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Januarie

2005

No. 27188

THE PRESIDENCY

No. 46

24 January 2005

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

No. 32 of 2004: Revenue Laws Amendment Act, 2004.

DIE PRESIDENSIE

No. 46

24 Januarie 2005

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

No. 32 van 2004: Wysigingswet op Inkomstewette, 2004.



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[] 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 18 January 2005.)

To amend the Transfer Duty Act, 1949, so as to regulate the interest and penalty on late payment of duty; to limit the exemption from duty where property is used by a public benefit organisation otherwise than wholly for public benefit activities; to provide for certain consequential and textual amendments; to amend the Income Tax Act, 1962, so as to amend certain definitions and insert a new definition; to further regulate the provisions relating to deductions of interest and withholding tax on foreign dividends; to further regulate the provisions in terms of which residents are taxed on amounts received by foreigners as a result of any donation by that resident; to further regulate the taxation of executive share incentive schemes; to regulate the taxation of broad-based employee equity share plans for purposes of determining the tax liability of the employee and the deduction for the employer; to further regulate the taxation of instruments which are convertible between debt and equity; to effect certain consequential amendments as a result of the introduction of the Mineral and Petroleum Resources Development Act, 2002, and the Securities Services Act, 2004; to further regulate the exemptions from tax; to further regulate the provisions relating to purchased annuities to make provision for an average exchange rate where consideration given by the purchaser thereof is denominated in a foreign currency; to further regulate the deduction of the cost of improvements effected in terms of a Public Private Partnership; to further regulate the deduction of research and development expenditure; to further regulate the provisions relating to urban development zones; to make provision for the limitation of losses from the disposal of certain assets; to further regulate the provisions relating to the acquisition or disposal of trading stock; to regulate the taxation of transactions where assets are acquired in exchange for the issue of shares; to further regulate the taxation of gains or losses on foreign exchange transactions to exclude non-residents; to further regulate the provisions relating to the incurral and accrual of interest; to regulate the taxation of assets acquired or disposed of for unquantified amounts; to regulate the taxation of the disposal and acquisition of equity shares; to further regulate the provisions relating to the taxation of trusts; to repeal the provisions which regulate the disposal of assets by non-residents; to make provision for a withholding tax in the case where a non-resident disposes of any immovable property in the Republic; to further regulate the provisions relating to the taxation of intra-group transactions; to further regulate the provisions relating to the taxation of unbundling transactions; to further regulate the provisions relating to liquidation distributions; to further regulate the provisions relating to donations tax; to further regulate the provisions relating to secondary tax on companies; to further regulate the provisions which deem certain amounts to be dividends for purposes of secondary tax on companies; to further regulate the provisions relating to transactions, operations or schemes

ALGEMENE VERDUIDELIKENDE NOTA:

- [] Woorde in vetdruk tussen vierkanthake dui weglatings uit bestaande verordenings aan.
- _____ Woorde met 'n volstreep daaronder dui invoegings in bestaande verordenings aan.

*(Engelse teks deur die President geteken.)
(Goedgekeur op 18 Januarie 2005.)*

WET

Tot wysiging van die Wet op Hereregte, 1949, ten einde die bepalinge van rente en boete op laat betaling van reg te reël; die vrystelling van reg waar eiendom deur 'n openbare weldaadsorganisasie gebruik word anders as ten volle vir openbare weldaadsaktiwiteite te beperk; vir sekere gevolgtrekkings en tekstuele wysigings voorsiening te maak; tot wysiging van die Inkomstebelastingwet, 1962, ten einde sekere omskrywings te wysig en 'n nuwe omskrywing in te voeg; die bepalinge met betrekking tot aftrekking van rente en weerhoudingsbelasting op buitelandse dividende verder te reël; die bepalinge ingevolge waarvan inwoners belas word op inkomste deur buitelanders ontvang weens enige skenking deur daardie inwoner verder te reël; die belasting van bestuursgerigte aandele aansporingskemas verder te reël; die belasting van uitgebreide werknemersaandeleplanne met betrekking tot belastingaanspreeklikheid van die werknemer en die aftrekking vir die werkgewer te reël; die belasting van instrumente wat tussen skuld en ekwiteit omgeskakel word, verder te reël; sekere gevolgtrekkings wysigings weens die afkondiging van die "Mineral and Petroleum Resources Development Act, 2002", en die "Securities Services Act, 2004", aan te bring; die vrystellings van belasting verder te reël; die bepalinge met betrekking tot aangekoopte jaargelde verder te reël ten einde, voorsiening te maak vir 'n gemiddelde wisselkoers waar vergoeding deur die koper daarvan gegee in 'n buitelandse geldeenheid aangedui word; die aftrekking van koste van verbeteringe ingevolge 'n "Public Private Partnership" aangebring verder te reël; die aftrekking van navorsings- en ontwikkelingskoste verder te reël; die bepalinge met betrekking tot stedelike ontwikkelingsone verder te reël; vir die beperking van verliese gelyk by beskikking oor sekere bates voorsiening te maak; die bepalinge met betrekking tot verkryging of beskikking oor handelsvoorraad verder te reël; die belasting van transaksies ingevolge waarvan bates in ruil vir die uitreiking van aandele verkry word te reël; die belasting van winste of verliese op buitelandse valutatransaksies verder te reël om nie-inwoners van die bepalinge uit te sluit; die bepalinge met betrekking tot aangaan en toevalling van rente verder te reël; die belasting ten opsigte van bates verkry of oor beskik vir 'n onbepaalde bedrag te reël; die belasting ten opsigte van beskikking en verkryging van ekwiteitsaandele te reël; die bepalinge met betrekking tot die belasting van trusts verder te reël; die bepalinge wat die beskikking oor bates deur nie-inwoners reël te skrap; voorsiening te maak vir 'n weerhoudingsbelasting waar 'n nie-inwoner oor enige onroerende eiendom in die Republiek beskik; die bepalinge met betrekking tot belasting ten opsigte van intragroep transaksies verder te reël; die bepalinge met betrekking tot die belasting ten opsigte van ontbondelingstransaksies verder te reël; die bepalinge met betrekking tot likwidasiëdistribusies verder te reël; die bepalinge met betrekking tot geskenkebelasting verder te reël; die bepalinge met betrekking tot sekondêre belasting op maatskappye verder te reël; die bepalinge wat sekere bedrae vir doeleindes van sekondêre belasting op maatskappye as dividende ag, verder te reël; die bepalinge met betrekking tot transaksies, handelinge of skemas om belasting te vermy of uit te stel, of om die bedrag van

