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THE PRESIDENCY

No. 1581 13 December 2002

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

No. 74 of 2002: Revenue Laws Amendment Act, 2002.

DIE PRESIDENSIE

No. 1581 13 Desember 2002

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

No. 74 van 2002: Wysigingswet op Inkomstewette, 2002.



AIDS HELPLINE: 0800-123-22 Prevention is the cure

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 9 December 2002.)

ACT

To amend the Marketable Securities Tax Act, 1948, so as to take into account the consequential amendments as a result of the amendment to the corporate restructuring rules; to amend the Transfer Duty Act, 1949, so as to amend certain definitions to ensure that the acquisition of a contingent right in a trust and the acquisition of shares in certain companies are subject to transfer duty; to provide that the person disposing of the contingent right or shares in the company and the trustee and public officer of the company shall be jointly and severably liable for the duty; and to provide for consequential amendments as a result of the amendments to the corporate restructuring rules in the Income Tax Act, 1962; to amend the Estate Duty Act, 1955, so as to delete certain words in section 4 that have unintended consequences; to amend the Income Tax Act, 1962, so as to insert certain definitions; to amend certain definitions; to effect certain amendments in consequence of the introduction of the Collective Investment Schemes Control Act, 2002; to ensure that certain discretionary powers of the Commissioner are subject to objection and appeal; to further regulate the provisions relating to secrecy; to further regulate the provisions relating to a credit against normal tax of taxes paid to the government of a foreign country; to further regulate the provisions relating to allowances and advances paid to an employee by his or her employer and to provide specific guidance on the deemed daily expenses in respect of meals and incidental costs; to further regulate the provisions that deem certain income to be from a source in the Republic; to move the provisions relating to funds that may as a result of the currency or other restrictions of a foreign country not be remitted to the Republic into a separate section; to further regulate the provisions relating to controlled foreign companies; to further regulate the taxation of foreign dividends; to further regulate the taxation for foreign equity instruments; to delete an exemption which is already provided for elsewhere; to further regulate the exemption of remuneration earned offshore where a person is outside the Republic for a specific period; to withdraw an exemption granted in respect of an entity which has ceased its operations; to repeal provisions relating to marketing expenditure for exporters which is no longer in use; to further regulate the strategic investment incentive provisions; to address an anomaly in section 22(8) which resulted in capital assets now becoming trading stock and to avoid potential double taxation; to insert certain definitions in the provisions relating to the taxation of film owners; to further regulate the taxation of gains and losses on foreign exchange transactions; to further regulate the determination of taxable income in foreign currency; to provide that the final withholding tax shall not apply

ALGEMENE VERDUIDELIKENDE NOTA:

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

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

*(Engelse teks deur die President geteken.)
(Goedgekeur op 9 Desember 2002.)*

WET

Tot wysiging van die Handelseffektebelastingwet, 1948, ten einde gevolglike wysigings weens die wysiging van die reëls vir korporatiewe herstrukturering in berekening te bring; tot wysiging van die Wet op Hereregte, 1949, ten einde sekere woordomsrywings te wysig om toe te sien dat die verkryging van 'n voorwaardelike reg in 'n trust en die verkryging van aandele in sekere maatskappye aan hereregte onderhewig is; om daarvoor voorsiening te maak dat die persoon wat oor 'n voorwaardelike reg of aandele in 'n maatskappy beskik en die trustee en openbare amptenaar van die maatskappy gesamentlik en afsonderlik vir die reg aanspreeklik is; en om voorsiening te maak vir gevolglike wysigings weens die wysigings aan die reëls vir korporatiewe herstrukturering in die Inkomstebelastingwet, 1962; tot wysiging van die Boedelbelastingwet, 1955, ten einde sekere woorde in artikel 4 wat onvoorsiene gevolge het, te skrap; tot wysiging van die Inkomstebelastingwet, 1962, ten einde sekere woordomsrywings in te voeg; om sekere woordomsrywings te wysig; om sekere gevolglike wysigings weens die instelling van die Wet op die Beheer van Kollektiewe Beleggingskemas, 2002, aan te bring; om toe te sien dat sekere diskresionêre bevoegdhede van die Kommissaris aan beswaar en appèl onderhewig is; om die bepalings met betrekking tot geheimhouding verder te reël; om die bepalings met betrekking tot krediet teen normale belasting van belastingen aan die owerheid van 'n vreemde land betaal, verder te reël; om die bepalings met betrekking tot toelaes en voorskotte aan 'n werknemer deur sy of haar werkgever betaal, verder te reël en om duidelike riglyne ten opsigte van die geagte daaglikse onkoste ten opsigte van etes en toevallige uitgawes, daar te stel; om die bepalings wat sekere inkomste van 'n bron in die Republiek geag te wees, verder te reël; om die bepalings met betrekking tot fondse wat weens die valuta- of ander beperking van 'n vreemde land nie na die Republiek oorgeplaas kan word nie, in 'n aparte artikel te vervat; om die bepalings met betrekking tot beheerde buitelandse maatskappye verder te reël; om die belasting van buitelandse dividende verder te reël; om die belasting van buitelandse ekwiteitsinstrumente verder te reël; om 'n vrystelling waarvoor reeds elders voorsiening gemaak word, in te trek; om die vrystelling van besoldiging in die buiteland verdien waar 'n persoon vir 'n spesifieke tydperk buite die Republiek is, verder te reël; om 'n vrystelling wat verleen is aan 'n entiteit wat sy bedrywighede gestaak het, in te trek; om die bepalings met betrekking tot bemarkingskoste vir uitvoerders wat in onbruik verval het, te skrap; om die strategiese beleggingsaansporingsbepalings verder te reël; om 'n anomalie in artikel 22(8) wat tot gevolg het dat kapitale bates handelsvoorraad word, aan te spreek en om dubbelbelasting te verhoed; om sekere woordomsrywings in die bepalings met betrekking tot die belasting van rolprenteienaars, in te voeg; om die belasting van winste en verliese op buitelandse valutatransaksies verder te reël; om die bepaling met betrekking tot belasbare inkomste in buitelandse geldeenheid verder te reël; om te bepaal dat die finale weerhoudingsbelasting nie van toepassing

in respect of royalties paid to any controlled foreign company; to effect certain consequential amendments resulting from the changes to the residence basis of taxation; to further regulate the provisions relating to company formations, share-for-share transactions, amalgamation transactions, intra-group transactions, unbundling transactions and liquidation distributions; to further regulate the provisions relating to secondary tax on companies and the provisions deeming certain distributions to be dividends; to provide for certain consequential amendments that arose after the amendment to the tax period for farmers, fishers and diamond diggers; to effect certain changes to the provisions relating to the submission of annual income tax returns; to further regulate the provisions relating to record keeping to ensure that the Commissioner may prescribe the electronic form in which such records may be retained; to extend the record keeping provisions to apply to all persons who are required to render a return and to extend the period to five years to align the record keeping provisions; to extend the period of imprisonment for certain offences committed in terms of the Income Tax Act, 1962; to clarify the provisions relating to estimated assessments where foreign funds are held or assets are held offshore which have not been declared or accounted for; to insert a new section to make provision for the withdrawal of assessments; to clarify the provisions relating to the jurisdiction of the courts; to amend a definition to ensure that certain allowances will not form part of Standard Income Tax on Employees; to exclude from tax allowances, benefits and privileges of a person stationed outside the Republic and employed by the national or provincial public entity substantially funded by Parliament where the benefits and privileges are attributable to the official's services rendered outside the Republic; to provide for certain amendments to the capital gains tax provisions contained in the Eighth Schedule and certain consequential amendments as a result of these amendments; to amend the Customs and Excise Act, 1964, so as to amend provisions relating to the entry and removal of goods in bond; to insert provisions relating to the manufacture, storage, disposal and use of biofuel; to include the convention on the Harmonised Commodity Description and Coding System as one of the instruments to which the interpretation of Part 1 of Schedule 1 shall be subject, to extend the scope of section 50 by including other non-customs and excise related conventions and agreements in respect of which the Commissioner may disclose information which may be in international, regional or national public interest, to provide for the establishment of joint land border posts and the mutual administration thereof by the Commissioner and the customs authority of the adjoining state, to provide for the circumstances where various licensees obtain goods from manufacturing warehouses in addition to the existing procedure for such a procedure in respect of storage warehouses, to provide for the licensing of certain distributors of fuel who are not also licensed manufacturers, to provide for the circumstance where an applicant for a refund of duty is unable to prove payment of duty; to restate and amend in respect of agents provisions relating to the liability and termination of liability; to link the fixing of the rate at which interest may be charged to the determination of the rate by the Minister of Finance; to amend the provisions relating to a lien in respect of a debt due to the State; provide for a lien on the right, title and interest of a customs debtor in anything subject to a lien which is the subject of a Credit Agreement and matters with regard to the filing of any statement with the clerk or registrar of a competent court for the recovery of such debt; to amend the Stamp Duties Act, 1968, so as to provide for certain consequential amendments as a result of the amendments to the corporate restructuring rules in the Income Tax Act, 1962; to amend the Value-Added Tax Act, 1991, so as to introduce provisions relating to the electronic signature on documents, to provide that section 105 applies in addition to the jurisdiction provisions contained in other legislation, to re-introduce an exemption from VAT in respect of goods at which a flat rate of customs duty is levied in lieu of VAT and specific customs duties; to amend the Uncertificated Securities Tax Act, 1998, so as to provide for certain consequential amendments as a result of the amendment to the corporate reorganisation rules in the Income Tax Act, 1962; to amend the Skills Development Levies Act, 1999, so as to provide that interest must

is nie ten opsigte van tantième aan 'n buitelandse beheerde maatskappy betaal; om sekere gevolglike wysigings aan te bring weens die veranderinge aan die inwoner grondslag van belasting; om die bepalings met betrekking tot maatskappyformasies, aandeel-vir-aandeeltransaksies, amalgamasietransaksies, intragroep-transaksies, ontbondelingstransaksies en likwidasië-uitkerings verder te reël; om die bepalings met betrekking tot sekondêre belasting op maatskappye en die bepalings wat sekere uitkerings as dividende ag, verder te reël; om vir sekere gevolglike wysigings voorsiening te maak vanweë die wysiging van die belastingtydperke van boere, vissers en diamantdelwers; om sekere wysigings aan te bring aan die bepalings met betrekking tot die indiening van jaarlikse inkomstebelastingopgawes; om die bepalings met betrekking tot rekordhouding verder te reël en om toe te sien dat die Kommissaris die elektroniese formaat waarin daardie rekords gehou mag word kan bepaal; om die rekordhoudingsbepalings uit te brei om van toepassing te wees ten opsigte van alle persone wat 'n opgawe moet indien en om die vyf jaar tydperk te verleng ten einde die rekordhoudingsbepalings in lyn te bring; om die tydperk van gevangenisstraf vir sekere misdrywe ingevolge die Inkomstebelastingwet, 1962, gepleeg, te verleng; om die bepalings met betrekking tot geraamde aanslae waar buitelandse fondse gehou word of bates in die buiteland gehou word, wat nie verklaar is of oor rekening gedoen is nie, duideliker uiteen te sit; om 'n nuwe artikel in te voeg om vir die intrekking van aanslae voorsiening te maak; om die bepalings met betrekking tot die jurisdiksie van die hof duideliker te stel; om 'n woordomskriving te wysig om toe te sien dat sekere toelaes nie deel vorm van Standaard Inkomstebelasting op Werknemers nie; om toelaes, voordele en voorregte van 'n persoon wat buite die Republiek gestasioneer is en wie in diens is by die nasionale of provinsiale regeringsfeer of openbare entiteite wat hoofsaaklik deur die Parlement befonds word, van belasting uit te sluit waar die voordele en voorregte aan die amptenaar se dienste buite die Republiek gelewer, toeskryfbaar is; om vir sekere wysigings aan die kapitaalwinstbelasting in die Agtste Bylae en sekere gevolglike wysigings as gevolg van hierdie wysigings voorsiening te maak; tot wysiging van die Doeane- en Aksynswet, 1964, ten einde die bepalings ten opsigte van die klaring en verwydering van goedere onder waarborg te wysig; om bepalings met betrekking tot die vervaardiging, opslag, beskikking oor en gebruik van bio-brandstof in te voeg; om die "Convention on the Harmonized Commodity Description and Coding System" in te voeg as een van die instrumente waaraan die vertolking van Deel 1 van Bylae No. 1 onderhewig is; om die bestek van die bepalings van artikel 50 uit te brei deur ander nie-doeane en aksynsverwante ooreenkomste in te sluit ten opsigte waarvan die Kommissaris inligting wat van internasionale, streeks- of nasionale openbare belang mag wees; om te voorsien vir die daarstelling van gesamentlike land-grensposte en die gesamentlike administrasie daarvan deur die Kommissaris en die doeane-owerheid van die aangrensende staat; om te voorsien vir omstandighede waar verskillende gelisensieerde goedere vanuit doeane en aksynspakhuse verkry benewens die bestaande prosedures sodanige prosedures ten opsigte van opslagpakhuse; om te voorsien vir die lisensiering van sekere verspreiders van brandstof wat nie ook gelisensieerde vervaardigers is nie; om te voorsien vir omstandighede waar die aansoeker om 'n terugbetaling van reg nie in staat is om die betaling van reg te bewys nie; om die bepalings ten opsigte van agente in verband met die aanspreeklikheid en eindiging van aanspreeklikheid te herbeskryf en te wysig; om die vasstelling van die koers waarteen rente gehef word aan die koers deur die Minister van Finansies bepaal, te koppel; om die bepalings met betrekking tot retensieregte ten opsigte van 'n skuld aan die staat te wysig, om voorsiening te maak vir 'n retensiereg oor die reg, titel en belang van 'n doeane skuldenaar in enigiets aan 'n retensiereg onderhewig wat die onderwerp van 'n Kredietooreenkoms is en aangeleenthede rakende die lisensiering van 'n verklaring by die klerk of griffier van 'n bevoegde hof vir die verhaling van sodanige skuld; tot wysiging van die Wet op Seëlregte, 1968, ten einde vir sekere wysigings wat gevolglik is vanweë die wysiging aan die reëls vir die korporatiewe herstrukturering in die Inkomstebelastingwet, 1962, voorsiening te maak; tot wysiging van die Wet op Belasting op Toegevoegde Waarde, 1991, ten einde bepalings met betrekking tot elektroniese handtekenings op dokumente in te stel, om vir die toepassing van artikel 105 saam met die jurisdiksiebepalings in ander wetgewing vervat, voorsiening te maak; om voorsiening te maak vir 'n vrystelling van BTW in die geval van goed ten opsigte waarvan doeanereg teen 'n vaste koers

only be calculated from the day following the last day for payment; and to clarify the provisions relating to jurisdiction of the courts; to amend the Revenue Laws Amendment Act, 2000, so as to clarify the date of commencement of section 4 of that Act; to amend the Taxation Laws Amendment Act, 2001, so as to provide for the date of commencement of section 3 to be retroactive; to amend the Revenue Laws Amendment Act, 2001, so as to provide correct an error in the Afrikaans text; to amend the Second Revenue Laws Amendment Act, 2001, so as to provide for the alignment of section 134 with section 71(1) of the Taxation Laws Amendment Act, 2001; to provide for the short title and commencement of the Act; to effect certain textual and consequential changes; and to provide for matters connected therewith.

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

Amendment of section 3 of Act 32 of 1948, as amended by section 12 of Act 64 of 1960, section 36 of Act 77 of 1968, section 2 of Act 88 of 1974, section 2 of Act 114 of 1977, section 1 of Act 95 of 1978, section 2 of Act 106 of 1980, section 1 of Act 87 of 1982, section 1 of Act 92 of 1983, section 1 of Act 118 of 1984, section 1 of Act 81 of 1985, section 1 of Act 87 of 1988, section 1 of Act 136 of 1992, section 1 of Act 97 of 1993, section 3 of Act 37 of 1996, section 2 of Act 27 of 1997, section 1 of Act 30 of 1998, section 1 of Act 32 of 1999, section 2 of Act 53 of 1999, section 1 of Act 30 of 2000 and section 1 of Act 60 of 2001

1. (1) Section 3 of the Marketable Securities Tax Act, 1948, is hereby amended by the substitution for paragraph (f) of the following paragraph: 10

“(f) in respect of the purchase of marketable securities by a [company] person that are acquired—

- (i) in terms of a company formation transaction contemplated in section 42 of the Income Tax Act, 1962 (Act No. 58 of 1962);
- (ii) in terms of a share-for-share transaction contemplated in section 43 of that Act; 15
- (iii) in terms of an amalgamation transaction contemplated in section 44 of that Act;
- [(iii)] (iv) in terms of an intra-group transaction contemplated in section [44] 45 of that Act; 20
- [(iv)] (v) in pursuance of a distribution in specie in the course of an unbundling transaction contemplated in section [45] 46 of that Act; [or]
- [(v)] (vi) in terms of any liquidation distribution contemplated in section [46] 47 of that Act; or 25
- (vii) in terms of any transaction contemplated in subparagraph (v) or which would have constituted a transaction or distribution contemplated—
 - (aa) in subparagraph (i), (iv) or (vi) had an election been made for the provisions of that section to apply; and
 - (bb) in subparagraph (i), (ii) or (iii) had the market value of the asset transferred in exchange for those market securities exceeded the base cost or the amount taken into account in respect thereof, as contemplated in section 42(1)(a), 43(1)(a) or 44(6) of that Act, 30

where the public officer of [that company]—

- (aa) the company which acquired those marketable securities otherwise than 35
- in terms of an unbundling transaction; or

gehef word instede van BTW en spesifieke doeanereg; tot wysiging van die Wet op Belasting op Sertifikaatlose Aandele, 1998, ten einde vir sekere wysigings wat gevolglik is vanweë die wysigings aan die reëls vir die korporatiewe herstrukturering in die Inkomstebelastingwet, 1962, voorsiening te maak; tot wysiging van die “Skills Development Levies Act, 1999”, ten einde te bepaal dat rente slegs bereken moet word vanaf die dag wat volg op die laaste dag vir betaling; en om die bepalings met betrekking tot die jurisdiksie van die houe duideliker te stel; tot wysiging van die Wysigingswet op Inkomstewette, 2000, ten einde die inwerkingtredingsdatum van artikel 4 van daardie Wet uit te klaar; tot wysiging van die Wysigingswet op Belastingwette, 2001, ten einde te bepaal dat die datum van inwerkingtreding van artikel 3 terugwerkend is; tot wysiging van die Wysigingswet op Inkomstewette, 2001, ten einde ’n fout in die Afrikaanse teks reg te stel; tot wysiging van die Tweede Wysigingswet op Inkomstewette, 2001, ten einde artikel 134 met artikel 71(1) van die Wysigingswet op Belastingwette, 2001, in lyn te bring; om vir die kort titel en inwerkingtreding van die Wet voorsiening te maak; om vir sekere tekstuele en gevolglike wysigings voorsiening te maak; en om vir aangeleenthede wat daarmee in verband staan voorsiening te maak.

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

Wysiging van artikel 3 van Wet 32 van 1948, soos gewysig deur artikel 12 van Wet 64 van 1960, artikel 36 van Wet 77 van 1968, artikel 2 van Wet 88 van 1974, artikel 2 van Wet 114 van 1977, artikel 1 van Wet 95 van 1978, artikel 2 van Wet 106 van 1980, artikel 1 van Wet 87 van 1982, artikel 1 van Wet 92 van 1983, artikel 1 van Wet 118 van 1984, artikel 1 van Wet 81 van 1985, artikel 1 van Wet 87 van 1988, artikel 1 van Wet 136 van 1992, artikel 1 van Wet 97 van 1993, artikel 3 van Wet 37 van 1996, artikel 2 van Wet 27 van 1997, artikel 1 van Wet 30 van 1998, artikel 1 van Wet 32 van 1999, artikel 2 van Wet 53 van 1999, artikel 1 van Wet 30 van 2000 en artikel 1 van Wet 60 van 2001

1. (1) Artikel 3 van die Handelseffektebelastingwet, 1948, word hierby gewysig deur paragraaf (f) deur die volgende paragraaf te vervang:

- “(f) ten opsigte van die koop van handelseffekte deur ’n **[maatskappy]** persoon wat verkry word—
- (i) ingevolge ’n maatskappyformasietransaksie in artikel 42 van die Inkomstebelastingwet, 1962 (Wet No. 58 van 1962), bedoel;
 - (ii) ingevolge ’n aandeel-vir-aandeeltransaksie in artikel 43 van daardie Wet bedoel;
 - (iii) ingevolge ’n amalgamasietransaksie in artikel 44 van daardie Wet bedoel;
 - [(iii)] (iv) ingevolge ’n intragroeptransaksie in artikel **[44]** **45** van **[genoemde]** daardie Wet bedoel;
 - [(iv)] (v) na aanleiding van ’n uitkering *in specie* in die loop van ’n ontbondelingstransaksie in artikel **[45]** **46** van **[genoemde]** daardie Wet bedoel; **[of]**
 - [(v)] (vi) ingevolge ’n likwidasië-uitkering in artikel **[46]** **47** van **[genoemde]** daardie Wet bedoel; **of**
 - (vii) ingevolge ’n transaksie in subparagraaf (v) bedoel of wat ’n transaksie of uitkering—
- (aa) in subparagraaf (i), (iv) of (vi) bedoel, sou wees, indien ’n keuse uitgeoefen is dat die bepalings van daardie artikel van toepassing moet wees; en
 - (bb) in subparagraaf (i), (ii) of (iii) bedoel, sou wees, indien die markwaarde van die bate oorgedra in ruil vir daardie handelseffekte die basiskoste of die bedrag ten opsigte daarvan in berekening geneem, soos in artikel 42(1)(a), 43(1)(a) of 44(6) van daardie Wet bedoel, oorskry het,
- waar die openbare amptenaar van **[daardie maatskappy]**—
- (aa) die maatskappy wat die handelseffekte andersins as ingevolge ’n ontbondelingstransaksie verkry het; of

(bb) in the case where the shares were acquired in terms of an unbundling transaction, the unbundling company contemplated in section 46 of that Act,

has made a sworn affidavit or solemn declaration that such [company formation transaction, share-for-share transaction, intra-group transaction, unbundling transaction or liquidation distribution complies with the provisions contained in section 42, 43, 44, 45, or 46, as the case may be, of that Act] purchase of marketable securities complies with the provisions of this paragraph;”.

(2) Subsection (1) shall—

- (a) to the extent that it substitutes the word “company” with the word “person” be deemed to have come into operation on 1 October 2001, and applies in respect of any purchase of a marketable security on or after that date; and
- (b) to the extent that it amends the rest of section 3, come into operation on 6 November 2002 and shall apply in respect of any purchase of marketable securities on or after that date.

Amendment of section 1 of Act 40 of 1949, as amended by section 1 of Act 5 of 2001

2. (1) Section 1 of the Transfer Duty Act, 1949, is hereby amended—

- (a) by the substitution for the definition of “fair value” of the following definition:

“ ‘fair value’—

- (a) in relation to property as defined in paragraphs (a), (b) and (c) of the definition of ‘property’, means the fair market value of that property as at the date of acquisition thereof;

- (b) in relation to a share or member’s interest in a company as contemplated in paragraph (d) or (e) of the definition of ‘property’, means so much of the fair market value as at the date of acquisition of that share or member’s interest, of any property held by that company which constitutes—

- (i) residential property;
- (ii) a share or member’s interest in any company as contemplated in paragraph (d) or (e) of the definition of ‘property’; or
- (iii) a contingent right in property of a trust as contemplated in paragraph (f) of the definition of ‘property’,

(without taking into account any lease agreement or any liability in respect of any loan in relation to that residential property or any residential property of any company or trust contemplated in subparagraph (ii) or (iii)), as is attributable to that share or member’s interest; or

- (c) in relation to any contingent right to any property, which constitutes—

- (i) residential property;
- (ii) a share or member’s interest contemplated in paragraph (d) or (e) of the definition of ‘property’; or
- (iii) a contingent right in property of a trust as contemplated in paragraph (f) of the definition of ‘property’,

held by a discretionary trust, means the fair market value of that property (without taking into account any lease agreement or any liability in respect of any loan in relation to that residential property or any residential property of any company or trust contemplated in subparagraph (ii) or (iii)), as at the date of acquisition of that contingent right:

Provided that—

- (a) the fair market value of any property of a company or a trust which constitutes a contingent right in property of a trust, as contemplated in paragraphs (b)(iii) and (c)(iii), shall be equal to the fair value of that contingent right as determined in terms of paragraph (c) of this definition; and

(bb) in die geval waar die aandele ingevolge 'n ontbondelingstransaksie verkry is, die ontbondelingsmaatskappy in artikel 46 van daardie Wet bedoel,

onder eed of plegtige verklaring verklaar het dat daardie [maatskappyformasie-transaksie, aandeel-vir-aandeeltransaksie, intra-groeptransaksie, ontbondelingstransaksie of likwidasië-uitkering aan die 5 bepalinge van artikel 42, 43, 44, 45 of 46, na gelang van die geval, van daardie Wet] aankoop van handelseffekte aan die vereistes van hierdie paragraaf voldoen;”.

(2) Subartikel (1)— 10

- (a) word, tot die mate wat dit die woord “maatskappy” deur die woord “persoon” vervang, geag op 1 Oktober 2001 in werking te getree het en is van toepassing ten opsigte van enige aankoop van 'n handelseffek op of na daardie datum; en
- (b) tot die mate wat dit die res van artikel 3 wysig, tree in werking op 6 November 2002 en is van toepassing ten opsigte van enige aankoop van handelseffekte op 15 of na daardie datum.

Wysiging van artikel 1 van Wet 40 van 1949, soos gewysig deur artikel 1 van Wet 5 van 2001

2. (1) Artikel 1 van die Wet op Hereregte, 1949, word hierby gewysig—

- (a) deur die omskrywing van “billike waarde” deur die volgende omskrywing te 20 vervang:

“ ‘billike waarde’ —

- (a) met betrekking tot eiendom soos omskryf in paragrawe (a), (b) en (c) van die omskrywing van ‘eiendom’, die billike markwaarde van daardie eiendom op die datum van verkryging daarvan; 25

- (b) met betrekking tot 'n aandeel of ledebelang in 'n maatskappy soos in paragraaf (d) of (e) van die omskrywing van ‘eiendom’ bedoel, soveel van die billike markwaarde as wat op die datum van verkryging van die aandeel of ledebelang in enige eiendom deur daardie maatskappy gehou, wat— 30

- (i) residensiële eiendom;

- (ii) 'n aandeel of ledebelang in enige maatskappy bedoel in paragraaf (d) of (e) van die omskrywing van ‘eiendom’; of

- (iii) 'n voorwaardelike reg in eiendom van 'n trust soos bedoel in paragraaf (f) van die omskrywing van ‘eiendom’, 35

uitmaak (sonder inagneming van enige huurooreenkoms of enige aanspreeklikheid ten opsigte van enige lening met betrekking tot daardie residensiële eiendom of enige residensiële eiendom van enige maatskappy of trust bedoel in subparagraaf (ii) of (iii)), wat aan daardie aandeel of ledebelang toeskryfbaar is; of 40

- (c) met betrekking tot enige voorwaardelike reg in enige eiendom, wat—

- (i) residensiële eiendom;

- (ii) 'n aandeel of ledebelang bedoel in paragraaf (d) of (e) van die omskrywing van ‘eiendom’; of

- (iii) 'n voorwaardelike reg in eiendom van 'n trust soos bedoel in paragraaf (f) van die omskrywing van ‘eiendom’, 45

uitmaak, wat deur 'n diskresionêre trust gehou word, die billike markwaarde van daardie eiendom (sonder inagneming van enige huurooreenkoms of enige aanspreeklikheid ten opsigte van enige lening met betrekking tot daardie residensiële eiendom of enige residensiële eiendom van enige maatskappy of trust bedoel in subparagraaf (ii) of (iii)), op die datum van verkryging van daardie voorwaardelike reg: 50

Met dien verstande dat—

- (a) die billike markwaarde van enige eiendom van 'n maatskappy of trust wat 'n voorwaardelike reg in eiendom van 'n trust uitmaak, soos bedoel 55 in paragrawe (b)(iii) en (c)(iii), gelyk is aan die billike waarde van daardie voorwaardelike reg soos bepaal ingevolge paragraaf (c) van hierdie woordskrywing; en

- (b) where property, has been acquired by the exercise of an option to purchase or a right of pre-emption, the fair value in relation to that property shall be the fair market value thereof as at the date upon which the option or right of pre-emption was acquired by the person who exercised the option or right of pre-emption;”;
- (b) by the addition to the definition of “property” of the following paragraphs:
- “(d) a share or member’s interest in a residential property company; or
- (e) a share or member’s interest in a company which is a holding company (as defined in the Companies Act, 1973 (Act No. 61 of 1973) or as defined in the Close Corporations Act, 1984 (Act No. 69 of 1984), as the case may be), if that company and all of its subsidiary companies (as defined in the Companies Act, 1973, or Close Corporations Act, 1984), would be a residential property company if all such companies were regarded as a single entity;
- (f) a contingent right to any residential property or share or member’s interest, contemplated in paragraph (d) or (e), held by a discretionary trust (other than a special trust as defined in section 1 of the Income Tax Act, 1962 (Act No. 58 of 1962)), the acquisition of which is—
- (i) a consequence of or attendant upon the conclusion of any agreement for consideration with regard to property held by that trust;
- (ii) accompanied by the substitution or variation of that trust’s loan creditors, or by the substitution or addition of any mortgage bond or mortgage bond creditor; or
- (iii) accompanied by the change of any trustee of that trust;”;
- (c) by the insertion after the definition of “Republic” of the following definition:
- “‘residential property’ means any dwelling-house, holiday home, apartment or similar abode, improved or unimproved land zoned for residential use in the Republic (including any real right thereto), other than—
- (a) an apartment complex, hotel, guesthouse or similar structure consisting of five or more units held by a person which has been used for renting to five or more persons, who are not connected persons, as defined in the Income Tax Act, 1962 (Act No. 58 of 1962), in relation to that person; or
- (b) any ‘fixed property’ of a ‘vendor’ forming part of an ‘enterprise’ all as defined in section 1 of the Value-Added Tax Act, 1991 (Act No. 89 of 1991);
- ‘residential property company’ means any company that holds property that constitutes—
- (a) residential property; or
- (b) a contingent right contemplated in paragraph (f) of the definition of ‘property’,
- and where the fair value of that property or contingent right comprises more than 50 per cent of the aggregate fair market value of all the assets, as defined in paragraph 1 of the Eighth Schedule to the Income Tax Act, 1962, (other than financial instruments as defined in section 1 of that Act or any coin made mainly from gold or platinum), held by that company on the date of acquisition of an interest in that company;”;

- (b) waar eiendom verkry is ten gevolge die uitoefening van 'n opsie om te koop of 'n voorkoopsreg, die billike waarde met betrekking tot daardie eiendom die billike markwaarde daarvan is op die datum waarop die opsie of voorkoopsreg verkry is deur die persoon wat die opsie of voorkoopsreg uitgeoefen het;";
- (b) deur die volgende paragrawe by die omskrywing van "eiendom" te voeg:
- "(d) 'n aandeel of ledebelang in 'n residensiële eiendomsmaatskappy; of
- (e) 'n aandeel of ledebelang in 'n maatskappy wat 'n houermaatskappy is (soos omskryf in die Maatskappywet, 1973 (Wet No. 61 van 1973) of soos omskryf in die Wet op Beslote Korporasies, 1984 (Wet No. 69 van 1984), na gelang van die geval), as daardie maatskappy en al die filiale daarvan (soos omskryf in die Maatskappywet, 1973, of die Wet op Beslote Korporasies, 1984), 'n residensiële eiendomsmaatskappy sou wees indien al sodanige maatskappye as 'n enkel entiteit beskou sou word;
- (f) 'n voorwaardelike reg in enige residensiële eiendom of aandeel of ledebelang, bedoel in paragraaf (d) of (e), gehou deur 'n diskresionêre trust (behalwe 'n spesiale trust soos omskryf in artikel 1 van die Inkomstebelastingwet, 1962 (Wet No. 58 van 1962)), waarvan die verkryging—
- (i) die gevolg is van of vergesel word deur die sluiting van enige ooreenkoms vir vergoeding met betrekking tot eiendom wat deur daardie trust gehou word;
- (ii) gepaard gaan met die vervanging of verandering van die trust se leningskrediteure, of deur vervanging of byvoeging van enige verband of verbandkrediteur; of
- (iii) gepaard gaan met 'n verandering van enige trustee van daardie trust;";
- (c) deur die volgende omskrywings na die omskrywing van "Republiek" in te voeg:
- " 'residensiële eiendom' enige woonhuis, vakansiehuis, woonstel of soortgelyke woonplek, verbeterde of onverbeterde, grond gesoneer vir residensiële gebruik in die Republiek (met inbegrip van enige saaklike reg daarop), behalwe—
- (a) 'n woonstelkompleks, hotel, gastehuis of soortgelyke struktuur bestaande uit vyf of meer eenhede gehou deur 'n persoon wat vir verhuring aan vyf of meer persone aangewend is, wat nie verbonde persone, soos omskryf in die Inkomstebelastingwet, 1962 (Wet No. 58 van 1962), met betrekking tot daardie persoon is nie; of
- (b) enige 'vasgoed' van 'n 'ondernemer' wat deel vorm van 'n 'onderneming', soos onderskeidelik omskryf in artikel 1 van die Wet op Belasting op Toegevoegde Waarde, 1991 (Wet No. 89 van 1991);
- 'residensiële eiendomsmaatskappy' enige maatskappy wat eiendom hou wat—
- (a) residensiële eiendom; of
- (b) 'n voorwaardelike reg in paragraaf (f) van die omskrywing van 'eiendom' bedoel, uitmaak,
- en waar die billike waarde van daardie eiendom of voorwaardelike reg meer as 50 persent uitmaak van die gesamentlike billike markwaarde van al die bates soos omskryf in paragraaf 1 van die Agtste Bylae by die Inkomstebelastingwet, 1962, (behalwe finansiële instrumente soos in artikel 1 van daardie Wet omskryf of enige munt hoofsaaklik van goud of platina vervaardig), gehou deur daardie maatskappy op die datum van verkryging van 'n belang in daardie maatskappy;";

- (d) by the substitution in subsection (1) for the definition of “transaction” of the following definition:

“ ‘transaction’ means—

- (a) in relation to paragraphs (a), (b) and (c) of the definition of ‘property’, an agreement whereby one party thereto agrees to sell, grant, waive, donate, cede, exchange, lease or otherwise dispose of property to another person or any act whereby any person renounces any [interest] right in or restriction in his or her favour upon the use or disposal of property; or
- (b) in relation to any shares or member’s interest contemplated in paragraph (d) or (e) of the definition of ‘property’, an agreement whereby one party thereto agrees to sell, grant, waive, donate, cede, exchange, issue, buy-back, convert, vary, cancel or otherwise dispose of any such shares or member’s interest to another person or any act whereby any person renounces any right in or restriction in his or her favour upon the use or disposal of any such shares or member’s interest; or
- (c) in relation to a discretionary trust, the substitution or addition of one or more beneficiaries with a contingent right to any property of that trust, which constitutes residential property or shares or member’s interest contemplated in paragraph (d) or (e) of the definition of ‘property’ or a contingent right contemplated in paragraph (f) of that definition;”.

(2) Subsection (1) shall come into operation on the date of promulgation of this Act and shall apply in respect of the acquisition of any property on or after that date.

Amendment of section 3 of Act 40 of 1949, as substituted by section 4 of Act 88 of 1974 and amended by section 1 of Act 99 of 1981 and substituted by section 4 of Act 97 of 1993 and section 10 of Act 37 of 1996 and amended by section 6 of Act 60 of 2001

3. (1) Section 3 of the Transfer Duty Act, 1949, is hereby amended by the addition of the following subsections:

“(1A) Where a person who acquires any property contemplated in paragraph (d) or (e) of the definition of ‘property’ fails to pay the duty within the period contemplated in subsection (1), the public officer as defined in section 101 of the Income Tax 1962 (Act No. 58 of 1962), of that company and the person from whom the shares or member’s interest are acquired shall be jointly and severally liable for such duty: Provided that the public officer or person from whom the shares or member’s interest was acquired, may recover any amount of duty paid by him or her in terms of this subsection from—

- (a) the person who so acquired that property; or
- (b) in the case of a public officer, from that company.

(1B) Where a person who acquires any property contemplated in paragraph (f) of the definition of ‘property’ fails to pay the duty within the period contemplated in subsection (1), the trust and the trustees of that trust shall be jointly and severally liable for such duty: Provided that the trust or trustee may recover any amount of duty paid in terms of this subsection by the trust or trustee, as the case may be, from—

- (a) the person who so acquired that property; or
- (b) in the case of the trustee, from that trust.”.

(2) Subsection (1) shall come into operation on the date of promulgation of this Act and shall apply in respect of any duty which becomes payable in respect of the acquisition of any property on or after that date.

- (d) deur in subartikel (1) die omskrywing van “transaksie” deur die volgende omskrywing te vervang:

“transaksie”—

- (a) met betrekking tot paragrawe (a), (b) en (c) van die omskrywing van ‘eiendom’, ’n ooreenkoms waarby een party daarby ooreenkom om eiendom aan ’n ander persoon te verkoop, toe te ken, daarvan afstand te doen, te skenk, te seeder, te verruil, te verhuur, of op ’n ander wyse aan ’n ander persoon af te staan, of enige handeling waarby iemand afstand doen van enige [belang] reg in of beperking in sy of haar guns op die gebruik van of beskikking oor eiendom; of
- (b) in verband met enige aandeel of ledebelang in paragraaf (d) of (e) van die omskrywing van ‘eiendom’ bedoel, ’n ooreenkoms waarby een party daarby ooreenkom om eiendom aan ’n ander te verkoop, toe te ken, daarvan afstand te doen, te skenk, te seeder, te verruil, uit te reik, terug te koop, om te skakel, te wysig, te kanselleer of op enige ander wyse oor daardie aandeel of ledebelang aan ’n ander persoon te beskik of enige handeling waarby enige persoon afstand doen van enige reg op of beperking in sy of haar guns op die gebruik van of beskikking oor enige sodanige aandeel of ledebelang; of
- (c) met betrekking tot ’n diskresionêre trust, die vervanging of byvoeging van een of meer begunstigdes met ’n voorwaardelike reg in enige eiendom van daardie trust, wat ’n residensiële eiendom uitmaak of aandeel of ledebelang in paragraaf (d) of (e) van die omskrywing van ‘eiendom’ bedoel of ’n voorwaardelike reg in paragraaf (f) van daardie omskrywing bedoel.”

(2) Subartikel (1) tree in werking op die datum van afkondiging van hierdie Wet en is van toepassing ten opsigte van die verkryging van enige eiendom op of na daardie datum.

Wysiging van artikel 3 van Wet 40 van 1949, soos vervang deur artikel 4 van Wet 88 van 1974 en gewysig deur artikel 1 van Wet 99 van 1981 en vervang deur artikel 4 van Wet 97 van 1993 en artikel 10 van Wet 37 van 1996 en gewysig deur artikel 6 van Wet 60 van 2001

3. (1) Artikel 3 van die Wet op Hereregte, 1949, word hierby gewysig deur die volgende subartikels daarby te voeg:

“(1A) Waar ’n persoon wat enige eiendom in paragraaf (d) of (e) van die omskrywing van ‘eiendom’ bedoel verkry, versuim om die hereregte binne die tydperk in subartikel (1) bedoel te betaal, is die openbare amptenaar soos omskryf in artikel 101 van die Inkomstebelastingwet, 1962 (Wet No. 58 van 1962) van daardie maatskappy en die persoon van wie die aandeel of ledebelang verkry word, gesamentlik en afsonderlik vir die hereregte aanspreeklik: Met dien verstande dat die openbare amptenaar of persoon van wie die aandeel of ledebelang verkry word, enige bedrag aan hereregte ingevolge hierdie subartikel deur hom of haar betaal, mag verhaal—

(a) van die persoon wat aldus die eiendom verkry het; of

(b) in die geval van ’n openbare amptenaar, van daardie maatskappy.

(1B) Waar ’n persoon wat enige eiendom in paragraaf (f) van die omskrywing van ‘eiendom’ bedoel verkry, versuim om die hereregte binne die tydperk in subartikel

(1) bedoel te betaal, is die trust en die trustees van die trust gesamentlik en afsonderlik vir daardie hereregte aanspreeklik: Met dien verstande dat die trust of trustee enige bedrag aan hereregte ingevolge hierdie subartikel deur die trust of trustee betaal, na gelang van die geval, mag verhaal—

(a) van die persoon wat sodoende die eiendom verkry het; of

(b) in die geval van ’n trustee, van daardie trust.”

(2) Subartikel (1) tree in werking op die datum van afkondiging van hierdie Wet en is van toepassing ten opsigte van enige hereregte wat betaalbaar word ten opsigte van die verkryging van enige eiendom op of na daardie datum.

Amendment of section 9 of Act 40 of 1949, as amended by section 3 of Act 31 of 1953, section 12 of Act 80 of 1959, section 3 of Act 70 of 1963, section 3 of Act 77 of 1964, section 1 of Act 81 of 1965, section 7 of Act 103 of 1969, section 2 of Act 89 of 1972, section 3 of Act 66 of 1973, section 5 of Act 88 of 1974, section 77 of Act 54 of 1976, section 2 of Act 95 of 1978, section 6 of Act 106 of 1980, section 2 of Act 99 of 1981, section 2 of Act 118 of 1984, section 3 of Act 81 of 1985, section 3 of Act 86 of 1987, section 4 of Act 87 of 1988, section 36 of Act 9 of 1989, section 1 of Act 69 of 1989, section 79 of Act 89 of 1991, section 6 of Act 120 of 1992, section 4 of Act 136 of 1992, section 5 of Act 97 of 1993, section 2 of Act 37 of 1995, section 3 of Act 32 of 1999, section 3 of Act 30 of 2000, section 2 of Act 5 of 2001, section 8 of Act 60 of 2001 and section 3 of Act 30 of 2002

4. (1) Section 9 of the Transfer Duty Act, 1949, is hereby amended by the substitution in subsection (1) for paragraph (l) of the following paragraph:

“(l) any company in terms of any [intra-group] amalgamation transaction contemplated in section 44 of the Income Tax Act, 1962 (Act No. 58 of 1962), [or] any intra-group transaction contemplated in section 45 or any liquidation distribution contemplated in section [46] 47 of that Act, where the public officer of that company has made a sworn affidavit or solemn declaration that such amalgamation transaction, intra-group transaction or liquidation distribution complies with the relevant provisions contained in section 44, 45 or [46] 47, as the case may be, of that Act.”

(2) Subsection (1) shall be deemed to have come into operation on 6 November 2002 and shall apply in respect of any property acquired on or after that date.

Amendment of section 4 of Act 45 of 1955, as amended by section 2 of Act 59 of 1957, section 3 of Act 65 of 1960, section 9 of Act 71 of 1961, section 9 of Act 77 of 1964, section 3 of Act 81 of 1965, section 2 of Act 94 of 1967, section 5 of Act 92 of 1971, section 2 of Act 70 of 1975, section 1 of Act 104 of 1976, section 4 of Act 102 of 1979, section 11 of Act 106 of 1980, section 3 of Act 99 of 1981, section 5 of Act 81 of 1985, section 6 of Act 86 of 1987, section 10 of Act 87 of 1988, section 8 of Act 97 of 1993, section 3 of Act 20 of 1994, section 7 of Act 27 of 1997, section 14 of Act 30 of 1998, section 8 of Act 30 of 2000 and section 4 of Act 30 of 2002

5. (1) Section 4 of the Estate Duty Act, 1955, is hereby amended by the substitution in paragraph (h) for the words preceding subparagraph (i) of the following words:

“the value of any property included in the estate which has not been allowed as a deduction under any other provision of this section which accrues or accrued [by way of bequest] to—”

(2) Subsection (1) shall be deemed to have come into operation on 5 August 2002.

Wysiging van artikel 9 van Wet 40 van 1949, soos gewysig deur artikel 3 van Wet 31 van 1953, artikel 12 van Wet 80 van 1959, artikel 3 van Wet 70 van 1963, artikel 3 van Wet 77 van 1964, artikel 1 van Wet 81 van 1965, artikel 7 van Wet 103 van 1969, artikel 2 van Wet 89 van 1972, artikel 3 van Wet 66 van 1973, artikel 5 van Wet 88 van 1974, artikel 77 van Wet 54 van 1976, artikel 2 van Wet 95 van 1978, artikel 6 van Wet 106 van 1980, artikel 2 van Wet 99 van 1981, artikel 2 van Wet 118 van 1984, artikel 3 van Wet 81 van 1985, artikel 3 van Wet 86 van 1987, artikel 4 van Wet 87 van 1988, artikel 36 van Wet 9 van 1989, artikel 1 van Wet 69 van 1989, artikel 79 van Wet 89 van 1991, artikel 6 van Wet 120 van 1992, artikel 4 van Wet 136 van 1992, artikel 5 van Wet 97 van 1993, artikel 2 van Wet 37 van 1995, artikel 3 van Wet 32 van 1999, artikel 3 van Wet 30 van 2000, artikel 2 van Wet 5 van 2001, artikel 8 van Wet 60 van 2001 en artikel 3 van Wet 30 van 2002

4. (1) Artikel 9 van die Wet op Hereregte, 1949, word hierby gewysig deur in subartikel (1) paragraaf (l) deur die volgende paragraaf te vervang:

“(l) enige maatskappy ingevolge enige **[intragroep] amalgamasietransaksie**, in artikel 44 van die Inkomstebelastingwet, 1962 (Wet No 58 van 1962) bedoel, **[of]** enige **intragroeptransaksie** in artikel 45 bedoel of enige likwidasië-uitkering bedoel in artikel **[46] 47** van daardie Wet, waar die openbare amptenaar van daardie maatskappy onder eed of plegtige verklaring verklaar het dat daardie **amalgamasietransaksie**, **intragroeptransaksie** of likwidasië-uitkering voldoen aan die relevante bepalings vervat in artikel 44, **45** of **[46] 47**, na gelang van die geval, van daardie Wet.”

(2) Subartikel (1) word geag in werking te getree het op 6 November 2002 en is van toepassing ten opsigte van enige eiendom op of na daardie datum verkry.

Wysiging van artikel 4 van Wet 45 van 1955, soos gewysig deur artikel 2 van Wet 59 van 1957, artikel 3 van Wet 65 van 1960, artikel 9 van Wet 71 van 1961, artikel 9 van Wet 77 van 1964, artikel 3 van Wet 81 van 1965, artikel 2 van Wet 94 van 1967, artikel 5 van Wet 92 van 1971, artikel 2 van Wet 70 van 1975, artikel 1 van Wet 104 van 1976, artikel 4 van Wet 102 van 1979, artikel 11 van Wet 106 van 1980, artikel 3 van Wet 99 van 1981, artikel 5 van Wet 81 van 1985, artikel 6 van Wet 86 van 1987, artikel 10 van Wet 87 van 1988, artikel 8 van Wet 97 van 1993, artikel 3 van Wet 20 van 1994, artikel 7 van Wet 27 van 1997, artikel 14 van Wet 30 van 1998, artikel 8 van Wet 30 van 2000 en artikel 4 van Wet 30 van 2002

5. (1) Artikel 4 van die Boedelbelastingwet, 1955, word hierby gewysig deur in paragraaf (h) die woorde wat subparagraaf (i) voorafgaan deur die volgende woorde te vervang:

“die waarde van enige eiendom in die boedel ingesluit wat nie ingevolge enige ander bepaling van hierdie artikel as ’n korting toegelaat is nie wat **[by wyse van erflating]** toeval of toegeval het aan—”.

(2) Subartikel (1) word geag op 5 Augustus 2002 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, section 13 of Act 30 of 2000, section 2 of Act 59 of 2000, section 5 of Act 5 of 2001, section 3 of Act 19 of 2001, section 17 of Act 60 of 2001 and section 9 of Act 30 of 2002

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

(a) by the insertion after the definition of “assessment” of the following definition:

“‘average exchange rate’ in relation to a year of assessment means—

- (a) the average determined by using the closing spot rates at the end of daily, weekly or monthly intervals during that year of assessment; or
- (b) the weighted average determined by using the closing spot rates at the end of daily, weekly or monthly intervals during that year of assessment during which income is received or accrued or expenditure is incurred, which average must be based on—
 - (i) the net amount of receipts and accruals (excluding those of a capital nature) and deductible expenditure during each such period; and
 - (ii) the net amount of capital gains or capital losses determined in respect of any disposal of assets during that period,

which must be consistently applied within that year of assessment;”;

(b) by the substitution in the definition of “company” for paragraph (e) of the following paragraph:

“(e) any—

- (i) [unit] portfolio comprised in any [unit trust] collective investment scheme in securities [other than property shares] contemplated in Part IV of the Collective Investment Schemes Control Act, 2002, managed or carried on by any company registered as a [management company] manager under [section 4 of the Unit Trusts Control Act, 1981 (Act No. 54 of 1981)] section 42 of that Act for purposes of that Part I, if—

(aa) **such portfolio was created on or after the date of commencement of the Unit Trusts Control Amendment Act, 1962 (Act No. 11 of 1962);**

(bb) **such portfolio was created before that date and the relevant trust deed has after that date been amended in order to create further units in that portfolio]; or**

- (ii) arrangement or scheme carried on outside the Republic in pursuance of which members of the public are [or will be] invited or permitted to invest in a portfolio of a collective investment scheme, where two or more investors contribute to and hold a participatory interest in a portfolio of the scheme through shares, units or any other form of participatory interest; or”;

(c) by the substitution in the definition of “connected person” for paragraph (bA) of the following paragraph:

“(bA) in relation to a connected person in relation to a trust (other than a [unit trust] collective investment scheme in property shares [as authorised under the Unit Trust Control Act, 1981 (Act No. 54 of 1981)] managed or carried on by any company registered as a manager under section 42 of the Collective Investment Schemes Control Act,

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 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 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 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, artikel 13 van Wet 30 van 2000, artikel 2 van Wet 59 van 2000, artikel 5 van Wet 5 van 2001, artikel 3 van Wet 19 van 2001, artikel 17 van Wet 60 van 2001 en artikel 9 van Wet 30 van 2002

6. (1) Artikel 1 van die Inkomstebelastingwet, 1962, word hierby gewysig—

(a) deur in die woordomskeywing van “aandeelhouer” paragraaf (b) deur die volgende paragraaf te vervang:

“(b) met betrekking tot ’n maatskappy bedoel in paragraaf (e) van genoemde omskeywing, die [geregistreeerde] besitter van ’n [onderaandeelsertifikaat uitgereik ten opsigte van ’n onderaandeel] deelnemende belang ingesluit by die betrokke [effektegroep] portefeulje, behalwe dat waar ’n ander persoon as die [geregistreeerde] besitter van ’n [onderaandeel] deelnemende belang geregtig is, hetsy uit hoofde van ’n bepaling in die [trustakte] akte aangegaan vir die doeleindes van die betrokke [effekte-trustskema] kollektiewe beleggingskema of ingevolge die voorwaardes van ’n ooreenkoms of kontrak of andersins, op die voordeel of ’n deel van die voordeel van die regte om in die winste of inkomste verbonde aan die [onderaandeelsertifikaat] deelnemende belang te deel, daardie ander persoon vir sover hy op bedoelde voordeel geregtig is ook geag word ’n aandeelhouer te wees; of”;

(b) deur die volgende woordomskeywing na die woordomskeywing van “aandeelhouer” die volgende omskeywing in te voeg:

“ ‘aangewese land’ ’n aangewese land soos in artikel 9E(8) bedoel;”;

(c) deur na die omskeywing van “bedryf” die volgende woordomskeywings in te voeg:

“ ‘beheerde buitelandse maatskappy’ ’n beheerde buitelandse maatskappy soos in artikel 9D omskryf, en sluit in enige verwysing in hierdie Wet, voor die wysiging daarvan deur die Wysigingswet op Inkomstewette, 2002, na ’n beheerde buitelandse entiteit; ‘beheerde groepsmaatskappy’ ’n beheerde groepsmaatskappy in die woordomskeywing van ‘groep van maatskappye’ bedoel; ‘beherende groepsmaatskappy’ ’n beherende groepsmaatskappy in die woordomskeywing van ‘groep van maatskappye’ bedoel;”;

(d) deur die woordomskeywing van “belastingpligtige” deur die volgende woordomskeywing te vervang:

“ ‘belastingpligtige’ ’n persoon belasbaar met ’n belasting hefbaar ingevolge hierdie Wet, en [by die toepassing van ’n bepaling met betrekking tot ’n opgawe ook] sluit in elke persoon wat ingevolge hierdie Wet [so ’n] enige opgawe moet verstrek [en by die toepassing van Deel IV van Hoofstuk III ook ’n persoon belasbaar met ’n belasting hefbaar ingevolge ’n vorige Inkomstebelastingwet];”;

(e) deur paragrafe (a) en (b) van die woordomskeywing van “buitelandse ekwiteitsinstrument” deur die volgende paragrafe te vervang:

“(a) ’n aandeel of depositobewys ten opsigte van ’n aandeel, wat genoteer is op ’n—

2002, for purposes of Part V of that Act), includes any other person who is a connected person in relation to such trust;”;

- (d) by the insertion after the definition of “connected person” of the following definitions:

“‘controlled group company’ means a controlled group company contemplated in the definition of ‘group of companies’;

‘controlling group company’ means a controlling group company contemplated in the definition of ‘group of companies’;

‘controlled foreign company’ means a controlled foreign company as defined in section 9D, and includes any reference in this Act, prior to the amendment thereof by the Revenue Laws Amendment Act, 2002, to a controlled foreign entity;”;

- (e) by the insertion after the definition of “date of assessment” of the following definition:

“‘designated country’ means a designated country contemplated in section 9E(8);”;

- (f) by the substitution in the definition of “dividend” for the words preceding paragraph (a) of the following words:

“‘dividend’ means any amount distributed by a company (not being an institution to which section 10(1)(d) applies) to its shareholders or any amount distributed out of the assets pertaining to any [unit] portfolio referred to in paragraph (e) of the definition of ‘company’ in this section to shareholders in relation to such [unit] portfolio (including, in the case of any co-operative society or company referred to in section 27, any amount distributed on or after 1 April 1977 to its members, whether divided among the members in accordance with their rights as shareholders or according to the value of business transactions between individual members and such society or company or on some other basis), and in this definition the expression ‘amount distributed’ includes—”;

- (g) by the substitution for paragraph (a) of the definition of “dividend” of the following paragraph:

“(a) in relation to a company that is being wound up or liquidated, or the corporate existence of which is finally terminated, any profits distributed, whether in cash or otherwise, other than those of a capital nature earned before or during the winding-up or liquidation from the disposal of any asset before 1 October 2001 (any such profits distributed by the liquidator of the company being deemed for the purposes of this definition to have been distributed by the company): Provided that the amount of any capital profits so distributed which are attributable to the disposal of any asset on or after 1 October 2001, but which was acquired by that company before that date shall, for the purposes of this definition be limited to the amount of profit determined as if that asset had been acquired on 1 October 2001 for a cost equal to the market value of that asset as contemplated in paragraph 29 of the Eighth Schedule;”;

- (h) by the insertion after the definition of “executor” of the following definition: “‘financial instrument’ includes—

(a) a loan, advance, debt, stock, bond, debenture, bill, share, promissory note, banker’s acceptance, negotiable certificate of deposit, deposit with a financial institution, a participatory interest in a portfolio of a collective investment scheme, or a similar instrument;

(b) any repurchase or resale agreement, forward purchase arrangement, forward sale arrangement, futures contract, option contract or swap contract;

(c) any other contractual right or obligation which derives its value from the value of a debt security, equity, commodity, rate index or a specified index;

(d) any interest-bearing arrangement; and

(e) any financial arrangement based on or determined with reference to the time value of money or cash flow or the exchange or transfer of an asset;”;

- (i) **[erkende]** aandeelbeurs **[buite die Republiek genoteer]** in paragraaf (b) van die woordskrywing van 'genoteerde maatskappy' bedoel; 5
- (ii) 'n nasionale, streeks- of plaaslike beurs buite die Republiek wat vergelykbaar is met 'n aandeelbeurs in subparagraaf (i) bedoel; of
- (iii) 'n tussenhandelaar kwotasiestelstel buite die Republiek wat gereelde vaste koop of verkoop kwotasies deur geïdentifiseerde makelaars of handelaars publiseer of vrystel, hetsy elektronies of andersins;";
- (b) 'n **[eenheid]** deelnemende belang in 'n reëling of skema in paragraaf (e)(ii) van die omskrywing van 'maatskappy' in artikel 1 bedoel;"; 10
- (f) deur in die omskrywing van "buitelandse ekwiteitsinstrument" die woorde wat op paragraaf (d) volg deur die volgende woorde te vervang:
 "en enige opsie, termynnooreenkoms of kontrak met betrekking tot daardie aandeel, **[eenheid]** **deelnemende** belang, belegging of kontraktuele reg of verpligting of munt;"; 15
- (g) deur in die woordskrywing van "dividend" die woorde wat paragraaf (a) voorafgaan deur die volgende woorde te vervang:
 "'dividend' 'n bedrag deur 'n ander maatskappy as 'n inrigting waarop artikel 10(1)(d) van toepassing is, aan sy aandeelhouers uitgekeer of 'n bedrag uit die bates met betrekking tot 'n **[effektegroep]** portefeulje bedoel in paragraaf (e) van die omskrywing van 'maatskappy' in hierdie artikel, aan aandeelhouers met betrekking tot sodanige **[effektegroep]** portefeulje uitgekeer (met inbegrip van, in die geval van 'n in artikel 27 bedoelde koöperatiewe vereniging of maatskappy, 'n bedrag wat op of na 1 April 1977 aan sy lede uitgekeer word, hetsy onder die lede ooreenkomstig hulle regte as aandeelhouers of volgens die waarde van besigheidstransaksies tussen individuele lede en bedoelde vereniging of maatskappy of op 'n ander basis verdeel), en omvat in hierdie omskrywing die uitdrukking 'bedrag uitgekeer'— 25
- (h) deur in die woordskrywing van "dividend" paragraaf (a) deur die volgende paragraaf te vervang:
 "'(a) met betrekking tot 'n maatskappy wat gelikwider word of waarvan die korporatiewe bestaan finaal beëindig word, alle uitgekeerde winste **[(behalwe dié van 'n kapitale aard)]**, hetsy in kontant of andersins, behalwe dié van 'n kapitale aard wat voor of gedurende die likwidasië verdien is uit die beskikking voor 1 Oktober 2001 oor enige bate (terwyl enige sodanige winste wat deur die likwidateur van die maatskappy uitgekeer word, by die toepassing van hierdie omskrywing geag word deur die maatskappy uitgekeer te wees): Met dien verstande dat die bedrag van enige kapitale winste aldus uitgekeer wat toeskryfbaar is aan die beskikking op of na 1 Oktober 2001 van enige bate wat voor daardie datum verkry is, by die toepassing van hierdie woordskrywing beperk word tot die bedrag van wins bereken asof daardie bate op 1 Oktober 2001 verkry is teen 'n koste gelykstaande aan die markwaarde van daardie bate soos in paragraaf 29 van die Agtste Bylae bedoel;"; 30
- (i) deur die volgende woordskrywing na die woordskrywing van "familielid" in te voeg:
 "'finansiële instrument' sluit in— 35
- (a) 'n lening, voorskot, skuld, effek, skuldbrief, wissel, aandeel, promesse, bankaksep, verhandelbare depositosertifikaat, deposito by 'n finansiële instelling, 'n deelnemende belang in 'n portefeulje van 'n gesamentlike beleggingskema, of 'n soortgelyke instrument; 40
- (b) 'n terugkoop- of herverkoopsooreenkoms, vooruitkoopsooreenkoms, vooruitverkoopsooreenkoms, termynsooreenkoms, opsiekontrak of ruilsooreenkoms; 45
- (c) enige ander kontraktuele reg of verpligting wat sy waarde verkry van die waarde van 'n skuldsekuriteit, ekwiteit, kommoditeit, koersindeks of 'n gespesifiseerde indeks; 50
- (d) enige rentedraende reëling; en 55
- (e) enige finansiële ooreenkoms gebaseer op of bepaal met verwysing na die tydwaarde van geld of kontantvloei, of die uitruil of oordrag van 'n bate;"; 60

- (i) by the substitution for paragraphs (a) and (b) of the definition of "foreign equity instrument" of the following paragraph:
- "(a) a share or depository receipt in respect of a share listed on any—
- (i) [recognised] stock exchange [outside the Republic] contemplated in paragraph (b) of the definition of 'listed company'; 5
- (ii) any national, regional or local exchange outside the Republic which is comparable to a stock exchange contemplated in subparagraph (i); or
- (iii) any interdealer quotation system outside the Republic that regularly publishes or releases firm buy or sell quotations by identified brokers or dealers by electronic means or otherwise;" 10
- (b) a [unit] participatory interest in an arrangement or scheme contemplated in paragraph (e)(ii) of the definition of 'company' in section 1;;
- (j) by the substitution in the definition of "foreign equity instrument" for the words following paragraph (d) of the following words: 15
- "and any option, future or contract relating to such share, [unit] participatory interest, investment or contractual right or obligation or coin;";
- (k) by the insertion after the definition of "gross income" of the following definition: 20
- "'group of companies' means two or more companies in which one company (hereinafter referred to as the 'controlling group company') directly or indirectly holds shares in at least one other company (hereinafter referred to as the 'controlled group company'), to the extent that—
- (a) at least 75 per cent of the equity shares of each controlled group company are directly held by the controlling group company, one or more other controlled group companies or any combination thereof; and 25
- (b) the controlling group company directly holds 75 per cent or more of the equity shares in at least one controlled group company;";
- (l) by the insertion after the definition of "international headquarter company" of the following definition: 30
- "'listed company' means a company where its shares or depository receipts in respect of its shares are listed on—
- (a) a stock exchange as defined in section 1 of the Stock Exchanges Control Act, 1985 (Act No. 1 of 1985); or
- (b) a stock exchange in a country other than the Republic which has been recognised by the Minister as contemplated in paragraph (c) of the definition of 'recognised exchange' in paragraph 1 of the Eighth Schedule; 35
- (m) by the substitution for subparagraph (iii) of paragraph (a) of the definition of "pension fund" of the following subparagraph: 40
- "(iii) any fund contemplated in subparagraph (ii) [established on or before 14 November 2000], which includes as members employees of any municipal entity created in accordance with the provisions of the Municipal Systems Act, 2000 (Act No. 32 of 2000), over which one or more local authorities exercise ownership control as contemplated by that Act, [if] where such fund was established— 45
- (aa) on or before 14 November 2000, and such employees were employees of a local authority immediately prior to becoming employees of such municipal entity; or
- (bb) after 14 November 2000, and such fund has been approved by the Commissioner subject to such limitations, conditions and requirements as contemplated in paragraph (c);" 50

- (j) deur na die woordskrywing van “gade” die volgende woordskrywings in te voeg:
- “‘gemiddelde wisselkoers’ met betrekking tot ’n jaar van aanslag—
- (a) die gemiddeld bepaal deur die sluitingskontantkoerse aan die einde van daaglikse, weeklikse of maandelikse tussenposes gedurende daardie jaar van aanslag te gebruik; of 5
- (b) die geweege gemiddeld bepaal deur die sluitingskontantkoerse aan die einde van daaglikse, weeklikse of maandelikse tussenposes gedurende daardie jaar van aanslag waartydens inkomste ontvang is of toegeval het of onkoste aangegaan is, te gebruik, welke gemiddeld gegrond moet word op— 10
- (i) die netto bedrag van ontvangste en toevallings (waarby uitgesluit dié van ’n kapitale aard) en onkoste wat gedurende daardie tydperk as ’n aftrekking toelaatbaar is; en
- (ii) die netto bedrag van kapitaalwinste of kapitaalverliese bereken ten opsigte van enige bates waarvoor gedurende daardie tydperk beskik is, 15
- wat konsekwent gedurende daardie jaar van aanslag toegepas moet word;
- ‘genoteerde maatskappy’ ’n maatskappy waar sy aandele of depositobewyse met betrekking tot sy aandele genoteer is op— 20
- (a) ’n aandeelbeurs soos in artikel 1 van die Wet op Beheer van Aandeelbeurse, 1985 (Wet No. 1 van 1985), omskryf; of
- (b) ’n aandeelbeurs in ’n land anders as die Republiek wat deur die Minister erken is, soos in paragraaf (c) van die woordskrywing van ‘erkende beurs’ in paragraaf 1 van die Agtste Bylae, bedoel;” 25
- (k) deur die volgende omskrywing na die omskrywing van “goudmynbou” in te voeg:
- “‘groep van maatskappye’ twee of meer maatskappye waarin een maatskappy (hierna die ‘beherende groepsmaatskappy’ genoem) direk of indirek aandele in minstens een ander maatskappy (hierna die ‘beheerde groepsmaatskappy’ genoem) hou, tot die mate wat—
- (a) minstens 75 persent van die ekwiteitsaandele van elke beheerde groepsmaatskappy direk deur die beherende groepsmaatskappy, een of meer ander beheerde groepsmaatskappye of enige kombinasie daarvan, gehou word; en 30
- (b) die beherende groepsmaatskappy direk 75 persent of meer van die ekwiteitsaandele in minstens een beheerde groepsmaatskappy hou;” 35
- (l) deur in die woordskrywing van “handelsvoorraad” subparagraaf (ii) van paragraaf (a) deur die volgende subparagraaf te vervang: 40
- “(ii) waarvan die opbrengs uit die van die hand sit daarvan deel van sy bruto inkomste uitmaak of sal uitmaak, anders as ingevolge paragraaf (j) of (m) van die woordskrywing van ‘bruto inkomste’, of as ’n vergoeding of verhaling in artikel 8(4) bedoel wat ingevolge paragraaf (n) van daardie woordskrywing by bruto inkomste ingesluit is; of” 45
- (m) deur in die woordskrywing van “inwoner” item (A) van die voorbehoudsbepaling by subparagraaf (ii) van paragraaf (a) deur die volgende item te vervang:
- “(A) [by die toepassing van items (aa) en (bb)] ’n dag ’n gedeelte van ’n dag insluit, maar sluit nie in nie enige dag wat ’n persoon in transit is deur die Republiek tussen twee plekke buite die Republiek en daardie persoon nie formeel die Republiek deur ’n ‘port of entry’ soos in die ‘Immigration Act, 2002’ (Wet No. 13 van 2002), omskryf, binnekom nie; en” 50
- (n) deur die volgende woordskrywing na die woordskrywing van “Kommissaris” in te voeg: 55
- “‘kwalifiserende statutêre koers’ ’n kwalifiserende statutêre koers soos in artikel 9E omskryf;”;

- (n) by the substitution for the definition of “prescribed rate” of the following definition:
 “ ‘prescribed rate’ in relation to any interest payable in terms of this Act, means **[such rate as the Minister may from time to time fix by notice in the Gazette]** for the purposes of— 5
- (a) interest payable to any taxpayer under the provisions of section 89quat(4), a rate determined at four percentage points below the rate contemplated in paragraph (b); or
- (b) any other provision of this Act, such rate as the Minister may from time to time fix by notice in the *Gazette* in terms of section 80(1)(b) of the Public Finance Management Act, 1999 (Act No. 1 of 1999);” 10
- (o) by the insertion after the definition of “provident fund” of the following definition:
 “ ‘qualifying statutory rate’ means a qualifying statutory rate as defined in section 9E;” 15
- (p) by the substitution in the definition of “resident” for item (A) of the proviso to subparagraph (ii) of paragraph (a) of the following paragraph:
 “(A) **[for the purposes of items (aa) and (bb)]** a day shall include a part of a day, but shall not include any day that a person is in transit through the Republic between two places outside the Republic and that person does not formally enter the Republic through a ‘port of entry’ as defined in the Immigration Act, 2002 (Act No. 13 of 2002); and” 20
- (q) by the substitution in the definition of “retirement-funding employment” for subparagraph (i) of paragraph (a) of the following subparagraph:
 “(i) in the case of such employee, derives in respect of his employment any income constituting remuneration as defined in paragraph 1 of the Fourth Schedule (but leaving out of account the provisions of paragraph (c) **[and paragraph (vii)]** of that definition and including the amount of any allowance or advance in respect of transport expenses contemplated in section 8(1)(b), but not an allowance or advance contemplated in section 8(1)(b)(iii) which is based on the actual distance travelled by the recipient, and which is calculated at a rate per kilometre which does not exceed the appropriate rate per kilometre fixed by the Minister of Finance under the said section 8(1)(b)(iii)) and is a member of or, as an employee, contributes to a pension fund or provident fund established for the benefit of employees of the employer from whom such income is derived; or” 25
- (r) by the substitution for paragraph (b) of the definition of “shareholder” of the following paragraph:
 “(b) in relation to any company referred to in paragraph (e) of the said definition, the **[registered]** holder of any **[unit certificate issued in respect of a unit]** participatory interest included in the relevant **[unit]** portfolio, except that where some person other than the **[registered]** holder of any **[unit]** participatory interest is entitled, whether by virtue of any provision in the **[trust]** deed entered into for the purposes of the relevant **[unit trust]** collective investment scheme or under the terms of any agreement or contract, or otherwise, to all or part of the benefit of the rights of participation in the profits or income attaching to the **[unit certificate]** participatory interest, such other person shall, to the extent 40 45

- (o) deur in die woordskrywing van “maatskappy” paragraaf (e) deur die volgende paragraaf te vervang:
“(e) ’n—
- (i) [effektiegroep] portefeulje bevat in ’n [effektetrustskema] kollektiewe beleggingskema in [ander] effekte [as eiendomsaandeel] in Deel IV van die Wet op die Beheer van Kollektiewe Beleggingskemas, 2002 bedoel, bestuur of voortgesit deur ’n maatskappy geregistreer as ’n [bestuursmaatskappy] bestuurder ingevolge [artikel 4 van die Wet op Beheer van Effektetrustskemas, 1981 (Wet 54 van 1981)] artikel 42 van daardie Wet vir doeleindes van daardie Deel, [indien—
 - (aa) sodanige effektiegroep op of na die datum van inwerkingtreding van die Wysigingswet op die Beheer van Effektetrustskemas, 1962 (Wet 11 van 1962), geskep is; of
 - (bb) sodanige effektiegroep voor daardie datum geskep is en die betrokke trustakte na daardie datum gewysig is ten einde meer onderaandeel in daardie effektiegroep te skep]; of
 - (ii) reëling of skema buite die Republiek beoefen ingevolge waarvan lede van die publiek uitgenooi of toegelaat word [of sal word] om in ’n portefeulje van ’n [gesamentlike] kollektiewe beleggingskema te belê, waar twee of meer beleggers bydra tot en ’n deelnemende belang in die portefeulje van die skema by wyse van aandeel, eenhede of enige ander vorm van deelnemende belang, hou; of”;
- (p) deur subparagraaf (iii) van paragraaf (a) van die woordskrywing van “pensioenfonds” deur die volgende subparagraaf te vervang:
- (iii) ’n fonds in subparagraaf (ii) beoog [wat voor of op 14 November 2000, ingestel is], wat as lede insluit werknemers van enige munisipale entiteit ingevolge die bepalings van die Wet op Munisipale Stelsels, 2000 (Wet No. 32 van 2000), gestig, waaroor een of meer plaaslike bestuurs eienaarskapsbeheer uitoefen, soos in daardie Wet bedoel, [indien] waar daardie fonds ingestel is—
 - (aa) voor of op 14 November 2000, en daardie werknemers onmiddellik voordat hulle werknemers van daardie munisipale entiteit geword het, werknemers van ’n plaaslike bestuur was; of
 - (bb) na 14 November 2000, en daardie fonds deur die Kommissaris goedgekeur is onderhewig aan die beperkings, voorwaardes en vereistes soos in paragraaf (c) bedoel;”;
- (q) deur in die woordskrywing van “uittredingfunderingsdiens” subparagraaf (i) van paragraaf (a) deur die volgende subparagraaf te vervang:
- “(i) in die geval van bedoelde werknemer, ten opsigte van sy diens enige inkomste verkry wat besoldiging uitmaak soos omskryf in paragraaf 1 van die Vierde Bylae (maar sonder om rekening te hou met die bepalings van paragraaf (c) [en paragraaf (vii)] van bedoelde omskrywing en insluitend die bedrag van ’n toelae of voorskot ten opsigte van reiskoste beoog in artikel 8(1)(b) maar nie ’n toelae of voorskot beoog in artikel 8(1)(b)(iii) wat gebaseer is op die werklike afstand wat deur die ontvanger afgelê is, en wat vasgestel is teen ’n skaal per kilometer wat nie die toepaslike skaal per kilometer deur die Minister van Finansies ingevolge genoemde artikel 8(1)(b)(iii) bepaal, te bowe gaan nie) en ’n lid is van, of as ’n werknemer bydra tot, ’n pensioenfonds of voorsorgsfonds ingestel ten voordele van werknemers van die werkgewer van wie bedoelde inkomste verkry is; of”;
- (r) deur in die woordskrywing van “verbonde persoon” paragraaf (bA) deur die volgende paragraaf te vervang:
- “(bA) met betrekking tot ’n verbonde persoon met betrekking tot ’n trust (behalwe ’n [effektetrustskema] kollektiewe beleggingskema in eiendomsaandeel [gemagtig ingevolge die Wet op Beheer van Effektetrustskemas, 1981 (Wet 54 van 1981)] bestuur of bedryf deur ’n maatskappy wat as ’n bestuurder geregistreer is ingevolge artikel 42 van die Wet op die Beheer van Kollektiewe Beleggingskemas, 2002,

that he is entitled to such benefit, also be deemed to be a shareholder; or”;

- (s) by the substitution for the definition of “taxpayer” of the following definition: “‘taxpayer’ means any person chargeable with any tax leviable under this Act and, **for the purposes of any provision relating to any return,** includes every person required by this Act to furnish [such] any return; **and for the purposes of Part IV of Chapter III includes any person chargeable with any tax leviable under any previous Income Tax Act;**”;

- (t) by the substitution in the definition of “trading stock” for subparagraph (ii) of paragraph (a) of the following subparagraph:

“(ii) the proceeds from the disposal of which forms or will form part of his gross income, otherwise than in terms of paragraph (j) or (m) of the definition of ‘gross income’, or as a recovery or recoupment contemplated in section 8(4) which is included in gross income in terms of paragraph (n) of that definition; or”.

(2) (a) Subsection (1)(a) shall come into operation on the date of promulgation of this Act and shall apply in respect of years of assessment commencing on or after that date.

(b) Subsection (1)(b), (c), (f), (j) and (r) shall come into operation on the date that the Collective Investment Schemes Control Act, 2002, comes into operation.

(c) Subsection (1)(d) shall in so far as it inserts—

(i) the definitions of “controlled group company” and “controlling group company”, be deemed to have come into operation on 6 November 2002;

(ii) the definition of “controlled foreign company” come into operation on the date of promulgation of this Act and shall apply in respect of years of assessment ending on or after that date.

(d) Subsection (1)(e), (h), (l) (o) and (s) shall come into operation on the date of promulgation of this Act.

(e) Subsection (1)(g) shall come into operation on 1 January 2003 and shall apply in respect of any dividend declared on or after that date.

(f) Subsection (1)(i) shall in so far as it amends—

(i) paragraph (a) of the definition of “foreign equity instrument”, be deemed to have come into operation on 1 October 2001; and

(ii) paragraph (b) of the definition of “foreign equity instrument”, come into operation on the date that the Collective Investment Schemes Control Act, 2002, comes into operation.

(g) Subsection (1)(k) shall come into operation on 6 November 2002.

(h) Subsection (1)(m) shall be deemed to have come into operation on 14 November 2000.

(i) Subsection (1)(n) shall come into operation on a date to be fixed by the President by proclamation in the *Gazette*.

(j) Subsection (1)(p) shall be deemed to have come into operation on 1 March 2001.

(k) Subsection (1)(t) shall be deemed to have come into operation on 19 July 2000.

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, section 20 of Act 30 of 1998, section 3 of Act 59 of 2000, section 6 of Act 5 of 2001, section 4 of Act 19 of 2001 and section 18 of Act 60 of 2001

7. 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’, ‘retirement annuity fund’ and ‘spouse’ in section 1, section 6, section 8(4)(b), (c), (d) and (e), section 9D, section 9E, section 9F, section 10(1)(cH), (cK), (e), (iA), (j) and (nB), section 11(e), (f), (g), (gA), (j), (l), (t), (u) and (w), section 12C, section 12E, section 12G, 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 30, section 31, section 35(2), section 38(4), section 41(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

- vir doeleindes van Deel V van daardie Wet), ook enige ander persoon wat 'n verbonde persoon met betrekking tot daardie trust is;";
- (s) deur die woordomskeywing van "voorgeskrewe koers" deur die volgende woordomskeywing te vervang:
- " 'voorgeskrewe koers', met betrekking tot enige rente wat ingevolge hierdie Wet betaalbaar is[, **die koers wat die Minister van tyd tot tyd by kennisgewing in die Staatskoerant bepaal**] vir die doeleindes van—
- (a) rente wat ingevolge die bepalings van artikel 89^{quat}(4) aan 'n belastingpligtige betaalbaar is, 'n koers bepaal teen vier persentasiepunte onder die koers in paragraaf (b) bedoel; of
- (b) enige ander bepaling van hierdie Wet, die koers wat die Minister van tyd tot tyd by kennisgewing in die Staatskoerant vasstel ingevolge artikel 80(1)(b) van die Wet op Openbare Finansiële Bestuur, 1999 (Wet No. 1 van 1999);".
- (2)(a) Subartikel (1)(a), (f), (g), (o) en (r) tree in werking op die datum wat die Wet op die Beheer van Kollektiewe Beleggingskemas, 2002, in werking tree.
- (b) Subartikel (1)(c) vir sover dit—
- (i) die woordomskeywing van "beheerde buitelandse maatskappy" invoeg, tree in werking op die datum van afkondiging van hierdie Wet en is van toepassing ten opsigte van jare van aanslag wat op of na daardie datum eindig;
- (ii) die woordomskeywings van "beheerde groepsmaatskappy" en "beherende groepsmaatskappy" invoeg, word geag op 6 November 2002 in werking te getree het.
- (c) Subartikel (1)(b), (d), (i) en (n) tree in werking op die datum van afkondiging van hierdie Wet.
- (d) Subartikel (1)(e) vir sover dit—
- (i) paragraaf (a) van die woordomskeywing van "buitelandse ekwiteitsinstrument" wysig, word geag op 1 Oktober 2001 in werking te getree het; en
- (ii) paragraaf (b) van die woordomskeywing van "buitelandse ekwiteitsinstrument" wysig, tree in werking op die datum wat die Wet op die Beheer van Kollektiewe Beleggingskemas, 2002, in werking tree.
- (e) Subartikel (1)(h) tree op 1 Januarie 2003 in werking en is van toepassing ten opsigte van enige dividend op of na daardie datum verklaar.
- (f) Subartikel (1)(j)—
- (i) vir sover dit die woordomskeywing van "gemiddelde wisselkoers" invoeg, tree in werking op die datum van afkondiging van hierdie Wet en is van toepassing ten opsigte van jare van aanslag wat op of na daardie datum 'n aanvang neem; and
- (ii) vir sover die die woordomskeywing van "genoteerde maatskappy" invoeg, tree in werking op die datum van afkondiging van hierdie Wet.
- (g) Subartikel (1)(k) word geag op 6 November 2002 in werking te getree het.
- (h) Subartikel (1)(l) word geag op 19 Julie 2000 in werking te getree het.
- (i) Subartikel (1)(m) word geag op 1 Maart 2001 in werking te getree het.
- (j) Subartikel (1)(p) word geag op 14 November 2000 in werking te getree het.
- (k) Subartikel (1)(s) tree in werking op 'n datum wat die President by proklamasie in die *Staatskoerant* bepaal.

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, artikel 20 van Wet 30 van 1998, artikel 3 van Wet 59 van 2000, artikel 6 van Wet 5 van 2001, artikel 4 van Wet 19 van 2001 en artikel 18 van Wet 60 van 2001

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

"(4) Enige beslissing van die Kommissaris kragtens die omskrywings van 'bystandsfonds', 'gade', 'pensioenfonds', 'uittredingannuïteitsfonds' en 'voorsorgfonds' in artikel 1, artikel 6, artikel 8(4)(b), (c), (d) en (e), artikel 9D, artikel 9E, artikel 9F, artikel 10(1)(cH), (cK), (e), (iA), (j) en (nB), artikel 11(e), (f), (g), (gA), (j), (l), (t), (u) en (w), artikel 12C, artikel 12E, artikel 12G, 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 30, artikel 31, artikel 35(2), artikel 38(4), artikel 41(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

paragraph 1 and paragraph 4 of the Second Schedule, paragraphs 18, 19(1), 20, 21, 22, 24 and 27 of the Fourth Schedule, paragraphs 2, 3, 6, 9 and 11 of the Seventh Schedule and paragraphs 29(2A), 29(7), 31(2), 65(1)(d) and 66(1)(c) of the Eighth Schedule, shall be subject to objection and appeal.”.

Amendment of section 4 of Act 58 of 1962, as amended by section 6 of Act 55 of 1966, section 4 of Act 104 of 1979, section 32 of Act 104 of 1980, section 3 of Act 96 of 1981, section 3 of Act 85 of 1987, section 3 of Act 70 of 1989, section 4 of Act 21 of 1994, section 3 of Act 36 of 1996, section 34 of Act 34 of 1997, section 21 of Act 30 of 1998, section 11 of Act 53 of 1999, section 14 of Act 30 of 2000 and section 19 of Act 60 of 2001

8. Section 4 of the Income Tax Act, 1962, is hereby amended—

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

“(1E) The National Police Commissioner or the National Director of Public Prosecutions or any person acting under the direction and control of such National Police Commissioner or National Director of Public Prosecutions, shall not disclose any information supplied under subsection (1B) to any other person or permit any other person to have access thereto, except in the exercise of his or her powers or the carrying out of his [of] or her duties—

(a) for purposes of any investigation of, or prosecution for, an offence contemplated in subsection (1B); or

(b) to combat any public safety or environmental risk contemplated in subsection (1B).”;

(b) by the substitution for subsection (3) of the following subsection:

“(3) Any person who contravenes the provisions of subsection (1), (1A), (1D), (1E) or (2A), shall be guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding two years.”.

Amendment 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, section 16 of Act 30 of 2000 and substituted by section 4 of Act 59 of 2000, and amended by section 8 of Act 5 of 2001 and section 20 of Act 60 of 2001

9. (1) Section 6quat of the Income Tax Act, 1962, is hereby amended—

(a) by the deletion in subsection (1) of subparagraph (ii) of paragraph (a);

(b) by the substitution in subsection (1) for paragraphs (e) and (f) of the following paragraphs:

“(e) any taxable capital gain contemplated in section 26A, [to the extent that it is attributable to any capital gain in respect of an asset situated] from a source outside the Republic which is not deemed to be from a source in the Republic; or

(f) any amount—

(i) contemplated in paragraphs (a), (b) or (d) which is received by or accrued to any other person and which is deemed to have been received by or accrued to such resident in terms of section 7;

(ii) of capital gain of any other person from a source outside the Republic which is not deemed to be from a source in the Republic and which is attributed to that resident in terms of paragraph 68, 69, 70, 71, 72 or 80 of the Eighth Schedule; or

(iii) contemplated in paragraphs (a), (b), (d) or (e) which represents capital of a trust, [as contemplated in] and which is included in the income of that resident in terms of section 25B(2A) or taken into account in determining the aggregate capital gain or aggregate capital loss of that resident in terms of paragraph 80(3) of the Eighth Schedule, [in respect of which that resident acquires a vested right].”;

paragraaf 4 van die Tweede Bylae, paragrawe 18, 19(1), 20, 21, 22, 24 en 27 van die Vierde Bylae, paragrawe 2, 3, 6, 9 en 11 van die Sewende Bylae en paragrawe 29(2A), 29(7), 31(2), 65(1)(d) en 66(1)(c) van die Agtste Bylae is aan beswaar en appèl onderhewig.”.

Wysiging van artikel 4 van Wet 58 van 1962, soos gewysig deur artikel 6 van Wet 55 van 1966, artikel 4 van Wet 104 van 1979, artikel 32 van Wet 104 van 1980, artikel 3 van Wet 96 van 1981, artikel 3 van Wet 85 van 1987, artikel 3 van Wet 70 van 1989, artikel 4 van Wet 21 van 1994, artikel 3 van Wet 36 van 1996, artikel 34 van Wet 34 van 1997, artikel 21 van Wet 30 van 1998, artikel 11 van Wet 53 van 1999, artikel 14 van Wet 30 van 2000 en artikel 19 van Wet 60 van 2001

8. Artikel 4 van die Inkomstebelastingwet, 1962, word hierby gewysig—

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

“(1E) Die Nasionale Kommissaris van die Polisie of die Nasionale Direkteur van Openbare Vervolgings of enige persoon wat onder die beheer en toesig van daardie Nasionale Kommissaris van die Polisie of die Nasionale Direkteur van Openbare Vervolgings optree, openbaar nie enige inligting kragtens subartikel (1B) voorsien aan enige persoon nie of laat nie toe dat enige persoon toegang daartoe verkry nie, behalwe in die uitoefening van sy of haar magte of uitvoering van sy of haar pligte—

(a) vir doeleindes van enige ondersoek of vervolging van ’n misdryf in subartikel (1B) bedoel; of

(b) om enige openbare gevaar of omgewingsrisiko in subartikel (1B) bedoel, te bestry.”;

(b) deur subartikel (3) deur die volgende subartikel te vervang:

“(3) Iemand wat die bepalings van subartikel (1), (1A), (1D), (1E) of (2A) oortree, is aan ’n misdryf skuldig en by skuldigbevinding strafbaar met ’n boete of gevangenisstraf vir ’n tydperk van hoogstens twee jaar.”.

