(a), (b), (d) and (f) relating to any other resident contemplated in subsection (2)(d) to such other resident; and 45
- (b) have available for submission to the Commissioner when so requested, an income statement and balance sheet of such controlled foreign entity prepared in accordance with the laws of the country of which such controlled foreign entity is a resident, or internationally accepted accounting practice.

(4) Every resident who receives any information contemplated in subsection (3), shall submit such information to the Commissioner in such form and manner as the Commissioner may prescribe.”. 50

Amendment of section 83A of Act 58 of 1962, as inserted by section 37 of Act 129 of 1991 and amended by section 37 of Act 113 of 1993 and Government Notice R.1245 of 26 September 1997 55

47. Section 83A of the Income Tax Act, 1962, is hereby amended by the substitution for paragraph (a) of subsection (1) of the following paragraph:

“(a) the amount of the tax in dispute does not exceed [R30 000 (or any other] such amount which the Minister [of Finance] may from time to time fix by notice

“Opgawe rakende deelnemende reg in beheerde buitelandse entiteit

72A. (1) Elke inwoner wat op enige tydstip gedurende die betrokke jaar van aanslag—

- 5 (a) direk of indirek minstens 10 persent van die deelnemende regte of stemreg of beheer in enige beheerde buitelandse entiteit in artikel 9D bedoel, hou; en
- 10 (b) tesame met enige verbonde persoon met betrekking tot bedoelde inwoner in totaal, meer as 50 persent van die totale deelnemende regte of stemreg of beheer in bedoelde beheerde buitelandse entiteit hou, moet aan die Kommissaris 'n opgawe verstrek in die vorm en binne die tyd wat die Kommissaris voorskryf wat die inligting in subartikel (2) bedoel met betrekking tot bedoelde beheerde buitelandse entiteit bevat: Met dien verstande dat die bepalings van hierdie subartikel nie van toepassing is nie
- 15 ten opsigte van 'n inwoner waar enige persoon wat 'n inwoner is en wat 'n verbonde persoon met betrekking tot eersgenoemde inwoner is, 'n groter persentasie van die deelnemende regte as eersgenoemde inwoner hou.

(2) Die opgawe in subartikel (1) bedoel moet ten volle aantoon—

- 20 (a) die naam, adres en land van verblyf van bedoelde beheerde buitelandse entiteit;
- (b) 'n beskrywing van die verskillende klasse deelnemende regte in bedoelde beheerde buitelandse entiteit;
- (c) die persentasie en klas deelnemende regte of stemreg deur bedoelde inwoner, hetsy direk, indirek of gesamentlik met verbonde persone, gehou;
- 25 (d) die persentasie en klas deelnemende regte gehou deur enige ander inwoner (wat 'n verbonde persoon met betrekking tot bedoelde inwoner is) wat direk of indirek minstens 10 persent van die deelnemende regte of stemreg in bedoelde beheerde buitelandse entiteit hou;
- 30 (e) 'n beskrywing van die ontvangste en toevallings van bedoelde beheerde buitelandse entiteit wat—
- (i) in die inkomste van bedoelde inwoner ingesluit is ingevolge die bepalings van artikel 9D;
- (ii) nie in die inkomste van bedoelde inwoner ingesluit is nie ingevolge die bepalings van artikel 9D(9);
- 35 (f) 'n beskrywing van enige bedrag aan belasting wat bewys word deur bedoelde beheerde buitelandse entiteit ten opsigte van enige inkomste in paragraaf (e)(i) bedoel aan die regering van enige ander land betaalbaar te wees, met inbegrip van besonderhede met betrekking tot die land waarin bedoelde belasting betaalbaar is en die onderliggende winste waarop bedoelde buitelandse belasting betrekking het.
- 40

(3) Elke inwoner van wie vereis word om 'n opgawe beoog in subartikel (1) te verstrek, moet—

- 45 (a) die betrokke inligting in subartikel (2)(a), (b), (d) en (f) bedoel wat verband hou met enige ander inwoner in subartikel (2)(d) bedoel aan bedoelde ander inwoner verskaf; en
- (b) 'n inkomstestaat en balansstaat van bedoelde beheerde buitelandse entiteit, voorberei ooreenkomstig die wette van die land waarvan die beheerde buitelandse entiteit 'n inwoner is, of internasionale aanvaarde rekeningkundige praktyk beskikbaar hê om aan die Kommissaris te voorsien wanneer aldus versoek.
- 50

(4) Elke inwoner wat enige inligting beoog in subartikel (3) ontvang, moet daardie inligting aan die Kommissaris verskaf in die vorm en wyse wat die Kommissaris voorskryf.”.

Wysiging van artikel 83A van Wet 58 van 1962, soos ingevoeg deur artikel 37 van
 55 Wet 129 van 1991 en gewysig deur artikel 37 van Wet 113 van 1993 en
 Goewermentskennisgewing R.1245 van 26 September 1997

47. Artikel 83A van die Inkomstebelastingwet, 1962, word hierby gewysig deur paragraaf (a) van subartikel (1) deur die volgende paragraaf te vervang:

- 60 “(a) die bedrag van die belasting in geskil nie [R30 000 (of 'n ander)] die bedrag wat die Minister [van Finansies] van tyd tot tyd by kennisgewing in die

in the *Gazette*, or, having regard to any assessed loss which may be carried forward will probably not in total exceed [the relevant] such amount; or”.

Amendment of section 89bis of Act 58 of 1962, as inserted by section 14 of Act 6 of 1963 and amended by section 21 of Act 95 of 1967, section 28 of Act 88 of 1971, section 45 of Act 85 of 1974, section 26 of Act 91 of 1982, section 35 of Act 94 of 1983, section 32 of Act 121 of 1984 and section 21 of Act 65 of 1986 5

48. Section 89bis of the Income Tax Act, 1962, is hereby amended—

- (a) by the substitution for the words preceding paragraph (a) of subsection (3) of the following words:

“For the purposes of this section ‘taxes’ means the taxes comprehended in the definition of ‘tax’ in section 1, excluding donations tax.”; and 10

- (b) by the deletion of paragraphs (a) and (b) of subsection (3).

Amendment of section 89ter of Act 58 of 1962, as inserted by section 14 of Act 6 of 1963, and substituted by section 37 of Act 89 of 1969 and amended by section 36 of Act 94 of 1983, section 33 of Act 121 of 1984, section 41 of Act 113 of 1993 and section 28 of Act 21 of 1994 15

49. Section 89ter of the Income Tax Act, 1962, is hereby amended—

- (a) by the substitution for the words preceding paragraph (a) of subsection (3) of the following words:

“For the purposes of subsections (1) and (2) ‘taxes’ means the taxes comprehended in the definition of ‘tax’ in section 1, excluding donations tax and secondary tax on companies.”; and 20

- (b) by the deletion of paragraphs (a), (c) and (d) of subsection (3).

Amendment of section 89quat of Act 58 of 1962, as inserted by section 34 of Act 121 of 1984, substituted by section 22 of Act 65 of 1986 and amended by section 18 of Act 70 of 1989, section 42 of Act 113 of 1993, section 15 of Act 140 of 1993, section 33 of Act 21 of 1995 and section 24 of Act 36 of 1996 25

50. Section 89quat of the Income Tax Act, 1962, is hereby amended—

- (a) by the addition of the word “and” at the end of paragraph (c) of the definition of “credit amount” in subsection (1); and 30

- (b) by the addition of the following paragraph to the definition of “credit amount” in subsection (1):

“(d) any amount of foreign taxes which may be deducted from the tax payable by such taxpayer in respect of the relevant year of assessment in terms of the provisions of section 6quat;” 35

Amendment of section 90 of Act 58 of 1962, as amended by section 15 of Act 6 of 1963, section 23 of Act 95 of 1967, section 35 of Act 121 of 1984, section 20 of Act 96 of 1985, section 38 of Act 129 of 1991 and section 43 of Act 30 of 1998

51. Section 90 of the Income Tax Act, 1962, is hereby amended by the substitution for the words preceding paragraph (a) of the following words: 40

“Subject to the provisions of this Act, any tax (other than [non-resident shareholder’s tax, undistributed profits tax, excess profits duty] donations tax [and non-residents tax on interest]) and any interest payable in terms of section 89(2) or 89quat, shall be payable—”.

Staatskoerant bepaal, oorskry nie of, met inagneming van enige aangeslane verlies wat oorgedra mag word, waarskynlik in totaal dié [betrokke genoemde] bedrag nie sal oorskry nie; of”.

Wysiging van artikel 89*bis* van Wet 58 van 1962, soos ingevoeg deur artikel 14 van Wet 6 van 1963 en gewysig deur artikel 21 van Wet 95 van 1967, artikel 28 van Wet 88 van 1971, artikel 45 van Wet 85 van 1974, artikel 26 van Wet 91 van 1982, artikel 35 van Wet 94 van 1983, artikel 32 van Wet 121 van 1984 en artikel 21 van Wet 65 van 1986

48. Artikel 89*bis* van die Inkomstebelastingwet, 1962, word hierby gewysig—
- 10 (a) deur die woorde wat paragraaf (a) van subartikel (3) voorafgaan deur die volgende woorde te vervang:
- “By die toepassing van hierdie artikel beteken ‘belastings’ die belasting in die omskrywing van ‘belasting’ in artikel 1 behels, uitgesonderd belasting op geskenke.”; en
- 15 (b) deur paragrafe (a) en (b) van subartikel (3) te skrap.

Wysiging van artikel 89*ter* van Wet 58 van 1962, soos ingevoeg deur artikel 14 van Wet 6 van 1963, en vervang deur artikel 37 van Wet 89 van 1969 en gewysig deur artikel 36 van Wet 94 van 1983, artikel 33 van Wet 121 van 1984, artikel 41 van Wet 113 van 1993 en artikel 28 van Wet 21 van 1994

49. Artikel 89*ter* van die Inkomstebelastingwet, 1962, word hierby gewysig—
- 20 (a) deur die woorde wat paragraaf (a) van subartikel (3) voorafgaan deur die volgende woorde te vervang:
- “By die toepassing van subartikels (1) en (2) beteken ‘belastings’ die belasting in die omskrywing van ‘belasting’ in artikel 1 behels, uitgesonderd belasting op geskenke en sekondêre belasting op maatskappye.”; en
- 25 (b) deur paragrafe (a), (c) en (d) van subartikel (3) te skrap.