for purposes of avoiding or postponing liability for or reducing amounts of taxes on income; to further regulate the provisions relating to the taxation of lump sum benefits; to further regulate the employees' tax provisions to include qualifying equity shares granted in terms of a broad-based employee equity share plan and equity instruments in terms of executive equity schemes; to further regulate the provisions relating to provisional tax; to further regulate the provisions relating to fringe benefits to take into account qualifying equity shares granted in terms of a broad-based employee equity share plan and equity instruments in terms of executive equity schemes; to further regulate the capital gains tax provisions to provide for the disposal and acquisition of assets for unquantified amounts; to regulate the capital gains tax implications for qualifying equity shares granted in terms of a broad-based employee equity share plan and equity instruments in terms of executive equity schemes; to further regulate the provisions relating to part disposal of assets; to regulate the capital gains tax implications in respect of the disposal of certain debt claims; to further regulate the provisions relating to disposal of assets for no consideration or consideration not measurable in money; to effect certain textual and consequential amendments and to delete certain obsolete provisions; to amend the Customs and Excise Act, 1964, so as to insert and amend certain definitions; to further regulate the liability for duty where underpayments are the result of fraud, misrepresentation, non-disclosure of material facts or false declarations for the purposes of the Act; to amend the long title to include environmental levy; to amend the provisions relating to customs controlled areas within Industrial Development Zones; to amend provisions relating to biofuel; to effect certain consequential amendments; to amend the Stamp Duty Act, 1968, so as to amend and insert certain definitions; to introduce interest and penalty provisions for failure or late payment of duty; to further provide for additional duty in case of evasion; to introduce provisions relating to e-stamping and electronic payments; to regulate the time in which an instrument must be stamped; to provide for regulations in respect of duty on other consideration; to further delete administrative penalties; to regulate the rate and exemption of duty; to provide for certain consequential and textual amendments; to amend the Value-Added Tax Act, 1991, so as to amend and insert certain definitions; to provide for the imposition of levies introduced in the Customs and Excise Act, 1964 ; to introduce certain deeming provisions; to provide for certain zero-rating and exemptions; to provide for the provisions relating to Industrial Development Zones; to further regulate the circumstances where an input tax may be claimed; to prescribe further requirements for tax invoices; to provide for certain textual amendments; to effect certain consequential amendments and to delete obsolete references to Acts that have been repealed; to clarify certain provisions; to amend the Uncertificated Securities Tax Act, 1998, so as to amend and insert certain definitions; to provide for the value on which duty will be payable on securities; to further regulate the exemptions from duty; to effect certain textual amendments; to amend the Second Revenue Laws Amendment Act, 2001, and the Revenue Laws Amendment Act, 2002, so as to further regulate the provisions relating to industrial development zones inserted in the Customs and Excise Act, 1964; to delete certain provisions which have not come into operation yet; to amend the Revenue Laws Amendment Act, 2003, so as to delete certain provisions which have not come into operation yet and to further regulate certain commencement dates; to amend the Taxation Laws Amendment Act, 2004, so as to delete a provision which has not come into operation yet; and to provide for a short title and commencement date; and to provide for matters relating thereto.

belasting te verminder, verder te reël; die bepalinge met betrekking tot belasting ten opsigte van enkelbedragvoordele verder te reël; die werknemersbelastingbepalinge verder te reël deur kwalifiserende ekwiteitsaandeel ingevolge 'n uitgebreide werknemersaandeelplan verleen en ekwiteitsinstrumente ingevolge 'n bestuursgerigte aandeelskema verleen, in te sluit; die bepalinge met betrekking tot voorlopige belasting verder te reël; die bepalinge met betrekking tot byvoordele verder te reël deur kwalifiserende ekwiteitsaandeel ingevolge 'n uitgebreide werknemersaandeelplan verleen en ekwiteitsinstrumente ingevolge 'n bestuursgerigte ekwiteitskema verleen, in te sluit; die kapitaalwinstbelastingbepalinge verder te reël deur voorsiening te maak vir die beskikking en verkryging van bates vir ongekwantifiseerde bedrae; die kapitaalwinstbelastingimplikasies ten opsigte van kwalifiserende ekwiteitsaandeel ingevolge 'n uitgebreide werknemersaandeelplan verleen en ekwiteitsinstrumente ingevolge 'n bestuursgerigte ekwiteitskema verleen, verder te reël; die bepalinge rakende gedeeltelike beskikkinge van bates verder te reël; die kapitaalwinstbelastingimplikasies ten opsigte van die beskikking oor sekere vorderingsregte te reël; die bepalinge rakende beskikking oor bates vir geen vergoeding of vergoeding nie in geld meetbaar nie, verder te reël; sekere tekstuele en gevolglike wysigings aan te bring en sekere bepalinge wat in onbruik verval het, te skrap; tot wysiging van die Doeane- en Aksynswet, 1964, ten einde sekere omskrywings in te voeg en te wysig; die aanspreeklikheid vir reg waar onderbetalings die gevolg is van bedrog, wanvoorstelling, nie-openbaarmaking van wesenlike feite of valse verklaring vir doeleindes van die Wet, verder te reël; die lang titel te wysig om omgewingsheffing in te sluit; die bepalinge met betrekking tot doeanebeheerde gebiede binne Nywerheidsontwikkelingsone te wysig; bepalinge met betrekking tot biobrandstof te wysig; sekere gevolglike wysigings aan te bring; tot wysiging van die Wet op Seëlregte, 1968, ten einde sekere omskrywings te wysig en in te voeg; rente- en boetebepalinge vir die nie-betaling of laat betaling van reg in te voeg; addisionele reg in geval van ontduiking; bepalinge vir elektroniese aanbring van reg en elektroniese betalings in te voeg; die tyd waarbinne 'n instrument geseël moet word verder te reël; voorsiening te maak vir regulasies met betrekking tot reg op ander vergoeding; die koers en vrystelling van reg te reël; vir verskeie gevolglike en tekstuele wysigings voorsiening te maak; tot wysiging van die Wet op Belasting op Toegevoegde Waarde, 1991, ten einde verskeie omskrywings te wysig en in te voeg; vir die instelling van heffings wat deur die Doeane- en Aksynswet, 1964, ingestel is, voorsiening te maak; om sekere geagte bepalinge in te stel; vir sekere nulkoerse en vrystellings voorsiening te maak; vir bepalinge wat met Nywerheidsontwikkelingsone verband hou, voorsiening te maak; die omstandighede waar insetbelasting geëis mag word verder te reël; verdere vereistes vir belastingfakture voor te skryf; vir sekere tekstuele wysigings voorsiening te maak; sekere gevolglike wysigings aan te bring en uitgediende verwysings na Wette wat herroep is, te skrap; sekere bepalinge op te klaar; tot wysiging van die Wet op Belasting op Sertifikaatlose Aandeel, 1998, ten einde sekere omskrywings te wysig en in te voeg; voorsiening te maak vir die waarde waarop belasting op sekuriteite betaalbaar sal wees; die vrystellings van reg verder te reël; sekere tekstuele wysigings aan te bring; tot wysiging van die Tweede Wysigingswet op Inkomstewette, 2001, en die Wysigingswet op Inkomstewette, 2002, ten einde die bepalinge met betrekking tot nywerheidsontwikkelingsone in die Doeane- en Aksynswet, 1964, ingevoeg, verder te reël; sekere bepalinge wat nog nie in werking getree het nie te skrap; tot wysiging van die Wysigingswet op Inkomstewette, 2003, ten einde sekere bepalinge wat nog nie in werking getree het nie te skrap en sekere inwerkingtredingsdatums verder te reël; tot wysiging van die Wysigingswet op Belastingwette, 2004, ten einde in bepaling wat nog nie in werking getree het nie te skrap; en vir 'n kort titel en inwerkingtredingsdatum voorsiening te maak; en om vir aangeleenthede wat daarmee in verband staan voorsiening te maak.