Wysiging van artikel 6 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, artikel 16 van Wet 30 van 2000 en vervang deur artikel 4 van Wet 59 van 2000, en gewysig deur artikel 8 van Wet 5 van 2001 en artikel 20 van Wet 60 van 2001

9. (1) Artikel 6 van die Inkomstebelastingwet, 1962, word hierby gewysig—

(a) deur subparagraaf (ii) van paragraaf (a) van subartikel (1) te skrap;

(b) deur paragrawe (e) en (f) van subartikel (1) deur die volgende paragrawe te vervang:

“(e) enige belasbare kapitaalwins in artikel 26A beoog [tot die mate wat dit toeskryfbaar is aan enige kapitaalwins ten opsigte van ’n bate wat] van ’n bron buite die Republiek [geleë is] wat nie geag word van ’n bron binne die Republiek te wees nie ; of

(f) enige bedrag—

(i) in paragrawe (a), (b) of (d) bedoel wat ontvang is deur of toe [te] geval het aan ’n ander persoon en wat geag word ontvang deur of toegeval te gewees het aan daardie inwoner ingevolge artikel 7;

(ii) van kapitaalwins van enige ander persoon van ’n bron buite die Republiek wat nie geag word van ’n bron binne die Republiek te wees nie en wat aan daardie inwoner toegereken word ingevolge paragraaf 68, 69, 70, 71, 72 of 80 van die Agtste Bylae; of

(iii) in paragrawe (a), (b), (d) of (e) bedoel wat kapitaal van ’n trust daarstel, [soos in] en wat ingesluit word in die inkomste van daardie inwoner ingevolge artikel 25B(2A) [van] of in berekening gebring is by die vasstelling van die totale kapitaalwins of totale kapitaalverlies van daardie inwoner ingevolge paragraaf 80 (3) van die Agtste Bylae [bedoel, ten opsigte waarvan die inwoner ’n gevestigde reg verkry].”;

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

“(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 to [the] any sphere of government of any country other than the Republic, 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—”;

- (d) by the substitution in subsection (1A) for paragraph (b) of the following paragraph:

“(b) any controlled foreign **[entity, as contemplated in section 9D]** company, in respect of such proportional amount contemplated in subsection (1)(b); or”;

- (e) by the substitution in subsection (1A) for paragraph (d) of the following paragraph:

“(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]** company, and which dividend relates to any proportional amount equal to the amount which was included in the income of **[such]** that resident as contemplated in subsection (1)(b); or”;

- (f) by the substitution in subsection (1A) for paragraph (e) of the following paragraph:

“(e) any **[unit]** portfolio of a collective investment scheme in respect of the amount of any foreign dividend which is deemed to have been declared to such resident in terms of section 9E(5) and included in the taxable income of that resident; or”;

- (g) by the substitution in subsection (1B) for paragraph (a) of the following paragraph:

“the rebate or rebates of any tax proved to be payable to the government of any other country or countries as contemplated in subsection (1A), 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, proportional amount **[contemplated in subsection (1)(b)]**, foreign dividend, **[or]** taxable capital gain or amount, as the case may be, **[derived from such country or countries]** which is included as contemplated in subsection (1), bears to the total taxable income: Provided that—

- (i) in determining the amount of the taxable income that is attributable to that income, proportional amount, foreign dividend, taxable capital gain or amount, any allowable deductions contemplated in sections 11(n), 18 and 18A must be deemed to have been incurred proportionately in respect of income derived from sources within and outside the Republic;

- [(i)]** (ii) where the sum of any such taxes payable to the government of any such other country or countries exceeds the rebate as so determined (hereinafter referred to as the excess amount), **[such]** that excess amount may—

- (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 any other country in **[such]** that year; and

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

- (c) deur in subartikel (1A) die woorde wat paragraaf (a) voorafgaan deur die volgende woorde te vervang:
- “(1A) Vir doeleindes van subartikel (1), is die korting gelyk aan die som van enige belastinge op inkomste wat bewys word betaalbaar te wees aan **[die regering]** enige regeringsfeer van enige land anders as die Republiek 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), deur—”;
- (d) deur paragraaf (b) van subartikel (1A) deur die volgende paragraaf te vervang:
- “(b) enige beheerde buitelandse **[entiteit, soos beoog in artikel 9D] maatskappy**, ten opsigte van gemelde proporsionele gedeelte in subartikel (1)(b) bedoel; of”;
- (e) deur paragraaf (d) van subartikel (1A) deur die volgende paragraaf te vervang:
- “(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]** maatskappy verklaar is of geag verklaar te gewees het en welke dividend betrekking het op enige proporsionele bedrag gelykstaande aan die bedrag wat in die inkomste van bedoelde inwoner ingesluit is soos in subartikel (1)(b) bedoel; of”;
- (f) deur paragraaf (e) van subartikel (1A) deur die volgende paragraaf te vervang:
- “(e) enige **[effektegroep]** portefeulje van ’n kollektiewe beleggingskema ten opsigte van die bedrag van enige buitelandse dividend wat geag word aan daardie inwoner verklaar te gewees het ingevolge artikel 9E(5) en in die belasbare inkomste van daardie inwoner ingesluit is; of”;
- (g) deur paragraaf (a) van subartikel (1B) deur die volgende paragraaf te vervang:
- “(a) mag die korting of kortings van enige belasting wat bewys word aan die regering van enige ander land of lande betaalbaar is soos in subartikel (1A) beoog, 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, proporsionele bedrag **[in subartikel (1)(b) bedoel]**, buitelandse dividend, **[of]** belasbare kapitaalwins of bedrag, na gelang van die geval, **[vanaf daardie land of lande verkry]** wat soos in subartikel (1) beoog ingesluit is tot die totale belasbare inkomste staan, te bowe gaan nie: Met dien verstande dat—
- (i) by die vasstelling van die bedrag van die belasbare inkomste wat toeskryfbaar is aan daardie inkomste, proporsionele bedrag, buitelandse dividend, belasbare kapitaalwins of bedrag, word enige toelaatbare afrekkings in artikels 11(n), 18 en 18A bedoel, geag proporsioneel ten opsigte van inkomste verkry vanuit bronne binne en buite die Republiek aangegaan te wees;
- [(i)] (ii) waar die bedrag van enige bedoelde belastinge betaalbaar aan die regering van enige bedoelde ander land of lande die korting aldus bepaal (hieronder die oorskotbedrag genoem), te bowe gaan **[bedoelde]** daardie oorskotbedrag—
- (aa) oorgedra kan word na die onmiddellik daaropvolgende jaar van aanslag en word geag ’n belasting op inkomste betaal aan die regering van ’n ander land te wees in **[bedoelde]** daardie jaar; en
- (bb) verreken word teen die bedrag van enige normale belasting betaalbaar deur **[bedoelde]** daardie inwoner gedurende **[bedoelde]** daardie jaar van aanslag ten opsigte van enige bedrag vanaf ’n ander land verkry wat in die belasbare inkomste van **[bedoelde]** daardie inwoner in **[bedoelde]** daardie jaar ingesluit is, soos in **[paragraaf (a), (b), (d) of (e) van]** subartikel (1) bedoel, na enige belasting betaalbaar aan die regering van ’n ander land gedurende bedoelde jaar van aanslag ten opsigte van enige bedrag aldus ingesluit in daardie jaar van aanslag, wat ingevolge subartikels (1) en (1A) afgetrek kan word, van die bedrag van bedoelde normale belasting betaalbaar ten opsigte van bedoelde bedrag aldus ingesluit, afgetrek is; en

normal tax payable in respect of such amount so included;
and

- [(ii)] (iii) the excess amount shall not be allowed to be carried forward for more than seven years reckoned from the year of assessment when such excess amount was for the first time carried forward;”;

- (h) by the substitution in subsection (1B) for the words in paragraph (c) following subparagraph (ii) of the following words:

“may be deducted from any normal tax which becomes payable by **[such] that** resident during any year of assessment that any income is derived by way of dividends declared to **[such] that** resident by any controlled foreign **[entity] company** from profits relating to any amount so previously included;”;

- (i) by the substitution in subsection (1B) of subparagraph (i) of paragraph (d) of the following subparagraph:

“(i) any company distributing any dividend to such resident, if such resident **[(in the case of a company,] together with any [other company in a group of companies of which such company forms part] connected** person in relation to that resident) holds for **[his or its] their** own benefit less than 10 per cent of the equity share capital in such company; or”;

- (j) by the deletion in subsection (3) of the definitions of “controlled company”, “controlling company” and “group of companies”;

- (k) by the addition in subsection (3) after the definition of “qualifying interest” of the following definition:

“ ‘taxes on income’ does not include any compulsory payment to the government of any other country which constitutes a consideration for the right to extract any mineral or natural oil;”;

- (l) by the substitution for subsection (4) of the following subsection:

“(4) For the purposes of this section the amount of any foreign tax proved 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 on the last day of that year of assessment by applying[—

(a) the ruling exchange rate on the day on which such foreign tax is 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 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] the average exchange rate for that year of assessment.”;

- (m) by the substitution in subsection (5) for the words preceding the proviso of the following words:

“(5) Where **[any amount of tax, which was proved to be payable to the government of any other country, was allowed as]** a rebate was allowed in terms of this section against the normal tax payable by any resident in any previous year of assessment in respect of any amount of tax which was proved to be payable to the government of any other country, and—

(a) it is proved by **[such] that** resident that the amount of **[such] the** tax actually payable to such government exceeds the amount of tax in respect of which the rebate was so allowed **[as a rebate]**; or

(b) the Commissioner is satisfied that the amount of **[such] the** tax actually payable to such government is less than the amount of tax in respect of which the rebate was so allowed **[as a rebate]**,

the Commissioner may, notwithstanding the provisions of section 79 or section 81(5), but subject to subsection (1B)(a) issue a reduced or additional assessment, as the case may be, reflecting the amount of the rebate in respect of that amount of tax actually payable in that other

- [(ii)](iii) die oorskotbedrag nie vir langer as sewe jaar, gereken vanaf die jaar van aanslag waarop bedoelde oorskotbedrag vir die eerste maal oorgedra is, oorgedra mag word nie;”;
- (h) deur in subartikel (1B) die woorde in paragraaf (c) wat subparagraaf (ii) volg deur die volgende woorde te vervang: 5
 “afgetrek word van enige normale belasting wat deur [bedoelde] daardie inwoner betaalbaar word gedurende enige jaar van aanslag wat inkomste verkry word by wyse van dividende aan [bedoelde] daardie inwoner deur enige beheerde buitelandse [entiteit] maatskappy verklaar uit winste wat verband hou met enige bedrag aldus voorheen ingesluit, verkry is;”;
- (i) deur subparagraaf (i) van paragraaf (d) van subartikel (1B) deur die volgende subparagraaf te vervang: 15
 “(i) enige maatskappy wat ’n dividend aan daardie inwoner uitkeer, indien daardie inwoner ([in die geval van ’n maatskappy,] tesame met enige [ander maatskappy in ’n groep maatskappye waarvan bedoelde maatskappy deel uitmaak] verbonde persoon met betrekking tot daardie inwoner) minder as 10 persent van die ekwiteitsaandelekapitaal in bedoelde maatskappy vir [sy] hulle eie belang hou; of”;
- (j) deur in subartikel (3) die woordomsrywings “beheerde maatskappy”, 20
 “beherende maatskappy” en “groep maatskappye” te skrap;
- (k) deur in subartikel (3) voor die woordomskrywing van “kwalifiserende belang” die volgende woordomskrywing in te voeg: 25
 “‘belasting op inkomste’ sluit nie in nie enige verpligte betaling aan die regering van enige ander land wat ’n vergoeding vir die reg om enige mineraal of aardolie te ontgin, daarstel;”;
- (l) deur subartikel (4) deur die volgende subartikel te vervang: 30
 “(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, op die laaste dag van daardie jaar van aanslag na die geldeenheid van die Republiek omgeskakel deur—
 (a) die heersende wisselkoers op die dag waarop die buitelandse belasting werklik betaal word; of 35
 (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] die gemiddelde 45
 wisselkoers vir daardie jaar van aanslag toe te pas.”;
- (m) deur in subartikel (5) die woorde wat die voorbehoudsbepaling voorafgaan deur die volgende woorde te vervang: 50
 “(5) Waar ’n korting ten opsigte van 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] die belasting werklik aan daardie regering betaalbaar die bedrag 55
 [wat as] van die belasting ten opsigte waarvan ’n korting aldus toegelaat is oorskry; of
 (b) die Kommissaris oortuig is dat die bedrag van [daardie] die belasting werklik betaalbaar aan daardie regering minder is as die bedrag [wat] van belasting ten opsigte waarvan die korting aldus 60
 toegelaat is [as ’n korting].
 kan die Kommissaris, ondanks die bepalinge van artikel 79 of artikel 81(5), maar behoudens subartikel (1B)(a), ’n verminderde of addisionele aanslag, na gelang van die geval, doen wat die bedrag van die korting ten

currency translated to the currency of the Republic at the average exchange rate applicable for that previous year of assessment, which shall be allowed against normal tax.”.

(2) (a) Subsection (1)(a), (b), (c), (d), (e), (g), (h), (i), (j), (k) and (n) shall come into operation on the date of promulgation of this Act and shall apply in respect of years of assessment ending on or after that date. 5

(b) Subsection (1)(f) shall come into operation on the date that the Collective Investment Schemes Control Act, 2002, comes into operation.

(c) Subsection (1)(l) and (m) comes into operation on the date of promulgation of this Act and shall apply in respect of years of assessment commencing on or after that date. 10

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, section 13 of Act 53 of 1999 and section 5 of Act 59 of 2000 15

10. (1) Section 7 of the Income Tax Act, 1962, is hereby amended by the substitution for subsection (8) of the following subsection:

“(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] an entity [as defined in section 9D, of a public character] which is not a resident and which is similar to a public benefit organisation contemplated in section 30) 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] company in relation to such resident), there shall be included in the income of [such] that resident so much of the amount of any income as is attributable to [such] that donation, settlement or other disposition: Provided that any amount of income received by or accrued to [such] that 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] that person had been a shareholder who is a resident.”. 20 25 30

(2) Subsection (1) shall come into operation on the date of promulgation of this Act and shall apply in respect of years of assessment ending on or after that date.

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, section 17 of Act 30 of 2000, section 6 of Act 59 of 2000, section 7 of Act 19 of 2001, section 21 of Act 60 of 2001 and section 12 of Act 30 of 2002 35 40

11. (1) Section 8 of the Income Tax Act, 1962, is hereby amended—

(a) by the addition in subsection (1) to paragraph (a) of the following subparagraph: 45

“(iv) The provisions of this paragraph shall not apply in respect of any allowance or advance received by or accrued to a person contemplated in section 9(1)(e) stationed outside the Republic which is attributable to that person’s services rendered outside the Republic.”; 50

opsigte van daardie bedrag van belasting werklik betaalbaar in daardie ander geldeenheid, omgerekend na die geldeenheid van die Republiek teen die gemiddelde wisselkoers wat van toepassing is vir daardie vorige jaar van aanslag, uiteensit wat [toegelaat word] teen normale belasting [uiteensit] toegelaat word.”

(2) (a) Subartikel (1)(a), (b), (c), (d), (e), (g), (h), (i), (j) en (k) tree op die datum van afkondiging van hierdie Wet in werking en is van toepassing ten opsigte van jare van aanslag wat op of na daardie datum eindig.

(b) Subartikel (1)(f) tree in werking op die datum wat die Wet op die Beheer van Kollektiewe Beleggingskemas, 2002, in werking tree.

(c) Subartikel (1)(l) en (m) tree in werking op die datum van afkondiging van hierdie Wet en is van toepassing ten opsigte van jare van aanslag wat op of na daardie datum 'n aanvang neem.

Wysiging van artikel 7 van Wet 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, artikel 23 van Wet 30 van 1998, artikel 13 van Wet 53 van 1999 en artikel 5 van Wet 59 van 2000

10. (1) Artikel 7 van die Inkomstebelastingwet, 1962, word hierby gewysig deur subartikel (8) deur die volgende subartikel te vervang:

“(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] wat nie 'n inwoner is nie en wat soortgelyk is aan 'n openbare weldaadsorganisasie in artikel 30 beoog) 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] maatskappy met betrekking tot daardie inwoner), word daar in die inkomste van [bedoelde] daardie inwoner ingesluit soveel van die bedrag aan inkomste wat aan [bedoelde] daardie skenking, 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.”

(2) Subartikel (1) tree in werking op die datum van afkondiging van hierdie Wet en is van toepassing ten opsigte van jare van aanslag wat op of na daardie datum eindig.

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 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, artikel 17 van Wet 30 van 2000, artikel 6 van Wet 59 van 2000, artikel 7 van Wet 19 van 2001, artikel 21 van Wet 60 van 2001 en artikel 12 van Wet 30 van 2002

11. (1) Artikel 8 van die Inkomstebelastingwet, 1962, word hierby gewysig—

(a) deur in subartikel (1) die volgende subparagraaf by paragraaf (a) te voeg:

“(iv) Die bepalinge van hierdie paragraaf is nie van toepassing nie ten opsigte van enige toelae of voorskot wat ontvang is deur of toegeval het aan 'n persoon in artikel 9(1)(e) bedoel wat buite die Republiek gestasioneer is, wat aan daardie persoon se dienste wat buite die Republiek gelewer word, toeskryfbaar is.”;

- (b) by the substitution in subsection (1) for subparagraph (ii) of paragraph (c) of the following subparagraph:

“(ii) for each day or part of a day in the period during which that
 recipient is absent from his or her usual place of residence, an
 amount in respect of meals and other incidental costs, or incidental
 costs only, determined by the Minister for the relevant year of
 assessment by way of notice in the *Gazette*, but limited to the
 amount of the allowance paid or granted to meet those expenses:
 Provided that this subparagraph does not apply to the extent that—
 (aa) the employer has borne the expenses (otherwise than by way of
 granting the allowance or advance) in respect of which the
 allowance was paid or granted for that day or part of that day;
 or
 (bb) the recipient has proved to the Commissioner any amount of
 actual expenditure in respect of meals or incidental costs for
 that day or part of that day, as contemplated in subparagraph
 (i).”;

- (c) by the substitution for subparagraph (ii) of paragraph (k) of subsection (4) of the following subparagraph:

“(ii) [distributed any asset by way of a dividend] transferred in
whatever manner or form any asset to any shareholder of that
company; or”; and

- (d) by the substitution in subsection (4) for the words following subparagraph (iii) of paragraph (k) of the following words:

“in respect of which a deduction or an allowance has been granted to
 such person in terms of any of the provisions referred to in that
 paragraph, such person shall be deemed to have recovered or recouped
 an amount equal to the market value of such asset as at the date of such
 donation, [distribution] transfer or disposal.”.

- (2) (a) Subsection (1)(a) shall be deemed to have come into operation on 1 March 2001.

- (b) Subsection (1)(b) shall be deemed to have come into operation on 1 March 2002.

- (c) Subsection (1)(c) and (d) shall be deemed to have come into operation on 12 December 2001, and shall apply in respect of any asset disposed of on or after that date.

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, section 15 of Act 53 of 1999 and section 7 of Act 59 of 2000

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

- (a) by the insertion in subsection (1) before paragraph (cA) of the following paragraphs:

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

- (i) any patent, design, trade mark, copyright, model, pattern, plan,
 formula or process or any other property or right of a similar nature;
 or
 (ii) motion picture film, or any film or video tape or disc, any sound
 recording or advertising matter,
 contemplated in section 35;

- (bA) the imparting of or undertaking to impart any scientific, technical,
 industrial or commercial knowledge or information for use in the
 Republic or rendering or undertaking to render any assistance or service
 in connection with the application or utilization of such knowledge or
 information, as contemplated in section 35;

- (b) by the deletion in subsection (1) of the proviso to paragraph (e); and

- (b) deur subparagraaf (ii) van paragraaf (c) van subartikel (1) deur die volgende subparagraaf te vervang:
- “(ii) vir elke dag of gedeelte van ’n dag in die tydperk waarin daardie ontvanger van sy gewone woonplek afwesig is, ’n bedrag ten opsigte van etes en ander toevallige uitgawes, of slegs toevallige uitgawes, wat die Minister vir die betrokke jaar van aanslag by wyse van kennisgewing in die *Staatskoerant* bepaal, maar beperk tot die bedrag van die toelae betaal of toegestaan om daardie uitgawes te delg. Met dien verstande dat hierdie subparagraaf nie van toepassing is nie tot die mate wat—
- (aa) die werkgewer die uitgawes gedra het (andersins as by wyse van die toestaan van die toelae of voorskot) ten opsigte waarvan die toelae betaal of toegestaan is vir daardie dag of gedeelte van daardie dag; of
- (bb) die ontvanger aan die Kommissaris bewys gelewer het van enige bedrag van werklike onkoste ten opsigte van etes of toevallige uitgawes vir daardie dag of gedeelte van daardie dag, soos in subparagraaf (i) bedoel.”;
- (c) deur subparagraaf (ii) van paragraaf (k) van subartikel (4) deur die volgende subparagraaf te vervang:
- “(ii) ’n bate **[by wyse van ’n dividend uitgekeer het]** aan enige aandeelhouer van daardie maatskappy oorgedra het in welke wyse of vorm ookal; of”;
- (d) deur in subartikel (4) die woorde wat subparagraaf (iii) van paragraaf (k) volg deur die volgende woorde te vervang:
- “ten opsigte waarvan ’n aftrekking of vermindering aan bedoelde persoon toegestaan is ingevolge enige van die bepalings in daardie paragraaf bedoel, word bedoelde persoon geag ’n bedrag gelyk aan die markwaarde van bedoelde bate soos op die datum van bedoelde skenking, **[uitkering]** oordrag of beskikking, te verhaal of vergoed te gewees het.”.
- (2) (a) Subartikel (1)(a) word geag op 1 Maart 2001 in werking te getree het.
- (b) Subartikel (1)(b) word geag op 1 Maart 2002 in werking te getree het.
- (c) Subartikel (1)(c) en (d) word geag op 12 Desember 2001 in werking te getree het en is van toepassing ten opsigte van enige bate op of na daardie datum oor beskik.

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, artikel 15 van Wet 53 van 1999 en artikel 7 van Wet 59 van 2000

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

- (a) deur in subartikel (1) die volgende paragrawe voor paragraaf (cA) in te voeg:
- “(b) die gebruik of reg van gebruik in die Republiek, of die verlening van toestemming vir die gebruik in die Republiek, van—
- (i) ’n patent, model, handelsmerk, outeursreg, ontwerp, patroon, plan, formule of proses of enige ander eiendom of reg van dergelike aard; of
- (ii) ’n rolprentfilm, of ’n film of videoband of -plaat, ’n klankopname of advertensiestuk, in artikel 35 bedoel;
- (bA) 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, soos in artikel 35 bedoel.”;
- (b) deur in subartikel (1) die voorbehoudsbepaling by paragraaf (e) te skrap; en

(c) by the insertion after subsection (1A) of the following subsection:

“(2) The capital gain or capital loss from the disposal of an asset of a person shall be deemed to be from a source in the Republic, where—

- (a) in the case of immovable property held by that person or any interest or right of whatever nature of that person to or in immovable property, that property is situated in the Republic; 5
- (b) in the case of any asset other than immovable property or any interest or right to or in immovable property—
 - (i) that person is a resident and that asset is not attributable to a permanent establishment of that person which is situated outside the Republic; or 10
 - (ii) that person is not a resident, but that asset is attributable to a permanent establishment of that person which is situated in the Republic; 15

Provided that for the purpose of this subsection, an interest in immovable property held by a person includes any equity shares in a company or other entity, where—

- (aa) 80 per cent or more of the value of the net assets of that company or other entity, determined on the market value basis, is attributable directly or indirectly to immovable property, (other than immovable property held by that company or entity as trading stock); and 20
- (bb) that person (whether alone or together with any connected person in relation to that person) holds at least 20 per cent in the equity share capital of that company or other entity.”. 25

(2) Subsection (1) shall come into operation on the date of promulgation of this Act. 25

Insertion of section 9A of Act 58 of 1962

13. The following section is hereby inserted in the Income Tax Act, 1962, after section 9:

“Blocked foreign funds

9A. Where any amount, or any portion of any amount— 30

- (a) received by or accrued to any person which is required to be included in the gross income or taxable income of that person; or
 - (b) of the net income of a controlled foreign company which is taken into account in determining an amount which is required to be included in the income of any resident in terms of the provisions of section 9D, 35
- during any year of assessment, may not be remitted to the Republic during that 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 arose, that amount or any portion thereof shall be deemed not to have been received or accrued to that person, or shall not be included in the income of that resident, as the case may be, during that year and that amount or portion thereof shall be included in the gross income or taxable income of that person or the income of that resident during the year of assessment during which that amount or portion thereof may be so remitted to the Republic.”. 40

(c) deur na subartikel (1A) die volgende subartikel in te voeg:

“(2) Die kapitaalwins of kapitaalverlies uit die beskikking oor ’n bate van ’n persoon sal geag word van ’n bron in die Republiek te wees waar,—

- (a) in die geval van onroerende eiendom deur daardie persoon gehou of enige belang of reg van welke aard ookal van daardie persoon op of in onroerende eiendom, daardie eiendom in die Republiek geleë is; of 5
- (b) in die geval van enige bate behalwe onroerende eiendom of ’n belang of reg op of in onroerende eiendom— 10
 - (i) daardie persoon ’n inwoner is en daardie bate nie aan ’n permanente saak van daardie persoon buite die Republiek toeskryfbaar is nie; of
 - (ii) daardie persoon nie ’n inwoner is nie, maar daardie bate aan ’n permanente saak van daardie persoon in die Republiek toeskryfbaar is: 15

Met dien verstande dat by die toepassing van hierdie subartikel, sluit ’n belang in onroerende eiendom deur ’n persoon gehou enige ekwiteitsaandeel in ’n maatskappy of ander entiteit in, waar—

- (aa) 80 persent of meer van die waarde van die netto bates van daardie maatskappy of ander entiteit, op die markwaarde grondslag bepaal, direk of indirek aan onroerende eiendom (behalwe onroerende eiendom deur daardie maatskappy of entiteit as handelsvoorraad gehou toeskryfbaar is); en 20
- (bb) daardie persoon (hetsy alleen of tesame met enige verbonde persoon met betrekking tot daardie persoon) minstens 20 persent van die ekwiteitsaandelekapitaal van daardie maatskappy of ander entiteit hou.”. 25

(2) Subartikel (1) tree in werking op die datum van afkondiging van hierdie Wet.

Invoeging van artikel 9A van Wet 58 van 1962

30

13. Die volgende artikel word hierby in die Inkomstebelastingwet, 1962, na artikel 9 ingevoeg:

“Geblokkeerde buitelandse fondse

9A. Waar enige bedrag, of ’n gedeelte daarvan—

- (a) ontvang deur of toegeval het aan enige persoon wat in die bruto inkomste of belasbare inkomste van daardie persoon ingesluit staan te word; of 35
- (b) van die netto inkomste van ’n beheerde buitelandse maatskappy wat in berekening gebring word by die vasstelling van ’n bedrag wat ingevolge die bepalings van artikel 9D by die inkomste van enige inwoner ingesluit staan te word, 40

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 ontstaan het, word daardie bedrag of ’n gedeelte daarvan geag 45

nie deur daardie persoon ontvang of toegeval te gewees het nie of word nie by die inkomste van daardie inwoner ingesluit, na gelang van die geval, gedurende daardie jaar nie en word daardie bedrag of gedeelte daarvan ingesluit by die bruto inkomste of belasbare inkomste van daardie persoon of die inkomste van daardie inwoner gedurende die jaar van aanslag 50

waartydens daardie bedrag of gedeelte daarvan aldus na die Republiek oorgeplaas kan word.”.

Substitution of section 9D of Act 58 of 1962

14. (1) Section 9D of the Income Tax Act, 1962, is hereby substituted by the following section:

“[Investment] Net income of controlled foreign [entities and investment income arising from donations, settlements or other dispositions] companies 5

9D. (1) For the purposes of this section—

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

- (a) a place of business with an office, shop, factory, warehouse [farm] or other structure which is used or will continue to be used by the controlled foreign [entity] company for a period of not less than one year, whereby the business of such company is carried on, and where—
 - (i) that 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 that business; and 15
 - (ii) that 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 Act administered by the Commissioner); 20
 - (b) a mine, oil or gas well, a quarry or any other place of extraction of natural resources, where that controlled foreign company has a right to directly explore or extract those natural resources, or any area where that controlled foreign company has the right to carry on prospecting operations preliminary to the establishment of a mine, oil or gas well, quarry or other place of extraction, and where that controlled foreign company carries on those exploration, extraction or prospecting operations; [or] 25
 - (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, where that controlled foreign company carries on those construction or installation activities; 30
 - (d) agricultural land used for *bona fide* farming activities directly carried on by that controlled foreign company; or
 - (e) a vessel or an aircraft solely engaged in transportation within a single country, or a fishing vessel or a vessel used for prospecting, exploration or extraction, where that vessels or aircraft is operated directly by that controlled foreign company, 35
- [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 40
 - (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)]; 45

‘controlled foreign company’ means any foreign company where more than 50 per cent of the total participation rights in that foreign company are held by one or more residents whether directly or indirectly: Provided that a person who holds less than five per cent of the participation rights of a foreign company which is either a listed company or a scheme or 55

Vervanging van artikel 9D van Wet 58 van 1962

14. (1) Die volgende artikel vervang hierby artikel 9D van die Inkomstebelastingwet, 1962:

“[Beleggingsinkomste] Netto inkomste van beheerde buitelandse entiteite en beleggingsinkomste wat ontstaan uit skenkings, oormakings of ander beskikkings] maatskappye 5

9D. (1) By die toepassing van hierdie artikel beteken—

['aangewese land' 'n aangewese land soos in artikel 9E omskryf; 'beheerde buitelandse entiteit' enige buitelandse entiteit waarin 'n inwoner of inwoners van die Republiek, hetsy afsonderlik of gesamentlik, en hetsy regstreeks of onregstreeks, meer as 50 persent van die deelnemende regte hou, of geregtig is om meer as 50 persent van die stemreg of beheer oor die entiteit uit te oefen: Met dien verstande dat ten einde te bepaal of inwoners gesamentlik meer as 50 persent van die deelnemende regte hou in enige buitelandse entiteit wat op 'n erkende beurs genoteer is of wat 'n skema of reëling in paragraaf (e)(ii) van die omskrywing van 'maatskappy' in artikel 1 daarstel, behalwe waar verbonde persone meer as 50 persent van die deelnemende regte van daardie buitelandse entiteit, skema of reëling hou, word 'n persoon wat minder as vyf persent van die deelnemende regte van daardie buitelandse entiteit hou geag nie 'n inwoner te wees nie;]

'beheerde buitelandse maatskappy' 'n buitelandse maatskappy waar meer as 50 persent van die totale deelnemende belange in daardie buitelandse maatskappy deur een of meer inwoners hetsy direk of indirek gehou word: Met dien verstande dat 'n persoon wat minder as vyf persent van die deelnemende belange van 'n buitelandse maatskappy wat of 'n genoteerde maatskappy of 'n skema of reëling in paragraaf (e)(ii) van die omskrywing van 'maatskappy' in artikel 1 bedoel daarstel hou, word geag nie 'n inwoner te wees nie by die vasstelling of inwoners direk of indirek meer as 50 persent van die deelnemende regte hou in—

(a) daardie buitelandse maatskappy; of
(b) enige ander buitelandse maatskappy waarin daardie persoon enige deelnemende belange indirek hou as gevolg van die belang in daardie genoteerde maatskappy of skema of reëling, tensy meer as 50 persent van die deelnemende belange van daardie buitelandse maatskappy of ander buitelandse maatskappy deur persone wat verbonde persone met betrekking tot mekaar is, gehou word; 'besigheidsaak', met betrekking tot 'n beheerde buitelandse [entiteit, 'n besigheidsplek met] maatskappy—

(a) 'n besigheidsplek met 'n kantoor, winkel, fabriek, pakhuis [plaas] of ander struktuur wat deur die beheerde buitelandse [entiteit] maatskappy gebruik word of aangehou gebruik staan te word vir 'n termyn van minstens een jaar, waardeur die besigheid van daardie maatskappy 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

(ii) daardie besigheidsplek gebruik word buite die Republiek vir 'n bona fide-besigheidsrede (behalwe die vermyding, uitstel of vermindering van enige aanspreeklikheid vir betaling van enige belasting, reg of heffing deur hierdie Wet of enige ander wet wat deur die Kommissaris geadministreer word, opgelê);

(b) 'n myn, olie- of gasbron, 'n steengroef of enige ander plek van ontginning van natuurlike hulpbronne, waar daardie beheerde buitelandse maatskappy die reg het om direk daardie natuurlike hulpbronne te ondersoek of ontgin, of enige gebied waar daardie beheerde buitelandse maatskappy die reg het om prospekterwerk wat die totstandkoming van 'n myn, olie- of gasbron, steengroef of ander

arrangement contemplated in paragraph (e)(ii) of the definition of 'company' in section 1, shall be deemed not to be a resident in determining whether residents directly or indirectly hold more than 50 per cent of the participation rights in—

- (a) that foreign company; or
- (b) any other foreign company in which that person indirectly holds any participation rights as a result of the interest in that listed company or scheme or arrangement,

unless more than 50 per cent of the participation rights of that foreign company or other foreign company are held by persons who are connected persons in relation to each other;

['controlled foreign entity' means any foreign entity in which any resident or residents of the Republic, whether individually or jointly, and whether directly or indirectly, hold more than 50 per cent of the participation rights, or are entitled to exercise more than 50 per cent of the votes or control of such entity: Provided that in determining whether residents jointly hold more than 50 per cent of the participation rights of any foreign entity which is listed on a recognised exchange or which is a scheme or arrangement contemplated in paragraph (e)(ii) of the definition of 'company' in section 1, except where connected persons hold more than 50 per cent of the participation rights of that foreign entity, scheme or arrangement, any person who holds less than five per cent of the participation rights of that foreign entity shall be deemed not to be a resident;

'designated country' means any designated country as defined in section 9E;]

'foreign [entity] company' means any [person (other than a natural person or a trust)] association, corporation, company, arrangement or scheme contemplated in paragraph (a), (b) or (e) of the definition of 'company' in section 1, which is not a resident, or which is a resident but where [such entity] that association, corporation, company, arrangement or scheme 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;

'foreign financial instrument holding company' means any foreign company where more than 50 per cent of the market value or actual cost of all the assets of that company, together with any controlled group company in relation to that foreign company, consists of financial instruments, other than—

- (a) any financial instrument that constitutes a debt due to that foreign company, or a controlled group company in relation to that foreign company, in respect of goods sold or services rendered by that foreign company or controlled group company, as the case may be, where—
 - (i) the amount of that debt is or was included in the income of that foreign company or controlled group company, as the case may be; and
 - (ii) that debt is an integral part of a business conducted by that foreign company or controlled group company, as the case may be, as a continuing independent operation;
- (b) any financial instrument arising from the principal trading activities of any company that is a bank, insurer, dealer or broker with a licence or registration that allows that foreign company to operate in the same manner as a company that mainly conducts business with clients who are residents in the same country of residence as the foreign company and that foreign company either—
 - (i) regularly accepts deposits, premiums or effects transactions for the account of clients from the general public; or
 - (ii) derives more than 50 per cent of its income or gains arising from principal trading activities with respect to persons who are not connected persons in relation to that foreign company:

Provided that in determining whether 50 per cent of the market value or actual cost of the assets of the company and controlled group company

plek van ontginning voorafgaan, en waar daardie beheerde buitelandse maatskappy daardie ondersoek, ontginning of prospekterwerk uitvoer; [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, waar daardie beheerde buitelandse maatskappy daardie konstruksie of installasie aktiwiteite uitvoer; 5
 - (d) landbougrond vir *bona fide* boerdery aktiwiteite gebruik wat direk deur daardie beheerde buitelandse maatskappy bedryf word; of
 - (e) 'n vaartuig of 'n vliegtuig wat alleenlik gebruik word vir vervoer binne 'n enkele land, of 'n vissersboot of 'n vaartuig gebruik vir prospekterwerk, ondersoek of ontginning, waar daardie vaartuig of vliegtuig direk deur daardie beheerde buitelandse maatskappy bedryf word. 10
- [waardeur die besigheid van bedoelde entiteit bedryf word, en waar— 15
- (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
 - (ii) daar die besigheidsplek gebruik word buite die Republiek vir 'n *bona fide*-besigheidsrede (behalwe die vermyding, uitstel of vermindering van enige aanspreeklikheid vir betaling van enige belasting, reg of heffing deur hierdie Wet of enige ander wet wat deur die Kommissaris geadministreer word, opgelê);] 20
- 'buitelandse belastingjaar' met betrekking tot 'n beheerde buitelandse maatskappy, die jaar of tydperk van verslagdoening vir doeleindes van buitelandse belasting op inkomste of, indien daardie maatskappy nie aan buitelandse belasting op inkomste onderhewig is nie, die jaarlikse tydperk vir finansiële verslagdoening deur daardie maatskappy; 25
- 'buitelandse finansiële instrumenthouermaatskappy' 'n buitelandse maatskappy waar meer as 50 persent van die markwaarde of die werklike koste van al die bates van daardie maatskappy, tesame met enige beheerde groepsmaatskappy met betrekking tot daardie buitelandse maatskappy, bestaan uit finansiële instrumente, behalwe— 30
- (a) enige finansiële instrument wat 'n skuld daarstel wat verskuldig is aan daardie maatskappy of 'n beheerde groepsmaatskappy met betrekking tot daardie buitelandse maatskappy, ten opsigte van goed verkoop of dienste gelewer deur daardie buitelandse maatskappy of beheerde groepsmaatskappy, na gelang van die geval, waar— 35
 - (i) die bedrag van daardie skuld by die inkomste van daardie buitelandse maatskappy of beheerde groepsmaatskappy, na gelang van die geval, ingesluit is of was; en 40
 - (ii) daardie skuld 'n integrale deel vorm van die besigheid wat deur daardie buitelandse maatskappy of beheerde groepsmaatskappy, na gelang van die geval, as 'n lopende onafhanklike bedryf beoefen word; 45
 - (b) enige finansiële instrument wat ontstaan uit die hoofbedryfsaktiwiteite van 'n maatskappy wat 'n bank, versekeraar, handelaar of makelaar met 'n lisensie of registrasie daarstel wat daardie buitelandse maatskappy toelaat om op dieselfde wyse besigheid te bedryf as 'n maatskappy wat hoofsaaklik besigheid dryf met kliënte wat inwoners is in dieselfde land as dié waarvan die buitelandse maatskappy 'n inwoner is, en daardie buitelandse maatskappy of— 50
 - (i) gereeld deposito's of premies aanvaar of transaksies vir die rekening van kliënte van die algemene publiek aangaan; of 55
 - (ii) meer as 50 persent van sy inkomste of winste verkry word uit hoofbedryfsaktiwiteite met betrekking tot persone wat nie verbonde persone met betrekking tot daardie buitelandse maatskappy is nie: 60

Met dien verstande dat by die berekening of 50 persent van die markwaarde of werklike koste van die bates van die maatskappy en beheerde groepsmaatskappy uit finansiële instrumente bestaan, word die volgende bates ten volle buite rekening gelaat—

consist of financial instruments, the following assets must be wholly disregarded—

- (i) any share in any other company in the same group of companies; and
- (ii) any financial instrument which constitutes a loan, advance or debt if both the debtor and creditor companies form part of the same group of companies;

‘foreign tax year’ in relation to a controlled foreign company means the year or period of reporting for foreign income tax purposes or, if that company is not subject to foreign income tax, the annual period of financial reporting by that company;

‘participation rights’ in relation to a foreign company means the right to participate directly or indirectly in the share capital [or profits of, dividends declared by, or any other distribution or allocation made by any entity], share premium, current or accumulated profits or reserves of that foreign company, whether or not of a capital nature.

(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)] who holds any participation rights in a controlled foreign company—

(a) on the last day of the foreign tax year of that controlled foreign company which ends during that year of assessment, an amount equal to—

- (i) where that foreign company was a controlled foreign company for the entire foreign tax year, the proportional amount of the net income of [such entity] that controlled foreign company determined for that foreign tax year [of such entity which ends during such year of assessment of such resident], which bears to the total net income of [such entity] that company during [such] that foreign tax year, the same ratio as the percentage of the participation rights of [such] that resident in relation to [such entity] that company bears to the total participation rights in relation to [such entity] that company on that last day; or

- (ii) where that foreign company became a controlled foreign company at any stage during that foreign tax year, at the option of the resident, either—

(aa) an amount which bears to the proportional amount determined in accordance with subparagraph (i), the same ratio as the number of days during that foreign tax year that the foreign company was a controlled foreign company bears to the total number of days in that foreign tax year; or

(bb) the proportional amount determined in the manner contemplated in subparagraph (i) (as if the day that foreign entity commenced to be a controlled foreign entity was the first day of its foreign tax year), of the net income of that company for the period commencing on the day that the foreign company commenced to be a controlled foreign company and ending on the last day of that foreign tax year; or

- (b) immediately before that foreign company ceased to be a controlled foreign company at any stage during that year of assessment before the last day of the foreign tax year of that controlled foreign company, an amount which shall be equal to, at the option of the resident, either—

- (i) enige aandeel in 'n ander maatskappy binne dieselfde groep van maatskappye; en
- (ii) enige finansiële instrument wat 'n lening, voorskot of skuld daarstel indien beide die skuldenaar- en skuldeisermaatskappy deel van dieselfde groep van maatskappye vorm; 5
- 'buitelandse [entiteit] maatskappy' enige [persoon (behalwe 'n natuurlike persoon of 'n trust)] vereniging, korporasie, maatskappy, reëling of skema in paragraaf (a), (b) of (e) van die omskrywing van 'maatskappy' in artikel 1 bedoel, wat nie 'n inwoner is nie, of wat 'n inwoner is maar waar daardie [entiteit] vereniging, korporasie, maatskappy, reëling of skema 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; 10
- 'deelnemende regte' met betrekking tot 'n buitelandse maatskappy, die reg om regstreeks of onregstreeks te deel in die aandeelkapitaal, [of winste van, dividende verklaar deur, of 'n ander uitkering van of toewysing gedoen deur, 'n entiteit] aandeelpremie, lopende of opgehoopte winste of reserwes van daardie buitelandse maatskappy, hetsy van 'n kapitale aard of nie. 15
- (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], wat enige deelnemende regte in 'n beheerde buitelandse maatskappy hou— 20
- (a) op die laaste dag van die buitelandse belastingjaar van daardie beheerde buitelandse maatskappy wat eindig gedurende daardie jaar van aanslag, 'n bedrag gelyk aan— 25
- (i) waar daardie buitelandse maatskappy 'n beheerde buitelandse maatskappy was vir die volle buitelandse belastingjaar, die proporsionele bedrag van die netto inkomste van [bedoelde entiteit] daardie beheerde buitelandse maatskappy bereken vir [die] daardie buitelandse belastingjaar [van bedoelde entiteit wat eindig gedurende daardie jaar van aanslag van bedoelde inwoner], wat tot die totale netto inkomste van [bedoelde entiteit] daardie maatskappy gedurende daardie buitelandse belastingjaar, in dieselfde verhouding staan as wat die persentasie van [bedoelde] daardie inwoner se deelnemende regte met betrekking tot [bedoelde entiteit] daardie maatskappy tot die totale deelnemende regte met betrekking tot [bedoelde entiteit] daardie maatskappy op daardie laaste dag staan; of 30
- (ii) waar daardie buitelandse maatskappy 'n beheerde buitelandse maatskappy geword het op enige tydstip gedurende daardie buitelandse belastingjaar, op die keuse van die inwoner, óf— 35
- (aa) 'n bedrag wat tot die proporsionele bedrag ingevolge subparagraaf (i) bepaal, in dieselfde verhouding staan as wat die aantal dae gedurende daardie buitelandse belastingjaar wat daardie buitelandse maatskappy 'n beheerde buitelandse maatskappy was tot die totale aantal dae in daardie buitelandse belastingjaar staan; of 40
- (bb) die proporsionele bedrag bepaal op die wyse in subparagraaf (i) bedoel (asof die dag waarop daardie buitelandse maatskappy 'n beheerde buitelandse maatskappy geword het die eerste dag van sy buitelandse belastingjaar was), van die netto inkomste van daardie maatskappy vir die tydperk wat begin op die dag waarop die buitelandse maatskappy begin het om 'n beheerde buitelandse maatskappy te wees en eindig op die laaste dag van daardie buitelandse belastingjaar; of 45
- (b) onmiddellik voordat daardie buitelandse maatskappy ophou om 'n beheerde buitelandse maatskappy te wees op enige tydstip gedurende daardie jaar van aanslag voor die laaste dag van die buitelandse belastingjaar van daardie beheerde buitelandse maatskappy, op die keuse van die inwoner, óf— 50
- 55
- 60

- (i) an amount determined in accordance with paragraph (a)(ii)(aa); or
- (ii) the proportional amount determined in the manner contemplated in paragraph (a)(i) (as if the day that foreign company ceased to be a controlled foreign company was the last day of its foreign tax year), of the net income of that company determined for the period commencing on the first day of that foreign tax year and ending on the date that the company so ceased to be a controlled foreign company:

Provided that **[the provisions of]** this subsection shall not apply—

(A) where **[such]** that resident (together with any connected person in relation to **[such]** that resident) **[in aggregate at all times during the foreign tax year]**—

- (i) at the end of the last day of the foreign tax year of the controlled foreign company; or
- (ii) in the case where that foreign company ceased to be a controlled foreign company during the relevant foreign tax year, immediately before that foreign company so ceased to be a controlled foreign company.

in aggregate 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]** that controlled foreign **[entity]** company; or

(B) to the extent that the participation rights are held by that resident indirectly through any company which is a resident.

(2A) For the purposes of this section, the 'net income' of a controlled foreign **[entity shall be]** company in respect of a foreign tax year is an amount equal to the taxable income of **[such entity]** that company determined in accordance with the provisions of this Act as if **[such]** that controlled foreign **[entity]** company had been **[a resident]** a taxpayer, and as if that company had been a resident for purposes of the definition of 'gross income', sections 7(8), 9E, 10(1)(h), 10(1)(hA), 25B and paragraphs 2(1)(a), 12, 24, 70, 71, 72 and 80 of the Eighth Schedule: 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]** that foreign company in terms of this Act shall be limited to the amount of **[such]** that 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 foreign tax year **[of assessment]** and be deemed to be a balance of assessed loss which may be set off against the income of such **[entity]** company in such succeeding year for the purposes of section 20;
- (c) no deduction shall be allowed in respect of any interest, royalties, **[or]** rental or income of a similar nature paid or payable or deemed to be paid or payable by **[such entity]** that company to any other controlled foreign **[entity]** company in relation to the resident (including any similar amount adjusted in terms of section 31) or any exchange difference determined in terms of section 24I in respect of any exchange item to which that controlled foreign company and other foreign company are parties, as contemplated in subsection (9)(fA);"
- [(d) any capital gain or capital loss of such entity shall, when applying paragraph 43(4) of the Eighth Schedule, be determined in the currency of the Republic and such capital gain or capital loss shall be translated on the last day of the foreign tax year of the controlled foreign entity to the local currency as defined in section 24I, of that controlled foreign entity; and]**

- (i) 'n bedrag ingevolge paragraaf (a)(ii)(aa) bepaal; of
- (ii) die proposionele bedrag op die wyse in paragraaf (a)(i) bedoel bepaal (asof die dag waarop daardie buitelandse maatskappy ophou om 'n beheerde buitelandse maatskappy te wees die laaste dag van sy buitelandse belastingjaar was), van die netto inkomste van daardie maatskappy bepaal vir die tydperk wat begin op die eerste dag van daardie buitelandse belastingjaar en eindig op die dag waarop daardie maatskappy aldus ophou om 'n beheerde buitelandse maatskappy te wees: 5
- Met dien verstande dat **[die bepalings van]** hierdie subartikel nie van toepassing is nie— 10
- (A) waar daardie inwoner (tesame met enige verbonde persoon met betrekking tot daardie inwoner) **[te alle tye gedurende die buitelandse belastingjaar]**—
- (i) aan die einde van die laaste dag van die buitelandse belastingjaar van die beheerde buitelandse maatskappy; of 15
- (ii) in die geval waar daardie buitelandse maatskappy gedurende die betrokke buitelandse belastingjaar ophou om 'n beheerde buitelandse maatskappy te wees, onmiddellik voor daardie buitelandse maatskappy aldus ophou om 'n beheerde buitelandse maatskappy te wees, 20
- in totaal minder as 10 persent van die deelnemende regte in bedoelde beheerde buitelandse **[entiteit] maatskappy** hou **[en geregtig is om minder as 10 persent van die stemreg uit te oefen]** of;
- (B) tot die mate wat die deelnemende regte indirek deur daardie inwoner gehou word deur enige maatskappy wat 'n inwoner is. 25
- (2A) By die toepassing van hierdie artikel is die 'netto inkomste' van 'n beheerde buitelandse **[entiteit] maatskappy** ten opsigte van 'n buitelandse belastingjaar 'n bedrag gelyk aan die belasbare inkomste van **[bedoelde entiteit] daardie maatskappy [bepaal]** ingevolge die bepalings van hierdie Wet bepaal asof daardie beheerde buitelandse **[entiteit] maatskappy** 'n belastingpligtige was, en asof daardie maatskappy 'n inwoner was vir doeleindes van die woordskrywing van 'bruto inkomste', artikels 7(8), 9E, 10(1)(h), 10(1)(hA), 25B en paragrafe 2(1)(a), 12, 24, 70, 71, 72 en 80 van die Agtste Bylae: Met dien verstande dat— 30 35
- (a) enige aftrekkings of verminderinge wat toegelaat kan word of enige bedrae wat verreken kan word teen die inkomste van daardie **[entiteit] buitelandse maatskappy** ingevolge hierdie Wet, nie die bedrag van daardie inkomste te bowe gaan nie;
- (b) enige bedrag waarmee bedoelde aftrekkings of verminderinge of bedrae die bedrag van daardie inkomste te bowe gaan, oorgedra word na die onmiddellike daaropvolgende **[jaar van aanslag] buitelandse belastingjaar** en geag word 'n balans van 'n vasgestelde verlies te wees wat teen die inkomste van daardie **[entiteit] maatskappy** in daardie daaropvolgende jaar by die toepassing van artikel 20 verreken kan word; 40 45
- (c) geen aftrekking toegelaat word nie ten opsigte van enige rente, tantième, **[of]** huurgeld of inkomste van 'n dergelike aard **[deur bedoelde entiteit]** betaal of betaalbaar of geag betaal of betaalbaar te wees deur daardie maatskappy aan enige ander beheerde buitelandse **[entiteit] maatskappy** met betrekking tot daardie inwoner (ingesluit enige soortgelyke bedrag wat ingevolge artikel 31 aangepas is) of enige valutaverskil ingevolge artikel 24I vasgestel ten opsigte van enige valuta-item waarby daardie beheerde buitelandse maatskappy en ander buitelandse maatskappy partye is, soos in subartikel (9)(fA) beoog; 50 55
- [(d) enige kapitaalwins of kapitaalverlies van sodanige entiteit word by die toepassing van paragraaf 43(4) van die Agtste Bylae, bepaal in die geldeenheid van die Republiek en daardie kapitaalwins of kapitaalverlies word op die laaste dag van die buitelandse belastingjaar van die beheerde buitelandse entiteit na die plaaslike geldeenheid, soos in artikel 24I omskryf, van daardie beheerde buitelandse entiteit omgerekend;]** 60

- (e) where a foreign **[entity] company** becomes a controlled foreign **[entity] company** after 1 October 2001, the valuation date for purposes of the determination of any taxable capital gain or assessed capital loss in terms of the Eighth Schedule, shall be the date that such **[entity] company** becomes a controlled foreign **[entity] company**; 5
- (f) where the resident contemplated in subsection (2) is a natural person, special trust or an insurer in respect of its individual policyholder fund, the taxable capital gain of the controlled foreign **[entity] company** shall, for the purposes of paragraph 10 of the Eighth Schedule, be 25 per cent of that **[entity's] company's** net capital gain for the relevant foreign tax year **[of assessment; and]** 10
- [(g) any amount to be taken into account in the determination of such net income of that entity in respect of the disposal of any foreign equity instrument, shall be determined in the currency of the Republic and such amount shall then be translated on the last day of the foreign tax year of the controlled foreign entity to the local currency, as defined in section 24I, of that controlled foreign entity;]** 15
- (h) for the purposes of section 24I, 'local currency' in relation to an exchange item of a controlled foreign company which is not attributable to a permanent establishment of that company, means any currency used by that company for purposes of financial reporting; 20
- (i) for the purposes of section 31— 25
- (aa) any transaction, operation or scheme between that controlled foreign company and any connected person in relation to that controlled foreign company shall be deemed to be an international agreement as defined in that section; and
- (bb) that controlled foreign company must for purposes of section 31(3)(a)(i) and (ii) be deemed to be a resident; 30
- (j) for the purposes of determining any capital gain or capital loss of that controlled foreign company from the disposal of any interest in any other foreign company (which is a controlled foreign company in relation to the resident contemplated in subsection (2)), the base cost of that interest shall be increased in terms of paragraph 20(1)(h)(iii) of the Eighth Schedule, by any amount derived by that other foreign company (or any other company in which that foreign company holds a direct or indirect interest which is also a controlled foreign company in relation to that resident), which was taken into account in determining the amount to be included in the income of that resident in terms of this section by virtue of that resident's shareholding in the controlled foreign company, reduced by the amount of any dividend distributed to that controlled foreign company by any such other foreign company from such income so taken into account; and 40
- (k) for the purposes of paragraph 43 of the Eighth Schedule, 'local currency' of a controlled foreign company otherwise than in relation to a permanent establishment of that controlled foreign company, means the currency used by that company for purposes of financial reporting. 45
- (6) The net income of a controlled foreign company, shall be determined in the currency used by that controlled foreign company for purposes of financial reporting and shall, for purposes of determining the amount to be included in the income of any resident during any year of assessment under the provisions of this section, **[shall]** be **[converted]** translated to the currency of the Republic **[on the last day of the foreign tax year of the controlled foreign entity and the ruling]** by applying the average exchange rate **[at that date or any other exchange rate or rates as the** 50 55

- (e) waar 'n buitelandse **[entiteit]** maatskappy na 1 Oktober 2001 'n beheerde buitelandse **[entiteit]** maatskappy word, is die waardasiedatum vir doeleindes van die berekening van enige belasbare kapitaalwins of vasgestelde kapitaalverlies ingevolge die Agtste Bylae, die datum waarop daardie **[entiteit]** maatskappy 'n beheerde buitelandse **[entiteit]** maatskappy word; 5
- (f) waar die inwoner in subartikel (2) bedoel 'n natuurlike persoon, 'n spesiale trust of 'n versekeraar met betrekking tot sy individuele polishouerfonds is, is die belasbare kapitaalwins van die beheerde buitelandse **[entiteit]** maatskappy, by die toepassing van paragraaf 10 van die Agtste Bylae, 25 persent van daardie **[entiteit]** maatskappy se netto kapitaalwins vir die betrokke **[jaar van aanslag]** buitelandse belastingjaar; **[en]** 10
- (g) **enige bedrag wat in berekening gebring word by die vasstelling van daardie netto inkomste van daardie entiteit ten opsigte van die beskikking oor 'n buitelandse ekwiteitsinstrument, in die geldeenheid van die Republiek bepaal word en word daardie bedrag dan op die laaste dag van die buitelandse belastingjaar van die beheerde buitelandse entiteit na die plaaslike geldeenheid, soos in artikel 24I omskryf, van daardie beheerde buitelandse entiteit omgerek.**; 15 20
- (h) by die toepassing van artikel 24I, beteken 'plaaslike geldeenheid' met betrekking tot 'n valuta-item van 'n beheerde buitelandse maatskappy wat nie aan 'n permanente saak van daardie maatskappy toeskryfbaar is nie, enige geldeenheid wat deur daardie maatskappy gebruik word vir doeleindes van finansiële verslagdoening; 25
- (i) by die toepassing van artikel 31—
- (aa) word enige transaksie, handeling of skema tussen daardie beheerde buitelandse maatskappy en enige verbonde persoon met betrekking tot daardie beheerde buitelandse maatskappy geag 'n internasionale ooreenkoms te wees soos in daardie artikel omskryf; en 30
- (bb) word daardie beheerde buitelandse maatskappy vir doeleindes van artikel 31(3)(a)(i) en (ii) geag 'n inwoner te wees; 35
- (j) vir doeleindes van die berekening van enige kapitaalwins of kapitaalverlies van daardie beheerde buitelandse maatskappy uit die beskikking oor enige belang in 'n ander buitelandse maatskappy (wat 'n beheerde buitelandse maatskappy met betrekking tot die inwoner in subartikel (2) bedoel is), word die basiskoste van daardie belang ingevolge paragraaf 20(1)(h)(iii) van die Agtste Bylae vermeerder met enige bedrag wat deur daardie ander buitelandse maatskappy (of enige ander maatskappy waarin daardie buitelandse maatskappy 'n direkte of indirekte belang hou en wat ook 'n beheerde buitelandse maatskappy met betrekking tot daardie inwoner is) verkry is, wat in berekening gebring is by die bepaling van die bedrag wat ingevolge hierdie artikel by die inkomste van daardie inwoner ingesluit is weens daardie inwoner se aandeelhouding in die beheerde buitelandse maatskappy, verminder deur die bedrag van enige dividend aan daardie beheerde buitelandse maatskappy uitgekeer deur daardie ander buitelandse maatskappy uit daardie inkomste aldus in berekening gebring; en 40 45 50
- (k) by die toepassing van paragraaf 43 van die Agtste Bylae, beteken 'plaaslike geldeenheid' van 'n beheerde buitelandse maatskappy, anders as met betrekking tot 'n permanent saak van daardie beheerde buitelandse maatskappy, die geldeenheid wat deur daardie maatskappy vir doeleindes van finansiële verslagdoening gebruik word. 55
- (6) Die netto inkomste van 'n beheerde buitelandse maatskappy word bepaal in die geldeenheid wat deur daardie beheerde buitelandse maatskappy gebruik word vir doeleindes van finansiële verslagdoening en word by die berekening van die bedrag **[in]** wat gedurende die jaar van aanslag by die inkomste van 'n inwoner kragtens die bepalings van hierdie artikel ingesluit moet word, omgeskakel **[in]** na die geldeenheid van die Republiek **[op die laaste dag van die buitelandse belastingjaar van die** 60

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] for that year of assessment, as contemplated in section 25D: Provided that—

- (a) any capital gain or capital loss of that controlled foreign company shall, when applying paragraph 43(4) of the Eighth Schedule, be determined in the currency of the Republic and that capital gain or capital loss shall be translated to the currency used by that controlled foreign company for purposes of financial reporting by applying that average exchange rate; and
- (b) any amount to be taken into account in determining the net income of that controlled foreign company in respect of the disposal of any foreign equity instrument shall, when applying section 9G, be determined in the currency of the Republic and that amount shall be translated to the currency so used by that controlled foreign company by applying that average exchange rate.”

(9) The provisions of this section shall not apply to the extent that the net income of the controlled foreign company—

- (a) [in respect of receipts and accruals] is attributable to amounts [(other than receipts and accruals of a capital nature) or capital gains of any controlled foreign entity which is a company, where—
 - (i) such receipts and accruals] that have been or will be subject to tax on income in a designated country at a qualifying statutory rate [of at least 27 per cent; or
 - (ii) those capital gains of that company, have been or will be subject to tax in a designated country at a statutory rate of at least 13,5 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), 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];

- (b) [where the net income of any controlled foreign entity which is a company] is attributable to any business establishment of [such] that controlled foreign [entity] company in any country other than the Republic: Provided that the provisions of this paragraph shall not apply to any [receipts and accruals] net income that is attributable to any amounts—

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

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] deur die gemiddelde wisselkoers vir daardie jaar van aanslag toe te pas, soos in artikel 25D bedoel: Met dien verstande dat—

- (a) enige kapitaalwins of kapitaalverlies van daardie beheerde buitelandse maatskappy word by die toepassing van paragraaf 43(4) van die Agtste Bylae bereken in die geldeenheid van die Republiek en daardie kapitaalwins of kapitaalverlies word omgerekend na die geldeenheid wat deur daardie beheerde buitelandse maatskappy gebruik word vir doeleindes van finansiële verslagdoening, deur daardie gemiddelde wisselkoers toe te pas; en
- (b) 'n bedrag wat in berekening gebring word by die bepaling van die netto inkomste van daardie beheerde buitelandse maatskappy ten opsigte van die beskikking oor enige buitelandse ekwiteitsinstrument word by die toepassing van artikel 9G bereken in die geldeenheid van die Republiek en daardie bedrag word omgerekend na die geldeenheid aldus deur daardie beheerde buitelandse maatskappy gebruik, deur die gemiddelde wisselkoers toe te pas.

(9) Die bepalinge van hierdie artikel is nie van toepassing nie tot die mate wat die netto inkomste van die beheerde buitelandse maatskappy—

- (a) [ten opsigte van ontvangste en toevallings] toeskryfbaar is aan bedrae [(behalwe ontvangste en toevallings van 'n kapitale aard) of kapitaalwinste van enige beheerde buitelandse entiteit wat 'n maatskappy is, waar—

- (i) daardie ontvangste en toevallings] wat onderhewig is of sal wees aan belasting op inkomste in 'n aangewese land teen 'n kwalifiserende statutêre koers [van minstens 27 persent; of
- (ii) daardie kapitaalwinste van daardie maatskappy onderhewig is of sal wees aan belasting teen 'n statutêre koers van minstens 13,5 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 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 opleë 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 netto inkomste van 'n beheerde buitelandse entiteit wat 'n maatskappy is] toeskryfbaar is aan enige besigheidsaak van daardie beheerde buitelandse [entiteit] maatskappy in 'n ander land as die Republiek : Met dien verstande dat die bepalinge van hierdie paragraaf nie van toepassing is nie ten opsigte van enige [ontvangste en toevallings] netto inkomste wat toeskryfbaar is aan enige bedrae—

- (i) verkry uit enige transaksie met betrekking tot die verskaffing van goed of dienste deur of aan [bedoelde] daardie beheerde buitelandse [entiteit] maatskappy met 'n verbonde persoon (met betrekking tot [bedoelde] daardie beheerde buitelandse [entiteit] maatskappy), 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) any sale of goods by [such] that controlled foreign [entity] company to any connected person (in relation to [such] that controlled foreign [entity] company) who is a resident, unless—
- (A) [such] that controlled foreign [entity] company purchased [such] those goods within the country of residence of [such] that controlled foreign [entity] company from any person who is not a connected person in relation to [such] that controlled foreign [entity] company; 5
 - (B) the creation, extraction, production, assembly, repair or improvement of goods undertaken by [such] that controlled foreign [entity] company amount to more than minor assembly or adjustment, packaging, repackaging and labeling; or 10
 - (C) [such] that controlled foreign [entity] company sells a significant quantity of goods of the same or a similar nature to persons who are not connected persons in relation to [such] that controlled foreign [entity] company, at comparable prices (after accounting for the level of the market, volume discounts and costs of delivery); or 15
- (bb) any sale of goods by [such] that controlled foreign [entity] company to a person, other than a connected person (in relation to [such] that controlled foreign [entity] company) who is a resident, where [such] that controlled foreign [entity] company initially purchased [such] those goods or any tangible intermediary inputs thereof from one or more connected persons (in relation to [such] that controlled foreign [entity] company) who are residents, unless— 25
- (A) [such] those goods or tangible intermediary inputs thereof purchased from connected persons (in relation to such controlled foreign [entity] company) who are residents amount to an insignificant portion of the total tangible intermediary inputs of [such] those goods; 30
 - (B) the creation, extraction, production, assembly, repair or improvement of goods undertaken by [such] that controlled foreign [entity] company amount to more than minor assembly or adjustment, packaging, repackaging and labeling; or 35
 - (C) the products are sold by [such] that controlled foreign [entity] company to persons who are not connected persons in relation to [such] that controlled foreign [entity] company, for delivery within the country of residence of [such] that controlled foreign [entity] company; or 40
- (cc) any service performed by [such] that controlled foreign [entity] company to a connected person (in relation to such controlled foreign [entity] company) who is a resident, unless [such] the service is performed outside the Republic and— 50
- (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 55
 - (B) such services relate directly to the sale or marketing of goods of a connected person (in relation to [such] that controlled foreign [entity] company) who is a resident and [such] those goods are sold to persons who are not connected persons in relation to [such] that controlled foreign [entity] company for delivery within the 60

- (aa) 'n verkoop van goed deur [bedoelde] daardie beheerde buitelandse [entiteit] maatskappy aan enige verbonde persoon (met betrekking tot die beheerde buitelandse [entiteit] maatskappy) wat 'n inwoner is, tensy—
- (A) daardie beheerde buitelandse [entiteit] maatskappy 5
daardie goed binne die land van verblyf van die beheerde buitelandse [entiteit] maatskappy aangekoop het van 'n persoon wat nie 'n verbonde persoon met betrekking tot [bedoelde] daardie beheerde buitelandse [entiteit] maatskappy is nie; 10
- (B) die skepping, ontginning, produksie, montering, herstel of verbetering van goed deur daardie beheerde buitelandse [entiteit] maatskappy onderneem meer as minimale montering of verwerking, verpakking, herverpakking en etikettering uitmaak; of 15
- (C) daardie beheerde buitelandse [entiteit] maatskappy 'n aansienlike hoeveelheid goed van dieselfde of soortgelyke aard aan persone wat nie verbonde persone met betrekking tot die beheerde buitelandse [entiteit] maatskappy is nie, teen vergelykbare pryse verkoop (na inagneming van die vlak van die mark, hoeveelheidskorting en koste van aflewering); of 20
- (bb) enige verkoop van goed deur daardie beheerde buitelandse [entiteit] maatskappy aan 'n persoon, behalwe 'n verbonde persoon (met betrekking tot daardie beheerde buitelandse [entiteit] maatskappy) wat 'n inwoner is, waar daardie beheerde buitelandse [entiteit] maatskappy aanvanklik daardie goed of enige tasbare intermediêre insette van een of meer verbonde persone (met betrekking tot daardie beheerde buitelandse [entiteit] maatskappy) wat inwoners 30 is, gekoop het, tensy—
- (A) daardie goed of tasbare intermediêre insette daarvan aangekoop van verbonde persone (met betrekking tot daardie beheerde buitelandse [entiteit] maatskappy) wat inwoners is 'n onbenullige gedeelte van die totale 35 tasbare intermediêre insette van daardie goed uitmaak;
- (B) die skepping, ontginning, produksie, montering, herstel of verbetering van goed deur daardie beheerde buitelandse [entiteit] maatskappy onderneem meer as minimale montering of verwerking, verpakking, 40 herverpakking en etikettering uitmaak; of
- (C) die produkte deur daardie beheerde buitelandse [entiteit] maatskappy verkoop is aan persone wat nie verbonde persone met betrekking tot daardie beheerde buitelandse [entiteit] maatskappy is nie vir aflewering 45 binne die land van verblyf van daardie beheerde buitelandse [entiteit] maatskappy; of
- (cc) enige diens deur daardie beheerde buitelandse [entiteit] maatskappy verrig aan 'n verbonde persoon (met betrekking tot daardie beheerde buitelandse [entiteit] maatskappy) wat 50 'n inwoner is, tensy [daardie] die 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 55 Republiek gebruik word; of
- (B) daardie diens direk verband hou met die verkoop of bemarking van goed van 'n verbonde persoon (met betrekking tot daardie beheerde buitelandse [entiteit] maatskappy) wat 'n inwoner is en daardie goed verkoop 60 word aan persone wat nie verbonde persone met betrekking tot daardie beheerde buitelandse [entiteit] maatskappy is nie vir aflewering binne die land van

- country of residence of **[such] that** controlled foreign **[entity] company**;
- (iii) in the form of dividends, interest, royalties, rental, annuities, insurance premiums or income of a similar nature, or any capital gain determined in respect of the disposal of any asset from which any such income is or could be earned, or any foreign currency gain determined in respect of any foreign equity instrument or any foreign currency gain determined in terms of section 24I, except where **[such receipts and accruals, capital gains and foreign currency gains] those amounts—**
- (aa) do not in total exceed five per cent of the sum of the **[receipts and accruals] amounts** (other than **[receipts and accruals] those** of a capital nature) and the amount of all capital gains and foreign currency gains of **[such] that** controlled foreign **[entity] company**; or
- (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] amounts** derived—
- (A) by a company which is a foreign financial instrument holding company at the time that the amounts are so derived;
- [(A)](B) from any connected person (in relation to **[such] that** controlled foreign **[entity] company**) who is a resident or any resident who holds at least five per cent of the participation rights in that controlled foreign **[entity] company**; or
- [(B)](C) from any resident to the extent that **[such receipts and accruals] those amounts** 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;
- [Provided that the receipts and accruals of such banking or financial services, insurance or rental business are derived mainly from persons who are not connected persons in relation to that controlled foreign entity;]**
- (e) **[to the net income of any controlled foreign entity to the extent that such net income]** is included in the taxable income of the **[entity] company** and has not been or will not be exempt or taxed at a reduced rate in the Republic, as a result of the application of any agreement for the avoidance of double taxation;
- (f) **[in relation to the proportional amount of an amount equal to the net income attributable to any resident, to the extent that it relates]** is attributable to any foreign dividend contemplated in section 9E declared to or deemed to have been declared to **[a] that** controlled foreign **[entity which is a]** company, by any other company **[which is a controlled foreign entity in relation to such resident]** from an amount which relates to an amount of income which has been or will be included in the income of the resident in terms of this section; **[or]**
- (fA) **[in relation to the net income of a controlled foreign entity, to the extent that it relates]** is attributable to any interest, royalties, rental or income of a similar nature, which is paid or payable or deemed to be paid or payable to **[such entity] that company** by any other foreign **[entity] company** (including any similar amount adjusted in terms of section 31), or any exchange difference determined in terms of section 24I in respect of any exchange item to which that controlled foreign

- verblyf van daardie beheerde buitelandse [entiteit] maatskappy;
- (iii) in die vorm van dividende, rente, tantième, huurgeld, jaargelde, versekeringspremies of inkomste van 'n soortgelyke aard, of enige kapitaalwins vasgestel ten opsigte van die beskikking oor enige bate, ten opsigte waarvan enige sodanige inkomste verdien word of kan word, of enige buitelandse valutawins vasgestel ten opsigte van enige buitelandse ekwiteitsinstrument of enige buitelandse valutawins vasgestel ingevolge artikel 24I, behalwe waar [daardie ontvangste en toevallings, kapitaalwins en buitelandse valutawins] daardie bedrae—
- (aa) nie in totaal vyf persent van die som van die [ontvangste en toevallings] bedrae (behalwe [ontvangste en toevallings] dié van 'n kapitale aard) en die bedrag van alle kapitaalwinste en buitelandse valutawinste van [bedoelde] daardie beheerde buitelandse [entiteit] maatskappy te bowe gaan nie; of
- (bb) verkry word uit die hoofbedryfsaktiwiteit van enige bank- of finansiële dienste, versekerings- of verhuringsbesigheid, uitgesonderd enige sodanige [ontvangste en toevallings van enige] bedrae verkry—
- (A) deur 'n maatskappy wat 'n buitelandse finansiële instrumenthouermaatskappy is op die tydstip wat die bedrae aldus verkry is;
- [(A)](B) vanaf enige verbonde persoon (met betrekking tot daardie beheerde buitelandse [entiteit] maatskappy) wat 'n inwoner is of enige inwoner wat minstens vyf persent van die deelnemende regte in daardie beheerde buitelandse [entiteit] maatskappy hou; of
- [(B)](C) vanaf enige inwoner in die mate wat daardie [ontvangste en toevallings] bedrae 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;
- [Met dien verstande dat die ontvangste en toevallings van daardie bank- of finansiële dienste, versekerings- of verhuringsbesigheid verkry word hoofsaaklik van persone wat nie verbonde persone met betrekking tot daardie beheerde buitelandse entiteit is nie;]
- (e) [op die netto inkomste van 'n beheerde buitelandse entiteit in die mate wat daardie netto inkomste] in die belasbare inkomste van die [entiteit] maatskappy ingesluit is en nie in die Republiek van belasting vrygestel is of teen 'n verminderde koers belas is nie, as gevolg van die toepassing van enige ooreenkoms vir die vermyding van dubbele belasting;
- (f) [met betrekking tot die proporsionele bedrag van 'n bedrag gelyk aan die netto inkomste wat aan enige inwoner toeskryfbaar is in die mate wat dit betrekking het op] toeskryfbaar is aan enige buitelandse dividend in artikel 9E beoog, verklaar of geag verklaar te gewees het aan [’n] daardie beheerde buitelandse [entiteit wat ’n] maatskappy [is], deur enige ander maatskappy [wat ’n beheerde buitelandse entiteit met betrekking tot daardie inwoner is] vanuit 'n bedrag wat betrekking het op 'n bedrag van inkomste wat ingevolge hierdie artikel by die inkomste van die inwoner ingesluit is of sal word; [of]
- (fA) [met betrekking tot die netto inkomste van 'n beheerde buitelandse entiteit, in die mate wat dit verband hou met] toeskryfbaar is aan enige rente, tantième, huurgeld of inkomste van 'n dergelike aard, wat [aan daardie entiteit] betaal is of betaalbaar word of geag word betaal of betaalbaar te wees aan daardie maatskappy deur enige ander buitelandse [entiteit] maatskappy (ingesluit enige soortgelyke bedrag wat ingevolge artikel 31 aangepas is), of enige

[entity] company and that other foreign [entity] company are parties, where that controlled foreign [entity] company and that other foreign [entity] company form part of the same group of companies[, as defined in section 41];

- (fB) [in relation to the net income of a controlled foreign entity to the extent that it relates] is attributable to any capital gain of [such entity] that company, which is determined in respect of the disposal of any asset, as defined in the Eighth Schedule, ([excluding] other than any financial instrument or intangible asset as defined in paragraph 16 of the Eighth Schedule), where that asset was attributable to any business establishment of that controlled foreign [entity] company or any other foreign [entity] company [which forms], where that controlled foreign company and that other foreign company form part of the same group of companies [, as defined in section 41, as that controlled foreign entity]; or
- (h) [in respect of] is attributable to any amount received by or accrued to [such] that controlled foreign [entity] company—
- (i) from the disposal of any interest in the equity share capital of any other foreign [entity which is a] company; or
 - (ii) by way of a dividend declared to that controlled foreign [entity] company by any other foreign [entity which is a] company, if that controlled foreign [entity on the date of] company immediately before that disposal or at the time of the declaration of dividend—
- (aa) [holds] held more than 25 per cent of the equity share capital in that other foreign [entity] company; and
 - (bb) in the case of any disposal contemplated in subparagraph (i), held such interest contemplated in item (aa) for a period of at least 18 months prior to that disposal, unless that interest was acquired by the controlled foreign [entity] company from any other foreign [entity] company, where that controlled foreign [entity] company and that other foreign [entity] company form part of the same group of companies[, as defined in section 41] and that controlled foreign [entity] company and that other foreign [entity] company in aggregate held that interest for more than 18 months;

Provided that the provisions of [this paragraph] subparagraph (i) shall not apply where [more than 50 per cent of either the market value or the actual costs of all the assets of that other foreign entity and any foreign entity, which is a controlled company, as defined in section 41, in relation to that other foreign entity on the date of that disposal or distribution, consists of financial instruments, as defined in paragraph 1 of the Eighth Schedule, other than any shares held in any foreign entity which is a controlled company in relation to that other foreign entity] that other foreign company is a foreign financial instrument holding company immediately before that disposal.

- (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

valutaverskil ingevolge artikel 24I vasgestel ten opsigte van enige valuta-item waarby daardie beheerde buitelandse [entiteit] maatskappy en daardie ander buitelandse [entiteit] maatskappy partye is, waar daardie beheerde buitelandse [entiteit] maatskappy en daardie ander buitelandse [entiteit] maatskappy deel van dieselfde groep van maatskappye [soos in artikel 41 omskryf,] vorm;

(fB) [met betrekking tot die netto inkomste van 'n beheerde buitelandse entiteit in die mate wat dit verband hou met] toeskryfbaar is aan enige kapitaalwinst van daardie [entiteit] maatskappy, vasgestel ten opsigte van die beskikking oor 'n bate, soos in die Agtste Bylae omskryf, ([uitgesluit] behalwe enige finansiële instrument of ontasbare bate soos in paragraaf 16 van die Agtste Bylae omskryf), waar daardie bate aan enige besigheidsaak van daardie beheerde buitelandse [entiteit] maatskappy of enige ander buitelandse [entiteit] maatskappy wat deel van dieselfde groep van maatskappye [soos in artikel 41 omskryf,] as daardie beheerde buitelandse [entiteit] maatskappy vorm, toeskryfbaar was;

(h) [ten opsigte van] toeskryfbaar is aan enige bedrag ontvang deur of toegeval aan daardie beheerde buitelandse [entiteit] maatskappy—
 (i) uit die beskikking oor 'n belang in die ekwiteitsaandelekapitaal van enige ander buitelandse [entiteit wat 'n] maatskappy [is]; of
 (ii) by wyse van 'n dividend aan daardie beheerde buitelandse [entiteit] maatskappy verklaar deur enige ander buitelandse [entiteit wat 'n] maatskappy [is],
 indien daardie beheerde buitelandse [entiteit op die datum van] maatskappy onmiddellik voor daardie beskikking of op die tydstip van die verklaring van die dividend—

(aa) meer as 25 persent van die ekwiteitsaandelekapitaal in daardie ander buitelandse [entiteit hou] maatskappy gehou het; en
 (bb) in die geval van enige beskikking in subparagraaf (i) bedoel, daardie belang in item (aa) bedoel vir 'n tydperk van minstens 18 maande voor daardie beskikking gehou het, tensy daardie belang deur die beheerde buitelandse [entiteit] maatskappy van 'n ander buitelandse [entiteit] maatskappy verkry is, waar daardie beheerde buitelandse [entiteit] maatskappy en daardie ander buitelandse [entiteit] maatskappy deel van dieselfde groep van maatskappye [soos in artikel 41 omskryf,] vorm en daardie beheerde buitelandse [entiteit] maatskappy en daardie ander buitelandse [entiteit] maatskappy daardie belang in totaal vir meer as 18 maande gehou het;

Met dien verstande dat die bepalinge van [hierdie paragraaf] subparagraaf (i) nie van toepassing is nie waar [meer as 50 persent van of die markwaarde of die werklike koste van al die bates van daardie ander buitelandse entiteit en enige buitelandse entiteit wat 'n beheerde maatskappy, soos in artikel 41 omskryf, met betrekking tot daardie ander buitelandse entiteit is, op die datum van daardie beskikking of uitkering bestaan uit finansiële instrumente soos in paragraaf 1 van die Agtste Bylae omskryf, behalwe aandele in enige buitelandse entiteit wat 'n beheerde maatskappy met betrekking tot daardie ander buitelandse entiteit is] daardie ander buitelandse maatskappy onmiddellik voor daardie beskikking 'n buitelandse finansiële instrumenthouermaatskappy was.

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

(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 ooreenstemming 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

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)] to (h), inclusive shall not apply in respect of any resident, where [such] that resident fails to comply with the provisions of section 72A.”.

(2) Subsection (1) shall come into operation on the date of promulgation of this Act and shall, to the extent it—

(a) amends subsection (6), apply in respect of years of assessment commencing on or after that date; and

(b) amends the rest of section 9D, apply in respect of years of assessment ending on or after that date.

Substitution of section 9E of Act 58 of 1962

15. (1) The following section is hereby substituted for section 9E of the Income Tax Act, 1962:

“Taxation of foreign dividends

9E. (1) For the purposes of this section—

‘controlled company’ means a company in relation to which another company is the controlling company;

‘controlling company’, in relation to any other company, means a company which is a resident and which holds for its own benefit, whether directly or indirectly, through one or more companies in a group of companies of which all the companies in question form part, shares in such other company which constitute not less than 75 per cent of the equity share capital of the said other company;

‘designated country’ means a country designated by the Minister under subsection (8);

‘effective date’ means 23 February 2000;

‘fixed capital’ includes share capital, share premium and accumulated profits, whether of a capital nature or not;

‘foreign dividend’ means—

(a) any dividend received by or which accrued to any person from any company which is either a foreign [entity] company 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—]; and

[(a)](b) any amount deemed to have been distributed to that person or any resident who is a connected person in relation to that person, by any foreign company which is a controlled foreign company in relation to that person, 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 connected person in relation to such person], and where the provisions contained in section 64C(4)(a), (b), (c), (d), (e), (f), (i) or (j) do not apply, to the extent that [such] the foreign company could have distributed a dividend to [such] that person from profits which have not been subject to tax in the Republic, [and none of the provisions contained in section 64C(4) (other than section 64C(4)(g) and (h)) apply] which amount must be deemed to be a dividend declared by that company to that person: [Provided that the provisions of this paragraph shall not apply in respect of any amount distributed by any company, which is being wound up or liquidated or whose corporate existence is finally terminated, out of profits of a capital nature (other than profits of a capital nature derived from the disposal by such company, on or after the

tot 'n onaanvaarbare erodering van die belastingbasis aanleiding sal gee nie.

(11) Die bepalings van subartikel (9)(b) [(f) en (fA)] tot en met (h) 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) tree in werking op die datum van afkondiging van hierdie Wet en, tot die mate wat dit—

(a) subartikel (6) wysig, is van toepassing ten opsigte van jare van aanslag wat op of na daardie datum 'n aanvang neem; en

(b) die res van artikel 9D wysig, is van toepassing ten opsigte van jare van aanslag wat op of na daardie datum eindig.

Vervanging van artikel 9E van Wet 58 van 1962

15. (1) Die volgende artikel vervang hierby artikel 9E van die Inkomstebelastingwet, 1962:

“Belasting van buitelandse dividende

9E. (1) By die toepassing van hierdie artikel beteken—

‘aangewese land’ 'n land deur die Minister kragtens subartikel (8) aangewys;

‘beheerde maatskappy’ 'n maatskappy met betrekking waartoe 'n ander maatskappy die beherende maatskappy is;

‘beherende maatskappy’, met betrekking tot 'n ander maatskappy, 'n maatskappy wat 'n inwoner is en wat vir sy eie voordeel hetsy direk of indirek deur een of meer maatskappye in die groep maatskappye waarvan al die betrokke maatskappye 'n deel uitmaak, aandeel in bedoelde ander maatskappy besit wat minstens 75 persent van die ekwiteitsaandelekapitaal van bedoelde ander maatskappy uitmaak;]

‘buitelandse belastingjaar’ 'n buitelandse belastingjaar soos in artikel 9D omskryf;

‘buitelandse dividend’—

(a) enige dividend ontvang deur of toegeval aan 'n persoon vanaf 'n maatskappy wat of 'n buitelandse [entiteit] maatskappy is soos omskryf in artikel 9D, of '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—]; en

[(a)] (b) 'n bedrag geag aan daardie persoon of enige inwoner wat 'n verbonde persoon met betrekking tot daardie persoon is, [deur 'n maatskappy wat 'n beheerde buitelandse entiteit is,] uitgekeer te gewees het deur 'n buitelandse maatskappy wat 'n beheerde buitelandse maatskappy met betrekking tot daardie persoon is, soos in artikel 64C(3)(a), (b), (c) of (d) beoog [aan bedoelde persoon of 'n inwoner wat 'n verbonde persoon met betrekking tot bedoelde persoon is] en waar die bepalings in artikel 64C(4)(a), (b), (c), (d), (e), (f), (i) of (j) nie van toepassing is nie, in die mate wat [bedoelde] daardie buitelandse maatskappy 'n dividend aan [bedoelde] daardie persoon kon uitgekeer het uit winste wat nie onderhewig is aan belasting in die Republiek nie, [en geen van die bepalings in artikel 64C(4) (behalwe artikel 64C(4)(g) en (h)) vervat van toepassing is nie] welke bedrag geag word 'n dividend deur daardie maatskappy aan daardie persoon verklaar te wees: [Met dien verstande dat die bepalings van hierdie paragraaf nie van toepassing is nie ten opsigte van 'n bedrag deur 'n maatskappy uitgekeer wat gelikwider word of wie se korporatiewe bestaan finaal beëindig word, uit winste van 'n kapitale aard (behalwe winste van 'n kapitale aard verkry uit die van die hand sit deur daardie maatskappy op of na die effektiewe datum van enige belang in enige ander

effective date, of any interest in any other company with retained profits which were available for distribution by such other company to such company which would not have been excluded from the provisions of paragraph (b) had that paragraph applied); or];

'foreign tax year' means a foreign tax year as defined in section 9D;

['group of companies' means a controlling company and one or more other companies which are controlled companies in relation to the controlling company;]

'proportionate amount of the profit', in relation to a shareholder, means an amount which bears to the total profit, the same ratio as such shareholder's shareholding bears to the total shareholding, and for that purpose, if there are different classes of shares—

(a) the expression 'total shareholding' refers only to the total of the class of shares of which such shareholding is part; and

(b) the expression 'total profits' means the total profits attributable to such class of shares;

'qualifying interest' of any person means—

(a) any direct interest of at least 10 per cent held by such person in the equity share capital of any company; and

(b) any direct interest of at least 10 per cent held by any company contemplated in paragraph (a) in the equity share capital of any other company, which other company shall for the purposes of this definition be deemed to be a company contemplated in paragraph (a) in which such person holds a direct interest of at least 10 per cent;

'qualifying statutory rate' means a statutory rate of tax on companies in the relevant country of at least—

(a) 27 per cent in the case of amounts other than capital gains; and

(b) 13,5 per cent in the case of capital gains,

after taking into account the application of any agreement for the avoidance of double taxation, if applicable, and in respect of which there is no 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 that country imposes a tax on companies at a progressive scale of statutory rates, the statutory rate shall for the purposes of this definition be deemed to be the highest rate on that scale.

(3) Subject to subsection (7), where during any year of assessment any foreign dividend is received by or accrues to any resident, the amount to be included in the gross income of [such] that resident for [such] that year of assessment in terms of paragraph (k) of the definition of 'gross income' in section 1, shall—

(a) **[if such] where that resident (together with any connected person in relation to that resident) holds for its own benefit—**

[(i) holds for his own benefit; or

(ii) in the case of a company, together with any other company in a group of companies of which such company forms part, hold for their own benefit,]

at least 10 per cent of the equity share capital in the company declaring the dividend, be the proportionate amount of the profit from which the dividend is distributed, before taking into account any foreign tax on income imposed in respect of [such] that profit and any withholding tax paid in respect of [such] that dividend: Provided that—

[(aa)](i) [unless such resident proves otherwise in such manner and such form as the Commissioner may prescribe] the foreign dividend shall be deemed to have been distributed by the foreign company from the profits of that foreign company determined in respect of the most [recently

maatskappy met opgehoopte winste wat vir uitkering deur bedoelde ander maatskappy aan bedoelde maatskappy beskikbaar was wat nie van die bepalings van paragraaf (b) uitgesluit sou gewees het nie sou daardie bepalings van toepassing gewees het); of]

'effektiewe datum' 23 Februarie 2000;

['groep maatskappye' 'n beheerende maatskappy en een of meer ander maatskappye wat beheerde maatskappye is met betrekking tot die beheerende maatskappy;]

'kwalifiserende belang' van enige persoon—

- (a) enige direkte belang van minstens 10 persent deur daardie persoon gehou in die ekwiteitsaandelekapitaal van enige maatskappy; en
- (b) enige direkte belang van minstens 10 persent deur enige maatskappy in paragraaf (a) bedoel, gehou in die ekwiteitsaandelekapitaal van enige ander maatskappy,

welke ander maatskappy by die toepassing van hierdie omskrywing geag word 'n maatskappy te wees in paragraaf (a) bedoel waarin daardie persoon 'n direkte belang van minstens 10 persent hou;

'kwalifiserende statutêre koers' 'n statutêre koers van belasting op maatskappye in die betrokke land van minstens—

- (a) 27 persent in die geval van bedrae behalwe kapitaalwins; en
- (b) 13,5 persent in die geval van kapitaalwins,

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): 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;

'proporsionele bedrag van die wins', met betrekking tot 'n aandeelhouer, 'n bedrag wat tot die totale wins in dieselfde verhouding staan as wat daardie aandeelhouer se aandeelhouding tot die totale aandeelhouding staan, en vir daardie doel, indien daar verskillende klasse aandele is—

- (a) verwys die uitdrukking 'totale aandeelhouding' slegs na die totaal van die klas aandele waarvan bedoelde aandeelhouding deel is; en
- (b) beteken die uitdrukking 'totale winste' die totale winste toeskryfbaar aan bedoelde klas aandele;

['vaste kapitaal' ook aandelekapitaal, aandeelpremie en opgehoopte winste, hetsy van 'n kapitale aard al dan nie].

(3) Behoudens subartikel (7), waar 'n buitelandse dividend gedurende 'n jaar van aanslag ontvang is deur of toegeval het aan 'n inwoner, is die bedrag wat by die bruto inkomste van [bedoelde] daardie inwoner vir daardie jaar van aanslag ingesluit staan te word ingevolge paragraaf (k) van die omskrywing van "bruto inkomste" in artikel 1—

- (a) [indien bedoelde] waar daardie inwoner (tesame met enige verbonde persoon met betrekking tot daardie inwoner) vir sy eie voordeel[—

(i) vir sy eie voordeel; of

- (ii) in die geval van 'n maatskappy, tesame met enige ander maatskappy in 'n groep maatskappye waarvan bedoelde maatskappy 'n deel uitmaak, vir hul eie voordeel,]

minstens 10 persent van die ekwiteitsaandelekapitaal van die maatskappy hou wat die dividend verklaar, die proporsionele bedrag van die wins waaruit die dividend uitgekeer word, voor inagneming van enige buitelandse belasting op inkomste gehef ten opsigte van [bedoelde] daardie wins en enige terughoudingsbelasting betaal ten opsigte van [bedoelde] daardie dividend: Met dien verstande dat—

[(aa)](i) [tensy die inwoner op die wyse en in die vorm wat die Kommissaris voorskryf die teendeel bewys,] die buitelandse dividend geag word uitgekeer te gewees het deur die buitelandse maatskappy uit die winste van daardie buitelandse maatskappy vasgestel ten opsigte van die mees

derived and] recent foreign tax year on a last in first out basis to the extent they are available for distribution, unless the directors or shareholders by resolution decided to distribute the dividend from profits derived in a different foreign tax year; and

[(bb)](ii) where [such] that foreign company during the relevant foreign tax year contemplated in subparagraph (i), derived its profits [by way of dividends received or accrued and by way of other sources of profits] from different forms of income, the dividend shall be deemed to have been declared on a proportionate basis from [such dividends and other sources of profits] the profits derived from such different forms of income; or

(b) in any other case [if such resident—

(i) does not hold for his own benefit; or

(ii) in the case of a company, together with any other company in a group of companies of which such company forms part, do not hold for their own benefit,

at least 10 per cent of the equity share capital in the company declaring the dividend], be the amount of [such] that dividend declared before taking into account the amount of any withholding tax paid in respect of [such] that dividend.

(4) In determining the proportionate amount of the profit to be included in the gross income of any resident in terms of subsection (3)(a), there shall be taken into account any profits derived by any other company in which the company distributing the dividend has an interest and which have been distributed to [such] that company in the form of dividends, if the resident has a qualifying interest in [such] that other company: Provided that—

(a) [unless such resident proves otherwise in such manner and such form as the Commissioner may prescribe] the dividend shall be deemed to have been distributed by [such] that other company to that company from the profits [most recently derived and] determined in respect of the most recent foreign tax year on a last in first out basis to the extent they are available for distribution, unless the directors or shareholders by resolution decided to distribute the dividend from profits derived in a different foreign tax year; and

(b) where [such] that other company during the relevant foreign tax year contemplated in paragraph (a) derived its profits [by way of dividends received or accrued to such company and by way of other sources of profits,] from different forms of income, the dividend shall be deemed to have been declared [by such other company] on a proportionate basis from [such dividends and other sources of profits] the profits derived from such different forms of income.

(5) For the purposes of subsection (3)(b), where—

(a) any dividend is declared by a company to any [unit] portfolio of a collective investment scheme referred to in paragraph (e)(i) of the definition of 'company' in section 1; and

(b) such dividend is distributed by such [unit] portfolio 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] participatory interests in such [unit] portfolio,

such dividend contemplated in paragraph (a) shall, to the extent that such dividend is declared to such holders of [units] participatory interests as

- [onlangs verkry en] onlangse buitelandse belastingjaar op 'n laaste in eerste uit grondslag tot die mate wat dit beskikbaar is vir verdeling, tensy die direkteure of aandeelhouders by besluit gekies het om die dividend uit winste in 'n verskillende buitelandse belastingjaar verkry, uit te keer; en 5
- [(bb)] (ii) waar [bedoelde] daardie buitelandse maatskappy gedurende die betrokke buitelandse belastingjaar in subparagraaf (i) bedoel, sy winste verkry het [by wyse van dividende ontvang of toegeval en by wyse van ander bronne van winste] uit verskillende vorms van inkomste, word die dividend geag verklaar te gewees het op 'n proporsionele grondslag uit [bedoelde dividende en ander bronne van winste] die winste uit daardie verskillende vorms van inkomste verkry; of 10 15
- (b) in enige ander geval, [indien bedoelde inwoner—
- (i) nie vir sy eie voordeel; of
- (ii) in die geval van 'n maatskappy, tesame met enige ander maatskappy in 'n groep maatskappye waarvan bedoelde maatskappy 'n deel uitmaak, nie vir hul eie voordeel, minstens 10 persent van die ekwiteitsaandelekapitaal van die maatskappy wat die dividend verklaar, hou nie,] die bedrag van [bedoelde] daardie dividend verklaar, voor inagneming van die bedrag van enige terughoudingsbelasting betaal ten opsigte van [bedoelde] daardie dividend. 20 25
- (4) By die vasstelling van die proporsionele bedrag van die wins wat ingevolge subartikel (3)(a) by die bruto inkomste van die inwoner ingesluit staan te word, word in ag geneem enige winste deur enige ander maatskappy verkry waarin die maatskappy wat die dividend verklaar 'n belang hou en wat aan [bedoelde] daardie maatskappy in die vorm van dividende uitgekeer is, indien die inwoner 'n kwalifiserende belang het in [bedoelde] daardie ander maatskappy: Met dien verstande dat— 30
- (a) [tensy die inwoner op die wyse en in die vorm wat die Kommissaris voorskryf die teendeel bewys,] die dividend geag word uitgekeer te gewees het deur [bedoelde] daardie ander maatskappy aan daardie maatskappy uit die winste [mees onlangs verkry en] vasgestel ten opsigte van die mees onlangse buitelandse belastingjaar op 'n laaste in eerste uit grondslag tot die mate wat dit beskikbaar is vir uitkering, tensy die direkteure of aandeelhouders by besluit gekies het om die dividend uit winste in 'n verskillende buitelandse belastingjaar verkry, uit te keer; en 35 40
- (b) waar [bedoelde] daardie ander maatskappy gedurende die betrokke buitelandse belastingjaar in paragraaf (a) bedoel sy winste verkry [by wyse van dividende ontvang of toegeval aan bedoelde maatskappy en by wyse van ander bronne van winste] het uit verskillende vorms van inkomste, word die dividend geag [deur bedoelde ander maatskappy] verklaar te gewees het op 'n proporsionele grondslag uit [bedoelde dividende en ander bronne van winste] die winste uit daardie verskillende vorms van inkomste verkry. 45
- (5) By die toepassing van subartikel (3)(b), waar— 50
- (a) 'n dividend deur 'n maatskappy verklaar word aan 'n [effektiegroep] portefeulje van 'n kollektiewe beleggingskema in paragraaf (e)(i) van die omskrywing van 'maatskappy' in artikel 1 bedoel; en
- (b) [bedoelde] daardie dividend deur bedoelde [effektiegroep] portefeulje verklaar is by wyse van 'n dividend, of 'n gedeelte van 'n dividend, aan persone wat op [bedoelde] daardie dividend geregtig geword het op grond [van hul registrasie as] daarvan dat hulle houders van [onderaandele] deelnemende belange in [bedoelde effektiegroep] daardie portefeulje is, 55
- word [bedoelde] daardie dividend in paragraaf (a) beoog, tot die mate wat daardie dividend aan daardie houders van [onderaandele] deelnemende belange verklaar word soos in paragraaf (b) bedoel, geag deur [bedoelde] 60

contemplated in paragraph (b), be deemed to have been declared by such company directly to such holders of **[units]** participatory interests.