Wysiging van artikel 89*quat* van Wet 58 van 1962, soos ingevoeg deur artikel 34 van Wet 121 van 1984, vervang deur artikel 22 van Wet 65 van 1986 en gewysig deur artikel 18 van Wet 70 van 1989, artikel 42 van Wet 113 van 1993, artikel 15 van Wet 140 van 1993, artikel 33 van Wet 21 van 1995 en artikel 24 van Wet 36 van 1996

50. Artikel 89*quat* van die Inkomstebelastingwet, 1962, word hierby gewysig—
- 35 (a) deur die woord “en” aan die einde van paragraaf (c) van die omskrywing van “kredietbedrag” in subartikel (1) by te voeg; en
- (b) deur die volgende paragraaf by die omskrywing van “kredietbedrag” in subartikel (1) te voeg:
- “(d) enige bedrag aan buitelandse belasting wat ingevolge die bepaling van artikel 6*quat* van die belasting deur bedoelde belastingpligtige ten opsigte van die betrokke jaar van aanslag betaalbaar, afgetrek kan word.”.
- 40

Wysiging van artikel 90 van Wet 58 van 1962, soos gewysig deur artikel 15 van Wet 6 van 1963, artikel 23 van Wet 95 van 1967, artikel 35 van Wet 121 van 1984, artikel 20 van Wet 96 van 1985, artikel 38 van Wet 129 van 1991 en artikel 43 van Wet 30 van 1998

51. Artikel 90 van die Inkomstebelastingwet, 1962, word hierby gewysig deur die woorde wat paragraaf (a) voorafgaan deur die volgende woorde te vervang:
- “Behoudens die bepalinge van hierdie Wet is enige belasting (behalwe [belasting op buitelandse aandeelhouers, belasting op onuitgekeerde winste, oorwinstbelasting] belasting op geskenke [en rentebelasting op buitelanders]) en enige ingevolge artikel 89(2) of 89*quat* verskuldigde rente betaalbaar—”.
- 50

Amendment of section 103 of Act 58 of 1962, as amended by section 14 of Act 101 of 1978, section 37 of Act 121 of 1984, section 19 of Act 70 of 1989, section 29 of Act 36 of 1996 and section 45 of Act 30 of 1998

52. Section 103 of the Income Tax Act, 1962, is hereby amended by the substitution for subsection (3) of the following subsection:

“(3) For the purposes of subsection (1) any transaction, operation or scheme (whether entered into or carried out before or after the commencement of this Act) whereby any **[person (other than a company) who is ordinarily resident or carrying on business in the Republic, or any company registered or carrying on business in the Republic]** resident has disposed of shares held by such **[person or such company]** resident in any company **[registered or incorporated in the Republic]** which is a resident to any person **[(other than a company) not ordinarily resident or carrying on business in the Republic or to any company registered outside the Republic]** who is not a resident, shall unless it is proved to the satisfaction of the Commissioner that the parties are independent persons dealing at arm’s length with each other, be deemed to be a transaction, operation or scheme entered into or carried out by means or in a manner not normally employed in the entering into or carrying out of such a transaction, operation or scheme of the nature of the transaction, operation or scheme in question.”.

Amendment of paragraph 1 of Fourth Schedule to Act 58 of 1962, as added by section 19 of Act 6 of 1963 and amended by section 22 of Act 72 of 1963, section 44 of Act 89 of 1969, section 24 of Act 52 of 1970, section 37 of Act 88 of 1971, section 47 of Act 85 of 1974, section 6 of Act 30 of 1984, section 38 of Act 121 of 1984, section 20 of Act 70 of 1989, section 44 of Act 101 of 1990, section 44 of Act 129 of 1991, section 33 of Act 141 of 1992, section 48 of Act 113 of 1993, section 16 of Act 140 of 1993, section 37 of Act 21 of 1995, section 34 of Act 36 of 1996, section 44 of Act 28 of 1997, section 52 of Act 30 of 1998 and section 52 of Act 30 of 2000

53. (1) Paragraph 1 of the Fourth Schedule to the Income Tax Act, 1962, is hereby amended—

(a) by the substitution for paragraphs (b) and (bA) of the definition of “provisional taxpayer” of the following paragraphs:

“(b) unless the Commissioner in the particular case otherwise directs, any director of a private company if such director **[is ordinarily resident in the Republic]** or such company is **[managed and controlled or has its registered office in the Republic]** a resident; (bA) unless the Commissioner in the particular case otherwise directs, any member of a close corporation if such member is **[ordinarily a resident [in the Republic];**”;

(b) by the substitution for paragraph (a) of the definition of “remuneration” of the following paragraph:

“(a) any amount referred to in paragraph (a), (c), (cA), (d), (e), (eA) or (f) of the definition of ‘gross income’ in section 1 of this Act;”;

(c) by the substitution for the words preceding the proviso to paragraph (ii) of the exclusions to the definition of “remuneration” of the following words:

“any amount paid or payable in respect of services rendered or to be rendered by any person (other than a person who is not **[ordinarily]** a resident **[in the Republic]** or an employee contemplated in paragraph (b), (c), **[or]** (d), (e) or (f) of the definition of ‘employee’) in the course of any trade carried on by him independently of the person by whom such amount is paid or payable and of the person to whom such services have been or are to be rendered;”;

(d) by the substitution for the words following paragraph (d) of the definition of “representative employer” of the following words:

“**who is a resident**, but nothing in this definition shall be construed as relieving any person from any liability, responsibility or duty imposed upon him by this Schedule.”.

Wysiging van artikel 103 van Wet 58 van 1962, soos gewysig deur artikel 14 van Wet 101 van 1978, artikel 37 van Wet 121 van 1984, artikel 19 van Wet 70 van 1989, artikel 29 van Wet 36 van 1996 en artikel 45 van Wet 30 van 1998

52. Artikel 103 van die Inkomstebelastingwet, 1962, word hierby gewysig deur subartikel (3) deur die volgende subartikel te vervang:

“(3) By die toepassing van subartikel (1) word ’n transaksie, handeling of skema (ongeaag of dit voor of na die inwerkingtreding van hierdie Wet aangegaan, verrig of uitgevoer is) waarby ’n [persoon (behalwe ’n maatskappy) wat gewoonlik in die Republiek woonagtig is of daarin besigheid dryf, of so ’n maatskappy wat in die Republiek geregistreer is of daarin besigheid dryf] inwoner, aandeel wat so ’n [persoon of so ’n maatskappy] inwoner besit in ’n maatskappy wat [in die Republiek geregistreer of ingelyf] ’n inwoner is, aan ’n persoon [(behalwe ’n maatskappy) wat nie gewoonlik in die Republiek woonagtig is of daarin besigheid dryf nie of aan ’n maatskappy wat buite die Republiek geregistreer is] wat nie ’n inwoner is nie, van die hand gesit het, geag ’n transaksie, handeling of skema te wees wat aangegaan, verrig of uitgevoer is deur middele of op ’n wyse wat nie normaalweg by die aangaan, verrigting of uitvoering van so ’n transaksie, handeling of skema van die aard van die onderhawige transaksie, handeling of skema aangewend word nie, tensy tot bevrediging van die Kommissaris bewys word dat die partye onafhanklike persone is wat met mekaar die uiterste voorwaardes beding het.”.

Wysiging van paragraaf 1 van Vierde Bylae by Wet 58 van 1962, soos bygevoeg deur artikel 19 van Wet 6 van 1963 en gewysig deur artikel 22 van Wet 72 van 1963, artikel 44 van Wet 89 van 1969, artikel 24 van Wet 52 van 1970, artikel 37 van Wet 88 van 1971, artikel 47 van Wet 85 van 1974, artikel 6 van Wet 30 van 1984, artikel 38 van Wet 121 van 1984, artikel 20 van Wet 70 van 1989, artikel 44 van Wet 101 van 1990, artikel 44 van Wet 129 van 1991, artikel 33 van Wet 141 van 1992, artikel 48 van Wet 113 van 1993, artikel 16 van Wet 140 van 1993, artikel 37 van Wet 21 van 1995, artikel 34 van Wet 36 van 1996, artikel 44 van Wet 28 van 1997, artikel 52 van Wet 30 van 1998 en artikel 52 van Wet 30 van 2000

53. Paragraaf 1 van die Vierde Bylae by die Inkomstebelastingwet, 1962, word hierby gewysig—

- (a) deur paragraaf (a) van die omskrywing van “besoldiging” deur die volgende paragraaf te vervang:

35 “(a) enige bedrag in paragraaf (a), (c), (cA), (d), (e), (eA) of (f) van die omskrywing van “bruto inkomste” in artikel 1 van hierdie Wet bedoel;”;
- (b) deur die woorde wat die voorbehoudsbepaling by paragraaf (ii) van die uitsluitings by die omskrywing van “besoldiging” voorafgaan deur die volgende woorde te vervang:

40 “ ’n bedrag betaal of betaalbaar ten opsigte van bewese dienste of dienste wat nog bewys moet word deur iemand (behalwe iemand wat nie [gewoonlik in die Republiek woonagtig] ’n inwoner is nie of ’n werknemer in paragraaf (b), (c), [of] (d), (e) of (f) van die omskrywing van “werknemer” beoog) in die loop van ’n bedryf wat deur hom onafhanklik van die persoon deur wie bedoelde bedrag betaal word of betaalbaar is en van die persoon aan wie daardie dienste bewys is of bewys moet word, beoefen word nie;”;
- (c) deur die woorde wat op paragraaf (d) van die omskrywing van “verteengewordigende werkgewer” volg deur die volgende woorde te vervang:

50 “wat ’n inwoner is, maar die bepalinge van hierdie omskrywing word nie so uitgelê dat dit ’n persoon onthef van aanspreeklikheid, verantwoordelikheid of ’n verpligting hom deur hierdie Bylae opgelê nie;”;
- (d) deur paragrafe (b) en (bA) van die omskrywing van “voorlopige belastingpligtige” deur die volgende paragrafe te vervang:

55 “(b) tensy die Kommissaris in die besondere geval anders gelas, ’n direkteur van ’n private maatskappy indien daardie direkteur [gewoonlik in die Republiek woonagtig is] of daardie maatskappy [in die Republiek bestuur en beheer word of sy geregistreerde kantoor daarin is] ’n inwoner is;

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(2) Subsection (1)(b) shall come into operation on the date of promulgation of this Act.

(3) In so far as subsection (1)(c)—

(a) inserts the reference to paragraphs (e) and (f) it shall be deemed to have come into operation on 1 August 2000; and

(b) deletes the words “ordinarily” and “in the Republic” it shall come into operation on 1 January 2001, and shall apply in respect of any year of assessment commencing on or after that date.

(4) Subsection (1)(d) shall come into operation on 1 March 2001.

Amendment of paragraph 2 of Fourth Schedule to Act 58 of 1962, as added by section 19 of Act 6 of 1963 and amended by section 23 of Act 72 of 1963, section 29 of Act 55 of 1966, section 38 of Act 88 of 1971, section 48 of Act 85 of 1974, section 28 of Act 113 of 1977, section 40 of Act 90 of 1988, section 21 of Act 70 of 1989, section 45 of Act 101 of 1990, section 45 of Act 129 of 1991, section 38 of Act 21 of 1995, section 45 of Act 28 of 1997 and section 53 of Act 30 of 2000

54. Paragraph 2 of the Fourth Schedule to the Income Tax Act, 1962, is hereby amended by the substitution for subparagraph (1) of the following subparagraph:

“(1) Every—

(a) employer who is a resident; or

(b) representative employer in the case of any employer who is not a resident, (whether or not registered as an employer under paragraph 15), who pays or becomes liable to pay any amount by way of remuneration to any employee shall, unless the Commissioner has granted authority to the contrary, deduct or withhold from that amount by way of employees’ tax an amount which shall be determined as provided in paragraph 9, 10, 11 or 12, whichever is applicable, in respect of the liability for normal tax of that employee, or, if such remuneration is paid or payable to an employee who is married and such remuneration is under the provisions of section 7(2) of this Act deemed to be income of the employee’s spouse, in respect of such liability of that spouse, and shall pay the amount so deducted or withheld to the Commissioner within seven days after the end of the month during which the amount was deducted or withheld, or in the case of a person who ceases to be an employer before the end of such month, within seven days after the day on which he ceased to be an employer, or in either case within such further period as the Commissioner may approve.”.