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

Amendment of section 4 of Act 40 of 1949, as amended by section 2 of Act 70 of 1963, section 1 of Act 72 of 1970, section 3 of Act 87 of 1982 and section 7 of Act 60 of 2001

1. (1) Section 4 of the Transfer Duty Act, 1949, is hereby amended—

(a) by the substitution for the heading of the following heading:

“Penalty and interest on late payment of duty”;

(b) by the substitution in subsection (1) for the words preceding the proviso of the following words:

“If any duty in respect of any transaction entered into before 1 March 2005, remains unpaid after the date of the expiration of the period referred to in section 3, there shall, subject to the provisions of subsection (3), in addition to the unpaid duty, be payable a penalty, at the rate of 10 per cent per annum on the amount of the unpaid duty, calculated in respect of each completed month in the period from that date to the date of payment.”;

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

“(1A) If any duty in respect of any transaction entered into on or after 1 March 2005, remains unpaid after the date of the expiration of the period referred to in section 3, interest shall, subject to the provisions of subsection (3), become payable at a rate equal to 10 per cent per annum of the amount of duty which remains unpaid, calculated in respect of each completed month in the period from that date to the date of payment.”; and

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

“Whenever the Commissioner is satisfied that the delay in the determination of the value on which the duty is payable cannot be ascribed to the person liable to pay the duty, he or she may allow a reasonable extension of time within which the duty may be paid without [penalty] interest if, within six months of the date of acquisition of the property—”.

(2) Subsection (1)(d) shall come into operation on 1 March 2005 and shall apply in respect of transactions entered into on or after that date.

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, section 3 of Act 30 of 2002, section 4 of Act 74 of 2002, section 3 of Act 45 of 2003 and section 2 of Act 16 of 2004

2. Section 9 of the Transfer Duty Act, 1949, is hereby amended—

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

“: Provided that if [any such property or any portion thereof is] at any time subsequent to the acquisition thereof it is used [for some purpose other than exclusively in carrying on any public benefit activities] otherwise than in the manner contemplated in this paragraph, duty shall become payable in respect of the acquisition of that property [or that portion thereof,] and the date upon which that property [or that portion thereof] was first so otherwise used [for that other purpose] shall for

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

Wysiging van artikel 4 van Wet 40 van 1949, soos gewysig deur artikel 2 van Wet 70 van 1963, artikel 1 van Wet 72 van 1970, artikel 3 van Wet 87 van 1982 en artikel 7 van Wet 60 van 2001

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1. (1) Artikel 4 van die Wet op Hereregte, 1949, word hierby gewysig—

(a) deur die opskrif deur die volgende opskrif te vervang:

“Boete en rente op laat betaling van hereregte”;

(b) deur die woorde in subartikel (1) wat die voorbehoudsbepaling voorafgaan deur die volgende woorde te vervang:

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“Indien hereregte op enige transaksie wat aangegaan is voor 1 Maart 2005, onbetaal bly na die datum van verstryking van die in artikel 3 bedoelde tydperk, is daar, behoudens die bepalings van subartikel (3), benewens die onbetaalde hereregte, ’n boete betaalbaar teen die skaal van 10 persent per jaar op die bedrag van die onbetaalde hereregte, bereken ten opsigte van elke volle maand in die tydperk vanaf daardie datum tot die datum van betaling.”;

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

“(1A) Indien hereregte op enige transaksie wat aangegaan is op of na 1 Maart 2005, onbetaal bly na die datum van verstryking van die tydperk bedoel in artikel 3, is rente, behoudens die bepalings van subartikel (3), betaalbaar teen die skaal van 10 persent per jaar op die bedrag van die onbetaalde hereregte, bereken ten opsigte van elke voltooide maand in die tydperk vanaf daardie datum tot die datum van betaling.”; en

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

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“Wanneer die Kommissaris oortuig is dat die vertraging by die vasstelling van die waarde waarop die hereregte betaalbaar is, nie toe te skryf is aan die persoon wat die hereregte moet betaal nie, kan hy of sy ’n redelike verlenging van tyd toestaan waarbinne die hereregte sonder [boete] rente betaal kan word, mits, binne ses maande vanaf die datum van verkryging van die eiendom—”.

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(2) Subartikel (1)(d) tree op 1 Maart 2005 in werking en is van toepassing ten opsigte van transaksies op of na daardie datum aangegaan.