(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 amount of foreign dividends included in the income of such resident during such year; and
- (b) any amount whereby **[such]** that interest contemplated in paragraph (a) 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 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 such resident during such succeeding year of assessment in the production of income in the form of foreign dividends.

(6) Any resident who receives a foreign dividend or to whom a foreign dividend accrues may, notwithstanding the provisions of subsection (3), in respect of any year of assessment elect that the amount of **[such]** that foreign dividend to be included in the gross income of **[such]** that resident shall—

(a) in the case of a resident contemplated in subsection (3)(a), [if such resident—

- (i) holds for his own benefit; or
- (ii) in the case of a company, together with any other company in a group of companies of which such company forms part, hold for their own benefit,

at least 10 per cent of the equity share capital in the company declaring such dividend,] be the amount of the profits from which such dividend is declared after taking into account any foreign tax on income imposed in respect of **[such]** those profits and any withholding tax paid in respect of **[such]** that dividend; or

(b) in the case of a resident contemplated in subsection (3)(b), [if such resident—

- (i) does not hold for his own benefit; or
- (ii) in the case of a company, together with any other company in a group of companies of which such company forms part, do not hold for their own benefit,

at least 10 per cent of the equity share capital in the company declaring such dividend] be the amount of **[such]** that dividend after taking into account any withholding tax paid in respect of **[such]** that dividend,

and **[such]** that election shall apply in respect of all foreign dividends received by or accrued to **[such]** that resident during the year of assessment in respect of which the election was made.

(7) There shall be exempt from tax any foreign dividend declared or deemed to have been declared by—

- (c) any listed company, [listed on a stock exchange as defined in section 1 of the Stock Exchanges Control Act, 1985 (Act No. 1 of 1985),] contemplated in paragraph (a) of the definition of 'listed company' in section 1, to a resident who, together with any connected person in relation to **[such]** that resident, [does not hold at least] holds less than

daardie maatskappy verklaar te gewees het direk aan **[bedoelde]** daardie houters van **[onderaande]** deelnemende belange.

(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 inkomste van daardie inwoner gedurende daardie jaar van aanslag ingesluit is; en 10

(b) enige bedrag waarby **[bedoelde]** daardie rente in paragraaf (a) bedoel 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— 15

(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. 20

(6) 'n Inwoner wat 'n buitelandse dividend ontvang of aan wie 'n buitelandse dividend toeval, kan, ondanks die bepalings van subartikel (3), ten opsigte van enige jaar van aanslag kies dat die bedrag van **[bedoelde]** daardie buitelandse dividend wat by die bruto inkomste van **[bedoelde]** daardie inwoner ingesluit staan te word— 25

(a) in die geval van 'n inwoner in subartikel (3)(a) bedoel, **[indien bedoelde inwoner—]** 30

(i) vir sy eie voordeel; of

(ii) in die geval van 'n maatskappy, tesame met enige ander maatskappy in 'n groep maatskappye waarvan bedoelde maatskappy 'n deel uitmaak, vir hul eie voordeel,

minstens 10 persent van die ekwiteitsaandelekapitaal van die maatskappy wat bedoelde dividend verklaar, hou,] die bedrag van die winste waaruit **[bedoelde]** daardie dividend verklaar is na inagneming van enige buitelandse belasting op inkomste gehef ten opsigte van **[bedoelde]** daardie winste en enige terughoudingsbelasting betaal ten opsigte van **[bedoelde]** daardie dividend, moet wees; of 35 40

(b) in die geval van 'n inwoner in subartikel (3)(b) bedoel, **[indien bedoele inwoner—]**

(i) nie vir sy eie voordeel; of

(ii) in die geval van 'n maatskappy, tesame met enige ander maatskappy in 'n groep maatskappye waarvan bedoelde maatskappy 'n deel uitmaak, nie vir hul eie voordeel,

minstens 10 persent van die ekwiteitsaandelekapitaal van die maatskappy wat bedoelde dividend verklaar, hou nie,] die bedrag van **[bedoelde]** daardie dividend na inagneming van enige terughoudingsbelasting betaal ten opsigte van **[bedoelde]** daardie dividend, moet wees, 45 50

en **[bedoelde]** daardie keuse is van toepassing ten opsigte van alle buitelandse dividende ontvang deur of toegeval aan **[bedoelde]** daardie inwoner gedurende die jaar van aanslag ten opsigte waarvan die keuse uitgeoefen is. 55

(7) Daar word van belasting vrygestel enige buitelandse dividend verklaar of geag verklaar te gewees het deur—

(c) 'n genoteerde maatskappy **[genoteer op 'n aandelebeurs soos omskryf in artikel 1 van die Wet op Beheer van Aandelebeurse, 1985 (Wet No. 1 van 1985)]** in paragraaf (a) van die omskrywing van 'genoteerde maatskappy' in artikel 1 bedoel, aan 'n inwoner wat, tesame met enige verbonde persoon met betrekking tot **[bedoelde]** 60

- 10 per cent of the equity share capital of **[such]** that company, if more than 10 per cent of the equity share capital in **[such]** that company is at the time of the declaration of **[such]** that dividend held collectively by residents: Provided that where **[such]** the shares of that company **[was]** were not listed on such a stock exchange on the effective date, the exemption shall apply only upon approval by the Commissioner, which approval the Commissioner may grant on application by **[such]** that company, having regard to—
- (i) the fact whether or not the profits of **[such]** that company were generated in a designated country; and
 - (ii) the tax rate at which the profits from which the dividend was declared was or will be taxed;
- (d) any company, which is distributed directly or indirectly to a resident who holds a qualifying interest in **[such]** that company, to the extent that the profits from which the dividend is declared are or will be subject to tax in a designated country at **[a]** a qualifying statutory rate **[of at least 27 per cent or, in the case of any capital gains of that company, at a statutory rate of at least 13,5 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 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];**
- (e) any company to the extent that the profits from which the dividend is distributed—
- (i) relate to any amount of income which has been or will be included in the income of the shareholder of such company in terms of section 9D; **[or]**
 - (ii) have been or will be subject to tax in the Republic in terms of this Act, unless those profits have been or will be exempt or taxed at a reduced rate in the Republic, as a result of the application of any agreement for the avoidance of double taxation; **[or]**
 - (iii) have otherwise been included in the taxable income of the shareholder in terms of **[paragraph (a) of]** the definition of 'foreign dividend'; or
 - (iv) arose directly or indirectly from any dividends declared by any company which is a resident; **[or]**
- (f) any company out of profits derived by **[such]** that company by way of—
- (i) any foreign dividend which is exempt from tax in terms of the provisions of this subsection; or
 - (ii) any dividend which would have constituted a foreign dividend which is exempt from tax, had **[such]** that dividend been declared on or after **[23 February 2000]** the effective date; or
- (g) any unbundling company of any distributable shares pursuant to any unbundling transaction contemplated in section 46.
- (8) The Minister may, by notice in the *Gazette*—
- (a) designate countries which—
- [(b)](i)** have a tax on income that is determined on a basis which is substantially the same as that of the Republic;
 - [(c)](ii)** have **[a]** a qualifying statutory rate of tax on income of companies **[of at least 27 per cent without any right of recovery of such tax by any person (other than a right of**

- daardie inwoner, **[nie minstens]** minder as 10 persent van die ekwiteitsaandelekapitaal van **[bedoelde]** daardie maatskappy hou **[nie]**, indien meer as 10 persent van die ekwiteitsaandelekapitaal van **[bedoelde]** daardie maatskappy op die tydstip van die verklaring van **[bedoelde]** daardie dividend gesamentlik deur inwoners gehou word: 5
 Met dien verstande dat waar **[bedoelde]** die aandele van daardie maatskappy nie op die effektiewe datum op **[bedoelde]** so 'n aandeelbeurs genoteer was nie, die vrystelling slegs van toepassing is by goedkeuring deur die Kommissaris, welke goedkeuring die Kommissaris kan toestaan op aansoek deur **[bedoelde]** daardie maatskappy, met inagneming van— 10
- (i) die feit of die winste van **[bedoelde]** daardie maatskappy in 'n aangewese land gegeneer is al dan nie; en
 - (ii) die belastingkoers waarteen die winste waaruit die dividend verklaar is, belas is of sal word; 15
- (d) 'n maatskappy, wat direk of indirek aan 'n inwoner uitgekeer word wat 'n kwalifiserende belang in die maatskappy hou, in die mate wat die winste waaruit die dividend verklaar word in 'n aangewese land aan belasting onderhewig is of sal word teen 'n kwalifiserende statutêre koers **[van minstens 27 persent of, in die geval van enige kapitaalwins van daardie maatskappy, teen 'n statutêre koers van minstens 13,5 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): 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];** 20
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- (e) 'n maatskappy in die mate wat die winste waaruit die dividend uitgekeer is—
- (i) betrekking het op enige inkomste wat by die inkomste van die aandeelhouer van bedoelde maatskappy ingevolge artikel 9D ingesluit is of staan te word; **[of]** 35
 - (ii) onderhewig aan belasting in die Republiek is of sal wees ingevolge hierdie Wet, tensy daardie winste in die Republiek van belasting vrygestel is of sal wees of belas is teen 'n verminderde koers, as gevolg van die toepassing van 'n ooreenkoms vir die vermyding van dubbele belasting; **[of]** 40
 - (iii) andersins by die belasbare inkomste van die aandeelhouer ingevolge **[paragraaf (a) van]** die omskrywing van 'buitelandse dividend' ingesluit is; of
 - (iv) direk of indirek ontstaan uit enige dividende verklaar deur 'n maatskappy wat 'n inwoner is; **[of]** 45
- (f) enige maatskappy uit die winste deur daardie maatskappy verkry by wyse van—
- (i) enige buitelandse dividend wat ingevolge die bepalinge van hierdie artikel van belasting vrygestel is; of 50
 - (ii) enige dividend wat 'n buitelandse dividend sou daarstel wat van belasting vrygestel is, indien daardie dividend op of na **[23 Februarie 2000]** die effektiewe datum verklaar was; of
- (g) enige ontbondelingsmaatskappy van enige uitkeerbare aandele ingevolge 'n ontbondelingstransaksie in artikel 46 bedoel. 55
- (8) Die Minister kan by kennisgewing in die *Staatskoerant*—
- (a) lande aanwys wat—
 - [(b)]** (i) 'n belasting op inkomste het wat vasgestel word op 'n grondslag wat wesenlik dieselfde is as dié van die Republiek; 60
 - [(c)]** (ii) 'n kwalifiserende statutêre koers van belasting op inkomste van maatskappye **[van minstens 27 persent]** het **[sonder enige reg van verhaal van daardie belasting deur 'n**

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)]; and

[(d)](iii) comply with any other requirement which the Minister may prescribe by regulation:

(b) exclude specific forms of income which are derived from those countries contemplated in paragraph (a).”

(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;

(b) the extent to which goods and services will be provided in respect of such project from the Republic;

(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

(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.

[9] The discretion exercised by the Commissioner in terms of this section shall be subject to objection and appeal.

(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.]”

(2) Subsection (1) shall come into operation on the date of promulgation of this Act and shall apply in respect of any year of assessment ending on or after that date.

Amendment of section 9F of Act 58 of 1962, as inserted by section 12 of Act 59 of 2000 and amended by section 24 of Act 60 of 2001

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

(a) by the deletion of subsection (1); and

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

“(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 by or 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] a qualifying 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] as defined in section 9E.”;

(c) by the deletion of subsection (3).

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)); en

[(d)] (iii) aan enige ander vereiste wat die Minister by regulasie kan voorskryf, voldoen; 5

(b) spesifieke vorms van inkomste wat vanaf die daardie lande in paragraaf (a) bedoel verkry is, uitsluit.

(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— 10 15

- (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;
- (c) die potensiele effek wat die projek op die Suid-Afrikaanse belastingbasis mag hê; 20
- (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. 25

(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.

[(9) Die diskresie deur die Kommissaris uitgeoefen ingevolge hierdie artikel is aan beswaar en appél onderhewig.

(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) Subartikel (1) tree in werking op die datum van afkondiging van hierdie Wet en is van toepassing ten opsigte van enige jaar van aanslag wat op of na daardie datum eindig. 35

Wysiging van artikel 9F van Wet 58 van 1962, soos ingevoeg deur artikel 12 van Wet 59 van 2000 en gewysig deur artikel 24 van Wet 60 van 2001

16. (1) Artikel 9F van die Inkomstebelastingwet, 1962, word hierby gewysig—

- (a) deur subartikel (1) te skrap; en 40
- (b) deur subartikel (2) deur die volgende subartikel te vervang:

“(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 toegeval 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 kwalifiserende statutêre koers [van minstens 27 persent of, in die geval van enige kapitaalwinst van daardie maatskappy, teen 'n statutêre koers van minstens 13,5 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].”;

- (c) deur subartikel (3) te skrap. 60

(2) Subsection (1) shall come into operation on the date of promulgation of this Act and shall apply in respect of any year of assessment ending on or after that date.

Amendment of section 9G of Act 58 of 1962, as inserted by section 25 of Act 60 of 2001

17. (1) Section 9G of the Income Tax Act, 1962, is hereby amended by the substitution for subsections (2) and (3) of the following subsection: 5

“(2) Notwithstanding the provisions of section 25D, the amount to be included in the gross income of a person in respect of the disposal by that person of any foreign equity instrument which constitutes trading stock, shall be determined by translating the amount received or accrued in any **[foreign] currency other than** 10 currency of the Republic in respect of that disposal into the currency of the Republic at the **[ruling] average exchange rate [on the date of that disposal]** for the year of assessment during which that foreign equity instrument is disposed of.

(3) Any—

(a) expenditure incurred by a person in any **[foreign] currency other than** 15 currency of the Republic in respect of any foreign equity instrument which is allowable as a deduction in terms of the provisions of this Act; or

(b) amount in any **[foreign] currency other than currency of the Republic** which is taken into account in the determination of the taxable income of any person in respect of any foreign equity instrument, 20

shall, for purposes of determining the taxable income of that person for the year of assessment in which that foreign equity instrument is disposed of, be translated into the currency of the Republic—

(i) in the case of a foreign equity instrument acquired before 1 October 2001, at the ruling exchange rate on 1 October 2001; or 25

(ii) in any other case, at the **[ruling] average exchange rate [on the later of the date of incurral of that expenditure or 1 October 2001]** for the year of assessment during which that expenditure was actually incurred by that person.”

(2) Subsection (1) shall come into operation on the date of promulgation of this Act and shall apply in respect of the disposal of any foreign equity instrument during any year of assessment commencing on or after that date. 30

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 35 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 40 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 45 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, section 21 of Act 30 of 2000, section 13 of Act 59 of 2000, section 9 of Act 19 of 2001, section 26 of Act 60 of 2001 and section 13 of Act 30 of 2002

18. (1) Section 10 of the Income Tax Act, 1962, is hereby amended— 50

(a) by the substitution in subsection (1) for subparagraph (iii) of paragraph (hA) of the following subparagraph:

“(iii) for the purposes of this paragraph, so much of any dividend as has been distributed by any **[unit] portfolio of any collective investment** 55 scheme constituting a company in terms of paragraph (e)(i) of the

(2) Subartikel (1) tree in werking op die datum van afkondiging van hierdie Wet en is van toepassing ten opsigte van enige jaar van aanslag wat op of na daardie datum eindig.

Wysiging van artikel 9G van Wet 58 van 1962, soos ingevoeg deur artikel 25 van Wet 60 van 2001

17. (1) Artikel 9G van die Inkomstebelastingwet, 1962, word hierby gewysig deur subartikel (2) deur die volgende subartikel te vervang:

“(2) Ondanks die bepalings van artikel 25D, word die bedrag wat by die bruto inkomste van ’n persoon ingesluit moet word ten opsigte van die beskikking deur daardie persoon oor enige buitelandse ekwiteitsinstrument wat handelsvoorraad daarstel, vasgestel deur die bedrag in enige **[buitelandse]** geldeenheid anders as die geldeenheid van die Republiek ten opsigte van daardie beskikking ontvang of toegeval, om te reken na die geldeenheid van die Republiek teen die **[heersende]** gemiddelde wisselkoers **[op die datum van daardie beskikking]** vir die jaar van aanslag waarin daardie buitelandse ekwiteitsinstrument oor beskik is.

(3) Enige—

(a) onkoste aangegaan deur ’n persoon in enige **[buitelandse]** geldeenheid anders as die geldeenheid in die Republiek ten opsigte van ’n buitelandse ekwiteitsinstrument wat ingevolge die bepalings van hierdie Wet as ’n aftrekking toelaatbaar is; of

(b) bedrag in ’n **[buitelandse]** geldeenheid anders as die geldeenheid van die Republiek wat in berekening gebring is by die vasstelling van die belasbare inkomste van ’n persoon ten opsigte van ’n buitelandse ekwiteitsinstrument, word, vir doeleindes van die vasstelling van die belasbare inkomste van daardie persoon vir die jaar van aanslag waarin oor daardie buitelandse ekwiteitsinstrument beskik is, na die geldeenheid van die Republiek omgerek—

(i) in die geval van ’n buitelandse ekwiteitsinstrument wat voor 1 Oktober 2001 verkry is, teen die heersende wisselkoers op 1 Oktober 2001; of

(ii) in enige ander geval, teen die **[heersende]** gemiddelde wisselkoers **[op die datum waarop die onkoste aangegaan is of 1 Oktober 2001, welke datum die laatste is]** vir die jaar van aanslag waarin daardie onkoste werklik deur daardie persoon aangegaan is.”

(2) Subartikel (1) tree in werking op die datum van afkondiging van hierdie Wet en is van toepassing ten opsigte van die beskikking oor enige buitelandse ekwiteitsinstrument gedurende enige jaar van aanslag wat op of na daardie datum ’n aanvang neem.

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 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 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 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, artikel 21 van Wet 30 van 2000, artikel 13 van Wet 59 van 2000, artikel 9 van Wet 19 van 2001, artikel 26 van Wet 60 van 2001 en artikel 13 van Wet 30 van 2002

18. (1) Artikel 10 van die Inkomstebelastingwet, 1962, word hierby gewysig—

(a) deur subparagraaf (iii) van paragraaf (hA) in subartikel (1) deur die volgende subparagraaf te vervang:

“(iii) by die toepassing van hierdie paragraaf, soveel van ’n dividend as wat deur ’n **[effektegroep]** portefeulje van ’n kollektiewe beleggingskema wat ingevolge paragraaf (e)(i) van die omskrywing van ‘maatskappy’ in

definition of 'company' in section 1 out of interest derived by such [unit] portfolio which is exempt from tax in the hands of such [unit] portfolio under the provisions of paragraph (iA), shall be deemed to be interest;"

- (b) by the substitution in subsection (1) for paragraph (iA) of the following paragraph: 5
- “(iA) in the case of any [unit] portfolio of a collective investment scheme referred to in paragraph (e)(i) of the definition of 'company' in section 1, so much of the income received by or accrued to such [unit] portfolio as has been distributed, or as the Commissioner is 10 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] participatory interest in such [unit] portfolio [on a date falling on or after the first day of April, 1971];”;
- (c) by the substitution in subsection (1) for items (aa) and (bb) of the proviso to subparagraph (i) of paragraph (k) of the following items: 15
- “(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 who is neither a resident, nor carrying on business in the Republic) 20 distributed by a [fixed property] company the shares of which are 'property shares' as defined in [section 1 of the Unit Trusts Control Act, 1981 (Act No. 54 of 1981)] section 47 of the Collective Investment Schemes Control Act, 2002, on shares included in a [unit] portfolio comprised in any [unit trust] collective investment scheme in 25 property [shares authorized under the said Act] managed or carried on by any company registered as a manager under section 42 of that Act for purposes of Part V of that Act; or
- (bb) to so much of any dividend as has been distributed by any [unit] portfolio of any collective investment scheme constituting a company 30 in terms of paragraph (e)(i) of the definition of 'company' in section 1—
- (A) out of 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
- (B) out of amounts received by or accrued to such [unit] portfolio 35 by way of dividends referred to in section 11(s); or”;
- (d) by the deletion in subsection (1) of subparagraph (iA) of paragraph (k);
- (e) by the substitution in subsection (1) for the words in paragraph (o) preceding subparagraph (i) of the following words: 40
- “any remuneration as defined in paragraph 1 of the Fourth Schedule [derived by any person]—”;
- (f) by the substitution in subsection (1) for the words in subparagraph (i) of paragraph (o) preceding item (aa) of the following words: 45
- “(i) derived by any person as an officer or crew member of a ship engaged—”;
- (g) by the substitution in subsection (1) for the words in subparagraph (ii) of paragraph (o) preceding the proviso and the proviso of the following words and proviso: 50
- “(ii) received by or accrued to any person during any year of assessment in respect of services rendered outside the Republic by [such] that person for or on behalf of any employer, if [such] that person was 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] 55 that year of assessment; and
- (bb) for a continuous period exceeding 60 full days during [such] that period of 12 months,

artikel 1 'n maatskappy is, uitgekeer is uit rente deur **[sodanige effektegroepe]** daardie portefeulje verkry wat ingevolge die bepalings van paragraaf (iA) in die hande van daardie **[effektegroepe]** portefeulje van belasting vrygestel is, geag word 'n bedrag aan rente te wees;"

- (b) deur paragraaf (iA) in subartikel (1) deur die volgende paragraaf te vervang: 5
- “(iA) in die geval van 'n **[effektegroepe]** portefeulje van 'n kollektiewe beleggingskema in paragraaf (e)(i) van die omskrywing van 'maatskappy' in artikel 1, soveel van die inkomste ontvang deur of toegeval aan daardie **[effektegroepe]** portefeulje 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 effektegroepe geregistreer] houe van deelnemende belange in daardie portefeulje is;" 15
- (c) deur items (aa) en (bb) van die voorbehoudsbepaling by subparagraaf (i) van paragraaf (k) in subartikel (1) deur die volgende items te vervang:
- “(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 'n inwoner is nóg 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)]** maatskappy waarvan die aandele 'eiendomsaandele', soos omskryf in artikel 47 van die Wet op die Beheer van Kollektiewe Beleggingskemas, 2002, is, uitgekeer op aandele ingesluit by 'n **[effektegroepe]** portefeulje bevat in 'n **[ingevolge genoemde Wet gemagtigde effek-te-trustskema in eiendomsaandele]** kollektiewe beleggingskema in eiendom wat deur 'n maatskappy wat ingevolge artikel 42 van daardie Wet as 'n bestuurder vir doeleindes van Deel V van daardie Wet geregistreer is, bestuur of bedryf word; of 20
- (bb) op soveel van 'n dividend as wat deur 'n **[effektegroepe]** portefeulje in 'n kollektiewe beleggingskema wat ingevolge paragraaf (e)(i) van die omskrywing van 'maatskappy' in artikel 1 'n maatskappy is, uitgekeer is— 25
- (A) uit inkomste deur **[sodanige effektegroepe]** daardie portefeulje verkry wat ingevolge die bepalings van paragraaf (iA) in die hande van daardie **[effektegroepe]** portefeulje van belasting vrygestel is; en 30
- (B) uit bedrae deur **[sodanige effektegroepe]** daardie portefeulje ontvang of **[aan hom]** toegeval by wyse van dividende in artikel 11(s) bedoel; of” 40
- (d) deur subparagraaf (iA) van paragraaf (k) in subartikel (1) te skrap;
- (e) deur in subartikel (1) die woorde in paragraaf (o) wat subparagraaf (i) voorafgaan deur die volgende woorde te vervang: 45
- “enige besoldiging **[verkry deur 'n persoon]** soos in paragraaf 1 van die Vierde Bylae omskryf—”;
- (f) deur in subartikel (1) die woorde wat item (aa) van subparagraaf (i) van paragraaf (o) voorafgaan deur die volgende woorde te vervang:
- “(i) verkry deur 'n persoon as 'n offisier of lid van die bemanning van 'n skip besig met—” 50
- (g) deur in subartikel (1) die woorde wat die voorgehoudsbepaling by subparagraaf (ii) van paragraaf (o) voorafgaan en die voorbehoudsbepaling deur die volgende woorde en voorgehoudsbepaling te vervang:
- “(ii) ontvang deur of toegeval aan 'n persoon gedurende enige jaar van aanslag, ten opsigte van dienste buite die Republiek deur daardie persoon gelewer vir of namens enige werkgewer, indien daardie persoon buite die Republiek was— 55
- (aa) vir 'n tydperk of tydperke wat in totaal 183 volle dae gedurende enige tydperk van 12 maande wat gedurende **['n]** daardie jaar van aanslag 'n aanvang neem of eindig, te bowe gaan; en 60
- (bb) vir 'n aaneenlopende tydperk wat 60 volle dae gedurende daardie tydperk van 12 maande te bowe gaan,

and [such] those services were rendered during [such] that period or periods: Provided that—

(A) for purposes of this subparagraph, a person who is in transit through the Republic between two places outside the Republic and who does not formally enter the Republic through a port of entry as defined in the Immigration Act, 2002 (Act No. 13 of 2002), shall be deemed to be outside the Republic; and

(B) 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 of any employer, as contemplated in section 9(1)(e);”;

(h) by the deletion of subparagraph (xv) of paragraph (t) of subsection (1);

(i) by the substitution in subsection (1) for the words preceding the proviso to paragraph (zA) of the following words:

“(zA) any amount by way of rebate or other assistance received by or accrued to or in favour of any **[exporter (as defined in section 11bis(1))]** person under any scheme for the promotion or financing of exports which is for the purposes of this paragraph approved by the Minister of Trade and Industry with the concurrence of the Minister of Finance.”;

(j) by the deletion in subsection (1) of paragraph (zF).

(2) (a) Subsection (1)(a), (b) and (c) shall come into operation on the date that the Collective Investment Schemes Control Act, 2002, comes into operation.

(b) Subsection(1)(d) shall come into operation on the date of promulgation of this Act and shall apply in respect of any dividend received or accrued on or after that date.

(c) Subsection (1)(e), (f) and (g) shall come into operation on the date of promulgation of this Act and shall apply in respect of any year of assessment ending on or after that date.

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, section 22 of Act 30 of 2000, section 15 of Act 59 of 2000, section 10 of Act 19 of 2001, section 27 of Act 60 of 2001 and section 14 of Act 30 of 2002

19. (1) Section 11 of the Income Tax Act, 1962, is hereby amended—

(a) by the substitution for paragraph (s) of the following paragraph:

“(s) in the case of a **[fixed property]** company the shares of which are ‘property shares’ as defined in section [1] 47 of the **[Unit Trusts Control Act, 1981 (Act No. 54 of 1981)]** Collective Investment Schemes Control Act, 2002, the dividends (other than those distributed out of profits of a capital nature) distributed by such company during the year of assessment on shares included in a **[unit]** portfolio comprised in any **[unit trust]** collective investment scheme in property **[shares authorized under the said Act]** managed or carried on by any company registered as a manager under section 42 of that Act for the purposes of Part V of that Act;”.

en daardie dienste gedurende daardie tydperk of tydperke gelewer is:
Met dien verstande dat—

(A) by die toepassing van hierdie subparagraaf, word 'n persoon wat in transito deur die Republiek tussen twee plekke buite die Republiek is en wat nie formeel die Republiek deur 'n 'port of entry' soos omskryf in die 'Immigration Act, 2002' (Wet No. 13 van 2002), binnekom nie, geag buite die Republiek te wees; en

(B) 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;";

(h) deur subparagraaf (xv) van paragraaf (t) in subartikel (1) te skrap;

(i) deur in subartikel (1) die woorde wat die voorbehoudsbepaling by paragraaf (zA) voorafgaan deur die volgende woorde te vervang:

“(zA) 'n bedrag by wyse van 'n korting of ander hulp ontvang deur of toegeval aan of ten gunste van 'n **[uitvoerder (soos in artikel 11bis(1) omskryf)] persoon** ingevolge 'n skema vir die bevordering of finansiering van uitvoere wat die Minister van Handel en Nywerheid, met die instemming van die Minister van Finansies, vir die doeleindes van hierdie paragraaf goedgekeur is;”;

(j) deur paragraaf (zF) in subartikel (1) te skrap.

(2) (a) Subartikel (1)(a), (b) en (c) tree in werking op die datum waarop die Wet op die Beheer van Kollektiewe Beleggingskemas, 2002, in werking tree.

(b) Subartikel (1)(d) tree in werking op die datum van afkondiging van hierdie Wet en is van toepassing ten opsigte van enige dividend op of na daardie datum ontvang of toegeval.

(c) Subartikel (1)(e), (f) en (g) tree in werking op die datum van afkondiging van hierdie Wet en is van toepassing ten opsigte van enige jaar van aanslag wat op of na daardie datum eindig.

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, artikel 22 van Wet 30 van 2000, artikel 15 van Wet 59 van 2000, artikel 10 van Wet 19 van 2001, artikel 27 van Wet 60 van 2001 en artikel 14 van Wet 30 van 2002

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

(a) deur paragraaf (s) deur die volgende paragraaf te vervang:

“(s) in die geval van 'n **[vaste-eiendomsmaatskappy soos omskryf in artikel 1 van die Wet op Beheer van Effekte-trustskemas, 1981 (Wet 54 van 1981)] maatskappy** die aandeel waarvan eiendomsaandeel soos omskryf in artikel 47 van die Wet op die Beheer van Kollektiewe Beleggingskemas, 2002, is, die dividende (behalwe dié uit winste van 'n kapitale aard uitgekeer) wat gedurende die jaar van aanslag deur so 'n maatskappy uitgekeer is op aandeel ingesluit by 'n **[effektiegroep] portefeulje** bevat in 'n **[ingevolge genoemde Wet gemagtigde effektestrustskema in eiendomsaandeel]** kollektiewe beleggingskema in eiendom wat deur 'n maatskappy wat ingevolge artikel 42 van daardie Wet as 'n bestuurder geregistreer is vir doeleindes van Deel V van daardie Wet, bestuur of bedryf word;”;

- (b) by the substitution for subparagraph (B) of paragraph (ee) of the proviso to paragraph (w) of the following subparagraph:

“(B) in the case of premiums paid under one or more policies referred to in subparagraph (C) of the said paragraph (dd) upon the life of a particular employee or director, to an amount equal to 10 per cent of the remuneration (as defined in the definition of ‘remuneration’ in paragraph 1 of the Fourth Schedule [**but including any amount referred to in paragraph (iv) or (vii) of that definition**]) derived by such employee or director from the taxpayer during the said year of assessment;”.

- (2) Subsection (1)(a) shall come into operation on the date that the Collective Investment Schemes Control Act, 2002, comes into operation.

Repeal of section 11bis of Act 58 of 1962

20. Section 11bis of the Income Tax Act, 1962, is hereby repealed.

Amendment of section 12E of Act 58 of 1962, as inserted by section 12 of Act 19 of 2001 and amended by section 17 of Act 30 of 2002

21. Section 12E of the Income Tax Act, 1962, is hereby amended by the substitution in subsection (4) for subparagraph (ii) of paragraph (a) of the following subparagraph:

- “(ii) none of the shareholders or members at any time during the year of assessment of the company or close corporation holds any shares or has any interest in the equity of any other company as defined in section 1 (other than a company **[listed on a stock exchange as defined in the Stock Exchanges Control Act, 1985 (Act No. 1 of 1985) contemplated in paragraph (a) of the definition of ‘listed company’, or any [unit] portfolio in a collective investment scheme contemplated in paragraph (e) of the definition of ‘company’ [in section 1];**”.

Amendment of section 12G of Act 58 of 1962, as inserted by section 12 of Act 19 of 2001 and amended by section 29 of Act 60 of 2001

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

- (a) by the substitution in subsection (1) for the words in paragraph (a) of the definition of “industrial asset” preceding subparagraph (i) of the following words:
 “any plant or machinery acquired, **[or]** contracted for or brought into the Republic by a company after the date of approval in terms of subsection (5), which—”;
- (b) by the substitution in subsection (1) for subparagraph (ii) of paragraph (a) of the definition of “industrial asset” of the following subparagraph:
 “(ii) will be brought into use for the first time by that company within **[three]** four years from the date of approval in terms of subsection (5);”;
- (c) by the substitution in subsection (1) for subparagraph (ii) of paragraph (b) of the definition of “industrial asset” of the following subparagraph:
 “(ii) will be brought into use by that company within **[three]** four years from the date of approval in terms of subsection (5);”;
- (d) by the substitution in subsection (1) for paragraph (a) of the definition of “industrial project” of the following paragraph:
 “(a) any manufacturing of products, goods, articles or other things (excluding any tobacco and tobacco related products) within the Republic that—
 (i) is classified under ‘Major Division 3: Manufacturing’ in the most recent Standard Industrial Classification issued by Statistics South Africa; or
 (ii) in the case of products, goods, articles or things which are not yet classified, the adjudication committee is of the view will be classified as contemplated in subparagraph (i);”.
- (e) by the substitution in subsection (2) for the word “and” at the end of paragraph (a) of the word “or”;

- (b) deur subparagraaf (B) van paragraaf (ee) van die voorbehoudsbepaling by paragraaf (w) deur die volgende subparagraaf te vervang:
- “(B) in die geval van premies betaal ingevolge een of meer polisse in subparagraaf (C) van genoemde paragraaf (dd) bedoel op die lewe van ’n bepaalde werknemer of direkteur, tot ’n bedrag gelyk aan 10 persent van die besoldiging (soos in die omskrywing van ‘besoldiging’ in paragraaf 1 van die Vierde Bylae omskryf, **[maar met inbegrip van ’n bedrag in paragraaf (iv) of (vii) van daardie omskrywing bedoel]**) gedurende genoemde jaar van aanslag deur bedoelde werknemer of direkteur van die belastingpligtige verkry;”.
- (2) Subartikel (1)(a) tree in werking op die datum wat die Wet op die Beheer van Kollektiewe Beleggingskemas, 2002, in werking tree.

Herroeping van artikel 11bis van Wet 58 van 1962

20. Artikel 11bis van die Inkomstebelastingwet, 1962, word hierby herroep.

Wysiging van artikel 12E van Wet 58 van 1962, soos ingevoeg deur artikel 12 van Wet 19 van 2001 en gewysig deur artikel 17 van Wet 30 van 2002

21. Artikel 12E van die Inkomstebelastingwet, 1962, word hierby gewysig deur in subparagraaf (ii) van paragraaf (a) in subartikel (4) deur die volgende subparagraaf te vervang:

- “(ii) nie een van die aandeelhouders of lede te eniger tyd gedurende die jaar van aanslag van die maatskappy of beslote korporasie enige aandele of belang in die ekwiteit van enige ander maatskappy soos in artikel 1 omskryf (behalwe ’n maatskappy **[genoteer op ’n aandeelbeurs soos omskryf in die Wet op Beheer van Aandeelbeurse, 1985 (Wet No. 1 van 1985)] in paragraaf (a) van die omskrywing van ‘genoteerde maatskappy’ bedoel, of enige [effektetrust] portefeulje in ’n kollektiewe beleggingskema in paragraaf (e) van die omskrywing van ‘maatskappy’ [in artikel 1] bedoel**), gehou het nie;”.

Wysiging van artikel 12G van Wet 58 van 1962, soos ingevoeg deur artikel 12 van Wet 19 van 2001 en gewysig deur artikel 29 van Wet 60 van 2001

22. Artikel 12G van die Inkomstebelastingwet, 1962, word hierby gewysig—
- (a) deur in subartikel (1) die woorde wat subparagraaf (i) van paragraaf (a) van die omskrywing van “nywerheidsbate” voorafgaan deur die volgende woorde te vervang:
- “enige installasie of masjinerie deur ’n maatskappy verkry of voor gekontraakteer of in die Republiek ingebring na die datum van goedkeuring ingevolge subartikel (5), wat—”;
- (b) deur in subartikel (1) subparagraaf (ii) van paragraaf (a) van die omskrywing van “nywerheidsbate” deur die volgende subparagraaf te vervang:
- “(ii) vir die eerste maal deur daardie maatskappy in gebruik gebring sal word binne **[drie] vier** jaar vanaf die datum van goedkeuring ingevolge subartikel (5);”;
- (c) deur in subartikel (1) subparagraaf (ii) van paragraaf (b) van die omskrywing van “nywerheidsbate” deur die volgende subparagraaf te vervang:
- “(ii) deur daardie maatskappy in gebruik gebring sal word binne **[drie] vier** jaar vanaf die datum van goedkeuring ingevolge subartikel (5);”;
- (d) deur in subartikel (1) paragraaf (a) van die omskrywing van “nywerheidsprojek” deur die volgende paragraaf te vervang:
- “(a) enige vervaardiging van produkte, goedere, artikels of ander goed (uitgesluit tabak en tabakverwante produkte) binne die Republiek, wat—
- (i) geklassifiseer is in ‘Hoofafdeling 3: Fabriekswese’ van die mees onlangse Standaardnywerheidsklassifikasie van alle Ekonomiese Bedrywighede deur Statistiek Suid-Afrika uitgereik; of
- (ii) in die geval van produkte, goedere, artikels of ander goed wat nog nie geklassifiseer is nie, die beoordelingskomitee van mening is geklassifiseer sal word soos in subparagraaf (i) bedoel;”;
- (e) deur in subartikel (2) die woord “en” aan die einde van paragraaf (a) deur die woord “of” te vervang;

- (f) by the substitution in subsection (4) for paragraph (a) of the following paragraph:

“(a) the cost of all industrial assets to be acquired by the company, which will be brought into use for that industrial project within **[three] four** years after the date of approval in terms of subsection (5), will exceed R50 million;”;

- (g) by the substitution in subsection (16) for paragraph (a) of the following paragraph:

“(a) may, after taking into account the recommendations of the adjudication committee, extend the **[three] four** year period contemplated in the definition of ‘industrial asset’ in subsection (1) by a period not exceeding one year, where an industrial project consists of industrial assets exceeding R1 billion;”;

- (2) Subsection (1) shall be deemed to have come into operation on 27 July 2001.

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, section 20 of Act 30 of 2000 and section 27 of Act 59 of 2000

23. Section 20 of the Income Tax Act, 1962, is hereby amended by the substitution for subsection (2) of the following subsection:

“(2) For the purposes of this section ‘assessed loss’ means any amount by which the deductions admissible under sections 11 to 19, inclusive, exceeded the income in respect of which they are so admissible **[or, if the context so requires, means an assessed loss as determined under the provisions of section 30].**”.

Amendment of section 22 of Act 58 of 1962, as amended by section 8 of Act 6 of 1963, section 14 of Act 90 of 1964, section 21 of Act 89 of 1969, section 23 of Act 85 of 1974, section 20 of Act 69 of 1975, section 15 of Act 103 of 1976, section 20 of Act 94 of 1983, section 19 of Act 121 of 1984, section 14 of Act 65 of 1986, section 5 of Act 108 of 1986, section 21 of Act 101 of 1990 section 22 of Act 129 of 1991, section 17 of Act 113 of 1993, section 1 of Act 168 of 1993, section 19 of Act 21 of 1995, section 12 of Act 36 of 1996, section 25 of Act 53 of 1999, section 27 of Act 30 of 2000 and section 12 of Act 5 of 2001

24. (1) Section 22 of the Income Tax Act, 1962, is hereby amended—

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

“(6) Any reference in this section to the beginning or end of a year of assessment includes—

[(i)] (a) where the period assessed is less than twelve months, a reference to the beginning or end, as the case may be, of the period assessed;

[(ii)] where a return is accepted under the proviso to subsection (13) of section sixty-six to a date other than the thirtieth day of June, a reference to the beginning or end, as the case may be, of the period covered by the return;

[(iii)] (b) where accounts are accepted under **[subsection (13)ter of the said section] section 66(13A)** to a date agreed to by the Commissioner, a reference to the beginning or end, as the case may be, of the period covered by the accounts.”;

- (b) by the deletion in subsection (8) for the word “or” at the end of paragraph (b) to the proviso;

- (c) by the addition in subsection (8) of the word “or” at the end of paragraph (c) of the proviso;

- (d) by the addition to the proviso to subsection (8) of the following paragraph:

“(d) such trading stock consists of assets in respect of which any amount received or accrued from the disposal thereof is or will be included in the gross income of the taxpayer in terms of paragraph (jA) of the definition of ‘gross income’, the provisions of paragraph (b)(iv) shall not apply.”.

- (f) deur in subartikel (4) paragraaf (a) deur die volgende paragraaf te vervang:
 “(a) die koste van alle nywerheidsbates wat verkry staan te word deur die maatskappy, wat in gebruik gebring sal word vir daardie nywerheidsprojek binne [drie] vier jaar na die datum van goedkeuring ingevolge subartikel (5), R50 miljoen sal oorskry;”;
- (g) deur in subartikel (16) paragraaf (a) deur die volgende paragraaf te vervang:
 “(a) kan, na inagneming van die aanbeveling van die beoordelingskomitee, die [drie] vier jaar tydperk in die omskrywing van ’nywerheidsbate’ in subartikel (1) bedoel, vir ’n tydperk wat nie een jaar oorskry nie verleng, waar ’n nywerheidsprojek bestaan uit nywerheidsbates wat R1 miljard te bowe gaan;”.
- (2) Subartikel (1) word geag op 27 Julie 2001 in werking te getree het.

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 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, artikel 20 van Wet 30 van 2000 en artikel 27 van Wet 59 van 2000

- 23.** Artikel 20 van die Inkomstebelastingwet, 1962, word hierby gewysig deur subartikel (2) deur die volgende subartikel te vervang:
- “(2) By die toepassing van hierdie artikel beteken ‘vasgestelde verlies’ ’n bedrag waarmee die aftrekkings ingevolge artikels 11 tot en met 19 toelaatbaar, die inkomste te bowe gegaan het ten opsigte waarvan hulle aldus toelaatbaar is[, of, as die samehang aldus vereis, ’n vasgestelde verlies soos ingevolge die bepalings van artikel 30 vasgestel].”.

Wysiging van artikel 22 van Wet 58 van 1962, soos gewysig deur artikel 8 van Wet 6 van 1963, artikel 14 van Wet 90 van 1964, artikel 21 van Wet 89 van 1969, artikel 23 van Wet 85 van 1974, artikel 20 van Wet 69 van 1975, artikel 15 van Wet 103 van 1976, artikel 20 van Wet 94 van 1983, artikel 19 van Wet 121 van 1984, artikel 14 van Wet 65 van 1986, artikel 5 van Wet 108 van 1986, artikel 21 van Wet 101 van 1990 artikel 22 van Wet 129 van 1991, artikel 17 van Wet 113 van 1993, artikel 1 van Wet 168 van 1993, artikel 19 van Wet 21 van 1995, artikel 12 van Wet 36 van 1996, artikel 25 van Wet 53 van 1999, artikel 27 van Wet 30 van 2000 en artikel 12 van Wet 5 van 2001

- 24.** (1) Artikel 22 van die Inkomstebelastingwet, 1962, word hierby gewysig—
- (a) deur subartikel (6) deur die volgende subartikel te vervang:
- “(6) ’n Verwysing in hierdie artikel na die begin of einde van ’n jaar van aanslag beteken—
- [i] (a) waar die tydperk waarvoor die aanslag geskied minder as twaalf maande is, ook ’n verwysing na die begin of einde, na gelang van die geval, van die tydperk waarvoor die aanslag geskied;
- [ii] waar ’n opgawe ingevolge die voorbehoudsbepaling by subartikel (13) van artikel ses-en-sestig tot op ’n ander datum as die dertigste dag van Junie aangeneem word, ook ’n verwysing na die begin of einde, na gelang van die geval, van die tydperk wat deur die opgawe gedek word;]
- [iii] (b) waar ingevolge [subartikel (13) ter van genoemde artikel] artikel 66(13A) rekenings aangeneem word tot ’n datum deur die Kommissaris goedgekeur, ook ’n verwysing na die begin of einde, na gelang van die geval, van die tydperk deur die rekenings gedek.”;
- (b) deur in subartikel (8) die woord “of” aan die einde van paragraaf (b) van die voorbehoudsbepaling te skrap;
- (c) deur in subartikel (8) die woord “of” aan die einde van paragraaf (c) van die voorbehoudsbepaling te voeg;
- (d) deur in subartikel (8) die volgende paragraaf by die voorbehoudsbepaling te voeg:

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

(b) Subsection (1)(b), (c) and (d) shall be deemed to have come into operation on 12 December 2001.

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, section 26 of Act 129 of 1991 and section 30 of Act 59 of 2000

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

(a) by the insertion in subsection (1) after the definition of “completion date” of the following definition: 10

“ ‘export’, in relation to a film, means sell and consign or sell and deliver to any purchaser at any address in any export country, or the exploitation of the film by the film owner in an export country and any derivative of ‘export’ shall be construed accordingly;”;

(b) by the insertion in subsection (1) after the definition of “exported” of the following definition: 15

“ ‘export country’ means any country other than the Republic or a neighbouring country;”;

(c) by the insertion in subsection (1) after the definition of “production cost” of the following definition: 20

“ ‘marketing expenditure’ means so much of the expenditure incurred by the film owner during the year of assessment to market a South African export film and allowed to be deducted from his or her income under section 11 as is proved to the satisfaction of the Commissioner to have been incurred directly— 25

(a) in research into or obtaining information (including the remuneration of consultants, agents or representatives) in regard to the marketing of that film in any export country;

(b) in advertising or otherwise securing publicity for that film in an export country (excluding expenditure incurred in sponsoring or promoting any sporting or any other event in a country other than an export country) or in soliciting orders for that film in, or participating in trade fairs in, export countries; 30

(c) in providing without charge samples or technical information in respect of that film to prospective customers in any export country; 35

(d) in bringing prospective customers from any export country to the Republic;

(e) in connection with the preparation or submission of tenders or quotations in respect of that film to be exported to any export country; 40

(f) in respect of commission or other remuneration for orders for that film exported to any export country or the clearing or forwarding of that film in that country;

(g) by way of certification fees charged by any South African Certification Authority in respect of that film which has been exported; 45

(h) by way of expenditure (including search and application fees) incurred in obtaining in any export country the registration of any copyright or patent or the restoration of any copyright or patent or the registration of any design or trade mark or the extension of the term or registration period of, or the renewal of the registration of, any copyright, patent, design or trade mark; 50

(i) in connection with the design of any special label or packaging used for that film, if the Commissioner is satisfied that the requirements as to the labeling or packaging of that film differ materially from, or are additional to, the requirements of the South African market; and 55

(j) by way of membership fees of any institution or body which—

(i) is actively engaged in export promotion of films;

(ii) does not receive financial support from the State; and

(iii) is approved by the Director-General of Trade and Industry;” 60

“(d) daardie handelsvoorraad uit bates bestaan ten opsigte waarvan enige bedrag ontvang of toegeval uit die beskikking daarvan ingevolge paragraaf (jA) van die omskrywing van ‘bruto inkomste’ by die bruto inkomste van die belastingpligtige ingesluit word of sal word, die bepalinge van paragraaf (b)(iv) nie van toepassing is nie.”.

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(2)(a) Subartikel (1)(a) tree in werking op die datum van afkondiging van hierdie Wet.

(b) Subartikel (1)(b), (c) en (d) word geag op 12 Desember 2001 in werking te getree het.

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, artikel 26 van Wet 129 van 1991 en artikel 30 van Wet 59 van 2000

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

(a) deur in subartikel (1) na die woordomschrywing van “afdrukkoste” die volgende woordomschrywing in te voeg:

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“ ‘bemarkingskoste’ soveel van die onkoste deur die uitvoerder gedurende die jaar van aanslag aangegaan wat ingevolge artikel 11 toegelaat is om van sy of haar inkomste afgetrek te word as wat, tot bevrediging van die Kommissaris bewys word, regstreeks aangegaan is—

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(a) vir navorsing of die verkryging van inligting (insluitende vergoeding van konsultante, agente of verteenwoordigers) met betrekking tot die bemaking van daardie rolprent in enige uitvoerland;

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(b) in verband met reklame of die verkryging op ander wyse van publisiteit in ’n uitvoerland (behalwe onkoste aangegaan by die borg of bevordering van enige sport- of enige ander geleentheid in ’n land behalwe ’n uitvoerland) of in verband met die werf van bestellings in, of deelname aan handelstoonstellings in uitvoerlande;

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(c) in verband met die gratis verskaffing van monsters of tegniese inligting aan moontlike klante in ’n uitvoerland;

(d) ten einde moontlike klante van ’n uitvoerland na die Republiek te bring;

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(e) in verband met die voorbereiding of verstrekking van tenders of kwotasies ten opsigte van daardie rolprent bestem vir uitvoer na ’n uitvoerland;

(f) ten opsigte van kommissie of ander vergoeding vir bestellings vir daardie rolprent uitgevoer na ’n uitvoerland of die klaring of versending van daardie rolprent in daardie land;

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(g) by wyse van sertifiseringsgelde wat deur enige Suid-Afrikaanse Sertifiseringsowerheid gevra word ten opsigte van daardie rolprent wat uitgevoer is;

(h) by wyse van onkoste (met inbegrip van soek- en aansoekgelde) aangegaan by die verkryging in ’n uitvoerland van die registrasie van ’n patent of die herstel van ’n patent of die registrasie van ’n model of handelsmerk of die verlenging van die tydperk of die registrasietydperk van, of die hernuwing van die registrasie van, ’n patent, model of handelsmerk;

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(i) in verband met die ontwerp van ’n spesiale etiket of verpakking wat vir daardie rolprent gebruik word, indien die Kommissaris oortuig is dat die vereistes met betrekking tot die etikette op of die verpakking van daardie rolprent, wesenlik verskil van, of bykomend is by, die vereistes van die Suid-Afrikaanse mark; en

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(j) by wyse van lidmaatskapsgelde van ’n instelling of liggaam wat—

(i) aktief met uitvoerbevoordering gemoeid is;

(ii) nie finansiële ondersteuning van die Staat ontvang nie; en

(iii) deur die Direkteur-generaal van Handel en Nywerheid goedgekeur is.”;

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

“(7) The amount of any print cost or any marketing expenditure **[contemplated in section 11bis]** which may be allowed under the provisions of section 11 shall not in the aggregate exceed the total of—”; 5

- (e) by the substitution for subsection (8) of the following subsection:

“(8) For the purposes of subsections (4) and (7), a film owner shall be deemed to be at risk to the extent that the payment of the production cost, post-production cost, print cost or marketing expenditure **[(as contemplated in section 11bis)]** incurred by him, or the repayment of any loan or credit used by him for the payment or financing of any such production cost, post-production cost, print cost or marketing expenditure, would (having regard to any transaction, agreement, arrangement, understanding or scheme entered into before or after such production cost, post-production cost, print cost or marketing expenditure is incurred) result in an economic loss to him were no income to be received by or accrue to him in future years from the exploitation by him of the film.”; 10 15

and

- (f) by the deletion of subsections (9), (10) and (11).

Amendment of section 24H of Act 58 of 1962, as inserted by section 21 of Act 90 of 1988 20

26. Section 24H of the Income Tax Act, 1962, is hereby amended by the substitution in subsection (3) for the words preceding paragraph (a) of the following words:

“(3) Notwithstanding anything to the contrary in this Act contained, the amount of any allowance or deduction which may be granted to any taxpayer under any provision of this Act **[other than section 11bis]** in respect of or in connection with any trade or business carried on by him in a partnership in relation to which he is a limited partner shall not in the aggregate exceed the sum of—”. 25

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, section 26 of Act 53 of 1999, section 31 of Act 59 of 2000 and section 36 of Act 60 of 2001 30

27. (1) Section 24I of the Income Tax Act, 1962, is hereby amended—

- (a) by the substitution in subsection (1) for the definition of “foreign currency” of the following definition: 35

“‘foreign currency’ in relation to any exchange item of a person, means any currency which is not local currency **[in relation to—**

(a) a any permanent establishment of a person, any currency which is not legal tender in the country in which that permanent establishment is situated; 40

(b) any resident in respect of any exchange item which is not attributable to a permanent establishment outside the Republic, any currency which is not legal tender in the Republic;

(c) any company or trust which is not a resident in respect of any exchange item which is not attributable to a permanent establishment of that company or trust, any currency which is not legal tender in the country in which that company is incorporated or trust is formed;]”; 45

- (b) deur in subartikel (1) na die woordoms krywing van “Suid-Afrikaanse uitvoerrolprent” die volgende woordoms krywings in te voeg:
 “ ‘uitvoer’ met betrekking tot ’n rolprent, die verkoop en versending of verkoop en lewering aan enige koper by enige adres in ’n uitvoerland, of die benutting van die rolprent deur die rolprenteienaar in ’n uitvoerland, en enige afgeleide vorm van ‘uitvoer’ word dienooreenkomstig uitgelê; ‘uitvoerland’ enige land behalwe die Republiek of ’n buurland;”;
- (c) deur in subartikel (7) die woorde wat paragraaf (a) voorafgaan deur die volgende woorde te vervang:
 “(7) Die bedrag aan enige afdrukkoste of enige bemarkingskoste [in artikel 11bis bedoel] wat kragtens die bepalings van artikel 11 toegelaat kan word, is in totaal nie meer as die totaal van—”;
- (d) deur subartikel (8) deur die volgende subartikel te vervang:
 “(8) By die toepassing van subartikels (4) en (7), word ’n rolprenteienaar geag op risiko te wees in die mate waarin die betaling van die produksiekoste, na-produksiekoste, afdrukkoste of bemarkingskoste [(soos in artikel 11bis bedoel)] wat deur hom aangegaan is, of die terugbetaling van ’n lening of krediet wat vir die betaling of finansiering van enige bedoelde produksiekoste, na-produksiekoste, afdrukkoste of bemarkingskoste (met inagneming van enige transaksie, ooreenkoms, verstandhouding of skema wat aangegaan is voordat of nadat bedoelde produksiekoste, na-produksiekoste, afdrukkoste of bemarkingskoste aangegaan is) op ’n ekonomiese verlies vir hom sou uitloop indien geen inkomste in toekomstige jare uit die benutting van die rolprent deur hom ontvang sou word of aan hom sou toeval nie.”;
- (e) deur subartikels (9), (10) en (11) te skrap.

Wysiging van artikel 24H van Wet 58 van 1962, soos ingevoeg deur artikel 21 van Wet 90 van 1988

26. Artikel 24H van die Inkomstebelastingwet, 1962, word hierby gewysig deur in subartikel (3) die woorde wat paragraaf (a) voorafgaan deur die volgende woorde te vervang:

“(3) Ondanks andersluidende bepalings van hierdie Wet, is die bedrag aan enige vermindering of aftrekking wat ingevolge enige bepaling van hierdie Wet [behalwe artikel 11bis] aan ’n belastingpligtige toegestaan mag word ten opsigte van of in verband met ’n bedryf of besigheid wat hy in ’n vennootskap beoefen met betrekking waartoe hy ’n beperkte vennoot is, nie meer as die som van—”.

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, artikel 26 van Wet 53 van 1999, artikel 31 van Wet 59 van 2000 en artikel 36 van Wet 60 van 2001

27. (1) Artikel 24I van die Inkomstebelastingwet, 1962, word hierby gewysig—

- (a) deur in subartikel (1) die woordoms krywing van “buitelandse valuta” deur die volgende woordoms krywing te vervang:
 “ ‘buitelandse valuta’ met betrekking tot ’n valuta-item van ’n persoon[—
- (a) enige permanente saak van ’n persoon, enige geldeenheid wat nie ’n wettige betaalmiddel is in die land waarin daardie permanente saak geleë is nie;
- (b) enige inwoner ten opsigte van ’n valuta-item wat nie aan ’n permanente saak buite die Republiek toeskryfbaar is nie, enige geldeenheid wat nie ’n wettige betaalmiddel in die Republiek is nie;
- (c) ’n maatskappy of trust wat nie ’n inwoner is nie ten opsigte van ’n valuta-item wat nie aan ’n permanente saak van daardie maatskappy of trust toeskryfbaar is nie, enige geldeenheid wat nie ’n wettige betaalmiddel is in die land waar daardie maatskappy opgerig is of trust gestig is nie] enige geldeenheid wat nie plaaslike geldeenheid is nie;”;

- (b) by the substitution in subsection (1) for the definition of “local currency” of the following definition:
- “‘local currency’ means in relation to—
- (a) any exchange item which is attributable to any permanent establishment of a person outside the Republic, [any] the currency [which is legal tender in the country in which that permanent establishment is situated] used by that permanent establishment for purposes of financial reporting; 5
- (b) any resident in respect of an exchange item which is not attributable to a permanent establishment outside the Republic, any currency which is legal tender in the Republic; or 10
- (c) any [company or trust which] person that is not a resident in respect of any exchange item which is [not] attributable to a permanent establishment in the Republic, any currency which is legal tender in the [country in which that company is incorporated or trust is formed] Republic;”; 15
- (c) by the deletion in subsection (1) of the word “or” at the end of paragraph (b) of the definition of “realised” and the addition of the word “or” at the end of paragraph (c) of that definition;
- (d) by the addition in subsection (1) to the definition of “realised” of the following paragraph: 20
- “(d) an amount which constitutes a unit of currency, when that amount is disposed of;”;
- (e) by the substitution in subsection (1) for item (bb) of subparagraph (ii) of paragraph (c) of the definition of “ruling exchange rate” of the following item: 25
- “(bb) in relation to a foreign currency option contract which is an affected contract, the rate obtained by dividing any amount included or deducted, as the case may be, in terms of subsection [(4)(a)] (3)(b) by the foreign currency amount, as specified in such affected contract;”; 30
- (f) by the insertion in subsection (1) before the proviso to the definition of “ruling exchange rate” of the following paragraph:
- “(d) an amount which constitutes a unit of currency, on— 35
- (i) transaction date, the spot rate on that date;
- (ii) the date it is translated, the spot rate on that date; or
- (iii) the date it is realised, the spot rate on that date;”;
- (g) by the deletion in subsection (1) of the word “and” at the end of paragraph (e) of the definition of “transaction date” and by the addition of the word “and” at the end of paragraph (f) of that definition; 40
- (h) by the addition in subsection (1) to the definition of “transaction date” of the following paragraph:
- “(g) an amount which constitutes a unit of currency, the date on which that amount was acquired;”;
- (i) by the substitution in subsection (2) for the words preceding paragraph (a) of the following words: 45
- “The provisions of this [subsection] section shall apply in respect of any—”;
- (j) by the deletion in subsection (2) of the word “and” at the end of paragraph (b);
- (k) by the substitution in subsection (2) for paragraph (c) of the following paragraph: 50
- “(c) natural person who holds any amount contemplated in paragraph (a) or (b) of the definition of ‘exchange item’ [for purposes of trade] as trading stock; and”;
- (l) by the addition to subsection (2) of the following paragraph: 55
- “(d) natural person or trust in respect of any amount contemplated in paragraph (c) or (d) of the definition of ‘exchange item.’”;
- (m) by the deletion of subsection (4);

- (b) deur in subartikel (1) die woord “of” aan die einde van paragraaf (b) van die woordomskeywing van “gerealiseer” te skrap en die woord “of” aan die einde van paragraaf (c) van daardie woordomskeywing by te voeg;
- (c) deur in subartikel (1) die volgende paragraaf by die woordomskeywing van “gerealiseer” te voeg: 5
“(d) ’n bedrag wat ’n valuta-eenheid daarstel, wanneer daardie bedrag oor beskik word;”;
- (d) deur in subartikel (1) item (bb) van subparagraaf (ii) van paragraaf (c) van die woordomskeywing van “heersende wisselkoers” deur die volgende item te vervang: 10
“(bb) met betrekking tot ’n buitelandse valuta-opsiekontrak wat ’n geaffekteerde kontrak is, die koers verkry deur die bedrag ingevolge subartikel [(4)(a)](3)(b) ingesluit of afgetrek, na gelang van die geval, deur die buitelandse valutabedrag soos in die geaffekteerde kontrak gespesifiseer, te deel;”; 15
- (e) deur in subartikel (1) die volgende paragraaf voor die voorbehoudsbepaling by die woordomskeywing van “heersende wisselkoers” te voeg:
“(d) ’n bedrag wat ’n valuta-eenheid daarstel, op—
(i) transaksiedatum, die kontantkoers op daardie datum;
(ii) die datum wat dit omgerek is, die kontantkoers op daardie datum; of 20
(iii) die datum wat dit gerealiseer word, die kontantkoers op daardie datum;”;
- (f) deur in subartikel (1) die woordomskeywing van “plaaslike geldeenheid” deur die volgende woordomskeywing te vervang: 25
“‘plaaslike geldeenheid’ met betrekking tot—
(a) ’n valuta-item wat aan enige permanente saak van ’n persoon buite die Republiek toeskryfbaar is, [enige] die geldeenheid [wat ’n wettige betaalmiddel is in die land waarin daardie permanente saak geleë is] wat deur daardie permanente saak gebruik word vir 30
doeleindes van finansiële verslagdoening;
(b) enige inwoner met betrekking tot ’n valuta-item wat nie aan ’n permanente saak buite die Republiek toeskryfbaar is nie, enige geldeenheid wat ’n wettige betaalmiddel in die Republiek is;
(c) enige [maatskappy of trust] persoon wat nie ’n inwoner is nie ten opsigte van enige valuta-item wat [nie] aan ’n permanente saak in die Republiek toeskryfbaar is [nie], enige geldeenheid wat ’n wettige betaalmiddel is in die [land waarin daardie maatskappy opgerig is of trust gestig is] Republiek;”; 35
- (g) deur in subartikel (1) die woord “en” aan die einde van paragraaf (e) van die woordomskeywing van “transaksiedatum” te skrap en die woord “en” aan die einde van paragraaf (f) van daardie woordomskeywing by te voeg; 40
- (h) deur in subartikel (1) die volgende paragraaf by die woordomskeywing van “transaksiedatum” te voeg:
“(g) ’n bedrag wat ’n valuta-eenheid daarstel, die datum waarop daardie bedrag verkry is;”; 45
- (i) deur in die Engelse teks die woorde in subartikel (2) wat paragraaf (a) voorafgaan deur die volgende woord te vervang:
“The provisions of this [subsection] section shall apply in respect of any—”; 50
- (j) deur in subartikel (2) die woord “en” aan die einde van paragraaf (b) te skrap;
- (k) deur in subartikel (2) paragraaf (c) deur die volgende paragraaf te vervang:
“(c) ’n natuurlike persoon wat enige bedrag in paragraaf (a) of (b) van die omskeywing van ‘valuta-item’ as handelsvoorraad hou [vir doeleindes van ’n bedryf] en”; 55
- (l) deur in subartikel (2) die volgende paragraaf by te voeg:
“(d) natuurlike persoon of trust ten opsigte van enige bedrag in paragraaf (c) of (d) van die omskeywing van ‘valuta-item’ bedoel.”;
- (m) deur subartikel (4) te skrap;

- (n) by the substitution for subsections (10), (11) and (12) of the following subsections:

“(10) No **[deduction shall be allowed]** amount shall be included in or deducted from the income of—

- (a) any **[person]** resident in terms of this section in respect of any exchange difference [arising from a transaction entered into by such person with any] determined on the translation of an exchange item to which that resident and any company are parties, where that company is a controlled foreign [entity] company in relation either to [that person or any connected person in relation to that controlled foreign entity, to the extent that the income attributable to that transaction is not included in the net income of that controlled foreign entity for purposes of section 9D] that resident or to any other company, which is a resident, and which forms part of the same group of companies as that resident; or 5
 (b) any controlled foreign company contemplated in paragraph (a): 10
 Provided that where that exchange item is realised during any year of assessment, the exchange difference in respect of that exchange item shall be determined by multiplying that exchange item by the difference between the ruling exchange rate on the date on which that exchange item is realised and the ruling exchange rate on transaction date, after taking into account any exchange difference included in or deducted from the income of that person in terms of this section in respect of that exchange item. 15 20

(11) No amount shall be included in or deducted from the income of a person in terms of this section in respect of any exchange difference arising from— 25

- (a) any amount owing by a person in respect of a loan, advance or debt incurred by that person in foreign currency to acquire any asset, other than an asset— 30
 (i) which constitutes an exchange item;
 (ii) the currency of expenditure of which is denominated in the local currency of that person; or
 (iii) [to] in respect of which the provisions of section 9G or paragraph [43(1) or (2)] 43(4) of the Eighth Schedule applies; and 35
 (b) any forward exchange contract or foreign currency option contract entered into to hedge such loan, advance or debt.

(12) Where a person holds any **[amount contemplated in paragraph (a), (b), (c) or (d) of the definition of ‘exchange item’ otherwise than as trading stock]** exchange item and the provisions of this section at any time during a year of assessment— 40

- (a) become applicable to that person, that **[amount]** exchange item shall be deemed to [be an exchange item which has] have been acquired at that time for the purposes of this section; or 45
 (b) cease to apply to that person, that **[amount]** exchange item shall be deemed to [be an exchange item which has] have been realised at that time for the purposes of this section.”.

(2) Subsection (1) shall—

- (a) in so far as it deletes subsection (4) and amends subsection (10) of section 24I of the Income Tax Act, 1962, be deemed to have come into operation on 1 October 2001; and 50
 (b) in so far as it amends the rest of section 24I the date of promulgation of this Act and shall apply in respect of years of assessment commencing on or after that date. 55

(n) deur subartikels (10), (11) en (12) deur die volgende subartikels te vervang:

“(10) Geen **[aftrekking]** bedrag word ingesluit in of afgetrek van die inkomste van—

(a) enige **[persoon word]** inwoner ingevolge hierdie artikel **[toegelaat]** nie ten opsigte van enige valutaverskil **[wat ontstaan uit 'n transaksie aangegaan deur daardie persoon met enige ander persoon wat]** vasgestel by die omrekening van 'n valuta-item waarby daardie inwoner en enige maatskappy partye is, waar daardie maatskappy 'n beheerde buitelandse **[entiteit]** maatskappy is met betrekking tot of **[daardie persoon is of wat 'n verbonde persoon met betrekking tot daardie beheerde buitelandse entiteit is, in die mate wat die inkomste wat aan daardie transaksie toeskryfbaar is nie in die netto inkomste van daardie beheerde buitelandse entiteit ingesluit is by die toepassing van artikel 9D nie]** daardie inwoner of enige ander maatskappy wat 'n inwoner is en wat deel vorm van dieselfde groep van maatskappye as daardie inwoner; of

(b) enige beheerde buitelandse maatskappy in paragraaf (a) bedoel: Met dien verstande dat waar daardie valuta-item gedurende enige jaar van aanslag gerealiseer word, die valutaverskil ten opsigte van daardie valuta-item vasgestel word deur daardie valuta-item te vermenigvuldig met die verskil tussen die heersende wisselkoers op die datum waarop daardie valuta-item gerealiseer is en die heersende wisselkoers op transaksiedatum nadat enige valutaverskil, wat ingevolge hierdie artikel ingesluit is in of afgetrek is van die inkomste van daardie persoon ten opsigte van daardie valuta-item, in berekening gebring is.

(11) Geen bedrag word ingesluit in of afgetrek van die inkomste van 'n persoon ingevolge hierdie artikel nie ten opsigte van enige valutaverskil wat ontstaan uit—

(a) enige bedrag deur 'n persoon verskuldig ten opsigte van 'n lening, voorskot of skuld deur daardie persoon in buitelandse valuta aangegaan om 'n bate te verkry, behalwe 'n bate—

(i) wat 'n valuta-item daarstel;

(ii) waarvan die geldeenheid van die onkoste daarvan in die plaaslike geldeenheid van daardie persoon aangedui is; of

(iii) ten opsigte waarvan die bepalings van artikel 9G of paragraaf **[43(1) of (2)]** 43(4) van die Agtste Bylae van toepassing is; en

(b) enige valuta-termynkontrak of 'n buitelandse valuta-opsiekontrak aangegaan om as dekking te dien vir daardie lening, voorskot of skuld.

(12) Waar 'n persoon enige valuta-item hou en die bepalings van hierdie artikel op enige tydstip gedurende 'n jaar van aanslag—

(a) op daardie persoon van toepassing word, word daardie valuta-item vir doeleindes van hierdie artikel op daardie tydstip geag verkry te gewees het; of

(b) ophou om op daardie persoon van toepassing te wees, word daardie valuta-item vir doeleindes van hierdie artikel op daardie tydstip geag gerealiseer te wees.”.

(2) Subartikel (1)—

(a) vir sover dit subartikel (4) skrap en subartikel (10) van artikel 24I van die Inkomstebelastingwet, 1962, wysig, word geag op 1 Oktober 2001 in werking te getree het; en

(b) vir sover dit die res van artikel 24I wysig, tree in werking op die datum van afkondiging van hierdie Wet en is van toepassing ten opsigte van jare van aanslag wat op of na daardie datum 'n aanvang neem.

Substitution of section 25D of Act 58 of 1962, as inserted by section 33 of Act 59 of 2000 and substituted by section 37 of Act 60 of 2001

28. (1) Section 25D of the Income Tax Act, 1962, is hereby substituted as follows:

“Determination of taxable income 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] a person during any year of assessment from amounts received by or accrued to, or expenditure incurred by, that person which are denominated in any currency other than currency of the Republic, shall be determined—

(a) in that currency; or

[(a)](b) where [such] that income is attributable to a permanent establishment of that [resident] person outside the Republic, [be determined] in the [relevant] currency [of the country in which that permanent establishment is situated, if the financial records of that permanent establishment are kept in that currency, 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] used by that permanent establishment for purposes of financial reporting,

and the amount so determined shall be translated to the currency of the Republic by applying the average exchange rate for that year of assessment[; or

(b) in any other case, be determined in the currency of the Republic].”

(2) Subsection (1) shall come into operation on the date of promulgation of this Act and shall apply in respect of any year of assessment commencing on or after that date.

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, section 15 of Act 36 of 1996 and section 34 of Act 59 of 2000

29. Section 27 of the Income Tax Act, 1962, is hereby amended by the substitution for the proviso in 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 section 11bis]** 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;”.

Vervanging van artikel 25D van Wet 58 van 1962, soos ingevoeg deur artikel 33 van Wet 59 van 2000 en vervang deur artikel 37 van Wet 60 van 2001

28. (1) Artikel 25D van die Inkomstebelastingwet, 1962, word hierby deur die volgende artikel vervang:

“Vaststelling van belasbare inkomste of verlies in buitelandse geldeenheid 5

25D. Die bedrag van enige belasbare inkomste deur 'n [inwoner] persoon gedurende 'n jaar van aanslag uit 'n bron buite die Republiek verkry [(behalwe by wyse van enige buitelandse dividend soos in artikel 9E bedoel)] uit bedrae ontvang deur of toegeval aan, of onkoste aangegaan 10 deur, daardie persoon wat in 'n geldeenheid anders as die geldeenheid van die Republiek aangedui is, word vasgestel—

(a) in daardie geldeenheid; of

[(a)](b) waar daardie inkomste aan 'n permanente saak van daardie [inwoner] persoon buite die Republiek toeskryfbaar is, [vasgestel] in die [betrokke] geldeenheid [van die land waar daardie permanente saak geleë is, indien die finansiële rekords van daardie permanente saak in daardie geldeenheid gehou word, en die bedrag van die belasbare inkomste aldus vasgestel, word op die laaste dag van die 20 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, 25 word toegepas om die waarde van die bedrag van die belasbare inkomste aldus verkry, vas te stel] wat deur daardie permanent saak gebruik word vir doeleindes van finansiële verslagdoening,

en die bedrag aldus vasgestel word na die geldeenheid van die Republiek 30 omgerekend deur die gemiddelde wisselkoers vir daardie jaar van aanslag toe te pas; of

(b) in enige ander geval, vasgestel in die geldeenheid van die Republiek].”.

(2) Subartikel tree in werking op die datum van afkondiging van hierdie Wet en is van 35 toepassing ten opsigte van enige jaar van aanslag wat op of na daardie datum 'n aanvang neem.

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, 40 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, artikel 15 van Wet 36 van 1996 en artikel 34 van Wet 59 van 2000

29. Artikel 27 van die Inkomstebelastingwet, 1962, word hierby gewysig deur in subartikel (2) die voorbehoudsbepaling by paragraaf (a) deur die volgende 45 voorbehoudsbepaling te vervang:

“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 50 paragraaf [en artikel 11bis] 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 29A of Act 58 of 1962, as inserted by section 30 of Act 53 of 1999 and amended by section 36 of Act 59 of 2000, section 15 of Act 5 of 2001, section 15 of Act 19 of 2001 and section 39 of Act 60 of 2001

30. Section 29A of the Income Tax Act, 1962, is hereby amended by the deletion in subsection (11) of paragraph (b). 5

Amendment of section 30 of Act 58 of 1962, as inserted by section 35 of Act 30 of 2000 and amended by section 16 of Act 19 of 2001 and section 22 of Act 30 of 2002

31. (1) Section 30 of the Income Tax Act, 1962, is hereby amended—

(a) by the substitution for paragraph (f) of subsection (3) of the following paragraph: 10

“(f) the Commissioner is satisfied that, in the case of any public benefit organisation which provides funds to any association of persons contemplated in paragraph [(b)]10(iii) of [the definition of “public benefit activity”] Part 1 of the Ninth Schedule, has taken reasonable steps to ensure that the funds are utilised for the purpose for which it has been provided; and”;

(b) by the deletion of subsection (11). 15

(2) Subsection (1)(a) shall be deemed to have come into operation on 5 August 2002.

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, section 21 of Act 21 of 1994 and section 39 of Act 59 of 2000 20

32. (1) Section 35 of the Income Tax Act, 1962, is hereby amended—

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

“(1) Any person (other than a resident or a controlled foreign company) by whom any amount is received or to whom any amount accrues by virtue of—” 25

(b) by the substitution in subsection (2) for paragraph (c) of the following paragraph:

“(c) The general provisions contained in Parts I to VI of Chapter III of this Act shall *mutatis mutandis* apply in respect of payments made to the Commissioner in terms of paragraph (a).” 30

(2) Subsection (1)(a) shall come into operation on the date of promulgation of this Act and shall apply in respect of any amount received or accrued on or after that date.

Amendment of section 38 of Act 58 of 1962, as amended by section 21 of Act 90 of 1962, section 16 of Act 90 of 1964, section 28 of Act 89 of 1969, section 31 of Act 85 of 1974, section 27 of Act 94 of 1983, section 24 of Act 121 of 1984, section 32 of Act 53 of 1999, section 36 of Act 30 of 2000 and section 43 of Act 60 of 2001 35

33. Section 38 of the Income Tax Act, 1962, is hereby amended by the substitution in subsection (2) for paragraph (i) of the following paragraph: 40

“(i) any [unit] portfolio of a collective investment scheme referred to in paragraph (e)(i) of the definition of ‘company’ in section one.”

Substitution for Part III of Chapter 2 of Act 58 of 1962, as inserted by section 44 of Act 60 of 2001

34. (1) The following Part is hereby substituted for Part III of Chapter II of the Income Tax Act, 1962: 45

Wysiging van artikel 29A van Wet 58 van 1962, soos ingevoeg deur artikel 30 van Wet 53 van 1999 en gewysig deur artikel 36 van Wet 59 van 2000, artikel 15 van Wet 5 van 2001, artikel 15 van Wet 19 van 2001 en artikel 39 van Wet 60 van 2001

30. Artikel 29A van die Inkomstebelastingwet, 1962, word hierby gewysig deur in subartikel (11) paragraaf (b) te skrap. 5

Wysiging van artikel 30 van Wet 58 van 1962, soos ingevoeg deur artikel 35 van Wet 30 van 2000 en gewysig deur artikel 16 van Wet 19 van 2001 en artikel 22 van Wet 30 van 2002

31. (1) Artikel 30 van die Inkomstebelastingwet, 1962, word hierby gewysig—
- (a) deur in subartikel (3) paragraaf (f) deur die volgende paragraaf te vervang: 10
- “(f) die Kommissaris tevrede is dat in die geval van ’n openbare weldaadsorganisasie wat fondse aan enige vereniging van persone in paragraaf [(b)]10(iii) van [die omskrywing van ‘openbare weldaadsaktiwiteit’] Deel 1 van die Negende Bylae bedoel, voorsien, redelike stappe doen ten einde te verseker dat die fondse vir die doel 15 waarvoor dit voorsien is, aangewend word; en”;
- (b) deur subartikel (11) te skrap.
- (2) Subartikel (1)(a) word geag op 5 Augustus 2002 in werking te getree het.

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, artikel 21 van Wet 21 van 1994 en artikel 39 van Wet 59 van 2000 20

32. (1) Artikel 35 van die Inkomstebelastingwet, 1962, word hierby gewysig—
- (a) deur in subartikel (1) die woorde wat paragraaf (a) voorafgaan deur die volgende woorde te vervang: 25
- “(1) ’n Persoon (behalwe ’n inwoner of ’n beheerde buitelandse maatskappy) deur wie ’n bedrag ontvang word of aan wie enige bedrag toeval uit hoofde van—”;
- (b) deur in subartikel (2) paragraaf (c) deur die volgende paragraaf te vervang: 30
- “(c) Die algemene bepalinge in Dele I tot VI van Hoofstuk III van hierdie Wet vervat is *mutatis mutandis* van toepassing ten opsigte van betalings ingevolge paragraaf (a) aan die Kommissaris gemaak.”.
- (2) Subartikel (1)(a) tree op die datum van afkondiging van hierdie Wet in werking en is van toepassing ten opsigte van enige bedrag ontvang of toegeval op of na daardie datum. 35

Wysiging van artikel 38 van Wet 58 van 1962, soos gewysig deur artikel 21 van Wet 90 van 1962, artikel 16 van Wet 90 van 1964, artikel 28 van Wet 89 van 1969, artikel 31 van Wet 85 van 1974, artikel 27 van Wet 94 van 1983, artikel 24 van Wet 121 van 1984, artikel 32 van Wet 53 van 1999, artikel 36 van Wet 30 van 2000 en artikel 43 van Wet 60 van 2001 40

33. (1) Artikel 38 van die Inkomstebelastingwet, 1962, word hierby gewysig deur paragraaf (i) van subartikel deur die volgende paragraaf te vervang:
- “(i) ’n [effektegroep] portefeulje van ’n kollektiewe beleggingskema bedoel in paragraaf (e)(i) van die omskrywing van ‘maatskappy’ in artikel een.”.
- (2) Subartikel (1) tree in werking op die datum wat die Wet op die Beheer van 45 Kollektiewe Beleggingskemas, 2002, in werking tree.

Vervanging van Deel III van Hoofstuk 2 van Wet 58 van 1962, soos ingevoeg deur artikel 44 van Wet 60 van 2001

34. (1) Die volgende Deel vervang hierby Deel III van Hoofstuk II van die Inkomstebelastingwet, 1962: 50

“PART III

Special rules relating to company formations, share-for-share transactions, amalgamation transactions, intra-group transactions, unbundling transactions and liquidation distributions.

General

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41. (1) For the purposes of this Part, unless the context otherwise indicates, any word or expression that has been defined in section 1, shall bear the same meaning so defined, and—

‘allowance asset’ means a capital asset qualifying for a deduction or allowance under the provisions of the Act;

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‘asset’ means an asset as defined in paragraph 1 of the Eighth Schedule;

‘base cost’ means the base cost as defined in paragraph 1 of the Eighth Schedule: Provided that where the base cost of an asset as at a specific date is to be determined as contemplated in paragraph 26 or 27 of the Eighth Schedule, the amount thereof must, for purposes of section 42, 43 or 44, be determined as if that asset had been disposed of on that date for proceeds equal to the market value of that asset as at that date;

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‘capital asset’ means an asset as defined in paragraph 1 of the Eighth Schedule, which does not constitute trading stock;

‘date of acquisition’ means the date of acquisition as determined in accordance with paragraph 13 of the Eighth Schedule or, where a person acquires an asset in terms of a transaction subject to the provisions of this Part, the deemed date of acquisition of that asset by that person as contemplated in this Part;

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‘domestic financial instrument holding company’ means any company which is a resident, where more than 50 per cent of the market value or actual cost of all the assets of that company together with the assets of all controlled group companies in relation to that company consists of financial instruments, other than—

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(a) a financial instrument that constitutes a debt due to that company (or to any controlled group company in relation to that company) in respect of goods sold or services rendered by that company where the amount of that debt is or was included in the income of that company (or of any controlled group company in relation to that company) and that debt is an integral part of a business conducted by that company as a going concern; or

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(b) a financial instrument of any company regulated in terms of—

(i) the Banks Act, 1990 (Act No.94 of 1990);

(ii) the Financial Markets Control Act, 1989 (Act No. 55 of 1989);

(iii) the Long Term Insurance Act, 1998 (Act No. 52 of 1998);

(iv) the Short Term Insurance Act, 1998 (Act No. 53 of 1998);

(v) the Stock Exchanges Control Act, 1985 (Act No. 1 of 1985); or

(vi) the Unit Trusts Control Act, 1981 (Act No. 54 of 1981), or its successor the Collective Investment Schemes Control Act, 2002:

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Provided that in determining the 50 per cent ratio, the following will be wholly disregarded—

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(i) any share of a controlled group company in relation to that company; and

(ii) any financial instrument which constitutes a loan, advance or debt if both the debtor and creditor companies are members within the same group of companies;

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‘disposal’ means a disposal as defined in paragraph 1 of the Eighth Schedule;

‘equity share’ in relation to a company, means a share or part thereof in the equity share capital of that company or a member’s interest in a company which is a close corporation;

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‘foreign financial instrument holding company’ means a foreign financial instrument holding company as defined in section 9D;

‘hold’ in relation to an equity share means the holding, by a person, of an equity share in such manner that that person qualifies as a ‘shareholder’ as

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“DEEL III

Spesiale reëls met betrekking tot maatskappyformasies, aandeel-vir-aandeeltransaksies, amalgamasietransaksies, intragroeptransaksies, ontbondelingstransaksies en likwidasië-uitkerings

Algemeen

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41. (1) By die toepassing van hierdie Deel, tensy uit die samehang anders blyk, het enige woord of uitdrukking wat in artikel 1 omskryf word, die betekenis soos omskryf, en beteken—

‘aandeelhouer’ met betrekking tot ’n ekwiteitsaandeel, die geregistreerde aandeelhouer van daardie ekwiteitsaandeel, behalwe waar ’n persoon anders as die geregistreerde aandeelhouer geregtig is op alle of ’n gedeelte van die voordele van die deelnemingsregte in die winste of inkomste verbonde aan daardie ekwiteitsaandeel, in welke geval daardie persoon tot die mate van die geregtigheid op daardie voordeel geag sal word die aandeelhouer te wees;

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‘afskryfbare bate’ ’n kapitaalbate ten opsigte waarvan ’n aftrekking kragtens die bepalings van die Wet toelaatbaar is;

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‘basiskoste’ basiskoste soos in paragraaf 1 van die Agtste Bylae omskryf; Met dien verstande dat waar die basiskoste van ’n bate op ’n bepaalde datum vasgestel moet word soos in paragraaf 26 of 27 van die Agtste Bylae beoog, die bedrag daarvan, vir doeleindes van artikel 42, 43 of 44, bepaal moet word asof daar oor die bate op daardie datum beskik is vir ’n opbrengs gelykstaande aan die markwaarde van daardie bate op daardie datum;

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‘bate’ ’n bate soos in paragraaf 1 van die Agtste Bylae omskryf;

‘beskikking’ ’n beskikking soos in paragraaf 1 van die Agtste Bylae omskryf;

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‘buitelandse finansiële instrumenthouermaatskappy’ ’n buitelandse finansiële instrumenthouermaatskappy soos in artikel 9D omskryf;

‘datum van verkryging’ die datum van verkryging dienoreenkomstig die bepalings van paragraaf 13 van die Agtste Bylae vasgestel, of waar ’n persoon ’n bate ingevolge ’n transaksie wat onderhewig aan die bepalings van hierdie Deel is verkry, die geagte datum van verkryging van daardie bate deur daardie persoon soos beoog in hierdie Deel;

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‘ekwiteitsaandeel’ met betrekking tot ’n maatskappy, ’n aandeel of gedeelte daarvan in die ekwiteitsaandelekapitaal van daardie maatskappy of ’n ledebelang in ’n maatskappy wat ’n beslote korporasie is;

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‘genoteerde maatskappy’ ’n maatskappy soos in paragraaf (a) van die omskrywing van ‘genoteerde maatskappy’ in artikel 1 bedoel;

‘hou’ met betrekking tot ’n ekwiteitsaandeel die hou deur ’n persoon van ’n ekwiteitsaandeel op so ’n wyse dat daardie persoon as ’n aandeelhouer soos in hierdie subartikel omskryf kwalifiseer, en die woord ‘gehou’ moet dienoreenkomstig uitgelê word;

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‘kapitaalbate’ ’n bate soos in paragraaf 1 van die Agtste Bylae omskryf, wat nie handelsvoorraad daarstel nie;

‘kwalifiserende belang’ van enige persoon die ekwiteitsaandeel deur daardie persoon in ’n maatskappy gehou, wat—

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(a) ’n genoteerde maatskappy is of een sal word binne 12 maande na afloop van die transaksie wat daartoe aanleiding gegee het dat daardie persoon daardie aandeel hou; of

(b) in enige ander geval, meer as 25 persent van die ekwiteitsaandeel van daardie maatskappy verteenwoordig;

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‘markwaarde’ met betrekking tot ’n bate, die prys wat verkry kan word met die verkoop van daardie bate tussen ’n gewillige koper en ’n gewillige verkoper by wyse van ’n transaksie onder uiterste voorwaardes in die ope mark beding;

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‘ongenoteerde maatskappy’ ’n maatskappy wat nie ’n genoteerde maatskappy soos in hierdie subartikel omskryf, is nie; en

‘plaaslike finansiële instrumenthouermaatskappy’ ’n maatskappy wat ’n inwoner is, waar meer as 50 persent van die markwaarde of werklike koste van al die bates van daardie maatskappy, tesame met die bates van al die

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defined in this subsection, and the word 'held' must be construed accordingly;

'listed company' means a company as contemplated in paragraph (a) of the definition of 'listed company' in section 1;

'market value' in relation to an asset means the price which could be obtained upon a sale of that asset between a willing buyer and a willing seller dealing at arm's length in an open market; and

'qualifying interest' of any person means equity shares held by that person in a company, which—

(a) is a listed company or will become a listed company within 12 months after the transaction as a result of which that person holds those shares; or

(b) in any other case, constitute more than 25 per cent of the equity shares of that company;

'shareholder' in relation to an equity share, means the registered shareholder of that equity share, unless a person other than that registered shareholder is entitled to all or part of the benefit of the rights of participation in the profits or income attaching to that equity share, in which case that person must, to the extent of that entitlement to that benefit, be deemed to be the shareholder; and

'unlisted company' means any company which is not a listed company as defined in this subsection.

(2) The provisions of this Part must, subject to subsection (5), apply in respect of a company formation transaction, a share-for-share transaction, an amalgamation transaction, an intra-group transaction, an unbundling transaction and a liquidation distribution as contemplated in sections 42, 43, 44, 45, 46 and 47, respectively, notwithstanding any provision to the contrary contained in the Act, other than section 103.

(3) Any person who acquires or disposes of any asset in terms of any transaction in respect of which the provisions of this Part apply, must provide full particulars relating to that transaction to the Commissioner, in such form as the Commissioner may prescribe, in the return furnished by that person for the year of assessment in which that transaction takes effect.

(4) A company must for the purposes of this Part, be deemed to have taken steps to liquidate, wind up or deregister, where—

(a) in the case of a liquidation or winding-up—

(i) that company has lodged a resolution authorising the voluntary liquidation or winding-up of that company, for registration in terms of—

(aa) section 200 of the Companies Act, 1973 (Act No. 61 of 1973), in the case of a company registered in terms of that Act;

(bb) section 67(2) of the Close Corporations Act, 1984 (Act No. 69 of 1984), in the case of a close corporation; or

(cc) a similar provision contained in any foreign law relating to the liquidation of companies, in the case where that company is incorporated in a country other than the Republic, if such foreign law so requires; and

(ii) that company has disposed of all assets and has settled all liabilities (other than assets required to satisfy any reasonably anticipated liabilities to the Commissioner and costs of administration relating to the liquidation or winding-up), unless the Commissioner otherwise allows for a period which the Commis-

beheerde groepmaatskappye met betrekking tot daardie maatskappy uit finansiële instrumente bestaan, anders as—

- (a) 'n finansiële instrument wat 'n skuld betaalbaar aan daardie maatskappy (of aan enige beheerde groepmaatskappy met betrekking tot daardie maatskappy) verteenwoordig ten opsigte van goedere verkoop of dienste deur daardie maatskappy gelewer, waar die bedrag van daardie skuld by die inkomste van daardie maatskappy (of van enige beheerde groepmaatskappy met betrekking tot daardie maatskappy) ingesluit is of was en daardie skuld 'n integrale deel van 'n besigheid deur daardie maatskappy as 'n lopende saak bedryf, vorm;
- (b) 'n finansiële instrument van enige maatskappy wat gereguleer word deur—
 - (i) die Bankwet, 1990 (Wet No. 94 van 1990);
 - (ii) die Die Wet op Beheer van Finansiële Markte, 1989 (Wet No. 55 van 1989);
 - (iii) die Langtermynversekeringswet, 1998 (Wet No. 52 van 1998);
 - (iv) die Korttermynversekeringswet, 1998 (Wet No. 53 van 1998);
 - (v) die Wet op Beheer van Aandelebeurse (Wet No. 1 van 1985);
 - (vi) die Wet op Beheer van Effektetrustskemas, 1981 (Wet No. 54 van 1981) of sy opvolger die Wet op die Beheer van Kollektiewe Beleggingskemas, 2002:

Met dien verstande dat by die vasstelling van die 50 persent verhouding, die volgende in geheel buite rekening gelaat moet word—

- (i) enige aandeel van 'n beheerde groepmaatskappy met betrekking tot daardie maatskappy; en
- (ii) enige finansiële instrument wat 'n lening, voorskot of skuld verteenwoordig indien beide die skuldenaar en die skuldeiser maatskappye lede van dieselfde groep van maatskappye is.