Amendment of paragraph 9 of Fourth Schedule to Act 58 of 1962, as added by section 19 of Act 6 of 1963 and amended by section 39 of Act 88 of 1971, section 32 of Act 103 of 1976, section 29 of Act 104 of 1980, section 46 of Act 101 of 1990 and section 46 of Act 28 of 1997

55. Paragraph 9 of the Fourth Schedule to the Income Tax Act, 1962, is hereby amended by the substitution for subparagraph (1) of the following subparagraph:

“(1) The Commissioner may from time to time, having regard to the rates of normal tax as fixed by Parliament or foreshadowed by the Minister [of Finance] in his budget statement or as varied by the [said] Minister under section 5 (3) of this Act, to the rebates applicable in terms of section 6 and section 6quat of this Act and to any other factors having a bearing upon the probable liability of taxpayers for normal tax, prescribe deduction tables applicable to such classes of employees as he may determine, and the manner in which such tables shall be applied, and the amount of employees’ tax to be deducted from any amount of remuneration shall, subject to the provisions of subparagraph (3) of this paragraph and paragraphs 10, 11 and 12, be determined in accordance with such tables or where subparagraph (3) is applicable, in accordance with that subparagraph.”.

- (bA) tensy die Kommissaris in die besondere geval anders gelas, 'n lid van 'n beslote korporasie indien daardie lid **[gewoonlik in die Republiek woonagtig is]** 'n inwoner is;";
- (2) Subartikel (1)(a) tree in werking op die datum van afkondiging van hierdie Wet.
- 5 (3) Vir sover subartikel (1)(b)—
- (a) die verwysing na paragrawe (e) en (f) invoeg, word dit geag op 1 Augustus 2000 in werking te getree het; en
- (b) die woorde "gewoonlik in die Republiek woonagtig" skrap, tree dit op 1 Januarie 2001 in werking en is van toepassing ten opsigte van enige jaar
- 10 van aanslag wat op of na daardie datum 'n aanvang neem.
- (4) Subartikel (1)(c) tree in werking op 1 Maart 2001.

Wysiging van paragraaf 2 van Vierde Bylae by Wet 58 van 1962, soos bygevoeg deur artikel 19 van Wet 6 van 1963 en gewysig deur artikel 23 van Wet 72 van 1963, artikel 29 van Wet 55 van 1966, artikel 38 van Wet 88 van 1971, artikel 48

15 van Wet 85 van 1974, artikel 28 van Wet 113 van 1977, artikel 40 van Wet 90 van 1988, artikel 21 van Wet 70 van 1989, artikel 45 van Wet 101 van 1990, artikel 45 van Wet 129 van 1991, artikel 38 van Wet 21 van 1995, artikel 45 van Wet 28 van 1997 en artikel 53 van Wet 30 van 2000

54. Paragraaf 2 van die Vierde Bylae by die Inkomstebelastingwet, 1962, word 20 hierby gewysig deur subparagraaf (1) deur die volgende subparagraaf te vervang:

- "(1) Elke—
- (a) werkgewer wat 'n inwoner is; of
- (b) verteenwoordigende werkgewer in die geval van enige werkgewer wat nie 'n inwoner is nie,
- 25 (ongegag of hy ingevolge paragraaf 15 as 'n werkgewer geregistreer is, al dan nie) wat aan 'n werknemer 'n bedrag by wyse van besoldiging betaal of verskuldig word, moet, tensy die Kommissaris andersins gemagtig het, van daardie bedrag 'n bedrag aftrek of terughou by wyse van werknemersbelasting wat volgens die
- 30 bepalings van paragraaf 9, 10, 11 of 12, watter bepaling ook al van toepassing is, vasgestel word, ten opsigte van die aanspreeklikheid van daardie werknemer vir normale belasting, of indien bedoelde besoldiging betaal of verskuldig is aan 'n werknemer wat getroud is en daardie besoldiging ingevolge die bepalings van
- 35 artikel 7 (2) geag word inkomste van die werknemer se gade te wees, ten opsigte van bedoelde aanspreeklikheid van daardie gade, en moet die bedrag aldus afgetrek of teruggehou aan die Kommissaris betaal binne sewe dae na die end van
- die maand waartydens die bedrag afgetrek of teruggehou is, of, in die geval van 'n persoon wat voor die end van daardie maand ophou om 'n werkgewer te wees, binne sewe dae na die dag waarop hy ophou om 'n werkgewer te wees, of, in die
- 40 een of die ander geval, binne die verdere tydperk wat die Kommissaris goedkeur."

Wysiging van paragraaf 9 van Vierde Bylae by Wet 58 van 1962, soos bygevoeg deur artikel 19 van Wet 6 van 1963 en gewysig deur artikel 39 van Wet 88 van 1971, artikel 32 van Wet 103 van 1976, artikel 29 van Wet 104 van 1980, artikel 46 van Wet 101 van 1990 en artikel 46 van Wet 28 van 1997

45 55. Paragraaf 9 van die Vierde Bylae by die Inkomstebelastingwet, 1962, word hierby gewysig deur subparagraaf (1) deur die volgende subparagraaf te vervang:

- "(1) Die Kommissaris kan, met inagneming van die skale van normale belasting soos deur die Parlement vasgestel of deur die Minister **[van Finansies]** in sy begrotingsrede in die vooruitsig gestel of soos deur **[bedoelde]** die Minister ingevolge artikel 5(3) van hierdie Wet verander, die kortings wat ingevolge artikel 6 en artikel 6quat van hierdie Wet van toepassing is, en enige ander faktore wat met die waarskynlike aanspreeklikheid van belastingpligtiges vir normale belasting in verband staan, van tyd tot tyd aftrekkingstabelle voorskryf wat geld vir die
- 50 kategorieë van werknemers wat by bepaal, en kan ook die wyse voorskryf waarop sodanige tabelle toegepas moet word, en die bedrag wat by wyse van werknemersbelasting van 'n bedrag aan besoldiging afgetrek moet word, word, behoudens die bepalings van subparagraaf (3) van hierdie paragraaf en paragrawe 10, 11 en 12 in ooreenstemming met sodanige tabelle, of waar subparagraaf (3) van toepassing is, in ooreenstemming met daardie subparagraaf bepaal."
- 55

Amendment of paragraph 11B of Fourth Schedule to Act 58 of 1962, as inserted by section 41 of Act 90 of 1988 and amended by section 22 of Act 70 of 1989, section 47 of Act 101 of 1990, section 46 of Act 129 of 1991, section 34 of Act 141 of 1992, section 3 of Act 168 of 1993, section 40 of Act 21 of 1995, section 35 of Act 36 of 1996, section 48 of Act 28 of 1997 and section 53 of Act 30 of 1998

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56. (1) Paragraph 11B of the Fourth Schedule to the Income Tax Act, 1962, is hereby amended by the substitution for subitem (ii) of item (f) of the definition of “net remuneration” in subparagraph (1) of the following subitem:

“(ii) by way of an annuity provided or payable by a pension fund, provident fund or benefit fund;”.

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(2) Subsection (1) shall be deemed to have come into operation on 1 March 2000.

Amendment of paragraph 17 of Fourth Schedule to Act 58 of 1962, as added by section 19 of Act 6 of 1963 and amended by section 27 of Act 90 of 1964, section 41 of Act 88 of 1971, section 33 of Act 103 of 1976, section 30 of Act 104 of 1980 and section 51 of Act 101 of 1990

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57. Paragraph 17 of the Fourth Schedule to the Income Tax Act, 1962, is hereby amended by the substitution for subparagraph (5) of the following subparagraph:

“(5) The Commissioner may from time to time, having regard to the rates of normal tax as fixed by Parliament or foreshadowed by the Minister [of Finance] in his budget statement or as varied by the [said] Minister under section 5 (3) of this Act, to the rebates applicable in terms of section 6(2) and (3)(a) and section 6quat of this Act and to any other factors having a bearing upon the probable liability of taxpayers for normal tax, prescribe tables for optional use by provisional taxpayers falling within any category specified by the Commissioner, or by provisional taxpayers generally, for the purpose of estimating the liability of such taxpayers for normal tax, and the Commissioner may prescribe the manner in which such tables shall be applied.”.

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Amendment of paragraph 2 of Fifth Schedule to Act 58 of 1962, as added by section 26 of Act 52 of 1970 and amended by section 50 of Act 88 of 1971, section 24 of Act 90 of 1972, section 34 of Act 103 of 1976, section 58 of Act 85 of 1974, section 31 of Act 91 of 1982 and section 56 of Act 94 of 1983

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58. Paragraph 2 of the Fifth Schedule to the Income Tax Act, 1962, is hereby amended by the substitution for the words preceding the proviso to subparagraph (3) of the following words:

“Any person [(other than a company)] who is not [ordinarily] a resident and is not carrying on business in the Republic [and any company which is not a South African company and is not carrying on business in the Republic], shall not be liable for the payment of any loan portion:”.

35

Amendment of paragraph 1 of Seventh Schedule to Act 58 of 1962, as added by section 46 of Act 121 of 1984 and amended by section 26 of Act 96 of 1985, Government Notice No. R.2706 of 29 November 1985, section 33 of Act 65 of 1986, Government Notice No. R.2683 of 19 December 1986, section 28 of Act 85 of 1987, Government Notice No. R.714 of 14 April 1989, section 24 of Act 70 of 1989, Government Notice No. R.763 of 29 March 1990, section 55 of Act 101 of 1990, section 35 of Act 141 of 1992, section 52 of Act 113 of 1993, section 30 of Act 21 of 1994, section 40 of Act 36 of 1996 and section 54 of Act 30 of 2000

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59. Paragraph 1 of the Seventh Schedule to the Income Tax Act, 1962, is hereby amended by the substitution for the definition of “official rate of interest” of the following definition:

“ ‘official rate of interest’ means—

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Wysiging van paragraaf 11B van Vierde Bylae by Wet 58 van 1962, soos ingevoeg deur artikel 41 van Wet 90 van 1988 en gewysig deur artikel 22 van Wet 70 van 1989, artikel 47 van Wet 101 van 1990, artikel 46 van Wet 129 van 1991, artikel 34 van Wet 141 van 1992, artikel 3 van Wet 168 van 1993, artikel 40 van Wet 21 van 1995, artikel 35 van Wet 36 van 1996, artikel 48 van Wet 28 van 1997 en artikel 53 van Wet 30 van 1998

56. (1) Paragraaf 11B van die Vierde Bylae by die Inkomstebelastingwet, 1962, word hierby gewysig deur subsubitem (ii) van item (f) van die omskrywing van "netto besoldiging" in subparagraaf (1) deur die volgende subitem te vervang:

10 "(ii) by wyse van 'n jaargeld wat deur 'n pensioenfonds, voorsorgsfonds of bystandsfonds voorsien of betaalbaar is;"

(2) Subartikel (1) word geag op 1 Maart 2000 in werking te getree het.

Wysiging van paragraaf 17 van Vierde Bylae by Wet 58 van 1962, soos bygevoeg deur artikel 19 van Wet 6 van 1963 en gewysig deur artikel 27 van Wet 90 van 1964, artikel 41 van Wet 88 van 1971, artikel 33 van Wet 103 van 1976, artikel 30 van Wet 104 van 1980 en artikel 51 van Wet 101 van 1990

57. Paragraaf 17 van die Vierde Bylae by die Inkomstebelastingwet, 1962, word hierby gewysig deur subparagraaf (5) deur die volgende subparagraaf te vervang:

20 "(5) Die Kommissaris kan, met inagneming van die skale van die normale belasting soos deur die Parlement vasgestel of deur die Minister [van Finansies] in sy begrotingsrede in die vooruitsig gestel of soos deur [bedoelde] die Minister ingevolge artikel 5(3) van hierdie Wet verander, die kortings wat ingevolge artikel 6(2) en (3)(a) en artikel 6quat van hierdie Wet van toepassing is, en enige ander faktore wat met die waarskynlike aanspreeklikheid van belastingpligtiges vir normale belasting in verband staan, van tyd tot tyd tabelle voorskryf vir opsionele gebruik deur voorlopige belastingpligtiges wat in 'n kategorie val wat deur die Kommissaris aangedui word, of deur alle voorlopige belastingpligtiges, ten einde skattings te maak van die aanspreeklikheid van bedoelde belastingpligtiges vir normale belasting, en die Kommissaris kan die wyse voorskryf waarop sodanige tabelle toegepas moet word."