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, artikel 3 van Wet 30 van 2002, artikel 4 van Wet 74 van 2002, artikel 3 van Wet 45 van 2003 en artikel 2 van Wet 16 van 2004

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2. Artikel 9 van die Wet op Hereregte, 1949, word hierby gewysig—

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

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“: Met dien verstande dat indien [enige sodanige eiendom of enige gedeelte daarvan,] dit op enige gegewe tydstip na die verkryging daarvan gebruik word [vir ’n ander doel dan uitsluitlik in die beoefening van enige openbare weldaadsaktiwiteite,] anders as op die wyse soos beoog in hierdie paragraaf, hereregte betaalbaar is op die verkryging van bedoelde eiendom [of van bedoelde gedeelte daarvan,] en die datum waarop bedoelde eiendom [of bedoelde gedeelte daarvan] vir die eerste keer vir [daardie] sodanige ander doel gebruik is, word by

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the purposes of section 3(1) and section 4 be deemed to be the date of acquisition thereof;” and

(b) by the deletion in subsection (2) of paragraph (ii).

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 34 of Act 34 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, section 9 of Act 30 of 2002, section 6 of Act 74 of 2002, section 33 of Act 12 of 2003, section 12 of Act 45 of 2003 and section 3 of Act 16 of 2004

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

(a) by the substitution in the definition of “financial instrument” for paragraph (c) of the following paragraph:

“(c) any other contractual right or obligation [which derives its value from] the value of which is determined directly or indirectly with reference to—

(i) a debt security or equity;

(ii) any commodity as quoted on an exchange; or

(iii) a rate index or a specified index;”;

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

“(a) [a stock] an exchange as defined in section 1 and licensed under section 10 of the [Stock Exchanges Control Act, 1985 (Act No. 1 of 1985)] Securities Services Act, 2004; or”;

(c) by the insertion after the definition of “provident fund” of the following definition:

“ ‘Public Private Partnership’ means a Public Private Partnership as defined in Regulation 16 of the Treasury Regulations issued in terms of section 76 of the Public Finance Management Act, 1999 (Act No. 1 of 1999);”.

(2) (a) Subsection (1)(b) shall come into operation on the date that the Securities Services Act, 2004, comes into operation.

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

Amendment of section 6quat of Act 58 of 1962, as substituted by section 4 of Act 59 of 2000, and amended by section 8 of Act 5 of 2001, section 20 of Act 60 of 2001, section 9 of Act 74 of 2002 and section 16 of Act 45 of 2003

4. (1) Section 6quat of the Income Tax Act, 1962, is hereby amended by the substitution in subsection (1B) for paragraph (e) of the following paragraph:

“(e) no rebate shall be allowed in respect of any tax payable on any amount contemplated in subsection (1)(d), if the resident has elected to deduct the amount of withholding tax as contemplated in section [11(r)] 11C(4).”.

- die toepassing [van subartikel (1)] van artikel [drie] 3(1) en artikel [vier] 4, geag die datum van verkryging daarvan te wees;” en
(b) deur paragraaf (ii) van subartikel (2) te skrap.

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, Goewernmentskennisgewing 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 34 van Wet 34 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, artikel 9 van Wet 30 van 2002, artikel 6 van Wet 74 van 2002, artikel 33 van Wet 12 van 2003, artikel 12 van Wet 45 van 2003 en artikel 3 van Wet 16 van 2004

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

- (a) deur paragraaf (c) van die omskrywing van “finansiële instrument” deur die volgende paragraaf te vervang:
 “(c) enige ander kontraktuele reg of verpligting [wat sy] die waarde [verkry van die waarde van] waarvan direk of indirek bepaal word met verwysing na—
 (i) ’n skuldsekuriteit of ekwiteit;
 (ii) enige kommoditeit soos op ’n beurs gekwoteer; of
 (iii) ’n [koersindekse] koersindeks of ’n gespesifiseerde indeks;”;
 (b) deur paragraaf (a) van die woordskrywing van “genoteerde maatskappy” deur die volgende paragraaf te vervang:
 “(a) ’n [aandelebeurs] beurs soos in artikel 1 van die [Wet op Beheer van Aandelebeurse, 1985 (Wet 1 van 1985)] ‘Securities Services Act, 2004’, omskryf en wat kragtens artikel 10 van daardie Wet gelisensieer is; of”; en
 (c) deur na die woordskrywing van “plaaslike bestuur” die volgende woordskrywing in te voeg:
 “‘Public Private Partnership’ ’n ‘Public Private Partnership’ soos omskryf in Regulasie 16 van die ‘Treasury Regulations’ uitgereik kragtens artikel 76 van die Wet op Openbare Finansiële Bestuur, 1999 (Wet No. 1 van 1999);”.
- (2)(a) Subartikel (1)(b) tree in werking op die datum waarop die “Securities Services Act, 2004”, in werking tree.
 (b) Subartikel (1)(c) tree op die datum van afkondiging van hierdie Wet in werking.

Wysiging van artikel 6quat van Wet 58 van 1962, soos vervang deur artikel 4 van Wet 59 van 2000, en gewysig deur artikel 8 van Wet 5 van 2001, artikel 20 van Wet 60 van 2001, artikel 9 van Wet 74 van 2002 en artikel 16 van Wet 45 van 2003

4. (1) Artikel 6quat van die Inkomstebelastingwet, 1962, word hierby gewysig deur paragraaf (e) van subartikel (1B) deur die volgende paragraaf te vervang:

- “(e) word geen korting toegelaat nie ten opsigte van enige belasting betaalbaar ten opsigte van enige bedrag in subartikel (1)(d) bedoel, indien die inwoner ’n keuse soos in artikel [11(r)] 11C(4) bedoel, uitgeoefen het om die bedrag van die weerhoudingsbelasting af te trek.”.

(2) Subsection (1) shall come into operation on 1 June 2004 and apply in respect of any year of assessment commencing on or after that date.