(2) Die bepalinge van hierdie Deel moet, behoudens die bepalinge van subartikel (5), toegepas word ten opsigte van 'n maatskappyformasie-transaksie, 'n aandeel-vir-aandeeltransaksie, 'n amalgamasietransaksie, 'n intragroeptransaksie, 'n ontbondelingstransaksie en 'n likwidasië-uitkering soos in artikels 42, 43, 44, 45, 46 en 47, respektiewelik beoog, ondanks enige andersluidende bepaling, behalwe artikel 103, in die Wet vervat.

(3) Enige persoon wat enige bate ingevolge 'n transaksie ten opsigte waarvan die bepalinge van hierdie Deel van toepassing is, verkry of oor beskik, moet volledige besonderhede met betrekking tot daardie transaksie aan die Kommissaris verstrek, in sodanige formaat as wat die Kommissaris mag voorskryf, in die opgawe wat deur daardie persoon vir die jaar van aanslag waarin die transaksie plaasgevind het, ingedien word.

(4) Daar word by die toepassing van hierdie Deel geag dat 'n maatskappy die nodige stappe geneem het om te likwideer of te deregistreer, waar—

- (a) in die geval van likwidasië—
 - (i) daardie maatskappy 'n besluit wat die vrywillige likwidasië van daardie maatskappy magtig, ingedien het vir registrasie ingevolge—
 - (aa) artikel 200 van die Maatskappywet, 1973 (Wet No. 61 van 1973), in die geval waar 'n maatskappy ingevolge daardie Wet geregistreer is;
 - (bb) artikel 67(2) van die Wet op Beslote Korporasies, 1984 (Wet No. 69 van 1984), in die geval van 'n beslote korporasie; of
 - (cc) 'n soortgelyke bepaling in buitelandse reg vervat wat met die likwidasië van maatskappye verband hou, in die geval waar daardie maatskappy in 'n land anders as die Republiek opgerig is, indien sodanige buitelandse reg dit vereis; en
 - (ii) daardie maatskappy oor alle bates beskik het en alle verpligtinge vereffen het (behalwe bates benodig om enige redelike verwagte verpligting aan die Kommissaris en koste van administrasie wat met die likwidasië verband hou, te delg), tensy die Kommissaris 'n ander tydperk wat die Kommissaris redelik ag om daardie

- sioner deems reasonable to enable that company to take adequate steps to wind down the business of the company; and
- (b) in the case of a deregistration of a company, that company has submitted a written statement signed by each of its directors confirming that the company has ceased to carry on business and has no assets or liabilities— 5
- (i) to the Registrar of Companies in terms of section 73(5) of the Companies Act, 1973, in the case of a company registered in terms of that Act;
- (ii) to the Registrar of Close Corporations in terms of section 26(2) of the Close Corporations Act, 1984, in the case of a close corporation; or 10
- (iii) in the case where that company is incorporated in a country other than the Republic, to a person who, in terms of any similar provision contained in any foreign law, exercises the powers and performs the duties assigned to a Registrar contemplated in subparagraph (i) or (ii), if such foreign law so requires; 15
- (c) that company has submitted a copy of the resolution contemplated in paragraph (a)(i) or the written statement contemplated in paragraph (b) to the Commissioner; and 20
- (d) all the returns or information required to be submitted or furnished to the Commissioner in terms of any Act administered by the Commissioner by the end of the relevant period of six months within which the steps contemplated in this subsection must be taken, have been submitted or furnished or arrangements have been made with the Commissioner for the submission of any outstanding returns or furnishing of information. 25
- (5) The Minister may prescribe by regulation the circumstances under which prior written approval of the Commissioner must be obtained or may be elected to be obtained in respect of any company formation transaction, share-for-share transaction, amalgamation transaction, intra-group transaction, unbundling transaction or liquidation distribution before the provisions of this Part must apply in respect of that transaction, transfer or distribution. 30
- (6) Particulars of any election exercised in terms of this Part must be submitted to the Commissioner in such form as the Commissioner may prescribe. 35

Company Formations

- 42. (1)** For the purposes of this section 'company formation transaction' means any transaction— 40
- (a) in terms of which a person (other than a trust which is not a special trust) disposes of an asset, the market value of which exceeds— 45
- (i) in the case of an asset held as a capital asset, the base cost of that asset on the date of that disposal; or
- (ii) in the case of an asset held as trading stock, the amount taken into account in respect of that asset in terms of section 11(a) or 22(1) or (2), 50
- to a company which is a resident, in exchange for an equity share or shares of that company and that person, at the close of the day on which that asset is disposed of, holds a qualifying interest in that company;
- (b) as a result of which that company acquires that asset from that person— 55
- (i) as a capital asset or as trading stock, where that person holds it as a capital asset; or
- (ii) as trading stock, where that person holds it as trading stock; and
- (c) in respect of which that person and that company have jointly elected that this section applies.

- maatskappy in staat te stel om die nodige stappe te neem om die besigheid van die maatskappy te beëindig, toelaat; en
- (b) in die geval van 'n deregistrasie van 'n maatskappy, daardie maatskappy 'n skriftelike verklaring deur elkeen van sy direkteure onderteken, waarin bevestig word dat die maatskappy opgehou het om 'n besigheid te bedryf en geen bates of laste het nie, ingedien het—
- (i) by die Registrateur van Maatskappye ingevolge artikel 73(5) van die Maatskappywet, 1973, in die geval van 'n maatskappy ingevolge daardie Wet geregistreer;
- (ii) by die Registrateur van Beslote Korporasies ingevolge artikel 26(2) van die Wet op Beslote Korporasies, 1984, in die geval van 'n beslote korporasie; of
- (iii) in die geval waar daardie maatskappy in 'n land anders as die Republiek opgerig is, by 'n persoon wat ingevolge enige soortgelyke bepaling in enige buitelandse reg vervat, die bevoegdhede uitoefen en die pligte wat aan die Registrateur in subparagraaf (i) of (ii) beoog opgedra is, uitvoer indien daardie buitelandse reg dit vereis;
- (c) daardie maatskappy 'n afskrif van die besluit in paragraaf (a)(i) beoog of die skriftelike verklaring in paragraaf (b) beoog by die Kommissaris ingedien het; en
- (d) alle opgawes of inligting wat by die Kommissaris ingedien of aan hom voorsien moet word ingevolge enige Wet wat deur die Kommissaris geadministreer word, voor die einde van die betrokke tydperk van ses maande waartydens die stappe soos in hierdie subartikel beoog geneem moes gewees het, ingedien of voorsien het of reëlins getref is met die Kommissaris vir die indiening van enige uitstaande opgawes of die verskaffing van inligting.
- (5) Die Minister kan by wyse van regulasie die omstandighede voorskryf waaronder vooraf verkreë toestemming van die Kommissaris verkry moet word of die keuse uitgeoefen mag word om dit te verkry ten opsigte van enige maatskappyformasietransaksie, aandeel-vir-aandeeltransaksie, amalgamasietransaksie, intragroeptransaksie, ontbondelingstransaksie of likwidasië-uitkering voordat die bepalings van hierdie Deel toegepas moet word ten opsigte van daardie transaksie, oordrag of uitkering.
- (6) Besonderhede van enige keuse wat ingevolge hierdie Deel uitgeoefen is, moet aan die Kommissaris verstrekk word in sodanige formaat as wat die Kommissaris mag voorskryf.

Maatskappyformasies

- 42.** (1) By die toepassing van hierdie deel beteken 'maatskappy-formasietransaksie' enige transaksie—
- (a) ingevolge waarvan 'n persoon (behalwe 'n trust wat nie 'n spesiale trust is nie) oor 'n bate beskik, waarvan die markwaarde meer is as—
- (i) in die geval van 'n bate wat as 'n kapitaalbate gehou word, die basiskoste van daardie bate op die datum van die beskikking; of
- (ii) in die geval van 'n bate wat as handelsvoorraad gehou word, die bedrag wat ten opsigte van daardie bate ingevolge artikel 11(a) of 22(1) of (2) in ag geneem is,
- aan 'n maatskappy wat 'n inwoner is, in ruil vir ekwiteitsaandeel van daardie maatskappy en daardie persoon, aan die einde van die dag waarop daardie bate oor beskik is, 'n kwalifiserende belang in daardie maatskappy hou;
- (b) wat tot gevolg het dat daardie maatskappy daardie bate vanaf daardie persoon verkry—
- (i) as 'n kapitaalbate of as handelsvoorraad, waar daardie persoon dit as 'n kapitaalbate hou; of
- (ii) as handelsvoorraad, waar daardie persoon dit as handelsvoorraad hou; en
- (c) ten opsigte waarvan daardie persoon en daardie maatskappy gesamentlik gekies het dat hierdie artikel van toepassing is.

- (a) an asset that constitutes an allowance asset in that person's hands to a company as part of a company formation transaction and that company acquires that asset as an allowance asset—
- (i) no allowance allowed to that person in respect of that asset must be recovered or recouped by that person or included in that person's income for the year of that transfer; and 5
- (ii) that person and that company must be deemed to be one and the same person for purposes of determining the amount of any allowance—
- (aa) to which that company may be entitled in respect of that asset; or 10
- (bb) that is to be recovered or recouped by or included in the income of that company in respect of that asset;
- (b) an asset that constitutes an allowance asset in that person's hands to a company as part of a company formation transaction and that company acquires that asset as trading stock, no allowance allowed to that person in respect of that asset must be recovered or recouped by that person or included in that person's income for the year of that transfer; or 15
- (c) a contract to a company as part of a disposal of a business as a going concern in terms of a company formation transaction and that contract imposes an obligation on that person in respect of which an allowance in terms of section 24C was allowable to that person for the year preceding that in which that contract is transferred or would have been allowable to that person for the year of that transfer had that contract not been so transferred— 20
- (i) no allowance allowed to that person in respect of that obligation must be included in that person's income for the year of that transfer; and 25
- (ii) that person and that company must be deemed to be one and the same person for purposes of determining the amount of any allowance— 30
- (aa) to which that company may be entitled in respect of that obligation; or
- (bb) that is to be included in the income of that company in respect of that obligation. 35
- (4) Subject to subsection (8), where—
- (a) a person disposes of an asset to a company in terms of a company formation transaction; and
- (b) that person in exchange for that asset, becomes entitled to any consideration in addition to any equity shares issued by the company to that person, 40
- the disposal of that asset to that company contemplated in paragraph (a) must, to the extent that any equity shares are issued by the company to that person, be deemed to be a disposal in terms of a company formation transaction for purposes of this section, and to the extent that such person becomes entitled to any other consideration, as contemplated in paragraph (b), be deemed to be a disposal of part of that asset other than in terms of a company formation transaction, in which case the amount to be determined in respect of— 45
- (i) in the case of a disposal of a capital asset, the base cost of that asset at the time of that disposal; or
- (ii) in the case of a disposal of an allowance asset, the amount of the allowances allowed to that person in respect of that asset; or
- (iii) in the case of the disposal of an asset that constitutes trading stock, the amount taken into account in respect of that asset in terms of section 11(a) or 22(1) or (2), 55

- (a) 'n bate wat 'n afskryfbare bate in daardie persoon se hande uitmaak aan 'n maatskappy as deel van 'n maatskappyformasietransaksie en daardie maatskappy daardie bate as 'n afskryfbare bate verkry—
- (i) word geen toelae wat ten opsigte van daardie bate aan daardie persoon toegestaan is, verhaal of vergoed deur daardie persoon nie of by daardie persoon se inkomste vir die jaar waarin die oordrag plaasgevind het, ingesluit nie; en
- (ii) word daardie persoon en daardie maatskappy geag een en dieselfde persoon te wees vir doeleindes van die berekening van die toelae—
- (aa) waarop die maatskappy geregtig mag wees ten opsigte van daardie bate; of
- (bb) wat verhaal of vergoed of ingesluit moet word by die inkomste van die maatskappy ten opsigte van daardie bate;
- (b) 'n bate wat 'n afskryfbare bate in daardie persoon se hande uitmaak aan 'n maatskappy as deel van 'n maatskappyformasietransaksie en daardie maatskappy daardie bate as handelsvoorraad verkry, word geen toelae wat ten opsigte van daardie bate aan daardie persoon toegestaan is, verhaal of vergoed deur daardie persoon nie of by daardie persoon se inkomste vir die jaar waarin die oordrag plaasgevind het, ingesluit nie; of
- (c) 'n kontrak aan 'n maatskappy as deel van 'n beskikking oor 'n besigheid as 'n lopende saak ingevolge 'n maatskappyformasietransaksie en daardie kontrak 'n verpligting plaas op daardie persoon ten opsigte waarvan 'n toelae ingevolge artikel 24C vir daardie persoon toelaatbaar was ten opsigte van die jaar wat die jaar waarin die kontrak aangegaan is, voorafgegaan het of wat vir daardie persoon toelaatbaar sou gewees het vir die jaar van daardie oordrag indien die kontrak nie aldus oorgedra is nie—
- (i) word geen toelae wat vir daardie persoon ten opsigte van die verpligting toegelaat is in daardie persoon se inkomste vir die jaar van daardie oordrag ingesluit nie; en
- (ii) word daardie persoon en daardie maatskappy geag een en dieselfde persoon te wees vir doeleindes van die vasstelling van die bedrag van enige toelae—
- (aa) waarop daardie maatskappy geregtig mag wees ten opsigte van daardie verpligting; of
- (bb) wat by die inkomste van daardie maatskappy ingesluit moet word ten opsigte van daardie verpligting.
- (4) Behoudens die bepalings van subartikel (8), waar—
- (a) 'n persoon oor 'n bate aan 'n maatskappy ingevolge 'n maatskappyformasietransaksie beskik; en
- (b) daardie persoon in ruil vir daardie bate, geregtig word op enige vergoeding bykomend tot die ekwiteitsaandeel wat deur die maatskappy aan daardie persoon uitgereik is,
- word die beskikking oor daardie bate aan daardie maatskappy soos beoog in paragraaf (a), in die mate wat enige ekwiteitsaandeel deur die maatskappy aan daardie persoon uitgereik is, vir die doeleindes van hierdie artikel geag 'n beskikking ingevolge 'n maatskappyformasietransaksie te wees, en in die mate wat so 'n persoon op enige ander vergoeding soos in paragraaf (b) beoog geregtig word, geag 'n beskikking oor 'n gedeelte van daardie bate anders as ingevolge 'n maatskappyformasietransaksie te wees, in welke geval die bedrag wat vasgestel moet word ten opsigte van—
- (i) in die geval van 'n beskikking oor 'n kapitaalbate, die basiskoste van daardie bate op die tydstip van die beskikking; of
- (ii) in die geval van 'n beskikking oor 'n afskryfbare bate, die bedrag van die toelaes wat aan daardie persoon ten opsigte van daardie bate toegestaan is; of
- (iii) in die geval van die beskikking oor 'n bate wat handelsvoorraad uitmaak, die bedrag wat ingevolge artikel 11(a) of 22(1) of (2) ten opsigte van daardie bate in ag geneem is,

that must be attributed to the part of the asset deemed to have been disposed of other than in terms of a company formation transaction, must bear the same ratio to the total amount referred to in subparagraphs (i) to (iii) as the market value of the consideration not consisting of equity shares issued by that company bears to the market value of the total consideration in respect of that asset.

(5) Where a person—

- (a) acquired any equity share in a company in terms of a company formation transaction; and
- (b) disposes of any such equity share (other than by way of an intra-group transaction contemplated in section 45, an unbundling transaction contemplated in section 46 or a liquidation distribution contemplated in section 47, an involuntary disposal as contemplated in paragraph 65 of the Eighth Schedule or the death of that person) within a period of 18 months after the date of acquisition contemplated in paragraph (a) and immediately prior to that disposal more than 50 per cent of the market value of all the assets disposed of by that person to that company in terms of any transaction in respect of which the provisions of this Part apply, is attributable to allowance assets or trading stock or both,

that person must be deemed to have disposed of that share as trading stock.

(6) Where a person disposed of any asset in terms of a company formation transaction and that person ceases to hold a qualifying interest in that company, as contemplated in paragraph (b) of the definition of 'qualifying interest', within a period of 18 months after the date of the disposal of that asset (whether or not by way of the disposal of any shares in that company), that person must for purposes of subsection (5), section 22 or the Eighth Schedule be deemed to have—

- (a) disposed of all the equity shares acquired in terms of that company formation transaction which were not disposed of immediately before that person ceased to hold such a qualifying interest, for an amount equal to the market value of those equity shares as at the beginning of that period of 18 months; and
- (b) immediately reacquired all the equity shares not disposed of immediately after that person ceased to hold a qualifying interest at a cost equal to the amount contemplated in paragraph (a):

Provided that the provisions of this subsection do not apply where that person ceases to hold a qualifying interest in that company in terms of an intra-group transaction contemplated in section 45, an unbundling transaction contemplated in section 46 or a liquidation distribution contemplated in section 47, an involuntary disposal as contemplated in paragraph 65 of the Eighth Schedule or as the result of the death of that person.

(7) Where a company disposes of an asset within a period of 18 months after acquiring that asset in terms of a company formation transaction, and—

- (a) that asset constitutes a capital asset, so much of any capital gain determined in respect of the disposal of that asset as does not exceed the amount that would have been determined had that asset been disposed of at the beginning of that period of 18 months for proceeds equal to the market value of that asset as at that date, may not be taken into account in determining any net capital gain or assessed capital loss of that company but is subject to paragraph 10 of the Eighth Schedule for purpose of determining an amount of taxable capital gain derived from that gain, which taxable capital gain may not be set off against any assessed loss or balance of assessed loss of that company; or

wat aan die gedeelte van die bate waaroor geag word beskik te gewees het anders as ingevolge 'n maatskappyformasietransaksie toegedeel moet word, moet in dieselfde verhouding tot die totale bedrag waarna in subparagraawe (i) tot (iii) verwys word, staan as wat die markwaarde van die vergoeding wat nie uit ekwiteitsaandele bestaan nie wat deur daardie maatskappy uitgereik is tot die markwaarde van die totale vergoeding ten opsigte van daardie bate staan.

(5) Waar 'n persoon—

(a) enige ekwiteitsaandele ingevolge 'n maatskappyformasietransaksie in 'n maatskappy verkry het; en

(b) binne 'n tydperk van 18 maande na die datum van verkryging soos in paragraaf (a) beoog oor enige sodanige ekwiteitsaandeel beskik (behalwe by wyse van 'n intragroeptransaksie soos in artikel 45 beoog, 'n ontbondelingstransaksie soos in artikel 46 beoog of 'n likwidasië-uitkering soos in artikel 47 beoog, 'n onvrywillige beskikking soos in paragraaf 65 van die Agtste Bylae beoog of die dood van daardie persoon) en onmiddellik voor daardie beskikking meer as 50 persent van die markwaarde van al die bates waaroor daardie persoon aan daardie maatskappy ingevolge 'n transaksie ten opsigte waarvan die bepalinge van hierdie Deel van toepassing is beskik het aan afskryfbare bates of handelsvoorraad of albei toeskryfbaar is,

word daardie persoon geag oor daardie aandeel as handelsvoorraad te beskik het.

(6) Waar 'n persoon ingevolge 'n maatskappyformasietransaksie oor 'n bate beskik het en daardie persoon binne 'n tydperk van 18 maande na die datum van die beskikking oor die bate (hetsy by wyse van die beskikking oor enige aandele in daardie maatskappy of nie) ophou om 'n kwalifiserende belang in daardie maatskappy te hou, soos in paragraaf (b) van die omskrywing van 'kwalifiserende belang' beoog, word daardie persoon by die toepassing van subartikel (5), artikel 22 of die Agtste Bylae geag—

(a) oor al die ekwiteitsaandele wat ingevolge 'n maatskappyformasietransaksie verkry is, waaroor nie onmiddellik voordat daardie persoon opgehou het om sodanige kwalifiserende aandeel te hou beskik is nie, te beskik het vir 'n bedrag gelykstaande aan die markwaarde van daardie ekwiteitsaandele soos aan die begin van die tydperk van 18 maande; en

(b) al die ekwiteitsaandele waaroor nie beskik is nie, onmiddellik nadat daardie persoon opgehou het om 'n kwalifiserende belang te hou, onmiddellik weer te verkry het teen 'n koste gelykstaande aan die bedrag soos in paragraaf (a) beoog:

Met dien verstande dat die bepalinge van hierdie subartikel nie van toepassing is nie waar daardie persoon ingevolge 'n intragroeptransaksie soos in artikel 45 beoog, 'n ontbondelingstransaksie soos in artikel 46 beoog of 'n likwidasië-uitkering soos in artikel 47 beoog, 'n onvrywillige beskikking soos in paragraaf 65 van die Agtste Bylae beoog of as gevolg van die afsterwe van daardie persoon opgehou het om 'n kwalifiserende belang in daardie maatskappy te hou.

(7) Waar 'n maatskappy binne 18 maande nadat die bate ingevolge 'n maatskappyformasietransaksie verkry is daaroor beskik en—

(a) daardie bate 'n kapitaalbate uitmaak, word soveel van die kapitaalwinst wat bereken is ten opsigte van die beskikking oor daardie bate as wat nie die bedrag oorskry nie wat vasgestel sou gewees het as daar aan die begin van die tydperk van 18 maande oor daardie bate beskik is vir 'n opbrengs gelykstaande aan die markwaarde van daardie bate soos op daardie datum, nie by die vasstelling van die netto kapitaalwinst of kapitaalverlies van daardie maatskappy in berekening gebring nie, maar is onderhewig aan paragraaf 10 van die Agtste Bylae vir doeleindes van die vasstelling van die belasbare kapitaalwinst afkomstig vanaf daardie wins, welke belasbare kapitaalwinst nie verreken mag word nie teen enige vasgestelde verlies of balans van vasgestelde verlies van daardie maatskappy; of

- (b) that asset constitutes—
- (i) trading stock in the hands of that company, so much of the amount received or accrued in respect of the disposal of that trading stock as does not exceed the market value of that trading stock as at the beginning of that period of 18 months and so much of the amount taken into account in respect of that trading stock in terms of section 11(a) or 22(1) or (2) as is equal to the amount so taken into account in terms of subsection (2)(b); or
 - (ii) an allowance asset in the hands of that company, so much of any allowance in respect of that asset that is recovered or recouped by or included in the income of that company as a result of that disposal as does not exceed the amount that would have been recovered had that asset been disposed of at the beginning of that period of 18 months for an amount equal to the market value of that asset as at that date,
- must be deemed to be attributable to a separate trade carried on by that company, the taxable income from which trade may not be set off against any assessed loss or balance of assessed loss of that company.
- (8) Where a person disposes of—
- (a) any asset which secures any debt (other than a debt contemplated in paragraph 20(3)(c) of the Eighth Schedule) to a company in terms of a company formation transaction and that debt was incurred by that person—
 - (i) more than 18 months before that disposal; or
 - (ii) within a period of 18 months before that disposal—
 - (aa) and that debt was incurred at the same time as that asset was acquired by that person; or
 - (bb) to the extent that debt constitutes the refinancing of any debt in respect of that asset incurred as contemplated in subparagraph (i) or item (aa) of subparagraph (ii), and that company assumes that debt or an equivalent amount of debt that is secured by that asset; or
 - (b) any business undertaking as a going concern to a company in terms of a company formation transaction and that disposal includes any amount of any debt that is attributable to, and arose in the normal course of that business undertaking (other than any debt that has been taken into account as contemplated in paragraph 20(3)(c) of the Eighth Schedule in determining the base cost of any asset so disposed of as part of that business undertaking),
- that person must, notwithstanding the fact that that person may be liable as surety for the payment of the debt referred to in subparagraphs (a) or (b), treat the face value of that debt as a capital distribution of cash in respect of that equity share, for the purposes of paragraph 76 of the Eighth Schedule, or as income to be included in that person's income when that person disposes of that equity share.
- (9) No election may be made in terms of paragraph (c) of the definition of 'company formation transaction' in subsection (1) in respect of the disposal of any asset by a person, where that asset constitutes a financial instrument as defined in paragraph 1 of the Eighth Schedule, unless—
- (a) that financial instrument constitutes a debt due to that person in respect of goods sold or services rendered by that person in the course of carrying on any business where the amount of that debt is or was included in the income of that person and that debt is transferred as an integral part of a going concern; or

- (b) daardie bate—
- (i) handelsvoorraad in die hande van daardie maatskappy uitmaak, word soveel van die bedrag wat ontvang is of toegeval het ten opsigte van die beskikking oor daardie handelsvoorraad as wat nie die markwaarde van daardie handelsvoorraad soos aan die begin van die tydperk van 18 maande oorskry nie en soveel van die bedrag wat ingevolge artikel 11(a) of 22(1) of (2) in berekening gebring is ten opsigte van daardie handelsvoorraad as wat gelykstaande is aan die bedrag wat aldus ingevolge subartikel 2(b) in berekening gebring is; of
 - (ii) 'n afskryfbare bate in die hande van die maatskappy uitmaak, word soveel van enige toelae ten opsigte van daardie bate as wat verhaal of vergoed is deur of in die inkomste van daardie maatskappy ingesluit is as gevolg van daardie beskikking as wat nie die bedrag wat vergoed sou gewees het indien daar oor daardie bate beskik is aan die begin van daardie tydperk van 18 maande vir 'n bedrag gelykstaande aan die markwaarde van daardie bate soos op daardie datum oorskry nie, geag toeskryfbaar te wees aan 'n aparte bedryf wat deur daardie maatskappy beoefen is, waarvan die belasbare inkomste uit sodanige bedryf nie verreken mag word teen enige vasgestelde verlies of balans van vasgestelde verlies van daardie maatskappy nie.
- (8) Waar 'n persoon beskik oor—
- (a) enige bate wat enige skuld versekureer (behalwe 'n skuld soos in paragraaf 20(3)(c) van die Agtste Bylae bedoel) aan 'n maatskappy ingevolge 'n maatskappyformasietransaksie en daardie skuld deur daardie persoon aangegaan is—
 - (i) meer as 18 maande voor daardie beskikking; of
 - (ii) binne 'n periode van 18 maande voor daardie beskikking—
 - (aa) en daardie skuld op dieselfde tydstip toe die bate deur daardie persoon verkry is, aangegaan is; of
 - (bb) tot dieselfde mate waarin daardie skuld die herfinansiering van enige skuld ten opsigte van daardie bate aangegaan uitmaak soos in subparagraaf (i) of item (aa) of subparagraaf (ii) beoog, en daardie maatskappy daardie skuld of 'n ekwivalente bedrag van skuld deur daardie bate versekureer is, aanvaar; of
 - (b) enige besigheidsonderneming as 'n lopende saak aan 'n maatskappy ingevolge 'n maatskappyformasietransaksie en daardie beskikking enige bedrag van enige skuld wat toeskryfbaar is aan en ontstaan het in die normale loop van sake (anders as enige skuld wat in berekening gebring is soos in paragraaf 20(3)(c) van die Agtste Bylae beoog by die vasstelling van die basiskoste van enige bate waarvoor beskik is as deel van daardie besigheidsonderneming) insluit, moet daardie persoon, ondanks die feit dat daardie persoon as borg vir die betaling van die skuld waarna in subparagraaf (a) of (b) verwys word, verantwoordelik is, die sigwaarde van daardie skuld as 'n kapitaaluitkering van kontant ten opsigte van die ekwiteitsaandeel hanteer, vir die doeleindes van paragraaf 76 van die Agtste Bylae, of as inkomste wat in daardie persoon se inkomste ingesluit moet word wanneer daardie persoon oor daardie ekwiteitsaandeel beskik.
- (9) Geen keuse mag ingevolge paragraaf (c) van die omskrywing van 'maatskappyformasietransaksie' in subartikel (1) uitgeoefen word nie ten opsigte van die beskikking oor 'n bate deur enige persoon, waar die bate 'n finansiële instrument uitmaak, behalwe waar—
- (a) daardie finansiële instrument 'n skuld betaalbaar aan daardie persoon ten opsigte van goedere wat verkoop is of dienste wat gelewer is in die loop van die beoefening van 'n bedryf uitmaak waar die bedrag van daardie skuld by die inkomste van daardie persoon ingesluit is of was en daardie skuld as 'n integrale deel van die lopende saak oorgedra is; of

- (b) the total market value immediately prior to that disposal of all financial instruments so disposed of (other than financial instruments contemplated in paragraph (a)), does not exceed five per cent of the total market value of all assets of any business which is transferred as a going concern; or 5
- (c) that financial instrument is being transferred to any company regulated in terms of—
- (i) the Banks Act, 1990 (Act No. 94 of 1990);
 - (ii) the Financial Markets Control Act, 1989 (Act No. 55 of 1989);
 - (iii) the Long Term Insurance Act, 1998 (Act No. 52 of 1998); 10
 - (iv) the Short Term Insurance Act, 1998 (Act No. 53 of 1998);
 - (v) the Stock Exchanges Control Act, 1985 (Act No. 1 of 1985); or
 - (vi) the Unit Trusts Control Act, 1981 (Act No. 54 of 1981), or its successor the Collective Investment Schemes Control Act, 2002. 15
- (10) No election may be made in terms of paragraph (c) of the definition of 'company formation transaction' in subsection (1) in respect of the disposal of any asset by a company where that asset was acquired by that company in terms of any company formation transaction, unless that asset was held by that company for a period of more than 18 months after that company formation transaction. 20

Share-for-share transactions

- 43. (1)** For the purposes of this section, a 'share-for-share transaction' means any transaction—
- (a) in terms of which any person (other than a trust which is not a special trust) disposes of an equity share, the market value of which exceeds— 25
- (i) in the case of a share held as a capital asset, the base cost of that share on the date of that disposal; or
 - (ii) in the case of a share held as trading stock, the amount taken into account in respect of that share in terms of section 11(a) or 22(1) or (2), 30
- (hereinafter referred to as the 'target share') in a company (hereinafter referred to as the 'target company') to any other company (hereinafter referred to as the 'acquiring company'), which is a resident, in exchange for any equity share or shares issued by that acquiring company to that person; and 35
- (b) where that person acquires that share or those shares in the acquiring company—
- (i) where that target share is disposed of as a capital asset, as a capital asset or as trading stock; or 40
 - (ii) where that target share is disposed of as trading stock, as trading stock; and
- (c) where the acquiring company—
- (i) in the case where that target company is a listed company, after that disposal and any other share-for-share transaction entered into in terms of any offer made on the same terms as that transaction and which is accepted within a period of 90 days after that disposal, holds— 45
 - (aa) more than 25 per cent of the equity shares of that target company, in the case where no other shareholder holds an equal or greater amount of equity shares of that target company; or 50
 - (bb) in any other case, at least 35 per cent of the equity shares of the target company; or
 - (ii) where the target company is not a company as contemplated in subparagraph (i), after that disposal holds more than 50 per cent of the equity shares of the target company; and 55

- (b) die totale markwaarde onmiddellik voor die beskikking oor alle finansiële instrumente waaroor aldus beskik is (behalwe finansiële instrumente soos in paragraaf (a) beoog)), nie vyf persent van die totale markwaarde van alle bates van enige besigheid wat as 'n lopende saak oorgedra is, oorskry nie; of 5
- (c) daardie finansiële instrument oorgedra word aan enige maatskappy wat geregleer word ingevolge—
- (i) die Bankwet, 1990 (Wet No. 94 van 1990);
 - (ii) die Die Wet op Beheer van Finansiële Markte, 1989 (Wet No. 55 van 1989); 10
 - (iii) die Langtermynversekeringswet, 1998 (Wet No. 52 van 1998);
 - (iv) die Korttermynversekeringswet, 1998 (Wet No. 53 van 1998);
 - (v) die Wet op Beheer van Aandelebeurse (Wet No. 1 van 1985);
 - (vi) die Wet op beheer van Effektetrustskemas, 1981 (Wet No. 54 van 1981) of sy opvolger die Wet op Beheer van Kollektiewe Beleggingskemas, 2002. 15
- (10) Geen keuse mag ingevolge paragraaf (c) van die omskrywing van maatskappyformasietransaksie in subartikel (1) uitgeoefen word nie ten opsigte van die beskikking oor 'n bate deur 'n maatskappy waar daardie bate deur daardie maatskappy ingevolge 'n maatskappyformasietransaksie verkry is, behalwe as die bate deur daardie maatskappy vir 'n periode langer as 18 maande na die maatskappyformasietransaksie gehou is. 20

Aandeel-vir-aandeeltransaksies

- 43. (1)** By die toepassing van hierdie artikel beteken 'n aandeel-vir-aandeeltransaksie 'n transaksie— 25
- (a) ingevolge waarvan enige persoon (behalwe 'n trust wat nie 'n spesiale trust is nie) oor enige ekwiteitsaandeel beskik waarvan die markwaarde—
- (i) in die geval waar 'n aandeel as 'n kapitaalbate gehou word, die basiskoste van daardie aandeel op die datum van daardie beskikking oorskry; of 30
 - (ii) in die geval van 'n aandeel wat as handelsvoorraad gehou word, die bedrag wat ingevolge artikel 11(a) of 22(1) of (2) ten opsigte van daardie aandeel in ag geneem is, oorskry, 35
- (hierna die 'teikenaandeel' genoem) in 'n maatskappy (hierna die 'teikenmaatskappy' genoem) aan 'n ander maatskappy (hierna die 'verkrygende maatskappy' genoem), wat 'n inwoner is, in ruil vir enige ekwiteitsaandeel of aandele wat deur die verkrygende maatskappy aan daardie persoon uitgereik is; en
- (b) waar daardie persoon die aandeel of aandele in die verkrygende maatskappy verkry— 40
- (i) waar oor daardie teikenaandeel as 'n kapitaalbate beskik word, as 'n kapitaalbate of as handelsvoorraad; of
 - (ii) waar oor daardie teikenaandeel as handelsvoorraad beskik word, as handelsvoorraad; en 45
- (c) waar die verkrygende maatskappy—
- (i) in die geval waar die teikenmaatskappy 'n genoteerde maatskappy is, nadat daardie beskikking en enige ander aandeel-vir-aandeeltransaksie wat ingevolge 'n aanbod wat op dieselfde voorwaardes as daardie transaksie gesluit is en binne 'n periode van 90 dae na daardie beskikking aanvaar is— 50
 - (aa) meer as 25 persent van die ekwiteitsaandeel in daardie teikenmaatskappy hou, in die geval waar geen ander aandeelhouer 'n gelyke of groter hoeveelheid ekwiteitsaandeel in daardie teikenmaatskappy hou nie; of 55
 - (bb) in enige ander geval, ten minste 35 persent van die ekwiteitsaandeel in die teikenmaatskappy hou; of
 - (ii) waar die teikenmaatskappy nie 'n maatskappy soos in subparagraaf (i) beoog is nie, na die beskikking meer as 50 persent van die ekwiteitsaandeel in die teikenmaatskappy hou; en 60

- (d) where that person at the close of the day of that disposal, holds a qualifying interest in that acquiring company.
- (2) Subject to subsection (3), where a person disposes of any target share to an acquiring company in terms of a share-for-share transaction—
- (a) that person must be deemed to have— 5
- (i) disposed of that target share for an amount equal to the amount contemplated in subparagraphs (i) or (ii) of paragraph (a) of the definition of 'share-for-share transaction', as the case may be; and
- (ii) acquired the equity shares in the acquiring company on the date that such person acquired that target share and— 10
- (aa) where that target share is so disposed of as a capital asset, for a cost equal to any expenditure in respect of that target share incurred by that person that is allowable in terms of paragraph 20 of the Eighth Schedule and to have incurred such cost at the date of incurral by that person of such expenditure, which cost must, where those equity shares are acquired as— 15
- (A) capital assets, be treated as an expenditure actually incurred and paid by that person in respect of those equity shares for the purposes of paragraph 20 of the Eighth Schedule; and 20
- (B) trading stock, be treated as the amount to be taken into account by that person in respect of those equity shares for the purposes of section 11(a) or 22(1) or (2); or 25
- (bb) where that target share is so disposed of as trading stock and those equity shares are acquired as trading stock, for a cost equal to the amount referred to in subparagraph (ii) of paragraph (a) of the definition of 'share-for-share transaction', which cost must be treated as the amount to be taken into account by that person in respect of those equity shares for purposes of section 11(a) or 22(1) or (2); and 30
- (b) the acquiring company must, where the target company is a listed company and the listed equity shares in that company were acquired by the acquiring company from any shareholder who does not hold more than 25 per cent of the equity share capital of the acquiring company after any transaction referred to in paragraph (c)(i) of the definition of 'share-for-share transaction', be deemed to have acquired those equity shares at a cost equal to the market value of those equity shares; or 35
- (c) that person and the acquiring company must, in any other case, for purposes of determining— 40
- (i) any taxable income derived by the acquiring company from a trade carried on by it; or 45
- (ii) any capital gain or capital loss in respect of a disposal of that equity share by the acquiring company,
- be deemed to be one and the same person with respect to—
- (aa) where that share is acquired by the acquiring company as a capital asset from that person who disposes of it as a capital asset— 50

- (d) waar daardie persoon aan die einde van die dag waarop daardie beskikking plaasgevind het, 'n kwalifiserende belang in daardie verkrygende maatskappy hou.
- (2) Behoudens die bepalings van subartikel (3), waar 'n persoon oor enige teikenaandeel aan 'n verkrygende maatskappy ingevolge 'n aandeel-vir-aandeeltransaksie beskik— 5
- (a) word daardie persoon geag—
- (i) oor daardie teikenaandeel te beskik het vir 'n bedrag gelykstaande aan die bedrag in subparagraaf (i) of (ii) van paragraaf (a) van die omskrywing van aandeel-vir-aandeeltransaksie beoog, na gelang van die geval; en 10
- (ii) die ekwiteitsaandeel in die verkrygende maatskappy te verkry het op die datum waarop sodanige persoon die teikenaandeel verkry het en—
- (aa) waar daar oor daardie teikenaandeel as 'n kapitaalbate beskik word, teen 'n koste gelykstaande aan enige onkoste wat met betrekking tot daardie teikenaandeel deur daardie persoon aangegaan is en wat ingevolge paragraaf 20 van die Agtste Bylae toelaatbaar is en om sodanige koste aan te gegaan het op die datum waarop daardie koste deur daardie persoon aangegaan is, welke koste, waar daardie ekwiteitsaandeel verkry is as— 15
- (A) kapitaalbates, geag word uitgawes wat werklik deur daardie persoon aangegaan en betaal is te wees ten opsigte van daardie ekwiteitsaandeel vir die doeleindes van paragraaf 20 van die Agtste Bylae; en 25
- (B) handelsvoorraad, geag word die bedrag te wees wat deur daardie persoon in ag geneem moet word ten opsigte van daardie ekwiteitsaandeel vir die doeleindes van artikel 11(a) of 22(1) of (2); of 30
- (bb) waar daar oor daardie teikenaandeel as handelsvoorraad beskik word en daardie ekwiteitsaandeel, teen 'n koste gelykstaande aan die bedrag waarna in subparagraaf (ii) van paragraaf (a) van die omskrywing van aandeel-vir-aandeeltransaksie verwys word as handelsvoorraad verkry word, welke koste geag word die bedrag te wees wat deur daardie persoon in berekening gebring moet word ten opsigte van daardie ekwiteitsaandeel vir doeleindes van artikel 11(a) of 22(1) of (2); en 35
- (b) word die verkrygende maatskappy, wanneer die teikenmaatskappy 'n genoteerde maatskappy is en die genoteerde ekwiteitsaandeel in daardie maatskappy deur die verkrygende maatskappy verkry is vanaf enige aandeelhouer wat nie meer as 25 persent van die ekwiteitsaandeelkapitaal in die verkrygende maatskappy hou na enige transaksie waarna in paragraaf (c)(i) van die omskrywing van 'aandeel-vir-aandeeltransaksie' verwys word, geag daardie ekwiteitsaandeel teen 'n koste gelykstaande aan die markwaarde van daardie ekwiteitsaandeel te verkry het; of 40
- (c) word daardie persoon en die verkrygende maatskappy, in enige ander geval, vir doeleindes van die vasstelling van— 50
- (i) enige belasbare inkomste wat deur die verkrygende maatskappy vanuit 'n bedryf wat deur die maatskappy beoefen verkry is; of
- (ii) enige kapitaalwins of kapitaalverlies ten opsigte van die beskikking oor daardie ekwiteitsaandeel deur die verkrygende maatskappy, 55
- geag een en dieselfde persoon te wees met betrekking tot—
- (aa) waar daardie aandeel deur die verkrygende maatskappy as 'n kapitaalbate verkry is vanaf daardie persoon wat daarvoor beskik het as 'n kapitaalbate— 60

- (A) the date of acquisition of that share by that person and the amount and date of incurral by that person of any expenditure in respect of that share allowable in terms of paragraph 20 of the Eighth Schedule; and
- (B) any valuation of that share effected by that person within the period contemplated in paragraph 29(4) of the Eighth Schedule;
- (bb) where that share is acquired by the acquiring company as trading stock from that person who disposes of it as trading stock, the date of acquisition of that share by that person and the amount and date of incurral by that person of any cost or expenditure incurred in respect of that asset as contemplated in section 11(a) or 22(1) or (2);
- (cc) where that share is acquired by the acquiring company as trading stock from that person who disposes of it as a capital asset—
- (A) the date of acquisition of that share by that person and the amount and date of incurral by that person of any expenditure in respect of that share allowable in terms of paragraph 20 of the Eighth Schedule; or
- (B) where that person has valued that share as contemplated in paragraph 29(4) of the Eighth Schedule, the amount of the market value so determined,
- which amount must, notwithstanding paragraph 25 of the Eighth Schedule, be treated as the amount to be taken into account by the acquiring company in respect of that share for purposes of section 11(a) or 22(1) or (2); or
- (dd) where that share is acquired by the acquiring company as a capital asset from that person who disposed of it as trading stock, the date of acquisition of that share by that person and the amount and date of incurral of any cost or expenditure incurred by the person in respect of that share as contemplated in section 11(a) or 22(1) or (2), which amount must, notwithstanding paragraph 25 of the Eighth Schedule be treated as expenditure actually incurred and paid by the acquiring company in respect of that share for purposes of paragraph 20 of the Eighth Schedule.
- (3) Where—
- (a) a person disposes of a target share to a company in terms of a share-for-share transaction; and
- (b) that person becomes entitled, in exchange for that share, to any consideration in addition to any equity shares issued by the acquiring company to that person,
- the disposal of that share to the acquiring company contemplated in paragraph (a) must, to the extent that any equity shares are issued by the acquiring company to that person, be deemed to be a disposal in terms of a share-for-share transaction for purposes of this section, and to the extent that such person becomes entitled to any other consideration, as contemplated in paragraph (b), be deemed to be a disposal of part of that share other than in terms of a share-for-share transaction, in which case the amount to be determined in respect of—
- (i) in the case of a disposal of a share as a capital asset, the base cost of that share at the time of that disposal; or
- (ii) in the case of the disposal of a share as trading stock, the amount taken into account in respect of that share in terms of section 11(a) or 22(1) or (2),

- (A) die datum van verkryging van daardie aandeel deur daardie persoon en die bedrag en datum waarop daardie persoon enige onkoste wat ingevolge paragraaf 20 van die Agtste Bylae met betrekking tot daardie bate aangegaan het; en
- (B) enige waardasie van daardie aandeel wat bewerkstellig is deur daardie persoon binne die tydperk soos in paragraaf 29(4) van die Agtste Bylae beoog; 5
- (bb) waar daardie bate deur die verkrygende maatskappy as handelsvoorraad verkry is vanaf 'n persoon wat daarvoor as handelsvoorraad beskik het, die datum van verkryging van daardie bate deur daardie persoon en die bedrag en datum waarop daardie persoon enige onkoste of uitgawe soos in artikel 11(a) of 22(1) of (2) beoog met betrekking tot daardie bate aangegaan het; of 10 15
- (cc) waar daardie bate deur die verkrygende maatskappy as handelsvoorraad verkry is vanaf 'n persoon wat daarvoor as 'n kapitaalbate beskik—
- (A) die datum van verkryging van daardie aandeel deur daardie persoon en die bedrag en datum waarop daardie persoon enige toelaatbare onkoste ingevolge paragraaf 20 van die Agtste Bylae aangegaan het; of 20
- (B) waar daardie persoon daardie aandeel waardeur het soos beoog in paragraaf 29(4) van die Agtste Bylae, die bedrag van die markwaarde aldus bepaal, 25
- welke bedrag, nie teenstaande die bepalinge van paragraaf 25 van die Agtste Bylae hanteer moet word as die bedrag wat deur die verkrygende maatskappy ten opsigte van daardie bate vir doeleindes van artikel 11(a) of 22(1) of (2) in ag geneem moet word; of 30
- (dd) waar daardie aandeel deur die verkrygende maatskappy verkry is as 'n kapitaalbate vanaf daardie persoon wat daarvoor as handelsvoorraad beskik het, die datum van verkryging van daardie aandeel deur daardie persoon en die bedrag en datum waarop die koste of uitgawes ingevolge artikel 11(a) of 22(1) of (2) met betrekking tot daardie aandeel aangegaan is, welke bedrag, ondanks paragraaf 25 van die Agtste Bylae geag word onkoste te wees wat werklik deur die verkrygende maatskappy ten opsigte van daardie aandele vir doeleindes van paragraaf 20 van die Agtste Bylae aangegaan en betaal is. 35 40
- (3) Waar—
- (a) 'n persoon oor 'n teikenaandeel aan 'n maatskappy ingevolge 'n aandeel-vir-aandeeltransaksie beskik; en
- (b) daardie persoon in ruil vir daardie aandeel, geregtig word op enige vergoeding bykomend tot die ekwiteitsaandele wat deur die verkrygende maatskappy aan daardie persoon uitgereik is, 45
- word die beskikking oor daardie aandeel aan die verkrygende maatskappy soos in paragraaf (a) beoog, tot die mate wat enige ekwiteitsaandele deur die verkrygende maatskappy aan daardie persoon uitgereik is, by die toepassing van hierdie artikel geag 'n beskikking ingevolge 'n aandeel-vir-aandeeltransaksie te wees, en tot die mate wat so 'n persoon op enige vergoeding soos in paragraaf (b) beoog geregtig word, geag 'n beskikking oor 'n gedeelte van daardie aandeel anders as ingevolge 'n aandeel-vir-aandeeltransaksie te wees, in welke geval die bedrag wat vasgestel moet word ten opsigte van— 50 55
- (i) in die geval van die beskikking oor die aandeel as 'n kapitaalbate, die basiskoste van daardie aandeel op die tydstip van die beskikking; of
- (ii) in die geval van die beskikking oor 'n aandeel as handelsvoorraad, die bedrag wat ten opsigte van daardie aandeel ingevolge artikel 11(a) of 22(1) of (2) in ag geneem is, 60

that must be attributed to the part of the share deemed to have been disposed of other than in terms of a share-for-share transaction, must bear the same ratio to the total amount contemplated in subparagraph (i) or (ii) as the market value of the consideration not consisting of equity shares issued by the acquiring company bears to the market value of the total consideration in respect of that share.

(4) Where a person disposed of a target share in terms of a share-for-share transaction and that person ceases to hold a qualifying interest in the acquiring company within a period of 18 months after the date of the disposal of that share (whether or not by way of the disposal of any shares in the acquiring company), that person must for purposes of section 22 or the Eighth Schedule be deemed to have—

(a) disposed of all the target shares acquired in terms of that share-for-share transaction which were not disposed of immediately before that person ceased to hold such an interest, for an amount equal to the market value of those equity shares as at the beginning of that period of 18 months; and

(b) immediately reacquired all the target shares not disposed of immediately after that person ceased to hold such an interest at a cost equal to the amount contemplated in paragraph (a):

Provided that the provisions of this subsection do not apply where that person ceases to hold a qualifying interest in the acquiring company in terms of an intra-group transaction contemplated in section 45, an unbundling transaction contemplated in section 46, an involuntary disposal as contemplated in paragraph 65 of the Eighth Schedule or as the result of the death of that person.

(5) Where an acquiring company acquired any target share in terms of a share-for-share transaction and that acquiring company ceases to hold an interest in the target company, as contemplated in paragraph (c) of the definition of 'share-for-share transaction' in subsection (1), within a period of 18 months after so acquiring that share (whether or not by way of the disposal of any shares in that target company), that acquiring company must for purposes of section 22 or the Eighth Schedule be deemed to have—

(a) disposed of all the equity shares in the target company acquired in terms of that share-for-share transaction which were not disposed of immediately before that acquiring company ceased to hold such an interest, for an amount equal to the market value of those equity shares as at the beginning of that period of 18 months; and

(b) immediately reacquired all the equity shares not disposed of immediately after that acquiring company ceased to hold such an interest at a cost equal to the amount contemplated in paragraph (a):

Provided that the provisions of this subsection do not apply where that acquiring company ceases to hold such an interest in the target company, in terms of an intra-group transaction contemplated in section 45, an unbundling transaction contemplated in section 46, a liquidation distribution contemplated in section 47 or an involuntary disposal as contemplated in paragraph 65 of the Eighth Schedule.

(6) Where an acquiring company disposes of a target share within a period of 18 months after acquiring that share in terms of a share-for-share transaction and—

(a) that share constitutes a capital asset, so much of any capital gain determined in respect of the disposal of that share as does not exceed the amount that would have been determined had that share been disposed of for proceeds equal to the market value of that share as at the beginning of that period of 18 months, may not be taken into

wat toegeskryf moet word aan die gedeelte van die aandeel waaroor geag word beskik te gewees het anders as ingevolge 'n aandeel-vir-aandeel-transaksie, moet in dieselfde verhouding tot die totale bedrag waarna in subparagraaf (i) of (ii) verwys word, staan as wat die markwaarde van die vergoeding wat nie uit ekwiteitsaandeel bestaan nie wat deur daardie verkrygende maatskappy uitgereik is tot die markwaarde van die totale vergoeding ten opsigte van daardie aandeel staan.

(4) Waar 'n persoon ingevolge 'n aandeel-vir-aandeeltransaksie oor 'n teikenaandeel beskik het en daardie persoon binne 'n tydperk van 18 maande na die datum van die beskikking oor daardie aandeel (hetsy by wyse van die beskikking oor enige aandeel in die verkrygende maatskappy of nie) ophou om 'n kwalifiserende belang in die verkrygende maatskappy te hou, word daardie persoon by die toepassing van artikel 22 of die Agtste Bylae geag—

(a) oor al die teikenaandeel wat ingevolge 'n aandeel-vir-aandeeltransaksie verkry is, waaroor nie onmiddellik voordat daardie persoon opgehou het om sodanige belang te hou beskik is nie, te beskik het vir 'n bedrag gelykstaande aan die markwaarde van daardie ekwiteitsaandeel soos aan die begin van die tydperk van 18 maande; en

(b) al die teikenaandeel waaroor nie onmiddellik nadat daardie persoon opgehou het om sodanige belang te hou beskik is nie, onmiddellik weer te verkry het teen 'n koste gelykstaande aan die bedrag soos in paragraaf (a) beoog:

Met dien verstande dat die bepalings van hierdie subartikel nie van toepassing is nie waar daardie persoon ingevolge 'n intragroeptransaksie soos in artikel 45 beoog, 'n ontbondelingstransaksie soos in artikel 46 beoog of 'n likwidasië-uitkering soos in artikel 47 beoog, 'n onvrywillige beskikking soos in paragraaf 65 van die Agtste Bylae beoog of as gevolg van die afsterwe van daardie persoon ophou om 'n kwalifiserende belang in die verkrygende maatskappy te hou.

(5) Waar 'n verkrygende maatskappy enige teikenaandeel ingevolge 'n aandeel-vir-aandeeltransaksie verkry en daardie verkrygende maatskappy binne 'n tydperk van 18 maande na die datum van die verkryging van die aandeel (hetsy by wyse van die beskikking oor enige aandeel in daardie verkrygende maatskappy of nie) ophou om 'n belang in die teikenmaatskappy soos in paragraaf (c) van die omskrywing van 'aandeel-vir-aandeeltransaksie' in subartikel (1) beoog, te hou, word daardie verkrygende maatskappy by die toepassing van artikel 22 of van die Agtste Bylae geag—

(a) oor al die ekwiteitsaandeel wat ingevolge daardie aandeel-vir-aandeeltransaksie in die teikenmaatskappy verkry is, waaroor nie onmiddellik voordat daardie verkrygende maatskappy opgehou het om sodanige belang te hou beskik is nie, te beskik het vir 'n bedrag gelykstaande aan die markwaarde van daardie ekwiteitsaandeel soos aan die begin van die tydperk van 18 maande; en

(b) al die ekwiteitsaandeel waaroor nie onmiddellik nadat daardie persoon opgehou het om sodanige belang te hou beskik is nie, onmiddellik weer te verkry het teen 'n koste gelykstaande aan die bedrag soos in paragraaf (a) beoog:

Met dien verstande dat die bepalings van hierdie subartikel nie van toepassing is nie waar daardie verkrygende maatskappy ingevolge 'n intragroeptransaksie soos in artikel 45 beoog, 'n ontbondelingstransaksie soos in artikel 46 beoog of 'n likwidasië-uitkering soos in artikel 47 beoog, 'n onvrywillige beskikking soos in paragraaf 65 van die Agtste Bylae beoog ophou om sodanige belang in die teikenmaatskappy te hou.

(6) Waar 'n verkrygende maatskappy binne 18 maande nadat 'n teikenaandeel ingevolge 'n aandeel-vir-aandeeltransaksie verkry is daaroor beskik en—

(a) daardie aandeel 'n kapitaalbate verteenwoordig, word soveel van die kapitaalwinst bereken ten opsigte van die beskikking oor daardie aandeel as wat nie die bedrag wat vasgestel sou gewees het as daar aan die begin van die tydperk van 18 maande oor daardie aandeel beskik sou wees vir 'n opbrengs gelykstaande aan die markwaarde van

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account in determining any net capital gain or assessed capital loss of that company but is subject to paragraph 10 of the Eighth Schedule for purpose of determining an amount of taxable capital gain derived from that gain, which taxable capital gain may not be set off against any assessed loss or balance of assessed loss of that company; or

- (b) that share constitutes trading stock in the hands of that company, so much of the amount received or accrued in respect of the disposal of that trading stock as does not exceed the market value of that trading stock as at the beginning of that period of 18 months and so much of the amount taken into account in respect of that trading stock under section 11(a) or 22(1) or (2) as is equal to the amount so taken into account in terms of subsection (2)(b) or (c) must be deemed to be attributable to a separate trade carried on by that company, the taxable income from which trade may not be set off against any assessed loss or balance of assessed loss of that company.

(7) The provisions of this section do not apply in respect of the disposal by a person of any equity share in a target company where that target company immediately prior to that disposal constitutes a domestic financial instrument holding company or a foreign financial instrument holding company as defined in section 9D.

(8) The provisions of this section do not apply in respect of the disposal of any equity share by a company where that equity share was acquired by that company in terms of a share-for-share transaction unless that equity share was held by that company for a period of more than 18 months after that share-for-share transaction.

Amalgamation transactions

44. (1) For the purposes of this section 'amalgamation transaction' means any transaction—

- (a) in terms of which any company (hereinafter referred to as the 'amalgamated company') disposes of all of its assets to another company (hereinafter referred to as the 'resultant company') which is a resident, by means of an amalgamation, conversion or merger; and
(b) as a result of which that amalgamated company's existence will be terminated;

'equity share' includes a participatory interest in a portfolio of a collective investment scheme referred to in paragraph (e)(i) of the definition of 'company' in section 1;

'qualifying interest' of any person means—

- (a) a qualifying interest as defined in section 41; or
(b) any equity shares held by that person in a resultant company which is a collective investment scheme referred to in paragraph (e)(i) of the definition of 'company' in section 1.

(2) Where an amalgamated company disposes of—

- (a) a capital asset in terms of an amalgamation transaction to a resultant company which acquires it as a capital asset—
(i) the amalgamated company must be deemed to have disposed of that asset for an amount equal to the base cost of that asset on the date of that disposal; and
(ii) that resultant company and that amalgamated company must, for purposes of determining any capital gain or capital loss in respect of a disposal of that asset by that resultant company, be deemed to be one and the same person with respect to—
(aa) the date of acquisition of that asset by that amalgamated company and the amount and date of incurral by that

- daardie aandeel soos op daardie datum, oorskry nie, nie by die vasstelling van die netto kapitaalwins of vasgestelde kapitaalverlies van daardie maatskappy in berekening gebring nie, maar is onderhewig aan paragraaf 10 van die Agtste Bylae vir doeleindes van die vasstelling van 'n bedrag van belasbare kapitaalwins verkry uit daardie wins, welke kapitaalwins nie verreken kan word teen enige vasgestelde verlies of balans van vasgestelde verlies van daardie maatskappy nie; of
- (b) daardie aandeel handelsvoorraad in die hande van daardie maatskappy verteenwoordig, word soveel van die bedrag wat ontvang is of toegeval het ten opsigte van die beskikking oor daardie handelsvoorraad as wat nie die markwaarde van daardie handelsvoorraad soos aan die begin van die tydperk van 18 maande oorskry nie en soveel van die bedrag wat ingevolge artikel 11(a) of 22(1) of (2) in berekening gebring is ten opsigte van daardie handelsvoorraad as wat gelykstaande aan die bedrag wat aldus ingevolge subartikel 2(b) of (c) in berekening gebring is, geag toeskryfbaar te wees aan 'n aparte bedryf deur daardie maatskappy beoefen, waarvan die belasbare inkomste uit sodanige bedryf nie verreken mag word teen enige vasgestelde verlies of balans van vasgestelde verlies van daardie maatskappy nie.
- (7) Die bepalinge van hierdie artikel is nie van toepassing nie ten opsigte van die beskikking deur 'n persoon oor enige ekwiteitsaandeel in 'n teikenmaatskappy waar daardie teikenmaatskappy onmiddellik voor daardie beskikking 'n plaaslike finansiële instrumenthouermaatskappy of 'n buitelandse finansiële instrumenthouermaatskappy was.
- (8) Die bepalinge van hierdie artikel is nie van toepassing nie ten opsigte van die beskikking oor enige ekwiteitsaandeel deur 'n maatskappy tensy daardie ekwiteitsaandeel deur daardie maatskappy ingevolge 'n aandeel-vir-aandeeltransaksie verkry, gehou is vir 'n tydperk van meer as 18 maande na daardie aandeel-vir-aandeeltransaksie.

Amalgamasietransaksies

- 44. (1)** By die toepassing van hierdie artikel, beteken 'amalgamasietransaksie' 'n transaksie—
- (a) ingevolge waarvan enige maatskappy (hierna die 'geamalgameerde maatskappy' genoem) oor al sy bates aan 'n ander maatskappy (hierna die 'gevolglike maatskappy' genoem) wat 'n inwoner is, by wyse van 'n amalgamasie, omskepping of samesmelting beskik; en
- (b) as gevolg waarvan die geamalgameerde maatskappy se bestaan beeindig sal word;
- 'ekwiteitsaandeel' sluit in 'n deelnemende belang in 'n portefeulje van 'n kollektiewe beleggingskema in paragraaf (e)(i) van die omskrywing van 'maatskappy' in artikel 1 bedoel;
- 'kwalifiserende belang' van 'n persoon beteken—
- (a) 'n kwalifiserende belang soos in artikel 41 omskryf; of
- (b) enige ekwiteitsaandeel deur 'n persoon in 'n gevolglike maatskappy wat 'n kollektiewe beleggingskema in paragraaf (e)(i) van die omskrywing van 'maatskappy' in artikel 1 bedoel, gehou.
- (2) Waar 'n geamalgameerde maatskappy oor—
- (a) 'n kapitaalbate ingevolge 'n amalgamasietransaksie aan 'n gevolglike maatskappy beskik wat dit as 'n kapitaalbate verkry—
- (i) word die geamalgameerde maatskappy geag oor daardie bate te beskik het vir 'n bedrag gelykstaande aan die basiskoste van daardie bate op die datum van die beskikking; en
- (ii) word die gevolglike maatskappy en die geamalgameerde maatskappy vir doeleindes van die vasstelling van enige kapitaalwins of kapitaalverlies met betrekking tot 'n beskikking oor daardie bate deur daardie gevolglike maatskappy, geag een en dieselfde persoon te wees met betrekking tot—
- (aa) die datum van verkryging van daardie bate deur daardie geamalgameerde maatskappy en die bedrag en datum

- amalgamated company of any expenditure in respect of that asset allowable in terms of paragraph 20 of the Eighth Schedule; and
- (bb) any valuation of that asset effected by that amalgamated company as contemplated in paragraph 29(4) of the Eighth Schedule; 5
- (b) an asset held by it as trading stock in terms of an amalgamation transaction to a resultant company which acquires it as trading stock—
- (i) that amalgamated company must be deemed to have disposed of that asset for an amount equal to the amount taken into account by that amalgamated company in respect of that asset in terms of section 11(a) or 22(1) or (2); and 10
- (ii) that amalgamated company and that resultant company must, for purposes of determining any taxable income derived by that resultant company from a trade carried on by it, be deemed to be one and the same person with respect to the date of acquisition of that asset by that amalgamated company and the amount and date of incurral by that amalgamated company of any cost or expenditure incurred in respect of that asset as contemplated in section 11(a) or 22(1) or (2). 15 20
- (3) Where an amalgamated company disposes of—
- (a) an asset that constitutes an allowance asset in that amalgamated company's hands to a resultant company as part of an amalgamation transaction and that resultant company acquires that asset as an allowance asset— 25
- (i) no allowance allowed to that amalgamated company in respect of that asset must be recovered or recouped by that amalgamated company or included in that amalgamated company's income for the year of that transfer; and
- (ii) that amalgamated company and that resultant company must be deemed to be one and the same person for purposes of determining the amount of any allowance— 30
- (aa) to which that resultant company may be entitled in respect of that asset; or
- (bb) that is to be recovered or recouped by or included in the income of that resultant company in respect of that asset; 35
- (b) a contract to a resultant company as part of a disposal of a business as a going concern in terms of an amalgamation transaction and that contract imposes an obligation on that amalgamated company in respect of which an allowance in terms of section 24C was allowable to that amalgamated company for the year preceding that in which that contract is transferred or would have been allowable to that amalgamated company for the year of that transfer had that contract not been so transferred— 40
- (i) no allowance allowed to that amalgamated company in respect of that obligation must be included in that amalgamated company's income for the year of that transfer; and 45
- (ii) that amalgamated company and that resultant company must be deemed to be one and the same person for purposes of determining the amount of any allowance— 50
- (aa) to which that resultant company may be entitled in respect of that obligation; or
- (bb) that is to be included in the income of that resultant company in respect of that obligation.
- (4) The provisions of subsections (2) and (3) will apply to a disposal of an asset by an amalgamated company to a resultant company as part of an 55

- waarop daardie geamalgameerde maatskappy enige toelaatbare onkoste ingevolge paragraaf 20 van die Agtste Bylae aangegaan het; en
- (bb) enige waardasie van daardie bate deur daardie geamalgameerde maatskappy uitgevoer soos in paragraaf 29(4) van die Agtste Bylae beoog; 5
- (b) 'n bate deur daardie maatskappy as handelsvoorraad gehou ingevolge 'n amalgamasietransaksie beskik aan 'n gevolglike maatskappy wat dit as handelsvoorraad verkry—
- (i) word daardie geamalgameerde maatskappy geag oor daardie bate te beskik het vir 'n bedrag gelykstaande aan die bedrag wat deur daardie geamalgameerde maatskappy ten opsigte van daardie bate ingevolge artikel 11(a) of 22(1) of (2) in berekening gebring is; en 10
- (ii) word daardie geamalgameerde maatskappy en daardie gevolglike maatskappy, vir doeleindes van die bepaling van enige belasbare inkomste wat deur die gevolglike maatskappy verkry is uit 'n bedryf beoefen, geag een en dieselfde persoon te wees met betrekking tot die datum van die verkryging van daardie bate deur daardie geamalgameerde maatskappy en die bedrag en datum waarop daardie geamalgameerde maatskappy enige onkoste of uitgawe, soos in artikel 11(a) of 22(1) of (2) beoog, met betrekking tot daardie bate aangegaan het. 20
- (3) Waar 'n geamalgameerde maatskappy oor—
- (a) 'n bate wat 'n afskryfbare bate in daardie geamalgameerde maatskappy se hande uitmaak, beskik aan 'n gevolglike maatskappy as deel van 'n amalgamasietransaksie en daardie gevolglike maatskappy daardie bate as 'n afskryfbare bate verkry— 25
- (i) word geen toelae wat ten opsigte van daardie bate aan daardie geamalgameerde maatskappy toegestaan is verhaal of vergoed deur daardie geamalgameerde maatskappy of by daardie geamalgameerde maatskappy se inkomste vir die jaar waarin die oordrag plaasgevind het, ingesluit nie; en 30
- (ii) word daardie geamalgameerde maatskappy en daardie gevolglike maatskappy geag een en dieselfde persoon te wees vir doeleindes van die berekening van enige toelae— 35
- (aa) waarop daardie gevolglike maatskappy ten opsigte van daardie bate geregtig mag wees; of
- (bb) wat verhaal of vergoed of ingesluit moet word by die inkomste van daardie gevolglike maatskappy ten opsigte van daardie bate; 40
- (b) 'n kontrak aan 'n gevolglike maatskappy beskik as deel van 'n beskikking oor 'n besigheid as 'n lopende saak ingevolge 'n amalgamasietransaksie en daardie kontrak 'n verpligting op daardie geamalgameerde maatskappy plaas ten opsigte waarvan 'n toelae ingevolge artikel 24C vir daardie geamalgameerde maatskappy toelaatbaar was ten opsigte van die jaar wat die jaar waarin die kontrak oorgeplaas is, voorafgegaan het of wat vir daardie geamalgameerde maatskappy toelaatbaar sou gewees het vir die jaar van daardie oordrag indien die kontrak nie aldus oorgedra is nie— 50
- (i) word geen toelae aan daardie geamalgameerde maatskappy ten opsigte van die verpligting toegelaat by daardie geamalgameerde maatskappy se inkomste vir die jaar van daardie oordrag ingesluit nie; en
- (ii) word daardie geamalgameerde maatskappy en daardie gevolglike maatskappy geag een en dieselfde persoon te wees vir doeleindes van die vasstelling van die bedrag van enige toelae— 55
- (aa) waarop daardie gevolglike maatskappy ten opsigte van daardie verpligting geregtig mag wees; of
- (bb) wat by die inkomste van daardie gevolglike maatskappy ingesluit moet word ten opsigte van daardie verpligting. 60
- (4) Die bepalinge van subartikels (2) en (3) is van toepassing ten opsigte van 'n beskikking oor 'n bate deur 'n geamalgameerde maatskappy aan 'n gevolglike maatskappy as deel van 'n amalgamasietransaksie 65

amalgamation transaction only to the extent that such asset is so disposed of in exchange for an equity share or shares in that resultant company.

(5) Where the resultant company acquires any asset from the amalgamated company in terms of an amalgamation transaction that was subject to subsection (2) or (3) and that resultant company disposes of that asset within a period of 18 months after so acquiring that asset and—

(a) that asset constitutes a capital asset in the hands of that resultant company—

(i) so much of any capital gain determined in respect of the disposal of that asset as does not exceed the amount that would have been determined had that asset been disposed of at the beginning of that period of 18 months for proceeds equal to the market value of that asset as at that date, may not be taken into account in determining any net capital gain or assessed capital loss of that resultant company but is subject to paragraph 10 of the Eighth Schedule for purpose of determining an amount of taxable capital gain derived from that gain, which taxable capital gain may not be set off against any assessed loss or balance of assessed loss of that resultant company; or

(ii) so much of any capital loss determined in respect of the disposal of that asset as does not exceed the amount that would have been determined had that asset been disposed of at the beginning of that period of 18 months for proceeds equal to the market value of that asset as at that date, must be disregarded in determining the aggregate capital gain or aggregate capital loss of that resultant company for purposes of the Eighth Schedule: Provided that the amount of any capital loss so disregarded may be deducted from the amount of any capital gain determined in respect of the disposal during that year or any subsequent year of assessment of any other asset acquired by that resultant company from that amalgamated company in terms of that amalgamation transaction; or

(b) that asset constitutes—

(i) trading stock in the hands of that resultant company, so much of the amount received or accrued in respect of the disposal of that trading stock as does not exceed the market value of that trading stock as at the beginning of that period of 18 months and so much of the amount taken into account in respect of that trading stock in terms of section 11(a) or 22(1) or (2) as is equal to the amount so taken into account in terms of subsection (2)(b); or

(ii) an allowance asset in the hands of that resultant company, so much of any allowance in respect of that asset that is recovered or recouped by or included in the income of that resultant company as a result of that disposal as does not exceed the amount that would have been recovered had that asset been disposed of at the beginning of that period of 18 months for an amount equal to market value of that asset as at that date,

must be deemed to be attributable to a separate trade carried on by that resultant company, the taxable income or assessed loss from which trade may not be set off against or added to any assessed loss or balance of assessed loss of that resultant company.

(6) Subject to subsection (7), where a person (other than a trust which is not a special trust) disposes of any equity share in an amalgamated company, the market value of which share exceeds—

slegs tot die mate waarin daar oor daardie bate beskik is in ruil vir 'n ekwiteitsaandeel of aandele in daardie gevolglike maatskappy.

(5) Waar die gevolglike maatskappy enige bate van 'n geamalgameerde maatskappy ingevolge 'n algamasietransaksie verkry wat aan subartikel (2) of (3) onderhewig was en daardie gevolglike maatskappy binne 18 maande nadat dit verkry is daaroor beskik en—

(a) daardie bate 'n kapitaalbate in die hande van daardie gevolglike maatskappy uitmaak—

(i) word soveel van die kapitaalwins wat vasgestel is ten opsigte van die beskikking oor daardie bate as wat nie die bedrag, wat vasgestel sou gewees het indien daar aan die begin van die tydperk van 18 maande oor daardie bate beskik is vir 'n opbrengs gelykstaande aan die markwaarde van daardie bate soos op daardie datum, oorskry nie, nie by die vasstelling van enige netto kapitaalwins of vasgestelde kapitaalverlies van daardie gevolglike maatskappy in berekening gebring nie, maar is onderhewig aan paragraaf 10 van die Agtste Bylae vir doeleindes van die vasstelling van die belasbare kapitaalwins afkomstig vanaf daardie wins, welke belasbare kapitaalwins nie verreken mag word teen enige vasgestelde verlies of balans van vasgestelde verlies van daardie gevolglike maatskappy nie; of

(ii) word soveel van die kapitaalverlies wat bereken is ten opsigte van die beskikking oor daardie bate as wat nie die bedrag, wat vasgestel sou gewees het indien daar aan die begin van die tydperk van 18 maande oor daardie bate beskik is vir 'n opbrengs gelykstaande aan die markwaarde van daardie bate soos op daardie datum, oorskry nie, by die vasstelling van die totale kapitaalwins of totale kapitaalverlies van daardie gevolglike maatskappy vir die doeleindes van die Agtste Bylae, buite rekening gelaat: Met dien verstande dat die bedrag van enige kapitaalverlies wat aldus buite rekening gelaat word, afgetrek kan word van die bedrag van enige kapitaalwins wat ten opsigte van die beskikking vasgestel word gedurende daardie jaar of enige daaropvolgende jaar van aanslag van enige ander bate wat deur daardie gevolglike maatskappy vanaf daardie geamalgameerde maatskappy ingevolge 'n amalgamasietransaksie verkry is; of

(b) daardie bate—

(i) handelsvoorraad in die hande van daardie gevolglike maatskappy uitmaak, word soveel van die bedrag wat ontvang is of toegeval het ten opsigte van die beskikking oor daardie handelsvoorraad as wat nie die markwaarde van daardie handelsvoorraad soos aan die begin van die tydperk van 18 maande oorskry nie en soveel van die bedrag wat ingevolge artikel 11(a) of 22(1) of (2) in berekening gebring is ten opsigte van daardie handelsvoorraad as wat gelykstaande is aan die bedrag wat aldus ingevolge subartikel 2(b) in berekening gebring is; of

(ii) 'n afskryfbare bate in die hande van 'n gevolglike maatskappy uitmaak, word soveel van enige toelae met betrekking tot daardie bate wat verhaal of vergoed is of ingesluit is by die inkomste van die gevolglike maatskappy as 'n gevolg van daardie beskikking as wat nie die bedrag wat verhaal sou gewees het as daar oor daardie bate aan die begin van die tydperk van 18 maande vir 'n bedrag gelykstaande aan die markwaarde van daardie bate op daardie tydstip beskik is nie,

geag toeskryfbaar te wees aan 'n aparte bedryf wat deur daardie gevolglike maatskappy beoefen is, waarvan die belasbare inkomste of vasgestelde verlies uit daardie bedryf nie verreken mag word teen enige vasgestelde verlies of balans van vasgestelde verlies van daardie gevolglike maatskappy nie.

(6) Behoudens die bepalinge van subartikel (7), waar 'n persoon (behalwe 'n trust wat nie 'n spesiale trust is nie) oor enige ekwiteitsaandeel in 'n geamalgameerde maatskappy beskik, waarvan die markwaarde van die aandeel—

- (a) in the case of a share held as a capital asset, the base cost of that share on the date of that disposal; or
- (b) in the case of a share held as trading stock, the amount taken into account in respect of that share in terms of section 11(a) or 22(1) or (2),
- in return for an equity share or equity shares in the resultant company and that person—
- (i) acquires that share or those shares in the resultant company as part of an amalgamation transaction that was subject to subsection (2) or (3)—
- (aa) where that share in the amalgamated company is disposed of as a capital asset, as a capital asset or as trading stock; or
- (bb) where that share in the amalgamated company is disposed of as trading stock, as trading stock; and
- (ii) at the close of the day during which that disposal is effected, holds a qualifying interest in that resultant company, that person must be deemed to have—
- (aa) disposed of the equity share in that amalgamated company for an amount equal to the amount contemplated in subparagraphs (a) or (b), as the case may be; and
- (bb) acquired the equity share or shares in that resultant company on the date that such person acquired that equity share in the amalgamated company and for a cost equal to any expenditure in respect of that equity share in the amalgamated company incurred by that person that is allowable in terms of paragraph 20 of the Eighth Schedule or taken into account in terms of section 11(a) or 22(1) or (2), as the case may be, which cost must, where those equity shares are acquired as—
- (A) capital assets, be treated as an expenditure actually incurred and paid by that person in respect of those equity shares for the purposes of paragraph 20 of the Eighth Schedule; and
- (B) trading stock, be treated as the amount to be taken into account by that person in respect of those equity shares for the purposes of section 11(a) or 22(1) or (2).
- (7) Where—
- (a) a person disposes of an equity share in an amalgamated company; and
- (b) that person becomes entitled, in exchange for that share, to any consideration in addition to any equity shares in the resultant company,
- the disposal of that share in the amalgamated company contemplated in paragraph (a) must, to the extent that that person becomes entitled to any equity shares in that resultant company, be deemed to be a disposal in respect of which subsection (6) applies (hereinafter referred to as the qualifying transaction), and to the extent that such person becomes entitled to any other consideration, as contemplated in paragraph (b), be deemed to be a disposal of part of that share in respect of which subsection (6) does not apply (hereinafter referred to as the non-qualifying transaction), in which case the amount to be determined in respect of—
- (i) in the case of a disposal of a share as a capital asset, the base cost of that share at the time of that disposal; or

- (a) in die geval van 'n aandeel wat as 'n kapitaalbate gehou is, die basiskoste van daardie aandeel op die datum van die beskikking oorskry; of
- (b) in die geval waar die aandele as handelsvoorraad gehou is, die bedrag wat ten opsigte van daardie aandeel ingevolge artikel 11(a) of 22(1) of (2) in ag geneem is, oorskry, 5
- in ruil vir enige ekwiteitsaandeel of ekwiteitsaandele in die gevolglike maatskappy en daardie persoon—
- (i) daardie aandeel of aandele in die gevolglike maatskappy as deel van 'n amalgamasietransaksie wat onderhewig aan subartikel (2) of (3) was, verkry— 10
- (aa) waar daar oor daardie aandeel in die geamalgameerde maatskappy as 'n kapitaalbate beskik word, as 'n kapitaalbate of as handelsvoorraad; of
- (bb) waar daar oor daardie aandeel in die geamalgameerde maatskappy as handelsvoorraad beskik is, as handelsvoorraad; en 15
- (ii) aan die einde van die dag waarop daardie beskikking plaasgevind het, 'n kwalifiserende belang in daardie gevolglike maatskappy hou, word daardie persoon geag— 20
- (aa) oor die ekwiteitsaandele in daardie geamalgameerde maatskappy te beskik het vir 'n bedrag gelykstaande aan die bedrag soos in subparagraaf (a) of (b) beoog, na gelang van die geval; en
- (bb) die ekwiteitsaandeel of aandele in daardie gevolglike maatskappy te verkry het op die datum waarop daardie persoon daardie ekwiteitsaandele in die geamalgameerde maatskappy verkry het en teen 'n koste gelykstaande aan enige onkoste wat met betrekking tot daardie ekwiteitsaandeel in die geamalgameerde maatskappy deur daardie persoon aangegaan is en wat ingevolge paragraaf 20 van die Agtste Bylae toelaatbaar is of ingevolge artikel 11(a) of 22(1) of (2) in berekening gebring was, na gelang van die geval, welke koste, waar daardie ekwiteitsaandele verkry is as— 25
- (A) kapitaalbates, geag word onkoste te wees wat werklik deur daardie persoon aangegaan en betaal is ten opsigte van daardie ekwiteitsaandele vir die doeleindes van paragraaf 20 van die Agtste Bylae; en 35
- (B) handelsvoorraad, geag word die bedrag wat deur daardie persoon ten opsigte van daardie ekwiteitsaandele vir die doeleindes van artikel 11(a) of 22(1) of (2) in ag geneem moet word. 40
- (7) Waar—
- (a) 'n persoon oor 'n ekwiteitsaandeel in 'n geamalgameerde maatskappy beskik; en 45
- (b) daardie persoon in ruil vir daardie aandeel op enige vergoeding bykomend tot die ekwiteitsaandele in die gevolglike maatskappy geregtig word,
- moet die beskikking oor daardie bate in die geamalgameerde maatskappy soos in paragraaf (a) beoog, in die mate wat daardie persoon geregtig word op enige ekwiteitsaandele in daardie gevolglike maatskappy, geag word 'n 50
- beskikking te wees ten opsigte waarvan subartikel (6) van toepassing is (hierna die 'kwalifiserende transaksie' genoem) en tot die mate wat daardie persoon op enige ander vergoeding soos in paragraaf (b) beoog geregtig word, geag 'n beskikking oor 'n gedeelte van daardie aandeel te wees ten 55
- opsigte waarvan subartikel (6) nie van toepassing is nie (hierna die 'nie-kwalifiserende transaksie' genoem) in welke geval die bedrag wat vasgestel moet word ten opsigte van—
- (i) in die geval van die beskikking oor die aandeel as 'n kapitaalbate, die basiskoste van daardie aandeel op die tydstip van die beskikking; of 60

- (ii) in the case of the disposal of a share as trading stock, the amount taken into account in respect of that share in terms of section 11(a) or 22(1) or (2),

that must be attributed to the part of the share deemed to have been disposed of in terms of the non-qualifying transaction, must bear the same ratio to the total amount contemplated in subparagraphs (i) or (ii) as the market value of the total consideration not consisting of equity shares in that resultant company bears to the amount of the full consideration in respect of that share.

(8) Where an amalgamated company disposes of any equity shares in a resultant company that were acquired by that amalgamated company in terms of an amalgamation transaction that was subject to subsection (2) or (3), to a shareholder of that amalgamated company as part of that amalgamation transaction, that amalgamated company must disregard that disposal for purposes of determining its taxable income or assessed loss.

(9) Where an amalgamated company disposes of any equity shares in a resultant company that were acquired by that amalgamated company in terms of an amalgamation transaction that was subject to subsection (2) or (3), to a shareholder of that amalgamated company as part of an amalgamation transaction—

- (a) the disposal by that amalgamated company of those shares must be deemed not to be a dividend with respect to that amalgamated company for purposes of section 64B(3); and
- (b) any shares acquired by a company in terms of that disposal must be deemed—
 - (i) not to be a dividend which accrued to that company for the purposes of section 64B(3); and
 - (ii) to be profits which are not of a capital nature for the purposes of section 64B(5)(c);

(10) The amount of any other consideration to which a person becomes entitled as contemplated in subsection (7)(b) must for purposes of section 64B be deemed to be a dividend declared and distributed out of profits of that amalgamated company.

(11) Where a person disposed of any equity share in an amalgamated company in terms of a qualifying transaction contemplated in subsection (7) and that person ceases to hold an interest in the resultant company, as contemplated in the definition of 'qualifying interest' in subsection (1), within a period of 18 months after the disposal in terms of that qualifying transaction (whether or not by way of the disposal of any shares in the resultant company), that person must for purposes of section 22 or the Eighth Schedule be deemed to have—

- (a) disposed of all the equity shares in the resultant company acquired in terms of that qualifying transaction which were not disposed of immediately before that person ceased to hold such an interest, for an amount equal to the market value of those equity shares as at the beginning of that period of 18 months; and
- (b) immediately reacquired all the equity shares not disposed of immediately after that person ceased to hold such an interest at a cost equal to the amount contemplated in paragraph (a):

Provided that the provisions of this subsection do not apply where that person ceases to hold an interest in that resultant company, as contemplated in the definition of 'qualifying interest' in subsection (1), in terms of an intra-group transaction contemplated in section 45, an unbundling transaction contemplated in section 46, or an involuntary disposal as contemplated in paragraph 65 of the Eighth Schedule or as the result of the death of that person.

- (ii) in die geval van beskikking oor 'n aandeel as handelsvoorraad, die bedrag wat ten opsigte van daardie bate ingevolge artikel 11(a) of 22(1) of (2) in ag geneem is, wat toegeskryf moet word aan die gedeelte van die aandeel waaroor geag word beskik te gewees het ingevolge 'n nie-kwalifiserende transaksie, in dieselfde verhouding tot die totale bedrag waarna in subparagraaf (i) of (ii) verwys word, staan as wat die markwaarde van die totale vergoeding wat nie uit ekwiteitsaandeel in daardie gevolglike maatskappy bestaan nie tot die bedrag van die volle vergoeding ten opsigte van daardie aandeel staan. 5 10
- (8) Waar 'n geamalgameerde maatskappy oor enige ekwiteitsaandeel in 'n gevolglike maatskappy, wat deur daardie geamalgameerde maatskappy ingevolge 'n amalgamasietransaksie wat aan subartikel (2) of (3) onderhewig was, aan 'n aandeelhouer van daardie geamalgameerde maatskappy as deel van daardie amalgamasietransaksie beskik, moet daardie geamalgameerde maatskappy daardie beskikking vir doeleindes van die berekening van die belasbare inkomste of vasgestelde verlies van die maatskappy buite rekening laat. 15
- (9) Waar 'n geamalgameerde maatskappy oor enige ekwiteitsaandeel in 'n gevolglike maatskappy beskik, wat deur daardie geamalgameerde maatskappy ingevolge 'n amalgamasietransaksie wat aan subartikel (2) of (3) onderhewig was, aan 'n aandeelhouer van daardie geamalgameerde maatskappy beskik as deel van daardie amalgamasietransaksie— 20
- (a) word die beskikking deur daardie geamalgameerde maatskappy oor daardie aandeel geag nie 'n dividend met betrekking tot daardie geamalgameerde maatskappy by die toepassing van artikel 64B(3) te wees nie; en 25
- (b) word enige aandeel wat deur 'n maatskappy ingevolge daardie beskikking verkry is, geag—
- (i) nie 'n dividend wat aan daardie maatskappy vir die doeleindes van artikel 64B(3) toe te geval het, te wees nie; en 30
- (ii) om winste nie van 'n kapitale aard te wees nie by die toepassing van artikel 64B(5)(c).
- (10) Die bedrag van enige vergoeding waarop 'n persoon geregtig word soos in subartikel 7(b) beoog, word by die toepassing van artikel 64B geag 'n dividend te wees wat verklaar en uitgekeer is uit die winste van die geamalgameerde maatskappy. 35
- (11) Waar 'n persoon oor enige ekwiteitsaandeel in 'n geamalgameerde maatskappy ingevolge 'n kwalifiserende transaksie soos in subartikel (7) bedoel, beskik het en daardie persoon binne 'n tydperk van 18 maande na die datum van die beskikking ingevolge daardie kwalifiserende transaksie (hetsy by wyse van die beskikking oor enige aandeel in die gevolglike maatskappy of nie), ophou om 'n belang in die gevolglike maatskappy te hou soos in die omskrywing van 'kwalifiserende belang' in subartikel (1) bedoel, word daardie verkrygende maatskappy by die toepassing van artikel 22 of die Agtste Bylae geag— 40 45
- (a) oor al die ekwiteitsaandeel wat ingevolge daardie kwalifiserende transaksie in die gevolglike maatskappy verkry is en waarvoor nie onmiddellik voordat daardie persoon opgehou het om sodanige belang te hou beskik is nie, te beskik het vir 'n bedrag gelykstaande aan die markwaarde van daardie ekwiteitsaandeel soos aan die begin van die tydperk van 18 maande; en 50
- (b) al die ekwiteitsaandeel waarvoor nie onmiddellik nadat daardie persoon opgehou het om sodanige belang te hou, beskik is nie, onmiddellik weer te verkry het teen 'n koste gelykstaande aan die bedrag soos in paragraaf (a) beoog; 55
- Met dien verstande dat die bepalinge van hierdie subartikel nie van toepassing is nie waar daardie persoon ingevolge 'n intragroeptransaksie soos in artikel 45 bedoel, 'n ontbondelingstransaksie soos in artikel 46 bedoel of 'n nie-vrywillige beskikking soos in paragraaf 65 van die Agtste Bylae beoog of as gevolg van die dood van daardie persoon, ophou om 'n belang in die gevolglike maatskappy soos in die omskrywing van 'kwalifiserende belang' in subartikel (1) te hou. 60

- (12) The provisions of subsections (2) and (3) do not apply in respect of the disposal of any asset where—
- (a) that asset constitutes a financial instrument, unless—
- (i) that financial instrument constitutes a debt due to that amalgamated company in respect of goods sold or services rendered by that amalgamated company in the course of carrying on any business where the amount of that debt is or was included in the income of that amalgamated company and that debt is transferred as an integral part of a going concern; 5
 - (ii) that financial instrument constitutes an equity share in or a debt owed by a controlled group company in relation to that amalgamated company and that controlled group company is not a domestic financial instrument holding company or foreign financial instrument holding company immediately prior to that disposal; or 10
 - (iii) the total market value, immediately prior to that disposal, of all financial instruments so disposed of (other than financial instruments contemplated in paragraph (i) or (ii)), does not exceed five per cent of the total market value of all assets of any business which is transferred as a going concern; or 15
 - (iv) that financial instrument is being transferred to any resultant company regulated in terms of— 20
 - (aa) the Banks Act, 1990 (Act No.94 of 1990);
 - (bb) the Financial Markets Control Act, 1989 (Act No. 55 of 1989); 25
 - (cc) the Long Term Insurance Act, 1998 (Act No. 52 of 1998);
 - (dd) the Short Term Insurance Act, 1998 (Act No. 53 of 1998);
 - (ee) the Stock Exchanges Control Act, 1985 (Act No. 1 of 1985);or
 - (ff) the Unit Trusts Control Act, 1981 (Act No. 54 of 1981), or its successor the Collective Investment Schemes Control Act, 2002; or 30
- (b) all the receipts and accruals of the resultant company are exempt from tax in terms of section 10(1)(cA), (cH), (cM), (cN), (d), (t) and (tA). 35
- (13) The provisions of subsections (2) and (3) do not apply where the amalgamated company has not, within a period of six months after the date of the amalgamation transaction, taken the steps contemplated in section 41(4) to liquidate, wind up or deregister: Provided that any tax which becomes payable as a result of the application of this subsection shall be recoverable from the resultant company. 40

Intra-group transactions

- 45. (1)** For the purposes of this section 'intra-group transaction' means any transaction—
- (a) in terms of which any asset is disposed of by one company (hereinafter referred to as the 'transferor company') to another company which is a resident (hereinafter referred to as the 'transferee company') and both companies form part of the same group of companies on the date of that transaction; 45
 - (b) as a result of which that transferee company acquires that asset from that transferor company— 50
 - (i) as a capital asset, where that transferor company holds it as a capital asset; or
 - (ii) as trading stock, where that transferor company holds it as trading stock; and
 - (c) in respect of which that transferor company and that transferee company have jointly elected that this section applies. 55

(12) Die bepalings van subartikels (2) en (3) is nie van toepassing ten opsigte van die beskikking oor enige bate nie waar—

(a) daardie bate 'n finansiële instrument uitmaak, behalwe indien—

(i) daardie finansiële instrument 'n skuld verskuldig aan daardie geamalgameerde maatskappy uitmaak ten opsigte van goedere wat verkoop is of dienste wat deur daardie geamalgameerde maatskappy in die loop van die beoefening van 'n bedryf gelewer is waar die bedrag van daardie skuld by die inkomste van daardie geamalgameerde maatskappy ingesluit is of was en daardie skuld as 'n integrale deel van 'n lopende saak oorgedra is; 5

(ii) daardie finansiële instrument 'n ekwiteitsaandeel in of 'n skuld verskuldig deur 'n beheerde groepmaatskappy met betrekking tot daardie geamalgameerde maatskappy uitmaak en daardie beheerde groepmaatskappy nie 'n plaaslike finansiële instrument-houermaatskappy of 'n buitelandse finansiële instrument-houermaatskappy onmiddellik voor daardie beskikking is nie; 10

(iii) die totale markwaarde onmiddellik voor daardie beskikking, van alle finansiële instrumente waaroor aldus beskik is (behalwe finansiële instrumente soos in paragraaf (i) en (ii) beoog), nie vyf persent van die totale markwaarde van alle bates van 'n besigheid wat as 'n lopende saak oorgedra is, oorskry nie; of 15

(iv) daardie finansiële instrument oorgedra word aan enige gevolglike maatskappy wat geregleer word ingevolge—

(aa) die Bankwet, 1990 (Wet No. 94 van 1990);

(bb) die Wet op Beheer van Finansiële Markte, 1989 (Wet No. 55 van 1989); 25

(cc) die Langtermynversekeringswet, 1998 (Wet No. 52 van 1998);

(dd) die Korttermynversekeringswet, 1998 (Wet No. 53 van 1998); 30

(ee) die Wet op Beheer van Aandelebeurse (Wet No. 1 van 1985); of

(ff) die Wet op beheer van Effektetrustskemas, 1981 (Wet No. 54 van 1981) of sy opvolger die Wet op die Beheer van Kollektiewe Beleggingskemas, 2002; of 35

(b) al die ontvangstes en toevallings van die gevolglike maatskappy ingevolge artikel 10(1)(cA), (cH), (cM), (cN), (d), (t) en (tA) van belasting vrygestel is.