Wysiging van paragraaf 2 van Vyfde Bylae by Wet 58 van 1962, soos bygevoeg deur artikel 26 van Wet 52 van 1970 en gewysig deur artikel 50 van Wet 88 van 1971, artikel 24 van Wet 90 van 1972, artikel 34 van Wet 103 van 1976, artikel 58 van Wet 85 van 1974, artikel 31 van Wet 91 van 1982 en artikel 56 van Wet 94 van 1983

58. Paragraaf 2 van die Vyfde Bylae by die Inkomstebelastingwet, 1962, word hierby gewysig deur die woorde wat die voorbehoudsbepaling by subparagraaf (3) voorafgaan deur die volgende woorde te vervang:

40 "'n Persoon [(behalwe 'n maatskappy)] wat nie [gewoonlik in die Republiek woon] 'n inwoner is nie en nie [daarin] in die Republiek besigheid dryf nie, [en 'n maatskappy wat nie 'n Suid-Afrikaanse maatskappy is nie en nie daarin besigheid dryf nie] is nie vir die betaling van 'n leningsgedeelte aanspreeklik nie."

Wysiging van paragraaf 1 van Sewende Bylae by Wet 58 van 1962, soos bygevoeg deur artikel 46 van Wet 121 van 1984 en gewysig deur artikel 26 van Wet 96 van 1985, Goewermentskennisgewing No. R.2706 van 29 November 1985, artikel 33 van Wet 65 van 1986, Goewermentskennisgewing No. R.2683 van 19 Desember 1986, artikel 28 van Wet 85 van 1987, Goewermentskennisgewing No. R.714 van 14 April 1989, artikel 24 van Wet 70 van 1989, Goewermentskennisgewing No. R.763 van 29 Maart 1990, artikel 55 van Wet 101 van 1990, artikel 35 van Wet 141 van 1992, artikel 52 van Wet 113 van 1993, artikel 30 van Wet 21 van 1994, artikel 40 van Wet 36 van 1996 en artikel 54 van Wet 30 van 2000

59. Paragraaf 1 van die Sewende Bylae by die Inkomstebelastingwet, 1962, word hierby gewysig deur die omskrywing van "amptelike rentekoers" deur die volgende omskrywing te vervang:

"'amptelike rentekoers'—

- (a) in the case of a loan which is denominated in the currency of the Republic, the rate of interest fixed by the Minister from time to time by notice in the *Gazette*;
or
(b) in the case of a loan which is denominated in a foreign currency, a market related rate of interest;”.

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Amendment of section 1 of Act 91 of 1964, as amended by section 1 of Act 95 of 1965, section 1 of Act 57 of 1966, section 1 of Act 105 of 1969, section 1 of Act 98 of 1970, section 1 of Act 71 of 1975, section 1 of Act 112 of 1977, section 1 of Act 110 of 1979, sections 1 and 15 of Act 98 of 1980, section 1 of Act 89 of 1984, section 1 of Act 84 of 1987, section 1 of Act 68 of 1989, section 1 of Act 59 of 1990, section 1 of Act 19 of 1994, section 57 of Act 30 of 1998 and section 1 of Act 59 of 1999

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60. (1) Section 1 of the Customs and Excise Act, 1964, is hereby amended by the substitution for the definition of “this Act” in subsection (1) of the following definition:

“ ‘this Act’ includes any proclamation, government notice, regulation or rule issued or made or agreement concluded or deemed to have been concluded thereunder, any agreement contemplated in section 49, or any taxation proposal contemplated in section 58 which is tabled in the National Assembly;”.

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(2) Subsection (1) shall be deemed to have come into operation on 24 November 1999.

Insertion of section 46A in Act 91 of 1964

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61. (1) The following section is hereby inserted after section 46 of the Customs and Excise Act, 1964:

“Non-reciprocal preferential tariff treatment of goods exported from the Republic

46A. (1) In this section, unless the context otherwise indicates—

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‘circumvention’ includes any circumvention of any provision of an enactment by—

- (a) transshipment, rerouting, false declaration concerning the country or place of origin or falsification of official documents; or
(b) making any false declaration concerning fibre content, quantities, description or classification of goods,

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as provided in article 5 of the Agreement on Textiles and Clothing included in Annex 1A of the Agreement established by the World Trade Organisation, kept by the Commissioner as contemplated in subsection (2);

‘enactment’ includes the provisions of any legislative act by a government of a country providing for preferential tariff treatment, any administrative requirements of the customs administration of such country, any legislation or agreement incorporated by reference in such provisions and any amendment to such provisions, requirements, legislation or agreement, kept by the Commissioner as contemplated in subsection (2);

35

‘preferential tariff treatment’ means the non-reciprocal preferential tariff treatment of goods exported from the Republic allowed on importation into any country in terms of and on compliance with the requirements of any enactment of the government of such country;

40

‘transshipment’ has the meaning assigned thereto in section 113(b)(4) of the African Growth and Opportunity Act contained in the Trade and Development Act of 2000 of the United States of America, kept by the Commissioner as contemplated in subsection (2).

45

(2) (a) The Commissioner shall—

- (i) keep two copies of any enactment and any amendment thereto received from the customs administration of the country allowing preferential tariff treatment;

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- (a) in die geval van 'n lening wat in die geldeenheid van die Republiek aangedui word, die rentekoers wat die Minister van tyd tot tyd by kennisgewing in the Staatskoerant vasstel; of
- (b) in die geval van 'n lening wat in 'n buitelandse geldeenheid aangedui word, 'n markverwante rentekoers;".

Wysiging van artikel 1 van Wet 91 van 1964, soos gewysig deur artikel 1 van Wet 95 van 1965, artikel 1 van Wet 57 van 1966, artikel 1 van Wet 105 van 1969, artikel 1 van Wet 98 van 1970, artikel 1 van Wet 71 van 1975, artikel 1 van Wet 112 van 1977, artikel 1 van Wet 110 van 1979, artikel 1 en 15 van Wet 98 van 1980, artikel 1 van Wet 89 van 1984, artikel 1 van Wet 84 van 1987, artikel 1 van Wet 68 van 1989, artikel 1 van Wet 59 van 1990, artikel 1 van Wet 19 van 1994, artikel 57 van Wet 30 van 1998 en artikel 1 of Wet 59 van 1999

60. (1) Artikel 1 van die Doeane- en Aksynswet, 1964, word hierby gewysig deur die omskrywing van "hierdie Wet" in subartikel (1) deur die volgende omskrywing te vervang:

" 'hierdie Wet' ook enige proklamasie, goewermentskennisgewing, regulasie of reël wat daarkragtens uitgevaardig of gemaak is of enige ooreenkoms wat daarkragtens aangegaan is of geag word daarkragtens aangegaan te gewees het, enige ooreenkoms in artikel 49 beoog, of enige belastingvoorstel wat in die Nasionale Vergadering ter tafel gelê word;".

(2) Subartikel (1) word geag op 24 November 1999 in werking te getree het.

Invoeging van artikel 46A in Wet 91 van 1964

61. (1) Die volgende artikel word hierby ingevoeg na artikel 46 van die Doeane- en Aksynswet, 1964:

25 "Nie-wederkerige voorkeurtariefbehandeling van goedere uit die Republiek uitgevoer

46A. (1) In hierdie artikel, tensy uit die samehang anders blyk—
beteken 'ontduiking' ook enige ontduiking van enige bepaling van 'n verordening deur—

(a) oorlaaiing, omsturing, vals verklaring betreffende die land of plek van oorsprong of vervalsing van amptelike dokumente; of

(b) die maak van enige vals verklaring betreffende veselinhoud, hoeveelhede, beskrywing of indeling van goedere,

soos bepaal in artikel 5 van die Ooreenkoms oor Tekstiele en Klerasie ingesluit by Anneks 1A van die Ooreenkoms geskep deur die Wêreldhandelsorganisasie en deur die Kommissaris soos in subartikel (2) beoog, gehou word;

het 'oorlaaiing' die betekenis wat daaraan geheg is in artikel 113(b)(4) van die 'Africa Growth and Opportunity Act' wat in die 'Trade and Development Act of 2000 of the United States of America' vervat is en deur die Kommissaris soos in subartikel (2) beoog, gehou word;

beteken 'verordening' ook die bepalings van enige wetgewende handeling deur 'n regering van 'n land wat vir voorkeurtariefbehandeling voorsiening maak, enige administratiewe vereistes van die doeane-administrasie van sodanige land, enige wetgewing of ooreenkoms by verwysing in sodanige bepalings ingelyf en enige wysiging aan sodanige bepalings, vereistes, wetgewing of ooreenkoms wat deur die Kommissaris soos in subartikel (2) beoog, gehou word;

beteken 'voorkeurtariefbehandeling' die nie-wederkerige voorkeur-tariefbehandeling van goedere uit die Republiek uitgevoer, wat by invoer in enige land ingevolge en by voldoening aan die vereistes van enige verordening van die regering van sodanige land, toegelaat word.

(2) (a) Die Kommissaris moet—

(i) twee eksemplare hou van enige verordening en enige wysiging daaraan wat van die doeane-administrasie van die land wat tarief-voorkeurbehandeling toelaat, ontvang is;

- (ii) record the date advised by such administration on which any such enactment or amendment becomes or became effective in such country for the purposes of such treatment; and
- (iii) effect any such amendment to the enactment.
- (b) Any enactment or amendment thereto shall for the purposes of this Act be effective from the date so recorded. 5
- (c) Wherever in any legal proceedings any question arises as to the contents of any enactment or as to the date upon which any enactment or any amendment thereto became effective, a copy of the enactment or the enactment as amended and any date so recorded shall be accepted as *prima facie* proof of the contents thereof and of the effective date of the enactment or the amendment thereto. 10
- (d) Any such copy kept by the Commissioner shall be accessible to any interested person during official working hours.
- (e) The Commissioner may publish any enactment or part thereof or amendment thereto in the *Gazette*. 15
- (3) (a) Notwithstanding anything to the contrary in this Act contained, the application of any provision of this Act relating to any importer, producer, manufacturer, exporter, licensee or other principal or any agent or the importation or exportation of goods, the preferential tariff treatment of goods, goods obtained, produced or manufactured, due entry or any other provision or customs procedure or any power, duty or function in connection therewith, shall, unless otherwise provided in, or in any rule made in terms of, this section for the purposes of giving effect to any enactment, be subject to compliance with the provisions of such enactment or any part or provision thereof, as the case may be. 20 25
- (b) The provisions of section 4(12A) shall apply *mutatis mutandis* in respect of any goods exported from the Republic for the purpose of benefiting from the preferential tariff treatment contemplated in an enactment and any person referred to in section 4(12A)(a) shall be deemed to have agreed to comply with the requirements governing the allowing of such treatment by the government of the country to which the goods are exported, including requirements relating to— 30
- (i) maintaining complete books, accounts and other documents in respect of— 35
- (aa) the production or manufacture and any materials used in the production or manufacture of the goods exported;
- (bb) the purchase of, cost of, value of and payment for the goods exported and all materials, including indirect materials used in the production or manufacture of the goods exported; 40
- (cc) proof of the originating status of such goods in accordance with the relevant rules of origin; and
- (dd) the exportation of the goods;
- (ii) permitting and assisting customs officers of the country of importation to investigate— 45
- (aa) such books, accounts and other documents; and
- (bb) any circumvention contemplated in subsection (8).
- (4) In administering the provisions of any enactment or any part or provision thereof and the application of any provisions of this Act to give effect thereto the Commissioner may, notwithstanding anything to the contrary in this Act contained— 50
- (a) decide on or determine any matter or perform any duty or function or impose any condition in connection with the provisions so administered, including any decision or determination or the performance of any duty or function or the imposing of any condition in respect of— 55
- (i) any heading in Part 1 or any item of any other Part of Schedule

- (ii) die datum soos deur sodanige administrasie meegedeel waarop enige sodanige verordening of wysiging in sodanige land in werking tree of in werking getree het vir die doeleindes van sodanige behandeling, en
(iii) enige sodanige wysiging aan die verordening aanbring.