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, section 5 of Act 59 of 2000, section 10 of Act 74 of 2002 and section 17 of Act 45 of 2003

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

“(8) Where by reason of or in consequence of any donation, settlement or other disposition (other than a donation, settlement or other disposition to an entity which is not a resident and which is similar to a public benefit organisation contemplated in section 30) made by any resident, [income] any amount is received by or accrued to any person who is not a resident (other than a controlled foreign company in relation to such resident), which would have constituted income had that person been a resident, there shall be included in the income of that resident so much of [the] that amount [of any income] as is attributable to that donation, settlement or other disposition.”. 15 20

(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 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, section 12 of Act 30 of 2002, section 11 of Act 74 of 2002 and section 18 of Act 45 of 2003

6. Section 8 of the Income Tax Act, 1962, is hereby amended by the substitution in subsection (4) for the words in paragraph (a) preceding the proviso of the following words: 35

“(a) There shall be included in the taxpayer’s income all amounts allowed to be deducted or set off under the provisions of sections 11 to 20, inclusive, section 24D, section 24F, section 24G, section 24I, section 24J and section 27(2)(b) and (d) of this Act, except section 11(k), (p) and (q), section 11quin, section 12(2) or section 12(2) as applied by section 12(3), section 12A(3), section 13(5), or section 13(5) as applied by section 13(8), or section 13bis(7), or section 15(a), or section 15A, or under the corresponding provisions of any previous Income Tax Act, whether in the current or any previous year of assessment which have been recovered or recouped during the current year of assessment.”. 40 45

Amendment of section 8A, as inserted by section 11 of Act 89 of 1969 and amended by section 8 of Act 88 of 1971

7. Section 8A of the Income Tax Act, 1962, is hereby amended by the substitution in subsection (1) for paragraph (a) of the following paragraph: 50

“(a) There shall be included in the taxpayer’s income for the year of assessment the amount of any gain made by the taxpayer after the first day of June, 1969, by the exercise, cession or release during such year of any right to acquire any marketable

(2) Subartikel (1) tree op 1 Junie 2004 in werking en is van toepassing ten opsigte van enige jaar van aanslag wat op of na daardie datum eindig.

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, artikel 5 van Wet 59 van 2000, artikel 10 van Wet 74 van 2002 en artikel 17 van Wet 45 van 2003 5

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

“(8) Waar vanweë of as gevolg van enige skenking, oormaking of ander beskikking (behalwe ’n skenking, oormaking of ander beskikking aan ’n entiteit wat nie ’n inwoner is nie en wat soortgelyk is aan ’n openbare weldaadsorganisasie in artikel 30 beoog) deur ’n inwoner, [inkomste] ’n bedrag ontvang word of toeval aan ’n persoon wat nie ’n inwoner is nie (behalwe ’n beheerde buitelandse maatskappy met betrekking tot daardie inwoner), wat inkomste sou uitmaak indien daardie persoon ’n inwoner was, word daar in die inkomste van daardie inwoner ingesluit soveel van [die] daardie bedrag [aan inkomste] wat aan daardie skenking, oormaking of ander beskikking toeskryfbaar is.”. 15 20

(2) Subartikel (1) tree op die datum van afkondiging van hierdie Wet in werking en is van toepassing ten opsigte van enige jaar 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, artikel 12 van Wet 30 van 2002, artikel 11 van Wet 74 van 2002 en artikel 18 van Wet 45 van 2003 25 30 35

6. Artikel 8 van die Inkomstebelastingwet, 1962, word hierby gewysig deur die woorde in paragraaf (a) van subartikel (4) wat die voorbehoudsbepaling voorafgaan deur die volgende woorde te vervang: 40

“(a) By die belastingpligtige se inkomste word ingereken alle bedrae wat ingevolge die bepalings van artikels 11 tot en met 20, artikel 24D, artikel 24F, artikel 24G, artikel 24I, artikel 24J en artikel 27(2)(b) en (d) van hierdie Wet, behalwe artikel 11(k), (p) en (q), artikel 11quin, artikel 12(2), of artikel 12(2) soos toegepas deur artikel 12(3), artikel 12A(3), artikel 13(5), of artikel 13(5) soos toegepas deur artikel 13(8), of artikel 13bis(7), of artikel 15(a), of artikel 15A, of ingevolge die ooreenstemmende bepalings van ’n vorige Inkomstebelastingwet toegelaat is, hetsy in die lopende of ’n vorige jaar van aanslag, om afgetrek of verreken te word, en gedurende die lopende jaar van aanslag verhaal of vergoed is.”. 45 50

Wysiging van artikel 8A, soos ingevoeg deur artikel 11 van Wet 89 van 1969 en gewysig deur artikel 8 van Wet 88 van 1971

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

“(a) By die belastingpligtige se inkomste vir die jaar van aanslag word ingereken die bedrag van die wins deur die belastingpligtige na die eerste dag van Junie 1969 gemaak by die uitoefening, sessie of afstanddoening gedurende daardie 55

security (whether such right be exercised, ceded or released in whole or part), if such right was obtained by the taxpayer before 26 October 2004 as a director or former director of any company or in respect of services rendered or to be rendered by him as an employee to an employer.”.

Insertion of sections 8B and 8C in Act 58 of 1962

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8. (1) The following sections are hereby inserted in the Income Tax Act, 1962, after section 8A:

“Taxation of amounts derived from broad-based employee share plan

8B. (1) There must be included in the income of an employee for a year of assessment any amount received by or accrued to that employee during that year from the disposal of any qualifying equity share or any right or interest in a qualifying equity share, which—

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(a) was acquired by that employee in terms of a broad-based employee share plan; and

(b) is disposed of by that employee within five years from the date of grant of that qualifying equity share, otherwise than in exchange for another qualifying equity share as contemplated in subsection (2).

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(2) If an employee as a result of a subdivision, consolidation, conversion or restructuring of the equity share capital of the employer or any company in the same group of companies as that employer disposes of a qualifying equity share in exchange solely for any other equity share in that employer or any company in the same group of companies as the employer, that other equity instrument acquired in exchange is deemed to be a qualifying equity share which was acquired by that employee on the date of grant of the qualifying equity share disposed of in exchange.