(13) Die bepalings van subartikels (2) en (3) is nie van toepassing nie waar die geamalgameerde maatskappy nie binne 'n periode van ses maande na die datum van die amalgamasietransaksie stappe bedoel in artikel 41(4) om te likwideer of te deregistreer gedoen het nie: Met dien verstande dat enige belasting wat as 'n gevolg van die toepassing van hierdie subartikel betaalbaar word van die gevolglike maatskappy verhaalbaar is. 40

Intragroeptransaksies

45. (1) By die toepassing van hierdie artikel beteken intragroep-transaksie enige transaksie—

(a) ingevolge waarvan daar oor enige bate deur een maatskappy (hierna die 'oordraggewende maatskappy' genoem) aan 'n ander maatskappy wat 'n inwoner is (hierna die 'oordragnemende maatskappy' genoem) beskik word en beide maatskappye op die datum van daardie transaksie deel van dieselfde groep van maatskappye vorm; 50

(b) wat tot gevolg het dat die oordragnemende maatskappy daardie bate van die oordraggewende maatskappy verkry—

(i) as 'n kapitaalbate, waar daardie oordraggewende maatskappy dit as 'n kapitaalbate hou; of 55

(ii) as handelsvoorraad, waar daardie oordraggewende maatskappy dit as handelsvoorraad hou; en

(c) ten opsigte waarvan daardie oordraggewende maatskappy en daardie oordragnemende maatskappy gesamentlik besluit het dat hierdie artikel van toepassing is. 60

- (2) Where a transferor company disposes of—
- (a) a capital asset in terms of an intra-group transaction to a transferee company which acquires it as a capital asset—
- (i) the transferor company must be deemed to have disposed of that asset for an amount equal to the base cost of that asset on the date of that disposal; and 5
- (ii) that transferor company and that transferee company must, for purposes of determining any capital gain or capital loss in respect of a disposal of that asset by that transferee company, be deemed to be one and the same person with respect to— 10
- (aa) the date of acquisition of that asset by that transferor company and the amount and date of incurral by that transferor company of any expenditure in respect of that asset allowable in terms of paragraph 20 of the Eighth Schedule; and 15
- (bb) any valuation of that asset effected by that transferor company as contemplated in paragraph 29(4) of the Eighth Schedule;
- (b) an asset held by it as trading stock in terms of an intra-group transaction to a transferee company which acquires it as trading stock— 20
- (i) that transferor company must be deemed to have disposed of that asset for an amount equal to the amount taken into account by that transferor company in respect of that asset in terms of section 11(a) or 22(1) or (2); and 25
- (ii) that transferor company and that transferee company must, for purposes of determining any taxable income derived by that transferee company from a trade carried on by it, be deemed to be one and the same person with respect to the date of acquisition of that asset by that transferor company and the amount and date of incurral by that transferor company of any cost or expenditure incurred in respect of that asset as contemplated in section 11(a) or 22(1) or (2). 30
- (3) Where a transferor company transfers—
- (a) an asset that constitutes an allowance asset in that transferor company's hands to a transferee company in terms of an intra-group transaction and that transferee company acquires that asset as an allowance asset— 35
- (i) no allowance allowed to that transferor company in respect of that asset must be recovered or recouped by that transferor company or included in that transferor company's income for the year of that transfer; and 40
- (ii) that transferor company and that transferee company must be deemed to be one and the same person for purposes of determining the amount of any allowance— 45
- (aa) to which that transferee company may be entitled in respect of that asset; or
- (bb) that is to be recovered or recouped by or included in the income of that transferee company in respect of that asset;
- (b) a contract to a transferee company as part of a disposal of a business as a going concern in terms of an intra-group transaction and that contract imposes an obligation on that transferor company in respect of which an allowance in terms of section 24C was allowable to that transferor company for the year preceding that in which that contract is 50

- (2) Waar 'n oordraggewende maatskappy beskik oor—
- (a) 'n kapitaalbate ingevolge 'n intragroeptransaksie aan 'n oordrag-nemende maatskappy waar dit as 'n kapitaalbate verkry word—
- (i) word die oordraggewende maatskappy geag oor daardie bate te beskik het vir 'n bedrag gelykstaande aan die basiskoste van daardie bate op die datum van die beskikking; en 5
- (ii) word daardie oordraggewende maatskappy en daardie oordragnemende maatskappy, vir doeleindes van die vasstelling van enige kapitaalwins of kapitaalverlies met betrekking tot die beskikking oor daardie bate deur daardie oordragnemende maatskappy, geag een en dieselfde persoon te wees met betrekking tot— 10
- (aa) die datum van verkryging van daardie bate deur daardie oordraggewende maatskappy en die bedrag en datum waarop daardie persoon enige toelaatbare onkoste ingevolge paragraaf 20 van die Agtste Bylae aangegaan het; en 15
- (bb) enige waardasie van daardie bate deur daardie oordraggewende maatskappy uitgevoer soos in paragraaf 29(4) van die Agtste Bylae bedoel; 20
- (b) 'n bate deur daardie maatskappy as handelsvoorraad gehou ingevolge 'n intragroeptransaksie aan 'n oordragnemende maatskappy wat dit as handelsvoorraad verkry—
- (i) word daardie oordraggewende maatskappy geag oor daardie bate te beskik het vir 'n bedrag gelykstaande aan die bedrag wat deur die oordraggewende maatskappy ten opsigte van daardie bate ingevolge artikel 11(a) of 22(1) of (2) in berekening gebring is; en 25
- (ii) word daardie oordraggewende maatskappy en daardie oordragnemende maatskappy, vir doeleindes van die vasstelling van die belasbare inkomste wat deur die oordragnemende maatskappy uit 'n bedryf beoefen voortgebring is, geag een en dieselfde persoon te wees met betrekking tot die datum van die verkryging van daardie bate deur daardie oordraggewende maatskappy en die bedrag en datum waarop daardie oordraggewende maatskappy enige onkoste of uitgawe soos in artikel 11(a) of 22(1) of (2) bedoel met betrekking tot daardie bate, aangegaan het. 30 35
- (3) Waar 'n oordraggewende maatskappy—
- (a) 'n bate wat 'n afskryfbare bate in daardie oordraggewende maatskappy se hande uitmaak aan 'n oordragnemende maatskappy ingevolge 'n intragroeptransaksie oordra en daardie oordragnemende maatskappy daardie bate as 'n afskryfbare bate verkry— 40
- (i) word geen toelae wat ten opsigte van daardie bate aan daardie oordraggewende maatskappy toegestaan is, verhaal of vergoed deur daardie oordraggewende maatskappy of by daardie oordraggewende maatskappy se inkomste vir die jaar waarin die oordrag plaasgevind het, ingesluit nie; 45
- (ii) word daardie oordraggewende maatskappy en daardie oordragnemende maatskappy geag een en dieselfde persoon te wees vir doeleindes van die berekening van die toelae— 50
- (aa) waarop daardie oordragnemende maatskappy geregtig mag wees ten opsigte van daardie bate; of
- (bb) wat verhaal of vergoed of ingesluit moet word by die inkomste van die oordragnemende maatskappy ten opsigte van daardie bate; 55
- (b) 'n kontrak aan 'n oordragnemende maatskappy as deel van 'n beskikking oor 'n besigheid as 'n lopende saak ingevolge 'n intragroeptransaksie oordra en daardie kontrak 'n verpligting op daardie oordraggewende maatskappy plaas ten opsigte waarvan 'n toelae ingevolge artikel 24C vir daardie oordraggewende maatskappy toelaatbaar was ten opsigte van die jaar wat die jaar waarin die kontrak oorgeplaas is, voorafgegaan het of wat vir daardie oordraggewende 60

transferred or would have been allowable to that transferor company for the year of that transfer had that contract not been so transferred—

- (i) no allowance allowed to that transferor company in respect of that obligation must be included in that transferor company's income for the year of that transfer; and
- (ii) that transferor company and that transferee company must be deemed to be one and the same person for purposes of determining the amount of any allowance—
 - (aa) to which that transferee company may be entitled in respect of that obligation; or
 - (bb) that is to be included in the income of that transferee company in respect of that obligation.

(4) Where an asset is disposed of by a transferor company to a transferee company in terms of an intra-group transaction and the transferor company and the transferee company at any time before the disposal by the transferee company of that asset, cease to form part of any group of companies in relation to each other, that transferee company must be deemed to have disposed of that asset for an amount equal to the market value of that asset on the date on which the disposal in terms of that intra-group transaction was effected and as having immediately reacquired that asset for a cost equal to that market value: Provided that where the transferor company or transferee company is liquidated or deregistered as contemplated in section 47, the holding company and the liquidating company, as contemplated in that section, must be deemed to be one and the same company for purposes of this subsection.

(5) Where a transferee company disposes of an asset within a period of 18 months after acquiring that asset in terms of an intra-group transaction and—

- (a) that asset constitutes a capital asset in the hands of that transferee company—
 - (i) so much of any a capital gain determined in respect of the disposal of that asset as does not exceed the amount that would have been determined had that asset been disposed of at the beginning of that period of 18 months for proceeds equal to the market value of that asset as at that date, may not be taken into account in determining any net capital gain or assessed capital loss of that transferee company but is subject to paragraph 10 of the Eighth Schedule for purpose of determining an amount of taxable capital gain derived from that gain, which taxable capital gain may not be set off against any assessed loss or balance of assessed loss of that transferee company; or
 - (ii) so much of any capital loss determined in respect of the disposal of that asset as does not exceed that amount that would have been determined had that asset been disposed of at the beginning of that period of 18 months for proceeds equal to the market value of that asset as at that date, must be disregarded in determining the aggregate capital gain or aggregate capital loss of that transferee company for purposes of the Eighth Schedule: Provided that the amount of any capital loss so disregarded may be deducted from the amount of any capital gain determined in respect of the disposal during that year or any subsequent year of assessment of any other asset acquired by that transferee company from the transferor company in terms of an intra-group transaction; or
- (b) that asset constitutes—

maatskappy toelaatbaar sou gewees het vir die jaar van daardie oordrag indien die kontrak nie aldus oorgedra was nie—

- (i) word geen toelae wat aan daardie oordraggewende maatskappy ten opsigte van die verpligting toegelaat is by daardie oordraggewende maatskappy se inkomste vir die jaar van daardie oordrag ingesluit nie; en
- (ii) word daardie oordraggewende maatskappy en daardie oordragnemende maatskappy geag een en dieselfde persoon te wees vir doeleindes van die vasstelling van die bedrag van enige toelae—
 - (aa) waarop daardie oordragnemende maatskappy geregtig mag wees ten opsigte van daardie verpligting; of
 - (bb) wat in die inkomste van daardie oordragnemende maatskappy ten opsigte van daardie verpligting ingesluit moet word.

(4) Waar daar oor 'n bate deur 'n oordraggewende maatskappy aan 'n oordragnemende maatskappy ingevolge 'n intragroeptransaksie beskik word, en daardie oordraggewende maatskappy en die oordragnemende maatskappy op enige tydstop voor die beskikking deur die oordragnemende maatskappy oor daardie bate ophou om deel van enige groep van maatskappye met betrekking tot mekaar te vorm, word daardie oordragnemende maatskappy geag oor daardie bate te beskik het vir 'n bedrag gelykstaande aan die markwaarde van daardie bate op die datum waarop die beskikking ingevolge daardie intragroeptransaksie uitgevoer is en daardie bate onmiddellik weer te verkry het teen 'n koste gelykstaande aan daardie markwaarde: Met dien verstande dat waar die oordraggewende maatskappy of oordragnemende maatskappy gelikwedeer of gederegistreer word, soos in artikel 47 beoog, die houermaatskappy en die likwiderende maatskappy soos in daardie artikel beoog, geag word een en dieselfde persoon te wees by die toepassing van hierdie subartikel.

(5) Waar die oordragnemende maatskappy oor enige bate wat binne 'n tydperk van 18 maande sedert daardie bate ingevolge 'n intragroeptransaksie verkry is, beskik en—

- (a) daardie bate 'n kapitaalbate in die hande van daardie oordragnemende maatskappy uitmaak—
 - (i) word soveel van die kapitaalwins vasgestel ten opsigte van die beskikking oor daardie bate as wat nie die bedrag wat vasgestel sou gewees het indien daar aan die begin van die tydperk van 18 maande oor daardie bate beskik is vir 'n opbrengs gelykstaande aan die markwaarde van daardie bate soos op daardie datum, oorskry nie, nie by netto kapitaalwins of vasgestelde kapitaalverlies van daardie oordragnemende maatskappy in berekening gebring nie, maar is onderhewig aan paragraaf 10 van die Agtste Bylae vir doeleindes van die vasstelling van die belasbare kapitaalwins verkry uit daardie wins, welke kapitaalwins nie verreken mag word teen enige vasgestelde verlies of balans van vasgestelde verlies van daardie oordragnemende maatskappy nie; of
 - (ii) word soveel van die kapitaalverlies vasgestel ten opsigte van die beskikking oor daardie bate as wat nie die bedrag wat vasgestel sou gewees het indien daar aan die begin van daardie tydperk van 18 maande oor daardie bate beskik is vir 'n opbrengs gelykstaande aan die markwaarde van daardie bate soos op daardie datum, oorskry nie, by die vasstelling van die totale kapitaalwins of totale kapitaalverlies van daardie oordragnemende maatskappy by die toepassing van die Agtste Bylae buite rekening gelaat: Met dien verstande dat die bedrag van enige kapitaalverlies wat aldus buite rekening gelaat word, afgetrek kan word van die bedrag van enige kapitaalwins wat vasgestel is ten opsigte van die beskikking gedurende daardie jaar of enige daaropvolgende jaar van aanslag van enige ander bate wat deur daardie oordragnemende maatskappy vanaf daardie oordraggewende maatskappy ingevolge 'n intragroeptransaksie verkry is; of
- (b) daardie bate—

- (i) trading stock in the hands of that transferee company, so much of the amount received or accrued in respect of the disposal of that trading stock as does not exceed the market value of that trading stock as at the beginning of that period of 18 months and so much of the amount taken into account in respect of that trading stock in terms of section 11(a) or 22(1) or (2) as is equal to the amount so taken into account in terms of subsection (2)(b); or 5
- (ii) an allowance asset in the hands of that transferee company, so much of any allowance in respect of that asset that is recovered or recouped by or included in the income of that transferee company as a result of that disposal as does not exceed the amount that would have been recovered had that asset been disposed of at the beginning of that period of 18 months for an amount equal to the market value of that asset as at that date, 10
- must be deemed to be attributable to a separate trade carried on by that transferee company, the taxable income or assessed loss from which trade may not be set off against any assessed loss or balance of assessed loss of that transferee company. 15
- (6) No election may be made in terms of paragraph (c) of the definition of 'intra-group transaction' in subsection (1) in respect of the disposal of any asset where— 20
- (a) that asset constitutes a financial instrument, unless—
- (i) that financial instrument constitutes a debt due to that transferor company in respect of goods sold or services rendered by that transferor company in the course of carrying on any business where the amount of that debt is or was included in the income of that transferor company and that debt is transferred as an integral part of a going concern; 25
- (ii) the total market value, immediately prior to that disposal, of all financial instruments so transferred (other than financial instruments contemplated in paragraph (i)), does not exceed five per cent of the total market value of all assets of any business which is transferred as a going concern; or 30
- (iii) that financial instrument is being transferred to any transferee company regulated in terms of— 35
- (aa) the Banks Act, 1990 (Act No. 94 of 1990);
- (bb) the Financial Markets Control Act, 1989 (Act No. 55 of 1989);
- (cc) the Long Term Insurance Act, 1998 (Act No. 52 of 1998);
- (dd) the Short Term Insurance Act, 1998 (Act No. 53 of 1998); 40
- (ee) the Stock Exchanges Control Act, 1985 (Act No. 1 of 1985); or
- (ff) the Unit Trusts Control Act, 1981 (Act No. 54 of 1981), or its successor the Collective Investment Schemes Control Act, 2002; or 45
- (iv) that financial instrument constitutes an equity share in a controlled group company in relation to that transferor company and that controlled group company is not a domestic financial instrument holding company or foreign financial instrument holding company immediately prior to that disposal; or 50
- (b) all the receipts and accruals of the transferee company are exempt from tax in terms of section 10(1)(cA), (cH), (cM), (cN), (d), (t) and (tA).

- (i) handelsvoorraad in die hande van daardie oordragnemende maatskappy uitmaak, word soveel van die bedrag wat ontvang is of toegeval het ten opsigte van die beskikking oor daardie handelsvoorraad as wat nie die markwaarde van daardie handelsvoorraad soos aan die begin van die tydperk van 18 maande oorskry nie en soveel van die bedrag wat ingevolge artikel 11(a) of 22(1) of (2) in berekening gebring is ten opsigte van daardie handelsvoorraad as wat gelykstaande is aan die bedrag wat aldus ingevolge subartikel 2(b) in berekening gebring is; of 5
- (ii) 'n afskryfbare bate in die hande van 'n oordragnemende maatskappy, word soveel van enige toelae met betrekking tot daardie bate wat verhaal of vergoed is of ingesluit is by die inkomste van die oordragnemende maatskappy as 'n gevolg van daardie beskikking as wat nie die bedrag wat verhaal sou gewees het as daar oor daardie bate aan die begin van die tydperk van 18 maande vir 'n bedrag gelykstaande aan die markwaarde van daardie bate op daardie tydstip beskik is nie, 10
- geag toeskryfbaar te wees aan 'n aparte bedryf wat deur daardie oordragnemende maatskappy beoefen is, waarvan die belasbare inkomste of vasgestelde verlies uit sodanige bedryf nie verreken mag word teen enige vasgestelde verlies of balans van vasgestelde verlies van daardie oordragnemende maatskappy nie. 15
- (6) Geen keuse mag ingevolge paragraaf (c) van die omskrywing van 'intragroeptransaksie' in subartikel (1) uitgeoefen word nie ten opsigte van die beskikking oor enige bate waar— 25
- (a) daardie bate 'n finansiële instrument verteenwoordig, behalwe waar—
- (i) daardie finansiële instrument 'n skuld betaalbaar aan daardie oordraggewende maatskappy uitmaak ten opsigte van goedere verkoop of dienste wat deur daardie oordraggewende maatskappy gelewer is in die loop van die beoefening van 'n bedryf waar die bedrag van daardie skuld by die inkomste van daardie oordraggewende maatskappy ingesluit is of was en daardie skuld as 'n integrale deel van 'n lopende saak oorgedra word; 30
- (ii) die totale markwaarde onmiddellik voor daardie beskikking van alle finansiële instrumente waaroor aldus beskik is (behalwe finansiële instrumente soos in paragraaf (i) bedoel), nie vyf persent van die totale markwaarde van alle bates van enige besigheid wat as 'n lopende saak oorgedra is, oorskry nie; of 35
- (iii) daardie finansiële instrument oorgedra word aan enige oordragnemende maatskappy wat gereguleer word ingevolge— 40
- (aa) die Bankwet, 1990 (Wet No. 94 van 1990);
- (bb) die Wet op Beheer van Finansiële Markte, 1989 (Wet No. 55 van 1989); 45
- (cc) die Langtermynversekeringswet, 1998 (Wet No. 52 van 1998);
- (dd) die Korttermynversekeringswet, 1998 (Wet No. 53 van 1998);
- (ee) die Wet op Beheer van Aandelebeurse (Wet No. 1 van 1985); 50
- (ff) die Wet op beheer van Effektetrustskemas, 1981 (Wet No. 54 van 1981) of sy opvolger die Wet op die Beheer van Kollektiewe Beleggingskemas, 2002; of
- (gg) daardie finansiële instrument 'n ekwiteitsaandeel in 'n beheerde groepmaatskappy met betrekking tot daardie oordraggewende maatskappy uitmaak en daardie beheerde groepmaatskappy onmiddellik voor daardie beskikking nie 'n plaaslike finansiële instrumenthouermaatskappy of 'n buitelandse finansiële instrumenthouermaatskappy was nie; of 55
- (b) al die ontvangstes en toevallings van die oordragnemende maatskappy ingevolge artikel 10(1)(cA), (cH), (cM), (cN), (d), (t) en (tA) van belasting vrygestel is. 60

Unbundling transactions

46. (1) For purposes of this section, 'unbundling transaction' means any transaction in terms of which equity shares of a company which is a resident (hereinafter referred to as the 'unbundled company')—

- (a) are disposed of by a company (hereinafter referred to as the 'unbundling company') which, if listed, is a resident; 5
 - (b) to the extent those shares (hereinafter referred to as 'distributable shares') so disposed of were acquired by that unbundling company—
 - (i) at least 18 months immediately prior to that disposal, and for purposes of this subsection, that unbundling company must be deemed to have acquired— 10
 - (aa) any shares acquired in terms of a substitution, as contemplated in paragraph 78(2) of the Eighth Schedule, at the same time as the previously held shares exchanged therefor;
 - (bb) any shares previously held by one or more other companies which all formed part of the same group of companies as that unbundling company during that 18 month period at the same time as those shares were acquired by any of those companies; 15
 - (cc) any shares acquired in terms of any transaction contemplated in this Part or any transaction that would have constituted a transaction contemplated— 20
 - (i) in section 42, 45 or 47 had an election been made for the provisions of that section to apply; or
 - (ii) in section 42, 43 or 44 had the market value of the asset transferred in exchange for those shares exceeded the base cost or the amount taken into account in respect of that asset as contemplated in section 42(1)(a), 43(1)(a) or 44(6); or 25
 - (ii) in exchange for an issue of equity shares by that unbundling company; and 30
 - (c) at least 18 months immediately prior to that disposal all the distributable shares—
 - (i) where that unbundled company is a listed company, constitute— 35
 - (aa) more than 25 per cent of the equity shares of that unbundled company in the case where no other shareholder holds an equal or greater amount of equity shares in that unbundled company; or
 - (bb) in any other case, at least 35 per cent of the equity shares of that unbundled company; or 40
 - (ii) where that unbundled company is an unlisted company, constitute more than 50 per cent of the equity shares of that unbundled company; and
- all the equity shares contemplated in subparagraph (a) are disposed of—
- (i) where that unbundling company is a listed company, to the shareholders of that unbundling company as long as the shares of the unbundled company are listed within 12 months after that disposal; or 45
 - (ii) where that unbundling company is an unlisted company, to any shareholder of that unbundling company that forms part of the same group of companies as that unbundling company, 50

Ontbondelingstransaksies

46. (1) By die toepassing van hierdie artikel beteken 'ontbondelingstransaksie' 'n transaksie ingevolge waarvan ekwiteitsaandeel van 'n maatskappy wat 'n inwoner is (hierna die 'ontbondelde maatskappy' genoem)— 5
- (a) deur 'n maatskappy (hierna die 'ontbondelingsmaatskappy' genoem) en wat in die geval van 'n genoteerde maatskappy 'n inwoner is, oor beskik word; 5
- (b) in die mate wat daardie aandeel (hierna die 'uitkeerbare aandeel' genoem) waaroor deur daardie ontbondelingsmaatskappy beskik word, verkry is— 10
- (i) minstens 18 maande onmiddellik voor daardie beskikking, en by die toepassing van hierdie artikel, word daardie ontbondelingsmaatskappy geag—
- (aa) enige aandeel wat ingevolge 'n vervanging verkry is, soos in paragraaf 78(2) van die Agtste Bylae bedoel, te verkry het op dieselfde tyd as die aandeel voorheen gehou wat daarvoor verruil is; 15
- (bb) enige aandeel voorheen gehou deur een of meer maatskappye waarvan almal deel van dieselfde groep van maatskappye as daardie ontbondelingsmaatskappy vorm, wat gehou is gedurende daardie tydperk van 18 maande, op dieselfde tydstip as daardie aandeel deur enige van daardie maatskappye verkry is; 20
- (cc) enige aandeel te verkry het, wat verkry is ingevolge enige transaksie in hierdie Deel bedoel of enige transaksie wat 'n transaksie sou uitmaak soos— 25
- (i) in artikel 42, 45 of 47 bedoel, indien 'n keuse uitgeoefen was dat die bepalings van daardie artikel van toepassing is; of 30
- (ii) in artikel 42, 43 of 44 bedoel, indien die markwaarde van die bate in ruil vir daardie aandeel oorgedra, die basiskoste of die bedrag wat ten opsigte van daardie bate in berekening gebring is soos in artikel 42(1)(a), 43(1)(a) of 44(6) bedoel, te bowe gegaan het; of 35
- (ii) in ruil vir ekwiteitsaandeel deur daardie ontbondelingsmaatskappy uitgereik; en
- (c) minstens 18 maande onmiddellik voor daardie beskikking al die uitkeerbare aandeel— 40
- (i) waar daardie ontbondelde maatskappy 'n genoteerde maatskappy is—
- (aa) meer as 25 persent van die ekwiteitsaandeel van daardie ontbondelde maatskappy uitmaak in die geval waar geen ander aandeelhouer 'n gelyke of groter bedrag van die ekwiteitsaandeel in daardie ontbondelde maatskappy hou nie; of 45
- (bb) in enige ander geval, minstens 35 persent van die ekwiteitsaandeel van daardie ontbondelde maatskappy uitmaak; of 50
- (ii) waar daardie ontbondelde maatskappy 'n genoteerde maatskappy is, meer as 50 persent van die ekwiteitsaandeel van daardie ontbondelde maatskappy uitmaak; en
- al die ekwiteitsaandeel in subparagraaf (a) oor beskik word—
- (i) waar daardie ontbondelingsmaatskappy 'n genoteerde maatskappy is, aan die aandeelhouers van daardie ontbondelingsmaatskappy op voorwaarde dat die aandeel van die ontbondelde maatskappy binne 12 maande na daardie beskikking genoteer word; of 55
- (ii) waar daardie ontbondelingsmaatskappy 'n ongenoteerde maatskappy is, aan enige aandeelhouer van daardie 60

in accordance with the effective interest of those shareholders or that shareholder, as the case may be, in the shares of that unbundling company.

(2) Where an unbundling company disposes of any distributable shares to a shareholder in terms of an unbundling transaction that unbundling company must be deemed to have disposed of those shares for proceeds equal to—

(a) in the case of shares held as capital assets, the base cost of those shares on the date of that disposal; or

(b) in the case of shares held as trading stock, the amount taken into account in respect of those shares in terms of section 11(a) or 22(1) or (2).

(3) Where a shareholder acquires distributable shares in terms of an unbundling transaction—

(a) that shareholder must be deemed to have acquired the equity shares held in the unbundling company (hereinafter referred to as the 'previously held shares') and those distributable shares at a cost equal to—

(i) where the previously held shares were held by that shareholder as trading stock, the amount taken into account by that person in respect of the previously held shares as contemplated in section 11(a) or 22(1) or (2); or

(ii) where the previously held shares were held by that shareholder as capital assets, the expenditure in respect of those shares allowable in terms of paragraph 20 of the Eighth Schedule, or the amount of the market value of those shares determined by that shareholder as contemplated in paragraph 29(4) of the Eighth Schedule; and

(b) that shareholder must determine the portion of the cost contemplated in paragraph (a) that must be attributed to those distributable shares, by determining an amount which bears to that cost the same ratio that the market value of those distributable shares, as at the close of the day after the date of that disposal, bears to the sum of the market values, as at the close of that day, of the previously held shares and of those distributable shares, which amount must, where the shareholder held the previously held shares as—

(i) capital assets and acquired those distributable shares as capital assets, be treated as an expenditure actually incurred and paid by that shareholder in respect of those distributable shares for the purposes of paragraph 20 of the Eighth Schedule; or

(ii) trading stock and acquired those distributable shares as trading stock, be treated as the amount to be taken into account by that shareholder in respect of those distributable shares for the purposes of section 11(a) or 22(1) or (2); and

(c) that shareholder must determine the portion of the cost contemplated in paragraph (a) that must be attributed, after that unbundling transaction, to the previously held shares, by reducing that cost by the amount determined in terms of paragraph (b);

(d) that shareholder's previously held shares and those distributable shares must be deemed to be the same shares in respect of the date of acquisition of those shares and the date of incurral of any expenditure in respect of those shares.

(4) Where distributable shares are disposed of by an unbundling company to a shareholder in terms of an unbundling transaction and that shareholder held the previously held shares in that unbundling company as a result of the exercise, by that shareholder, of a right contemplated in

- ontbondelingsmaatskappy wat deel van dieselfde groep van maatskappye as daardie ontbondelingsmaatskappy vorm, ooreenkomstig die effektiewe belang van daardie aandeelhouders of daardie aandeelhouer, na gelang van die geval, in die aandele van daardie ontbondelingsmaatskappy. 5
- (2) Waar 'n ontbondelingsmaatskappy oor enige uitkeerbare aandele aan 'n aandeelhouer ingevolge 'n ontbondelingstransaksie beskik, word daardie ontbondelingsmaatskappy geag oor daardie aandele te beskik het vir opbrengs gelyk aan—
- (a) in die geval van aandele as kapitaalbates gehou, die basiskoste van daardie aandele op die datum van daardie beskikking; of 10
- (b) in die geval van aandele as handelsvoorraad gehou, die bedrag wat ingevolge artikel 11(a), of 22(1) of (2) ten opsigte van daardie aandele in berekening gebring is.
- (3) Waar 'n aandeelhouer uitkeerbare aandele ingevolge 'n ontbondelingstransaksie verkry— 15
- (a) word daardie aandeelhouer geag die ekwiteitsaandele in die ontbondelingsmaatskappy gehou (hierna die 'aandele voorheen gehou' genoem) en daardie uitkeerbare aandele te verkry het vir 'n koste gelyk aan— 20
- (i) waar die aandele voorheen gehou deur daardie aandeelhouer as handelsvoorraad gehou is, die bedrag wat deur daardie persoon ten opsigte van die aandele voorheen gehou in berekening gebring is, soos in artikel 11(a), 22(1) of (2) bedoel; of
- (ii) waar die aandele voorheen gehou deur daardie aandeelhouer as kapitaalbates gehou is, die onkoste ten opsigte van daardie aandele wat ingevolge paragraaf 20 van die Agtste Bylae toelaatbaar is, of die bedrag van die markwaarde van daardie aandele deur daardie aandeelhouer bepaal soos in paragraaf 29(4) van die Agtste Bylae bedoel; en 25 30
- (b) moet daardie aandeelhouer die gedeelte van die koste in paragraaf (a) bedoel wat toegeskryf moet word aan daardie uitkeerbare aandele bepaal, deur 'n bedrag vas te stel wat tot daardie koste in dieselfde verhouding staan as wat die markwaarde van daardie uitkeerbare aandele aan die einde van die dag na die datum van daardie beskikking, tot die som van die markwaardes van die aandele voorheen gehou en die uitkeerbare aandele aan die einde van daardie dag staan, welke bedrag, waar die aandeelhouer die aandele voorheen as— 35
- (i) kapitaalbates gehou het en daardie uitkeerbare aandele as kapitaalbates verkry is, geag word onkoste te wees wat werklik deur daardie aandeelhouer aangegaan en betaal is ten opsigte van daardie uitkeerbare aandele by die toepassing van paragraaf 20 van die Agtste Bylae; of 40
- (ii) handelsvoorraad gehou het en daardie uitkeerbare aandele as handelsvoorraad verkry is geag word die bedrag te wees wat deur daardie aandeelhouer in berekening gebring moet word ten opsigte van daardie uitkeerbare aandele by die toepassing van artikel 11(a), 22(1) of (2); en 45
- (c) moet daardie aandeelhouer die gedeelte van die koste ingevolge paragraaf (a) beoog wat na daardie ontbondelingstransaksie aan die aandele voorheen gehou, toegeskryf word, bepaal deur daardie koste met 'n bedrag ingevolge paragraaf (b) bepaal, te verminder; 50
- (d) moet daardie aandeelhouer se aandele voorheen gehou en daardie uitkeerbare aandele geag word dieselfde aandele te wees met betrekking tot die datum van verkryging van daardie aandele en die datum waarop enige onkoste ten opsigte van daardie aandele aangegaan is. 55
- (4) Waar 'n ontbondelingsmaatskappy oor uitkeerbare aandele aan 'n aandeelhouer ingevolge 'n ontbondelingstransaksie beskik en daardie aandeelhouer die aandele voorheen gehou in daardie ontbondelingsmaatskappy gehou het as weens die uitoefening deur daardie aandeelhouer van 'n reg in artikel 8A bedoel, word 'n gedeelte van enige 60

section 8A, a portion of any gain made by that shareholder in the exercise of that right to acquire those previously held shares must be included in the income of that shareholder—

- (a) in the year of assessment during which that shareholder becomes entitled to dispose of those distributable shares, which portion shall be an amount which bears to such gain the same ratio as that contemplated in paragraph (3)(b); and 5
- (b) in the year of assessment during which that person becomes entitled to dispose of the previously held shares, which portion shall be calculated by reducing such gain by the amount which has been determined or is to be determined in terms of paragraph (a). 10
- (5) Where distributable shares are disposed of by an unbundling company to a shareholder in terms of an unbundling transaction—
- (a) the disposal by that unbundling company of the distributable shares must be deemed not to be a dividend with respect to that unbundling company for the purposes of section 64B(3); and 15
- (b) any distributable shares acquired by a company in terms of that disposal must be deemed—
 - (i) not to be a dividend which accrued to that company for the purposes of section 64B(3); and 20
 - (ii) to be profits which are not of a capital nature for the purposes of section 64B(5)(c).
- (6) Any distributable shares disposed of by an unbundling company in terms of an unbundling transaction, must be deemed to have been disposed of first from the share premium account of that unbundling company. 25
- (7) The provisions of this section do not apply—
- (a) where the unbundled company is a domestic financial instrument holding company immediately prior to that disposal; or
- (b) in respect of any disposal of distributable shares in terms of an unbundling transaction to a shareholder who is not a resident, where that shareholder acquires more than five per cent of those distributable shares. 30

Transactions relating to liquidation, winding-up and deregistration

- 47.** (1) For the purposes of this section 'liquidation distribution' means any transaction— 35
- (a) in terms of which any company (hereinafter referred to as the 'liquidating company') disposes of all its assets in anticipation of or in the course of the liquidation, winding up or deregistration of that company to another company (hereinafter referred to as the 'holding company') which is a resident and which holds, on the date of that disposal, at least 75 per cent of the equity shares of that liquidating company; and 40
 - (b) in respect of which that liquidating company and that holding company have jointly elected that this section applies in respect of all the assets so disposed of by that liquidating company to that holding company. 45
 - (2) Where a liquidating company disposes of—
 - (a) a capital asset in terms of a liquidation distribution to its holding company which acquires it as a capital asset— 50
 - (i) that liquidating company must be deemed to have disposed of that asset for an amount equal to the base cost of that asset on the date of the disposal thereof; and
 - (ii) that liquidating company and that holding company must, for purposes of determining any capital gain or capital loss in respect of a disposal of that asset by that holding company, be deemed to be one and the same person with respect to— 55
 - (aa) the date of acquisition of that asset by that liquidating company and the amount and date of incurral by that

wins wat deur daardie aandeelhouer gemaak word by die uitoefening van daardie reg om daardie aandele voorheen gehou te verkry, by die inkomste van daardie aandeelhouer ingesluit—

- (a) in die jaar van aanslag waarin daardie aandeelhouer geregtig word om oor daardie uitkeerbare aandele te beskik, welke gedeelte 'n bedrag uitmaak wat tot die wins in dieselfde verhouding staan as dié in paragraaf (3)(b) bedoel; en 5
- (b) in die jaar van aanslag waarin daardie persoon geregtig word om oor daardie aandele voorheen gehou te beskik, welke gedeelte bepaal word deur daardie wins te verminder deur die bedrag wat ingevolge paragraaf (a) bepaal is of word. 10
- (5) Waar 'n ontbondelingsmaatskappy oor uitkeerbare aandele aan 'n aandeelhouer ingevolge 'n ontbondelingstransaksie beskik—
- (a) word die beskikking deur daardie ontbondelingsmaatskappy van die uitkeerbare aandele by die toepassing van artikel 64B(3) geag nie 'n dividend te wees nie ten opsigte van daardie ontbondelingsmaatskappy; en 15
- (b) word enige uitkeerbare aandele deur 'n maatskappy ingevolge daardie beskikking verkry, geag—
 - (i) by die toepassing van artikel 64B(3) nie 'n dividend te wees nie wat aan daardie maatskappy toegeval het; en 20
 - (ii) wins te wees wat nie van 'n kapitale aard is nie by die toepassing van artikel 64B(5)(c).
- (6) Enige uitkeerbare aandele deur 'n ontbondelingsmaatskappy oor beskik ingevolge 'n ontbondelingstransaksie, word geag beskik te gewees het eerste uit die aandelepremierekening van daardie ontbondelingsmaatskappy. 25
- (7) Die bepalinge van hierdie artikel is nie van toepassing nie—
- (a) waar die ontbondelde maatskappy onmiddellik voor daardie beskikking 'n plaaslike finansiële instrumenthouermaatskappy is; of 30
- (b) ten opsigte van enige beskikking van uitkeerbare aandele ingevolge 'n ontbondelingstransaksie aan 'n aandeelhouer wat nie 'n inwoner is nie, waar daardie aandeelhouer meer as vyf persent van daardie uitkeerbare aandele hou.

Transaksies met betrekking tot likwidasië en deregistrasie

35

47. (1) By die toepassing van hierdie artikel beteken 'likwidasië-uitkering' 'n transaksie—

- (a) ingevolge waarvan 'n maatskappy (hierna die 'likwiderende maatskappy' genoem) oor al sy bates beskik in afwagting van of in die loop van die likwidasië of deregistrasie van daardie maatskappy, aan 'n ander maatskappy (hierna die 'houermaatskappy' genoem) wat 'n inwoner is en wat op die datum van daardie beskikking minstens 75 persent van die ekwiteitsaandele van daardie likwiderende maatskappy hou; en 40
- (b) ten opsigte waarvan daardie likwiderende maatskappy en daardie houermaatskappy gesamentlik die keuse uitgeoefen het dat hierdie artikel van toepassing is ten opsigte van al die bates aldus deur daardie likwiderende maatskappy aan daardie houermaatskappy beskik. 45
- (2) Waar 'n likwiderende maatskappy oor—
- (a) 'n kapitaalbate ingevolge 'n likwidasië-uitkering beskik aan sy houermaatskappy wat dit as 'n kapitaalbate verkry— 50
 - (i) word daardie likwiderende maatskappy geag oor daardie bate te beskik het vir 'n bedrag gelyk aan die basiskoste van daardie bate op die datum van die beskikking; en
 - (ii) word daardie likwiderende maatskappy en daardie houermaatskappy geag by die vasstelling van enige kapitaalwinst of kapitaalverlies ten opsigte van 'n beskikking oor daardie bate deur daardie houermaatskappy, geag een en dieselfde persoon te wees met betrekking tot— 55
 - (aa) die datum van verkryging van daardie bate deur daardie likwiderende maatskappy en die bedrag en datum van enige 60

- liquidating company of any expenditure in respect of that asset allowable in terms of paragraph 20 of the Eighth Schedule; and
- (bb) any valuation of that asset effected by that liquidating company as contemplated in paragraph 29(4) of the Eighth Schedule; or
- (b) an asset held by it as trading stock in terms of a liquidation distribution to its holding company which acquires it as trading stock—
- (i) that liquidating company must be deemed to have disposed of that asset for an amount equal to the amount taken into account by that liquidating company in respect of that asset in terms of section 11(a) or 22(1) or (2), and
- (ii) that liquidating company and that holding company must, for purposes of determining any taxable income derived by that holding company from a trade carried on by it, be deemed to be one and the same person with respect to the date of acquisition of that asset by that liquidating company and the amount and date of incurral by that liquidating company of any cost or expenditure incurred in respect of that asset as contemplated in section 11(a) or 22(1) or (2).
- (3) Where a liquidating company disposes of—
- (a) an asset that constitutes an allowance asset in that liquidating company's hands to its holding company in terms of a liquidation distribution and that holding company acquires that asset as an allowance asset—
- (i) no allowance allowed to that liquidating company in respect of that asset must be recovered or recouped by that liquidating company or included in that liquidating company's income for the year of that transfer; and
- (ii) that liquidating company and that holding company must be deemed to be one and the same person for purposes of determining the amount of any allowance—
- (aa) to which that holding company may be entitled in respect of that asset; or
- (bb) that is to be recovered or recouped by or included in the income of that holding company in respect of that asset; or
- (b) a contract to its holding company as part of a disposal of a business as a going concern in terms of a liquidation distribution and that contract imposes an obligation on that liquidating company in respect of which an allowance in terms of section 24C was allowable to that liquidating company for the year preceding that in which that contract is transferred or would have been allowable to that liquidating company for the year of that transfer had that contract not been so transferred—
- (i) no allowance allowed to that liquidating company in respect of that obligation must be included in that liquidating company's income for the year of that transfer; and
- (ii) that liquidating company and that holding company must be deemed to be one and the same person for purposes of determining the amount of any allowance—
- (aa) to which that holding company may be entitled in respect of that obligation; or
- (bb) that is to be included in the income of that holding company in respect of that obligation.
- (4) Where the holding company acquires any asset from the liquidating company in terms of a liquidation distribution and that holding company

- onkoste ten opsigte van daardie bate deur daardie likwiderende maatskappy aangegaan, wat ingevolge paragraaf 20 van die Agtste Bylae toelaatbaar is; en
- (bb) enige waardasie van daardie bate wat deur daardie likwiderende maatskappy aangeneem is soos in paragraaf 29(4) van die Agtste Bylae bedoel; of 5
- (b) 'n bate wat deur die likwiderende maatskappy as handelsvoorraad gehou is ingevolge 'n likwidasië-uitkering beskik aan sy houermaatskappy wat dit as handelsvoorraad verkry— 10
- (i) word daardie likwiderende maatskappy geag oor daardie bate te beskik het vir 'n bedrag gelykstaande aan die bedrag wat ingevolge artikel 11(a) of 22(1) of (2) ten opsigte van daardie bate deur daardie likwiderende maatskappy in berekening gebring is; en
- (ii) word daardie likwiderende maatskappy en daardie houermaatskappy by die vasstelling van enige belasbare inkomste deur daardie houermaatskappy verkry uit 'n bedryf deur die houermaatskappy beoefen, geag een en dieselfde persoon te wees met betrekking tot die datum van verkryging van daardie bate deur daardie likwiderende maatskappy en die bedrag en datum van enige onkoste of uitgawes deur daardie likwiderende maatskappy aangegaan ten opsigte van daardie bate soos in artikel 11(a) of 22(1) of (2) bedoel. 15 20
- (3) Waar 'n likwiderende maatskappy oor—
- (a) 'n bate wat 'n afskryfbare bate in die hande van daardie likwiderende maatskappy uitmaak, aan sy houermaatskappy beskik ingevolge 'n likwidasië-uitkering en daardie houermaatskappy daardie bate as 'n afskryfbare bate verkry— 25
- (i) word geen toelaag wat aan daardie likwiderende maatskappy ten opsigte van daardie bate toegelaat is deur daardie likwiderende maatskappy vergoed of verhaal nie of by daardie likwiderende maatskappy se inkomste vir die jaar van daardie oordrag ingesluit nie; en 30
- (ii) word daardie likwiderende maatskappy en daardie houermaatskappy geag een en dieselfde persoon te wees vir doeleindes van die bepaling van die bedrag van enige toelaag— 35
- (aa) waarop daardie houermaatskappy ten opsigte van daardie bate geregtig mag wees; of
- (bb) wat ten opsigte van daardie bate verhaal of vergoed moet word of ingesluit moet word by die inkomste van daardie houermaatskappy; of 40
- (b) 'n kontrak aan sy houermaatskappy beskik as deel van 'n beskikking van 'n besigheid as 'n lopende saak ingevolge 'n likwidasië-uitkering en daardie kontrak 'n verpligting op daardie likwiderende maatskappy opleë ten opsigte waarvan 'n toelaag ingevolge artikel 24C aan daardie likwiderende maatskappy toelaatbaar was in die jaar wat dié waarin daardie ooreenkoms oorgeplaas is voorafgaan, of aan daardie likwiderende maatskappy toelaatbaar sou wees in die jaar van die oordrag indien daardie kontrak nie aldus oorgeplaas is nie— 45
- (i) word geen toelaag wat aan daardie likwiderende maatskappy toegelaat is ten opsigte van daardie verpligting by daardie likwiderende maatskappy se inkomste vir die jaar van daardie oorplasing ingesluit nie; en 50
- (ii) word daardie likwiderende maatskappy en daardie houermaatskappy geag een en dieselfde persoon te wees vir doeleindes van die vasstelling van die bedrag van enige toelae— 55
- (aa) waarop daardie houermaatskappy geregtig mag wees ten opsigte van daardie verpligting; of
- (bb) wat by die inkomste van daardie houermaatskappy ingesluit moet word ten opsigte van daardie verpligting. 60
- (4) Waar die houermaatskappy 'n bate vanaf die likwiderende maatskappy ingevolge 'n likwidasië-uitkering verkry en daardie

disposes of that asset within a period of 18 months after so acquiring that asset and—

(a) that asset constitutes a capital asset in the hands of that holding company—

(i) so much of any capital gain determined in respect of the disposal of that asset as does not exceed the amount that would have been determined had that asset been disposed of at the beginning of that period of 18 months for proceeds equal to the market value of that asset as at that date, may not be taken into account in determining any net capital gain or assessed capital loss of that holding company but is subject to paragraph 10 of the Eighth Schedule for purpose of determining an amount of taxable capital gain derived from that gain, which taxable capital gain may not be set off against any assessed loss or balance of assessed loss of that holding company; or

(ii) so much of any capital loss determined in respect of the disposal of that asset as does not exceed the amount that would have been determined had that asset been disposed of at the beginning of that period of 18 months for proceeds equal to the market value of that asset as at that date must be disregarded in determining the aggregate capital gain or aggregate capital loss of that holding company for purposes of the Eighth Schedule: Provided that the amount of any capital loss so disregarded may be deducted from the amount of any capital gain determined in respect of the disposal during that year or any subsequent year of assessment of any other asset acquired by that holding company from the liquidating company in terms of that liquidation distribution; or

(b) that asset constitutes—

(i) trading stock in the hands of that holding company, so much of the amount received or accrued in respect of the disposal of that trading stock as does not exceed the market value of that trading stock as at the beginning of that period of 18 months and so much of the amount taken into account in respect of that trading stock in terms of section 11(a) or 22(1) or (2) as is equal to the amount so taken into account in terms of subsection (2)(b); or

(ii) an allowance asset in the hands of that holding company, so much of any allowance in respect of that asset that is recovered or recouped by or included in the income of that holding company as a result of that disposal as does not exceed the amount that would have been recovered had that asset been disposed of at the beginning of that period of 18 months for an amount equal to the market value of that asset as at that date,

must be deemed to be attributable to a separate trade carried on by that holding company, the taxable income or assessed loss from which trade may not be set off against or added to any assessed loss or balance of assessed loss of that holding company.

(5) Where a holding company disposes of any equity share in a liquidating company as a result of the liquidation of that liquidating company, that holding company must be treated to have disposed of that share for an amount equal to—

(a) in the case of that share held as a capital asset, the base cost of that share on the date of that disposal; or

houermaatskappy binne 'n tydperk van 18 maande na daardie bate aldus verkry is, oor daardie bate beskik, en—

(a) daardie bate 'n kapitaalbate in die hande van daardie houermaatskappy daarstel—

(i) word soveel van enige kapitaalwins vasgestel ten opsigte van die beskikking oor daardie bate, wat nie die bedrag wat vasgestel sou gewees het indien oor daardie bate aan die begin van daardie tydperk van 18 maande beskik was vir opbrengs gelyk aan die markwaarde van daardie bate soos op daardie datum, oorskry nie, nie in berekening gebring nie by die vasstelling van die netto kapitaalwins of vasgestelde kapitaalverlies van daardie houermaatskappy, maar is onderhewig aan paragraaf 10 van die Agtste Bylae vir doeleindes van die bepaling van 'n bedrag van belasbare kapitaalwins verkry uit daardie wins, welke belasbare kapitaalwins nie verreken mag word teen enige vasgestelde verlies of balans van vasgestelde verlies van daardie houermaatskappy nie; of

(ii) word soveel van enige kapitaalverlies vasgestel ten opsigte van die beskikking oor daardie bate, as wat nie die bedrag wat vasgestel sou gewees het indien oor daardie bate aan die begin van daardie tydperk van 18 maande beskik was vir opbrengs gelykstaande aan die markwaarde van daardie bate soos op daardie datum, oorskry nie, verontagsaam by die vasstelling van die totale kapitaalwins of totale kapitaalverlies van daardie houermaatskappy by die toepassing van die Agtste Bylae: Met dien verstande dat die bedrag van enige kapitaalverlies aldus verontagsaam, afgetrek kan word van die bedrag van enige kapitaalwins wat vasgestel word ten opsigte van die beskikking gedurende daardie jaar of enige daaropvolgende jaar van aanslag van enige ander bate deur daardie houermaatskappy ingevolge daardie likwidasië-uitkering vanaf die likwiderende maatskappy verkry; of

(b) daardie bate—

(i) handelsvoorraad in die hande van daardie houermaatskappy daarstel, word soveel van die bedrag ontvang of toegeval ten opsigte van die beskikking oor daardie handelsvoorraad, as wat nie die markwaarde van daardie handelsvoorraad aan die begin van daardie tydperk van 18 maande oorskry nie en soveel van die bedrag wat ten opsigte van daardie handelsvoorraad ingevolge artikel 11(a) of 22(1) of (2) in berekening gebring is as wat gelyk is aan die bedrag aldus in berekening gebring ingevolge subartikel (2)(b); of

(ii) 'n afskryfbare bate in die hande van daardie houermaatskappy daarstel, word soveel van enige toelaag ten opsigte van daardie bate wat vergoed of verhaal is of by die inkomste van daardie houermaatskappy ingesluit is as gevolg van daardie beskikking, as wat nie die bedrag wat vergoed sou gewees het indien oor daardie bate beskik was aan die begin van daardie tydperk van 18 maande vir 'n bedrag gelyk aan die markwaarde van daardie bate op daardie datum, oorskry nie,

geag toeskryfbaar te wees aan 'n aparte bedryf deur daardie houermaatskappy beoefen waarvan die belasbare inkomste of vasgestelde verlies nie verreken mag word teen, of bygetel mag word by, die inkomste of die vasgestelde verlies of balans van vasgestelde verlies van daardie houermaatskappy nie.

(5) Waar 'n houermaatskappy oor 'n ekwiteitsaandeel in 'n likwiderende maatskappy beskik as gevolg van die likwidasië van daardie likwiderende maatskappy, word daardie houermaatskappy geag oor daardie aandeel te beskik het vir 'n bedrag gelykstaande aan—

(a) in die geval waar daardie aandeel as 'n kapitaalbate gehou is, die basiskoste van daardie aandeel op die datum van daardie beskikking; of

(b) in the case of a share held as trading stock, the amount taken into account in respect of that share in terms of section 11(a) or 22(1) or (2).

(6) The provisions of this section do not apply where—

- (a) all the receipts and accruals of the holding company are exempt from tax in terms of section 10(1)(cA), (cH), (cM), (cN), (d), (t) and (tA);
- (b) the liquidating company constitutes a domestic financial instrument holding company or foreign financial instrument holding company immediately prior to that disposal;
- (c) the liquidating company has not, within a period of six months after the date of the liquidation distribution, taken such steps contemplated in section 41(4) to liquidate, wind up or deregister that company: Provided that any tax which becomes payable as a result of the application of this paragraph shall be recoverable from the holding company.”.

(2) Subsection (1) shall come into operation on 6 November 2002 and shall apply in respect of any disposal on or after that date.

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, section 38 of Act 30 of 2000, section 41 of Act 59 of 2000, section 45 of Act 60 of 2001 and section 24 of Act 30 of 2002

35. Section 56 of the Income Tax Act, 1962, is hereby amended—

- (a) by the deletion in subsection (1) of paragraph (q); and
- (b) by the addition to subsection (1) of the following paragraph:
“(r) to the extent that the disposal is deemed to be a dividend in terms of section 64C.”.

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, section 39 of Act 30 of 2000, section 42 of Act 59 of 2000, section 18 of Act 5 of 2001, section 48 of Act 60 of 2001 and section 25 of Act 30 of 2002

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

- (a) by the deletion in subsection (1) of the definitions of “affected company”, “holding company” and “intermediate company”;
- (b) by the substitution in subsection (1) for the definition of “intermediate company” of the following definition:
“‘intermediate company’ means any company at least 75 percent of whose equity share capital is held by—
 - (a) the first-mentioned company in the definition of [‘**holding company**’] ‘controlling group company’; or
 - (b) (i) one or more companies which are intermediate companies in terms of paragraph (a); or
 - (ii) a [‘**holding company**’] controlling group company and one or more companies referred to in subparagraph (i);”;
- (c) by the substitution in subsection (5) for paragraph (c) of the following paragraph:
“(c) so much of any dividend distributed in the course or in anticipation of the liquidation or winding up or deregistration of a company, as is shown by the company to be a—
 - (i) distribution of profits derived during any year of assessment which ended not later than 31 March 1993, (other than any such profits derived by way of the revaluation of trading stock held by such company); or

- (b) in die geval waar daardie aandeel as handelsvoorraad gehou is, die bedrag wat ingevolge artikel 11(a) of 22(1) of (2) ten opsigte van daardie aandeel in berekening gebring is.
- (6) Die bepalinge van hierdie artikel is nie van toepassing nie, waar—
- (a) al die ontvangste en toevallings van die houermaatskappy ingevolge artikel 10(1)(cA), (cH), (cM), (cN), (d), (t) en (tA) van belasting vrygestel is;
- (b) die likwiderende maatskappy onmiddellik voor daardie beskikking 'n plaaslike finansiële instrumenthouermaatskappy of 'n buitelandse finansiële instrumenthouermaatskappy daarstel;
- (c) die likwiderende maatskappy nie binne 'n tydperk van ses maande na die datum van die likwidasië-uitkering, die stappe in artikel 41(4) bedoel gedoen het om daardie maatskappy te likwideer of deregistreer nie: Met dien verstande dat enige belasting wat as gevolg van die toepassing van hierdie paragraaf betaalbaar word, van die houermaatskappy verhaalbaar is.”

(2) Subartikel (1) tree op 6 November 2002 en is van toepassing ten opsigte van enige beskikking op of na daardie datum.”

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 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, artikel 38 van Wet 30 van 2000, artikel 41 van Wet 59 van 2000, artikel 45 van Wet 60 van 2001 en artikel 24 van Wet 30 van 2002

35. Artikel 56 van die Inkomstebelastingwet, 1962, word hierby gewysig—

- (a) deur paragraaf (q) van subartikel (1) te skrap;
- (b) deur die volgende paragraaf by subartikel (1) te voeg:
- “(r) tot die mate wat die beskikking ingevolge artikel 64C geag word 'n dividend te wees.”

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, artikel 39 van Wet 30 van 2000, artikel 42 van Wet 59 van 2000, artikel 18 van Wet 5 van 2001, artikel 48 van Wet 60 van 2001 en artikel 25 van Wet 30 van 2002

36. (1) Artikel 64B van die Inkomstebelastingwet, 1962, word hierby gewysig—

- (a) deur in subartikel (1) die omskrywings van “geaffekteerde maatskappy”, “houermaatskappy” en “tussenmaatskappy” te skrap;
- (b) deur in subartikel (1) die omskrywing van “tussenmaatskappy” deur die volgende omskrywing te vervang:
- “‘tussenmaatskappy’ 'n maatskappy waarvan minstens 75 persent van sy ekwiteitsaandeelkapitaal, gehou word deur—
- (a) die eersgenoemde maatskappy in die omskrywing van [‘houermaatskappy’] ‘beherende groepsmaatskappy’; of
- (b) (i) een of meer maatskappye wat tussenmaatskappye ingevolge paragraaf (a) is; of
- (ii) 'n [‘houermaatskappy’] beherende groepsmaatskappy en een of meer maatskappye bedoel in subparagraaf (i);”;
- (c) deur paragraaf (c) van subartikel (5) deur die volgende paragraaf te vervang:
- “(c) soveel van 'n dividend uitgekeer in die loop of in afwagting van die likwidasië of deregistrasie van 'n maatskappy as wat deur die maatskappy aangetoon word om 'n—
- (i) uitkering van winste wat verkry is gedurende 'n jaar van aanslag wat nie later as 31 Maart 1993 geëindig het nie (behalwe as enige bedoelde winste wat by wyse van 'n herwaardasie van handelsvoorraad deur bedoelde maatskappy gehou, verkry is); of

- (ii) distribution of profits of a capital nature (other than capital profits attributable to the disposal of any asset on or after 1 October 2001 which capital profits must, in the case of an asset acquired before that date, be limited to the amount of profit determined as if that asset had been acquired on 1 October 2001 for a cost equal to the market value of that asset on that date as contemplated in paragraph 29 of the Eighth Schedule): 5

Provided that where such dividend is distributed in anticipation of the liquidation or winding-up or deregistration of a company and such company— 10

- (i) has not within six months taken such steps as **[may be prescribed by the Minister by regulation in the Gazette]** contemplated in section 41(4) to liquidate, wind up or deregister that company **[within such period specified by the Minister in those regulations];** or 15
- (ii) has at any stage withdrawn any step taken to liquidate, wind up or deregister that company, as contemplated in paragraph (i), or does anything to invalidate any such step so taken, with the result that the company is or will not be liquidated, wound up or deregistered, 20

the provisions of this paragraph and of subsection (3)(b) shall be deemed not to have applied to such dividend and any secondary tax on companies which becomes payable as a result thereof shall be recoverable from the shareholders to whom such dividend was distributed in the same proportion as such dividend was so distributed.”; 25

- (d) by the substitution in subsection (5) for paragraph (d) of the following paragraph: 30

“(d) so much of any dividend declared by a **[unit]** portfolio of a collective investment scheme referred to in paragraph (e)(i) of the definition of “company” in section 1 as represents a distribution **[of interest or]** of dividends referred to in section 11(s) received by or accrued to such **[unit]** portfolio;”;

- (e) by the substitution in subsection (5) for paragraph (f) of the following paragraph: 35

“(f) any dividend declared by a company to a shareholder (as defined in Part III) of that company if—

- (i) that shareholder is a company forming part of the same group of companies as the company declaring the dividend; 40
- (ii) to the extent the dividend is derived out of profits earned by the company declaring the dividend during any period when that company formed part of the same group of companies as the shareholder to whom the dividend was declared; 45
- (iii) that shareholder is a resident;
- (iv) at least 90 per cent of that shareholders’ profits (excluding profits derived by way of dividends) were derived from a source within the Republic during the three years of assessment immediately preceding the date of declaration; and
- (v) the company declaring the dividend elects the exemption under this paragraph to apply by submitting this election— 50
- (aa) no later than the last day on which the secondary tax on companies would otherwise be due but for this paragraph (or no later than any other subsequent date prescribed by the Commissioner), and 55
- (bb) in such form as the Commissioner may prescribe;”;

(ii) uitkering van winste van 'n kapitale aard te wees (behalwe kapitale winste wat aan die beskikking oor 'n bate op of na 1 Oktober 2001 toeskryfbaar is, welke kapitale winste in die geval van 'n bate wat voor daardie datum verkry is, beperk word tot die bedrag van wins vasgestel asof daardie bate op 1 Oktober 2001 verkry is vir 'n koste gelykstaande aan die markwaarde van daardie bate op daardie datum, soos in paragraaf 29 van die Agtste Bylae bedoel);

Met dien verstande dat waar bedoelde dividend in afwagting van die likwidasië of deregistrasie van 'n maatskappy uitgekeer is en bedoelde maatskappy—

(i) nie binne ses maande daardie stappe [wat die Minister by regulasie in die Staatskoerant mag voorskryf, binne daardie tydperk deur die Minister in daardie regulasies aangedui,] in artikel 41(4) bedoel, gedoen het om daardie maatskappy te likwedeer of te deregistreer nie; of

(ii) op enige tydstip enige stap wat gedoen is om daardie maatskappy te likwedeer of deregistreer, soos in paragraaf (i) bedoel, intrek of enigiets doen om enige sodanige stap aldus gedoen ongeldig te maak, wat tot gevolg het of sal hê dat die maatskappy nie gelikwedeer of gederegistreer word of sal word nie,

word die bepalings van hierdie paragraaf en van subartikel (3)(b) geag om nie op bedoelde dividend van toepassing te gewees het nie en enige sekondêre belasting op maatskappye wat as gevolg daarvan betaalbaar word, is verhaalbaar op die aandeelhouders aan wie bedoelde dividend uitgekeer is, in dieselfde verhouding as bedoelde dividend aldus uitgekeer is:";

(d) deur paragraaf (d) van subartikel (5) deur die volgende paragraaf te vervang:
“(d) soveel van 'n dividend verklaar deur 'n [effektegroep] portefeulje van 'n kollektiewe beleggingskema soos bedoel in paragraaf (e)(i) van die omskrywing van 'maatskappy' in artikel 1, as wat 'n verdeling van [rente of] dividende soos bedoel in artikel 11(s) ontvang deur of toegeval aan daardie [effektegroep] portefeulje, verteenwoordig;”;

(e) deur paragraaf (f) van subartikel (5) deur die volgende paragraaf te vervang:
“(f) 'n dividend deur 'n maatskappy aan 'n aandeelhouer (soos in Deel III omskryf) van daardie maatskappy verklaar—

(i) indien daardie aandeelhouer 'n maatskappy is wat deel vorm van dieselfde groep van maatskappye as die maatskappy wat die dividend verklaar;

(ii) tot die mate wat die dividend verkry is uit winste wat deur daardie maatskappy wat die dividend verklaar verdien is gedurende enige tydperk wat daardie maatskappy deel gevorm het van dieselfde groep van maatskappye as die aandeelhouer aan wie die dividend verklaar is;

(iii) indien daardie aandeelhouer 'n inwoner is;

(iv) indien minstens 90 persent van daardie aandeelhouer se winste (uitgesluit winste wat by wyse van dividende verkry is) van 'n bron in die Republiek verkry is gedurende die drie jare van aanslag wat die datum van die verklaring onmiddellik voorafgaan; en

(v) indien die maatskappy wat die dividend verklaar gekies het dat die vrystelling ingevolge hierdie paragraaf van toepassing is, deur hierdie keuse in te dien—

(aa) nie later nie as die laaste dag waarop die sekondêre belasting op maatskappye andersins verskuldig sou wees by ontstentenis van hierdie paragraaf (of nie later nie as enige latere datum deur die Kommissaris voorgeskryf); en

(bb) in daardie vorm as wat die Kommissaris mag voorskryf;”;

- (f) by the substitution in subsection (10) for paragraph (a) of the following paragraph:

“(a) in the case of a company [**which is listed on a recognized stock exchange**] contemplated in paragraph (a) or (b) of the definition of ‘listed company’ or a subsidiary (as defined in section 1 of the Companies Act, 1973 (Act No. 61 of 1973)), of any such company, it had not prior to that date paid the dividend to the shareholders concerned or publicly announced the declaration thereof; or”.

- (2) (a) Subsection (1)(a), (b) and (e) shall come into operation on the date of promulgation of this Act.

(b) Subsection (1)(c) shall come into operation on 1 January 2003 and shall apply in respect of any dividend declared on or after that date.

(c) Subsection (1)(d) shall come into operation on the date that the Collective Investment Schemes Control Act, 2002, comes into operation.

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, section 40 of Act 30 of 2000 and section 43 of Act 59 of 2000

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

- (a) by the addition to subsection (1) of the following definition:

“‘share incentive scheme’ means a scheme in terms of which not more than 20 per cent of the equity share capital of a company is—

- (a) held by the directors and full-time employees of—

(i) such company; or

(ii) an associated institution, as defined in paragraph 1 of the Seventh Schedule, in relation to such company, in terms of a share incentive scheme carried on for their own benefit;

- (b) held by a trustee for the benefit of such directors and employees under a scheme referred to in section 38(2)(b) of the Companies Act, 1973 (Act 61 of 1973); or

- (c) collectively held by such directors and full-time employees, and such a trustee.”;

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

“(2) For the purposes of section 64B any amount which is in terms of subsection (3) deemed to have been distributed by a company [**to a recipient,**] shall, subject to the provisions of subsection (4), be deemed to be a dividend declared by such company out of that company’s profits (determined in respect of the most recent year of assessment and which are available for distribution) to a shareholder, where that shareholder—

(a) receives a deemed distribution as contemplated in subsection (3); or

(b) is a connected person in relation to any person who receives a deemed distribution as contemplated in subsection (3),

notwithstanding the fact that such amount may have been so distributed by way of a loan or credit to the recipient or that the recipient may in consequence of such distribution have assumed any other form of obligation to make a future payment to the company.”;

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

“(3) For the purposes of subsection (2) an amount shall be deemed to have been distributed by a company [**to a recipient**] if—”;

- (d) by the substitution in subsection (4) of paragraph (h) of the following paragraph:

“(h) to a loan made by any company to any other company within the same group of companies if that loan is utilised by that other company in the Republic.”.

- (2) Subsection (1) shall come into operation on the date of promulgation of this Act and shall apply in respect of any amount distributed on or after that date.

(f) deur paragraaf (a) van subartikel (10) deur die volgende paragraaf te vervang:

“(a) in die geval van ’n maatskappy [**wat op ’n erkende aandeelbeurs genoteer is**] in paragraaf (a) of (b) van die omskrywing van ‘genoteerde maatskappy’ bedoel of ’n filiaal (soos omskryf in artikel 1 van die Maatskappywet, 1973 (Wet No. 61 van 1973)), van so ’n maatskappy, hy nie voor daardie datum die dividend aan die betrokke aandeelhouders betaal het of die verklaring daarvan in die openbaar aangekondig het nie; of”.

(2) (a) Subartikel (1)(a), (b) en (e) tree in werking op die datum van afkondiging van hierdie Wet.

(b) Subartikel (1)(c) tree op 1 Januarie 2003 in werking en is van toepassing ten opsigte van enige dividend op of na daardie datum verklaar.

(c) Subartikel (1)(d) tree in werking op die datum wat die Wet op die Beheer van Kollektiewe Beleggingskemas, 2002, in werking tree.

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, artikel 40 van Wet 30 van 2000 en artikel 43 van Wet 59 van 2000

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

(a) deur die volgende woordskrywing in subartikel (1) te voeg:

“‘aandeel-aansporingskema’ ’n skema ingevolge waarvan hoogstens 20 persent van die ekwiteitsaandelekapitaal van ’n maatskappy—

(a) gehou word deur die direkteure en voltydse werknemers van—

(i) bedoelde maatskappy; of

(ii) ’n verwante inrigting soos omskryf in paragraaf 1 van die Sewende Bylae, met betrekking tot bedoelde maatskappy,

ingevolge ’n aandeel-aansporingskema vir hul eie voordeel bedryf;

(b) gehou word deur ’n trustee vir die voordeel van bedoelde direkteure en werknemers kragtens ’n skema bedoel in artikel 38 (2)(b) van die Maatskappywet, 1973 (Wet No. 61 van 1973); of

(c) gesamentlik gehou word deur bedoelde direkteure en voltydse werknemers en so ’n trustee;”;

(b) deur subartikel (2) deur die volgende artikel te vervang:

“(2) By die toepassing van artikel 64B word enige bedrag wat ingevolge subartikel (3) geag word deur ’n maatskappy [**aan ’n ontvanger**] uitgekeer te gewees het, behoudens die bepalings van subartikel (4) geag ’n dividend te wees deur bedoelde maatskappy verklaar uit daardie maatskappy se winste (vasgestel ten opsigte van die mees onlangse jaar van aanslag en wat vir verdeling beskikbaar is) aan ’n aandeelhouer, waar daardie aandeelhouer—

(a) ’n geagte uitkering in subartikel (3) bedoel ontvang; of

(b) ’n verbonde persoon is met betrekking tot enige persoon wat ’n geagte uitkering soos in subartikel (3) bedoel, ontvang,

ondanks die feit dat bedoelde bedrag aldus by wyse van ’n lening of krediet aan die ontvanger uitgekeer mag gewees het of dat die ontvanger ten gevolge van bedoelde uitkering enige ander vorm van verpligting mag aanvaar het om ’n toekomstige betaling aan die maatskappy te doen.”;

(c) deur in subartikel (3) die woorde wat paragraaf (a) voorafgaan deur die volgende woorde te vervang:

“(3) By die toepassing van subartikel (2) word ’n bedrag deur ’n maatskappy [**aan ’n ontvanger**] geag uitgekeer te gewees het indien—”;

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

“(h) op enige lening gemaak deur ’n maatskappy aan ’n ander maatskappy binne dieselfde groep van maatskappye, indien daardie lening deur daardie ander maatskappy in die Republiek aangewend word;”.

(2) Subartikel (1) tree in werking op die datum van afkondiging van hierdie Wet en is van toepassing ten opsigte van enige bedrag op of na daardie datum uitgekeer.

Amendment of section 66 of Act 58 of 1962, as amended by section 10 of Act 6 of 1963, section 19 of Act 90 of 1964, section 27 of Act 88 of 1971, section 22 of Act 91 of 1982, section 19 of Act 65 of 1986, section 23 of Act 85 of 1987, section 37 of Act 101 of 1990, section 26 of Act 21 of 1994, section 41 of Act 30 of 2000, section 19 of Act 5 of 2001, section 17 of Act 19 of 2001 and section 26 of Act 30 of 2002

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38. (1) Section 66 of the Income Tax Act, 1962, is hereby amended—

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

“(a) The Commissioner shall annually give public notice that all persons who are personally or in a representative capacity liable to taxation under the provisions of this Act ~~[and]~~ or are required to furnish returns for the assessment of tax, shall within sixty days after the date of such notice, or within such further time as the Commissioner may for good cause allow, furnish returns for the purposes of assessments in respect of the years of assessment specified in such notice.”;

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

“(vi) any resident who holds any funds in foreign currency as defined in section 78(3) or owns any assets outside the Republic, or to whom any income or gain from any funds in foreign currency or assets outside the Republic would be attributable during the relevant year of assessment in terms of section 7 or Part X of the Eighth Schedule.”;

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(c) by the substitution for subsection (13) of the following subsection:

“(13) The return of income to be made by any person **[in respect of the year of assessment ended the thirtieth day of June, 1962, or by any person (other than a company)]** in respect of any year of assessment **[referred to in subparagraph (i) of paragraph (b) of subsection (1) of section five]** shall be a full and true return—

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(a) in the case of a person (other than a company), for the whole period of twelve months ending upon the last day of the year of assessment under charge; or

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(b) in the case of a company, for the whole period of the relevant financial year of that company comprising the year of assessment: [Provided that where it is established to the satisfaction of the Commissioner that the income of a person cannot be conveniently returned for that period, the Commissioner may accept returns made up to a date agreed to by him which returns shall be deemed for all purposes of this Act to be returns for the periods covered by the years of assessment under charge, and the taxpayer shall not without the consent of the Commissioner be entitled to make a return in respect of any subsequent year of assessment to a date other than the date so agreed to].”;

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(d) by the deletion of subsections (13)*bis*, (13)*ter*, (13)*quat* and (13)*quin*;

(e) by the insertion after subsection (13) of the following subsections:

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“(13A) Where—

(a) it is established to the satisfaction of the Commissioner that the whole or any portion of the income of any person to whom the provisions of subsection (13)(a) apply cannot be conveniently returned for any year of assessment, the Commissioner may, subject to such conditions as he or she may impose, accept accounts in respect of the whole or a portion of the taxpayer's income drawn to a date agreed to by the Commissioner, whether for a longer or shorter period than the year of assessment under charge, and the income disclosed in any such accounts must be deemed to be income of that person in respect of that year under charge;

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Wysiging van artikel 66 van Wet 58 van 1962, soos gewysig deur artikel 10 van Wet 6 van 1963, artikel 19 van Wet 90 van 1964, artikel 27 van Wet 88 van 1971, artikel 22 van Wet 91 van 1982, artikel 19 van Wet 65 van 1986, artikel 23 van Wet 85 van 1987, artikel 37 van Wet 101 van 1990, artikel 26 van Wet 21 van 1994, artikel 41 van Wet 30 van 2000, artikel 19 van Wet 5 van 2001, artikel 17 van Wet 19 van 2001 en artikel 26 van Wet 30 van 2002 5

38. (1) Artikel 66 van die Inkomstebelastingwet, 1962, word hierby gewysig—

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

“(a) Die Kommissaris gee jaarliks openbare kennis dat alle persone wat persoonlik of in ’n verteenwoordigende hoedanigheid ingevolge die bepalings van hierdie Wet belastingpligtig is [en] of verplig is om opgawes vir die aanslag van belasting te verstrek, binne sestig dae na die datum van sodanige kennisgewing, of binne die verdere tydperk wat die Kommissaris om goeie redes mag toestaan, opgawes moet verstrek vir die doeleindes van aanslae ten opsigte van die jare van aanslag in bedoelde kennisgewing vermeld.”; 10 15

(b) deur subparagraaf (vi) van paragraaf (b) van subartikel (1) deur die volgende subparagraaf te vervang:

“(vi) ’n inwoner wat enige fondse in buitelandse [valuta] geldeenheid soos in artikel 78(3) omskryf hou of enige bates buite die Republiek besit, of aan wie enige inkomste of wins van enige fondse in buitelandse valuta of bates buite die Republiek gedurende die betrokke jaar van aanslag ingevolge artikel 7 of Deel X van die Agtste Bylae toegereken kan word.”; 20

(c) deur subartikel (13) deur die volgende subartikel te vervang: 25

“(13) Die opgawe van inkomste wat ten opsigte van [die jaar van aanslag wat op die dertigste dag van Junie 1962 geëindig het deur ’n persoon gedoen moet word, of wat ten opsigte van ’n in subparagraaf (i) van paragraaf (b) van subartikel (1) van artikel vyf bedoelde] enige jaar van aanslag deur ’n persoon [(behalwe ’n maatskappy)] gedoen moet word, moet ’n volledige en juiste opgawe wees— 30

(a) in die geval van ’n persoon (behalwe ’n maatskappy), vir die hele tydperk van twaalf maande eindigende op die laaste dag van die onderhawige jaar van aanslag; of 35

(b) in die geval van ’n maatskappy, vir die hele tydperk van die betrokke finansiële jaar van daardie maatskappy wat die jaar van aanslag uitmaak [: Met dien verstande dat, wanneer dit tot bevrediging van die Kommissaris bewys word dat dit nie geleë is om ’n opgawe van die inkomste van ’n persoon vir daardie tydperk te doen nie, die Kommissaris opgawes kan aanneem wat opgemaak is tot ’n datum deur hom goedgekeur, en dié opgawes word vir alle doeleindes van hierdie Wet geag opgawes te wees vir die tydperke gedek deur die onderhawige jaar van aanslag, en die belastingpligtige is nie sonder toestemming van die Kommissaris geregtig om ’n opgawe ten opsigte van ’n daaropvolgende jaar van aanslag tot ’n ander datum as die aldus goedgekeurde datum te doen nie.]”; 40 45

(d) deur subartikels (13)*bis*, (13)*ter*, (13)*quat* en (13)*quin* te skrap;

(e) deur na subartikel (13) die volgende subartikels in te voeg: 50

“(13A) Waar—

(a) daar tot bevrediging van die Kommissaris bewys word dat dit nie geleë is om ’n opgawe van die inkomste of ’n gedeelte daarvan van ’n persoon op wie die bepalings van subartikel (13)(a) betrekking het vir ’n jaar van aanslag te doen nie, kan die Kommissaris onderworpe aan die voorwaardes wat hy oplê, rekenings ten opsigte van die belastingpligtige se inkomste of ’n gedeelte daarvan aanneem wat opgemaak is tot ’n datum deur die Kommissaris goedgekeur, hetsy vir ’n langer of korter tydperk as die betrokke jaar van aanslag, en word die inkomste in bedoelde rekenings aangegee, geag inkomste van die betrokke persoon te wees ten opsigte van die betrokke jaar van aanslag; 55 60

(b) any such accounts are drawn to a date later than the last day of the year of assessment, no further regard shall be had to the income disclosed by those accounts for purposes of any subsequent year of assessment;

(c) any such accounts are drawn to a date falling within the year of assessment and the person concerned dies or his or her estate is sequestrated during the interim period between that date and the last day of the year of assessment, any income received by or accrued to that person during that interim period must be deemed to be part of that person's income for the year of assessment.

(13B) For the purposes of subsections (13), (13A) and (14), the word 'income' must be construed as including any aggregate capital gain or aggregate capital loss."

(2) Subsection (1) shall be deemed to have come into operation on 1 July 2002 and shall apply in respect of years of assessment commencing on or after that date.

Amendment of section 69 of Act 58 of 1962, as amended by section 41 of Act 30 of 1998

39. Section 69 of the Income Tax Act, 1962, is hereby amended by the substitution in subsection (2) for the words preceding paragraph (a) of the following words:

"(2) In addition to the returns specified in subsection (1), every person[, **whether a taxpayer or not,**] shall, if required by the Commissioner—"

Substitution of section 70A of Act 58 of 1962, as inserted by section 21 of Act 5 of 2001 and substituted by section 49 of Act 60 of 2001

40. (1) The following section is hereby substituted for section 70A of the Income Tax Act, 1962:

"Return of information by [Unit] Portfolio of Collective Investment Scheme

70A. Any [unit] portfolio of a collective investment scheme contemplated in paragraph (e)(i) of the definition of 'company' in section 1, and any [unit] portfolio comprised in any [unit trust] collective investment scheme in property [shares authorised under the Unit Trust Control Act, 1981 (Act 54 of 1981) contemplated in Part V of the Collective Investment Schemes Control Act, 2002, managed or carried on by a company registered under section 42 of that Act for the purposes of Part V of that Act, shall furnish to the Commissioner an annual return in such form and within such time and containing such information as the Commissioner may prescribe."

(2) Subsection (1) shall come into operation on the date that the Collective Investment Schemes Control Act, 2002, comes into operation.

Substitution of section 71 of Act 58 of 1962

41. The following section is hereby substituted for section 71 of the Income Tax Act, 1962:

"Return of payments in respect of bearer warrants

71. Every bank carrying on business in the Republic or company dealing in or negotiating bearer warrants shall keep a record in such form, including any electronic form, as the Commissioner may prescribe of all payments in respect of interest or dividends made to any person by means of bearer warrants, and shall in such manner and form and at such times as may be prescribed or as the Commissioner may require, furnish particulars of such payments."

- (b) enige bedoelde rekenings opgemaak is tot 'n datum na die laaste dag van die jaar van aanslag, word die inkomste deur bedoelde rekenings aangegee nie vir doeleindes van 'n daaropvolgende jaar van aanslag in aanmerking geneem nie;
- (c) enige bedoelde rekenings opgemaak is tot 'n datum wat in die jaar van aanslag val, en die betrokke persoon te sterwe kom of sy of haar boedel gesekwestreer word gedurende die tussentydperk tussen bedoelde datum en die laaste dag van die jaar van aanslag, word enige inkomste wat gedurende daardie tussentydperk ontvang word deur of toeval aan daardie persoon, geag deel uit te maak van daardie persoon se inkomste vir die jaar van aanslag. 5
- (13B) By die toepassing van subartikels (13), (13A) en (14) word die woord 'inkomste' so uitgelê om enige totale kapitaalwins of totale kapitaalverlies in te sluit. 10

(2) Subartikel (1) word geag op 1 Julie 2002 in werking te getree het en is van toepassing ten opsigte van jare van aanslag wat op of na daardie datum 'n aanvang neem. 15

Wysiging van artikel 69 van Wet 58 van 1962, soos gewysig deur artikel 41 van Wet 30 van 1998

39. Artikel 69 van die Inkomstebelastingwet, 1962, word hierby gewysig deur in subartikel (2) die woorde wat paragraaf (a) voorafgaan deur die volgende woorde te vervang: 20

“(2) Benewens die opgawes in subartikel (1) vermeld, moet elke persoon[, of hy 'n belastingpligtige is al dan nie,] indien deur die Kommissaris vereis—”.

Vervanging van artikel 70A van Wet 58 van 1962, soos ingevoeg deur artikel 21 van Wet 5 van 2001 en vervang deur artikel 49 van Wet 60 van 2001 25

40. (1) Die volgende artikel vervang hierby artikel 70A van die Inkomstebelastingwet, 1962:

“Opgawe van inligting deur [Effektegroe] Portefeulje van Kollektiewe Beleggingskema 30

70A. Enige [effektegroe] portefeulje in 'n kollektiewe beleggingskema beoog in paragraaf (e)(i) van die omskrywing van 'maatskappy' in artikel 1, en enige [effektegroe] portefeulje vervat in enige [effektetrustskema in eiendomsaandeel gemagtig deur die Wet op Beheer van Effektetrustskemas, 1981 (Wet 54 van 1981)] kollektiewe beleggingskema in eiendom in Deel V van die Wet op die Beheer van Kollektiewe Beleggingskemas, 2002, bedoel, wat deur 'n maatskappy wat ingevolge artikel 42 van daardie Wet vir doeleindes van Deel V van daardie Wet geregistreer is, bestuur of bedryf word, moet aan die Kommissaris 'n jaarlikse opgawe verstrek in sodanige vorm en binne sodanige tydperk en wat sodanige inligting vervat as wat die Kommissaris mag voorskryf. 35 40

(2) Subartikel (1) tree in werking op die datum wat die Wet op die Beheer van Kollektiewe Beleggingskemas, 2002, in werking tree.

Vervanging van artikel 71 van Wet 58 van 1962

41. Die volgende artikel vervang hierby artikel 71 van die Inkomstebelastingwet, 1962: 45

“Opgawe van betalings ten opsigte van bewyse aan toonder

71. Elke bank wat in die Republiek handel dryf of maatskappy wat met bewyse aan toonder sake doen of dit verhandel, moet aantekening hou in daardie vorm, waarby ingesluit elektroniese vorm, as wat die Kommissaris mag voorskryf, van alle betalings ten opsigte van rente of dividende aan 'n persoon gemaak deur middel van bewyse aan toonder, en moet op die wyse en in die vorm en op die tye wat voorgeskryf is of wat die Kommissaris vereis, besonderhede van sodanige betalings verstrek.”. 50

Amendment of section 72A of Act 58 of 1962, as inserted by section 46 of Act 59 of 2000

42. (1) Section 72A of the Income Tax Act, 1962, is hereby amended—

- (a) by the substitution for the heading of the following heading:

“Return as to participation right in controlled foreign [entity] company”;
 - (b) by the substitution in subsection (1) for paragraphs (a) and (b) of the following paragraphs:

“(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] company; and

(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] company.”;
 - (c) by the substitution in subsection (1) for the words following paragraph (b) but preceding the proviso of the following words:

“shall submit to the Commissioner a return containing the information contemplated in subsection (2) relating to such controlled foreign [entity] company, in such form and within such time as may be prescribed by the Commissioner.”;
 - (d) by the substitution in subsection (2) for paragraphs (a), (b), (c) and (d) of the following paragraphs:

“(a) the name, address and country of residence of such controlled foreign [entity] company;

(b) a description of the various classes of participation rights in such controlled foreign [entity] company;

(c) the percentage and class of participation [or voting] rights held by such resident whether directly, indirectly or together with connected persons;

(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] company.”;
 - (e) by the substitution in subsection (2) for the words in paragraph (e) preceding subparagraph (i) of the following words:

“a description of the receipts and accruals of such controlled foreign [entity] company which are—”;
 - (f) by the substitution in subsection (2) for paragraph (f) of the following paragraph:

“(f) a description of any amount of tax proved to be payable by such controlled foreign [entity] company 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.”;
 - (g) by the substitution in subsection (3) for paragraph (b) of the following paragraph:

“(b) have available for submission to the Commissioner when so requested, an income statement and balance sheet of such controlled foreign [entity] company prepared in accordance with the laws of the country of which such controlled foreign [entity] company is a resident, or internationally accepted accounting practice.”.
- (2) Subsection (1) shall come into operation on the date of promulgation of this Act and shall apply in respect of years of assessment ending on or after that date.

Wysiging van artikel 72A van Wet 58 van 1962, soos ingevoeg deur artikel 46 van Wet 59 van 2000

42. (1) Artikel 72A van die Inkomstebelastingwet, 1962, word hierby gewysig—
- (a) deur die opskrif deur die volgende opskrif te vervang:
- “**Opgawe rakende deelnemende reg in beheerde buitelandse [entiteit] maatskappy**”;
- (b) deur paragrawe (a) en (b) van subartikel (1) deur die volgende paragrawe te vervang:
- “(a) direk of indirek minstens 10 persent van die deelnemende regte [**of stemreg of beheer**] in enige beheerde buitelandse [entiteit in artikel 9D bedoel,] maatskappy hou; en
- (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] maatskappy hou.”;
- (c) deur in subartikel (1) die woorde wat op paragraaf (b) volg maar die voorbehoudsbepaling voorafgaan deur die volgende woorde te vervang:
- “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] maatskappy bevat.”;
- (d) deur paragrawe (a), (b), (c) en (d) van subartikel (2) deur die volgende paragrawe te vervang:
- “(a) die naam, adres en land van verblyf van bedoelde beheerde buitelandse [entiteit] maatskappy;
- (b) ’n beskrywing van die verskillende klasse deelnemende regte in bedoelde beheerde buitelandse [entiteit] maatskappy;
- (c) die persentasie en klas deelnemende regte [**of stemreg**] deur bedoelde inwoner, hetsy direk, indirek of gesamentlik met verbonde persone, gehou;
- (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] maatskappy hou.”;
- (e) deur in subartikel (2) die woorde in paragraaf (e) wat subparagraaf (i) voorafgaan deur die volgende woorde te vervang:
- “(e) ’n beskrywing van die ontvangste en toevallings van bedoelde beheerde buitelandse [entiteit] maatskappy wat—”;
- (f) deur paragraaf (f) van subartikel (2) deur die volgende paragraaf te vervang:
- “(f) ’n beskrywing van enige bedrag aan belasting wat bewys word deur bedoelde beheerde buitelandse [entiteit] maatskappy 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.”;
- (g) deur paragraaf (b) van subartikel (3) deur die volgende paragraaf te vervang:
- “(b) ’n inkomstestaat en balansstaat van bedoelde beheerde buitelandse [entiteit] maatskappy, voorberei ooreenkomstig die wette van die land waarvan die beheerde buitelandse [entiteit] maatskappy ’n inwoner is, of internasionale aanvaarde rekeningkundige praktyk beskikbaar hê om aan die Kommissaris te voorsien wanneer aldus versoek.”.
- (2) Subartikel (1) tree in werking op die datum van afkondiging van hierdie Wet en is van toepassing ten opsigte van jare van aanslag wat op of na daardie datum eindig.

Amendment of section 73A of Act 58 of 1962, as inserted by section 22 of Act 5 of 2001

43. Section 73A of the Income Tax Act, 1962, is hereby amended—

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

“(1) A person **[whose gross income consists of amounts other than those derived solely by way of salary, wages or similar compensation for personal service shall]** who is required to render a return or who is not so required but has rendered a return must retain all records relevant to that return for a period of **[four]** five years from the date upon which the return relevant to the last entry in those records was received by the Commissioner.”; and

(b) by the addition of the following subsection:

“(3) The records contemplated in subsection (1) must be retained in such form, including any electronic form, as may be prescribed by the Commissioner.”.

Amendment of section 73B of Act 58 of 1962, as inserted by section 22 of Act 5 of 2001

44. Section 73B of the Income Tax Act, 1962, is hereby amended—

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

“(1) A person **[shall]** must retain all records required to determine the taxable capital gain or assessed capital loss of that person for a period of **[four]** five years from the date on which the return for that year of assessment was received by the Commissioner.”; and

(b) by the addition of the following subsection:

“(4) The records contemplated in subsections (1) and (2) must be retained in such form, including any electronic form, as may be prescribed by the Commissioner.”.

Amendment of section 75 of Act 58 of 1962, as amended by section 40 of Act 101 of 1990, section 34 of Act 129 of 1991, section 30 of Act 141 of 1992, section 35 of Act 113 of 1993, section 27 of Act 21 of 1994, section 15 of Act 46 of 1996, section 39 of Act 53 of 1999, section 44 of Act 30 of 2000, section 23 of Act 5 of 2001, section 18 of Act 19 of 2001 and section 52 of Act 60 of 2001

45. Section 75 of the Income Tax Act, 1962, is hereby amended by the substitution in subsection (1) for the words following paragraph (j) of the following words:

“shall be guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding **[12] 24** months.”.

Amendment of section 77 of Act 58 of 1962, as amended by section 25 of Act 69 of 1975, section 41 of Act 101 of 1990, section 35 of Act 129 of 1991 and section 31 of Act 21 of 1995

46. (1) Section 77 of the Income Tax Act, 1962, is hereby amended—

(a) by the substitution in subsection (2) for the expression “Controller and Auditor-General” of the expression “Auditor-General”; and

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

“(5) The Commissioner shall, in the notice of assessment, give notice to the taxpayer that any objection to the assessment made must be sent to him or her within **[30 days after the date of the assessment]** the period contemplated in section 81.”.

(2) Subsection (1)(b) shall come into operation on the date that section 53(1) of the Second Revenue Laws amendment Act, 2001 (Act No. 60 of 2001), comes into operation.

Wysiging van artikel 73A van Wet 58 van 1962, soos ingevoeg deur artikel 22 van Wet 5 van 2001

43. Artikel 73A van die Inkomstebelastingwet, 1962, word hierby gewysig—

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

“(1) ’n Persoon [wie se bruto inkomste bestaan uit bedrae anders as daardie uitsluitlik by wyse van salaris, lone of soortgelyke vergoeding vir persoonlike dienste verkry] van wie vereis word om ’n opgawe in te dien of van wie nie aldus vereis word nie, maar wat ’n opgawe ingedien het, moet alle rekords vir ’n tydperk van [vier] vyf jaar hou vanaf die datum waarop die opgawe wat betrekking het op die laaste inskrywing in daardie rekords, deur die Kommissaris ontvang is.”;

(b) deur die volgende subartikel by te voeg:

“(3) Die rekords in subartikel (1) bedoel moet gehou word in daardie vorm, waarby ingesluit enige elektroniese vorm, as wat die Kommissaris mag voorskryf.”.