(b) Enige verordening of wysiging daaraan tree vir doeleindes van hierdie Wet in werking vanaf die datum aldus aangeteken.

(c) Wanneer by 'n regsgeding 'n vraag ontstaan aangaande die inhoud van enige verordening of aangaande die datum waarop enige verordening of wysiging daaraan in werking getree het, word 'n eksemplaar van die verordening of die verordening soos gewysig en enige datum aldus aangeteken as *prima facie*-bewys van die inhoud daarvan en van die datum van inwerkingtreding van die verordening of die wysiging daaraan, aanvaar.

(d) Enige sodanige eksemplaar deur die Kommissaris gehou, moet vir enige belanghebbende persoon gedurende amptelike werksure toeganklik wees.

(e) Die Kommissaris kan enige verordening of deel daarvan of wysiging daaraan in die *Staatskoerant* afkondig.

(3) (a) Ondanks andersluidende bepalings van hierdie Wet, is die toepassing van enige bepaling van hierdie Wet met betrekking tot enige invoerder, produsent, vervaardiger, uitvoerder, gelisensiëerde of ander prinsipaal of enige agent of die invoer of uitvoer van goedere, die voorkeurtariefbehandeling van goedere, goedere verkry, geproduseer of vervaardig, behoorlike klaring of enige ander bepaling of doeaneprocedure of enige bevoegdheid, plig of werksaamheid in verband daarmee, vir die doeleindes om aan enige verordening gevolg te gee, tensy andersins bepaal in hierdie artikel of in enige reël ingevolge daarvan uitgevaardig, onderhewig aan voldoening aan die bepalings van sodanige verordening of enige deel of bepaling daarvan, na gelang van die geval.

(b) Die bepalings van artikel 4(12A) is *mutatis mutandis* van toepassing ten opsigte van enige goedere vanaf die Republiek uitgevoer met die doel om voordeel uit die voorkeurtariefbehandeling in 'n verordening beoog, te verkry en enige persoon in artikel 4(12A)(a) bedoel, word geag in te gestem het om te voldoen aan die vereistes, wat die toelating van sodanige voorkeurtariefbehandeling deur die regering van die land waarheen die goedere uitgevoer word, beheers, met inbegrip van vereistes wat betrekking het op—

(i) die byhou van volledige boeke, rekeninge en ander dokumente ten opsigte van—

(aa) die produksie of vervaardiging en enige materiale wat in die produksie of vervaardiging van die goedere uitgevoer, gebruik word;

(bb) die aankoop van, koste van, waarde van en betaling vir die goedere uitgevoer en alle materiale, met inbegrip van indirekte materiale wat in die produksie of vervaardiging van die goedere uitgevoer, gebruik word;

(cc) bewys van die oorsprongstatus van sodanige goedere in ooreenkomstig die betrokke reëls van oorsprong; en

(dd) die uitvoer van die goedere;

(ii) toestemming en bystand aan doeanebeamptes van die land van invoer om ondersoek in te stel na—

(aa) sodanige boeke, rekeninge en ander dokumente; en

(bb) enige ontduiking in subartikel (8) beoog.

(4) By die administrasie van die bepalings van enige verordening of enige deel of bepaling daarvan en die toepassing van enige bepaling in hierdie Wet om daaraan gevolg te gee, kan die Kommissaris, ondanks enige andersluidende bepalings in hierdie Wet vervat—

(a) oor enige aangeleentheid besluit of dit bepaal of enige plig of werksaamheid verrig of enige voorwaarde oplê in verband met die bepalings aldus geadministreer, met inbegrip van enige besluit of bepaling of die verrigting van enige plig of werksaamheid of die oplegging van enige voorwaarde ten opsigte van—

(i) enige pos in Deel 1 of enige item of enige ander Deel van Bylae

- No. 1 applicable to any goods imported or produced, obtained, manufactured, exported or used in the production or manufacture of any goods, or the customs value of any such imported goods;
- (ii) any action or procedure concerning—
- (aa) the origin or proof of origin of goods imported or exported; 5
- (bb) the importation or production or manufacture or exportation of goods and the ex-factory price of goods or the cost or value of materials;
- (cc) tariff quotas;
- (dd) any circumvention and any action taken in respect thereof; 10
- (ee) rendering mutual and technical assistance in respect of any customs co-operation, including any investigation, as required by any enactment, by any officer of the customs administration of the country allowing such preferential tariff treatment;
- (ff) the keeping and the production of books, accounts and other documents and the furnishing of information in respect of any matter to which this section relates; 15
- (gg) requirements in connection with any agency where any person is represented in the exportation of any goods involving proof of origin; 20
- (hh) furnishing of a certificate of origin including in respect of multiple shipments of identical goods over a specified period;
- (ii) any document relating to origin issued retrospectively;
- (jj) the issue of or refusal to issue a visa;
- (iii) any other power, duty or function or procedure provided in any enactment or part or provision thereof contemplated in subsection (1) which requires either expressly or by implication customs administrative action in respect of goods produced, manufactured or exported for the purposes of such enactment; 25
- (b) make rules— 30
- (i) concerning any matter referred to in paragraph (a);
- (ii) where reference is made to customs or competent authorities, to domestic, national or customs law or any like reference or any other matter which requires either expressly or by implication application of customs legislation; 35
- (iii) in connection with the entry of goods imported or exported and documents to be produced in support thereof;
- (iv) prescribing forms or procedures or specifying any condition or provision of this Act to be complied with for the purposes of such enactment; 40
- (v) to delegate or assign subject to section 3(2), any power, duty or function to any officer or other person;
- (vi) regarding any other matter which may be reasonably necessary for the purposes of administering such provisions;
- (c) subject to such conditions as the Commissioner may in each case impose, enter into any agreement with any person, with the concurrence of any producer, manufacturer or exporter, as the case may be, to perform any function or provide any service for the purposes of establishing and reporting on the origin of goods or issuance of any proof of origin. 50
- (5) Whenever any report is required by the importing country from time to time in terms of any enactment of such country in connection with the producer, manufacturer or exporter or any other person concerned with the export of goods for the purposes of preferential tariff treatment or the production, manufacture or export of such goods and the furnishing of such 55

No. 1 van toepassing op enige goedere ingevoer of geproduseer, verkry, vervaardig, uitgevoer of gebruik in die produksie of vervaardiging van enige goedere, of die doeane waarde van enige sodanige ingevoerde goedere;

5 (ii) enige handeling of prosedure betreffende—

(aa) die oorsprong of bewys van oorsprong van goedere ingevoer of uitgevoer;

10 (bb) die invoer of produksie of vervaardiging of uitvoer van goedere en die eks-fabriekprys van goedere of die koste of waarde van materiale;

(cc) tariefkwotas;

(dd) enige ontduiing en enige stappe ten opsigte daarvan gedoen;

15 (ee) lewering van onderlinge en tegniese bystand ten opsigte van enige doeanesamewerking, met inbegrip van enige ondersoek soos vereis deur enige verordening, deur enige beampte van die doeaneadministrasie van die land wat sodanige voorkeur-tariefbehandeling toelaat;

(ff) die hou en voorlegging van boeke, rekeninge en ander dokumente en die verskaffing van inligting ten opsigte van enige aangeleentheid waarop hierdie artikel betrekking het;

20 (gg) vereistes in verband met enige agentskap waar enige persoon verteenwoordig word by die uitvoer van goedere waarby bewys van oorsprong betrokke is;

25 (hh) verskaffing van 'n sertifikaat van oorsprong met inbegrip van ten opsigte van veelvoudbesendings van identiese goedere oor 'n spesifieke tydperk;

(ii) enige dokument betreffende oorsprong terugwerkend uitgereik;

(jj) die uitreiking van 'n visa of weiering om dit uit te reik;

30 (iii) enige ander bevoegdheid, plig of werksaamheid of prosedure bepaal in enige verordening of deel of bepaling daarvan wat óf uitdruklik óf by implikasie doeane-administratiewe handeling vereis ten opsigte van enige goedere wat vir die doeleindes van sodanige verordening geproduseer, vervaardig of uitgevoer is;

35 (b) reëls uitvaardig—

(i) betreffende enige aangeleentheid in paragraaf (a) bedoel;

40 (ii) waar verwys word na doeane- of bevoegde owerhede, na binne-landse, nasionale of doeane wetgewing of enige soortgelyke verwysing of enige ander aangeleentheid wat óf uitdruklik óf by implikasie toepassing van doeane wetgewing vereis;

(iii) in verband met die klaring van goedere ingevoer of uitgevoer en dokumente wat by ondersteuning daarvan voorgelê moet word;

45 (iv) wat vorms of prosedures voorskryf of enige voorwaarde of bepaling van hierdie Wet vermeld waaraan vir die doeleindes van sodanige verordening voldoen moet word;

(v) om, behoudens artikel 3(2), enige bevoegdheid, plig of werksaamheid aan enige beampte of ander persoon te deleger of op te dra;

50 (vi) betreffende enige ander aangeleentheid wat redelikerwys nodig mag wees vir die doeleindes om sodanige bepalings te administreer;

55 (c) behoudens die voorwaardes wat die Kommissaris in elke geval oplê, enige ooreenkoms aangaan met enige persoon, met die instemming van enige produsent, vervaardiger of uitvoerder, na gelang van die geval, om enige werksaamheid te verrig of enige diens te lewer vir die doeleindes om die oorsprong van goedere of die uitreiking van enige bewys van oorsprong vas te stel en daarvoor verslag te doen.

60 (5) Wanneer enige verslag deur die invoerland ingevolge enige verordening van sodanige land van tyd tot tyd vereis word in verband met die produsent, vervaardiger of uitvoerder of enige ander persoon betrokke by die uitvoer van goedere vir die doeleindes van voorkeurtariefbehandeling of die produksie, vervaardiging of uitvoer van sodanige goedere en die verskaffing van sodanige verslag deur die Minister gemagtig is, moet die

report is authorised by the Minister, the Commissioner shall, notwithstanding anything to the contrary in this Act or any other law contained, furnish to the customs administration of such country such report containing such particulars as may be required in terms of any enactment kept by the Commissioner as contemplated in subsection (2).

(6) (a) (i) Every producer, manufacturer or exporter of goods to which this section relates, shall be registered with the Commissioner for the purposes of this section.

(ii) No such goods may, from a date to be specified by rule, be exported unless the producer, manufacturer or exporter thereof is registered.

(b) Application for such registration shall be made on the form prescribed by the Commissioner by rule and the applicant shall comply with all the requirements specified therein and any additional requirements that may be prescribed in any other rule and as may be determined by the Commissioner in each case.

(c) Any registered producer, manufacturer or exporter of such goods shall comply with such requirements as the Commissioner may prescribe by rule and determine in each case.