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(3) For the purposes of this section—

‘broad-based employee share plan’ of an employer means a plan in terms of which—

(a) equity shares in that employer, or in a company in the same group of companies as the employer, are acquired by employees of that employer, for consideration which does not exceed the minimum consideration required by the Companies Act, 1973 (Act No. 61 of 1973);

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(b) employees who participate in any other equity scheme of that employer or of a company in the same group of companies as that employer are not entitled to participate and where at least 90 per cent of all other employees who are employed by that employer on a permanent basis on the date of grant (and who have continuously been so employed on a full-time basis for at least one year) are entitled to participate;

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(c) the employees who acquire the equity shares are entitled to all dividends and full voting rights in relation to those equity shares; and

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(d) no restrictions have been imposed in respect of the disposal of those equity shares, other than—

(i) a restriction imposed by legislation;

(ii) a right of any person to acquire those equity shares from the employee at market value; or

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(iii) a restriction in terms of which that employee may not dispose of those equity shares for a period, which may not extend beyond five years from the date of grant;

‘date of grant’ in relation to an equity share means the date on which the granting of that equity share is approved by the directors or some other person or body of persons with comparable authority conferred under or by virtue of the memorandum and articles of association of the employer company;

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‘market value’ in relation to an equity share means the price which could be obtained upon the sale of that equity share between a willing buyer and a willing seller dealing freely at arm’s length in an open market and without having regard to any restrictions imposed in respect of that equity share;

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‘qualifying equity share’ in relation to a person means an equity share acquired in a year of assessment in terms of a broad-based employee share

jaar van 'n reg om handelseffekte te verkry (ongeag of bedoelde reg as geheel of gedeeltelik uitgeoefen of gesedeer word en of van daardie reg as geheel of gedeeltelik afstand gedoen word), indien bedoelde reg voor 26 Oktober 2004 deur die belastingpligtige as direkteur of oud-direkteur van 'n maatskappy of ten opsigte van dienste wat deur hom as werknemer aan 'n werkgever bewys is of moet word, verkry is.”. 5

Invoeging van artikels 8B en 8C in Wet 58 van 1962

8. (1) Die volgende artikels word hierby in die Inkomstebelastingwet, 1962, ingevoeg na artikel 8A:

“Belasting van bedrae verkry uit uitgebreide werknemersaandeelplan 10

8B. (1) Daar word by die inkomste van 'n werknemer vir 'n jaar van aanslag ingesluit enige bedrag ontvang deur of toegeval aan daardie werknemer in daardie jaar uit die beskikking oor 'n kwalifiserende ekwiteitsaandeel of enige reg of belang in 'n kwalifiserende ekwiteitsaandeel— 15

- (a) wat deur daardie werknemer ingevolge 'n uitgebreide werknemersaandeelplan verkry is; en
- (b) waaroor deur daardie werknemer binne vyf jaar vanaf die datum van toekenning van daardie kwalifiserende ekwiteitsaandeel beskik is, anders as in ruil vir 'n ander kwalifiserende ekwiteitsaandeel soos in subartikel (2) beoog. 20

(2) Indien 'n werknemer weens die onderverdeling, konsolidasie, omskakeling of herstrukturering van die ekwiteitsaandelekapitaal van die werkgever of 'n maatskappy in dieselfde groep van maatskappye as die werkgever oor 'n kwalifiserende ekwiteitsaandeel beskik in ruil vir slegs 'n ander ekwiteitsaandeel in daardie werkgever of maatskappy in dieselfde groep van maatskappye as die werkgever, word daardie ander ekwiteitsaandeel in ruil verkry geag 'n kwalifiserende ekwiteitsaandeel te wees wat deur daardie werknemer verkry is op die datum van toekenning van die kwalifiserende ekwiteitsaandeel waaroor in ruil beskik is. 25 30

(3) By die toepassing van hierdie artikel beteken—
 ‘datum van toekenning’ met betrekking tot 'n ekwiteitsaandeel, die datum waarop die toekenning van daardie ekwiteitsaandeel deur die direkteur of 'n ander persoon of liggaam van persone met soortgelyke magtiging verleen kragtens of by wyse van die akte van oprigting en statute van die werkvermaatskappy, goedgekeur is; 35

‘kwalifiserende ekwiteitsaandeel’ met betrekking tot 'n persoon, 'n ekwiteitsaandeel in 'n jaar van aanslag ingevolge 'n uitgebreide werknemersaandeelplan verkry, waar die markwaarde van alle ekwiteitsaandeel (soos op die betrokke datum van toekenning van elke ekwiteitsaandeel bepaal), wat deur daardie persoon ingevolge daardie plan in daardie jaar en die twee onmiddellik voorafgaande jare van aanslag verkry is, in totaal nie R9 000 te bowe gaan nie; 40

‘markwaarde’ met betrekking tot 'n ekwiteitsaandeel, die prys wat by verkoop van daardie ekwiteitsaandeel tussen 'n gewillige koper en gewillige verkoper wat in 'n ope mark op uiterste voorwaardes beding verkry kan word en sonder inagneming van enige beperkings wat ten opsigte van daardie ekwiteitsaandeel opgelê is. 45

‘uitgebreide werknemersaandeelplan’ van 'n werkgever 'n plan ingevolge waarvan— 50

- (a) ekwiteitsaandeel in daardie werkgever, of 'n maatskappy in dieselfde groep van maatskappye as die werkgever, deur werknemers van daardie werkgever verkry word teen 'n vergoeding wat nie die minimum vergoeding wat ingevolge die Maatskappywet, 1973 (Wet No. 61 van 1973), vereis word, oorskry nie; 55
- (b) werknemers wat deelneem aan enige ander aandelekskema van daardie werkgever of 'n maatskappy in dieselfde groep van maatskappye as daardie werkgever, nie mag deelneem nie en waar minstens 90 persent van alle ander werknemers wat op die datum van toekenning

plan, where the market value of all equity shares (as determined on the relevant date of grant of each equity share), which were acquired by that person in terms of that plan in that year and the two immediately preceding years of assessment, does not in aggregate exceed R9 000.

(4) The provisions of section 25 do not apply in respect of any amount received or accrued from the disposal of any qualifying equity share after the date of death of the person contemplated in subsection (1). 5

Taxation of directors and employees on vesting of equity instruments

8C. (1) (a) Notwithstanding section 9B and section 23(m), a taxpayer must include in or deduct from his or her income for a year of assessment any gain or loss determined in terms of subsection (2) in respect of the vesting during that year of any equity instrument, if that equity instrument was acquired by that taxpayer by virtue of his or her employment or office of director of any company. 10

(b) This section does not apply in respect of any equity instrument which— 15

(i) was acquired in exchange for the disposal of any other equity instrument which had already vested in terms of this section before that disposal; or

(ii) constitutes a qualifying equity share contemplated in section 8B. 20

(2) (a) The gain to be included in the income of a taxpayer is—

(i) in the case of a disposal contemplated in subsection (5)(c), the amount received or accrued in respect of that disposal which exceeds the sum of any consideration in respect of that equity instrument; or