Wysiging van artikel 73B van Wet 58 van 1962, soos ingevoeg deur artikel 22 van Wet 5 van 2001

44. Artikel 73B van die Inkomstebelastingwet, 1962, word hierby gewysig—

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

“(1) ’n Persoon moet alle rekords behou wat benodig word om daardie persoon se belasbare kapitaalwinst of vasgestelde kapitaalverlies vas te stel, vir ’n tydperk van [vier] vyf jaar vanaf die datum waarop die opgawe vir daardie jaar van aanslag deur die Kommissaris ontvang is.”;

(b) deur die volgende subartikel by te voeg:

“(4) Die rekords in subartikels (1) en (2) bedoel moet gehou word in daardie vorm, waarby ingesluit enige elektroniese vorm, as wat die Kommissaris mag voorskryf.”.

Wysiging van artikel 75 van Wet 58 van 1962, soos gewysig deur artikel 40 van Wet 101 van 1990, artikel 34 van Wet 129 van 1991, artikel 30 van Wet 141 van 1992, artikel 35 van Wet 113 van 1993, artikel 27 van Wet 21 van 1994, artikel 15 van Wet 46 van 1996, artikel 39 van Wet 53 van 1999, artikel 44 van Wet 30 van 2000, artikel 23 van Wet 5 van 2001, artikel 18 van Wet 19 van 2001 en artikel 52 van Wet 60 van 2001

45. Artikel 75 van die Inkomstebelastingwet, 1962, word hierby gewysig deur in subartikel (1) die woorde wat paragraaf (j) volg deur die volgende woorde te vervang: “is aan ’n misdryf skuldig en by skuldigbevinding strafbaar met ’n boete of met gevangenisstraf vir ’n tydperk van hoogstens [12] 24 maande.”.

Wysiging van artikel 77 van Wet 58 van 1962, soos gewysig deur artikel 25 van Wet 69 van 1975, artikel 41 van Wet 101 van 1990, artikel 35 van Wet 129 van 1991 en artikel 31 van Wet 21 van 1995

46. (1) Artikel 77 van die Inkomstebelastingwet, 1962, word hierby gewysig—

(a) deur in subartikel (2) die uitdrukking “Kontroleur en Ouditeur-generaal” deur die uitdrukking “Ouditeur-generaal” te vervang; en

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

“(5) Die Kommissaris gee in die kennisgewing van aanslag kennis aan die belastingpligtige dat ’n beswaar teen die gedane aanslag aan hom of haar gestuur moet word binne [30 dae na die datum van die aanslag] die tydperk in artikel 81 bedoel.”.

(2) Subartikel (1)(b) tree in werking op die datum wat artikel 53(1) van die Tweede Wysigingswet op Inkomstewette, 2001 (Wet No. 60 van 2001), in werking tree.

Amendment of section 78 of Act 58 of 1962, as amended by section 25 of Act 5 of 2001 and section 27 of Act 30 of 2002

47. (1) Section 78 of the Income Tax Act, 1962, is hereby amended—
- (a) by the substitution for subsection (1B) of the following subsection: 5
- “(1B) The Commissioner shall estimate an amount of taxable income derived from any funds or assets contemplated in subsection (1A), which estimated amount shall be calculated by applying a percentage, determined at the rate contemplated in paragraph (a) of the definition of ‘official rate of interest’ contemplated in paragraph 1 of the Seventh Schedule during the year of assessment to the estimated amount of those funds or value of those assets or such higher amount as may be estimated in terms of subsection (1).”; and 10
- (b) by the substitution in subsection (1C) for paragraph (b) of the following paragraph: 15
- “(b) taken into account by the Commissioner during any succeeding year of assessment in estimating the amount of any funds in foreign currency or value of any assets owned by that resident outside the Republic, as contemplated in subsection (1A).”; 20
- (c) by the addition of the following subsection: 20
- “(3) For the purposes of this section, ‘foreign currency’ means currency other than the currency of the Republic.”.
- (2) Subsection (1) shall come into operation on 1 January 2003.

Insertion of section 79B of Act 58 of 1962

48. (1) The following section is hereby inserted after section 79A of the Income Tax Act, 1962: 25

“Withdrawal of assessments

- 79B.** (1) The Commissioner may, notwithstanding the fact that no objection has been lodged or appeal has been noted in terms of Part III of Chapter III, withdraw an assessment, which— 30
- (a) was issued to the incorrect taxpayer; or
- (b) was issued in respect of the incorrect year of assessment.
- (2) Any assessment withdrawn by the Commissioner in terms of this section shall for all purposes of this Act be deemed not to have been issued.”.

- (2) Subsection (1) shall come into operation on the date of promulgation of this Act. 35

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, section 24 of Act 36 of 1996, section 50 of Act 59 of 2000 and section 29 of Act 5 of 2001 40

49. Section 89quat of the Income Tax Act, 1962, is hereby amended by the substitution in subsection (1) for paragraphs (a) and (b) of the definition of “effective date” of the following paragraphs:
- “(a) where the provisional taxpayer is a company which has a year of assessment which ends on the last day of February or is a person (other than a company) who has not been granted permission by the Commissioner under the provisions of section [66(13)ter] 66(13A) to render accounts for a period ending on a date other than the last day of February, the date falling [7] seven months after the last day of such year; or 45
- (b) in any other case, the date falling [6] six months after the last day of such year as applicable for the purposes of the provisions of paragraph 21 [22] or 23 of the Fourth Schedule;”.

Wysiging van artikel 78 van Wet 58 van 1962, soos gewysig deur artikel 25 van Wet 5 van 2001 en artikel 27 van Wet 30 van 2002

47. (1) Artikel 78 van die Inkomstebelastingwet, 1962, word hierby gewysig—
- (a) deur subartikel (1B) deur die volgende subartikel te vervang:
- “(1B) Die Kommissaris moet ’n bedrag van belasbare inkomste van enige fondse of bates in subartikel (1A) bedoel gedurende die jaar van aanslag verkry raam, welke geraamde bedrag bereken word deur ’n persentasie, bepaal teen [die] ’n koers in paragraaf (a) van die omskrywing van ‘amptelike rentekoers’ in paragraaf 1 van die Sewende Bylae bedoel, op die geraamde bedrag van daardie fondse of waarde van daardie bate toe te pas, of sodanige hoër bedrag as wat ingevolge subartikel (1) geraam kan word.”;
- (b) deur paragraaf (b) van subartikel (1C) deur die volgende paragraaf te vervang:
- “(b) deur die Kommissaris in berekening gebring word gedurende enige daaropvolgende jaar van aanslag by die raming van die bedrag van enige fondse in buitelandse geldeenheid of waarde van enige bate deur daardie persoon buite die Republiek besit, soos in subartikel (1A) bedoel.”; en
- (c) deur die volgende subartikel by te voeg:
- “(3) By die toepassing van hierdie artikel, beteken ‘buitelandse geldeenheid’ ’n geldeenheid anders as die geldeenheid van die Republiek.”.
- (2) Subartikel (1) tree op 1 Januarie 2003 in werking.

Invoeging van artikel 79B van Wet 58 van 1962

48. (1) Die volgende artikel word hierby na artikel 79A van die Inkomstebelastingwet, 1962, ingevoeg:

“Intrekking van aanslae

- 79B.** (1) Die Kommissaris kan, ondanks die feit dat geen beswaar aangeteken of appèl genoteer is ingevolge Deel III van Hoofstuk III nie, ’n aanslag intrek, wat—
- (a) aan die verkeerde belastingpligtige uitgereik is; of
- (b) ten opsigte van die verkeerde jaar van aanslag uitgereik is.
- (2) Enige aanslag wat ingevolge hierdie artikel deur die Kommissaris ingetrek is, word vir alle doeleindes van hierdie Wet geag nie uitgereik te gewees het nie.”.

- (2) Subartikel (1) tree in werking op die datum van afkondiging van hierdie Wet.

Wysiging van artikel 89quat 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, artikel 24 van Wet 36 van 1996, artikel 50 van Wet 59 van 2000 en artikel 29 van Wet 5 van 2001

49. Artikel 89quat van die Inkomstebelastingwet, 1962, word hierby gewysig deur paragrafe (a) en (b) van die omskrywing van “effektiewe datum” in subartikel (1) deur die volgende paragrafe te vervang:
- “(a) waar die voorlopige belastingpligtige ’n maatskappy is met ’n jaar van aanslag wat op die laaste dag van Februarie eindig, of ’n persoon (behalwe ’n maatskappy) is wat nie toestemming deur die Kommissaris kragtens die bepalings van artikel [66(13)ter] 66(13A) verleen is nie, om rekeninge vir ’n tydperk eindigende op ’n ander datum as die laaste dag van Februarie te lewer, die datum vallende [7] sewe maande na die laaste dag van bedoelde jaar; of
- (b) in enige ander geval, die datum wat [6] ses maande na die laaste dag van bedoelde jaar val soos van toepassing vir die doeleindes van paragraaf 21 [22] of 23 van die Vierde Bylae.”.

Amendment of section 101 of Act 58 of 1962, as amended by section 29 of Act 90 of 1962, section 22 of Act 52 of 1970, section 39 of Act 94 of 1983, section 40 of Act 129 of 1991, section 27 of Act 36 of 1996 and section 49 of Act 30 of 2000

50. (1) Section 101 of the Income Tax Act, 1962, is hereby amended—

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

“(1) Every company carrying on business or having an office in the Republic and every **[unit]** portfolio of a collective investment scheme constituting a company in terms of paragraph (e)(i) of the definition of ‘company’ in section one, shall at all times be represented by an individual residing therein.”;

(b) by the substitution in subsection (2) for the second proviso of the following proviso:

“Provided further that in the case of any **[unit]** portfolio referred to in subsection (1) the public officer of the relevant **[management company]** manager registered in terms of section 42 of the Collective Investment Schemes Control Act, 2002, shall be the public officer except in the event of the winding-up of the **[management company]** portfolio, in which event the manager, trustee or custodian appointed by the Registrar as defined in section 1 of that Act or any competent division of the court, to wind-up the portfolio [under the relevant unit trust scheme] shall be the public officer.”;

(c) by the substitution in subsection (5) for the first proviso of the following proviso:

“Provided that in the case of any **[unit]** portfolio referred to in subsection (1) the place at which any such notice or other document may be served or delivered or to which any such notice or document may be sent shall be the place appointed by the relevant **[management company]** manager in regard to any notice or other document affecting itself, or, in the event of the manager, trustee or custodian under the relevant **[unit trust]** collective investment scheme becoming the public officer, the place within the Republic appointed by the manager, trustee or custodian and approved by the Commissioner.”.

(2) Subsection (1) shall come into operation on the date that the Collective Investment Schemes Control Act, 2002, comes into operation.

Amendment of section 104 of Act 58 of 1962, as amended by section 50 of Act 30 of 2000

51. Section 104 of the Income Tax Act, 1962, is hereby amended by the substitution in subsection (1) for the words following paragraph (d) of the following words:

“shall be guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding **[two]** five years.”.

Substitution of section 105 of Act 58 of 1962

52. The following section is hereby substituted for section 105 of the Income Tax Act, 1962:

“Jurisdiction of courts

105. Any person charged with an offence under this Act may[, notwithstanding anything to the contrary contained in any law,] be tried in respect of that offence by any court having jurisdiction within any area in which he resides or carries on business, in addition to any jurisdiction conferred upon any court by any law.”.

Wysiging van artikel 101 van Wet 58 van 1962, soos gewysig deur artikel 29 van Wet 90 van 1962, artikel 22 van Wet 52 van 1970, artikel 39 van Wet 94 van 1983, artikel 40 van Wet 129 van 1991, artikel 27 van Wet 36 van 1996 en artikel 49 van Wet 30 van 2000

50. (1) Artikel 101 van die Inkomstebelastingwet, 1962, word hierby gewysig— 5

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

“(1) Elke maatskappy wat in die Republiek besigheid dryf of ’n kantoor het en elke [effektegroep] portefeulje van ’n kollektiewe beleggingskema wat ingevolge paragraaf (e)(i) van die omskrywing van ‘maatskappy’ in artikel een ’n maatskappy is, word te alle tye deur ’n in die Republiek woonagtige individu verteenwoordig.”; 10

(b) deur in subartikel (2) die tweede voorbehoudsbepaling deur die volgende voorbehoudsbepaling te vervang:

“Met dien verstande voorts dat in die geval van ’n [effektegroep] portefeulje bedoel in subartikel (1) die openbare amptenaar van die betrokke [bestuursmaatskappy] bestuurder ingevolge artikel 42 van die Wet op die Beheer van Kollektiewe Beleggingskemas, 2002, geregistreer, die openbare amptenaar is behalwe in geval van likwidasië van die [bestuursmaatskappy] portefeulje, in welke geval die bestuurder, trustee [ingevolge die betrokke effektrustskema] of bewaarder aangestel deur die Registrateur soos in artikel 1 van daardie wet omskryf of enige bevoegde afdeling van die hof, om die portefeulje te likwideer, die openbare amptenaar is.”; 15 20

(c) deur in subartikel (5) die eerste voorbehoudsbepaling deur die volgende voorbehoudsbepaling te vervang: 25

“Met dien verstande dat in die geval van ’n [effektegroep] portefeulje bedoel in subartikel (1) die plek waar so ’n kennisgewing of ander stuk bestel of afgelewer kan word of waarheen so ’n kennisgewing of stuk gestuur kan word, die plek is wat die betrokke [bestuursmaatskappy] bestuurder met betrekking tot ’n kennisgewing of ander stuk aangaande die maatskappy self aangedui het, of, ingeval die bestuurder, trustee of bewaarder ingevolge die betrokke [effekte-trustskema] kollektiewe beleggingskema die openbare amptenaar word, die plek in die Republiek deur die bestuurder, trustee of bewaarder aangedui en deur die Kommissaris goedgekeur.”. 30 35

(2) Subartikel (1) tree in werking op die datum wat die Wet op die Beheer van Kollektiewe Beleggingskemas, 2002, in werking tree.

Wysiging van artikel 104 van Wet 58 van 1962, soos gewysig deur artikel 50 van Wet 30 van 2000

51. Artikel 104 van die Inkomstebelastingwet, 1962, word hierby gewysig deur in subartikel (1) die woorde wat op paragraaf (d) volg deur die volgende woorde te vervang: 40

“is aan ’n misdryf skuldig en by skuldigbevinding strafbaar met ’n boete of met gevangenisstraf vir ’n tydperk van hoogstens [twee] vyf jaar.”.

Vervanging van artikel 105 van Wet 58 van 1962 45

52. Die volgende artikel vervang hierby artikel 105 van die Inkomstebelastingwet, 1962:

“Jurisdiksie van howe

105. Iemand wat weens ’n misdryf ingevolge hierdie Wet aangekla word, kan, [ondanks andersluidende wetsbepalings] bykomend tot enige jurisdiksie by wetsbepaling aan enige hof verleen, ten opsigte van daardie misdryf verhoor word deur enige hof wat regsbevoeg is binne ’n gebied waarin hy woon of besigheid dryf.”. 50

Amendment of section 106 of Act 58 of 1962, as substituted by section 29 of Act 69 of 1975, amended by section 26 of Act 103 of 1976 and section 51 of Act 30 of 2000

53. (1) Section 106 of the Income Tax Act, 1962, is hereby amended by the substitution in subsection (2) for subparagraph (ii) of paragraph (d) of the following subparagraph:

“(ii) if left with some adult person apparently residing at or occupying or employed at the place appointed by the company under subsection (5) of section 101 or, in the case of any [unit] portfolio of a collective investment scheme referred to in paragraph (e)(i) of the definition of ‘company’ in section 1, the public officer of which is the manager, trustee or custodian referred to in the said subsection (5), by such manager, trustee or custodian, or where no such place has been appointed by the company, [or] manager, trustee or custodian, as the case may be, if left with some adult person apparently residing at or occupying or employed at the last known office or place of business of the company, [or] manager, trustee or custodian, as the case may be, in the Republic; or”.

(2) Subsection (1) shall come into operation on the date that the Collective Investment Schemes Control Act, 2002, comes into operation.

Amendment of section 107 of Act 58 of 1962, as amended by section 26 of Act 65 of 1973, section 46 of Act 97 of 1986, section 29 of Act 21 of 1994, section 37 of Act 28 of 1997, section 46 of Act 30 of 1998, section 34 of Act 5 of 2001 and section 62 of Act 60 of 2001

54. Section 107 of the Income Tax Act, 1962, is hereby amended by the deletion of paragraph (f) of subsection (1).

Amendment of paragraph 5 of First Schedule to Act 58 of 1962, as substituted by section 18 of Act 72 of 1963 and amended by section 23 of Act 52 of 1970, section 30 of Act 88 of 1971, section 28 of Act 103 of 1976, section 23 of Act 104 of 1980, section 26 of Act 96 of 1981, section 31 of Act 36 of 1996 and section 36 of Act 5 of 2001

55. Paragraph 5 of the First Schedule to the Income Tax Act, 1962, is hereby amended by the substitution for subparagraph (1) of the following subparagraph:

“(1) The value to be placed upon livestock for the purposes of this Schedule shall, subject to the provisions of paragraph 4(1) [and subparagraph (2) of this paragraph] as respects livestock held and not disposed of at the end of the year of assessment, be the standard value applicable to the livestock.”.

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, section 53 of Act 30 of 1998, section 56 of Act 59 of 2000 and section 33 of Act 30 of 2002

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

“(h) the amount of any allowance or advance contemplated in paragraph [(bA) or] (c) of the definition of ‘remuneration’ in paragraph (1);”.

(2) Subsection (1) shall be deemed to have come into operation on 1 August 2002.

Wysiging van artikel 106 van Wet 58 van 1962, soos vervang deur artikel 29 van Wet 69 van 1975, gewysig deur artikel 26 van Wet 103 van 1976 en artikel 51 van Wet 30 van 2000

53. (1) Artikel 106 van die Inkomstebelastingwet, 1962, word hierby gewysig deur subparagraaf (ii) van paragraaf (d) van subartikel (2) deur die volgende subparagraaf te vervang: 5

“(ii) indien gelaat by ’n volwasse persoon wat oënskynlik die plek ingevolge subartikel (5) van artikel 101 deur die maatskappy of, in die geval van ’n [effektegroep] portefeulje van ’n kollektiewe beleggingskema bedoel in paragraaf (e)(i) van die omskrywing van ‘maatskappy’ in artikel 1, waarvan die openbare amptenaar die bestuurder, trustee of bewaarder bedoel in genoemde subartikel (5) is, deur bedoelde bestuurder, trustee of bewaarder, aangedui, bewoon of okkupeer of aldaar in diens is, of, waar so ’n plek nie deur die maatskappy, [of] bestuurder, trustee of bewaarder, na gelang van die geval, aangedui is nie, indien gelaat by ’n volwasse persoon wat oënskynlik die laasbekende kantoor of besigheidsplek van die maatskappy, [of] bestuurder, trustee of bewaarder, na gelang van die geval, in die Republiek bewoon of okkupeer of aldaar in diens is; of”.

(2) Subartikel (1) tree in werking op die datum wat die Wet op die Beheer van Kollektiewe Beleggingskemas, 2002, in werking tree. 20

Wysiging van artikel 107 van Wet 58 van 1962, soos gewysig deur artikel 26 van Wet 65 van 1973, artikel 46 van Wet 97 van 1986, artikel 29 van Wet 21 van 1994, artikel 37 van Wet 28 van 1997, artikel 46 van Wet 30 van 1998, artikel 34 van Wet 5 van 2001 en artikel 62 van Wet 60 van 2001

54. Artikel 107 van die Inkomstebelastingwet, 1962, word hierby gewysig deur paragraaf (f) van subartikel (1) te skrap. 25

Wysiging van paragraaf 5 van Eerste Bylae by Wet 58 van 1962, soos vervang deur artikel 18 van Wet 72 van 1963 en gewysig deur artikel 23 van Wet 52 van 1970, artikel 30 van Wet 88 van 1971, artikel 28 van Wet 103 van 1976, artikel 23 van Wet 104 van 1980, artikel 26 van Wet 96 van 1981, artikel 31 van Wet 36 van 1996 en artikel 36 van Wet 5 van 2001 30

55. Paragraaf 5 van die Eerste Bylae by die Inkomstebelastingwet, 1962, word hierby gewysig deur subparagraaf (1) deur die volgende subparagraaf te vervang:

“(1) Die waarde wat vir die doeleindes van hierdie Bylae op lewende hawe gestel moet word, is, behoudens die bepalings van paragraaf 4 (1) [en subparagraaf (2) van hierdie paragraaf] met betrekking tot lewende hawe wat aan die end van die jaar van aanslag besit word en nie van die hand gesit is nie, die standaardwaarde wat op die lewende hawe van toepassing is.”. 35

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, artikel 53 van Wet 30 van 1998, artikel 56 van Wet 59 van 2000 en artikel 33 van Wet 30 van 2002 40

56. (1) Paragraaf 11B van die Vierde Bylae by die Inkomstebelastingwet, 1962, word hierby gewysig deur item (h) van die omskrywing van “netto besoldiging” in subparagraaf (1) deur die volgende item te vervang: 45

“(h) die bedrag van enige toelae of voorskot in paragraaf [(bA) of] (c) van die omskrywing van ‘besoldiging’ in paragraaf 1 beoog;”.

(2) Subartikel (1) word geag op 1 Augustus 2002 in werking te getree het. 50

Amendment of paragraph 14 of the Fourth Schedule to Act 58 of 1962, as amended by section 40 of Act 88 of 1971 and section 50 of Act 101 of 1990

57. Paragraph 14 of the Fourth Schedule to the Income Tax Act, 1962, is hereby amended by the addition of the following subparagraph:

“(4) The records contemplated in subparagraph (1) must be maintained in such form, including any electronic form, as may be prescribed by the Commissioner.”. 5

Amendment of paragraph 18 of Fourth Schedule to Act 58 of 1962, as added by section 19 of Act 6 of 1963 and amended by section 28 of Act 90 of 1964, section 42 of Act 88 of 1971, section 49 of Act 85 of 1974, section 19 of Act 104 of 1979, section 26 of Act 65 of 1986, section 9 of Act 108 of 1986, section 23 of Act 70 of 1989, section 50 of Act 113 of 1993, section 37 of Act 36 of 1996, section 24 of Act 19 of 2001 and section 34 of Act 30 of 2002 10

58. Paragraph 18 of the Fourth Schedule to the Income Tax Act, 1962, is hereby amended by the deletion of subparagraphs (2), (3), (4) and (5).

Amendment of paragraph 21 of the Fourth Schedule to Act 58 of 1962, as substituted by section 30 of Act 88 of 1965 and amended by section 46 of Act 88 of 1971 15

59. Paragraph 21 of the Fourth Schedule to the Income Tax Act, 1962, is hereby amended—

(a) by the substitution for the heading of the following heading: 20

“Payment of provisional tax by provisional taxpayers (other than companies) [whose income is not normally derived wholly or mainly from farming, fishing or diamond digging]”;

(b) by the substitution for subparagraph (2) of the following subparagraph:

“(2) If the Commissioner has in terms of [subsection (13)ter of section sixty-six] section 66(13A) of this Act agreed to accept accounts from any provisional taxpayer in respect of any year of assessment drawn to a date falling after the end of such year, the period referred to in item (a) of subparagraph (1) shall, notwithstanding the provisions of that subparagraph, be reckoned from such date as the Commissioner upon application of the taxpayer and having regard to the circumstances of the case may approve, and in such case the last day of such year of assessment shall for the purposes of item (b) of that subparagraph be deemed to be the day preceding the first anniversary of the said date.”; 25 30 35

and

(c) by the deletion of subparagraph (3).

Repeal of paragraph 22 of the Fourth Schedule to Act 58 of 1962

60. (1) Paragraph 22 of the Fourth Schedule to the Income Tax Act, 1962, is hereby repealed.

(2) Subsection (1) shall be deemed to have come into operation on 1 July 2002 in respect of years of assessment commencing on or after that date. 40

Repeal of paragraph 26 of the Fourth Schedule to Act 58 of 1962, as amended by section 48 of Act 129 of 1991

61. Paragraph 26 of the Fourth Schedule to the Income Tax Act, 1962, is hereby repealed. 45

Wysiging van paragraaf 14 van Vierde Bylae by Wet 58 van 1962, soos gewysig deur artikel 40 van Wet 88 van 1971 en artikel 50 van Wet 101 van 1990

57. Paragraaf 14 van die Vierde Bylae by die Inkomstebelastingwet, 1962, word hierby gewysig deur die volgende subparagraaf by te voeg:

“(4) Die rekords in subparagraaf (1) bedoel moet gehou word in daardie vorm, waarby ingesluit enige elektroniese vorm, as wat die Kommissaris mag voorskryf.”. 5

Wysiging van paragraaf 18 van Vierde Bylae by Wet 58 van 1962, soos added by artikel 19 van Wet 6 van 1963 en gewysig deur artikel 28 van Wet 90 van 1964, artikel 42 van Wet 88 van 1971, artikel 49 van Wet 85 van 1974, artikel 19 van Wet 104 van 1979, artikel 26 van Wet 65 van 1986, artikel 9 van Wet 108 van 1986, artikel 23 van Wet 70 van 1989, artikel 50 van Wet 113 van 1993, artikel 37 van Wet 36 van 1996, artikel 24 van Wet 19 van 2001 en artikel 34 van Wet 30 van 2002 10

58. Paragraaf 18 van die Vierde Bylae by die Inkomstebelastingwet, 1962, word hierby gewysig deur subparagrafe (2), (3), (4) en (5) te skrap. 15

Wysiging van paragraaf 21 van Vierde Bylae by Wet 58 van 1962, soos vervang deur artikel 30 van Wet 88 van 1965 en gewysig deur artikel 46 van Wet 88 van 1971

59. Paragraaf 21 van die Vierde Bylae by die Inkomstebelastingwet, 1962, word hierby gewysig— 20

(a) deur die opskrif deur die volgende opskrif te vervang:

“Betaling van voorlopige belasting deur voorlopige belastingpligtiges (behalwe maatskappye) [wie se inkomste nie gewoonlik geheel en al of hoofsaaklik uit boerdery, visserij of diamantdelwery verkry word nie]”; 25

(b) deur subparagraaf (2) deur die volgende subparagraaf te vervang:

“(2) Indien die Kommissaris ingevolge [subartikel (13)ter van artikel ses-en-sestig] artikel 66(13A) van hierdie Wet ingestem het om van ’n voorlopige belastingpligtige ten opsigte van ’n jaar van aanslag rekenings aan te neem wat opgemaak is tot ’n datum na die einde van daardie jaar, word die tydperk in item (a) van subparagraaf (1) bedoel, ondanks die bepalinge van daardie sub-paragraaf, gereken van die datum wat die Kommissaris op aansoek van die belastingpligtige en met inagneming van die omstandighede van die geval goedkeur, en in so ’n geval word die laaste dag van bedoelde jaar van aanslag by die toepassing van item (b) van daardie sub-paragraaf geag die dag voor die eerste verjaardag van bedoelde datum te wees.”; 30 35

(c) deur subparagraaf (3) te skrap.

Herroeping van paragraaf 22 van Vierde Bylae by Wet 58 van 1962

60. (1) Paragraaf 22 van die Vierde Bylae by die Inkomstebelastingwet, 1962, word hierby herroep. 40

(2) Subartikel (1) word geag op 1 Julie 2002 inwerking te getree het en is van toepassing ten opsigte van jare van aanslag wat op of na daardie datum ’n aanvang neem.

Herroeping van paragraaf 26 van Vierde Bylae by Wet 58 van 1962, soos gewysig deur artikel 48 van Wet 129 van 1991 45

61. Paragraaf 26 van die Vierde Bylae by die Inkomstebelastingwet, 1962, word hierby herroep.

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, section 54 of Act 30 of 2000 and section 59 of Act 59 of 2000

62. Paragraph 1 of the Seventh Schedule is hereby amended— 10

(a) by the substitution for paragraph (b) of the definition of “official rate of interest” of the following paragraph:

“(b) in the case of a loan which is denominated in [a foreign] any other currency, a market related rate of interest;”;

(b) by the addition in the definition of “taxable benefit” of the following paragraph: 15

“(d) any benefit or privilege received by or accrued to a person contemplated in section 9(1)(e) stationed outside the Republic which is attributable to that person’s services rendered outside the Republic.”. 20

Amendment of paragraph 1 of Eighth Schedule to Act 58 of 1962, as inserted by section 38 of Act 5 of 2001 and amended by section 65 of Act 60 of 2001

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

(a) by the deletion of the definition of “active business asset”; 25

(b) by the deletion of the definition of “financial instrument”;

(c) by the deletion of the definition of “foreign currency”;

(d) by the insertion after the definition of “ruling price” of the following definition:

“‘special trust’ means a trust contemplated in paragraph (a) of the definition of ‘special trust’ in section 1;”.

(2) (a) Subsection (1)(a) shall be deemed to have come into operation on 1 October 2001.

(b) Subsection (1)(b) shall come into operation on the date of promulgation of this Act. 35

(c) Subsection (1)(c) shall come into operation on the date of promulgation of this Act and shall apply in respect of years of assessment commencing on or after that date.

(d) Subsection (1)(d) shall come into operation from the commencement of years of assessment ending on or after 1 January 2003.

Amendment of paragraph 2 of Eighth Schedule to Act 58 of 1962, as inserted by section 38 of Act 5 of 2001 and amended by section 25 of Act 19 of 2001 and section 66 of Act 60 of 2001 40

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

“(b) the following assets [situated in the Republic] of a person who is not a resident, namely— 45

(i) immovable property situated in the Republic held by that person or any interest or right of whatever nature of that person to or in immovable property situated in the Republic; or

(ii) any asset [of a] which is attributable to a permanent establishment of that person in the Republic [through which a trade is carried on in the Republic during the relevant year of assessment].”.

Wysiging van paragraaf 1 van Sewende Bylae by Wet 58 van 1962, soos ingevoeg 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, artikel 54 van Wet 30 van 2000 en artikel 59 van Wet 59 van 2000

62. Paragraaf 1 van die Sewende Bylae by die Inkomstebelastingwet, 1962, word hierby gewysig—

- (a) deur paragraaf (b) van die omskrywing van “amptelike rentekoers” deur die volgende paragraaf te vervang:
 - “(b) in die geval van ’n lening wat in [’n buitelandse] enige ander geldeenheid aangedui word, ’n markverwante rentekoers;”;
- (b) deur die volgende paragraaf by die omskrywing van “belasbare voordeel” te voeg:
 - “(d) enige voordeel of voorreg ontvang deur of toegeval aan ’n persoon in artikel 9(1)(e) bedoel wat buite die Republiek gestasioneer is, wat aan daardie persoon se dienste buite die Republiek gelewer, toeskryfbaar is.”.

Wysiging van paragraaf 1 van Agtste Bylae by Wet 58 van 1962, soos ingevoeg deur artikel 38 van Wet 5 van 2001 en gewysig deur artikel 65 van Wet 60 van 2001

63. (1) Paragraaf 1 van die Agtste Bylae by die Inkomstebelastingwet, 1962, word hierby gewysig—

- (a) deur die omskrywing van “aktiewe besigheidsbate” te skrap;
 - (b) deur die omskrywing van “buitelandse geldeenheid” te skrap;
 - (c) deur die omskrywing van “finansiële instrument” te skrap;
 - (d) deur na die omskrywing van “primêre woning” die volgende omskrywing in te voeg:
 - “‘spesiale trust’, ’n trust in paragraaf (a) van die omskrywing van ‘spesiale trust’ in artikel 1 bedoel;”.
- (2) (a) Subartikel (1)(a) word geag op 1 Oktober 2001 in werking te getree het.
- (b) Subartikel (1)(b) tree in werking op die datum van afkondiging van hierdie Wet en is van toepassing ten opsigte van jare van aanslag wat op of na daardie datum ’n aanvang neem.
- (c) Subartikel (1)(c) tree in werking op die datum van afkondiging van hierdie Wet.
- (d) Subartikel (1)(d) tree in werking op 1 Januarie 2003 in is van toepassing ten opsigte van jare van aanslag wat op of na daardie datum eindig.

Wysiging van paragraaf 2 van Agtste Bylae by Wet 58 van 1962, soos ingevoeg deur artikel 38 van Wet 5 van 2001 en gewysig deur artikel 25 van Wet 19 van 2001 en artikel 66 van Wet 60 van 2001

64. Paragraaf 2 van die Agtste Bylae by die Inkomstebelastingwet, 1962, word hierby gewysig deur item (b) van subparagraaf (1) deur die volgende item te vervang:

- “(b) die volgende bates [geleë in die Republiek] van ’n persoon wat nie ’n inwoner is nie naamlik—
 - (i) onroerende eiendom in die Republiek geleë deur sodanige persoon gehou of enige belang of reg van welke aard ookal van daardie persoon tot of in onroerende eiendom in die Republiek geleë; of
 - (ii) enige bate [van] wat aan ’n permanente saak van daardie persoon [waardeur ’n besigheid] in die Republiek [bedryf word gedurende die betrokke jaar van aanslag] toeskryfbaar is.”.

Amendment of paragraph 4 of Eighth Schedule to Act 58 of 1962, as inserted by section 38 of Act 5 of 2001 and amended by section 68 of Act 60 of 2001

65. Paragraph 4 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended by the substitution for subparagraph (a) of the following subparagraph:

“(a) during that year, is equal to the amount by which the base cost of that asset exceeds the proceeds received or accrued in [consequence] respect of that disposal; or”.

Amendment of paragraph 10 of Eighth Schedule to Act 58 of 1962, as inserted by section 38 of Act 5 of 2001

66. Paragraph 10 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended by the substitution for subparagraph (a) of the following subparagraph:

“(a) in the case of a natural person or a special trust as defined in section 1 of the Act, 25 per cent;”.

Amendment of paragraph 11 of Eighth Schedule to Act 58 of 1962, as inserted by section 38 of Act 5 of 2001 and amended by section 71 of Act 60 of 2001

67. (1) Paragraph 11 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended—

- (a) by the substitution in subparagraph (2) for item (c) of the following item:

“(c) by a [unit] portfolio of a collective investment scheme in respect of the issue of a [unit] participatory interest in that portfolio, or by a [unit] portfolio in respect of the granting of an option to acquire a [unit] participatory interest in that [unit] portfolio;”.
- (b) by the substitution in subparagraph (2) for item (e) of the following item:

“(e) by a trustee in respect of the distribution of an asset of the trust to a beneficiary [who] to the extent that that beneficiary has a vested right in that asset [prior to distribution];”;
- (c) by the deletion in subparagraph (2) at the end of item (g) of the word “or”; and
- (d) by the addition in subparagraph (2) to the end of item (h) of the word “or”.

(2) Subsection (1) shall come into operation on the date that the Collective Investment Schemes Control Act, 2002, comes into operation.

Amendment of paragraph 12 of Eighth Schedule to Act 58 of 1962, as inserted by section 38 of Act 5 of 2001 and amended by section 72 of Act 60 of 2001

68. (1) Paragraph 12 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended by the substitution for subparagraph (5) of the following subparagraph:

“(5) (a) [Where] Subject to paragraph 67, this subparagraph applies where a debt owed by a person to a creditor has been reduced or discharged by that creditor—

- (i) [without full] for no consideration [for that reduction or discharge]; or
- (ii) for a consideration which is less than the amount by which the face value of the debt has been so reduced or discharged,

[that person will, to the extent that] but does not apply where the amount of that reduction or discharge [did not constitute] constituted a capital gain in terms of paragraph 3(b)(ii) or has [not] been taken into account in terms of section 20(1)(a)(ii) or paragraph 20(3). [be treated as having—]”.

(b) Where this subparagraph applies the person contemplated in item (a) shall be treated as having—

- [(a)](i) acquired a claim to so much of that debt that was reduced or discharged for no consideration, or if a consideration was paid, to so much of the reduction or discharge of the debt as exceeds the consideration, which claim shall have a base cost of nil; and
- [(b)](ii) disposed of that claim for proceeds equal to that reduction or discharge.”.

Wysiging van paragraaf 4 van Agtste Bylae by Wet 58 van 1962, soos ingevoeg deur artikel 38 van Wet 5 van 2001 en gewysig deur artikel 68 van Wet 60 van 2001

65. Paragraaf 4 van die Agtste Bylae by die Inkomstebelastingwet, 1962, word hierby gewysig deur subparagraaf (a) deur die volgende subparagraaf te vervang:

- “(a) gedurende daardie jaar, is gelyk aan die bedrag waarmee die basiskoste van die bate die opbrengs verkry of toegeval [as gevolg] ten opsigte van sodanige beskikking, oorskry; of”.

Wysiging van paragraaf 10 van Agtste Bylae by Wet 58 van 1962, soos ingevoeg deur artikel 38 van Wet 5 van 2001

66. Paragraaf 10 van die Agtste Bylae by die Inkomstebelastingwet, 1962, word hierby gewysig deur subparagraaf (a) deur die volgende subparagraaf te vervang:

- “(a) in die geval van ’n natuurlike persoon of ’n spesiale trust soos in artikel 1 van die Wet omskryf, 25 persent;”.

Wysiging van paragraaf 11 van Agtste Bylae by Wet 58 van 1962, soos ingevoeg deur artikel 38 van Wet 5 van 2001 en gewysig deur artikel 71 van Wet 60 van 2001

67. (1) Paragraaf 11 van die Agtste Bylae by die Inkomstebelastingwet, 1962, word hierby gewysig—

- (a) deur item (c) van subparagraaf (2) deur die volgende item te vervang:

“(c) deur ’n [effektiegroep] portefeulje van ’n kollektiewe beleggingskema ten opsigte van die uitreiking van ’n [eenheid] deelnemende belang in daardie [groep] portefeulje of deur ’n [effektiegroep] portefeulje ten opsigte van die verlening van ’n opsie om ’n [eenheid] deelnemende belang in daardie [effektiegroep] portefeulje te verkry;”;

- (b) deur item (e) van subparagraaf (2) deur die volgende item te vervang:

“(e) deur ’n trustee ten opsigte van die uitkering van ’n bate van die trust aan ’n begunstigde [wat] tot die mate wat die begunstigde ’n gevestigde belang in daardie bate [voor die uitkering daarvan] het;”;

- (c) deur die woord “of” aan die einde van item (g) van subparagraaf (2) te skrap;

- (d) deur die woord “of” aan die einde van item (h) van subparagraaf (2) by te voeg.

(2) Subartikel (1) tree in werking op die datum wat die Wet op die Beheer van Kollektiewe Beleggingskemas, 2002, in werking tree.

Wysiging van paragraaf 12 van Agtste Bylae by Wet 58 van 1962, soos ingevoeg deur artikel 38 van Wet 5 van 2001 en gewysig deur artikel 72 van Wet 60 van 2001

68. (1) Paragraaf 12 van die Agtste Bylae by die Inkomstebelastingwet, 1962, word hierby gewysig deur subparagraaf (5) deur die volgende subparagraaf te vervang:

“(5)(a) [Waar] Behoudens paragraaf 67, is hierdie subparagraaf van toepassing waar ’n skuld wat deur ’n persoon aan ’n skuldeiser verskuldig is deur daardie skuldeiser verminder of afgelos word—

- (i) [sonder volle] teen geen vergoeding [vir daardie vermindering of aflossing]; of

- (ii) vir ’n vergoeding wat minder is as die bedrag waarmee die gesigwaarde van die skuld aldus verminder of afgelos is,

[word daardie persoon, tot die mate wat] maar is nie van toepassing nie waar die bedrag van daardie vermindering of aflossing [nie] ’n kapitaalwinst ingevolge paragraaf 3(b)(ii) daargestel het [nie] of [nie] ingevolge paragraaf 20(1)(a)(ii) of paragraaf 20(3) in berekening gebring is [nie, geag].

(b) Waar hierdie subparagraaf van toepassing is word die persoon in item (a) bedoel geag—

- [(a)](i) ’n eis te verkry het op soveel van daardie skuld as wat verminder of afgelos is vir geen vergoeding, of indien ’n vergoeding betaal is, soveel van die vermindering of aflossing van die skuld as wat die vergoeding te bowe gaan, welke eis ’n basiskoste van nul het; en

- [(b)](ii) oor daardie eis beskik het teen vergoeding gelyk aan daardie vermindering of aflossing.”.

(2) Subsection (1) shall—

- (a) to the extent it includes a reference to paragraph 67 and paragraph 20(1)(a)(ii) be deemed to have come into operation on 1 October 2001; and
- (b) to the extent that it amends the rest of paragraph 12, comes into operation on the date of promulgation.

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Amendment of paragraph 13 of Eighth Schedule to Act 58 of 1962, as inserted by section 38 of Act 5 of 2001

69. (1) Paragraph 13 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended—

- (a) by the substitution in subparagraph (1) for the words preceding item (a) of the following words: 10

“(1) The time of disposal of an asset **[in consequence of] by means of—**”;

- (b) by the substitution in subparagraph (1) for the words preceding sub-item (i) of item (a) of the following words: 15

“(a) a change of ownership effected or to be effected from one person to another because of an event, act, forbearance or by the operation of law is, in the case of—”; and

- (c) by the substitution in subparagraph (1) for the words preceding sub-item (i) of item (g) of the following words: 20

“the happening of an event contemplated in—”.

(2) Subsection (1) shall be deemed to have come into operation on 1 October 2001.

Amendment of paragraph 14 of Eighth Schedule to Act 58 of 1962, as inserted by section 38 of Act 5 of 2001

70. Paragraph 14 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended by the substitution for the words preceding subparagraph (a) of the following words: 25

“For the purposes of this Schedule, in the case of spouses married in community of property, where any **[property] asset** is disposed of by one of the spouses and that **[property] asset—**”. 30

Amendment of paragraph 20 of Eighth Schedule to Act 58 of 1962, as inserted by section 38 of Act 5 of 2001 and amended by section 26 of Act 19 of 2001 and section 75 of Act 60 of 2001

71. (1) Paragraph 20 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended— 35

- (a) by the substitution in subparagraph (1) for item (f) of the following item:

“(f) if that asset was acquired or disposed of by the exercise on or after valuation date of an option acquired prior to the valuation date, the valuation date value of that option, which value must be treated **[to be]** as expenditure actually incurred in respect of that asset on valuation date for the purposes of this Part;”; 40

- (b) by the substitution in subparagraph (1) for the words in item (g) preceding subitem (i) of the following words:

“(g) the following amounts actually incurred as expenditure directly related to the cost of ownership of that asset, which is used wholly and exclusively for business purposes or which constitutes a share listed on a recognised stock exchange or **[an] a participatory** interest in a **[unit] portfolio of a collective investment scheme [(other than a unit portfolio comprised in any unit trust scheme in property shares)]—**”; 45

- (c) by the substitution in subparagraph (1) for the proviso to item (g) of the following proviso: 50

“Provided that if that asset constitutes a share listed on a recognised **[stock] exchange or [an] a participatory** interest in a **[unit] portfolio of a collective investment scheme**, the expenditure in respect of that asset must for the purposes of this subparagraph be reduced by two-thirds;”; 55

(2) Subartikel (1)—

- (a) tot die mate wat dit 'n verwysing na paragraaf 67 en paragraaf 20(1)(a)(ii) byvoeg, word geag op 1 Oktober 2001 in werking te getree het; en
- (b) tot die mate wat dit die res van paragraaf 12 wysig, tree in werking op die datum van afkondiging van hierdie Wet.

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Wysiging van paragraaf 13 van Agtste Bylae by Wet 58 van 1962, soos ingevoeg deur artikel 38 van Wet 5 van 2001

69. (1) Paragraaf 13 van die Agtste Bylae by die Inkomstebelastingwet, 1962, word hierby gewysig—

- (a) deur in subparagraaf (1) die woorde wat item (a) voorafgaan deur die volgende woorde te vervang:
“(1) Die tydstop van beskikking oor 'n bate [as gevolg] by wyse van—”;
- (b) deur in subparagraaf (1) die woorde wat subitem (i) van item (a) voorafgaan deur die volgende woorde te vervang:
“(a) die verandering in eienaarskap uitgevoer of uitgevoer te word van een persoon aan 'n ander as gevolg van 'n gebeurtenis, daad, toewysing of deur werking van die reg is, in die geval van—”; en
- (c) deur in subparagraaf (1) die woorde wat subitem (i) van item (g) voorafgaan deur die volgende woorde te vervang:
“(g) die plaasvind van 'n gebeurtenis beoog in—”.

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(2) Subartikel (1) word geag op 1 Oktober 2001 in werking te getree het.

Wysiging van paragraaf 14 van Agtste Bylae by Wet 58 van 1962, soos ingevoeg deur artikel 38 van Wet 5 van 2001

70. Paragraaf 14 van die Agtste Bylae by die Inkomstebelastingwet, 1962, word hierby gewysig deur die woorde wat subparagraaf (a) voorafgaan deur die volgende woorde te vervang:

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“By die toepassing van hierdie Bylae, in die geval van gades in gemeenskap van goed getroud, waar enige [eiendom] bate oor beskik word deur een van die gades en daardie [eiendom] bate—”.

Wysiging van paragraaf 20 van Agtste Bylae by Wet 58 van 1962, soos ingevoeg deur artikel 38 van Wet 5 van 2001 en gewysig deur artikel 26 van Wet 19 van 2001 en artikel 75 van Wet 60 van 2001

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71. (1) Paragraaf 20 van die Agtste Bylae by die Inkomstebelastingwet, 1962, word hierby gewysig—

- (a) deur item (f) van subparagraaf (1) deur die volgende item te vervang:
“(f) indien daardie bate verkry is of oor beskik is deur middel van die uitoefening op of na die waardasiedatum van 'n opsie voor die waardasiedatum verkry, die waardasiedatumwaarde van daardie opsie, welke waarde geag moet word as onkoste werklik aangegaan op waardasiedatum ten opsigte van daardie bate vir doeleindes van hierdie Deel;”;
- (b) deur in subparagraaf (1) die woorde in item (g) wat subitem (i) voorafgaan deur die volgende woorde te vervang:
“(g) die volgende bedrae werklik aangegaan as onkoste wat direk verband hou met die koste van eienaarskap van daardie bate, wat geheel en uitsluitlik vir besigheidsdoeleindes gebruik word of wat 'n aandeel genoteer op 'n erkende aandelebeurs of 'n deelnemende belang in 'n [effektiegroep (behalwe 'n effektiegroep bevat in 'n effektrustskema in eiendomsaandele)] portefeulje van 'n kollektiewe beleggingskema daarstel—”;
- (c) deur in subparagraaf (1) die voorbehoudsbepaling by item (g) deur die volgende voorbehoudsbepaling te vervang:
“Met dien verstande dat indien daardie bate 'n aandeel genoteer op 'n erkende [aandelebeurs] beurs of 'n deelnemende belang in 'n [effektiegroep] portefeulje van 'n kollektiewe beleggingskema daarstel, die onkoste ten opsigte van daardie bate by die toepassing van hierdie subparagraaf met twee-derdes verminder moet word;”;

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- (d) by the substitution in subparagraph (1) for sub-items (ii) and (iii) of item (h) of the following sub-items:

“(ii) any other asset—

(aa) so much of an amount that has been included in that person's income in terms of section 8(5), as having been applied towards the reduction of the purchase price of that asset; [or]

(bb) where an amount has been included in that person's gross income in terms of paragraph (i) of the definition of 'gross income' in section 1, the value placed on the asset under the Seventh Schedule for purposes of determining the amount so included in that person's gross income; or

(cc) where an amount has been included in that person's gross income in terms of paragraph (h) of the definition of 'gross income' in section 1 in respect of that asset, so much of that amount so included as exceeds the amount of any allowance granted to that person in terms of section 11(h);

- (iii) [an interest] a share in a controlled foreign [entity as defined in section 9D] company, an amount equal to the proportional amount of the net income of that [entity] company (or any other controlled foreign company in relation to that resident in which that controlled foreign company directly or indirectly has an interest) which was included in the income of that person in terms of section 9D during any year of assessment (other than such portion of that proportional amount which relates to the amount of any taxable capital gain included in that [net income] proportional amount) plus the proportional amount of the net capital gains of that controlled foreign [entity] company, less the amount of any foreign dividend distributed by that [entity] company to that person during any year of assessment which was exempt from tax in terms of section 9E(7)(e)(i); or”.

(2) (a) Subsection (1)(a) shall be deemed to have come into operation on 1 October 2001.

(b) Subsections (1)(b) and (c) shall come into operation on the date that the Collective Investment Schemes Control Act, 2002, comes into operation.

(c) Subsection (1)(d) shall in so far as it amends—

(i) paragraph 20(h)(ii), be deemed to have come into operation on 1 October 2001; and

(ii) paragraph 20(h)(iii), come into operation on the date of promulgation and shall apply in respect of years of assessment ending on or after that date.

Amendment of paragraph 24 of Eighth Schedule to Act 58 of 1962, as inserted by section 38 of Act 5 of 2001 and amended by section 76 of Act 60 of 2001

72. (1) Paragraph 24 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended—

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

“(1) The base cost of an asset, other than an asset situated in the Republic listed in paragraph 2(1)(b)(i) and (ii), acquired by a person before the date on which that person became a resident is the sum of the value of that asset determined in terms of subparagraphs (2) or (3) and the expenditure allowable in terms of paragraph 20 incurred on or after that date in respect of that asset.”;

(b) by the substitution in subparagraph (2) for the words preceding item (a) of the following words:

“(2) Where an asset [of a person who becomes a resident as] contemplated in paragraph 12(4) has been disposed of by a person on or after the date on which that person commenced to be a resident and the

- (d) deur subitem (ii) en (iii) van item (h) van subparagraaf (1) deur die volgende subitem te vervang:

“(ii) enige ander bate—

(aa) soveel van 'n bedrag as wat kragtens artikel 8(5) in daardie persoon se inkomste ingesluit is, as wat aangewend is by die vermindering van die koopprys van daardie bate; [of]

(bb) waar 'n bedrag ingevolge paragraaf (i) van die omskrywing van 'bruto inkomste' in artikel 1 in daardie persoon se bruto inkomste ingesluit is, die waarde ingevolge die Sewende Bylae op daardie bate geplaas vir doeleindes van die vasstelling van die bedrag aldus in die persoon se bruto inkomste ingesluit; of

(cc) waar 'n bedrag ingevolge paragraaf (h) van die omskrywing van 'bruto inkomste' in artikel 1 in daardie persoon se bruto inkomste ingesluit is, soveel van daardie bedrag aldus ingesluit as wat die bedrag van enige toelae ingevolge artikel 11(h) aan daardie persoon toegestaan is, te bowe gaan;

- (iii) 'n [belang] aandeel in 'n beheerde buitelandse [entiteit soos in artikel 9D omskryf] maatskappy, 'n bedrag gelyk aan die proporsionele bedrag van die netto inkomste van daardie [entiteit] maatskappy (of enige ander beheerde buitelandse maatskappy met betrekking tot daardie inwoner waarin daardie beheerde buitelandse maatskappy direk of indirek 'n belang het) wat kragtens artikel 9D gedurende enige jaar van aanslag in die inkomste van daardie persoon ingesluit was (behalwe daardie gedeelte van daardie proporsionele bedrag wat verband hou met die bedrag van enige belasbare kapitaalwinst wat by daardie [netto inkomste] proporsionele bedrag ingesluit is) plus die proporsionele bedrag van die netto kapitaalwinste van daardie beheerde buitelandse [entiteit] maatskappy, verminder met die bedrag van enige buitelandse dividend deur daardie [entiteit] maatskappy aan daardie persoon gedurende enige jaar van aanslag uitgekeer wat kragtens artikel 9E(7)(e)(i) van belasting vrygestel was; of”.

(2) (a) Subartikel (1)(a) word geag op 1 Oktober 2001 in werking te getree het.

(b) Subartikel (1)(b) en (c) tree in werking op die datum wat die Wet op die Beheer van Kollektiewe Beleggingskemas, 2002, in werking tree.

(c) Subartikel (1)(d), vir sover dit—

- (i) paragraaf 20(h)(ii) wysig, word geag op 1 Oktober 2001 in werking te getree het; en

- (ii) paragraaf 20(h)(iii) wysig, tree in werking op die datum van afkondiging van hierdie Wet en is van toepassing ten opsigte van jare van aanslag wat op of na daardie datum eindig.

Wysiging van paragraaf 24 van Agtste Bylae by Wet 58 van 1962, soos ingevoeg deur artikel 38 van Wet 5 van 2001 en gewysig deur artikel 76 van Wet 60 van 2001

72. (1) Paragraaf 24 van die Agtste Bylae by die Inkomstebelastingwet, 1962, word hierby gewysig—

- (a) deur subparagraaf (1) deur die volgende subparagraaf te vervang:

“(1) Die basiskoste van 'n bate, behalwe 'n bate in die Republiek geleë wat in paragraaf 2(1)(b)(i) en (ii) gelys is, wat deur 'n persoon verkry is voor die datum waarop daardie persoon 'n inwoner geword het, is die som van die waarde van daardie bate ingevolge subparagrafe (2) of (3) vasgestel en die onkoste ingevolge paragraaf 20 toelaatbaar wat op of na daardie datum ten opsigte van daardie bate aangegaan is.”;

- (b) deur in subparagraaf (2) die woorde wat item (a) voorafgaan deur die volgende woorde te vervang:

“(2) Waar 'n bate [van 'n persoon wat 'n inwoner word soos] in paragraaf 12(4) beoog, oor beskik is deur 'n persoon op of na die datum waarop daardie persoon begin het om 'n inwoner te wees en beide die

proceeds from that disposal and the expenditure allowable in terms of paragraph 20 incurred prior to that date in respect of that asset are each lower than the market value of that asset as at that date, that person must be treated as having acquired that asset at a cost equal to the higher of—”;

- (c) by the substitution for item (b) of subparagraph (2) of the following item:
“(b) those proceeds less the expenditure allowable in terms of paragraph 20 incurred on or after that date in respect of that asset.”;

- (d) by the substitution for the words preceding item (a) of subparagraph (3) of the following words:

“(3) Where an asset contemplated in paragraph 12(4) has been disposed of by a person on or after the date on which that person commenced to be a resident and the proceeds from the disposal of that asset and the market value of that asset as at the date on which that person commenced to be a resident are each lower than the expenditure allowable in terms of paragraph 20 incurred prior to that date in respect of that asset, that person must be treated as having acquired that asset at a cost equal to the higher of—”; and

- (e) by the substitution for item (b) of subparagraph (3) of the following item:
“(b) those proceeds less the expenditure allowable in terms of paragraph 20 incurred on or after that date in respect of that asset.”.

(2) Subsection (1) shall be deemed to have come into operation on 1 October 2001.

Substitution of paragraph 25 of Eighth Schedule to Act 58 of 1962, as inserted by section 38 of Act 5 of 2001 and substituted by section 77 of Act 60 of 2001

73. (1) The following paragraph is hereby substituted for paragraph 25 of the Eighth Schedule to the Income Tax Act, 1962:

“Determination of base cost of pre-valuation date assets

25. The base cost of a pre-valuation date asset (other than an identical asset in respect of which paragraph 32(3A) has been applied), is the sum of the valuation date value of that asset, as determined in terms of paragraph 26, 27 or 28 and the expenditure allowable in terms of paragraph 20 incurred on or after the valuation date in respect of that asset.”.

(2) Subsection (1) shall be deemed to have come into operation on 1 October 2001.

Amendment of paragraph 26 of Eighth Schedule to Act 58 of 1962, as inserted by section 38 of Act 5 of 2001 and amended by section 78 of Act 60 of 2001

74. (1) Paragraph 26 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended—

- (a) by the substitution for the words preceding item (a) of subparagraph (1) of the following words:

“Where the proceeds from the disposal of a pre-valuation date asset (other than an asset contemplated in paragraph 28 or in respect of which paragraph 32(3A) has been applied) exceed the expenditure allowable in terms of paragraph 20 incurred **[both]** before, on and after the valuation date in respect of that asset, the person who disposed of that asset must, subject to subparagraph (3), adopt any of the following as the valuation date value of that asset—”;

- (b) by the substitution for item (b) of subparagraph (1) of the following item:
“(b) 20 per cent of the proceeds from disposal of the asset, after deducting from those proceeds an amount equal to the expenditure allowable in terms of paragraph 20 incurred on or after the valuation date; or”;

opbrengs van daardie beskikking en die onkoste kragtens paragraaf 20 toelaatbaar wat voor daardie datum ten opsigte van die bate aangegaan is minder is as die markwaarde van die bate op daardie datum, moet daardie persoon geag word asof die persoon die bate verkry het teen 'n koste gelyk aan die hoogste van—";

- (c) deur item (b) van subparagraaf (2) deur die volgende item te vervang:

“(b) daardie opbrengs verminder met die onkoste kragtens paragraaf 20 toelaatbaar wat op of na daardie datum ten opsigte van daardie bate aangegaan is.”;

- (d) deur in subparagraaf (3) die woorde wat item (a) voorafgaan deur die volgende woorde te vervang:

“(3) Waar 'n bate in paragraaf 12(4) beoog oor beskik is deur 'n persoon op of na die datum waarop daardie persoon begin het om 'n inwoner te wees en beide die opbrengs van die beskikking oor daardie bate en die markwaarde van daardie bate op die datum waarop daardie persoon begin het om 'n inwoner te wees minder is as die onkoste kragtens paragraaf 20 toelaatbaar wat voor daardie datum ten opsigte van daardie bate aangegaan is, moet daardie persoon geag word daardie bate te verkry het teen 'n koste gelyk aan die hoogste van—”;

- (e) deur item (b) van subparagraaf (3) deur die volgende item te vervang:

“(b) daardie opbrengs verminder met die onkoste kragtens paragraaf 20 toelaatbaar wat op of na daardie datum ten opsigte van daardie bate aangegaan is.”.

- (2) Subartikel (1) word geag op 1 Oktober 2001 in werking te getree het.

Vervanging van paragraaf 25 van Agtste Bylae by Wet 58 van 1962, soos ingevoeg deur artikel 38 van Wet 5 van 2001 en vervang deur artikel 77 van Wet 60 van 2001

73. (1) Die volgende paragraaf vervang hierby paragraaf 25 van die Agtste Bylae by die Inkomstebelastingwet, 1962:

“Vasstelling van basiskoste van voor-waardasiedatumbates

25. Die basiskoste van 'n voor-waardasiedatumbate (behalwe 'n identiese bate ten opsigte waarvan paragraaf 32 (3A) van toepassing is), is die som van die waardasiedatumwaarde van daardie bate, soos vasgestel kragtens paragraaf 26, 27 of 28, en die onkoste kragtens paragraaf 20 toelaatbaar wat op of na die waardasiedatum ten opsigte van daardie bate aangegaan is.”.

- (2) Subartikel (1) word geag op 1 Oktober 2001 in werking te getree het.

Wysiging van paragraaf 26 van Agtste Bylae by Wet 58 van 1962, soos ingevoeg deur artikel 38 van Wet 5 van 2001 en gewysig deur artikel 78 van Wet 60 van 2001

74. (1) Paragraaf 26 van die Agtste Bylae by die Inkomstebelastingwet, 1962, word hierby gewysig—

- (a) deur in subparagraaf (1) die woorde wat item (a) voorafgaan deur die volgende woorde te vervang:

“Waar die opbrengs van die beskikking oor 'n voor-waardasiedatumbate (behalwe 'n bate in paragraaf 28 beoog of ten opsigte waarvan paragraaf 32(3A) van toepassing is) die onkoste kragtens paragraaf 20 toelaatbaar, wat [beide] voor, op en na die waardasiedatum ten opsigte van daardie bate aangegaan is, te bowe gaan, moet die persoon wat oor daardie bate beskik het, behoudens subparagraaf (3), enige van die volgende as die waardasiedatumwaarde van daardie bate aanneem—”;

- (b) deur item (b) van subparagraaf (1) deur die volgende item te vervang:

“(b) 20 persent van die opbrengs van die beskikking oor die bate, na aftrekking van daardie opbrengs van 'n bedrag gelyk aan die onkoste kragtens paragraaf 20 toelaatbaar wat op of na waardasiedatum aangegaan is; of”;

- (c) by the substitution for item (b) of subparagraph (2) of the following item:
 “(b) 20 per cent of the proceeds from disposal of the asset, after deducting from those proceeds an amount equal to the expenditure allowable in terms of paragraph 20 incurred on or after the valuation date.”; and

- (d) by the substitution for subparagraph (3) of the following subparagraph:
 “(3) Where a person has adopted the market value as the valuation date value of an asset, as contemplated in subparagraph (1)(a), and the proceeds from the disposal of that asset do not exceed that market value, that person must substitute as the valuation date value of that asset, those proceeds less the expenditure allowable in terms of paragraph 20 incurred on or after the valuation date in respect of that asset.”.

(2) Subsection (1) shall be deemed to have come into operation on 1 October 2001.

Amendment of paragraph 27 of Eighth Schedule to Act 58 of 1962, as inserted by section 38 of Act 5 of 2001 and substituted by section 79 of Act 60 of 2001

75. (1) Paragraph 27 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended—

- (a) by the substitution for subparagraph (1) of the following subparagraph:
 “(1) Subject to subparagraph (2), where the proceeds from the disposal of a pre-valuation date asset do not exceed the expenditure allowable in terms of paragraph 20 incurred [both] before, on and after the valuation date in respect of that asset, the valuation date value of that asset must be determined in terms of this paragraph.”; and
- (b) by the substitution in subparagraph (3) for sub-item (ii)(bb) of item (a) of the following sub-item:
 “(bb) those proceeds less the expenditure allowable in terms of paragraph 20 incurred on or after the valuation date in respect of that asset; or”.

(2) Subsection (1) shall be deemed to have come into operation on 1 October 2001.

Amendment of paragraph 29 of Eighth Schedule to Act 58 of 1962, as inserted by section 38 of Act 5 of 2001 and amended by section 81 of Act 60 of 2001 and section 38 of Act 30 of 2002

76. (1) Paragraph 29 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended—

- (a) by the deletion in subparagraph (4) of the word “or” at the end of item (a);
- (b) by the addition in subparagraph (4) of the word “or” to the end of item (b);
- (c) by the addition to subparagraph (4) of the following item; and
 “(c) that person has acquired that asset from that person’s spouse as contemplated in paragraph 67 and the transferor spouse had adopted or determined a market value in terms of this paragraph, and for this purpose the transferee spouse must be treated as having adopted or determined that same market value.”;
- (d) by the substitution in subparagraph (6) for the words following item (b) the following words:

“that person must submit proof of that valuation in a form prescribed by the Commissioner with the return for the year of assessment during which that asset was disposed of.”.

(2) Subsection (1) shall be deemed to have come into operation on 1 October 2001.

(c) deur item (b) van subparagraaf (2) deur die volgende item te vervang:

“(b) 20 persent van die opbrengs van die beskikking oor die bate, na aftrekking van daardie opbrengs van ’n bedrag gelyk aan die onkoste kragtens paragraaf 20 toelaatbaar wat op of na waardasiedatum aangegaan is.”;

(d) deur subparagraaf (3) deur die volgende subparagraaf te vervang:

“(3) Waar ’n persoon die markwaarde as die waardasiedatumwaarde van daardie bate aangeneem het, soos in subparagraaf (1)(a) bedoel, en die opbrengs uit die beskikking van die bate nie die markwaarde te bowe gaan nie, moet daardie persoon daardie opbrengs verminder met die onkoste ingevolge paragraaf 20 toelaatbaar, wat op of na die waardasiedatum ten opsigte van daardie datum aangegaan is, as die waardasiedatumwaarde van daardie bate vervang.”.

(2) Subartikel (1) word geag op 1 Oktober 2001 in werking te getree het.

Wysiging van paragraaf 27 van Agtste Bylae by Wet 58 van 1962, soos ingevoeg deur artikel 38 van Wet 5 van 2001 en vervang deur artikel 79 van Wet 60 van 2001

75. (1) Paragraaf 27 van die Agtste Bylae by die Inkomstebelastingwet, 1962, word hierby gewysig—

(a) deur subparagraaf (1) deur die volgende subparagraaf te vervang:

“(1) Behoudens subparagraaf (2), waar die opbrengs uit die beskikking van ’n voorwaardasiedatumbate nie die onkoste ingevolge paragraaf 20 toelaatbaar wat [**beide**] voor, op en na die waardasiedatum ten opsigte van daardie bate aangegaan is, oorskry nie, moet die waardasiedatumwaarde van daardie bate ingevolge hierdie paragraaf vasgestel word.”; en

(b) deur subitem (ii)(bb) van item (a) van subparagraaf (3) deur die volgende subitem te vervang:

“(bb) daardie opbrengs verminder met die onkoste toelaatbaar ingevolge paragraaf 20 aangegaan op of na die waardasiedatum ten opsigte van daardie bate; of”.

(2) Subartikel (1) word geag op 1 Oktober 2001 in werking te getree het.

Wysiging van paragraaf 29 van Agtste Bylae by Wet 58 van 1962, soos ingevoeg deur artikel 38 van Wet 5 van 2001 en gewysig deur artikel 81 van Wet 60 van 2001 en artikel 38 van Wet 30 van 2002

76. (1) Paragraaf 29 van die Agtste Bylae by die Inkomstebelastingwet, 1962, word hierby gewysig—

(a) deur in subparagraaf (4) die woord “of” aan die einde van item (a) te skrap;

(b) deur in subparagraaf (4) die woord “of” aan die einde van item (b) by te voeg;

(c) deur die volgende item by subparagraaf (4) te voeg:

“(c) daardie persoon daardie bate verkry het van daardie persoon se gade soos in paragraaf 67 bedoel en die oordraggewende gade die markwaarde ingevolge hierdie paragraaf aangeneem of bepaal het, en vir die doel word die oordragnemende gade geag daardie selfde markwaarde aan te geneem of te bepaal het.”; en

(d) deur in subparagraaf (6) die woorde wat item (b) volg deur die volgende woorde te vervang:

“moet daardie persoon in die vorm deur die Kommissaris voorgeskryf, bewys indien van daardie waardasie met die opgawe vir die jaar van aanslag waartydens daar oor daardie bate beskik is.”.

(2) Subartikel (1) word geag op 1 Oktober 2001 in werking te getree het.

Amendment of paragraph 30 of Eighth Schedule to Act 58 of 1962, as inserted by section 38 of Act 5 of 2001 and amended by section 82 of Act 60 of 2001

77. (1) Paragraph 30 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended—

- (a) by the substitution in subparagraph (1) for the words proceeding the formula of the words:

“(1) Subject to subparagraph (3), the time apportionment base cost of a pre-valuation date asset is determined in accordance with the formula—”;

- (b) by the substitution in subparagraph (1) for item (c) of the following item:

“(c) ‘P’ represents the proceeds as determined in terms of paragraph 35, in [consequence] respect of the disposal of that asset, or where subparagraph (2) applies, the amount of proceeds attributable to the expenditure in ‘B’ as determined in accordance with subparagraph (2);”;

- (c) by the substitution for subparagraph (2) of the following subparagraph:

“(2) Where [the total amount] a portion of the expenditure allowable in terms of paragraph 20 in respect of a pre-valuation date asset was incurred [in more than one year of assessment] on or after the valuation date, the proceeds to be used in the determination of the time apportionment base cost of the asset must be determined in accordance with the formula—

$$P = [T] R \times \frac{B}{(A + B)},$$

where—

- (a) ‘P’ represents the [amount to be determined] proceeds attributable to B;
- (b) ‘[T]R’ represents the total amount of proceeds as determined in terms of paragraph 35 in consequence of the disposal of the pre-valuation date asset;
- (c) ‘A’ represents the amount of expenditure allowable in terms of paragraph 20 in respect of the asset that is incurred on or after valuation date;
- (d) ‘B’ represents the amount of expenditure allowable in terms of paragraph 20 in respect of that asset that is incurred before valuation date.”;

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

“(3) Despite the provisions of paragraph 20(3)(a) and 35(3)(a), where in respect of a pre-valuation date asset—

- (a) a person has incurred expenditure allowable in terms of paragraph 20 on or after the valuation date;
- (b) any part of the expenditure allowable in terms of paragraph 20 is or was allowable as a deduction in determining the taxable income of that person before the inclusion of any taxable capital gain; and
- (c) the proceeds in respect of the disposal of that asset exceed the expenditure allowable in terms of paragraph 20 incurred before, on and after the valuation date,

that person must determine the time-apportionment base cost of that asset in terms of subparagraph (4).

(4) The time-apportionment base cost of a pre-valuation date asset referred to in subparagraph (3) is determined in accordance with the formulae—

$$Y = B + \frac{[(P_1 - B_1) \times N]}{T + N},$$

and

$$P_1 = \frac{R_1 \times B_1}{(A_1 + B_1)}$$

Wysiging van paragraaf 30 van Agtste Bylae by Wet 58 van 1962, soos ingevoeg deur artikel 38 van Wet 5 van 2001 en gewysig deur artikel 82 van Wet 60 van 2001

77. (1) Paragraaf 30 van die Agtste Bylae by die Inkomstebelastingwet, 1962, word hierby gewysig—

- (a) deur in subparagraaf (1) die woorde wat die formule voorafgaan deur die volgende woorde te vervang:

“(1) Behoudens subparagraaf (3), word die tydtoedelingsbasiskoste van 'n voor-waardasiedatumbate [word] vasgestel ooreenkomstig die formule”;

- (b) deur item (c) van subparagraaf (1) deur die volgende item te vervang:

“(c) ‘P’ die opbrengs kragtens paragraaf 35 vasgestel, [as gevolg] ten opsigte van die beskikking oor daardie bate, of waar subparagraaf (2) van toepassing is, die bedrag van die opbrengs aan die onkoste in ‘B’ toeskryfbaar soos ingevolge subparagraaf (2) vasgestel, verteenwoordig”;

- (c) deur subparagraaf (2) deur die volgende subparagraaf te vervang:

“(2) Waar [die totale bedrag] 'n gedeelte van die onkoste kragtens paragraaf 20 toelaatbaar ten opsigte van die voor-waardasiedatumbate op of na die waardasiedatum aangegaan is [gedurende meer as een jaar van aanslag], moet die opbrengs wat by die vasstelling van die tydtoedelingsbasiskoste van die bate gebruik word, vasgestel word ooreenkomstig die formule—

$$P = [T] R \times \frac{B}{(A + B)},$$

waar—

- (a) ‘P’ die [bedrag vasgestel te word] opbrengs wat aan B toeskryfbaar is, verteenwoordig;
- (b) [‘T’]R die totale bedrag van die opbrengs ingevolge paragraaf 35 vasgestel as gevolg van die beskikking oor die voor-waardasiedatumbate, verteenwoordig;
- (c) ‘A’ die bedrag van onkoste kragtens paragraaf 20 toelaatbaar ten opsigte van die bate wat op of na die waardasiedatum aangegaan is, verteenwoordig;
- (d) ‘B’ die bedrag van onkoste kragtens paragraaf 20 toelaatbaar ten opsigte van die bate wat voor die waardasiedatum aangegaan is, verteenwoordig.”;
- (d) deur die volgende subparagraaf by te voeg:

“(3) Ondanks die bepalinge van paragrafe 20(3)(a) en 35(3)(a), waar ten opsigte van 'n voor-waardasiedatumbate—

- (a) 'n persoon op of na die waardasiedatum onkoste aangegaan het wat ingevolge paragraaf 20 toelaatbaar is;
- (b) enige deel van die onkoste wat ingevolge paragraaf 20 toelaatbaar is by die vasstelling van die belasbare inkomste van daardie persoon voor die insluiting van enige belasbare kapitaalwinst, as 'n aftrekking toegestaan is of was; en
- (c) die opbrengs ten opsigte van die beskikking oor daardie bate die onkoste wat ingevolge paragraaf 20 toelaatbaar is, wat voor, op of na die waardasiedatum aangegaan is, te bowe gaan, moet daardie persoon die tydtoedelingsbasiskoste van daardie bate ingevolge subparagraaf (4) bepaal.

(4) Die tydtoedelingsbasiskoste van 'n voor-waardasiedatumbate in subparagraaf (3) bedoel word bepaal ingevolge die formules—

$$Y = B + \frac{(P_1 - B_1 \times N)}{T + N},$$

$$\text{en}$$

$$P_1 = \frac{R_1 \times B_1}{(A_1 + B_1)}$$

where—

- (a) 'Y' represents the time apportionment base cost of the asset;
- (b) 'P₁' represents the proceeds attributable to the expenditure in B₁, disregarding the provisions of paragraph 35(3)(a);
- (c) 'A₁' represents the amount of expenditure allowable in terms of paragraph 20 in respect of the asset that is incurred on or after valuation date, disregarding the provisions of paragraph 20(3)(a);
- (d) 'B₁' represents the amount of expenditure allowable in terms of paragraph 20 in respect of the asset that is incurred before valuation date, disregarding the provisions of paragraph 20(3)(a);
- (e) 'B', 'N' and 'T' bear the same meanings ascribed to those symbols in subparagraph (1); and
- (f) 'R₁' represents the total amount of proceeds as determined in terms of paragraph 35 in respect of the disposal of the pre-valuation date asset, disregarding the provisions of paragraph 35(3)(a)."

(2) Subsection (1) shall be deemed to have come into operation on 1 October 2001.

Amendment of paragraph 31 of Eighth Schedule to Act 58 of 1962, as inserted by section 38 of Act 5 of 2001 and amended by section 83 of Act 60 of 2001

78. (1) Paragraph 31 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended—

- (a) by the substitution in subparagraph (1) for item (c) of the following item:
 - "(c) an asset which is not listed on a recognised exchange which constitutes a right of a [unit] holder of a participatory interest in—
 - (i) any company contemplated in paragraph (e)(i) of the definition of "company" in section 1 of the Act, or any [unit] portfolio comprised in any [unit trust] collective investment scheme in property [shares] contemplated in Part V of the Collective Investment Schemes Control Act, 2002, carried on in the Republic, the price at which a [unit] participatory interest can be sold to the management company of the scheme on the date of disposal; or
 - (ii) any arrangement or scheme contemplated in paragraph (e)(ii) of the definition of 'company', the price at which a [unit] participatory interest can be sold to the management company of the scheme on the date of disposal or where there is not a management company the price which could have been obtained upon a sale of the asset between a willing buyer and a willing seller dealing at arm's length in an open market;"
- (b) by the substitution in subparagraph (1) for items (d) and (e) of the following items:
 - "(d) a fiduciary, usufructuary or other similar interest in any [property] asset, an amount determined by capitalising at 12 per cent the annual value of the right of enjoyment of the [property] asset subject to that fiduciary, usufructuary or other like interest, as determined in terms of subparagraph (2), over the expectation of life of the person to whom that interest was granted, or if that right of enjoyment is to be held for a lesser period than the life of that person, over that lesser period;
 - (e) any [property] asset which is subject to a fiduciary, usufructuary or other similar interest in favour of any person, the amount by which the [fair] market value of the full ownership of that [property] asset exceeds the value of that fiduciary, usufructuary or other like interest determined in accordance with item (d);"

waar—

- (a) 'Y' die tydtoedelingsbasiskoste van die bate, verteenwoordig;
 - (b) 'P₁' die opbrengs wat aan die onkoste in B₁ toeskryfbaar is en waar die bepaling van paragraaf 35(3)(a) nie in ag geneem is nie, verteenwoordig; 5
 - (c) 'A₁' die bedrag van onkoste met betrekking tot die bate wat ingevolge paragraaf 20 toelaatbaar is, wat op of na die waardasiedatum aangegaan is, en waar die bepaling van paragraaf 20(3)(a) nie in ag geneem is nie, verteenwoordig;
 - (d) 'B₁' die bedrag van onkoste met betrekking tot daardie bate wat ingevolge paragraaf 20 toelaatbaar is, wat voor waardasiedatum aangegaan is, en waar die bepaling van paragraaf 20(3)(a) nie in ag geneem is nie, verteenwoordig; 10
 - (e) 'B', 'N' en 'T' dieselfde betekenis dra as daardie simbole in subparagraaf (1); en 15
 - (f) 'R₁' die totale bedrag van opbrengs soos ingevolge paragraaf 35 bepaal, ten opsigte van die beskikking oor die voor-waardasiedatum bate, en waar die bepaling van paragraaf 35(3)(a) nie in ag geneem is nie, verteenwoordig.”.
- (2) Subartikel (1) word geag op 1 Oktober 2001 in werking te getree het. 20

Wysiging van paragraaf 31 van Agtste Bylae by Wet 58 van 1962, soos ingevoeg deur artikel 38 van Wet 5 van 2001 en gewysig deur artikel 83 van Wet 60 van 2001

78. (1) Paragraaf 31 van die Agtste Bylae by die Inkomstebelastingwet, 1962, word hierby gewysig—

- (a) deur item (c) van subparagraaf (1) deur die volgende item te vervang: 25
 - “(c) 'n bate wat nie op 'n erkende beurs genoteer is nie en wat 'n reg van 'n [eenheidshouer] hou van 'n deelnemende belang daarstel in—
 - (i) enige maatskappy in paragraaf (e)(i) van die omskrywing van 'maatskappy' in artikel 1 van die Wet beoog, of enige [effektegroep] portefeulje wat deel uitmaak van 'n [effektetrustskema in eiendomsaandeel] 'n kollektiewe beleggingskema in eiendom in Deel V van die Wet op die Beheer oor Kollektiewe Beleggingskemas, 2002, bedoel in die Republiek bedryf, die prys waarteen 'n [eeheid] deelnemende belang aan die bestuursmaatskappy van die skema op die dag van beskikking verkoop kan word; of 30
 - (ii) enige reëling of skema in paragraaf (e)(ii) van die omskrywing van maatskappy beoog, die prys waarteen 'n [eenheid] deelnemende belang aan die bestuursmaatskappy van die skema op die dag van beskikking verkoop kan word of waar daar nie 'n bestuursmaatskappy is nie die prys wat verkry sou kon word vir 'n verkoop van die bate tussen 'n gewillige koper en 'n gewillige verkoper wat onder uiterste voorwaardes in 'n ope mark beding is;”;
- (b) deur items (d) en (e) van subparagraaf (1) deur die volgende items te vervang: 45
 - “(d) 'n fidusiële reg, vruggebruik of ander soortgelyke reg in enige [eiendom] bate, 'n bedrag vasgestel deur die kapitalisering teen 12 persent van die jaarlikse waarde van die reg van genot van die [eiendom] bate onderhewig aan sodanige fidusiële reg, vruggebruik of ander soortgelyke reg, soos ingevolge subparagraaf (2) bepaal, oor die verwagte lewensduur van die persoon aan wie daardie belang verleen is, of indien daardie reg van genot vir 'n korter tydperk as die lewe van die persoon gehou word, oor daardie korter tydperk; 50
 - (e) enige [eiendom] bate wat aan 'n fidusiële reg, vruggebruik of ander soortgelyke reg ten gunste van enige persoon onderhewig is, die bedrag waarmee die [billike] markwaarde van die volle eiendomsreg van sodanige [eiendom] bate die waarde van daardie fidusiële reg, vruggebruik of ander soortgelyke reg vasgestel ooreenkomstig item (d), te bowe gaan;”;

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(c) by the substitution for subparagraph (2) of the following subparagraph:

“(2) For purposes of subparagraph (1)(d)—

(a) the annual value of the right of enjoyment of any **[property]** asset which is subject to any fiduciary, usufructuary or other like interest, means an amount equal to 12 per cent of the **[fair]** market value of the full ownership of the **[property]** asset: Provided that where the Commissioner is satisfied that the **[property]** asset which is subject to that interest could not reasonably be expected to produce an annual yield equal to 12 per cent on that value of the **[property]** asset, the Commissioner may fix such sum as representing the annual yield as may seem **[to him to be]** reasonable, and the sum so fixed must for the purposes of subparagraph (1)(d) be treated as being the annual value of the right of enjoyment of that **[property]** asset; and

(b) the expectation of life of a person to whom an interest was granted—

(i) in the case of a natural person, must be determined in accordance with the provisions applicable in determining the expectation of life of a person for estate duty purposes, as contemplated in the regulations issued in terms of section 29 of the Estate Duty Act, 1955, (Act No. 45 of 1955); and

(ii) in the case of a person other than a natural person, is a period of fifty years.”

(2) (a) Subsection (1)(a) shall come into operation on the date that the Collective Investment Schemes Control Act, 2002, comes into operation.

(b) Subsection (1)(b) and (c) shall be deemed to have come into operation on 1 October 2001.

Amendment of paragraph 32 of Eighth Schedule to Act 58 of 1962, as inserted by section 38 of Act 5 of 2001 and amended by section 28 of Act 19 of 2001, section 84 of Act 60 of 2001 and section 39 of Act 30 of 2002

79. (1) Paragraph 32 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended—

(a) by the substitution for item (a) of subparagraph (3A) of the following item:

“(a) from the date of acquisition to the date of disposal constituted assets contemplated in paragraph 31(1)(a), other than instruments contemplated in item (d);”;

(b) by the substitution for item (b) of subparagraph (3A) of the following item:

“(b) constitute participatory interests **[rights of unit holders]**—

(i) contemplated in paragraph 31(1)(c), where the prices of these **[units, shares or]** participatory interests or shares are regularly published in a national or international newspaper;

(ii) in any **[unit]** portfolio comprised in any **[unit trust]** collective investment scheme managed or carried on by a **[management]** company registered as a manager under section **[4 or 30 of the Unit Trust Control Act, 1981 (Act No. 54 of 1981)]** 42 of the Collective Investment Schemes Control Act, 2002, for purposes of Parts IV and V of that Act; or

(iii) in any arrangement or scheme contemplated in paragraph (e)(ii) of the definition of ‘company’ in section 1 of the Act, which is approved in terms of section 65 of the Collective Investment Schemes Control Act, 2002, by the Registrar **[of Unit Trust Companies in terms of section 37A of the Unit**

(c) deur subparagraaf (2) deur die volgende subparagraaf te vervang:

“(2) By die toepassing van subparagraaf (1)(d)—

(a) beteken die jaarlikse waarde van die reg van genot van enige **[eiendom]** bate wat aan ’n fidusiële reg, vruggebruik of ander soortgelyke reg in enige **[eiendom]** bate onderhewig is, ’n bedrag gelyk aan 12 persent van die **[billike]** markwaarde van die volle eiendomsreg van die **[eiendom]** bate: Met dien verstande dat waar die Kommissaris tevrede is dat die **[eiendom]** bate wat aan daardie belang onderhewig is nie redelikerwys verwag kan word om ’n jaarlikse opbrengs van 12 persent van die waarde van die eiendom te behaal nie, kan die Kommissaris sodanige som vasstel wat die jaarlikse opbrengs verteenwoordig as wat **[vir hom]** redelik mag voorkom, en die som aldus vasgestel moet by die toepassing van subparagraaf (1)(d) geag word as synde die jaarlikse waarde van die reg van genot van sodanige **[eiendom]** bate te wees; en

(b) word die lewensverwagting van ’n persoon aan wie ’n reg verleen is—

(i) in die geval van ’n natuurlike persoon, bepaal ingevolge die bepalings van toepassing by die berekening van die lewensverwagting van ’n persoon vir doeleindes van boedelbelasting, soos in die regulasies ingevolge artikel 29 van die Boedelbelastingwet, 1955 (Wet No. 45 van 1955), uitgereik, bedoel; en

(ii) in die geval van ’n persoon behalwe ’n natuurlike persoon, bepaal vir ’n tydperk van 50 jaar.”

(2) (a) Subartikel (1)(a) tree in werking op die datum wat die Wet op die Beheer van Kollektiewe Beleggingskemas, 2002, in werking tree.

(b) Subartikel (1)(b) en (c) word geag op 1 Oktober 2001 in werking te getree het.

Wysiging van paragraaf 32 van Agtste Bylae by Wet 58 van 1962, soos ingevoeg deur artikel 38 van Wet 5 van 2001 en gewysig deur artikel 28 van Wet 19 van 2001, artikel 84 van Wet 60 van 2001 en artikel 39 van Wet 30 van 2002

79. (1) Paragraaf 32 van die Agtste Bylae by die Inkomstebelastingwet, 1962, word hierby gewysig—

(a) deur item (a) van subparagraaf (3A) deur die volgende item te vervang:

“(a) vanaf die datum van verkryging tot die datum van beskikking bates in paragraaf 31(1)(a) bedoel, behalwe instrumente in item (d) bedoel, daarstel;”;

(b) deur item (b) van subparagraaf (3A) deur die volgende item te vervang:

“(b) **[regte van houters in eenhede]** deelnemende belange—

(i) in paragraaf 31(1)(c) bedoel uitmaak, waar die pryse van hierdie **[eenhede]** deelnemende belange of aandele [of belange] gereeld in ’n nasionale of internasionale koerant gepubliseer word;

(ii) in enige **[effektegroep in ’n effekte-trustskema]** portefeulje van ’n kollektiewe beleggingskema bestuur of bedryf deur ’n [bestuursmaatskappy] maatskappy wat ingevolge artikel **[4 of 30 van die Wet op Beheer van Effekte-trustskemas, 1981 (Wet 54 van 1981)]** 42 van die Wet op die Beheer van Kollektiewe Beleggingskemas, 2002, as ’n bestuurder vir doeleindes van Dele IV en V van daardie Wet geregistreer is, uitmaak; of

(iii) in enige reëling of skema in paragraaf (e)(ii) van die omskrywing van ‘maatskappy’ in artikel 1 van die Wet bedoel, wat ingevolge **[artikel 37A van die Wet op Beheer van Effekte-trustskemas, 1981 (Wet 54 van 1981)]**, artikel 65 van die Wet op die Beheer van Kollektiewe Beleggingskemas, 2002, deur die Registrateur [van

Trust Control Act, 1981 (Act No. 54 of 1981)] as defined in section 1 of the latter Act; [or]";

- (c) by the addition in subparagraph (3A) of the word "or" to the end of item (c);
 (d) by the insertion in subparagraph (3A) after item (c) of the following item:

"(d) from the date of acquisition to the date of disposal constituted instruments as defined in section 24J that were listed on a recognised exchange and for which a price was quoted on that exchange,".

- (e) by the substitution in subparagraph (3A) for the words following item (d) of the following words:

"and where a person uses the weighted average method for any identical asset contemplated in item (a), (b), [or] (c) or (d), that method must be used for all identical assets, contemplated in that item, held by that person."

(2)(a) Subsection (1)(a), (c), (d) and (e) shall be deemed to have come into operation on 1 October 2001.

(b) Subsection (1)(b) shall come into operation on the date that the Collective Investment Schemes Control Act, 2002, comes into operation.

Amendment of paragraph 33 of Eighth Schedule to Act 58 of 1962, as inserted by section 38 of Act 5 of 2001

80. Paragraph 33 of the Eighth Schedule to the Income Tax Act, 1962, is hereby substituted by the following paragraph:

"Part-disposals

33. (1) Subject to subparagraphs (2), [and] (3) and (4), where part of an asset is disposed of, the proportion of the base cost attributable to the part disposed of is an amount which bears to the base cost of the entire asset the same proportion as the market value of the part disposed of bears to the market value of the entire asset immediately prior to that disposal.

(2) Subject to subparagraph (4), where a part of the base cost of an asset can be directly attributed to the part of the asset that is disposed of or retained then the apportionment contemplated in subparagraph (1) does not apply in respect of that part of the base cost.

(3) For the purposes of subparagraphs (1) and (2) there is no part-disposal of an asset by a person in respect of—

(a) the granting of an option by that person in respect of that asset; and
 (b) the granting, variation or cession of a right of use or occupation of that asset by that person in respect of which no proceeds are received by or accrue to that person.

(4) Where proceeds are received by or accrue to a person in respect of the granting, variation or cession of a right of use or occupation of an asset by that person, the portion of the base cost attributable to the part of the asset in respect of which those proceeds were received or accrued is an amount which bears to the base cost of the entire asset the same proportion as those proceeds bear to the market value of the entire asset immediately prior to that disposal."

Amendment of paragraph 38 of Eighth Schedule to Act 58 of 1962, as inserted by section 38 of Act 5 of 2001 and amended by section 87 of Act 60 of 2001

81. Paragraph 38 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended by the substitution in subparagraph (1) for the words preceding item (a) of the following words:

"(1) Subject to subparagraph 2 and [paragraph] paragraphs 12(5) and 67, where a person disposed of an asset by means of a donation or for a consideration

Effekte-trustmaatskappye] soos in artikel 1 van daardie Wet omskryf goedgekeur is, uitmaak; [of]”;

(c) deur in subparagraaf (3A) die woord “of” aan die einde van item (c) by te voeg;

(d) deur in subparagraaf (3A) na item (c) die volgende item by te voeg:

“(d) vanaf die datum van verkryging tot die datum van beskikking ’n instrument soos in artikel 24J omskryf daargestel het, wat op ’n erkende beurs genoteer was en waarvoor ’n prys op daardie beurs gekwoteer was.”;

(e) deur in subparagraaf (3A) die woorde wat op item (d) volg deur die volgende woorde te vervang:

“en waar ’n persoon die geweegde gemiddelde metode vir identiese bates in item (a), (b), [of] (c) of (d) bedoel gebruik, moet daardie metode gebruik word vir alle identiese bates in daardie item bedoel, wat deur daardie persoon gehou word.”.

(2) (a) Subartikel (1)(a), (c), (d) en (e) word geag op 1 Oktober 2001 in werking te getree het.

(b) Subartikel (1)(b) tree in werking op die datum wat die Wet op die Beheer van Kollektiewe Beleggingskemas, 2002, in werking tree.

Wysiging van paragraaf 33 van Agtste Bylae by Wet 58 van 1962, soos ingevoeg deur artikel 38 van Wet 5 van 2001

80. Die volgende paragraaf vervang hierby paragraaf 33 van die Agtste Bylae by die Inkomstebelastingwet, 1962:

“Gedeeltelike beskikkings

33. (1) Behoudens subparagrafe (2), [en] (3) en (4), waar oor ’n gedeelte van ’n bate beskik word, is die gedeelte van die basiskoste toeskryfbaar aan die gedeelte waaroor beskik is ’n bedrag wat in dieselfde verhouding tot die basiskoste van die totale bate staan as wat die markwaarde van die gedeelte waaroor beskik is in die verhouding tot die markwaarde van die totale bate onmiddellik voor daardie beskikking staan.

(2) Behoudens subparagraaf (4), waar ’n gedeelte van die basiskoste van ’n bate direk toegeskryf kan word aan die gedeelte van die bate waaroor beskik is of wat behou is, dan is die toedeling in subparagraaf (1) beoog nie van toepassing nie ten opsigte van daardie gedeelte van die basiskoste.

(3) By die toepassing van [subparagraaf] subparagrafe (1) en (2) moet daar nie geag word ’n gedeeltelike beskikking deur ’n persoon oor daardie bate te wees nie ten opsigte van—

(a) die verlening van ’n opsie deur daardie persoon ten opsigte van ’n bate [nie geag word ’n gedeeltelike beskikking oor daardie bate te wees nie]; en

(b) die verlening, wysiging of sessie van ’n reg van gebruik of okkupasie van daardie bate deur daardie persoon ten opsigte waarvan geen opbrengs ontvang is of toegeval het aan daardie persoon nie.