(d) The Commissioner may—

(i) refuse to register any applicant and for that purpose the provisions of section 60(2) shall apply *mutatis mutandis* to such application for registration;

(ii) cancel the registration of any producer, manufacturer or exporter of such goods—

(aa) if any books, accounts or other documents are not kept or produced as required by or in terms of this Act; or

(bb) who is convicted of an offence or where forfeiture of any amount deposited or secured by such person is ordered by way of penalty under the provisions of section 91 in respect of any circumvention or contravention contemplated in subsection (8);

(iii) subject to any prohibition imposed for the purposes of subsection 8(b), reregister any person at any time after such cancellation on such conditions as the Commissioner may impose in each case.

(7) No goods shall be exported with the object of obtaining any benefit of preferential tariff treatment in terms of an enactment unless the goods comply with the provisions of origin or any other provision of such enactment or of this Act governing the acquisition of origin or any other requirement which is to be complied with for the purposes of giving effect to such provisions.

(8) (a) Any person who, in connection with any goods produced or manufactured or exported for the purposes of obtaining any preferential tariff treatment therefor in the country of importation in terms of any enactment—

(i) makes any false statement or makes use of any declaration or document containing such statement or performs any other act for the purposes of circumvention of any provision of such enactment relating to the origin, production, manufacture or exportation of such goods;

(ii) contravenes or fails to comply with any other provision of this Act; or

(iii) attempts to circumvent or contravene any provision contemplated in subparagraphs (i) and (ii), as the case may be,

shall be guilty of an offence and liable on conviction to a fine not exceeding R100 000 or three times the export value of the goods in respect of which the offence was committed, whichever is the greater, or to imprisonment for a period not exceeding 10 years, or to both such fine and such imprisonment and the goods in respect of which the offence was committed shall be liable to forfeiture in accordance with this Act.

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Kommissaris, ondanks andersluidende bepalings van hierdie Wet of enige ander wet, aan die doeane-administrasie van sodanige land sodanige verslag verskaf wat die besonderhede bevat wat ingevolge enige verordening in enige eksemplaar wat deur die Kommissaris soos beoog in subartikel (2) gehou word, vereis word.

(6)(a)(i) Elke produsent, vervaardiger of uitvoerder van goedere waarop hierdie artikel betrekking het, moet, by die Kommissaris vir die doeleindes van hierdie artikel geregistreer wees.

(ii) Geen sodanige goedere mag, vanaf 'n datum by reël vermeld, uitgevoer word tensy die produsent, vervaardiger of uitvoerder daarvan geregistreer is nie.

(b) Aansoek om sodanige registrasie word gedoen op die vorm deur die Kommissaris by reël voorgeskryf en die aansoeker moet voldoen aan al die vereistes daarin vermeld en enige bykomende vereistes wat in enige ander reël voorgeskryf word en wat deur die Kommissaris in elke geval bepaal word.

(c) Enige geregistreerde produsent, vervaardiger of uitvoerder van sodanige goedere moet aan die vereistes voldoen wat die Kommissaris by reël voorskryf en in elke geval bepaal.

(d) Die Kommissaris kan—

(i) weier om enige aansoeker te registreer en vir daardie doel is die bepalings van artikel 60(2) *mutatis mutandis* op sodanige aansoek om registrasie van toepassing;

(ii) die registrasie van enige produsent, vervaardiger of uitvoerder van sodanige goedere kanselleer—

(aa) indien enige boeke, rekeninge of ander dokumente nie gehou word of voorgelê word soos deur hierdie Wet vereis word nie; of

(bb) wat skuldig bevind is aan 'n misdryf of waar verbeuring van enige bedrag gestort of gesekureer deur sodanige persoon by wyse van pene kragtens die bepalings van artikel 91 beveel is ten opsigte van enige ontduiking of oortreding in subartikel (8) beoog;

(iii) behoudens enige verbod vir die doeleindes van subartikel (8)(b), enige persoon te eniger tyd na sodanige kansellering op die voorwaardes wat die Kommissaris in elke geval oplê, herregistreer.

(7) Geen goedere mag uitgevoer word met die doel om enige voorkeurtariefbehandeling ingevolge 'n verordening te ontvang nie tensy die goedere voldoen aan die bepalings van oorsprong of enige ander bepaling van sodanige verordening of van hierdie Wet wat die verkryging van oorsprong of enige ander vereiste wat nagekom moet word vir die doeleindes om gevolg aan sodanige vereistes te gee, beheers.

(8) (a) Iemand wat, in verband met enige goedere geproduseer of vervaardig of uitgevoer vir die doeleindes om enige voorkeurtariefbehandeling daarvoor in die land van invoer ingevolge enige verordening te verkry—

(i) 'n vals verklaring maak of gebruik maak van enige deklarasie of dokument wat sodanige verklaring bevat of enige ander handeling verrig vir die doeleindes van ontduiking van enige bepaling van sodanige verordening betreffende die oorsprong, produksie, vervaardiging of uitvoer van sodanige goedere;

(ii) enige ander bepaling van hierdie Wet oortree of versuim om daaraan te voldoen; of

(iii) poog om enige bepaling beoog in subparagrafe (i) en (ii), na gelang van die geval, te ontduik of te oortree,

is aan 'n misdryf skuldig en by skuldigbevinding strafbaar met 'n boete van hoogstens R100 000 of drie maal die uitvoerwaarde van die goedere ten opsigte waarvan die misdryf gepleeg is, na gelang van watter die hoogste is, of met gevangenisstraf vir 'n tydperk van hoogstens 10 jaar, of met sowel sodanige boete as sodanige gevangenisstraf en die goedere ten opsigte waarvan die misdryf gepleeg is, is ooreenkomstig hierdie Wet aan verbeuring onderhewig.

(b) The Commissioner may on conviction of any exporter or where forfeiture of any amount deposited or secured by such exporter is ordered by way of penalty under the provisions of section 91 in respect of any circumvention contemplated in paragraph (a) prohibit, for a period not exceeding 5 years from the date of such conviction or order of forfeiture for any such circumvention involving transshipment, such exporter, any successor of such exporter and any other entity, owned or operated by the principal of the exporter, from exporting any goods for the purposes of obtaining any benefit in terms of any enactment. 5

(9) The Commissioner may make any rules under this section with retrospective effect as from 1 October 2000 or any date thereafter.”. 10

(2) Subsection (1) shall, except in so far as any offence is created by section 46A(8) be deemed to have come into operation on 1 October 2000.

Amendment of section 80 of Act 91 of 1964, as amended by section 10 of Act 85 of 1968, section 27 of Act 105 of 1969, section 28 of Act 112 of 1977, section 22 of Act 86 of 1982, section 7 of Act 89 of 1984, section 12 of Act 52 of 1986, section 27 of Act 84 of 1987, section 32 of Act 59 of 1990, section 8 of Act 105 of 1992, section 8 of Act 98 of 1993, section 68 of Act 30 of 1998 and section 63 of Act 53 of 1999 15

62. Section 80 of the Customs and Excise Act, 1964, is hereby amended by the substitution for paragraph (q) of subsection (1) of the following paragraph: 20

“(q) contravenes or fails to comply with any provision of any agreement contemplated in section 49 or 51;”;

Amendment of item 15 of Schedule 1 to Act 77 of 1968, as substituted by section 13 of Act 89 of 1972 and amended by section 16 of Act 66 van 1973, section 21 of Act 88 of 1974, section 3 of Act 104 of 1976, section 20 of Act 114 of 1977, section 8 of Act 95 of 1978, section 8 of Act 102 of 1979, section 21 of Act 106 of 1980, section 9 of Act 99 of 1981, section 7 of Act 87 of 1982, section 14 of Act 92 of 1983, section 11 of Act 118 of 1984, section 11 of Act 81 of 1985, section 5 of Act 71 of 1986, section 13 of Act 108 of 1986, section 11 of Act 86 of 1987, section 33 of Act 87 of 1988, section 14 of Act 69 of 1989, section 9 of Act 136 of 1991, section 8 of Act 136 of 1992, section 17 of Act 97 of 1993, section 17 of Act 140 of 1993, section 8 of Act 20 of 1994, section 86 of Act 30 of 1998, section 79 of Act 53 of 1999 and section 72 of Act 30 of 2000 25 30

63. (1) Item 15 of Schedule 1 to the Stamp Duties Act, 1968, is hereby amended by the substitution for subparagraph (i) of paragraph (hA) under the heading “*Exemptions from the duty under paragraph (3)*” of the following subparagraph: 35

(i) any pension fund established by law to any other pension fund established by law or to any other pension fund which is registered under the Pension Funds Act, 1956; or”.

(2) Subsection (1) shall be deemed to have come into operation on 1 March 2000. 40

Amendment of section 1 of Act 89 of 1991, as amended by section 21 of Act 136 of 1991, paragraph 1 of Government Notice 2695 of 8 November 1991, section 12 of Act 136 of 1992, section 22 of Act 97 of 1993, section 9 of Act 20 of 1994, section 18 of Act 37 of 1996, section 23 of Act 27 of 1997, section 81 of Act 53 of 1999 and section 76 of Act 30 of 2000 45

64. Section 1 of the Value-Added Tax Act, 1991, is hereby amended—

(a) by the addition of the following proviso to the definition of “local authority”:
 “Provided that where any local authority has been disestablished and superseded by a new local authority in terms of the Local Government: Municipal Structures Act, 1998 (Act No. 117 of 1998), such disestablished local authority and such new local authority shall for the purposes of this Act be deemed to be and to have been one and the same local authority;” and 50

(b) by the substitution for the words preceding the proviso to the definition of “resident of the Republic” of the following words: 55
 “‘resident of the Republic’ means a [person (other than a company) who is ordinarily resident in the Republic or a company which is a

(b) Die Kommissaris kan by skuldigbevinding van enige uitvoerder of waar verbeuring van enige bedrag gestort of gesekureer deur sodanige uitvoerder by wyse van pene kragtens die bepalings van artikel 91 beveel is ten opsigte van enige ontduiking in paragraaf (a) beoog, enige
5 uitvoerder, enige regsopvolger van sodanige uitvoerder en enige ander entiteit, besit of bedryf deur die prinsipaal van die uitvoerder vir 'n tydperk van hoogstens 5 jaar vanaf die datum van sodanige skuldigbevinding of verbeuringsbevel vir enige sodanige ontduiking waarby oorlaaiing betrokke is, verbied om enige goedere vir die doeleindes om enige
10 voordeel ingevolge 'n verordening te verkry, uit te voer.

(9) Kragtens hierdie artikel kan die Kommissaris enige reëls terugwerkend uitvaardig met ingang van 1 Oktober 2000 of enige datum daarna.”

(2) Subartikel (1) word, behalwe vir sover enige misdryf deur artikel 46A(8) geskep word, geag op 1 Oktober 2000 in werking te getree het.

15 Wysiging van artikel 80 van Wet 91 van 1964, soos gewysig deur artikel 10 van Wet 85 van 1968, artikel 27 van Wet 105 van 1969, artikel 28 van Wet 112 van 1977, artikel 22 van Wet 86 van 1982, artikel 7 van Wet 89 van 1984, artikel 12 van Wet 52 van 1986, artikel 27 van Wet 84 van 1987, artikel 32 van Wet 59 van 1990, artikel 8 van Wet 105 van 1992, artikel 8 van Wet 98 van 1993, artikel 68 van Wet
20 30 van 1998 en artikel 63 van Wet 53 van 1999

62. Artikel 80 van die Doeane- en Aksynswet, 1964, word hier gewysig deur paragraaf (q) van subartikel (1) van die Engelse teks deur die volgende paragraaf te vervang:

25 “(q) contravenes or fails to comply with any provision of any agreement contemplated in section 49 or 51;”.