(ii) in any other case, the sum of— 25

(aa) the amount by which the market value of the equity instrument determined on the date on which it vests in that taxpayer exceeds the sum of any consideration in respect of that equity instrument; and

(bb) the amount (if any) determined in terms of subsection (4)(b). 30

(b) The loss to be deducted from the income of a taxpayer is—

(i) in the case of a disposal contemplated in subsection (5)(c), the amount by which the sum of any consideration in respect of that equity instrument exceeds the amount received or accrued in respect of that disposal; or

(ii) in any other case, the amount by which the consideration in respect of the equity instrument exceeds the market value of that equity instrument determined on the date that it vests in that taxpayer. 35

(3) An equity instrument acquired by a taxpayer is deemed for the purposes of this section to vest in that taxpayer— 40

(a) in the case of the acquisition of an unrestricted equity instrument, at the time of that acquisition; or

(b) in the case of the acquisition of a restricted equity instrument, at the earliest of—

(i) when all the restrictions, which result in that equity instrument being a restricted equity instrument, cease to have effect; 45

(ii) immediately before that taxpayer disposes of that restricted equity instrument, other than a disposal in respect of which subsection (4) or (5) applies;

(iii) when that equity instrument, which is an option contemplated in paragraph (a) of the definition of 'equity instrument', terminates; and 50

(iv) immediately before that taxpayer dies.

(4) (a) If a taxpayer disposes of a restricted equity instrument which was acquired in the manner contemplated in subsection (1) for a consideration which consists of or includes any other restricted equity instrument which is acquired from the employer, associated institution or other person by arrangement with the employer, that other restricted equity instrument acquired in exchange is deemed to be acquired by that taxpayer by virtue of his or her employment or office of director of any company. 55 60

- op 'n permanente basis by daardie werkgewer in diens is (en wat deurlopend aldus in diens was op 'n voltydse basis vir minstens een jaar), mag deelneem;
- (c) die werknemers wat die ekwiteitsaandeel verkry geregtig is op alle dividende en die volle stemreg met betrekking tot daardie ekwiteitsaandeel; en 5
- (d) geen beperkings wat met die beskikking oor daardie ekwiteitsaandeel verband hou geplaas is nie, behalwe—
- (i) 'n beperking by wetgewing opgelê;
 - (ii) 'n reg van enige persoon om daardie ekwiteitsaandeel van die werknemer te verkry teen markwaarde; of 10
 - (iii) 'n beperking ingevolge waarvan daardie werknemer nie oor daardie ekwiteitsaandeel mag beskik nie binne 'n tydperk wat nie langer as vyf jaar vanaf datum van toekenning mag wees nie; 15
- (4) Die bepalings van artikel 25 is nie van toepassing nie ten opsigte van enige bedrag ontvang of toegeval uit die beskikking oor enige kwalifiserende ekwiteitsaandeel na die datum van dood van die persoon in subartikel (1) bedoel.

Belasting van direkteure en werknemers by vestiging van ekwiteitsinstrumente 20

- 8C.** (1) (a) Ondanks artikel 9B en artikel 23(m), moet 'n belastingpligtige by sy inkomste vir 'n jaar van aanslag insluit of daarvan aftrek enige wins of verlies ingevolge subartikel (2) bepaal ten opsigte van die vestiging in daardie jaar van enige ekwiteitsinstrument, indien daardie ekwiteitsinstrument deur daardie belastingpligtige verkry is uit hoofde van sy of haar diens of amp as direkteur van 'n maatskappy. 25
- (b) Hierdie artikel is nie van toepassing nie ten opsigte van enige ekwiteitsinstrument wat—
- (i) verkry is in ruil vir die beskikking van enige ander ekwiteitsinstrument wat reeds voor daardie beskikking ingevolge hierdie artikel gevestig het; of 30
 - (ii) 'n kwalifiserende ekwiteitsaandeel in artikel 8B bedoel, uitmaak.
- (2) (a) Die wins wat by die inkomste van 'n belastingpligtige ingesluit moet word is— 35
- (i) in die geval van 'n beskikking in subartikel (5)(c) bedoel, die bedrag ten opsigte van daardie beskikking ontvang of toegeval wat die som van enige vergoeding ten opsigte van daardie ekwiteitsinstrument oorskry; of
 - (ii) in enige ander geval, die som van— 40
 - (aa) die bedrag waarby die markwaarde van die ekwiteitsinstrument, soos bepaal op die datum waarop dit in daardie belastingpligtige vestig, die som van enige vergoeding ten opsigte van daardie ekwiteitsinstrument oorskry; en
 - (bb) die bedrag (indien enige) ingevolge subartikel (4)(b) bepaal. 45
- (b) Die verlies wat van die inkomste van 'n belastingpligtige afgetrek moet word is—
- (i) in die geval van 'n beskikking in subartikel (5)(c) bedoel, die bedrag waarby die som van enige vergoeding ten opsigte van daardie ekwiteitsinstrument die bedrag ten opsigte van daardie beskikking ontvang of toegeval, oorskry; of 50
 - (ii) in enige ander geval, die bedrag waarby die vergoeding ten opsigte van daardie ekwiteitsinstrument die markwaarde van daardie ekwiteitsinstrument, soos bepaal op die datum wat dit in daardie belastingpligtige vestig, oorskry. 55
- (3) 'n Ekwiteitsinstrument wat deur 'n belastingpligtige verkry is word by die toepassing van hierdie artikel geag in daardie belastingpligtige te vestig—
- (a) in die geval van die verkryging van 'n onbeperkte ekwiteitsinstrument, op die tydstip van daardie verkryging; of 60

(b) If the consideration contemplated in paragraph (a) includes an amount other than restricted equity instruments and that amount exceeds the consideration in respect of the restricted equity instrument which is disposed of as contemplated in paragraph (a), the excess amount must be deemed to be a gain which must be included in the income of the taxpayer in the year of assessment during which that restricted equity instrument is so disposed of.

(5) (a) If a restricted equity instrument which was acquired by a taxpayer in the manner contemplated in subsection (1) is disposed of by that taxpayer to any person—

(i) otherwise than by or under a disposal made in terms of a transaction at arm's length; or

(ii) who is a connected person in relation to that taxpayer, the provisions of subsections (2), (3) and (4) apply *mutatis mutandis* in the determination of any gain or loss made by that person as if that person had been the taxpayer, and that gain or loss is for purposes of subsection (1) deemed to be made by that taxpayer in respect of the vesting of that equity instrument.