(4) Waar opbrengs ontvang is deur of toegeval het aan ’n persoon ten opsigte van die verlening, wysiging of sessie van ’n reg van gebruik of okkupasie van ’n bate deur daardie persoon, is die gedeelte van die basiskoste wat toeskryfbaar is aan die gedeelte van die bate ten opsigte waarvan daardie opbrengs ontvang is of toegeval het ’n bedrag wat tot die basiskoste van die totale bate staan in dieselfde verhouding as daardie opbrengs tot die markwaarde van die totale bate onmiddellik voor daardie beskikking staan.”.

Wysiging van paragraaf 38 van Agtste Bylae by Wet 58 van 1962, soos ingevoeg deur artikel 38 van Wet 5 van 2001 en gewysig deur artikel 87 van Wet 60 van 2001

81. Paragraaf 38 van die Agtste Bylae by die Inkomstebelastingwet, 1962, word hierby gewysig deur in subparagraaf (1) die woorde wat item (a) voorafgaan deur die volgende woorde te vervang:

“(1) Behoudens subparagraaf (2) en [paragraaf] paragrafe 12(5) en 67, waar ’n persoon oor ’n bate beskik het by wyse van ’n skenking of teen vergoeding wat nie in geld meetbaar is nie of aan ’n persoon wat ’n verbonde persoon is met

not measurable in money or to a person who is a connected person in relation to that person for a consideration which does not reflect an arm's length price—”.

Amendment of paragraph 40 of Eighth Schedule to Act 58 of 1962, as inserted by section 38 of Act 5 of 2001 and amended by section 89 of Act 60 of 2001

82. Paragraph 40 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended—

- (a) by the deletion in subparagraph (1) of the word “or” at the end of item (b);
- (b) by the addition in subparagraph (1) of the word “or” at the end of item (c); and
- (c) by the substitution in subparagraph (2) for the words preceding item (a) of the following words:

“(2) Subject to subparagraph 12(5), where an asset is disposed of by a deceased estate to an heir or legatee (other than the surviving spouse of the deceased person as contemplated in paragraph 67(2)(a) or an approved public benefit organisation as contemplated in paragraph 62) or a trustee of a trust—”.

Amendment of paragraph 41 of Eighth Schedule to Act 58 of 1962, as inserted by section 38 of Act 5 of 2001

83. Paragraph 41 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended by the substitution of item (a) of subparagraph (1) of the following item:

- “(a) the tax determined in terms of this Act, which relates to the taxable capital gain of a deceased person, exceeds 50 per cent of the net value of the estate determined for purposes of the Estate Duty Act, 1955 (Act No. 45 of 1955), before taking into account the amount of that tax so determined; and”.

Substitution of paragraph 43 of Eighth Schedule to Act 58 of 1962, as inserted by section 38 of Act 5 of 2001 and amended by section 91 of Act 60 of 2001

84. (1) Paragraph 43 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended—

“Assets disposed of or acquired in foreign currency

43. (1) Subject to subparagraph (4), where a person during any year of assessment disposes of an asset[, **other than a foreign equity instrument,**] for proceeds denominated in a foreign currency after having incurred expenditure in respect of that asset in the same currency, that person must determine the capital gain or capital loss on the disposal **[by translating both proceeds and the base cost]** in that foreign currency and that capital gain or capital loss must be translated into the local currency **[of the Republic at the ruling exchange rate on the date of disposal]** in accordance with the provisions of section 25D.

(2) Despite section 25D, where a person disposes of an asset, (other than **[a foreign equity instrument]** an asset contemplated in subsection (4)), for proceeds denominated in any currency (hereinafter referred to as the ‘currency of disposal’) after having incurred expenditure in respect of that asset in another currency (hereinafter referred to as the ‘currency of expenditure’), that person must **[determine]** for purposes of determining the capital gain or capital loss on the disposal **[by translating both]** of that asset—

- (a) where the currency of expenditure is denominated in the local currency, translate the proceeds **[and the base cost]** into the local currency **[of expenditure]** at the **[ruling]** average exchange rate **[on the date of disposal]** for that year of assessment during which that asset was disposed of; **[and]**

- (b) **[determine a capital gain or capital loss in terms of Part XIII as if that person disposed of the currency of expenditure for the**

betrekking tot daardie persoon teen vergoeding wat nie onder uiterste voorwaardes in 'n ope mark beding is nie—”.

Wysiging van paragraaf 40 van Agtste Bylae by Wet 58 van 1962, soos ingevoeg deur artikel 38 van Wet 5 van 2001 en gewysig deur artikel 89 van Wet 60 van 2001

82. Paragraaf 40 van die Agtste Bylae by die Inkomstebelastingwet, 1962, word hierby gewysig— 5

- (a) deur in subparagraaf (1) die woord “of” aan die einde van item (b) te skrap;
- (b) deur in subparagraaf (1) die woord “of” aan die einde van item (c) by te voeg;
- en
- (c) deur in subparagraaf (2) die woorde wat item (a) voorafgaan deur die volgende woorde te vervang: 10

“(2) Behoudens paragraaf 12(5), waar 'n bestorwe boedel oor 'n bate aan 'n erfgenaam of legataris beskik (behalwe die langslewende gade van daardie oorlede persoon soos in paragraaf 67 (2) (a) beoog of 'n goedgekeurde weldaadsorganisasie soos in paragraaf 62 beoog) of 'n trustee van 'n trust, moet—”. 15

Wysiging van paragraaf 41 van Agtste Bylae by Wet 58 van 1962, soos ingevoeg deur artikel 38 van Wet 5 van 2001

83. Paragraaf 41 van die Agtste Bylae by die Inkomstebelastingwet, 1962, word hierby gewysig deur item (a) van subparagraaf (1) deur die volgende item te vervang: 20

- “(a) die belasting kragtens hierdie Wet vasgestel, wat verband hou met die belasbare kapitaalwins van 'n oorlede persoon, 50 persent van die netto waarde van die boedel vasgestel vir doeleindes van die Boedelbelastingwet, 1955 (Wet No. 45 van 1955), te bowe gaan, voor die bedrag van daardie belasting aldus vasgestel in berekening gebring is; en”. 25

Vervanging van paragraaf 43 van Agtste Bylae by Wet 58 van 1962, soos ingevoeg deur artikel 38 van Wet 5 van 2001 en gewysig deur artikel 91 van Wet 60 van 2001

84. (1) Die volgende paragraaf vervang hierby paragraaf 43 van die Agtste Bylae by die Inkomstebelastingwet, 1962:

“Bates oor beskik of verkry in buitelandse geldeenheid 30

43. (1) Behoudens subparagraaf (4), waar 'n persoon gedurende 'n jaar van aanslag oor 'n bate[, behalwe 'n buitelandse ekwiteitsinstrument,] beskik vir 'n opbrengs wat in 'n buitelandse geldeenheid aangetoon word nadat 'n onkoste ten opsigte van daardie bate in dieselfde geldeenheid aangegaan is, moet daardie persoon die kapitaalwins of kapitaalverlies by die beskikking vasstel [deur beide daardie opbrengs en die basiskoste na] in daardie buitelandse geldeenheid en daardie kapitaalwins of kapitaalverlies moet ingevolge die bepalinge van artikel 25D na die plaaslike geldeenheid [van die Republiek om te skakel teen die heersende wisselkoers op die datum van beskikking] omgeskakel word. 40

(2) Ondanks artikel 25D, waar 'n persoon oor 'n bate, behalwe 'n [buitelandse ekwiteitsinstrument,] bate in subartikel (4) bedoel, beskik vir 'n opbrengs wat in enige geldeenheid aangetoon word (hierna die ‘geldeenheid van beskikking’ genoem) nadat onkoste ten opsigte van daardie bate in 'n ander geldeenheid (hierna die ‘geldeenheid van onkoste’ genoem) aangegaan is, moet daardie persoon ten einde die kapitaalwins of kapitaalverlies by die beskikking van daardie bate te bepaal,— 45

- (a) [die kapitaalwins of kapitaalverlies by die beskikking vasstel deur beide] waar die geldeenheid van onkoste in die plaaslike geldeenheid aangedui is, deur die opbrengs [en die basiskoste] na die plaaslike geldeenheid [van die Republiek] om te skakel teen die [heersende] gemiddelde wisselkoers [op die datum van beskikking] vir die jaar van aanslag waarin oor daardie bate beskik is; [en] 50
- (b) [die kapitaalwins of kapitaalverlies kragtens Deel XIII vasstel asof daardie persoon oor die geldeenheid van onkoste beskik het vir die 55

- currency of disposal]** where the currency of disposal is denominated in the local currency, translate the expenditure which is allowable in terms of paragraph 20, into the local currency at the average exchange rate for the year of assessment during which that expenditure was incurred or treated as being incurred (or if the local currency did not exist at the time of expenditure, the first available exchange rate for that local currency); and
- (c) where neither the currency of disposal nor the currency of expenditure constitutes local currency—
- (i) translate the amount of the expenditure, which is allowable in terms of paragraph 20, to the currency of disposal at the average exchange rate for the year of assessment during which that expenditure was incurred or treated as being incurred (or if the currency of disposal did not exist at the time of expenditure, the first available exchange rate for that currency of disposal); and
 - (ii) translate the amount of the capital gain or capital loss determined in foreign currency to the local currency **[of the Republic]** at the average exchange rate for the year of assessment during which the asset was disposed of.
- [(3) For the purposes of this paragraph the term ‘ruling exchange rate’ will have the same meaning as defined in section 24I.]**
- (4) Despite section 25D, where a person during any year of assessment disposes of any—
- (a) foreign equity instrument; or
 - (b) asset the capital gain or capital loss from the disposal of which is derived or deemed to have been derived from a source in the Republic, as contemplated in section 9(2) (other than an asset contemplated in section 9(2)(b)(i) or an asset contemplated in paragraph (b) of the definition of ‘foreign currency asset’ in paragraph 84),
- which was acquired or disposed of in any currency other than currency of the Republic, that person must [determine] for purposes of determining the capital gain or capital loss on the disposal [by translating] of that asset, translate—
- [(a)] (i)** the proceeds into the currency of the Republic at the [ruling] average exchange rate [on the date of disposal] for that year of assessment; and
 - [(b)] the valuation date value of that foreign equity instrument which is a pre-valuation date asset into the currency of the Republic at the ruling exchange rate on valuation date; and]**
 - [(c)] (ii)** the expenditure incurred [after valuation date] in respect of that foreign equity instrument into the currency of the Republic at the [ruling] average exchange rate [on the date of incurral of that expenditure] for the year of assessment during which that expenditure was incurred;
- Provided that the provisions of this subparagraph do not apply in respect of any exchange item in respect of which section 24I applies).
- (5) Where a person is treated as having derived an amount of proceeds from the disposal of any asset and the base cost of that asset is determined in any foreign currency—
- (a) the amount of those proceeds must be treated as being denominated in the currency of the base cost; and
 - (b) the base cost of the person acquiring that asset must for purposes of paragraphs 12, 38, 40, 42 and 67 be treated as being denominated in that currency.
- (6) Where a person has adopted the market value as the valuation date value of any asset contemplated in this paragraph, that market value must be determined in the currency of expenditure of that asset and, in the case of an asset—

- geldeenheid van die beskikking]** waar die geldeenheid van beskikking in die plaaslike geldeenheid aangedui is, deur die onkoste wat ingevolge paragraaf 20 toelaatbaar is, om te skakel na die plaaslike geldeenheid teen die gemiddelde wisselkoers vir die jaar van aanslag waarin daardie onkoste aangegaan is of geag aangegaan te gewees het (of indien die plaaslike geldeenheid nie op die tydstip wat die onkoste aangegaan is bestaan het nie, die eerste beskikbare wisselkoers vir daardie plaaslike geldeenheid); en
- (c) waar nóg die geldeenheid van beskikking nóg die geldeenheid van onkoste die plaaslike geldeenheid daarstel—
- (i) die bedrag van die onkoste wat ingevolge paragraaf 20 toelaatbaar is, om te skakel na die geldeenheid van beskikking teen die gemiddelde wisselkoers vir die jaar van aanslag waarin daardie onkoste aangegaan is of geag aangegaan te gewees het) of indien die geldeenheid van beskikking nie op die tydstip wat die onkoste aangegaan is bestaan het nie, die eerste beskikbare wisselkoers vir daardie geldeenheid van beskikking); en
- (ii) die bedrag van die kapitaalwins of kapitaalverlies in daardie buitelandse geldeenheid bepaal, om te skakel na die plaaslike geldeenheid teen die gemiddelde wisselkoers vir die jaar van aanslag waarin oor die bate beskik is.
- [(3) By die toepassing van hierdie paragraaf het die term ‘heersende wisselkoers’ dieselfde betekenis soos in artikel 24I omskryf.]**
- (4) Ondanks artikel 25D, waar 'n persoon gedurende 'n jaar van aanslag beskik oor enige—
- (a) buitelandse ekwiteitsinstrument; of
- (b) bate waarvan die kapitaalwins of kapitaalverlies uit die beskikking verkry is of geag verkry te gewees het van 'n bron in die Republiek, soos in artikel 9(2) bedoel (behalwe 'n bate in artikel 9(2)(b)(i) bedoel of 'n bate in paragraaf (b) van die omskrywing van 'buitelandse valuta-bate' in paragraaf 84 bedoel),
- [beskik,] wat verkry is of oor beskik is in enige geldeenheid anders as die geldeenheid van die Republiek, moet daardie persoon by die vasstelling van die kapitaalwins of kapitaalverlies by die beskikking van daardie bate [vasstel deur]—**
- [(a)(i) die opbrengs na die geldeenheid van die Republiek [om te reken] omreken teen die [heersende] gemiddelde wisselkoers [op die datum van beskikking] vir daardie jaar van aanslag; en;**
- [(b) die waardasiedatumwaarde van daardie buitelandse ekwiteitsinstrument wat 'n voorwaardasiedatumbate is om te reken na die geldeenheid van die Republiek teen die heersende wisselkoers op waardasiedatum; en]**
- [(c)(ii) die onkoste [na waardasiedatum] ten opsigte van daardie buitelandse ekwiteitsinstrument [aangegaan om te reken] omreken na die geldeenheid van die Republiek teen die [heersende] gemiddelde wisselkoers [op die datum van aangaan van daardie onkoste] vir die jaar van aanslag waarin daardie onkoste aangegaan is;**
- Met dien verstande dat die bepalings van hierdie subparagraaf nie van toepassing is nie ten opsigte van enige valuta-item ten opsigte waarvan artikel 24I van toepassing is.
- (5) Waar 'n persoon geag word 'n bedrag van opbrengs te verkry het uit die beskikking oor 'n bate en die basiskoste van daardie bedrag in enige buitelandse geldeenheid aangedui is—
- (a) word die bedrag van daardie opbrengs geag in daardie geldeenheid van die basiskoste aangedui te wees; en
- (b) word die basiskoste van die persoon wat daardie bate verkry, by die toepassing van paragrawe 12, 38, 40, 42 en 67 geag in daardie geldeenheid aangedui te wees.
- (6) Waar 'n persoon die markwaarde as die waardasiedatum waarde van 'n bate in hierdie paragraaf bedoel aangeneem het, moet daardie markwaarde vasgestel word in die geldeenheid van onkoste van daardie bate en moet, in die geval van 'n bate—

- (a) contemplated in subparagraph (2)(b) and (4), must be translated to the currency of the Republic at the ruling exchange rate on valuation date; or
- (b) contemplated in subparagraph (2)(c), must be translated to the currency of disposal at the ruling exchange rate on valuation date. 5
- (7) For the purposes of this paragraph—
‘foreign currency’ means currency other than local currency; and
‘local currency’ means—
- (a) in relation to a permanent establishment of a person, the currency used by that permanent establishment for purposes of financial reporting; 10
- (b) in any other case, the currency of the Republic.”.

(2) Subsection (1) shall come into operation on the date of promulgation and shall apply in respect of the disposal of any asset during any year of assessment which commences on or after that date.

Amendment of paragraph 51 of Eighth Schedule to Act 58 of 1962, as inserted by section 38 of Act 5 of 2001 and amended by section 96 of Act 60 of 2001 15

85. Paragraph 51 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended by the substitution for item (a) of subparagraph (2) of the following item:

- “(a) that natural person acquires that residence from the company or trust on or after the date of promulgation of the Taxation Laws Amendment Act, 2001 (Act No. 5 of 2001), but not later than 30 September 2002;”.

Amendment of paragraph 53 of Eighth Schedule to Act 58 of 1962, as inserted by section 38 of Act 5 of 2001 and amended by section 97 of Act 60 of 2001

86. (1) Paragraph 53 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended— 25

- (a) by the deletion in subparagraph (3) of the word “and” at the end of item (f);
- (b) by the substitution of item (g) of subparagraph (3) of the following item:
 - “(g) any contract in terms of which a person, in return for payment of a premium, is entitled to policy benefits upon the happening of a certain event and includes a reinsurance policy in respect of such a contract, but excludes any short-term policy contemplated in the Short-Term Insurance Act, 1998 (Act No. 53 of 1998);”;
- (c) by the addition to subparagraph (3) of the following items:
 - “(h) any short-term policy contemplated in the Short-Term Insurance Act, 1998, to the extent that it relates to any asset which is not a personal-use asset; and 30
 - (i) a right or interest of whatever nature to or in an asset envisaged in items (a) to (h).”.

(2) Subsection (1) shall be deemed to have come into operation on 1 October 2001.

Amendment of paragraph 55 of Eighth Schedule to Act 58 of 1962, as inserted by section 38 of Act 5 of 2001 and amended by section 32 of Act 19 of 2001 and section 98 of Act 60 of 2001 40

87. Paragraph 55 of the Eighth Schedule to the Income tax Act, 1962, is hereby amended—

- (a) by the substitution for item (b) of subparagraph (1) of the following item: 45
 - “(b) in respect of any policy, [taken out on the life of an employee or director as contemplated in section 11(w)] where that person is an employee or director whose life was insured in terms of that policy and any premiums paid by that person’s employer were deducted in terms of section 11(w);”;

50

- (a) in subparagraaf (2)(b) en (4) bedoel, na die geldeenheid van die Republiek omgeskakel word teen die heersende wisselkoers op waardasiedatum; of
- (b) in subparagraaf (2)(c) bedoel, na die geldeenheid van beskikking omgeskakel word teen die heersende wisselkoers op waardasiedatum. 5
- (7) By die toepassing van hierdie paragraaf beteken—
 ‘buitelandse geldeenheid’, enige geldeenheid behalwe plaaslike geldeenheid; en
 ‘plaaslike geldeenheid’—
- (a) met betrekking tot ’n permanent saak van ’n persoon, die geldeenheid deur daardie permanent saak gebruik vir doeleindes van finansiële verslagdoening; 10
- (b) in enige ander geval, die geldeenheid van die Republiek.”.

(2) Subartikel (1) tree in werking op die datum van afkondiging van hierdie Wet en is van toepassing ten opsigte van die beskikking oor enige bate gedurende enige jaar van aanslag wat op of na daardie datum ’n aanvang neem. 15

Wysiging van paragraaf 51 van Agtste Bylae by Wet 58 van 1962, soos ingevoeg deur artikel 38 van Wet 5 van 2001 en gewysig deur artikel 96 van Wet 60 van 2001

85. Paragraaf 51 van die Agtste Bylae by die Inkomstebelastingwet, 1962, word hierby gewysig deur item (a) van subparagraaf (2) deur die volgende item te vervang: 20
 “(a) daardie natuurlike persoon daardie woning vanaf daardie maatskappy of trust op of na die datum van afkondiging van die Wysigingswet op Belastingwette, 2001 (Wet No. 5 van 2001), maar nie later nie as 30 September 2002, verkry het;”.

Wysiging van paragraaf 53 van Agtste Bylae by Wet 58 van 1962, soos ingevoeg deur artikel 38 van Wet 5 van 2001 en gewysig deur artikel 97 van Wet 60 van 2001 25

86. (1) Paragraaf 53 van die Agtste Bylae by die Inkomstebelastingwet, 1962, word hierby gewysig—

- (a) deur in subparagraaf (3) die woord “en” aan die einde van item (f) te skrap;
- (b) deur item (g) van subparagraaf (3) deur die volgende item te vervang: 30
 “(g) ’n kontrak ingevolge waarvan ’n persoon, teen betaling van ’n premie, geregtig is op polisvoordele by die plaasvind van ’n sekere gebeurtenis en sluit in ’n herversekeringpolis ten opsigte van so ’n kontrak, maar sluit nie in nie enige korttermynpolis in die Korttermynversekeringswet, 1998 (Wet No. 53 van 1998), bedoel;”; en 35
- (c) deur die volgende items by subparagraaf (3) te voeg:
 “(h) ’n korttermynpolis in die Korttermynversekeringswet, 1998, bedoel, tot die mate wat dit verband hou met ’n bate wat nie ’n persoonlike gebruiksbate daarstel nie; en 40
 (i) ’n reg of belang van welke aard ookal tot of in ’n bate in items (a) tot (h) beoog.”.

(2) Subartikel (1) word geag op 1 Oktober 2001 in werking te getree het.

Wysiging van paragraaf 55 van Agtste Bylae by Wet 58 van 1962, soos ingevoeg deur artikel 38 van Wet 5 van 2001 en gewysig deur artikel 32 van Wet 19 van 2001 en artikel 98 van Wet 60 van 2001 45

87. Paragraaf 55 van die Agtste Bylae by die Inkomstebelastingwet, 1962, word hierby gewysig—

- (a) deur item (b) van subparagraaf (1) deur die volgende subparagraaf te vervang:
 “(b) ten opsigte van enige polis, [uitgeneem op die lewe van ’n werknemer of direkteur beoog in artikel 11(w)] waar daardie persoon ’n werknemer of direkteur is wie se lewe ingevolge daardie polis verseker was en enige premies deur daardie persoon se werkgever betaal in gevolge artikel 11(w) as ’n aftrekking toegestaan was;”; 50 55

(b) by the substitution for item (c) of subparagraph (1) of the following item:

“(c) in respect of a policy that was **[originally]** taken out **[on the life of any other]** to insure against the death, disability or illness of that person by any other person who was a partner of that person, or held any share or similar interest in a company in which that person held any share or similar interest, for the purpose of enabling that other person to acquire, upon the death of that **[other]** person, the whole or part of—

- (i) that **[other]** person’s interest in the partnership concerned; or
- (ii) that **[other]** person’s share or similar interest in that company and any claim by that **[other]** person against that company, and no premium on the policy was paid or borne by that **[other]** person **[or any connected person in relation to that other person]** while that other person was the beneficial owner of the policy; or”.

Amendment of paragraph 56 of Eighth Schedule to Act 58 of 1962, as inserted by section 38 of Act 5 of 2001 and substituted by section 99 of Act 60 of 2001

88. (1) Paragraph 56 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended by the substitution for subparagraph (2) of the following subparagraph:

“(2) Despite paragraph 39, subparagraph (1) does not apply in respect of any capital loss determined in consequence of the disposal by a creditor of a claim **[owned]** owed by a debtor, to the extent that the amount of that claim so disposed of represents—

- (a) a capital gain which is included in the determination of the aggregate capital gain or aggregate capital loss of that debtor by virtue of paragraph 12(5);
- (b) an amount which the creditor proves must be or was included in the gross income of any acquirer of that claim; or
- (c) an amount that must be or was included in the gross income or income of the debtor or taken into account in the determination of the balance of assessed loss of the debtor in terms of section 20(1)(a)(ii).”.

(2) Subsection (1) shall be deemed to have come into operation on 1 October 2001.

Amendment of paragraph 57 of Eighth Schedule to Act 58 of 1962, as inserted by section 38 of Act 5 of 2001

89. (1) Paragraph 57 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended by the insertion before the definition of “small business” in subparagraph (1) of the following definition:

“‘active business asset’ means—

- (a) an asset which constitutes immovable property, to the extent that it is used for business purposes; or
- (b) an asset (other than immovable property) used or held wholly and exclusively for business purposes,

but excludes—

- (i) a financial instrument; and
- (ii) an asset held in the course of carrying on a business mainly to derive any income in the form of an annuity, rental income, a foreign exchange gain or royalty or any income of a similar nature;”.

(2) Subsection (1) shall be deemed to have come into operation on 1 October 2001.

(b) deur item (c) van subparagraaf (1) deur die volgende subparagraaf te vervang:

“(c) ten opsigte van ’n polis wat **[oorspronklik uitgeneem is op die lewe van enige ander]** verseker teen die dood, ongeskiktheid of siekte van daardie persoon, wat uitgeneem is deur ’n ander persoon wat die vennoot van daardie persoon was, of wat enige aandeel of soortgelyke belang gehou het in ’n maatskappy waarin daardie persoon enige aandeel of soortgelyke belang gehou het, met die doel om daardie ander persoon in staat te stel om, na die afsterwe van daardie [ander] persoon, die geheel of ’n gedeelte te verkry van—

(i) daardie [ander] persoon se belang in die betrokke vennootskap; of

(ii) daardie [ander] persoon se aandeel of soortgelyke belang in daardie maatskappy en enige eis van daardie [ander] persoon teen daardie maatskappy,

en geen premie op die polis betaal of gedra was deur daardie [ander] persoon [of enige verbonde persoon met betrekking tot daardie ander persoon] terwyl daardie ander persoon die voordelige eienaar van daardie polis was nie; of”.

Wysiging van paragraaf 56 van Agtste Bylae by Wet 58 van 1962, soos ingevoeg deur artikel 38 van Wet 5 van 2001 en vervang deur artikel 99 van Wet 60 van 2001

88. (1) Paragraaf 56 van die Agtste Bylae by die Inkomstebelastingwet, 1962, word hierby gewysig deur subparagraaf (2) deur die volgende subparagraaf te vervang:

“(2) Ondanks paragraaf 39, is subparagraaf (1) [is] nie van toepassing nie ten opsigte van enige kapitaalverlies vasgestel vanweë die beskikking deur ’n skuldeiser van ’n eis deur ’n skuldenaar verskuldig, tot die mate wat die bedrag van daardie eis aldus oor beskik—

(a) ’n kapitaalwinst daarstel wat by die vasstelling van die totale kapitaalwinst of totale kapitaalverlies van daardie skuldeiser ingevolge paragraaf 12(5) ingesluit is;

(b) ’n bedrag daarstel wat die skuldeiser bewys by die bruto inkomste van enige verkryger van daardie eis, ingesluit moet of moes word; of

(c) ’n bedrag daarstel wat by die bruto inkomste van die skuldenaar ingesluit moet of moes word, of ingevolge artikel 20(1)(a)(ii) in berekening gebring moet word in by die vasstelling van die balans van aangeslane verlies van die skuldenaar.”.

(2) Subartikel (1) word geag op 1 Oktober 2001 in werking te getree het.

Wysiging van paragraaf 57 van Agtste Bylae by Wet 58 van 1962, soos ingevoeg deur artikel 38 van Wet 5 van 2001

89. (1) Paragraaf 57 van die Agtste Bylae by die Inkomstebelastingwet, 1962, word hierby gewysig deur die volgende woordomskrywing voor die omskrywing van “kleinbesigheid” in te voeg:

“ ‘aktiewe besigheidsbate’—

(a) ’n bate wat onroerende eiendom uitmaak, tot die mate wat dit vir besigheidsdoeleindes gebruik word; of

(b) ’n bate (behalwe onroerende eiendom) geheel en uitsluitlik gebruik of gehou vir besigheidsdoeleindes, maar uitgesluit—

(i) ’n finansiële instrument; en

(ii) ’n bate in die loop van die bedryf van ’n besigheid gehou hoofsaaklik om enige inkomste in die vorm van ’n annuïteit, huurinkomste, wins op ’n buitelandse valutatransaksie of tantième of enige inkomste van ’n soortgelyke aard te verkry.”.

(2) Subartikel (1) word geag op 1 Oktober 2001 in werking te getree het.

Substitution of paragraph 61 of Eighth Schedule to Act 58 of 1962, as inserted by section 38 of Act 5 of 2001 and amended by section 102 of Act 60 of 2001

90. (1) Paragraph 61 of the Eighth Schedule to the Income Tax Act, 1962, is hereby substituted by the following paragraph:

“Collective Investment Schemes in Securities

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61. A [unit] portfolio in a collective investment scheme contemplated in paragraph (e)(i) of the definition of ‘company’ in section 1, must disregard any capital gain or capital loss.”

(2) Subsection (1) shall come into operation on the date that the Collective Investment Schemes Control Act, 2002, comes into operation.

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Substitution of paragraph 63 of Eighth Schedule to Act 58 of 1962, as inserted by section 38 of Act 5 of 2001

91. The following paragraph is hereby substituted for paragraph 63 of the Eighth Schedule to the Income Tax Act, 1962:

“Exempt persons

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63. A person must disregard any capital gain or capital loss in respect of the disposal of an asset where all the receipts and accruals of that person [are] would have been exempt from tax in terms of section 10, if those receipts and accruals had been received by or had accrued to that person.”

Insertion of paragraph 64A of Eighth Schedule to Act 58 of 1962

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92. (1) The following paragraph is hereby inserted in the Eighth Schedule to the Income Tax Act, 1962, after paragraph 64:

“Awards in terms of the Restitution of Land Rights Act

64A. A person must disregard any capital gain or capital loss in respect of the disposal that resulted in that person receiving restitution of a right to land, an award or compensation in terms of the Restitution of Land Rights Act, 1994 (Act No. 22 of 1994).”

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(2) Subsection (1) shall be deemed to have come into operation on 1 October 2001.

Substitution of section 67A of Eighth Schedule to Act 58 of 1962, as inserted by section 105 of Act 60 of 2001

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93. (1) The following paragraph is hereby substituted for paragraph 67A of the Eighth Schedule to the Income Tax Act, 1962:

“Capital gains and capital losses in respect of interests in collective investment schemes in property

67A. (1) A holder of a [unit] participatory interest in a [unit] portfolio comprised in any [unit trust] collective investment scheme managed or carried on by any company registered as a [management company] manager under section [30 of the Unit Trusts Control Act, 1981 (Act No. 54 of 1981)], 42 of the Collective Investment Schemes Control Act, 2002, for the purposes of Part V of that Act must determine a capital gain or capital loss in respect of any participatory interest in that [unit] portfolio only upon the disposal of that [unit] interest.

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(2) The capital gain or capital loss to be determined in terms of subparagraph (1) must be determined with reference to the proceeds from the disposal of that [unit] participatory interest and its base cost.”

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Vervanging van paragraaf 61 van Agtste Bylae by Wet 58 van 1962, soos ingevoeg deur artikel 38 van Wet 5 van 2001 en gewysig deur artikel 102 van Wet 60 van 2001

90. (1) Die volgende paragraaf vervang hierby paragraaf 61 van die Agtste Bylae by die Inkomstebelastingwet, 1962:

“[Effektetrustfondse] Kollektiewe Beleggingskemas in Sekuriteitseffekte

61. 'n [Effektegroep] portefeulje in 'n kollektiewe beleggingskema in paragraaf (e)(i) van die omskrywing van 'maatskappy' in artikel 1 bedoel, moet enige kapitaalwins of kapitaalverlies verontagsaam.”.

(2) Subartikel (1) tree in werking op die datum wat die Wet op die Beheer van Kollektiewe Beleggingskemas, 2002, in werking tree.

Vervanging van paragraaf 63 van Agtste Bylae by Wet 58 van 1962, soos ingevoeg deur artikel 38 van Wet 5 van 2001

91. Die volgende paragraaf vervang hierby paragraaf 63 van die Agtste Bylae by die Inkomstebelastingwet, 1962:

“Vrygestelde persone

63. 'n Persoon moet enige kapitaalwins of kapitaalverlies ten opsigte van die beskikking oor 'n bate waar al die ontvangstes en toevallings van daardie persoon kragtens artikel 10 van belasting vrygestel [is] sou wees, indien daardie ontvangste en toevallings deur daardie persoon ontvang was of toegeval het, verontagsaam.”.

Invoeging van paragraaf 64A van Agtste Bylae by Wet 58 van 1962

92. (1) Die volgende paragraaf word hierby na paragraaf 64 van die Agtste Bylae by die Inkomstebelastingwet, 1962, ingevoeg:

“Toekennings ingevolge die Wet op Herstel van Grondregte, 1994

64A. 'n Persoon moet enige kapitaalwins of kapitaalverlies ten opsigte van die beskikking wat daartoe aanleiding gee dat daardie persoon herstel van 'n reg tot grond verkry, 'n toekenning of vergoeding ingevolge die Wet op Herstel van Grondregte, 1994 (Wet No. 22 van 1994), verkry, verontagsaam.”.

(2) Subartikel (1) word geag op 1 Oktober 2001 in werking te getree het.

Vervanging van artikel 67A van Agtste Bylae by Wet 58 van 1962, soos ingevoeg deur artikel 105 van Wet 60 van 2001

93. (1) Die volgende paragraaf vervang hierby paragraaf 67A van die Agtste Bylae by die Inkomstebelastingwet, 1962:

“Kapitaalwinste en kapitaalverliese ten opsigte van belange in [effektegroepe] kollektiewe beleggingskemas in eiendom

67A. (1) 'n [Eenheidshouer] Houer van 'n deelnemende reg in 'n [effektegroep bevat in 'n effekte-trustskema] portefeulje in 'n kollektiewe beleggingskema bestuur of bedryf deur enige maatskappy geregistreer as 'n [bestuursmaatskappy kragtens artikel 30 van die Wet op Beheer van Effekte-trustskemas, 1981 (Wet 54 van 1981)] bestuurder ingevolge artikel 42 van die Wet op die Beheer van Kollektiewe Beleggingskemas, 2002, vir doeleindes van Deel V van daardie Wet, moet 'n kapitaalwins of kapitaalverlies ten opsigte van enige deelnemende belang in daardie [effektegroep] portefeulje vasstel slegs by die beskikking van daardie [eenheid] belang.

(2) Die kapitaalwins of kapitaalverlies wat ingevolge subparagraaf (1) vasgestel moet word, moet vasgestel word met verwysing na die opbrengs

(2) Subsection (1) shall come into operation on the date that the Collective Investment Schemes Control Act, 2002, comes into operation.

Amendment of paragraph 72 of Eighth Schedule to Act 58 of 1962, as inserted by section 38 of Act 5 of 2001

94. Paragraph 72 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended by the substitution for item (b) of the following item:

“(b) a capital gain attributable to that donation, settlement or other disposition has arisen during a year of assessment and has during that year vested in or is treated as having vested in any person who is not a resident (other than a controlled foreign [entity, as defined in section 9D] company, in relation to that resident).”.

Amendment of paragraph 74 of Eighth Schedule to Act 58 of 1962, as inserted by section 38 of Act 5 of 2001 and amended by section 106 of Act 60 of 2001

95. (1) Paragraph 74 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended by the substitution for the definition of “company” of the following definition:

“‘company’ means any ‘company’ as defined in section 1, except for any [unit] portfolio in a collective investment scheme contemplated in paragraph (e) of that definition;”.

(2) Subsection (1) shall come into operation on the date that the Collective Investment Schemes Control Act, 2002, comes into operation.

Amendment of paragraph 76 of Eighth Schedule to Act 58 of 1962, as inserted by section 38 of Act 5 of 2001 and amended by section 107 of Act 60 of 2001

96. (1) Paragraph 76 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended—

(a) by the substitution for subparagraphs (1) and (2) of the following subparagraphs:

“(1) Subject to subparagraph (2), where a capital distribution of cash or an asset *in specie* is received by or accrues to a shareholder in respect of a share, that shareholder must—

(a) where that capital distribution is received or accrues before valuation date, reduce the expenditure contemplated in paragraph 20 actually incurred before valuation date in respect of that share by the amount of that cash or the market value of that asset *in specie*; and

(b) where that capital distribution is received or accrues on or after valuation date, treat the amount of that cash or the market value of that asset *in specie* as proceeds when that share is disposed of.

(2) Where a shareholder uses the weighted average method in respect of shares that are identical assets as contemplated in paragraph 32(3A)(a) and a capital distribution of cash or an asset *in specie* is received by or accrues to that shareholder in respect of those shares on or after valuation date, the weighted average base cost of those shares must be determined by—

(a) deducting the amount of that cash or the market value of that asset *in specie* from the base cost of those shares held when that capital distribution was received or accrued; and

(b) dividing the result by the number of those shares held when that capital distribution was received or accrued.”.

(b) by the substitution for subparagraph (3) of the following subparagraph:

“(3) Any distribution of an asset *in specie* received by or accrued to a shareholder must be treated as having been acquired at [for] an

uit die beskikking van daardie [eenheid] deelnemende belang en sy basiskoste.”.

(2) Subartikel (1) tree in werking op die datum wat die Wet op die Beheer van Kollektiewe Beleggingskemas, 2002, in werking tree.

Wysiging van paragraaf 72 van Agtste Bylae by Wet 58 van 1962, soos ingevoeg deur artikel 38 van Wet 5 van 2001 5

94. Paragraaf 72 van die Agtste Bylae by die Inkomstebelastingwet, 1962, word hierby gewysig deur item (b) deur die volgende item te vervang:

“(b) ’n kapitaalwinst toerekenbaar aan daardie skenking, oormaking of ander beskikking ontstaan in ’n jaar van aanslag en dit gedurende daardie jaar vestig in of geag word te gevestig het in enige persoon wat nie ’n inwoner is nie (behalwe ’n beheerde buitelandse [entiteit, soos in artikel 9D omskryf,] maatskappy met betrekking tot daardie inwoner),”.

Wysiging van paragraaf 74 van Agtste Bylae by Wet 58 van 1962, soos ingevoeg deur artikel 38 van Wet 5 van 2001 en gewysig deur artikel 106 van Wet 60 van 2001 15

95. (1) Paragraaf 74 van die Agtste Bylae by die Inkomstebelastingwet, 1962, word hierby gewysig deur die omskrywing van “maatskappy” deur die volgende omskrywing te vervang:

“‘maatskappy’ enige ‘maatskappy’ soos in artikel 1 omskryf, behalwe vir enige [effektegroep] portefeulje in ’n kollektiewe beleggingskema in paragraaf (e) van daardie omskrywing beoog;”.

(2) Subartikel (1) tree in werking op die datum wat die Wet op die Beheer van Kollektiewe Beleggingskemas, 2002, in werking tree.

Wysiging van paragraaf 76 van Agtste Bylae by Wet 58 van 1962, soos ingevoeg deur artikel 38 van Wet 5 van 2001 en gewysig deur artikel 107 van Wet 60 van 2001 25

96. (1) Paragraaf 76 van die Agtste Bylae by die Inkomstebelastingwet, 1962, word hierby gewysig—

(a) deur subparagrafe (1) en (2) deur die volgende subparagrafe te vervang: 30

“(1) Behoudens subparagraaf (2), waar ’n kapitaaluitkering van kontant of ’n bate *in specie* ontvang word deur of toeval aan ’n aandeelhouer ten opsigte van ’n aandeel, moet daardie aandeelhouer—

(a) waar daardie kapitaaluitkering ontvang is of toegeval het voor waardasiedatum, die onkoste in paragraaf 20 bedoel wat werklik voor waardasiedatum ten opsigte van daardie aandeel aangegaan is, deur die bedrag van daardie kontant of markwaarde van daardie bate *in specie*, verminder; en 35

(b) waar daardie kapitaaluitkering ontvang word of toeval op of na waardasiedatum, die bedrag van daardie kontant of die markwaarde van daardie bate *in specie* as opbrengs hanteer wanneer oor daardie aandeel beskik word. 40

(2) Waar ’n aandeelhouer die geweegde gemiddelde metode ten opsigte van aandele wat identiese bates is soos in paragraaf 32(3A)(a) bedoel gebruik, en ’n kapitaaluitkering van kontant of ’n bate *in specie* op of na waardasiedatum ontvang word deur of toeval aan daardie aandeelhouer ten opsigte van daardie aandele, moet die geweegde gemiddelde basiskoste van daardie aandele bereken word deur— 45

(a) die bedrag van daardie kontant of die markwaarde van daardie bate *in specie* van die basiskoste van daardie aandele wat gehou is toe daardie kapitaaluitkering ontvang is of toegeval het, af te trek; en 50

(b) die resultaat te deel deur die aantal aandele wat gehou is toe daardie kapitaaluitkering ontvang was of toegeval het.”;

(b) deur subparagraaf (3) deur die volgende subparagraaf te vervang: 55

“(3) Enige uitkering van ’n bate *in specie* wat ontvang is deur of toegeval het aan ’n aandeelhouer [ontvang is] moet geag word verkry te

expenditure [incurred at] equal to the market value and on the date contemplated in paragraph 75(2), which expenditure must be treated as an amount of expenditure actually incurred and paid for the purposes of paragraph 20(1)(a).”; and

(c) by the deletion of subparagraph (4).

(2) Subsection (1) shall be deemed to have come into operation on 1 October 2001.

Amendment of paragraph 78 of Eighth Schedule to Act 58 of 1962, as inserted by section 38 of Act 5 of 2001

97. (1) Paragraph 78 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended by the substitution for subparagraphs (1) and (2) of the following subparagraphs:

“(1) Where a company issues capitalisation shares, [such] those capitalisation shares must be treated as having [a base cost] been acquired for expenditure incurred and paid of nil, except to the extent that the issue of those shares constitutes a dividend, in which case they must be treated as having been acquired for expenditure incurred and paid equal to the amount of that dividend.

(2) Subject to paragraphs 11(1)(g), 23 and 35(2), where a company issues shares in substitution of previously held shares in that company by reason of a subdivision, consolidation, or similar arrangement or a conversion contemplated in section 40A or 40B—

(a) the shareholder must disregard any capital gain or capital loss determined in respect of that substitution; and

(b) those newly issued shares must [have] be treated as—

(i) having an aggregate base cost equal to the aggregate base cost of the previously held shares with the aggregate base cost allocated among all those newly issued shares in proportion to their relative market values; and

(ii) having been acquired on the same date as those previously held shares.”.

(2) Subsection (1) shall be deemed to have come into operation on 1 October 2001.

Amendment of paragraph 79 of Eighth Schedule to Act 58 of 1962, as inserted by section 38 of Act 5 of 2001

98. Paragraph 79 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended by the substitution in subparagraph (1) for the words preceding item (a) of the following words:

“Despite [section] paragraph 76, where a shareholder receives a capital distribution of cash or assets *in specie*, the amount of that capital distribution must be treated as a capital gain for the purposes of determining that shareholder’s aggregate capital gain or aggregate capital loss, where—”.

Substitution of paragraph 81 of Eighth Schedule to Act 58 of 1962, as inserted by section 38 of Act 5 of 2001 and substituted by section 109 of Act 60 of 2001

99. The following paragraph is hereby substituted for paragraph 81 of the Eighth Schedule to the Income Tax Act, 1962:

“Base cost of interest in discretionary trust

81. Despite paragraph 38(1)(b), a person’s interest in a discretionary trust must be treated as having a base cost of nil.”.

gewees het [vir] teen 'n onkoste [aangegaan teen] gelykstaande aan die markwaarde op die datum in paragraaf 75 (2) beoog, welke onkoste by die toepassing van paragraaf 20(1)(a) geag moet word 'n bedrag van onkoste werklik aangegaan en betaal te wees.";

(c) deur subparagraaf (4) te skrap.

(2) Subartikel (1) word geag op 1 Oktober 2001 in werking te getree het.

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Wysiging van paragraaf 78 van Agtste Bylae by Wet 58 van 1962, soos ingevoeg deur artikel 38 van Wet 5 van 2001

97. (1) Paragraaf 78 van die Agtste Bylae by die Inkomstebelastingwet, 1962, word hierby gewysig deur subparagrafe (1) en (2) deur die volgende subparagrafe te 10 vervang:

“(1) Waar 'n maatskappy kapitalisasie-aandele uitreik, word daardie kapitalisasie-aandele geag [**'n basiskoste van**] verkry te gewees het vir onkoste aangegaan en betaal van nul [te hê], behalwe tot die mate wat die uitreiking van daardie aandele 'n dividend uitmaak, in welke geval hulle geag moet word verkry te gewees het vir onkoste aangegaan en betaal wat gelyk is aan die bedrag van daardie dividend.

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(2) Behoudens paragrafe 11(1)(g), 23 en 35(2), waar 'n maatskappy aandele uitreik ter vervanging van aandele voorheen in daardie maatskappy gehou weens die onderverdeling, konsolidasie of soortgelyke reëling of 'n omskakeling in 20 artikel 40A of 40B bedoel—

(a) moet die aandeelhouer enige kapitaalwins of kapitaalverlies vasgestel ten opsigte van daardie vervanging verontagsaam; en

(b) moet daardie nuut-uitgereikte aandele [**moet**] geag word—

(i) 'n totale basiskoste hê wat gelyk is aan die totale basiskoste van die aandele voorheen gehou met die totale basiskoste toegeedeel tussen al daardie nuut-uitgereikte aandele in die verhouding tot hulle relatiewe markwaardes; en

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(ii) verkry te gewees het op dieselfde datum as daardie aandele voorheen gehou.”.

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(2) Subartikel (1) word geag op 1 Oktober 2001 in werking te getree het.

Wysiging van paragraaf 79 van Agtste Bylae by Wet 58 van 1962, soos ingevoeg deur artikel 38 van Wet 5 van 2001

98. Paragraaf 79 van die Agtste Bylae by die Inkomstebelastingwet, 1962, word hierby gewysig deur in subparagraaf (1) die woorde wat item (a) voorafgaan deur die volgende woorde te vervang: 35

“(1) Ondanks [artikel] paragraaf 76, waar 'n aandeelhouer 'n kapitaaluitkering in kontant of bates in spesie ontvang, moet die bedrag van daardie kapitaaluitkering geag word 'n kapitaalwins te wees vir doeleindes van die vasstelling van daardie aandeelhouer se totale kapitaalwins of totale kapitaalverlies, waar—”. 40

Vervanging van paragraaf 81 van Agtste Bylae by Wet 58 van 1962, soos ingevoeg deur artikel 38 van Wet 5 van 2001 en vervang deur artikel 109 van Wet 60 van 2001

99. Die volgende paragraaf vervang hierby paragraaf 81 van die Agtste Bylae by die Inkomstebelastingwet, 1962: 45

“Basiskoste van belang in diskresionêre trust

81. (1) Ondanks paragraaf 38(1)(b), word 'n persoon se belang in 'n diskresionêre trust geag 'n nul-basiskoste te hê.”.

Substitution of Part XIII of Eighth Schedule to Act 58 of 1962, as inserted by section 38 of Act 5 of 2001 and amended by section 34 of Act 19 of 2001 and sections 110 and 111 of Act 60 of 2001

100. (1) The following Part is hereby substituted for Part XIII of the Eighth Schedule to the Income Tax Act, 1962:

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“PART XIII

FOREIGN CURRENCY

Definitions

- 84.** For purposes of this Part, unless the context otherwise indicates—
- “foreign currency” means any currency which is not legal tender in the Republic; 10
- “foreign currency asset” in relation to a person means any amount in foreign currency—
- (a) which constitutes a unit of foreign currency of that person; or
- (b) owing to that person in respect of any loan, advance or debt payable to that person; 15
- “foreign currency base cost” means the base cost in respect of a foreign currency asset, as determined in accordance with paragraph 91;
- “foreign currency liability” means an amount in foreign currency owing by that person in respect of any loan, advance or debt incurred by that person; 20
- “foreign currency proceeds” means the proceeds from the disposal of a foreign currency asset, as determined in accordance with paragraph 92;
- “personal expenses” of a person means any—
- (a) domestic or private expenses incurred outside the Republic in respect of foreign accommodation (excluding the acquisition of any immovable property) or foreign personal-use assets; or 25
- (b) traveling or maintenance expenses;
- “personal foreign currency asset” means any foreign currency asset of a person which constitutes—
- (a) an amount which constitutes a unit of foreign currency in cash or cash equivalent, held primarily for the regular payment of personal expenses; or 30
- (b) any one account held in the relevant foreign currency with a banking institution from which funds can be immediately withdrawn, which account is used primarily for the regular payment of personal expenses; 35
- “valuation date” means—
- (a) 1 March 2003; or
- (b) where a person becomes a resident of the Republic after 1 March 2003, the date that such person becomes a resident. 40

Application of this Part

- 85.** This Part applies in respect of—
- (a) the acquisition and disposal of any foreign currency asset; and
- (b) the settlement or part settlement of any foreign currency liability, 45
- by any person who is a resident (other than a resident in respect of whom section 24I of the Act applies in respect of any foreign currency asset of that person in the relevant foreign currency).

Vervanging van Deel XIII van Agtste Bylae by Wet 58 van 1962, soos ingevoeg deur artikel 38 van Wet 5 van 2001 en gewysig deur artikel 34 van Wet 19 van 2001 en artikels 110 en 111 van Wet 60 van 2001

100. (1) Die volgende Deel vervang hierby Deel XIII van die Agtste Bylae by die Inkomstebelastingwet, 1962:

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“DEEL XIII

BUITELANDSE VALUTA

Woordomskrywings

84. By die toepassing van hierdie Deel, tensy uit die samehang anders blyk, beteken—
- ‘buitelandse geldeenheid’ enige geldeenheid wat nie ’n wettige betaalmiddel in die Republiek is nie; 10
 - ‘buitelandse valutabasiskoste, die basiskoste ten opsigte van ’n buitelandse valutabate, soos ingevolge paragraaf 91 bepaal;
 - ‘buitelandse valutabate’ met betrekking tot ’n persoon, ’n bedrag in buitelandse geldeenheid— 15
 - (a) wat ’n eenheid van buitelandse valuta van daardie persoon daarstel; of
 - (b) wat aan daardie persoon verskuldig is ingevolge ’n lening, voorskot of skuld wat aan daardie persoon betaalbaar is;
 - ‘buitelandse valuta-opbrengs’ die opbrengs uit die beskikking oor ’n buitelandse valutabate, soos ingevolge paragraaf 92 bepaal; 20
 - ‘buitelandse valuta-verpligting’ ’n bedrag in buitelandse geldeenheid deur daardie persoon verskuldig ten opsigte van ’n lening, voorskot of skuld deur daardie persoon aangegaan;
 - ‘persoonlike buitelandse valutabate’ ’n buitelandse valutabate van ’n persoon wat— 25
 - (a) ’n bedrag daarstel wat ’n eenheid in buitelandse valuta in kontant of kontantekwivalent daarstel, wat gehou word primêr vir die gereelde betaling van persoonlike uitgawes; of
 - (b) een rekening by ’n bankinstelling gehou in die betrokke buitelandse geldeenheid waaruit fondse onmiddellik onttrek kan word, welke rekening primêr vir die gereelde betaling van persoonlike uitgawes gebruik word; 30
 - ‘persoonlike uitgawes’ van ’n persoon—
 - (a) huishoudelike of privaatonkoste wat buite die Republiek aangegaan is ten opsigte van buitelandse huisvesting (uitgesluit die verkryging van enige onroerende eiendom) of buitelandse persoonlike gebruiksbates; of 35
 - (b) reis- of onderhoudskostes;
 - ‘waardasiedatum’— 40
 - (a) 1 Maart 2003; of
 - (b) waar ’n persoon na 1 Maart 2003 ’n inwoner van die Republiek word, die datum waarop daardie persoon ’n inwoner word.

Toepassing van hierdie Deel

85. Hierdie Deel is van toepassing ten opsigte van— 45
- (a) die verkryging van en beskikking oor enige buitelandse valutabates; en
 - (b) die vereffening of gedeeltelike vereffening van enige buitelandse valuta-verpligting, 50
- deur ’n persoon wat ’n inwoner is (behalwe ’n inwoner op wie artikel 24I van die Wet ten opsigte van enige buitelandse valutabate van daardie persoon in die betrokke buitelandse geldeenheid van toepassing is).

Foreign currency capital gain and foreign currency capital loss

- 86.** (1) Despite anything to the contrary contained in the Act, a person's foreign currency capital gain for the year of assessment in respect of—
- (a) the disposal of a foreign currency asset (other than a personal foreign currency asset), is the amount by which the foreign currency proceeds exceed the foreign currency base cost; or 5
 - (b) the settlement or part settlement of any foreign currency liability due by that person, is the amount determined in accordance with paragraph 93(1). 10
- (2) Despite anything to the contrary contained in the Act, a person's foreign currency capital loss for the year of assessment in respect of—
- (a) the disposal of a foreign currency asset (other than a personal foreign currency asset) is the amount by which the foreign currency base cost in respect of that asset exceeds the foreign currency proceeds; or 15
 - (b) any settlement or part settlement of any foreign currency liability due by that person, is the amount determined in accordance with paragraph 93(2). 20
- (3) The amount of any foreign currency capital gain or foreign currency capital loss of a person during any year of assessment, as contemplated in subparagraphs (1) and (2), respectively, shall be treated as a capital gain or capital loss, as the case may be, for purposes of determining the aggregate capital gain or aggregate capital loss of that person for that year in terms of this Schedule.

Disposal of foreign currency asset

- 87.** A disposal of a foreign currency asset includes— 25
- (a) the conversion, sale, donation, expropriation, cession, exchange or any alienation or transfer of that foreign currency asset;
 - (b) the forfeiture, termination, redemption, cancellation, surrender, discharge, relinquishment, release, waiver, renunciation, expiry, abandonment or loss of that foreign currency asset; or 30
 - (c) the vesting of any foreign currency asset of a trust in a beneficiary of that trust.

Events treated as acquisition or disposal of foreign currency asset

- 88.** (1) A person must be treated as having acquired on valuation date all foreign currency assets (other than personal foreign currency assets) of that person which have not been disposed of by that person before that date. 35
- (2) Where a person—
- (a) ceases to be a resident; or
 - (b) who is a resident, is as a result of the application of any agreement entered into by the Republic with any other country for the avoidance of double taxation, treated as not being a resident, 40
- that person must be treated as having disposed of all foreign currency assets (other than personal foreign currency assets) acquired and not disposed of by that person before so ceasing to be or treated as not being a resident.
- (3) Where the provisions of section 24I become applicable to a person in respect of any foreign currency asset of that person, that person must, for the purposes of this Part, be treated as having disposed of all foreign currency assets (other than personal foreign currency assets) of that person which were not disposed of immediately before section 24I became applicable. 45
- (4) Where the provisions of this Part become applicable to a person, that person must, for the purposes of this Part, be treated as having acquired all foreign currency assets (other than personal foreign currency assets) of that 50

Buitelandse valuta kapitaalwins en buitelandse valuta kapitaalverlies

86. (1) Ondanks enigiets tot die teendeel in die Wet vervat, is 'n persoon se buitelandse valuta kapitaalwins vir die jaar van aanslag ten opsigte van—

- (a) die beskikking oor 'n buitelandse valutabate (behalwe 'n persoonlike buitelandse valutabate), die bedrag waarmee die buitelandse valuta-opbrengs die buitelandse valutabasis koste te bowe gaan; of 5
- (b) die vereffening of gedeeltelike vereffening van 'n buitelandse valuta-verpligting deur daardie persoon verskuldig, die bedrag ingevolge paragraaf 93(1) vasgestel.

(2) Ondanks enigiets tot die teendeel in die Wet vervat, is 'n persoon se buitelandse valuta kapitaalverlies vir die jaar van aanslag ten opsigte van— 10

- (a) die beskikking oor 'n buitelandse valutabate (behalwe 'n persoonlike buitelandse valutabate) die bedrag waarmee die buitelandse valuta basiskoste ten opsigte van daardie bate die buitelandse valuta-opbrengs te bowe gaan; of 15
- (b) die vereffening of gedeeltelike vereffening van enige buitelandse valuta-verpligting deur daardie persoon verskuldig, die bedrag ingevolge paragraaf 93(2) vasgestel.

(3) Die bedrag van enige buitelandse valuta kapitaalwins of buitelandse valuta kapitaalverlies van 'n persoon gedurende enige jaar van aanslag, soos in subparagrafe (1) en (2) bedoel, word onderskeidelik geag 'n kapitaalwins of kapitaalverlies, na gelang van die geval, te wees by die vasstelling van die totale kapitaalwins of totale kapitaalverlies ingevolge hierdie Bylae van daardie persoon vir daardie jaar. 20

Beskikking oor buitelandse valutabate

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87. 'n Beskikking oor 'n buitelandse valutabate sluit in—

- (a) die omskakeling, verkoop, skenking, onteiening, sessie, ruil of enige vervreemding of oordrag van daardie buitelandse valutabate; 30
- (b) die verbeuring, beëindiging, aflossing, intrekking, afgee, ontheffing, opgee, kwytskelding, laatvaarding, afstanddoening, verstryking, prysgawe of verlies van daardie buitelandse valutabate; of
- (c) die vestiging van enige buitelandse valutabate van 'n trust in 'n begunstigde van daardie trust.

Gebeurtenisse as verkrygings of beskikking van buitelandse valutabate geag

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88. (1) 'n Persoon moet geag word alle buitelandse valutabates (behalwe persoonlike buitelandse valutabates) van daardie persoon op waardasiedatum te verkry het, wat nie voor daardie datum deur daardie persoon oor beskik is nie.

(2) Waar 'n persoon— 40

- (a) ophou om 'n inwoner te wees; of
 - (b) wat 'n inwoner is, as gevolg van die toepassing van 'n ooreenkoms deur die Republiek met enige ander land vir die vermyding van dubbel belasting aangegaan, geag word nie 'n inwoner te wees nie, 45
- moet daardie persoon geag word oor alle buitelandse valutabates (behalwe persoonlike buitelandse valutabates) wat verkry is en nie deur daardie persoon oor beskik is voor daardie persoon aldus geag word nie 'n inwoner te wees nie, te beskik het.

(3) Waar die bepalinge van artikel 24I op 'n persoon van toepassing word ten opsigte van enige buitelandse valutabate van daardie persoon, moet daardie persoon vir doeleindes van hierdie Deel, geag word te beskik het oor alle buitelandse valutabates (behalwe persoonlike buitelandse valutabates) van daardie persoon waaroor nie onmiddellik voordat artikel 24I van toepassing geword het, beskik was nie. 50

(4) Waar die bepalinge van hierdie Deel op 'n persoon van toepassing word, moet daardie persoon vir doeleindes van hierdie Deel geag word alle buitelandse valutabates (behalwe persoonlike buitelandse valutabates) van 55

person which were not disposed of immediately before this Part became applicable.

(5) Where a person commences to hold a foreign currency asset which is included in the foreign currency asset pool, as a personal foreign currency asset, that person must be treated as having disposed of that foreign currency asset on the date that the person so commences to hold that foreign currency asset as a personal foreign currency asset.

(6) Where a person ceases to hold a foreign currency asset as personal foreign currency asset, that person must be treated as having acquired that foreign currency asset on the date that the person so ceases to hold that foreign currency asset as a personal foreign currency asset.

Exchange of foreign currency assets denominated in same foreign currency

89. (1) Subject to subparagraph (2), where a person exchanges one foreign currency asset for another foreign currency asset which is denominated in the same currency, there shall, for the purposes of this Part—

- (a) be no disposal by that person of the foreign currency asset which is surrendered in exchange for that other foreign currency asset, to the extent that the value in foreign currency of that foreign currency asset so surrendered does not exceed the value in foreign currency of that other foreign currency asset; and
- (b) be no acquisition by that person of the foreign currency asset which is obtained in exchange for that other foreign currency asset, to the extent that the value in foreign currency of that foreign currency asset so obtained does not exceed the value in foreign currency of that other foreign currency asset.

(2) Subparagraph (1) does not apply to the extent that the foreign currency asset obtained or surrendered in exchange for the other foreign currency asset constitutes a personal foreign currency asset.

Foreign currency asset pool

90. (1) A person must maintain a foreign currency asset pool for each foreign currency in which any foreign currency asset of that person is denominated, which must—

- (a) include the total amount in foreign currency of all foreign currency assets (other than personal foreign currency assets) acquired on or after valuation date, (including any amount of interest which is deemed to have accrued for purposes of the Act in respect of any foreign currency asset); and
- (b) be reduced by the amount in foreign currency of any foreign currency asset included therein, which has been disposed of by that person on or after valuation date.

(2) The total asset pool base cost in respect of the foreign currency asset pool contemplated in subparagraph (1), is determined as the sum of the values in foreign currency of each foreign currency asset contemplated in subparagraph (1)(a), translated into the currency of the Republic at the average exchange rate for the year of assessment during which the relevant foreign currency asset was acquired, subject to paragraphs 95 and 96, reduced by the foreign currency base cost of any foreign currency assets disposed of as contemplated in subparagraph (1)(b).

daardie persoon te verkry het, wat nie onmiddellik voor hierdie Deel van toepassing geword het oor beskik is nie.

(5) Waar 'n persoon 'n buitelandse valutabate wat by die buitelandse valutapoel ingesluit is, as 'n persoonlike buitelandse valutabate begin hou, moet daardie persoon geag word oor daardie buitelandse valutabate te beskik het op die datum wat die persoon aldus begin om daardie buitelandse valutabate as 'n persoonlike buitelandse valutabate te hou.

(6) Waar 'n persoon ophou om 'n buitelandse valutabate as 'n persoonlike buitelandse valutabate te hou, moet daardie persoon geag word daardie buitelandse valutabate te verkry het op die datum wat die persoon aldus ophou om daardie buitelandse valutabate as 'n persoonlike buitelandse valutabate te hou.

Ruil van buitelandse valutabates in dieselfde buitelandse geldeenheid aangedui

89. (1) Behoudens subparagraaf (2), waar 'n persoon een buitelandse valutabate vir 'n ander buitelandse valutabate wat in in dieselfde geldeenheid aangedui is, verruil, is daar by die toepassing van hierdie Deel—

(a) geen beskikking deur daardie persoon van die buitelandse valutabate wat in ruil vir daardie ander buitelandse valutabate opgegee is nie, tot die mate wat die waarde in buitelandse geldeenheid van die buitelandse valutabate aldus opgegee nie die waarde in buitelandse geldeenheid van daardie ander buitelandse valutabate te bowe gaan nie; en

(b) geen verkryging deur daardie persoon van die buitelandse valutabate wat in ruil vir daardie ander buitelandse valutabate verkry is nie, tot die mate wat die waarde in buitelandse geldeenheid van daardie buitelandse valutabate aldus verkry nie die waarde in buitelandse geldeenheid van daardie ander buitelandse valutabate te bowe gaan nie.

(2) Subparagraaf (1) is nie van toepassing nie tot die mate wat die buitelandse valutabate in ruil vir die ander buitelandse valutabate verkry of opgegee 'n persoonlike buitelandse valutabate daarstel.

Buitelandse valutabatepoel

90. (1) 'n Persoon moet 'n buitelandse valutabatepoel hou vir elke buitelandse geldeenheid waarin 'n buitelandse valutabate van daardie persoon aangedui is, wat—

(a) moet insluit die totale bedrag in buitelandse geldeenheid van alle buitelandse valutabates (behalwe persoonlike buitelandse valutabates) op of na waardasiedatum verkry, (waarby ingesluit enige bedrag van rente wat geag word toe te geval het vir doeleindes van die Wet ten opsigte van enige buitelandse valutabate); en

(b) verminder moet word deur die bedrag in buitelandse geldeenheid van enige buitelandse valutabate wat daarby ingesluit is, waaroor deur daardie persoon beskik word op of na waardasiedatum.

(2) Die totale batepoel-basiskoste ten opsigte van die buitelandse valutabatepoel in subparagraaf (1) bedoel, word vasgestel as die som van die waardes in buitelandse geldeenheid van elke buitelandse valutabate in subparagraaf (1)(a) bedoel, omgeskakel na die geldeenheid van die Republiek teen die gemiddelde wisselkoers vir die jaar van aanslag waarin die betrokke buitelandse valutabate verkry is, behoudens paragrafe 95 en 96, verminder deur die buitelandse valutabasiskoste van enige buitelandse valutabate waaroor beskik word soos in subparagraaf (1)(b) bedoel.

Foreign currency base cost of foreign currency asset

91. The base cost of a foreign currency asset disposed of by a person is an amount which bears to the total asset pool base cost determined in terms of paragraph 90(2) prior to that disposal, the same ratio as the value in foreign currency of that foreign currency asset so disposed of bears to the total value in foreign currency of the relevant foreign currency asset pool determined in terms of paragraph 90(1) prior to that disposal. 5

Foreign currency proceeds

92. Subject to paragraphs 95 and 96, the proceeds from the disposal by a person of a foreign currency asset is an amount determined by translating the value in foreign currency of that asset into the currency of the Republic at the average exchange rate for the year of assessment during which that asset is disposed of and— 10

- (a) reducing that amount by—
 - (i) any capital gain determined in terms of this Schedule in respect of the disposal of that foreign currency asset (otherwise than in terms of the application of this Part), which was included in that amount; or 15
 - (ii) any other amount included therein, which is or was during any year of assessment included in the taxable income of that person (or of that person's spouse in the case of an asset transferred to that person as contemplated in paragraph 95) in respect of that foreign currency asset; or 20
- (b) increasing that amount by any capital loss determined in terms of this Schedule in respect of the disposal of that foreign currency asset (otherwise than in terms of the application of this Part). 25

Settlement of foreign currency liability

93. (1) A person must be treated as having a foreign currency capital gain from the settlement or part settlement by that person of any foreign currency liability, to the extent that the amount settled or part settled, translated into the currency of the Republic at the average exchange rate for the year of assessment during which that foreign currency liability was incurred, exceeds that amount translated into the currency of the Republic at the average exchange rate for the year of assessment during which that foreign currency liability was settled or part settled. 30 35

(2) A person must be treated as having a foreign currency capital loss from the settlement or part settlement by that person of any foreign currency liability, to the extent that the amount settled or part settled, translated into the currency of the Republic at the average exchange rate for the year of assessment during which that foreign currency liability was settled or part settled, exceeds that amount translated into the currency of the Republic at the average exchange rate for the year of assessment during which that foreign currency liability was incurred. 40

(3) A person must disregard any foreign currency capital gain or foreign currency capital loss determined during any year of assessment in respect of the settlement of any foreign currency liability, to the extent that the amount of that foreign currency liability was utilised otherwise than to— 45

- (a) acquire any right in terms of a forward exchange contract or a foreign currency option contract;
- (b) acquire any foreign currency asset other than a personal foreign currency asset; 50
- (c) acquire any foreign equity instrument or any asset in local currency as contemplated in paragraph 43; or

Buitelandse valutabasiskoste van buitelandse valutabate

91. Die basiskoste van 'n buitelandse valutabate waaroor deur 'n persoon beskik word, is 'n bedrag wat tot die totale batepoel-basiskoste ingevolge paragraaf 90(2) bepaal voor daardie beskikking, in dieselfde verhouding staan as wat die waarde in buitelandse geldeenheid van daardie buitelandse valutabate aldus oor beskik tot die totale waarde in buitelandse geldeenheid van die betrokke buitelandse valutabatepoel ingevolge paragraaf 90(1) bepaal voor daardie beskikking, staan. 5

Buitelandse valuta-opbrengs

92. Behoudens paragrafe 95 en 96, is die opbrengs uit die beskikking deur 'n persoon van 'n buitelandse valutabate 'n bedrag vasgestel deur die waarde in buitelandse geldeenheid van daardie bate om te skakel na die geldeenheid van die Republiek teen die gemiddelde wisselkoers vir die jaar van aanslag waarin oor daardie bate beskik is en— 10

(a) daardie bedrag te verminder deur— 15

(i) enige kapitaalwins ingevolge hierdie Bylae vasgestel ten opsigte van die beskikking oor daardie buitelandse valutabate (andersins as ingevolge die toepassing van hierdie Deel), wat by daardie bedrag ingesluit is; of

(ii) enige ander bedrag daarby ingesluit, wat gedurende enige jaar van aanslag in die belasbare inkomste van daardie persoon ingesluit is of was (of van daardie persoon se gade in die geval van 'n bate aan daardie persoon oorgedra soos in paragraaf 95 bedoel) ten opsigte van daardie buitelandse valutabate; of 20

(b) deur daardie bedrag te vermeerder deur enige kapitaalverlies ingevolge hierdie Bylae vasgestel ten opsigte van die beskikking oor daardie buitelandse valutabate (andersins as ingevolge die toepassing van hierdie Deel). 25

Vereffening van buitelandse valuta-verpligting

93. (1) 'n Persoon moet geag word 'n buitelandse valutakapitaalwins te hê uit die vereffening of gedeeltelike vereffening deur daardie persoon van enige buitelandse valuta-verpligting, tot die mate wat die bedrag vereffen of gedeeltelik vereffen, omgeskakel na die geldeenheid van die Republiek teen die gemiddelde wisselkoers vir die jaar van aanslag waarin daardie buitelandse valuta-verpligting aangegaan is, daardie bedrag, omgeskakel na die geldeenheid van die Republiek teen die gemiddelde wisselkoers vir die jaar van aanslag waarin daardie buitelandse valuta-verpligting vereffen is of gedeeltelik vereffen is, te bowe gaan. 30 35

(2) 'n Persoon moet geag word 'n buitelandse valutakapitaalverlies te hê uit die vereffening of gedeeltelike vereffening deur daardie persoon van enige buitelandse valuta-verpligting, tot die mate wat die bedrag vereffen of gedeeltelik vereffen, omgeskakel na die geldeenheid van die Republiek teen die gemiddelde wisselkoers vir die jaar van aanslag waarin daardie buitelandse valuta-verpligting vereffen of gedeeltelik vereffen is, daardie bedrag, omgeskakel na die geldeenheid van die Republiek teen die gemiddelde wisselkoers vir die jaar van aanslag waarin daardie buitelandse valuta-verpligting aangegaan is, te bowe gaan. 40 45

(3) 'n Persoon moet 'n buitelandse valutakapitaalwins of buitelandse valutakapitaalverlies wat vasgestel is gedurende enige jaar van aanslag ten opsigte van die vereffening van enige buitelandse valuta-verpligting, verontagsaam tot die mate wat die bedrag van daardie buitelandse valuta-verpligting gebruik is andersins as om— 50

(a) 'n reg ingevolge 'n valutatermynkонтрак of 'n buitelandse valuta-opsiekонтрак te verkry;

(b) 'n buitelandse valutabate behalwe 'n persoonlike buitelandse valutabate, te verkry; 55

(c) 'n buitelandse ekwiteitsinstrument of bate in plaaslike geldeenheid, soos in paragraaf 43 bedoel, te verkry; of

- (d) refinance any foreign currency liability which was utilised to acquire any asset contemplated in item (a), (b) or (c), which was not disposed of by that person during any previous year of assessment.

Involuntary disposal of foreign currency asset

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94. A person must disregard any foreign currency gain or foreign currency loss determined in respect of an involuntary disposal of any foreign currency asset by way of expropriation, theft or physical loss.

Transfer of foreign currency assets between spouses

95. Where a person disposes of any foreign currency asset to his or her spouse—
- (a) that person must be treated as having disposed of that foreign currency asset for proceeds equal to the foreign currency base cost of that foreign currency asset; and
- (b) that spouse must, for purposes of paragraph 90(2), treat that foreign currency base cost as the value of that asset in the currency of the Republic on the date of acquisition.

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Application of provisions of Eighth Schedule

96. (1) The provisions of paragraphs 11(2)(a), (e) and (i), 12(1), 12(2)(a), 13, 14, 36, 38, 39, 40, 56, 62, 63, 68, 69, 70, 71, 72, 73, 80 and 82 and 83 of the Eighth Schedule to the Act, shall apply *mutatis mutandis* in respect of the determination of any foreign currency capital gain or foreign currency capital loss resulting from the disposal of any foreign currency asset.
- (2) For purposes of paragraph 96(1), any reference in any provision referred to in that paragraph to—
- (a) the market value shall be treated as a reference to the relevant value in foreign currency translated to the currency of the Republic at the average exchange for the relevant year of assessment; and
- (b) the base cost shall be treated as a reference to the foreign currency base cost.”.

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(2) Subsection (1) shall come into operation on 1 March 2003 and shall apply in respect of years of assessment commencing on or after that date.

Amendment of paragraph 86 of Eighth Schedule to Act 58 of 1962, as inserted by section 38 of Act 5 of 2001 and amended by section 35 of Act 19 of 2001 and section 112 of Act 60 of 2001

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101. Paragraph 86 of the Eighth Schedule to the Income Tax Act, 1962, is hereby renumbered as paragraph 97.

Amendment of section 18 of Act 91 of 1964, as amended by section 2 of Act 95 of 1965, section 6 of Act 105 of 1969, section 4 of Act 71 of 1975, section 3 of Act 105 of 1976, section 3 of Act 112 of 1977, section 4 of Act 84 of 1987, section 13 of Act 59 of 1990, section 11 of Act 45 of 1995, section 48 of Act 53 of 1999, section 37 of Act 19 of 2001 and section 119 of Act 60 of 2001

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102. Section 18 of the Customs and Excise Act, 1964, is hereby amended—

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

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“(a) except as otherwise prescribed by rule—

- (i) the importer or owner of any imported goods landed in the Republic;
- (ii) the licensee of any customs and excise manufacturing warehouse in which excisable or fuel levy goods are manufactured;

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- (d) 'n buitelandse valuta-verpligtig wat gebruik is om 'n bate in item (a),
(b) of (c) te verkry, te herfinansier,
wat nie deur daardie persoon gedurende enige vorige jaar van aanslag oor
beskik is nie.

Onvrywillige beskikking van buitelandse valutabate

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94. 'n Persoon moet 'n buitelandse valutawins of buitelandse valutaverlies, vasgestel ten opsigte van enige onvrywillige beskikking oor 'n buitelandse valutabate by wyse van onteiening, diefstal of fisiese verlies, verontagsaam.

Oordrag van buitelandse valutabates tussen gades

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95. Waar 'n persoon oor enige buitelandse valutabate aan sy of haar gade beskik—

- (a) moet daardie persoon geag word oor daardie buitelandse valutabate te beskik het vir opbrengs gelyk aan die buitelandse valutabasiskoste van daardie buitelandse valutabate; en
(b) moet daardie gade, by die toepassing van paragraaf 90(2), daardie buitelandse valutabasiskoste as die waarde van daardie bate in die geldeenheid van die Republiek ag op die datum van verkryging.

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Toepassing van bepalinge van Agtste Bylae

96. (1) Die bepalinge van paragraaf 11(2)(a), (e) en (i), 12(1), 12(2)(a), 13, 14, 36, 38, 39, 40, 56, 62, 63, 68, 69, 70, 71, 72, 73, 80, 82 en 83 van die Agtste Bylae by die Wet, is *mutatis mutandis* van toepassing ten opsigte van die vasstelling van enige buitelandse valutakapitaalwins of buitelandse valutakapitaalverlies weens die beskikking oor enige buitelandse valutabate.

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(2) By die toepassing van paragraaf 96(1), word enige verwysing in 'n bepaling in daardie paragraaf na—

- (a) die markwaarde, geag 'n verwysing na die betrokke waarde in buitelandse geldeenheid, omgeskakel na die geldeenheid van die Republiek teen die gemiddelde wisselkoers vir die betrokke jaar van aanslag, te wees; en
(b) die basiskoste, geag 'n verwysing na die buitelandse valutabasiskoste te wees.”.

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(2) Subartikel (1) tree op 1 Maart 2003 in werking en is van toepassing ten opsigte van jare van aanslag wat op of na daardie datum 'n aanvang neem.

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Wysiging van paragraaf 86 van Agtste Bylae by Wet 58 van 1962, soos ingevoeg deur artikel 38 van Wet 5 van 2001 en gewysig deur artikel 35 van Wet 19 van 2001 en artikel 112 van Wet 60 van 2001

101. Paragraaf 86 van die Agtste Bylae by die Inkomstebelastingwet, 1962, word hierby hernommer as paragraaf 97.

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Wysiging van artikel 18 van Wet 91 van 1964, soos gewysig deur artikel 2 van Wet 95 van 1965, artikel 6 van Wet 105 van 1969, artikel 4 van Wet 71 van 1975, artikel 3 van Wet 105 van 1976, artikel 3 van Wet 112 van 1977, artikel 4 van Wet 84 van 1987, artikel 13 van Wet 59 van 1990, artikel 11 van Wet 45 van 1995, artikel 48 van Wet 53 van 1999, artikel 37 van Wet 19 van 2001 en artikel 119 van Wet 60 van 2001

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102. Artikel 18 van die Doeane en Aksynswet, 1964, word hierby gewysig—

- (a) deur paragraaf (a) van subartikel (1) deur die volgende paragraaf te vervang:
“(a) behalwe soos anders by reël voorgeskryf kan,

- (i) die invoerder of eienaar van enige ingevoerde goedere wat in die Republiek geland is;
(ii) die gelisensiëerde van enige doeane- en aksynsvervaardigingspakhuis waarin synsbare of brandstofheffinggoedere vervaardig word;

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- (iii) the licensee of any storage warehouse in which excisable or fuel levy goods are stored;
 - (iv) the licensee or owner of any imported goods stored in a customs and excise storage warehouse; or
 - (v) any clearing agent licensed in terms of section 64B appointed by such importer, owner of licensee, may enter such goods for removal in bond and may remove such goods or cause such goods to be removed—
 - (aa) in the case of goods contemplated in subparagraph (i), to any place in the Republic appointed as a place of entry or warehousing under this Act or to any place outside the Republic: Provided that any goods which are in transit through the Republic as contemplated in subsection (1A), may only be so entered and removed or caused to be so removed by such licensed clearing agent; or
 - (bb) in the case of goods contemplated in subparagraphs (ii), (iii) or (iv), to any warehousing place in the Republic or to any place in any other country in the common customs area appointed as a warehousing place for rewarehousing at that place in another such warehouse.”;
- (b) by the addition to subsection (1) of paragraph (f) of the following paragraph:
“(f) Any goods entered for removal in bond may, except if exempted by rule, when carried by road only be transported by a licensed remover of goods in bond contemplated in section 64D, whether or not the goods are wholly or partly transported by road.”;
- (c) by the substitution for subsection (2) of the following subsection:
“(2) In addition to any liability for duty incurred by any person under any provision of this Act, but subject to the provisions of section 99(2), the person who [removes] enters any goods for removal in bond or who may remove in bond any goods contemplated in subsection (1) and who removes or causes such goods to be so removed, shall subject to the provisions of subsection (3), be liable for the duty on all goods which [he so removes] are so entered and so removed in bond.”.

Insertion of section 37B of Act 91 of 1964

103. (1) The following section is hereby inserted in the Customs and Excise Act, 1964 after section 37A:

“Provisions relating to the manufacture, storage, disposal and use of biofuel, biodiesel or bioethanol

37B. (1) For the purposes of this Act, unless the context otherwise indicates—

‘biofuel’ means any goods used as liquid fuel manufactured from any vegetable or other material, not being any material from which mineral fuels, oils or other goods are obtained as provided in Chapter 27 of Part 1 of Schedule No. 1;

‘biodiesel’ means a biofuel as specified in and described in any note to any heading or in any subheading of Part 1 of Schedule No. 1, any item of Section A of Part 2 or Part 5 of the said Schedule No. 1 or any item of Schedule No. 3, 4, 5 or 6 capable of use as a substitute for or an additive to distillate fuel;

‘bioethanol’ means a biofuel as specified in and described in any note to any heading or in any subheading of Part 1 of Schedule No. 1, any item of Section A of Part 2 or Part 5 of the said Schedule no. 1 or any item of Schedule No. 3, 4, 5 or 6 capable of use as a substitute for or additive to petrol;

‘distillate fuel’ or ‘diesel’ means distillate fuel defined in the Notes to Chapter 27 of Part 1 of Schedule No 1 and liable to customs duty as specified in the said Part 1 and to excise duty and fuel levy as specified in Section A of Part 2 and Part 5, respectively, of Schedule No. 1;

- (iii) die gelisensiëerde van enige opslagpakhuis waarin synsbare of brandstofheffinggoedere opgeslaan word;
- (iv) die gelisensiëerde of eienaar van enige ingevoerde goedere wat in 'n doeane- en aksynsopslagpakhuis geberg word; of
- (v) enige klaringsagent kragtens artikel 64B gelisensiëer deur sodanige invoerder, eienaar of gelisensiëerde aangestel, sodanige goedere vir verwydering onder waarborg klaar en sodanige goedere verwyder of sodanige goedere laat verwyder—
- (aa) in die geval van goedere bedoel in subparagraaf (i), na enige plek in die Republiek wat as 'n klaringsplek of 'n pakhuisplek onder die Wet aangewys is of na enige plek buite die Republiek: met dien verstande dat enige goedere wat deur die Republiek in transito is soos bedoel in subartikel (1A), slegs deur sodanige gelisensiëerde klaringsagent so geklaar en verwyder mag word of so laat verwyder mag word; of
- (bb) in die geval van goedere bedoel in subparagrafe (ii), (iii), of (iv), na enige pakhuisplek in die Republiek of na enige plek in enige ander land in die gemeenskaplike doeanegebied wat as 'n pakhuisplek vir heropslag by daardie plek in 'n ander sodanige pakhuis aangewys is.”;
- (b) deur by subartikel (1) die volgende paragraaf te voeg:
- “(f) Enige goedere vir vervoer onder waarborg geklaar mag, behalwe wanneer by reël vrygestel, wanneer dit per pad vervoer word slegs deur 'n gelisensiëerde vervoerder van goedere onder waarborg soos bedoel in artikel 64D, vervoer word, hetsy die goedere geheel of gedeeltelik per pad vervoer word al dan nie.”;
- (c) deur subartikel (2) deur die volgende subartikel te vervang:
- “(2) Benewens enige aanspreeklikheid vir reg wat enige persoon kragtens enige bepaling van hierdie Wet opgeloopt het, maar behoudens die bepalinge van artikel 99(2), is die persoon wat enige goedere vir vervoer onder waarborg [verwyder] klaar of enige goedere bedoel in subartikel (1) onder waarborg kan vervoer, en wat sodanige goedere alvorens vervoer of laat vervoer, behoudens die bepalinge van subartikel (3), aanspreeklik vir die reg op alle goedere wat [hy aldus vervoer] so geklaar en onder waarborg vervoer word.”.

Invoeging van artikel 37B van Wet 91 van 1964

103. (1) Die volgende artikel word hierby na artikel 37A in die Doeane en Aksynswet, 1964, ingevoeg:

“Bepalings met betrekking tot die vervaardiging, opslag, beskikking oor en gebruik van biobrandstof, biodiesel en bio-ethanol

37B. (1) Vir doeleindes van hierdie Wet, tensy uit die samehang anders blyk, beteken—

‘biobrandstof’ enige goedere wat as vloeibare brandstof gebruik word en van enige plantaardige of ander stof vervaardig is wat nie 'n stof is waarvan minerale brandstowwe, -olies of ander goedere soos bepaal in Hoofstuk 27 van Deel 1 van Bylae No. 1 verkry word nie;

‘biodiesel’ enige biobrandstof, soos vermeld in en omskryf in enige opmerking by enige pos of in enige subpos van Deel 1 van Bylae No. 1, enige item van Afdeling A van Deel 2 of Deel 5 van die gemelde Bylae No. 1 of enige item van Bylae No 3, 4, 5 of 6, geskik vir gebruik as substituu vir of as 'n toevoegmiddel tot distillaatbrandstof;

‘bioethanol’ 'n biobrandstof, soos vermeld in en omskryf in enige opmerking by enige pos of in enige subpos van Deel 1 van Bylae No. 1, enige item van Afdeling A van Deel 2 of Deel 5 van die gemelde Bylae No. 1 of enige item van Bylae No 3, 4, 5 of 6, geskik vir gebruik as 'n substituu vir of as 'n toevoegmiddel tot petrol;

‘distillaatbrandstof’ of ‘diesel’ distillaatbrandstof soos omskryf in die bepalinge by Hoofstuk 27 van Deel 1 van Bylae No 1 en onderhewig aan doeanereg soos vermeld in die gemelde Deel 1 en aan aksynsreg en brandstofheffing soos vermeld in Afdeling A van Deel 2 en Deel 5, onderskeidelik, van Bylae No. 1;

'manufacture' in relation to biofuel includes mixing biofuel with distillate fuel or petrol;

'petrol' means petrol as defined in the Notes to Chapter 27 of Part 1 of Schedule No 1 and liable to customs duty as specified in the said Part 1 and to excise duty and fuel levy as specified in Section A of Part 2 and Part 5, respectively, of Schedule No. 1.

(2) (a) Except where otherwise provided—

- (i) in this section;
- (ii) by the Minister in any amendment of any Schedule in terms of any provision of this Act; or
- (iii) by the Commissioner in any rule, the provisions of this Act governing the administration of excisable goods or fuel levy goods, including the levying of duty and granting of any rebate or refund of duty on such goods, shall apply *mutatis mutandis* to biofuel.

(b) The Minister may, in prescribing any licence for the manufacture of biofuel in any item of Schedule No. 8 under the provisions of section 60, exempt any person or class of persons from licensing in respect of any manufacturing process in the production of biofuel or any goods used in the production of biofuel.

(3) Notwithstanding anything to the contrary contained in this Act, the Minister may, in any amendment of any Schedule under any provision of this Act, specify—

- (a) in which proportion distillate fuel and biodiesel or petrol and bioethanol may be mixed to be classifiable under any tariff heading or item;
- (b) a different rate of duty and extent of rebate or refund on the basis of the proportionate content of distillate fuel or biodiesel or petrol or bioethanol in any such mixture.

(4) The Commissioner may—

- (a) require any seller of biofuel to register in terms of section 59A;
- (b) make rules—
 - (i) to exempt any person who is required to licence under any provision of this Act from furnishing security;
 - (ii) concerning payment of duty, accounts to be kept and procedures regulating the manufacture, storage, disposal or use of biofuel;
 - (iii) to delegate, subject to section 3(2), any power which may be exercised and assign any duty that shall be performed by the Commissioner in terms of this Act to any officer;
 - (iv) regarding all matters which are required or permitted in terms of this section to be prescribed by rule;
 - (v) in respect of any other matter which is necessary to prescribe and useful to achieve the efficient and effective administration of this section."

(2) Subsection (1) shall come into operation on a date to be determined by the President by proclamation in the *Gazette*.

- 'petrol' petrol soos omskryf in die opmerkings by Hoofstuk 27 van Deel 1 van Bylae No. 1 en onderhewig aan doeanereg soos vermeld in die gemelde Deel 1 en aan aksynsreg en brandstofheffing soos vermeld in Afdeling A van Deel 2 en Deel 5, onderskeidelik, van Bylae No. 1; en
- 'vervaardiging' sluit met betrekking tot biobrandstof ook die vermenging van biobrandstof met distillaatbrandstof of petrol.
- (2) (a) Behalwe waar anders bepaal—
- (i) in hierdie artikel;
 - (ii) deur die Minister in enige wysiging van enige Bylae kragtens enige bepaling van hierdie Wet; of
 - (iii) deur die Kommissaris in enige reël,
- is die bepalings van hierdie Wet wat die administrasie van sinsbare goedere of brandstofheffinggoedere beheers, insluitende die heffing van reg en die toestaan van enige korting op of terugbetaling van reg op sodanige goedere *mutatis mutandis* op biobrandstof van toepassing.
- (b) Die Minister kan, by die voorskryf van enige lisensie vir die vervaardiging van biobrandstof in enige item van Bylae No. 8 ingevolge die bepalings van artikel 60, enige persoon of klas van persone van lisensiëring vrystel ten opsigte van enige vervaardigingsproses in die produksie van biobrandstof of van enige goedere wat in die produksie van biobrandstof gebruik word.
- (3) Ondanks andersluidende bepalings van hierdie Wet kan die Minister in enige wysiging van enige Bylae ingevolge enige bepaling van hierdie Wet—
- (a) spesifiseer in welke verhouding distillaatbrandstof en biodiesel of petrol en bioethanol vermeng kan word om onder enige tariefpos of item indeelbaar te wees;
 - (b) 'n verskillende skaal van reg en mate van korting of terugbetaling op basis van die proporsionele inhoud van distillaatbrandstof of biodiesel of petrol of bioethanol in sodanige mengsel spesifiseer.
- (4) Die Kommissaris kan—
- (a) van enige verkoper van bio-brandstof vereis om ingevolge artikel 59A te registreer;
 - (b) reëls uitvaardig—
 - (i) om iemand wat kragtens enige bepaling van hierdie Wet moet lisensiëer, van die verskaffing van sekerheid vry te stel;
 - (ii) aangaande die betaling van reg, die hou van rekeninge en prosedures wat die vervaardiging, opslag, beskikking oor of gebruik van biobrandstof reguleer;
 - (iii) om, behoudens artikel 3(2) enige bevoegdheid wat deur die Kommissaris uitgeoefen kan word aan enige beampte te deleger en enige plig wat deur die Kommissaris verrig moet word ingevolge die bepalings van hierdie Wet aan enige beampte toe te wys;
 - (iv) betreffende alle aangeleenthede wat ingevolge hierdie artikel by reël voorgeskryf moet of kan word;
 - (v) ten opsigte van enige ander aangeleentheid wat vir die effektiewe en doeltreffende administrasie van hierdie artikel noodsaaklik is om voor te skryf of nuttig kan wees."
- (2) Subartikel (1) tree in werking op 'n datum deur die President by proklamasie in die Staatskoerant bepaal.