Wysiging van item 15 van Bylae 1 by Wet 77 van 1968, soos vervang deur artikel 13 van Wet 89 van 1972 en gewysig deur artikel 16 van Wet 66 van 1973, artikel 21 van Wet 88 van 1974, artikel 3 van Wet 104 van 1976, artikel 20 van Wet 114 van 1977, artikel 8 van Wet 95 van 1978, artikel 8 van Wet 102 van 1979, artikel
30 21 van Wet 106 van 1980, artikel 9 van Wet 99 van 1981, artikel 7 van Wet 87 van 1982, artikel 14 van Wet 92 van 1983, artikel 11 van Wet 118 van 1984, artikel 11 van Wet 81 van 1985, artikel 5 van Wet 71 van 1986, artikel 13 van Wet 108 van 1986, artikel 11 van Wet 86 van 1987, artikel 33 van Wet 87 van 1988, artikel 14 van Wet 69 van 1989, artikel 9 van Wet 136 van 1991, artikel 8 van Wet 136 van
35 1992, artikel 17 van Wet 97 van 1993, artikel 17 van Wet 140 van 1993, artikel 8 van Wet 20 van 1994, artikel 86 van Wet 30 van 1998, artikel 79 van Wet 53 van 1999 en artikel 72 van Wet 30 van 2000

63. (1) Item 15 van Bylae 1 by die Wet op Seëlregte, 1968, word hierby gewysig deur subparagraaf (i) van paragraaf (hA) onder die opskrif “*Vrystellings van die seëlreg*
40 *ingevolge paragraaf (3)*” deur die volgende subparagraaf te vervang:

“(i) 'n pensioenfonds by wet ingestel aan 'n ander pensioenfonds wat by wet ingestel is of aan 'n ander pensioenfonds wat ingevolge die Wet op Pensioenfondse, 1956, geregistreer is; of”.

(2) Subartikel (1) word geag op 1 Maart 2000 in werking te getree het.

45 Wysiging van artikel 1 van Wet 89 van 1991, soos gewysig deur artikel 21 van Wet 136 van 1991, paragraaf 1 van Goewermentskennisgewing 2695 van 8 November 1991, artikel 12 van Wet 136 van 1992, artikel 22 van Wet 97 van 1993, artikel 9 van Wet 20 van 1994, artikel 18 van Wet 37 van 1996, artikel 23 van Wet 27 van 1997, artikel 81 van Wet 53 van 1999 en artikel 76 van Wet 30 van 2000

50 64. Artikel 1 van die Wet op Belasting op Toegevoegde Waarde, 1991, word hierby gewysig—

(a) deur die woorde wat die voorbehoudsbepaling by die omskrywing van “inwoner van die Republiek” voorafgaan deur die volgende woorde te vervang:

55 “inwoner van die Republiek” ’n [persoon (behalwe ’n maatskappy) wat gewoonlik in die Republiek woonagtig is of ’n maatskappy wat

domestic company] resident as defined in section 1 of the Income Tax Act.”.

Amendment of section 33A of Act 89 of 1991, as inserted by section 36 of Act 136 of 1991

65. Section 33A of the Value-Added Tax Act, 1991, is hereby amended by the substitution for paragraph (a) of subsection (1) of the following paragraph: 5

“(a) the appeal is lodged against an assessment of the Commissioner, and the amount of the tax in dispute does not exceed **[R30 000 (or any other)]** such amount which the Minister **[of Finance]** may from time to time fix by notice in the *Gazette*; or”.

Amendment of section 1 of Act 38 of 1996, as amended by section 85 of Act 30 of 2000

66. Section 1 of the Tax on Retirement Funds Act, 1996, is hereby amended—

(a) by the substitution for the definition of “guaranteed annuity” in subsection (1) of the following definition: 15

“‘guaranteed annuity’ means an annuity contemplated in section **[29(4)(a)(iii)]** 29A(4)(a)(iii) of the Income Tax Act, where such annuity is contractually subject to a guaranteed increase at a fixed rate, which rate may be zero, over the full term of the annuity, excluding any annuity which may participate in any bonus distributions by the insurer;”; and 20

(b) by the substitution for the definition of “untaxed policyholder fund” of the following definition:

“‘untaxed policyholder fund’ means a fund contemplated in section **[29(4)(a)]** 29A(4)(a) of the Income Tax Act.”.

Amendment of section 3 of Act 38 of 1996, as amended by section 86 of Act 30 of 2000

67. (1) Section 3 of the Tax on Retirement Funds Act, 1996, is hereby amended by the substitution for paragraphs (b) and (c) of the following paragraphs:

“(b) ‘T’ represents the gross amount of any interest received by or accrued to such fund during such tax period **[from a source within the Republic or deemed to be within the Republic as contemplated in sections 9 and 9C of the Income Tax Act];** 30

(c) ‘R’ represents the gross amount of any rental income received by or accrued to such fund during such tax period **[from a source within the Republic or deemed to be within the Republic as contemplated in the last-mentioned sections 9 and 9C];** and”.

(2) Subsection (1) shall come into operation on 1 March 2001.

Amendment of section 4 of Act 38 of 1996, as amended by section 32 of Act 46 of 1996

68. Section 4 of the Tax on Retirement Funds Act, 1996, is hereby amended—

(a) by the substitution for paragraph (c) of the following paragraph:

“(c) ‘B’ represents the portion of symbol ‘A’ attributable to assets referred to in section **[29(4)(a)(i)]** 29A(4)(a)(i) of the Income Tax Act as allocated to retirement funds in terms of section 9 during such tax period;”; 45

'n binnelandse maatskappy is] inwoner soos in artikel 1 van die Inkomstebelastingwet omskryf.”; en

- (b) deur die volgende voorbehoudsbepaling by die omskrywing van “plaaslike bestuur” te voeg:

5 “Met dien verstande dat waar enige plaaslike bestuur ingevolge die Wet op Plaaslike Regering: Munisipale Strukture, 1998 (Wet No. 117 van 1998), afgeskaf en deur ’n nuwe plaaslike bestuur vervang is, bedoelde afgeskafte plaaslike bestuur en bedoelde nuwe plaaslike bestuur by die toepassing van hierdie Wet geag word een en dieselfde plaaslike bestuur te wees en te gewees het;”.

Wysiging van artikel 33A van Wet 89 van 1991, soos ingevoeg deur artikel 36 van Wet 136 van 1991

65. Artikel 33A van die Wet op Belasting op Toegevoegde Waarde, 1991, word hierby gewysig deur paragraaf (a) van subartikel (1) deur die volgende paragraaf te

15 vervang:

“(a) die appèl aangeteken word teen ’n aanslag van die Kommissaris, en die bedrag van die belasting in geskil nie [R30 000 (of ’n ander) die bedrag wat die Minister [van Finansies] van tyd tot tyd by kennisgewing in die Staatskoerant bepaal, oorskry nie; of”.

20 **Wysiging van artikel 1 van Wet 38 van 1996, soos gewysig deur artikel 85 van Wet 30 van 2000**

66. Artikel 1 van die Wet op Belasting op Uittreefondse, 1996, word hierby gewysig—

- 25 (a) deur die omskrywing van “gewaarborgde annuïteit” in subartikel (1) deur die volgende omskrywing te vervang:

“‘gewaarborgde annuïteit’ ’n annuïteit beoog in artikel [29(4)(a)(iii)] 29A(4)(a)(iii) van die Inkomstebelastingwet, waar bedoelde annuïteit kontrakteel onderworpe is aan ’n gewaarborgde verhoging teen ’n vaste koers, welke koers nul mag wees, gedurende die volle termyn van 30 die annuïteit, uitgesonderd ’n annuïteit wat in enige bonusuitkerings van die versekeraar kan deel;”; en

- (b) deur die omskrywing van “onbelaste polishouerfonds” deur die volgende omskrywing te vervang:

35 “‘onbelaste polishouerfonds’ ’n fonds beoog in artikel [29(4)(a)] 29A(4)(a) van die Inkomstebelastingwet;”.

Wysiging van artikel 3 van Wet 38 van 1996, soos gewysig deur artikel 86 van Wet 30 van 2000

67. (1) Artikel 3 van die Wet op Belasting op Uittreefondse, 1996, word hierby gewysig deur paragrawe (b) en (c) deur die volgende paragrawe te vervang:

- 40 “(b) ‘T’ die bruto bedrag voorstel van enige rente ontvang deur of toegeval aan bedoelde fonds gedurende bedoelde belastingtydperk [uit ’n bron in die Republiek of geag in die Republiek te wees soos beoog in artikels 9 en 9C van die Inkomstebelastingwet];

- 45 (c) ‘R’ die bruto bedrag voorstel van enige huurinkomste ontvang deur of toegeval aan bedoelde fonds gedurende bedoelde belastingtydperk [uit ’n bron in die Republiek of geag in die Republiek te wees soos beoog in laasgenoemde artikels 9 en 9C]; en”.

(2) Subartikel (1) tree in werking op 1 Maart 2001.

50 **Wysiging van artikel 4 van Wet 38 van 1996, soos gewysig deur artikel 32 van Wet 46 van 1996**

68. Artikel 4 van die Wet op Belasting op Uittreefondse, 1996, word hierby gewysig—

- (a) deur paragraaf (c) deur die volgende paragraaf te vervang:

55 “(c) ‘B’ die gedeelte van simbool ‘A’ voorstel wat toeskryfbaar is aan bates bedoel in artikel [29(4)(a)(i)] 29A(4)(a)(i) van die Inkomstebelastingwet soos toegedeel aan uittreefondse ingevolge artikel 9 gedurende bedoelde belastingtydperk;”;

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- (b) by the substitution for subparagraphs (i) and (ii) of paragraph (d) of the following subparagraphs:
- “(i) representing business of such untaxed policyholder fund as contemplated in section [29(4)(a)(iii)] 29A(4)(a)(iii) of the Income Tax Act (excluding assets contemplated in paragraph (c));
 - (ii) equal to the [statutory] actuarial value of liabilities under guaranteed annuities; and”;
- (c) by the substitution for subparagraph (i) of paragraph (f) of the following subparagraph:
- (i) section [29(4)(a)(ii)] 29A(4)(a)(ii) of the Income Tax Act (excluding assets in respect of amounts allocated to retirement funds contemplated in paragraph (c) and assets representing guaranteed annuities contemplated in paragraph (d)); and”;
- (d) by the substitution for the words preceding item (aa) of subparagraph (ii) of paragraph (f) of the following words:
- “section [29(4)(a)(iii)] 29A(4)(a)(iii) of the Income Tax Act (excluding assets—”.

Amendment of section 16 of Act 38 of 1996, as amended by section 59 of Act 27 of 1997

69. (1) Section 16 of the Tax on Retirement Funds Act, 1996, is hereby amended—
- (a) by the substitution for paragraph (k) of the following paragraph:

“(k) income of controlled foreign entities and [investment] income arising from any donation, settlement or other disposition,”; and
 - (b) by the substitution for paragraph (viii) of the following paragraph:

“(viii) in respect of the inclusion of any [investment income] amount in the income of any fund.”.
- (2) Subsection (1) shall come into operation on 1 March 2001.

Amendment of section 13 of Act 9 of 1999, as amended by section 93 of Act 30 of 2000

70. (1) Section 13 of the Skills Development Levies Act, 1999, is hereby amended—
- (a) by the deletion of the word “and” at the end of paragraph (h);
 - (b) by the addition of the word “and” at the end of paragraph (i);
 - (c) by the addition of the following paragraph:

“(j) jurisdiction of courts as contained in section 105,”;
 - (d) by the addition of the word “and” at the end of paragraph (vi); and
 - (e) by the addition of the following paragraph:

“(vii) jurisdiction of courts.”.
- (2) Subsection (1) shall be deemed to have come into operation on 1 September 1999.

Amendment of section 12 of Act 30 of 2000

71. Section 12 of the Taxation Laws Amendment Act, 2000, is hereby amended by the substitution for paragraph (c) of the following paragraph:
- “(c) the taxable income of any company contemplated in paragraph 2(b) or (c) of Schedule 1 to this Act, for the year of assessment commencing on or after 1 April 2000 and ending during the period of twelve months ending on 31 March [2000] 2001.”.

Amendment of section 24 of Act 30 of 2000

72. (1) Section 24 of the Taxation Laws Amendment Act, 2000, is hereby amended by the substitution for subparagraph (ii) of paragraph (b) of subsection (1) of section 18A of the Income Tax Act, 1962, of the following subparagraph:
- “(ii) during the year of assessment preceding the year of assessment of such public benefit organisation during which the donation is received, distributed or incurred the obligation to so distribute at least 75 per cent of the funds

- (b) deur subparagrafe (i) en (ii) van paragraaf (d) deur die volgende subparagrafe te vervang:
- 5 “(i) besigheid van bedoelde onbelaste polishouerfonds verteenwoordig soos beoog in artikel [29(4)(a)(iii)] 29A(a)(iii) van die Inkomstebelastingwet (uitgesonderd bates beoog in paragraaf (c));
- (ii) gelyk is aan die [statutêre] aktuariële waarde van verpligtinge kragtens gewaarborgde annuïteite; en”;
- 10 (c) deur subparagraaf (i) van paragraaf (f) deur die volgende subparagraaf te vervang:
- “(i) artikel [29(4)(a)(ii)] 29A(4)(a)(ii) van die Inkomstebelastingwet (uitgesonderd bates ten opsigte van bedrae aan uittreefondbse toegedeel in paragraaf (c) beoog en bates wat gewaarborgde annuïteite in paragraaf (d) beoog, verteenwoordig; en”;
- 15 (b) deur die woorde wat item (aa) van subparagraaf (ii) van paragraaf (f) voorafgaan deur die volgende woorde te vervang:
- “artikel [29(4)(a)(iii)] 29A(4)(a)(iii) van die Inkomstebelastingwet (uitgesonderd bates—”.

Wysiging van artikel 16 van Wet 38 van 1996, soos gewysig deur artikel 59 van Wet 27 van 1997

69. (1) Artikel 16 van die Wet op Belasting op Uittreefondbse, 1996, word hierby gewysig—
- (a) deur paragraaf (k) deur die volgende paragraaf te vervang:
- 25 “(k) inkomste van beheerde buitelandse entiteite en [beleggingsinkomste] inkomste wat ontstaan uit enige skenking, oormaking of ander beskikking;”;
- (b) deur paragraaf (viii) deur die volgende paragraaf te vervang:
- “(viii) ten opsigte van die insluiting van enige [beleggingsinkomste] bedrag in die inkomste van ’n fonds.”.
- 30 (2) Subartikel (1) tree in werking op 1 Maart 2001.

Wysiging van artikel 13 van Wet 9 van 1999, soos gewysig deur artikel 93 van Wet 30 van 2000

70. (1) Artikel 13 van die Zoeloe van die “uMthetho weZibizontela wokuThuthukisa aMakhono, 1999,” word hierby gewysig—
- 35 (a) deur die woord “futhi” aan die einde van paragraaf (h) te skrap;
- (b) deur die woord “futhi” aan die einde van paragraaf (i) by te voeg;
- (c) deur die volgende paragraaf by te voeg:
- “(j) amandla ezinkantolo njengalokhu equkethwe kusigaba 105.”;
- (d) deur die woord “futhi” aan die einde van paragraaf (vi) by te voeg; en
- 40 (e) deur die volgende paragraaf by te voeg:
- “(vii) amandla ezinkantolo ngokwemincele.”.
- (2) Subartikel (1) word geag op 1 September 1999 in werking te getree het.

Wysiging van artikel 12 van Wet 30 van 2000

- 71 Artikel 12 van die Wysigingswet op Belastingwette, 2000, word hierby gewysig
- 45 deur paragraaf (c) van die Engelse teks deur die volgende paragraaf te vervang:
- “(c) the taxable income of any company contemplated in paragraph 2(b) or (c) of Schedule 1 to this Act, for the year of assessment commencing on or after 1 April 2000 and ending during the period of twelve months ending on 31 March [2000] 2001.”.

Wysiging van artikel 24 van Wet 30 van 2000

72. (1) Artikel 24 van die Wysigingswet op Belastingwette, 2000, word hierby gewysig deur subparagraaf (ii) van paragraaf (b) van subartikel (1) van artikel 18A van die Inkomstebelastingwet, 1962, deur die volgende subparagraaf te vervang:
- 55 “(ii) gedurende die jaar van aanslag wat die jaar van aanslag van die openbare weldaadsorganisasie waarin die skenking ontvang is, voorafgaan minstens 75 persent van die fondse wat ontvang is deur bedoelde organisasie by wyse van

received by such organisation by way of donations which qualified for a deduction in terms of this section.”.

(2) Subsection (1) shall be deemed to have come into operation on 19 July 2000.

Amendment of section 35 of Act 30 of 2000

73. (1) Section 35 of the Taxation Laws Amendment Act, 2000, is hereby amended by the substitution for paragraph (a) of subsection (2) of section 30 of the Income Tax Act, 1962, of the following paragraph:

“(a) The Minister shall, by notice in the *Gazette*, determine any activity which is of a philanthropic or benevolent nature, having regard to the needs, interests and well-being of the general public for the purposes of this section.”.

(2) Subsection (1) shall be deemed to have come into operation on 19 July 2000.

Amendment of section 59 of Act 30 of 2000

74. (1) Section 59 of the Taxation Laws Amendment Act, 2000, is hereby amended by the addition to subsection (2) of the following proviso:

“Provided that the provisions of subsection (1) shall not apply in respect of the carriage of any chargeable passenger, where the ticket in respect of such flight was purchased and issued before 1 August 2000.”.

(2) Subsection (1) shall be deemed to have come into operation on 19 July 2000.

Amendment of paragraph 4 of Schedule 1 to Act 30 of 2000

75. (1) Paragraph 4 of Schedule 1 to the Taxation Laws Amendment Act, 2000, is hereby amended by the substitution for item (iii) of subparagraph (b) of the following item:

“(iii) ‘investment income’ means any [investment income as defined in section 9C of the Income Tax Act, 1962, and includes]—

(aa) dividends; [and]

(bb) [any] proceeds derived from investment or trading in financial instruments (including futures, options and other derivatives), marketable securities or immovable property;

(cc) annuity, other than—

(A) pensions in consideration of past employment; or

(B) payments made under the social security system of any other country;

(dd) interest, including—

(A) interest as contemplated in section 24J;

(B) any amount as contemplated in section 24K; or

(C) any other income which, in terms of the laws of the Republic administered by the commissioner,

is subject to the same treatment as income from money lent;

(ee) rental income received by or accrued to any person as consideration for the use of, or the right to use, any movable or immovable property; and

(ff) amount received by or accrued to any person as consideration for the use of, or the right to use, any copyright of literary, artistic or scientific work (including cinematograph films and films, tapes or discs for radio or television broadcasting), any patent, trade mark, design or model, plan, secret formula or process, or any other property or right of a similar nature, or for information concerning industrial, commercial or scientific experience;”.

(2) Subsection (1) shall be deemed to have come into operation on 1 April 2000.

Short title and commencement

76. (1) This Act shall be called the Revenue Laws Amendment Act, 2000.

skenkings wat ingevolge hierdie artikel as 'n aftrekking gekwalifiseer het, uitgekeer het of die verpligting aangegaan het om aldus uit te keer.”.

(2) Subartikel (1) word geag op 19 Julie 2000 in werking te getree het.

Wysiging van artikel 35 van Wet 30 van 2000

5 73. (1) Artikel 35 van die Wysigingswet op Belastingwette, 2000, word hierby gewysig deur paragraaf (a) van subartikel (2) van artikel 30 van die Inkomstebelastingwet, 1962, deur die volgende paragraaf te vervang:

10 “(a) Die Minister moet by kennisgewing in die *Staatskoerant* enige aktiwiteit wat van 'n filantropiese of welwillendheidsaard is, bepaal, met inagneming van die behoeftes, belange en welvaart van die algemene publiek vir die doeleindes van hierdie artikel.”.

(2) Subartikel (1) word geag op 19 Julie 2000 in werking te getree het.

Wysiging van artikel 59 van Wet 30 van 2000

15 74. (1) Artikel 59 van die Wysigingswet op Belastingwette, 2000, word hierby gewysig deur die volgende voorbehoudsbepaling by subartikel (2) te voeg:

“Met dien verstande dat die bepalings van subartikel (1) nie van toepassing is nie ten opsigte van die vervoer van enige belasbare passassier waar die kaartjie ten opsigte van daardie vlug voor 1 Augustus 2000 aangekoop en uitgereik is.”.

(2) Subartikel (1) word geag op 19 Julie 2000, in werking te getree het.

20 Wysiging van paragraaf 4 van Bylae 1 by Wet 30 van 2000

75. (1) Paragraaf 4 van Bylae 1 by die Wysigingswet op Belastingwette, 2000, word hierby gewysig deur item (iii) van subparagraaf (b) deur die volgende item te vervang:

“(iii) ‘beleggingsinkomste’ enige [beleggingsinkomste in artikel 9C van die Inkomstebelastingwet, 1962, omskryf, en ook]—

25 (aa) dividende; [en]

(bb) [enige] opbrengs verkry uit die belegging of handelsdrijf in finansiële instrumente (met inbegrip van termyntransaksies, opsies en ander afgeleide instrumente), handelseffekte of onroerende eiendom;

30 (cc) jaargeld, behalwe—

(A) pensioene as vergoeding vir dienste in die verlede gelewer; of

(B) betalings ingevolge die bestaansbeveiligingstelsel van enige ander land gemaak;

(dd) rente, met inbegrip van—

35 (A) rente soos in artikel 24J beoog;

(B) 'n bedrag soos in artikel 24K beoog; of

(C) enige ander inkomste wat, ingevolge die wette van die Republiek wat deur die Kommissaris geadministreer word, onderhewig is aan dieselfde behandeling as inkomste uit geld geleen;

40 (ee) huurinkomste ontvang deur of toegeval aan 'n persoon as vergoeding vir die gebruik, of reg van gebruik, van enige roerende of onroerende eiendom;

45 (ff) bedrag ontvang deur of toegeval aan enige persoon as vergoeding vir die gebruik, of die reg van gebruik, van enige kopiereg van literêre, kuns- of wetenskaplike werk (met inbegrip van rolprent-films en films, bande of plate vir radio- of televisie-uitsending), enige patent, handelsmerk, ontwerp of model, plan, geheime formule of proses, of enige ander eiendom of reg van dergelike aard, of vir inligting rakende industriële, kommersiële, of wetenskaplike kennis;”.

50 (2) Subartikel (1) word geag op 1 April 2000 in werking te getree het.

Kort titel en inwerkingtreding

76. (1) Hierdie Wet heet die Wysigingswet op Inkomstewette, 2000.

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(2) Save in so far as is otherwise provided in this Act or the context otherwise indicates, the amendments effected by this Act shall come into operation on 1 January 2001, and shall apply in respect of years of assessment commencing on or after that date.

(2) Behalwe vir sover in hierdie Wet anders bepaal of uit die samehang anders blyk, tree die wysigings by hierdie Wet aangebring in werking op 1 Januarie 2001 en is van toepassing ten opsigte van jare van aanslag wat op of na daardie datum 'n aanvang neem.