Insertion of section 50A in Act 91 of 1964

106. The following section is hereby inserted after section 50 of the Customs and Excise Act, 1964:

“Joint, one-stop or juxtaposed international land border posts

- 50A.** (1) The Commissioner may by rule in accordance with any international agreement concerning joint, one-stop or juxtaposed international land border posts and places of entry for the Republic and an adjoining state—
- (a) in respect of such places situated in the territory of the Republic—
 - (i) allow and appoint any such place as a place of entry for the adjoining state through which goods may be imported or exported and where goods may be entered for customs and excise purposes in accordance with the national legislation of the adjoining state; and
 - (ii) allow officers of the competent customs authority of the adjoining state to perform such duties and functions and exercise such powers as may be required and prescribed by the national legislation of the adjoining state to effect entry and clearance of goods through such place and matters incidental thereto; and
 - (b) in respect of such places situated in the territory of the adjoining state—
 - (i) deem such a place to be a place of entry for the Republic through which goods may be imported or exported and where goods may be entered for customs and excise purposes; and
 - (ii) allow officers to exercise their powers and perform their duties and functions under the Act in such places.
- (2) Notwithstanding anything to the contrary in any other law contained, for purposes of this Act—
- (a) any such place situated in the territory of an adjoining state shall be deemed to be a place situated in the Republic; and
 - (b) whenever, within such a place, situated within an adjoining state—
 - (i) any goods are detained for purposes of this Act, such goods shall as soon as practicable be removed to the State Warehouse or other place indicated by the Controller within the territory of the Republic; or
 - (ii) any person is detained for purposes of this Act, such person shall without delay be secured in an office of the South African Police Service closest to such place.
- (3) Whenever such a place is situated within the territory of the Republic, and the national legislation of the adjoining state provides for the detention of goods or persons at such place, the Commissioner shall allow for the removal of such detained goods or persons by the competent customs authorities of the adjoining state from such a place to the territory of the adjoining state.
- (4) The Commissioner may in administering the provisions of this section, notwithstanding anything to the contrary in this Act or in any other law contained—
- (a) decide or determine any matter or perform any duty or impose any condition in connection with the provisions so administered;
 - (b) make rules—
 - (i) where reference is made in such agreement to customs or competent authorities, to domestic national or customs law or any other matter which requires either expressly or by implication application of customs legislation;

Invoeging van artikel 50A van Wet 91 van 1964

106. Die volgende artikel word hierby na artikel 50 in die Doeane en Aksynswet, 1964, ingevoeg:

“Gesamentlike, eenstop of aangrensende internasionale land-grensposte

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50A. (1) Die Kommissaris kan by reël, ooreenkomstig enige internasionale ooreenkoms aangaande gesamentlike, eenstop of aangrensende internasionale land-grensposte en klaringsplekke vir die Republiek en 'n aangrensende staat—

(a) ten opsigte van sodanige plekke wat in die grondgebied van die Republiek geleë is— 10

(i) enige sodanige plek as 'n klaringsplek vir die aangrensende staat toelaat en aanwys waardeur goedere ingevoer of uitgevoer kan word en waar goedere vir doeane- en aksynsdoeleindes geklaar kan word ingevolge die nasionale wetgewing van die aangrensende staat; en 15

(ii) beamptes van die bevoegde doeaneowerheid van die aangrensende staat toelaat om sulke pligte en werksaamhede te verrig en sulke bevoegdhede uit te oefen soos wat deur die nasionale wetgewing van die aangrensende staat vereis en voorgeskryf word ten einde klaring en inkларing van sodanige goedere deur sodanige plek en aangeleenthede wat daarmee in verband staan, te weeg te bring; en 20

(b) ten opsigte van sodanige plekke in die grondgebied van die aangrensende staat geleë— 25

(i) sodanige plek as 'n klaringsplek vir die Republiek ag waardeur goedere ingevoer of uitgevoer kan word en waar goedere vir doeane- en aksynsdoeleindes geklaar kan word; en

(ii) beamptes toelaat om ingevolge die Wet by sodanige plekke, hul bevoegdhede uit te oefen en hul pligte en werksaamhede te verrig. 30

(2) Ondanks andersluidende bepalings in enige ander wet, by die toepassing van hierdie Wet—

(a) word enige sodanige plek geleë in die grondgebied van 'n aangrensende staat geag 'n plek in die Republiek geleë te wees; en 35

(b) wanneer binne sodanige plek geleë binne 'n aangrensende staat—
(i) enige goedere vir die doeleindes van hierdie Wet aangehou word, moet sodanige goedere so gou doenlik na die Staatspakhuis of ander plek deur die Kontroleur aangedui binne die grondgebied van die Republiek verwyder word; of 40

(ii) iemand vir die doeleindes in hierdie Wet aangehou word, moet sodanige persoon sonder versuim in 'n kantoor van die Suid-Afrikaanse Polisiediens naaste aan sodanige plek beveilig word.

(3) Wanneer sodanige plek geleë is binne die grondgebied van die Republiek en die nasionale wetgewing van die aangrensende staat maak vir die aanhouding van goedere en persone by sodanige plek voorsiening moet die Kommissaris die verwydering van sodanige aangehoue goedere of persone deur die bevoegde doeaneowerheid van die aangrensende gebied vanaf sodanige plek na die grondgebied van die aangrensende staat toelaat. 45

(4) Die Kommissaris kan, ondanks andersluidende bepalings van hierdie Wet of enige ander wet by die administrasie van sodanige ooreenkoms en van die bepalings van hierdie artikel— 50

(a) enige aangeleentheid beslis of bepaal of enige plig vervul of enige voorwaarde op lê in verband met die bepalings aldus geadministreer; 55

(b) reëls uitvaardig—
(i) waar in sodanige ooreenkoms verwys word na doeane of bevoegde owerhede, na binnelandse, nasionale of doeanewetgewing of enige ander aangeleentheid wat of uitdruklik of by implikasie toepassing van doeanewetgewing vereis; 60

- (ii) in connection with the entry of goods imported or exported and documents to be produced in support thereof;
- (iii) prescribing forms or procedures or specifying any condition to be complied with to give effect to any agreement contemplated in this section;
- (iv) to delegate subject to section 3(2) any power, duty or function to any officer or any other person; and
- (v) regarding any other matter which may be necessary or useful for purposes of administering such places.”.

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Amendment of section 61 of Act 91 of 1964, as amended by section 22 of Act 84 of 1987

107. Section 61 of the Customs and Excise Act, 1964 is hereby amended by the substitution for subsection (4) of the following subsection:

“(4) (a) Not more than one licence shall be issued in respect of any customs and excise warehouse: Provided that the Commissioner may, on such conditions as [he] the Commissioner may in each case impose, issue a licence—

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(i) to the owner or person in possession or control of any customs and excise storage or manufacturing warehouse in which excisable or fuel levy goods are stored or manufactured; and

(ii) to each person who obtains for distribution [for] on [his] own account these goods from [that] any such warehouse.

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(b) The owner or person in possession or control of such warehouse who is so licensed shall be liable for the fulfilment of all obligations under this Act in respect of such goods in such warehouse. Provided that each person to whom a licence is so issued shall be liable for any liability incurred under this Act in respect of goods so obtained [taken by him] from such warehouse.”.

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Insertion of section 64F of Act 91 of 1964

108. (1) The following section is hereby inserted in the Customs and Excise Act, 1964 after section 64E:

“Licensing of distributors of fuels obtained from the licensee of a customs and excise manufacturing warehouse

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64F. (1) For the purposes of this Act, unless the context otherwise indicates—

‘licensed distributor’ means any person who—

(a) is licensed in accordance with the provision of section 60 and this section;

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(b) obtains at any place in the Republic for delivery to a purchaser in any other country of the common customs area for consumption in such country or for export (including supply as ships’ or aircraft stores), fuel, which has been or is deemed to have been entered for payment of excise duty and fuel levy, from stocks of a licensee of a customs and excise manufacturing warehouse; and

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(c) is entitled to a refund of duty in terms of any provision of Schedule No. 6 in respect of such fuel which has been duly delivered or exported as contemplated in paragraph (b);

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‘fuel’ means any goods classifiable in any item of Section A of Part 2 of Schedule No. 1 liable to excise duty and goods classifiable in any item of Part 5 of Schedule No. 1 liable to fuel levy, used as fuel.

(2) (a) No person, except a licensee of a customs and excise warehouse, who removes to any other country in the common customs area or exports any fuel, which has been entered or is deemed to have been entered shall be

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- (ii) in verband met klaring van goedere wat ingevoer of uitgevoer word en dokumente wat ter ondersteuning daarvan voorgelê moet word;
- (iii) wat vorms of prosedures voorskryf of enige voorwaarde of bepaling vermeld waaraan voldoen moet word om aan enige ooreenkoms in hierdie artikel bedoel gevolg te gee;
- (iv) om, behoudens artikel 3(2), enige bevoegdheid, plig of werksaamheid aan enige beampte of ander persoon te delegeer;
- (v) betreffende enige ander aangeleentheid wat nodig of nuttig kan wees vir doeleindes om sodanige plekke te administreer.”

Wysiging van artikel 61 van Wet 91 van 1964, soos gewysig deur artikel 22 van Wet 84 van 1987

107. Artikel 61 van die Doeane en Aksynswet, 1964 word hierby gewysig deur die subartikel (4) deur die volgende subartikel te vervang:

- “(4) (a) Nie meer as een lisensie word ten opsigte van enige doeane- en aksynspakhuis uitgereik nie: Met dien verstande dat die Kommissaris op die voorwaardes wat [hy] die Kommissaris in elke geval oplê, ’n lisensie kan uitreik—
- (i) aan die eienaar, of die persoon in besit of beheer van enige doeane- en aksyns opslag- of vervaardigingspakhuis waarin synbare of brandstofheffinggoedere opgeslaan of vervaardig word; en
 - (ii) aan elke persoon wat daardie goedere vir verspreiding vir [sy] eie rekening uit [daardie] enige sodanige pakhuis verkry.
- (b) Die eienaar of enige persoon in besit of beheer van sodanige pakhuis wat aldus gelisensiër is, is aanspreeklik vir die nakoming van alle verpligtinge kragtens hierdie Wet ten opsigte van sodanige goedere in sodanige pakhuis: Met dien verstande dat elke persoon aan wie ’n lisensie aldus uitgereik is aanspreeklik is vir enige aanspreeklikheid kragtens hierdie Wet opgehoop ten opsigte van goedere wat [deur hom] so uit sodanige pakhuis [geneem] verkry word.”

Invoeging van artikel 64F van Wet 91 van 1964

108. (1) Die volgende artikel word hierby na artikel 64E in die Doeane en Aksynswet, 1964, ingevoeg:

“Lisensiëring van verspreiders van brandstowwe wat van die gelisensiëerde van ’n doeane- en aksynsvervaardigingspakhuis verkry is

64F. (1) By die toepassing van hierdie Wet, tensy uit die samehang anders blyk beteken—

‘gelisensiëerde verspreider’ iemand wat—

- (a) gelisensieer is ooreenkomstig die bepalings van artikel 60 en hierdie artikel;
 - (b) by enige plek in die Republiek vir aflewering aan ’n koper in enige ander land van die gemeenskaplike doeanegebied vir verbruik in sodanige land of vir uitvoer (met inbegrip van verskaffing as skeepsof vliegtuigvoorrade), brandstof wat geklaar is of geag word om geklaar te wees vir die betaling van aksynsreg en brandstofheffing uit die voorraad van ’n doeane— en aksynsvervaardigingspakhuis verkry; en
 - (c) geregtig is op ’n terugbetaling van reg ingevolge enige bepaling van Bylae No. 6 ten opsigte van sodanige brandstof wat soos bedoel in paragraaf (b) behoorlik afgelewer of uitgevoer is;
- ‘brandstof’ enige goedere indeelbaar in enige item van Afdeling A van Deel 2 van Bylae No. 1 wat onderhewig is aan aksynsreg en goedere indeelbaar in enige item van Deel 5 van Bylae No. 1 onderhewig aan brandstofheffing, wat as brandstof gebruik word.

(2) (a) Niemand behalwe die gelisensiëerde van ’n doeane- en aksynspakhuis, wat enige brandstof wat geklaar is of geag word geklaar te wees na enige ander land in die gemeenskaplike doeanegebied verwyder of

entitled to any refund of duty unless such person is a licensed distributor as contemplated in this section.

(b) Application for such a licence shall be made on the form prescribed by the Commissioner by rule and the applicant shall comply with all the requirements specified therein and with any additional requirement that may be prescribed in any other rule and as may be determined by the Commissioner in each case.

(c) Before any licence is issued the applicant must furnish security as contemplated in section 60(1)(c): Provided that the Commissioner may, on good cause shown, to the extent considered reasonable in each case, exempt any person from furnishing such security or reduce the amount of such security.

(3) (a) In addition to any other provision of this Act relating to refunds of duty, any refund of duty contemplated in this section shall be subject to compliance with the requirements specified in the item of Schedule No. 6 providing for such refund and any rule prescribing any requirement in respect of the movement of such fuel to any such country or for export.

(b) Notwithstanding anything to the contrary contained in this Act, the Commissioner may pay any such refund at such intervals for such periods and on such conditions as may be prescribed by rule.

(4) The Commissioner may make rules—

(a) prescribing the forms to be completed and the procedures to be followed and other requirements to be observed for the purposes of administering the provisions of this section and the provisions for a refund of duty in Schedule No. 6;

(b) in respect of all matters which are required or permitted in terms of this section to be prescribed by rule;

(c) in respect of any other matter which is necessary to prescribe and useful to achieve the efficient and effective administration of this section.

(5) (a) (i) Any person who in any application for a refund of duty in terms of the provisions of Schedule No. 6 makes a false statement shall be guilty of an offence and liable on conviction to a fine not exceeding R100 000 or double the amount of any duty refunded as a result of the false statement for refund, whichever is the greater, or to imprisonment for a period not exceeding 10 years, or both such fine and imprisonment and the fuel in respect of which the offence has been committed shall be liable to forfeiture under this Act.

(ii) For the purposes of subparagraph (i), any forfeiture amount in respect of such fuel shall be calculated on the basis of the usual retail price thereof on the date the false statement was submitted or on the date of assessment of such amount, whichever is greater.”

(2) Subsection (1) shall come into operation on a date determined by the President by proclamation in the *Gazette*.

Amendment of section 75 of Act 91 of 1964, as amended by section 13 of Act 95 of 1965, section 10 of Act 57 of 1966, section 8 of Act 85 of 1968, section 25 of Act 105 of 1969, section 8 of Act 103 of 1972, section 2 of Act 68 of 1973, section 9 of Act 71 of 1975, section 27 of Act of 1977, section 28 of Act 93 of 1978, section 10 of Act 110 of 1979, section 19 of Act 86 of 1982, section 6 of Act 89 of 1984, section 11 of Act 101 of 1985, section 9 of Act 52 of 1986, section 23 of Act 84 of 1987, section 8 of Act 69 of 1988, section 13 of Act 68 of 1989, section 29 of Act 59 of 1990, section 13 of Act 61 of 1992, section 7 of Act 98 of 1993, section 10 of Act 19 of 1994, section 53 of Act 45 of 1995, section 61 of Act 30 of 2000, section 50 of Act 19 of 2001 and section 130 of Act 60 of 2001

109. (1) Section 75 of the Customs and Excise Act, 1964, is hereby amended by the insertion after subsection (11) of the following subsection:

“(11A) (a) Where any applicant for a refund of duty in terms of any item of Schedule No. 6, which relates to circumstances other than those referred to in subsection (11), is required to prove payment of duty on the goods in respect of

dit uitvoer, is geregtig op enige terugbetaling van reg nie tensy sodanige persoon ingevolge hierdie artikel as 'n verspreider gelisensiëer is.

(b) Aansoek om sodanige lisensie word gedoen op die vorm deur die Kommissaris by reël voorgeskryf en die applikant moet aan al die vereistes daarin vermeld en aan enige bykomende vereistes wat in enige ander reël voorgeskryf word en soos deur die Kommissaris in elke geval bepaal word, voldoen.

(c) Voordat enige lisensie uitgereik word moet die applikant sekerheid verskaf soos bedoel in artikel 60(1)(c): Met dien verstande dat die Kommissaris, op redelike gronde aangetoon, in die mate wat in elke geval redelik geag word, iemand kan vrystel van die verskaffing van sodanige sekerheid of die bedrag van sodanige sekerheid kan verminder.

(3) (a) Benewens enige ander bepaling van hierdie Wet aangaande terugbetaling van reg is terugbetaling van reg in hierdie artikel bedoel onderworpe aan nakoming van die vereistes vermeld in die item van Bylae No. 6 wat vir sodanige terugbetaling voorsiening maak en van enige reël wat vereistes ten opsigte van die beweging van sodanige brandstof na sodanige land of vir uitvoer voorskryf.

(b) Ondanks andersluidende bepalings in hierdie Wet kan die Kommissaris sodanige terugbetalings maak op sulke tussenposes vir sulke tydperke en op sulke voorwaardes as wat by reël voorgeskryf mag word.

(4) Die Kommissaris kan reëls uitvaardig—

(a) wat die vorms wat voltooi moet word en die prosedures wat gevolg moet word en ander vereistes wat nagekom moet word vir doeleindes van die administrasie van die bepalings van hierdie artikel en die bepalings vir 'n terugbetaling van reg in Bylae No. 6, voorskryf;

(b) betreffende alle aangeleenthede wat ingevolge hierdie artikel by reël voorgeskryf kan word;

(c) ten opsigte van enige ander aangeleentheid wat noodsaaklik is om voor te skryf en nuttig is om die effektiewe en doeltreffende administrasie van hierdie artikel te bewerkstellig.

(5) (a)(i) Iemand wat in 'n aansoek om 'n terugbetaling van reg ingevolge die bepalings van Bylae No. 6 'n vals verklaring maak, is aan 'n misdryf skuldig en by skuldigbevinding strafbaar met 'n boete van hoogstens R100 000 of twee maal die bedrag van enige reg terugbetaal as gevolg van die vals verklaring, na gelang watter die hoogste is, of met gevangenisstraf vir 'n tydperk van hoogstens 10 jaar, of met sowel sodanige boete as sodanige gevangenisstraf en die brandstof ten opsigte waarvan die misdryf gepleeg is, is kragtens hierdie Wet aan verbeuring onderhewig.

(ii) Vir doeleindes van subparagraaf (i) word enige verbeuringsbedrag ten opsigte van sodanige brandstof bereken op grond van die gewone kleinhandelprys daarvan op die datum waarop die vals verklaring ingedien is of op die datum van aanslag van sodanige bedrag, welke die hoogste is.”

(2) Subartikel (1) sal in werking tree op 'n datum deur die President by proklamasie in die *Staatskoerant* bepaal.

Wysiging van artikel 75 van Wet 91 van 1964, soos gewysig deur artikel 13 van Wet 95 van 1965, artikel 10 van Wet 57 van 1966, artikel 8 van Wet 85 van 1968, artikel 25 van Wet 105 van 1969, artikel 8 van Wet 103 van 1972, artikel 2 van Wet 68 van 1973, artikel 9 van Wet 71 van 1975, artikel 27 van Wet van 1977, artikel 28 van Wet 93 van 1978, artikel 10 van Wet 110 van 1979, artikel 19 van Wet 86 van 1982, artikel 6 van Wet 89 van 1984, artikel 11 van Wet 101 van 1985, artikel 9 van Wet 52 van 1986, artikel 23 van Wet 84 van 1987, artikel 8 van Wet 69 van 1988, artikel 13 van Wet 68 van 1989, artikel 29 van Wet 59 van 1990, artikel 13 van Wet 61 van 1992, artikel 7 van Wet 98 van 1993, artikel 10 van Wet 19 van 1994, artikel 53 van Wet 45 van 1995, artikel 61 van Wet 30 van 2000, artikel 50 van Wet 19 van 2001 en artikel 130 van Wet 60 van 2001

109. (1) Artikel 75 van die Doane en Aksynswet, 1964, word hierby gewysig deur die volgende subartikel in te voeg:

“(11A)(a) Waar enige aansoeker om 'n terugbetaling van reg ingevolge enige item van Bylae No. 6, wat betrekking het op ander omstandighede as daardie na in subartikel (11) verwys, indien daar vereis word om die betaling van reg op die

which the refund is claimed in terms of any Note to such item, is unable to prove such payment by production of an entry or deemed entry for home consumption as provided in this Act, the Commissioner may, notwithstanding anything to the contrary contained in this Act, allow such refund—

- (i) on the basis of any evidence produced by such applicant; and
- (ii) by taking into account any other evidence contained in accounts or invoices or other documents relating to the removal of the goods concerned from any customs and excise manufacturing or storage warehouse, any other records required to be kept in terms of the Act or any other facts that may be available or requested by the Commissioner,

if, in the relevant circumstances of each case, the Commissioner considers that such evidence is reasonably sufficient to allow such refund: Provided that where it is so specified in the relevant item of Schedule No. 6, the duty refundable shall be calculated at the lowest rate operative during any period not exceeding 12 months prior to the date the goods were placed under the procedure specified in such item.

(b) Any such refund provision in Schedule No. 6 may include—

- (i) goods found to be off-specification or which have become contaminated or have undergone post-manufacturing deterioration and are returned to a customs and excise manufacturing warehouse for reprocessing or destruction; and
- (ii) any fuel levy goods removed to another country in the common customs area or for export or to a customs and excise storage warehouse.”.

(2) Subsection (1) shall be deemed to have come into operation on 1 October 2002.

Amendment of section 99 of Act 91 of 1964, as amended by section 15 of Act 95 of 1965, section 17 of Act 85 of 1968, section 7 of Act 98 of 1970, section 34 of Act 112 of 1977, section 12 of Act 110 of 1979, section 24 of Act 86 of 1982, section 62 of Act 45 of 1995, section 71 of Act 30 of 1998, section 68 of Act 53 of 1999 and section 138 of Act 60 of 2001

110. (1) Section 99 of the Customs and Excise Act 1964, is hereby amended—

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

“(a) (i) (aa) An agent appointed by any importer, exporter, manufacturer, licensee or any other principal, hereinafter referred to as the principal; and

- (bb) any person who represents him- or herself as such an agent to any officer and is accepted as such by the officer concerned,

shall in respect of the matter in question be liable for the fulfilment of all obligations imposed by this Act on such principal.

- (ii) The fulfilment of such obligations shall include—

- (aa) the payment of all duties and charges;
- (bb) the payment of penalties; and
- (cc) the payment of amounts demanded under section 88(2)(a),

which may be incurred in respect of the matter in question.

- (iii) Whenever an agent or any person contemplated in subparagraph (i)(bb) delivers any document of whatever nature required to be completed and presented for any purpose under this Act wherein—

- (aa) any principal contemplated in subparagraph (i)(aa) has not been disclosed; or

- (bb) the name of such agent or the name of another agent is stated as the principal as contemplated in section 64B(6); or

- (cc) any principal is a person outside the Republic, such agent or person shall, notwithstanding paragraph (iv), in all respects be liable for the fulfilment of all the obligations imposed on such a principal under this Act.

goedere ten opsigte waarvan die terugbetalings ingevolge enige opmerking by sodanige item geëis, te bewys, nie in staat is om deur die voorlegging van enige klaring of geagte klaring vir binnelandse verbruik soos bepaal in hierdie Wet sodanige betaling te bewys nie, kan die Kommissaris ondanks andersluidende bepalings van hierdie Wet, sodanige terugbetaling toelaat—

- (i) op grond van enige getuienis deur sodanige aansoeker gelewer; en
- (ii) deur enige ander getuienis wat in rekeninge of fakture of ander dokumente wat verband hou met die verwydering van die betrokke goedere uit enige doeane en aksyns vervaardigings- of opslagpakhuis vervat is, enige ander rekords wat ingevolge die Wet gehou moet word of enige ander feite wat beskikbaar mag wees of deur die Kommissaris versoek mag word, in ag te neem,

indien die Kommissaris, in die toepaslike omstandighede van elke geval, van mening is dat sodanige getuienis redelik voldoende is om sodanige terugbetaling toe te laat: Met dien verstande dat waar dit so voorgeskryf is in die betrokke item van Bylae No. 6, moet die terugbetaalbare reg bereken word teen die laagste skaal van toepassing gedurende enige tydperk van hoogstens 12 maande voordat die goedere onder die prosedure wat in sodanige item voorgeskryf word, geplaas is;

(b) Enige sodanige kortingsvoorsiening in Bylae No. 6 kan—

- (i) goedere wat bevind is om buite-spesifikasie te wees of wat besoedel is of wat na-produksie verslegting ondergaan het en teruggestuur is na 'n doeane- en aksynsvervaardigingspakhuis vir herprosesering of vernietiging; en
- (ii) enige brandstofheffinggoedere verwyder na 'n ander land in die gemeenskaplike doeanegebied of vir uitvoer of na 'n doeane- en aksynsopslagpakhuis,

insluit.”.

(2) Subartikel (1) word geag in werking te getree het op 1 Oktober 2002.

Wysiging van artikel 99 van Wet 91 van 1964, soos gewysig deur artikel 15 van Wet 95 van 1965, artikel 17 van Wet 85 van 1968, artikel 7 van Wet 98 van 1970, artikel 34 van Wet 112 van 1977, artikel 12 van Wet 110 van 1979, artikel 24 van Wet 86 van 1982, artikel 62 van Wet 45 van 1995, artikel 71 van Wet 30 van 1998, artikel 68 van Wet 53 van 1999 en artikel 138 van Wet 60 van 2001

110. Artikel 99 van die Doeane en Aksynswet, 1964, word hierby gewysig—

(a) deur paragraaf (a) van subartikel (2) deur die volgende paragraaf te vervang—

“(a)(i)(aa) 'n Agent wat deur enige invoerder, uitvoerder, vervaardiger,

lisensiehouer of ander prinsipaal, hierna na verwys as prinsipaal, aangestel is; en

(bb) iemand wat aan 'n beampte voorgee dat hy of sy sodanige agent is en as sodanig deur daardie beampte aanvaar word, is ten opsigte van die betrokke saak aanspreeklik vir die nakoming van alle verpligtinge wat deur hierdie Wet sodanige prinsipaal opgelê is.

(ii) Die nakoming van sodanige verpligtinge sluit in—

(aa) die betaling van alle regte en kostes;

(bb) die betaling van penes; en

(cc) die betaling van bedrae geëis onder artikel 88(2)(a), wat ten opsigte van die betrokke aangeleentheid opgeloop word.

(iii) Wanneer 'n agent of iemand bedoel in subparagraaf (i)(bb), enige dokument van watter aard ookal, wat vereis word om voltooi en aangebied te word vir enige doel ingevolge hierdie Wet, aflewer, waarin—

(aa) enige prinsipaal soos bedoel in subparagraaf (i)(aa) nie geopenbaar is nie; of

(bb) die naam van sodanige agent of die naam van 'n ander agent aangedui word as die prinsipaal soos bedoel in artikel 64B(6); of

(cc) enige prinsipaal 'n persoon buite die Republiek is, is sodanige agent of persoon, ondanks paragraaf (iv), in alle opsigte aanspreeklik vir die nakoming van alle verpligtinge wat sodanige prinsipaal deur die Wet opgelê is.

- (iv) Except as provided for in paragraph (iii), the agent or person contemplated in this section shall cease to be so liable if such agent or person proves that—
 - (aa) such agent or person exercised reasonable care to ensure that every document completed and presented and every act performed or procedure followed for purposes of this Act by such agent or person complied in all respects with the requirements of this Act, the rules, any prescribed procedures or requirements of the Commissioner and the terms and conditions of any agreement entered into with the Commissioner; and
 - (bb) all reasonable steps were taken by such agent or person, including those mentioned in any agreement contemplated in subparagraph (aa), to prevent any non-fulfilment of the provisions of this Act.
- (v) For purposes of subparagraph (iv) reasonable care or steps shall not include reliance solely on information supplied by the principal.”; and
- (b) by the deletion of subsection (5).

(2) Subsection (1) shall come into operation on a date fixed by the President by Proclamation in the *Gazette*.

Amendment of section 105 of Act 91 of 1964, as substituted by section 2 of Act 111 of 1991 and amended by section 65 of Act 45 of 1995, section 72 of Act 30 of 1998, section 6 of Act 32 of 1999 and section 63 of Act 30 of 2000

111. (1) Section 105 of the Customs and Excise Act, 1964, is hereby amended by the substitution for paragraph (b) of the following paragraph:

“(b) the interest so payable shall be paid at a rate [which] the Minister of Finance [may from time to time fix by notice in the *Gazette*] determines in terms of section 80(1)(b) of the Public Finance Management Act, 1999 (Act No. 1 of 1999).”

(2) Subsection (1) shall come into operation on a date to be fixed by the president by proclamation in the *Gazette*.

Amendment of section 114 of Act 91 of 1964, as substituted by section 33 of Act 105 of 1969, section 12 of Act 71 of 1975, as inserted by section 36 of Act 112 of 1977, as substituted by section 13 of Act 101 of 1985, section 32 of Act 84 of 1987, section 37 of Act 59 of 1990, section 34 of Act 34 of 1997, section 71 of Act 53 of 1999 and section 140 of Act 60 of 2001

112. Section 114 of the Customs and Excise Act, 1964 is hereby amended—

- (a) by the substitution for paragraph (a) of subsection (1) of the following paragraph:
 - “(a) (i) Any amount of any duty, interest, fine, penalty or forfeiture incurred under this Act and which is payable in terms of this Act, shall, when it becomes due or is payable, be a debt due to the State by the person concerned and shall be recoverable by the Commissioner in the manner hereinafter provided.
 - (ii) If any person fails to pay any amount of any duty, interest, fine, penalty or forfeiture incurred under this Act, when it becomes due or is payable by such person, the Commissioner may file with the clerk or registrar of any competent court a statement certified by him as correct and setting forth the amount thereof so due or payable by that person, and such statement shall thereupon have all the effects of, and any proceedings may be taken thereon as if it were a civil judgement lawfully given in that court in favour of the Commissioner for a liquid debt of the amount specified in the statement.
 - (iii) (aa) The Commissioner may by notice in writing addressed to the clerk or registrar, withdraw the statement referred to in subparagraph (ii), and such statement shall thereupon cease to have any effect: Provided that the Commissioner may institute proceedings afresh under that subsection in

- (iv) Behalwe soos bepaal in paragraaf (iii), hou die agent of persoon in hierdie artikel bedoel op om so aanspreeklik te wees indien sodanige agent of persoon bewys dat—
- (aa) sodanige agent of persoon redelike sorg uitgeoefen het om te verseker dat elke dokument wat voltooi en aangebied is en elke handeling wat verrig is of prosedure wat deur sodanige agent of persoon, vir doeleindes van hierdie Wet gevolg is, in alle opsigte aan die voorskrifte van hierdie Wet, die reëls, enige voorgeskrewe prosedures of vereistes van die Kommissaris en die bepalinge en voorwaardes van enige ooreenkoms wat met die Kommissaris aangegaan is, voldoen; en
 - (bb) alle redelike stappe, met inbegrip van daardie vermeld in enige ooreenkoms in subparagraaf (aa) bedoel, deur sodanige agent of persoon geneem is om die nie-nakoming van die bepalinge van hierdie Wet te verhoed.
- (v) Vir doeleindes van subparagraaf (iv) sluit redelike sorg of stappe nie steun alleenlik op inligting wat deur die prinsipaal verskaf is in nie.
- (b) deur subartikel (5) te skrap.
- (2) Subartikels (1) en (2) tree in werking op 'n datum deur die President by proklamasie in die *Staatskoerant* bepaal.

Wysiging van artikel 105 van Wet 91 van 1964, soos vervang deur artikel 2 van Wet 111 van 1991 en gewysig deur artikel 65 van Wet 45 van 1995, artikel 72 van Wet 30 van 1998, artikel 6 van Wet 32 van 1999 en artikel 63 van Wet 30 van 2000

111. (1) Artikel 105 van die Doeane en Aksynswet, 1964, word hierby gewysig—

- (a) deur paragraaf (b) deur die volgende paragraaf te vervang:
- “(b) word die rente aldus betaalbaar betaal teen 'n koers [wat] deur die Minister van Finansies [van tyd tot tyd by kennisgewing in die *Staatskoerant* bepaal] ingevolge die bepalinge van artikel 80(1)(b) van die Wet op Openbare Finansiële Bestuur, 1999 (Wet No. 1 van 1999), bepaal.”

(2) Subartikel (1) tree in werking op 'n datum deur die President by proklamasie in die *Staatskoerant* bepaal.

Wysiging van artikel 114 van Wet 91 van 1964, soos vervang deur artikel 33 van Wet 105 van 1969, artikel 12 van Wet 71 van 1975, soos ingevoeg deur artikel 36 van Wet 112 van 1977, soos vervang deur artikel 13 van Wet 101 van 1985, artikel 32 van Wet 84 van 1987, artikel 37 van Wet 59 van 1990, artikel 34 van Wet 34 van 1997, artikel 71 van Wet 53 van 1999 en artikel 140 van Wet 60 van 2001

112. Artikel 114 an die Doeane en Aksynswet, 1964, word hierby gewysig—

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

“(a)(i) Enige bedrag van enige reg, rente, boete, pene of verbeuring onder hierdie Wet opgeloopt, en wat ingevolge hierdie Wet betaalbaar is, is, wanneer dit verskuldig raak of betaalbaar word, 'n skuld deur die betrokke persoon verskuldig aan die Staat en is verhaalbaar deur die Kommissaris op die wyse hierna bepaal.

(ii) Indien iemand versuim om enige bedrag van enige reg, rente, boete, pene of verbeuring onder hierdie Wet opgeloopt, te betaal wanneer dit verskuldig raak of betaalbaar word deur sodanige persoon kan die Kommissaris by die klerk of griffier van enige bevoegde hof 'n verklaring deur hom as juis gesertifiseer, en waarin die bedrag daarvan aldus deur daardie persoon verskuldig of betaalbaar uiteengesit word, indien, en so 'n verklaring het daarna al die gevolge van 'n siviele vonnis en enige geding kan daarop ingestel word asof dit 'n siviele vonnis is wat regtens in daardie hof ten gunste van die Kommissaris gegee is vir 'n likiede skuld van die bedrag in die verklaring vermeld.

(iii)(aa) Die Kommissaris kan by skriftelike kennisgewing aan die klerk of griffier gerig, die in subparagraaf (ii) vermeldde verklaring intrek en daardie verklaring het daarna geen uitwerking nie: Met dien verstande dat die Kommissaris opnuut geregtelike stappe ingevolge daardie

- respect of any duty, interest, fine, penalty or forfeiture referred to in the withdrawn statement.
- (bb) Notwithstanding anything contained in the Magistrates' Courts Act, 1944 (Act No. 32 of 1944), a statement for any amount whatsoever may be filed in terms of subparagraph (ii) with the clerk of the magistrate's court having jurisdiction in respect of the person by whom such amount is payable in accordance with the provisions of this Act. 5
- (cc) Pending the conclusion of any proceedings, whether internally or in any court, regarding a dispute as to the amount of any duty, interest, fine, penalty or forfeiture payable, the statement filed in terms of subparagraph (ii) shall, for purposes of recovery proceedings contemplated in subparagraph (ii), be deemed to be correct. 10
- (iv) (aa) Any imported or excisable goods, vehicles, machinery, plant or equipment, any goods in any customs and excise warehouse, any goods in a rebate store room, any goods in the custody or under the control of the Commissioner and any goods in respect of which an excise duty or fuel levy is prescribed, and any materials for the manufacture of such goods, belonging to such person whether imported, exported or manufactured before or after the debt became so due and whether or not such goods are found in or on any premises in the possession or under the control of the person by whom the debt is due; and 15
- (bb) any imported or excisable goods, vehicles, machinery, plant or equipment, in the possession or under the control of such person or in or on any premises in the possession or under the control of such person and in respect of which such person has entered into any credit agreement as contemplated in the Credit Agreements Act, 1980 (Act No. 75 of 1980) and of which the right, title or interest of such person may be readily established and excused, may be detained in accordance with the provisions of subsection (2) and shall subject to subparagraph (vi)(cc) be subject to a lien until such debt is paid. 20
- (v) Whenever any of the goods mentioned in subparagraph (iv)(bb) are subject to a lien the person concerned shall without delay advise the Commissioner, or the officer detaining and subjecting such goods to a lien, of the existence of any such agreement setting forth at least the following— 25
- (aa) The name and address of the credit grantor as intended in the said Credit Agreement Act; 30
- (bb) The amount of the principal debt as intended in the Usury, 1968 (Act 73 of 1968) in respect of the applicable credit agreement; 35
- (cc) The duration of the agreement;
- (dd) The outstanding balance due; and
- (ee) A copy of such agreement. 40
- (vi) (aa) The Commissioner shall without delay advise the credit grantor concerned of such detention and lien and shall enquire as to the right, title or interest of such person in such goods. 45
- (bb) The credit grantor concerned shall, where such right, title or interest is determinable, without delay advise the Commissioner of such right, title or interest of the person concerned in the goods, expressed as a liquid amount, and the lien shall thereafter serve as security for such liquid amount and such amount may be recovered as provided for in paragraph (ii). 50
- (cc) In circumstances where such credit grantor advises the Commissioner that the right, title or interest of the person concerned is economically insignificant or does not exist, 55

paragraaf kan instel met betrekking tot enige reg, rente, boete, pene, of verbeuring waarna in die ingetrekke verklaring verwys word.

(bb) Ondanks enige bepalings van die Wet op Landroshowe, 1944, (Wet No. 32 van 1944) kan 'n verklaring van enige bedrag hoegenaamd ingevolge subparagraaf (ii) ingedien word by die klerk van die Landroshof wat regsbevoeg is ten aansien van die persoon deur wie sodanige bedrag ooreenkomstig die bepalings van hierdie Wet betaalbaar is.

(cc) Hangende die afhandeling van enige verrigtinge of stappe, hetsy intern of in enige hof, aangaande 'n dispuut ten opsigte van die bedrag van enige reg, rente, boete, pene of verbeuring betaalbaar, word die kennisgewing ingevolge die bepalings van subparagraaf (ii) geliasseer; vir die doeleindes van die invorderingprosedures in subparagraaf (ii) bedoel, geag korrek te wees.

(iv)(aa) Enige ingevoerde of synsbare goedere, voertuie, masjienerie, installasies of toerusting, enige goedere in 'n doeane- en aksynspakhuis, enige goedere in 'n kortingpakkamer, enige goedere in die bewaring of onder beheer van die Kommissaris en enige goedere ten opsigte waarvan 'n aksynsreg of brandstofheffing voorgeskrif is en enige stowwe vir die vervaardiging van sodanige goedere, behorende aan sodanige persoon ongeag of dit voor of na die skuld aldus betaalbaar geword het, ingevoer, uitgevoer of vervaardig is en ongeag of sodanige goedere gevind word in of op enige perseel in die besit of onder die beheer van die persoon deur wie die skuld verskuldig is, al dan nie; en

(bb) enige ingevoerde of synbare goedere, voertuie, masjienerie en installasies of toerusting in die besit of onder die beheer van sodanige persoon of in of op enige perseel in die besit of onder die beheer van sodanige persoon en ten opsigte waarvan sodanige persoon 'n kredietooreenkoms soos bedoel in die Wet op Kredietooreenkoms, 1975, (Wet 75 van 1980) aangegaan het en waarvan die reg, titel en belang van sodanige persoon geredelik bepaal en uitgewin kan word, kan ooreenkomstig die bepalings van subartikel (2) aangehou word en is behoudens subparagraaf (vi)(cc) aan 'n retensiereg onderworpe totdat sodanige skuld betaal is.

(v) Wanneer enige van die goedere in subparagraaf (iv)(bb) vermeld aan 'n retensiereg onderwerp word moet die betrokke persoon die Kommissaris of die beampte wat sodanige goedere aangehou en aan 'n retensie onderwerp het sonder versuim in kennis stel van die bestaan van enige sodanige ooreenkoms en ten minste die volgende bekend maak—

(aa) die naam en adres van die kredietverskaffer soos bedoel in die genoemde Wet op Kredietooreenkoms;

(bb) die bedrag van die hoofskuld soos bedoel in die Woekerwet 1968 (Wet No. 75 van 1968) ten opsigte van die toepaslike kredietooreenkoms;

(cc) die duur van die ooreenkoms;

(dd) die uitstaande balans verskuldig; en

(ee) 'n afskrif van sodanige ooreenkoms.

(vi)(aa) Die Kommissaris moet sonder versuim die kredietverskaffer in kennis stel van sodanige aanhouding en retensiereg en moet navraag doen aangaande die reg, titel en belang van sodanige persoon in sodanige goedere.

(bb) Die betrokke kredietverskaffer moet waar sodanige reg, titel en belang bepaalbaar is die Kommissaris sonder versuim van sodanige reg, titel en belang van die betrokke persoon in die goedere, as 'n likiede bedrag uitgedruk, in kennis stel en die retensiereg dien daarna as sekerheid vir sodanige likiede bedrag en sodanige bedrag kan verhaal word soos in paragraaf (ii) bepaal.

(cc) In omstandighede waar sodanige kredietverskaffer die Kommissaris in kennis stel dat die reg, titel en belang van die betrokke persoon ekonomies onbenullig is of nie bestaan nie, moet die Kommissaris sonder versuim sodanige goedere van die werking van die retensiereg vrystel.

the Commissioner shall without delay remove such goods from the operation of the lien.

(dd) Any person who, without reasonable cause fails to advise the Commissioner of the existence of any credit agreement contemplated in subparagraph (v) shall be guilty of an offence and liable on conviction to a fine not exceeding R20 000,00 or to imprisonment for a period not exceeding five years or to both such fine and such imprisonment.

(ee) In the absence of evidence to the contrary which raises a reasonable doubt, proof by the Commissioner of the failure to advise the Commissioner of the existence of such credit agreement shall be sufficient evidence of the absence of reasonable cause."; and

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

"(b) (i) The claims of the State shall have priority over the claims of all persons upon anything subject to a lien contemplated in paragraph (a), (aA), (aB) or (aC) and may be enforced in accordance with the provisions of this section if the debt is not paid upon demand after the person by whom the debt is due is in writing advised of such debt and of the date on which such debt becomes due and is payable.

(ii) The Commissioner and the credit grantor concerned may, notwithstanding anything to the contrary in this Act or any other law contained, and subject to such conditions as may be agreed upon, agree to dispose of any goods contemplated in paragraph (a)(iv)(bb) in order to preserve and secure the interests of all parties in such goods and in the proceeds of the disposal of such goods pending the resolution of any dispute in respect of which an interest in such goods is secured by such lien.

(iii) In the event of any goods subjected to a lien being attached pursuant to a warrant of execution, such goods shall, notwithstanding anything to the contrary contained in the said Magistrates' Court Act, 1944 (Act No.32 of 1944) or its rules, where such goods are not detained in the State Warehouse, be removed by an officer to the State Warehouse and such goods may thereupon be disposed of in accordance with the provisions of this section.

(iv) Where, in addition to any amount of duty which is due or is payable by any person in terms of this Act, any fine, penalty, forfeiture or interest is incurred under this Act and is payable by such person, any payment made by that person or any amount recovered pursuant to any sale of such goods as contemplated in this section shall be utilised by the Commissioner to discharge such payment or amount in the order of—

(aa) any duty, interest, fine, penalty, forfeiture, expenses incurred by or charges due to the Commissioner; and

(bb) payment of the overplus, on application, if any, to the person by whom the debt was due."

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, section 72 of Act 30 of 2000, section 63 of Act 59 of 2000, section 42 of Act 5 of 2001, section 147 of Act 60 of 2001 and section 56 of Act 30 of 2002

113. Item 15 of Schedule 1 to the Stamp Duties Act, 1968, is hereby amended—

(a) by the substitution in *Exemptions from the duty under paragraph (1) or (2)* for paragraph (g) of the following paragraph:

(dd) Iemand wat sonder redelike gronde versuim om die Kommissaris van die bestaan van enige kredietooreenkoms bedoel in subparagraaf (vi) in kennis te stel is aan 'n misdryf skuldig en by skuldigbevinding strafbaar met 'n boete van hoogstens R20 000 of met gevangenisstraf vir 'n tydperk van hoogstens vyf jaar of met sowel sodanige boete as sodanige gevangenisstraf.

(ee) In die afwesigheid van getuienis tot die teendeel wat redelike twyfel wek is bewys deur die Kommissaris van die versuim om die Kommissaris van die bestaan van sodanige kredietooreenkoms in te lig voldoende getuienis van die afwesigheid van redelike gronde.";

(b) deur paragraaf (b) deur die volgende paragraaf te vervang:

“(b)(i) Die eise van die staat het voorrang bo die eise van alle persone op enigiets wat aan 'n in paragraaf (a), (aA), (aB) of (aC) beoogde retensiereg onderhewig is en kan afgedwing word ooreenkomstig die bepalings van hierdie artikel indien die skuld nie op aanvraag betaal word nie nadat die persoon deur wie die skuld verskuldig is skriftelik in kennis gestel is van sodanige skuld en van die datum waarop sodanige skuld verskuldig geword het en betaalbaar is.

(i) Die Kommissaris en die betrokke kredietverskaffer kan, ondanks strydige bepalings in hierdie Wet of enige ander wet, en onderworpe aan sulke voorwaardes soos waarop ooreengekom word, ooreenkom om oor enige goedere bedoel in paragraaf (a)(iv)(bb) te beskik ten einde die belange van alle partye in sodanige goedere en in die opbrengs van die beskikking daarvan in stand te hou en te verseker hangende die beslegting van enige dispuut ten opsigte waarvan 'n belang in sodanige goed deur 'n retensiereg verseker is.

(iii) In die geval waar op enige goedere wat aan 'n retensiereg onderworpe is uit hoofde van 'n lasbrief vir eksekusie beslaggelê word, moet sodanige goedere, ondanks enige strydige bepalings in die genoemde Landroshowe Wet of die reëls daarvan, waar sodanige goedere nie in die Staatspakhuis aangehou word nie, deur 'n beampte na die Staatspakhuis verwyder word en oor sodanige goedere kan daarna ooreenkomstig die bepalings van hierdie artikel beskik word.

(iv) Waar, benewens enige bedrag van reg wat verskuldig of betaalbaar is deur iemand ingevolge hierdie Wet, enige boete, pene, verbeuring of rente ingevolge hierdie Wet opgeloopt is en betaalbaar is deur sodanige persoon, moet enige betaling deur daardie persoon gemaak en enige bedrag ingevorder uit hoofde van enige verkoping van sodanige goedere, soos bedoel in hierdie artikel, deur die Kommissaris aangewend word om sodanige betaling of bedrag te delg in die volgorde van—

(aa) enige reg, rente, boete, pene, verbeuring, uitgawes aangegaan of kostes aan die Kommissaris verskuldig; en

(bb) betaling van die oorskot indien enige, op aansoek, aan die persoon deur wie die skuld verskuldig was.”.

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 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 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, artikel 72 van Wet 30 van 2000, artikel 63 van Wet 59 van 2000, artikel 42 van Wet 5 van 2001, artikel 147 van Wet 60 van 2001 en artikel 56 van Wet 30 van 2002

113. Item 15 van Bylae 1 by die Wet op Seëlregte, 1968, word hierby gewysig—

(a) deur paragraaf (g) van *Verstellings van die seëlreg ingevolge paragraaf (1) of* (2) deur die volgende paragraaf te vervang:

- “(g) The original issue of any share by a company to any other company in terms of an intra-group transaction contemplated in section [44] 45 of the Income Tax Act, 1962 (Act 58 of 1962), where the public officer of that company has made a sworn affidavit or solemn declaration that such intra-group transaction complies with the provisions contained in section [44] 45 of that Act;”;
- (b) by the substitution in the *Exemptions from the duty under paragraph (3)* for paragraph (x) of the following paragraph:
- “(x) Any registration of transfer of any marketable security acquired by a **[company] person**—
- (i) in terms of a company formation transaction contemplated in section 42 of the Income Tax Act, 1962 (Act 58 of 1962);
 - (ii) in terms of a share-for-share transaction contemplated in section 43 of that Act;
 - (iii) in terms of an amalgamation transaction contemplated in section 44 of that Act;
 - (iv) in terms of an intra-group transfer contemplated in section [44] 45 of that Act;
 - (v) in pursuance of a distribution in specie in the course of an unbundling transaction contemplated in section [45] 46 of that Act;
 - [or]
 - (vi) in terms of a liquidation distribution contemplated in section [46] 47 of that Act; or
 - (vii) in terms of any transaction contemplated in subparagraph (v) or transaction which would have constituted a transaction or distribution contemplated—
 - (aa) in subparagraph (i), (iv) or (vi) had an election been made for the provisions of that section to apply; and
 - (bb) in subparagraph (i), (ii) or (iii) had the market value of the asset transferred in exchange for those marketable securities exceeded the base cost or the amount taken into account in respect thereof, as contemplated in section 42(1)(a), 43(1)(a) or 44(6) of that Act,
 where the public officer of **[that] the relevant company** has made a sworn affidavit or solemn declaration that such **[company formation transaction, share-for-share transaction, intra-group transfer, unbundling transaction or liquidation distribution complies with the provisions contained in section 42, 43, 44, 45, 46, as the case may be, of that Act]** transfer of marketable security complies with the provisions of this paragraph.”.
- (c) by the addition to the *Exemptions from the duty under paragraph (3)* of the following paragraph:
- “(y) Any registration of transfer of a marketable security in a residential property company, as defined in section 1 of the Transfer Duty Act, 1949, to the extent that any transfer duty is payable in respect of the transfer of that marketable security.”.

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, section 76 of Act 30 of 2000, section 64 of Act 59 of 2000, section 65 of Act 19 of 2001 and section 148 of Act 60 of 2001

114. (1) Section 1 of the Value-Added Tax Act, 1991 is hereby amended—

- (a) by the substitution for paragraph (vii) of the proviso to the definition of “enterprise” of the following paragraph:
- “(vii) the activities of the **[Multilateral Motor Vehicles Accidents Fund] Road Accident Fund** contemplated in the **[Multilateral Motor Vehicles Accidents Fund Act, 1989 (Act No. 93 of 1989)]**

“(g) die oorspronklike uitreiking van enige aandele deur ’n maatskappy aan enige ander maatskappy ingevolge ’n intragroeptransaksie in artikel [44] 45 van die Inkomstebelastingwet, 1962 (Wet No 58 van 1962), bedoel, waar die openbare amptenaar van daardie maatskappy onder eed of plegtige verklaring verklaar het dat daardie intragroeptransaksie aan die 5 bepalinge van artikel [44] 45 van daardie Wet voldoen;”;

(b) deur paragraaf (x) van die *Vrystellings van die seëlreg ingevolge paragraaf (3)* deur die volgende paragraaf te vervang:

“(x) Enige registrasie van oordrag van enige handelseffek verkry deur ’n [maatskappy] persoon— 10

(i) ingevolge ’n maatskappyformasie-transaksie in artikel 42 van die Inkomstebelastingwet, 1962 (Wet No 58 van 1962), bedoel;

(ii) ingevolge ’n aandeel-vir-aandeeltransaksie in artikel 43 van daardie Wet bedoel;

(iii) ingevolge ’n amalgamasietransaksie in artikel 44 van daardie Wet 15 bedoel;

(iv) ingevolge ’n intragroepoordrag in artikel [44] 45 van daardie Wet bedoel;

(v) ten gevolge van ’n uitkering *in specie* in die loop van ’n ontbondelingstransaksie in artikel [45] 46 van daardie Wet bedoel; 20 [of]

(vi) ingevolge ’n likwidasië-uitkering in artikel [46] 47 van daardie Wet bedoel; of

(vii) ingevolge enige transaksie in subparagraaf (v) bedoel of ’n transaksie wat ’n transaksie of uitkering— 25

(aa) in subparagraaf (i), (iv) of (vi) sou uitmaak, indien ’n keuse uitgeoefen is dat die bepalinge van daardie artikel moet geld; en

(bb) in subparagraaf (i), (ii) of (iii) sou uitmaak waar die markwaarde van die bate oorgedra in ruil vir daardie 30 handelseffekte die basiskoste of die bedrag ten opsigte daarvan in ag geneem, oorskry het, soos bedoel in artikel 42(1)(a), 43(1)(a) of 44(6) van daardie Wet,

waar die openbare amptenaar van [daardie] die betrokke maatskappy onder eed of plegtige verklaring verklaar het dat 35 daardie [maatskappyformasietransaksie, aandeel-vir-aandeel-transaksie, intra-groepoordrag, ontbondelingstransaksie of likwidasië-uitkering voldoen aan die bepalinge van artikel 42, 43, 44, 45, 46, na gelang van die geval, van daardie Wet] oordrag van handelseffekte voldoen aan die bepalinge van hierdie 40 paragraaf.”;

(c) deur die volgende paragraaf by *Vrystellings van die seëlreg ingevolge paragraaf (3)* te voeg:

“(y) enige registrasie van oordrag van ’n handelseffek in ’n residensiële eiendomsmaatskappy, soos omskryf in artikel 1 van die Wet op 45 Hereregte, 1949, tot die mate waarin enige hereregte betaalbaar is ten opsigte van die oordrag van daardie handelseffek.”.

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 50 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, artikel 76 van Wet 30 van 2000, artikel 64 van Wet 59 van 2000, artikel 65 van Wet 19 van 2001 en artikel 148 van Wet 60 van 2001

114. (1) Artikel 1 van die Wet op Belasting op Toegevoegde Waarde, 1991, word hierby gewysig— 55

(a) deur paragraaf (vii) van die voorbehoudsbepaling by die omskrywing van “onderneming” deur die volgende paragraaf te vervang:

“(vii) die bedrywighede van die [Multilaterale Motorvoertuigongelukke- 60 fonds] Padongelukfonds beoog in die [Multilaterale Motorvoertuigongelukkefondswet, 1989 (Wet 93 van 1989)]

Road Accident Fund Act, 1996 (Act No. 56 of 1996), shall be deemed not to be the carrying on of an enterprise;”;

- (b) by the substitution for the definition of “prescribed rate” of the following definition:

“ ‘prescribed rate’ in relation to any interest payable in terms of this Act means a rate equal to the rate fixed from time to time by the Minister by notice in the *Gazette* in terms of section 80(1)(b) of the Public Finance Management Act, 1999 (Act No. 1 of 1999);”;

- (c) by the substitution in the definition of “welfare organisation” for the words preceding paragraph (a) of the following words:

“ ‘welfare organisation’ means any association not for gain which is registered under the Nonprofit Organisations Act, 1997 (Act No. 71 of 1997) and is exempt from income tax in terms of section [30] 10(1)(cN) of the Income Tax Act, if it carries on or intends to carry on any welfare activity determined by the Minister for purposes of this Act to be of a philanthropic or benevolent nature, having regard to the needs, interests and well-being of the general public, relating to those activities that fall under the headings—”.

- (2) Subsection (1)(b) shall come into operation on a date to be fixed by the President by proclamation in the *Gazette*.

Amendment of section 2 of Act 89 of 1991, as amended by section 22 of Act 136 of 1991, paragraph 2 of Government Notice 2695 of 8 November 1991, section 13 of Act 136 of 1992, section 10 of Act 20 of 1994, section 19 of Act 37 of 1996, section 24 of Act 27 of 1997, section 87 of Act 30 of 1998, section 82 of Act 53 of 1999 and section 149 of Act 60 of 2001

115. Section 2 of the Value-Added Tax Act, 1991, is hereby amended by the substitution for item (vi) of the following item:

- “(vi) ‘participatory security’ means a [unit] participatory interest as defined in section 1 of the [Unit Trust Control Act, 1981 (Act No. 58 of 1981)] Collective Investment Schemes Control Act, 2002, but does not include an equity security, a debt security, money or a cheque;”.

Amendment of section 6 of Act 89 of 1991, as amended by section 20 of Act 37 of 1996, section 34 of Act 34 of 1997, section 88 of Act 30 of 1998, section 66 of Act 19 of 2001 and section 150 of Act 60 of 2001

116. Section 6 of the Value-Added Tax Act, 1991 is hereby amended—

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

“Provided that [(i) **any information, document or thing obtained in terms of section 57C(17)(a) may not be disclosed in terms of this subsection; and** (ii)] any information, document or thing provided by a taxpayer in any return or document, or obtained from a taxpayer in terms of section 57A, [or] 57B or 57C which is disclosed in terms of this subsection, shall not, unless a competent court otherwise directs, be admissible in any criminal proceedings against such taxpayer, to the extent that such information, document or thing constitutes an admission by such taxpayer of the commission of an offence contemplated in paragraph (a).”; and

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

“(2C) The National Police Commissioner or the National Director of Public Prosecutions or any person acting under the direction and control of such National Police Commissioner or National Director of Public Prosecutions, shall not disclose any information supplied under subsection (2A) to any other person or permit any other person to have access

Padongelukfondswet, 1996 (Wet No. 56 van 1996), geag word nie die bedryf van 'n onderneming te wees nie;; en

- (b) deur die omskrywing van “voorgeskrewe koers” deur die volgende omskrywing te vervang:

“‘voorgeskrewe koers’ met betrekking tot enige rente wat ingevolge hierdie Wet betaalbaar is, 'n koers gelyk aan die koers wat die Minister van tyd tot tyd by kennisgewing in die *Staatskoerant* ingevolge artikel 80(1)(b) van die Wet op die Bestuur van Openbare Finansies, 1999 (Wet No. 1 van 1999) bepaal;”; en

- (c) deur die woorde wat paragraaf (a) in die omskrywing van

“welsynsorganisasie” voorafgaan, deur die volgende woorde te vervang: “‘welsynsorganisasie’ 'n vereniging sonder winsoogmerk wat ingevolge die Wet op Organisasies sonder Winsoogmerk, 1997 (Wet No. 71 van 1997), geregistreer is en vrygestel is van inkomstebelasting ingevolge artikel [30] 10(1)(cN) van die Inkomstebelastingwet, indien dit enige welsynsaktiwiteit voortsit of van voorneme is om dit voort te sit wat deur die Minister vir doeleindes van hierdie Wet verklaar is van 'n filantropiese of welwillendheidsaard te wees, met inagneming van die behoeftes, belange en welvaart van die algemene publiek, met verwysing na die bedrywighede wat val onder die hoofde—”.

- (2) Subartikel 1(b) sal in werking tree op 'n datum wat deur die President by proklamasie in die *Staatskoerant* bepaal sal word.

Wysiging van artikel 2 van Wet 89 van 1991, soos gewysig deur artikel 22 van Wet 136 van 1991, paragraaf 2 van Goewermentskennisgewing 2695 van 8 November 1991, artikel 13 van Wet 136 van 1992, artikel 10 van Wet 20 van 1994, artikel 19 van Wet 37 van 1996, artikel 24 van Wet 27 van 1997, artikel 87 van Wet 30 van 1998, artikel 82 van Wet 53 van 1999 en artikel 149 van Wet 60 van 2001

115. Artikel 2 van die Wet op Belasting op Toegevoegde Waarde, 1991 word hierby gewysig deur item (vi) deur die volgende item te vervang:

- “(vi) ‘deelnemersekuriteit’ 'n [onderaandeel] deelnemersbelang soos in artikel 1 van die Wet op Beheer van [Effekte-trustskemas, 1981 (Wet 54 van 1981)] Kollektiewe Beleggingskemas, 2002, omskryf, maar uitgesonderd 'n ekwiteitseffek, 'n skuldobligasie, geld of 'n tjek;”.

Wysiging van artikel 6 van Wet 89 van 1991, soos gewysig deur artikel 20 van Wet 37 van 1996, artikel 34 van Wet 34 van 1997, artikel 88 van Wet 30 van 1998, artikel 66 van Wet 19 van 2001 en artikel 150 van Wet 60 van 2001

116. Artikel 6 van die Wet op Belasting op Toegevoegde Waarde, 1991 word hierby gewysig—

- (a) deur die voorbehoudsbepaling by paragraaf (b) van subartikel (2A) deur die volgende voorbehoudsbepaling te vervang:

“Met dien verstande dat [(i) enige inligting, dokumentasie of 'n ding wat ingevolge artikel 57C(17)(a) bekom is nie ingevolge hierdie subartikel openbaar gemaak mag word nie; en (ii)] enige inligting, dokumentasie of 'n ding deur 'n belastingbetaler verstrek in 'n opgawe of dokument, of wat ingevolge artikel 57A, [of] 57B of 57C van 'n belastingbetaler bekom is, wat ingevolge hierdie subartikel openbaar gemaak word; tensy 'n bevoegde hof anders beveel, nie in 'n strafgeding as getuienis teen die betrokke belastingbetaler toelaatbaar is nie, tot die mate waarin sodanige inligting, dokument of ding 'n erkenning deur die belastingbetaler van die pleeg van 'n misdryf soos bedoel in paragraaf (a) daarstel.”; en

- (b) deur subartikel (2C) deur die volgende subartikel te vervang:

“(2C) Die Nasionale Polisiekommissaris of die Nasionale Direkteur van Openbare Vervolgings of enige persoon wat handel onder die leiding en beheer van die Nasionale Polisiekommissaris of die Nasionale Direkteur van Openbare Vervolgings mag nie enige inligting wat ingevolge subartikel (2A) verstrek is, openbaar maak aan enige ander persoon of aan enige ander persoon toegang daartoe verleen nie, behalwe

thereto, except in the exercise of his or her powers or the carrying out of his [of] or her duties for purposes of—

- (a) any investigation of, or prosecution for, an offence contemplated in subsection (2A); or
- (b) dealing with any such public safety or environmental risk as contemplated in subsection (2A).”; and
- (c) by the substitution for subsection (2D) of the following subsection:

“(2D) The Director-General or any person acting under the direction and control of such Director-General [as contemplated in subsection (2)(e)] shall not disclose any information supplied under [to subsection (2)(e)] proviso (ii) to subsection (1) to any other person or permit any other person to have access thereto, except in the performance of any function contemplated in proviso (ii) to subsection (1).”

Amendment of section 12 of Act 89 of 1991, as amended by section 29 of Act 136 of 1991, section 19 of Act 136 of 1992, section 15 of Act 20 of 1994, section 30 of Act 27 of 1997, section 86 of Act 53 of 1999, section 69 of Act 19 of 2001 and section 154 of Act 60 of 2001

117. Section 12 of the Value-Added Tax Act, 1991, is hereby amended—

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

“(c) the supply of—

 - (i) a dwelling under an agreement for the letting and hiring thereof;
 - (ii) lodging or board and lodging—
 - (aa) by the employer of the recipient (including an employer as defined in paragraph 1 of the Fourth Schedule to the Income Tax Act), where the recipient is entitled to occupy the accommodation as a benefit of his or her office or employment and his or her right thereto is limited to the period of his or her employment or the term of his or her office or a period agreed upon by the supplier and the recipient;
 - (bb) by the employer of the recipient, where the employer operates a hostel or boarding establishment mainly for the benefit of the employees otherwise than for the purpose of making profit; or
 - (cc) by a local authority which operates a hostel or boarding establishment otherwise than for the purpose of making profit.”; and
- (b) by the substitution in subparagraph (ii) of paragraph (h) thereof for the words preceding the proviso thereto of the following words:

“(ii) the supply by a school, university, technikon or college solely or mainly for the benefit of its learners or students of goods or services (including domestic goods and services) necessary for and subordinate and incidental to the supply of services referred to in subparagraph (i) of this paragraph, if such goods or services are supplied for a consideration in the form of school fees, tuition fees or payment for board and lodging.”

Amendment of section 28 of Act 89 of 1991, as amended by section 29 of Act 136 of 1992, section 79 of Act 30 of 2000, section 44 of Act 5 of 2001 and section 158 of Act 60 of 2001

118. Section 28 of the Value-Added Tax Act, 1991 is hereby amended by the addition of the following subsections:

- “(8) Where in any proceedings or prosecution under this Act or in any dispute in which the State, the Minister or the Commissioner is a party, the question arises whether an electronic or digital signature of a person affixed to any return as contemplated in subsection (6), was used with or without the consent and authority of that person, it shall, in the absence of proof to the contrary, for purposes of this

in die uitoefening van sy of haar bevoegdheid of die uitvoering van sy of haar pligte vir doeleindes van—

- (a) enige ondersoek van, of vervolging vir, 'n misdryf bedoel in subartikel (2A); of
- (b) die hantering van enige sodanige openbare veiligheids- of omgewings- risiko soos bedoel in subartikel (2A).”; en
- (c) deur subartikel (2D) deur die volgende subartikel te vervang:

“(2D) Die Direkteur-generaal of enige persoon handelende onder die leiding en beheer van die Direkteur-generaal, [soos bedoel in subparagraaf (2)(e)], mag nie enige inligting verstrek onder [subartikel (2)(e)] voorbehoudsbepaling (ii) by subartikel (1) aan enige ander persoon openbaar maak of enige ander persoon toegang daartoe verleen nie, behalwe in die uitoefening van enige funksie bedoel in voorbehoudsbepaling (ii) by subartikel (1).”.

Wysiging van artikel 12 van Wet 89 van 1991, soos gewysig deur artikel 29 van Wet 136 van 1991, artikel 19 van Wet 136 van 1992, artikel 15 van Wet 20 van 1994, artikel 30 van Wet 27 van 1997, artikel 86 van Wet 53 van 1999, artikel 69 van Wet 19 van 2001 en artikel 154 van Wet 60 van 2001

117. Artikel 12 van die Wet op Belasting op Toegevoegde Waarde, 1991 word hierby gewysig—

- (a) deur paragraaf (c) deur die volgende paragraaf te vervang:

“(c) die lewering van—

 - (i) 'n woning ingevolge 'n ooreenkoms vir die huur en verhuring daarvan;
 - (ii) inwoning of kos en inwoning—
 - (aa) deur die werkgewer van die ontvanger (met inbegrip van 'n werkgewer soos in paragraaf 1 van die Vierde Bylae by die Inkomstebelastingwet omskryf), waar die ontvanger geregtig is om die huisvesting te okkupeer as voordeel van sy of haar amp of diens en sy of haar reg daartoe beperk word tot die tydperk van sy of haar diens of die termyn van sy of haar amp of 'n tydperk wat deur die leweraar en die ontvanger ooreengekom word;
 - (bb) deur die werkgewer van die ontvanger, waar die werkgewer 'n koshuis of losieshuis hoofsaaklik vir die voordeel van die werknemers bedryf andersins as vir die maak van wins; of
 - (cc) deur 'n plaaslike bestuur wat 'n koshuis of losieshuis bedryf andersins as vir die maak van wins;”; en
- (b) deur die woorde wat die voorbehoudsbepaling in subparagraaf (ii) van paragraaf (h) voorafgaan, deur die volgende woorde te vervang:

“(ii) die lewering deur 'n skool, universiteit, technikon of kollege geheel en al of hoofsaaklik vir die voordeel van sy leerlinge of studente van goed of dienste (met inbegrip van huishoudelike goed en dienste) nodig vir en ondergeskik aan en saamhangend met die lewering van dienste beoog in subparagraaf (i) van hierdie paragraaf, waar die goed of dienste gelewer word teen 'n vergoeding in die vorm van skoolgelde, onderriggelde of betaling vir losies of inwoning.”

Wysiging van artikel 28 van Wet 89 van 1991, soos gewysig deur artikel 29 van Wet 136 van 1992, artikel 79 van Wet 30 van 2000, artikel 44 van Wet 5 van 2001 en artikel 158 van Wet 60 van 2001

118. Artikel 28 van die Wet op Belasting op Toegevoegde Waarde, 1991 word hierby gewysig deur die volgende subartikels daarby te voeg:

- “(8) Wanneer in enige geding of vervolging kragtens hierdie Wet of in enige geskil waarby die Staat, die Minister of die Kommissaris 'n party is, die vraag ontstaan of 'n elektroniese of digitale handtekening van 'n persoon wat op enige opgawe soos in subartikel (6) bedoel aangebring is, gebruik is met of sonder die instemming en magtiging van daardie persoon, word daar, in die afwesigheid van enige bewys tot die teendeel by die toepassing van hierdie Wet vermoed dat

Act be assumed that such signature was so used with the consent and authority of that person.

(9) (a) Notwithstanding anything contained to the contrary in this Act or in any other law, whenever in any proceedings or prosecution under this Act or in any dispute in which the State, the Minister or the Commissioner is a party, it is necessary to prove the authenticity, the veracity, the origin, the contents, an electronic signature or any other aspect of any electronic communication transmitted to and received by the Commissioner under this section, the provisions and conditions of any agreement (entered into in accordance with any regulations made by the Minister in terms of subsection (7)) establish the basis upon which any court of competent jurisdiction shall determine such issues. 5 10

(b) Notwithstanding anything to the contrary contained in any other law, nothing in the application of the rules of evidence shall be applied so as to deny the admissibility of any electronic communication under this section for purposes of this Act in evidence— 15

(i) on the sole grounds that it is an electronic data message; or
(ii) if it is the best evidence that the person adducing it could reasonably be expected to obtain, on the grounds that it is not in original form.

(c) (i) Information in the form of a data message shall be given due evidential weight. 20

(ii) In assessing the evidential weight of a data message a court shall have regard to—

(aa) the reliability of the manner in which the data message was generated, stored and communicated;
(bb) the reliability of the manner in which the integrity of the information was maintained;
(cc) the manner in which its originator was identified;
(dd) whether these functions were in compliance with the agreement contemplated in paragraph (a); and
(ee) the requirements of this section, and any other relevant factor.” 25 30

Amendment of section 58 of Act 89 of 1991, as amended by section 41 of Act 136 of 1991, section 39 of Act 97 of 1993, section 25 of Act 46 of 1996, section 102 of Act 53 of 1999, section 72 of Act 19 of 2001 and section 173 of Act 60 of 2001

119. Section 58 of the Value-Added Tax Act, 1991, is hereby amended by the addition of the following paragraph: 35

“(p) uses an electronic or digital signature of any other person in any electronic communication to the Commissioner for any purpose, without the consent and authority of such person.”

Substitution of section 70 of Act 89 of 1991

120. The following section is hereby substituted for section 70 of the Value-Added Tax Act, 1991: 40

“Jurisdiction of courts

70. A person charged with an offence under this Act may[, **notwithstanding anything to the contrary in any law,**] be tried in respect of that offence by any court having jurisdiction within any area in which that person resides or carries on business, in addition to any jurisdiction conferred upon any court by any law.” 45

sodanige handtekening met die instemming en magtiging van daardie persoon gebruik is.

(9) (a) Ondanks enigiets tot die teendeel in hierdie Wet of enige ander wet vervat, wanneer dit ookal nodig is, in enige geding of vervolging kragtens hierdie Wet of in enige geskil waarby die Staat, die Minister of die Kommissaris 'n party is, om die betroubaarheid, die geloofwaardigheid, die oorsprong, die inhoud, 'n elektroniese handtekening of enige ander aspek van enige elektroniese kommunikasie, versend aan en ontvang deur die Kommissaris kragtens hierdie artikel te bewys, vestig die bepalings en voorwaardes van enige ooreenkoms (aangegaan ingevolge enige regulasie kragtens subartikel (7) deur die Minister gemaak), die basis op grond waarvan 'n hof van kompetente jurisdiksie sodanige geskilpunte beslis.

(b) Ondanks andersluidende bepalings van enige ander wet word niks in die toepassing van bewysleweringsreëls so toegepas dat die toelaatbaarheid van enige elektroniese kommunikasie kragtens hierdie artikel vir doeleindes van hierdie Wet geweier word as getuienis nie—

(i) uitsluitlik op grond daarvan dat dit 'n elektroniese databoodskap is; of
(ii) indien dit die beste getuienis is wat van die persoon wat dit aanvoer redelikerwys verwag kan word om te verkry, op grond daarvan dat dit nie in oorspronklike vorm is nie.

(c)(i) Aan inligting in die vorm van 'n databoodskap moet gepaste bewysregtelike gewig verleen word.

(ii) In die beoordeling van die bewysregtelike waarde van 'n databoodskap moet 'n hof—

(aa) die betroubaarheid van die wyse waarop die databoodskap geskep, gestoor en gekommunikeer is;

(bb) die betroubaarheid van die wyse waarop die integriteit van die inligting in stand gehou is;

(cc) die wyse waarop die opsteller geïdentifiseer is;

(dd) die vraag of hierdie funksies in ooreenstemming met die ooreenkoms in paragraaf (a) bedoel, was; en

(ee) die vereistes van hierdie artikel en enige ander relevante faktor in ag neem.”

Wysiging van artikel 58 van Wet 89 van 1991, soos gewysig deur artikel 41 van Wet 136 van 1991, artikel 39 van Wet 97 van 1993, artikel 25 van Wet 46 van 1996, artikel 102 van Wet 53 van 1999, artikel 72 van Wet 19 van 2001 en artikel 173 van Wet 60 van 2001

119. Artikel 58 van die Wet op Belasting op Toegevoegde Waarde, 1991 word hierby gewysig deur die volgende paragraaf by te voeg:

“(p) ‘n elektroniese of digitale handtekening van enige ander persoon in enige elektroniese kommunikasie aan die Kommissaris vir enige doeleindes gebruik sonder die instemming en magtiging van daardie persoon.”

Vervanging van artikel 70 van Wet 89 van 1991

120. Artikel 70 van die Wet op Belasting op Toegevoegde Waarde, 1991 word hierby deur die volgende artikel vervang:

“Jurisdiksie van hofe

70. Iemand wat weens 'n misdryf kragtens hierdie Wet aangekla word, kan [ondanks andersluidende bepalings van die een of ander wet,] ten opsigte van daardie misdryf verhoor word deur enige hof met regsbevoegdheid binne 'n gebied waarin hy woon of sake doen, bykomend tot enige regsbevoegdheid deur enige wet aan enige hof verleen.”

Amendment of Schedule 1 to Act 89 of 1991, as substituted by section 106 of Act 53 of 1999 and section 177 of Act 60 of 2001 and amended by section 58 of Act 30 of 2002

121. Schedule 1 to the Value-Added Tax Act, 1991, is hereby amended—

- (a) by the substitution for item 407.02/00.00/01.00 of the following item: 5
 “407.02/00.00/01.00 Other new or used goods, of a total value not exceeding R1 250 per person (or such other amount as the Minister may fix by notice in the *Gazette*)”;
- (b) by the addition of the following subitem to Item 407.02: 10
 “407.02/00.00/02.00 Additional goods, new or used, of a total value not exceeding R10 000 per person (or such other amount as the Minister may fix by way of a notice in the *Gazette*), excluding goods of a class or kind specified in Item Nos. 407.02/ 15
 22.00, 407.02/24.02, 407.02/24.03 and 407.02/33.03.”;
- (c) by the substitution for subparagraph 4(b) of the Notes to item 407.00 of the following subparagraph:
 “(b) only entitled to the exemption in terms of item 407.02/00.00/01.00 20
 if the total value of the goods declared under this item does not exceed R200-00 (or such other amount as the Minister may fix by notice in the *Gazette*).”;
- (d) by the addition of the following subparagraph to paragraph 4 of the Notes to item 407.00: 25
 “(c) only entitled to the exemption in terms of Item 407.02/00.00/02.00 provided the total value of goods declared under this item does not exceed R1 500 (or such other amount as the Minister may fix by notice in the *Gazette*).”;
- (e) by the insertion of the following paragraphs after paragraph 4 of the Notes to Item 407.00: 30
 “4A The exemption in item 407.02/00.00/02.00 is only applicable if the total value of the goods declared under item 407 (excluding goods provided for in item 407.01) does not exceed R10 000 (or such other amount as the Minister may fix by way of a notice in the *Gazette*). 35
 4B If the person concerned so desires and indicates accordingly before the goods are cleared, the goods in respect of which the exemption in item 407.02/00.00/02.00 is applicable, may be cleared at the rates of duty specified in Schedule 1 to the Customs and Excise Act and with payment of VAT at the standard rate. 40
 4C If a person contravenes any provision of this Act, the Customs and Excise Act or any other law relating to the importation of goods, the Commissioner may refuse to grant any exemption provided for in Item 407.02.”.

Amendment of section 6 of Act 31 of 1998, as amended by section 15 of Act 32 of 1999, section 87 of Act 30 of 2000, section 75 of Act 19 of 2001, section 180 of Act 60 of 2001 and section 60 of Act 30 of 2002 45

122. (1) Section 6 of the Uncertificated Securities Tax Act, 1998, is hereby amended by the substitution in subsection (1) for subparagraph (ix) of paragraph (b) of the following subparagraph: 50

“(ix) if the beneficial ownership is acquired by a person—

- (aa) in terms of a company formation transaction contemplated in section 42 of the Income Tax Act, 1962 (Act 58 of 1962);
- (bb) in terms of a share-for-share transaction contemplated in section 43 of that Act;
- (cc) in terms of an amalgamation transaction contemplated in section 44 of that Act;

Wysiging van Bylae 1 by Wet 89 van 1991, soos vervang deur artikel 106 van Wet 53 van 1999 en artikel 177 van Wet 60 van 2001 en gewysig deur artikel 58 van Wet 30 van 2002

121. Bylae 1 by die Wet op Belasting op Toegevoegde Waarde, 1991 word hierby gewysig—

- (a) deur item 407.02/00.00/01.00 deur die volgende item te vervang:
- “407.02/00.00/01.00 Ander nuwe of gebruikte goed met 'n totale waarde van hoogstens R1 250 per persoon (of sodanige ander bedrag as wat die Minister by kennisgewing in die *Staatskoerant* bepaal)”; 5
- (b) deur die volgende subitem by Item 407.02 te voeg:
- “407.02/00.00/02.00 Addisionele goed, nuut of gebruik, met 'n totale waarde van hoogstens R10 000 per persoon (of sodanige ander bedrag as wat die Minister by kennisgewing in die *Staatskoerant* bepaal), uitgesonderd goed van 'n klas of soort vermeld in Item Nos. 407.02/22.00, 407.02/24.02, 407.02/24.03 en 407.02/33.03.”; 10
- (c) deur subparagraaf 4(b) van die Notas by item 407.00 met die volgende subparagraaf te vervang:
- “(b) slegs geregtig op die vrystelling ingevolge item 407.02/00.00/01.00, op voorwaarde dat die totale waarde van die goed wat onder hierdie item geklaar word, nie R200 (of sodanige ander bedrag as wat die Minister by kennisgewing in die *Staatskoerant* bepaal) te bowe gaan nie.”; 20
- (d) deur die volgende subparagraaf by paragraaf 4 van die Notas by item 407.00 te voeg:
- “(c) slegs geregtig op die vrystelling ingevolge Item 407.02/00.00/02.00 vir sover die totale waarde van die goed verklaar onder hierdie item nie R1 500 (of sodanige ander bedrag as wat die Minister by kennisgewing in die *Staatskoerant* bepaal) te bowe gaan nie.”; 25
- (e) deur die volgende paragrawe na paragraaf 4 van die Notas by Item 407.00 by te voeg:
- “4A Die vrystelling in item 407.02/00.00/02.00 is slegs van toepassing indien die totale waarde van die goed wat onder item 407 verklaar word, (uitgesluit goed waarvoor voorsiening in item 407.01 gemaak is) nie R10 000 (of sodanige ander bedrag as wat die Minister by kennisgewing in die *Staatskoerant* bepaal) te bowe gaan nie. 35
- 4B Indien die betrokke persoon sou verkies en dienoreenkomstig aandui alvorens die goed geklaar is, kan die goed met betrekking waartoe die vrystelling in item 407.02/00.00/02.00 van toepassing is, geklaar word teen 'n koers van reg vermeld in Bylae 1 by die Doeane en Aksynswet en met betaling van BTW teen die standaardkoers. 40
- 4C Indien 'n persoon enige bepaling van hierdie Wet, die Doeane en Aksynswet of enige ander wet wat betrekking het op die invoer van goed, oortree, kan die Kommissaris weier om enige vrystelling waarvoor in Item 407.02 voorsiening gemaak word, toe te staan.”. 45

Wysiging van artikel 6 van Wet 31 van 1998, soos gewysig deur artikel 15 van Wet 32 van 1999, artikel 87 van Wet 30 van 2000, artikel 75 van Wet 19 van 2001, artikel 180 van Wet 60 van 2001 en artikel 60 van Wet 30 van 2002

122. (1) Artikel 6 van die Wet op Belasting op Sertifikaatlose Aandele, 1998, word hierby gewysig deur in subartikel (1) subparagraaf (ix) van paragraaf (b) met die volgende paragraaf te vervang:

- “(ix) indien die voordelige eienaarskap verkry word deur 'n persoon—
- (aa) ingevolge 'n maatskappyformasietransaksie in artikel 42 van die Inkomstebelastingwet, 1962 (Wet No 58 van 1962), bedoel, 55
- (bb) ingevolge 'n aandeel-vir-aandeeltransaksie in artikel 43 van daardie Wet bedoel;
- (cc) ingevolge 'n amalgamasietransaksie in artikel 44 van daardie Wet bedoel;

(dd) in terms of an intra-group transfer contemplated in section 45 of that Act;
 (ee) in pursuance of a distribution in specie in the course of an unbundling transaction contemplated in section 46 of that Act;
 (ff) in terms of a liquidation distribution contemplated in section 47 of that Act; or
 (gg) in terms of any transaction contemplated in subparagraph (ee) or transaction 5
 which would have constituted a transaction or distribution contemplated—
 (A) in subparagraph (aa), (dd) or (ff) had an election been made for the provisions of that section to apply; and
 (B) in subparagraph (aa), (bb) or (cc) had the market value of the asset transferred in exchange for those marketable securities exceeded the 10
 base cost or the amount taken into account in respect thereof, as contemplated in section 42(1)(a), 43(1)(a) or 44(6) of that Act,
 where the public officer of the relevant company has made a sworn affidavit or solemn declaration that such transfer of marketable security complies with the 15
 provisions of this paragraph.”.

(2) Subsection (1) shall come into operation on the date of promulgation of this Act and shall apply in respect of any acquisition of beneficial ownership on or after that date.

Substitution of section 11 of Act 9 of 1999

123. The following section hereby substituted for section 11 of the Skills Development Levies Act, 1999: 20

“Interest on late payment

11. If an employer fails to pay a levy or any portion thereof on the last day for payment thereof, as contemplated in section 6(2) or 7(4), interest is payable on the outstanding amount at the rate contemplated in paragraph (b) of the definition of ‘prescribed rate’ in section 1 of the Income Tax Act, 25
 calculated from the day following that last day for payment to the day that payment is received by the Commissioner, SETA or approved body, as the case may be.”.

Substitution of section 20A of Act 9 of 1999, as inserted by section 77 of Act 19 of 2001 30

124. The following section substituted for section 20A of the Skills Development Levies Act, 1999:

“Jurisdiction of courts

20A. A person charged with an offence under this Act may[, **notwithstanding anything to the contrary in any law,**] be tried in respect of that 35
 offence by any court having jurisdiction within any area in which that person resides or carries on business, in addition to any jurisdiction conferred upon any court by any law.”.

Amendment of section 4 of Act 30 of 2000

125. (1) Section 4 of the Revenue Laws Amendment Act, 2000, is hereby amended by 40
 the addition of the following subsection:

“(2) Subsection (1) shall, in so far as it amends section 6quat of the Income Tax Act, 1962 (Act No. 58 of 1962), to withdraw subitem (BBB) of item (bb) of subparagraph (i) of the proviso to subsection (1B)(b), come into operation on the 45
date of promulgation of this Act, and shall apply in respect secondary tax on companies in respect of dividends declared on or after that date.”.

(2) Subsection (1) shall be deemed to have come into operation on 6 December 2000.

- (dd) ingevolge 'n intragroeptransaksie in artikel 45 van daardie Wet bedoel;
- (ee) ten gevolge van 'n uitkering *in specie* in die loop van 'n ontbondelingstransaksie in artikel 46 van daardie Wet bedoel;
- (ff) ingevolge 'n likwidasië-uitkering in artikel 47 van daardie Wet bedoel;
- (gg) ingevolge enige transaksie in item (ee) bedoel of wat 'n transaksie of 'n uitkering sou wees bedoel in—
- (A) item (aa), (dd) of (ff) indien 'n keuse uitgeoefen is dat die bepalings van daardie artikel sal geld; en
- (B) item (aa), (bb) of (cc) waar die markwaarde van die bate oorgedra in ruil vir daardie handelseffekte die basiskoste of die bedrag ten opsigte daarvan in ag geneem, oorskry het, soos bedoel in artikel 42(1)(a), 43(1)(a) of 44(6) van daardie Wet,
- waar die openbare amptenaar van die betrokke maatskappy onder eed of plegtige verklaring verklaar het dat daardie oordrag van daardie handelseffek aan die bepalings van hierdie paragraaf voldoen.”.

(2) Subartikel (1) tree in werking op die datum van afkondiging van hierdie Wet en is van toepassing ten opsigte van enige verkryging van voordelige eienaarskap op of na daardie datum.

Vervanging van artikel 11 van Wet 9 van 1999

123. Die volgende artikel vervang hierby artikel 11 van die “uMthetho weZibizontela wokuThuthukisa aMakhono, 1999” (“Skills Development Levies Act, 1999”):

“Inzuzo yokuphuza ukukhokha

11. Uma umqashi ehluleka ukukhokha isibizontela noma noma isiphi isigamu sayo ngosuku lokugcina lokukhokha sona, njengoba kucatshangwe kusigaba 6(2) no 7(4), inzuzo iyakhokhwa esambeni esingakhokhiwe ngesilinganiso esicatshangwe kundima (b) yencazelo ‘yesilinganiso esinqunyiwe’ kusigaba 1 soMthetho weNtela wemali eNgenayo, sibalwe kusukela kulolo suku lulandela olo suku lokugcina lokukhokha kuya osukwini leyonkokhelo emukelowe ngalo uKhomishinali, iSETA noma umgwamanda ovumelwe, kye ngesimo.”.

Vervanging van artikel 20A van Wet 9 van 1999, soos ingevoeg deur artikel 77 van Wet 19 van 2001

124. Die volgende artikel vervang hierby artikel 20A van die “uMthetho weZibizontela wokuThuthukisa aMakhono, 1999” (“Skills Development Levies Act, 1999”):

“Amagunya ezinkantolo

20A. Umuntu obekwe icala phansi kwaloMthetho[, **nakuba kukhona umthetho ophikisana nalona,**] icala lakhe liyoqulwa maqondana nalelocala yinoma iyiphi inkantolo enamandla okuliqua icala kunoma iyiphi indawo lapho lowomuntu ehlala khona noma eqhuba khona ibhizinisi, ukwengezelela nakuwaphi amandla asemthethweni wenkantolo.”.

Wysiging van artikel 4 van Wet 30 van 2000

125. (1) Artikel 4 van die Wysigingswet op Inkomstewette, 2000, word hierby gewysig deur die volgende subartikel by te voeg:

“(2) Subartikel (1) tree in werking, vir sover as wat dit artikel 6quat van die Inkomstebelastingwet, 1962 (Wet No. 58 van 1962), wysig om subitem (BBB) van item (bb) van subparagraaf (i) van die voorbehoudsbepaling by subartikel (1B)(b) te skrap, op die datum van afkondiging van hierdie Wet, en is van toepassing ten opsigte van sekondêre belasting op maatskappye met betrekking tot dividende wat op of na daardie datum verklaar word.”.

(2) Subartikel (1) word geag op 6 Desember 2000 in werking te getree het.

Amendment of section 3 of Act 5 of 2001

126. Section 3 of the Taxation Laws Amendment Act, 2001, is hereby amended by the addition of the following subsection:

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

Amendment of section 51 of Act 19 of 2001, as amended by section 65 of Act 30 of 2002 5

127. (1) Section 51 of the Revenue Laws Amendment Act, 2001, is hereby amended by the addition to the Afrikaans text of the following subsection:

“(2) Subartikel (1) tree in werking op ’n datum deur die President by proklamasie in die Staatskoerant bepaal.”. 10

(2) Subsection (1) shall be deemed to have come into operation on 27 July 2001.

Amendment of section 118 of Act 60 of 2001

128. (1) Section 118 of the Second Revenue Laws Amendment Act, 2001, is hereby amended by the substitution in subsection (1) in the proposed section 11(1) of the Customs and Excise Act, 1964, for the words preceding paragraph (a) of the following words: 15

“All goods imported into the Republic by ship, aircraft or other vehicle shall, except where the Commissioner otherwise prescribes by rule, [if] when landed [before due entry thereof] be—”.

(2) Subsection (1) shall be deemed to have come into operation on the date on which section 116(1) of the Second Revenue Laws Amendment Act, 2001, comes into operation. 20

Amendment of section 134 of Act 60 of 2002

129. (1) Section 134 of the Second Revenue Laws Amendment Act, 2001 is hereby amended by the substitution for subsection (2) of the following subsection: 25

“(2) The provisions contained in the regulations prescribing the circumstances under which the Commissioner may [waive any claim for purposes of the settlement of] settle any dispute and the reporting requirements, as contemplated in section 93A of the Customs and Excise Act, 1964, must be [incorporated into that Act] tabled in Parliament within a period of 12 months from the date that the regulations come into operation for incorporation into the Customs and Excise Act, 1964”. 30

(2) Subsection (1) shall be deemed to have come into operation on 12 December 2001.

Short title and commencement 35

130. (1) This Act shall be called the Revenue Laws Amendment Act, 2002.

(2) Save in so far as is otherwise provided in this Act or the context otherwise indicates, the amendments effected by this Act to the Income Tax Act, 1962, shall for purposes of assessments in respect of normal tax under the Income Tax Act, 1962, be deemed to have come into operation as from the commencement of years of assessment ending on or after 1 January 2003. 40

Wysiging van artikel 3 van Wet 5 van 2001

126. Artikel 3 van die Wysigingswet op Belastingwette, 2001, word hierby gewysig deur die volgende subartikel by te voeg:

“(2) Subartikel (1) word geag op 27 April 1994 in werking te getree het.”.

Wysiging van artikel 51 van Wet 19 van 2001, soos gewysig deur artikel 65 van Wet 30 van 2002 5

127. (1) Artikel 51 van die Wysigingswet op Inkomstewette, 2001, word hierby gewysig deur in die Afrikaanse teks die volgende subartikel by te voeg:

“(2) Subartikel (1) tree in werking op ’n datum deur die President by proklamasie in die *Staatskoerant* bepaal.”.

10

(2) Subartikel (1) word geag op 27 Julie 2001 in werking te getree het.

Wysiging van artikel 118 van Wet 60 van 2001

128. (1) Artikel 118 van die Tweede Wysigingswet op Inkomstewette, 2001, word hierby gewysig deur subartikel (1) in die voorgestelde artikel 11(1) van die Doeane en Aksynswet, 1964, die woorde wat paragraaf (a) voorafgaan deur die volgende woorde te vervang: 15

“Alle goedere in die Republiek ingevoer per skip, vliegtuig of ander voertuig moet behalwe waar die Kommissaris by reël anders voorskryf [indien] wanneer geland [voor behoorlike klaring daarvan]—”.

(2) Subartikel (1) word geag in werking te tree op die datum waarop artikel 116(1) van die Tweede Wysigingswet op Inkomstewette, 2001, in werking tree. 20

Wysiging van artikel 134 van Wet 60 van 2002

129. (1) Artikel 134 van die Tweede Wysigingswet op Inkomstewette, 2001, word hierby gewysig deur subartikel (2) deur die volgende subartikel te vervang:

“(2) Die bepalinge in die regulasies vervat wat die omstandighede waarvolgens die Kommissaris **[vir doeleindes van beslegting van]** enige dispuut **[enige eis kan kwytskeld]** kan besleg en die verslaggewingsvereistes soos in artikel 93A van die Doeane- en Aksynswet, 1964, beoog moet **[in daardie Wet geïnkorporeer word]** in die Parlement ter tafel gelê word binne ’n tydperk van 12 maande vanaf die datum waarop die regulasies in werking tree vir insluiting in die Doeane- en Aksynswet, 1964.”.

30

(2) Subartikel (1) word geag in werking te getree het op 12 Desember 2001.

Kort titel en inwerkingtreding

130. (1) Hierdie Wet heet die Wysigingswet op Inkomstewette, 2002.

(2) Behalwe vir sover in hierdie Wet anders bepaal of uit die samehang anders blyk, word die wysigings aan die Inkomstebelastingwet, 1962, by hierdie Wet aangebring, vir die doeleindes van aanslae ten opsigte van normale belasting ingevolge die Inkomstebelastingwet, 1962, geag in werking te getree het met ingang van die begin van 35
jare van aanslag wat op of na 1 Januarie 2003 eindig.