(b) If an equity instrument was acquired by any person other than the taxpayer by virtue of the taxpayer's employment or office of director, that equity instrument must, for purposes of this section, be deemed to have been so acquired by that taxpayer and disposed of to that person in the manner contemplated in paragraph (a).

(c) Paragraph (a) does not apply where a taxpayer disposes of any restricted equity instrument to his or her employer, an associated institution or other person by arrangement with the employer in terms of a restriction imposed in relation to that equity instrument for an amount not exceeding the consideration in respect of that restricted equity instrument.

(6) If a person who acquires a restricted equity instrument from the taxpayer as contemplated in subsection (5), disposes of that restricted equity instrument to any other person in the manner contemplated in subsection (5)(a)(i) or to a connected person in relation to the taxpayer, subsection (5) applies in respect of that other person as if he or she had acquired that restricted equity instrument directly from that taxpayer.

(7) For purposes of this section, unless the context otherwise indicates—
'associated institution' means an associated institution as contemplated in paragraph 1 of the Seventh Schedule;

'consideration' in respect of an equity instrument means any amount given or to be given (otherwise than in the form of services rendered or to be rendered or anything done, to be done or not to be done)—

(a) by the taxpayer in respect of that equity instrument;

(b) by the taxpayer in respect of any other restricted equity instrument which had been disposed of by that taxpayer in exchange for that equity instrument, reduced by any amount received or accrued in respect of that disposal which consisted of something other than that equity instrument to the extent that it has not been included in the income of the taxpayer in terms of subsection (4)(b); and

(c) by any person contemplated in subsection (5) in respect of that equity instrument or other equity instrument contemplated in paragraph (b), which would have been taken into account had it been given by the taxpayer in respect of that equity instrument or other equity instrument, but does not include any amount given or to be given by that person to the taxpayer or to any other person contemplated in subsection (5):

Provided that where a taxpayer acquires an equity instrument in exchange for any other equity instrument, as contemplated in subsection (4)(a), the market value of the equity instrument given in exchange must not be taken into account in determining the consideration in respect of the equity instrument so acquired;

'employer' means an employer as contemplated in paragraph 1 of the Seventh Schedule;

(b) in die geval van die verkryging van 'n beperkte ekwiteitsinstrument, die vroegste van—

- (i) wanneer al die beperkings wat daartoe aanleiding gee dat daardie ekwiteitsinstrument 'n beperkte ekwiteitsinstrument is, nie langer van krag is nie;
- (ii) onmiddellik voor daardie belastingpligtige oor daardie beperkte ekwiteitsinstrument beskik, behalwe 'n beskikking ten opsigte waarvan subartikel (4) or (5) van toepassing is;
- (iii) wanneer daardie ekwiteitsinstrument, wat 'n opsie in paragraaf (a) van die omskrywing van 'ekwiteitsinstrument' bedoel uitmaak, beëindig word; en
- (iv) onmiddellik voor daardie belastingpligtige te sterwe kom.

(4)(a) Indien 'n belastingpligtige oor 'n beperkte ekwiteitsinstrument beskik wat op die wyse in subartikel (1) bedoel, verkry is vir vergoeding wat bestaan uit of insluit enige ander beperkte ekwiteitsinstrument wat van die werkgever, verwante inrigting of ander persoon in ooreenkoms met die werkgever verkry is, word daardie ander beperkte ekwiteitsinstrument wat in ruil verkry word geag deur daardie belastingpligtige verkry te wees uit hoofde van sy of haar diens of amp as direkteur van 'n maatskappy.

(b) Indien die vergoeding in paragraaf (a) bedoel 'n bedrag anders as 'n beperkte ekwiteitsinstrument insluit en daardie bedrag oorskry die vergoeding ten opsigte van die beperkte ekwiteitsinstrument waaroor beskik is soos in paragraaf (a) bedoel, word die oorskotbedrag geag 'n wins te wees wat by die inkomste van die belastingpligtige vir die jaar van aanslag waarin daar aldus oor daardie beperkte ekwiteitsinstrument beskik is, ingesluit moet word.

(5)(a) Indien 'n beperkte ekwiteitsinstrument deur 'n belastingpligtige op die wyse in subartikel (1) bedoel verkry, deur daardie belastingpligtige oor beskik word aan enige persoon—

- (i) anders as by wyse van of kragtens 'n beskikking wat ingevolge 'n transaksie onder uiterste voorwaardes beding, gemaak is; of
- (ii) wat 'n verbonde persoon met betrekking tot daardie belastingpligtige is,

is die bepalinge van subartikels (2), (3) en (4) *mutatis mutandis* van toepassing by die vasstelling van enige wins of verlies van daardie persoon asof daardie persoon die belastingpligtige was, en daardie wins of verlies word by die toepassing van subartikel (1) geag die van die belastingpligtige te wees ten opsigte van die vestiging van daardie ekwiteitsinstrument.

(b) Indien 'n ekwiteitsinstrument verkry word deur 'n persoon anders as die belastingpligtige, uit hoofde van die belastingpligtige se diens of amp as direkteur, word daardie ekwiteitsinstrument by die toepassing van hierdie artikel geag aldus deur daardie belastingpligtige verkry en oor beskik te gewees het aan daardie persoon op die wyse in paragraaf (a) bedoel.

(c) Paragraaf (a) is nie van toepassing nie waar 'n belastingpligtige ingevolge 'n beperking wat ten opsigte van daardie ekwiteitsinstrument opgelê is, oor 'n beperkte ekwiteitsinstrument aan sy of haar werkgever, verwante inrigting of ander persoon in ooreenkoms met die werkgever beskik vir 'n bedrag wat nie die vergoeding ten opsigte van daardie beperkte ekwiteitsinstrument oorskry nie.

(6) Indien 'n persoon wat 'n beperkte ekwiteitsinstrument van die belastingpligtige verkry soos in subartikel (5) bedoel, oor daardie beperkte ekwiteitsinstrument beskik aan 'n ander persoon op die wyse in subartikel (5)(a)(i) bedoel of aan 'n verbonde persoon met betrekking tot die belastingpligtige, is subartikel (5) van toepassing ten opsigte van daardie ander persoon asof hy of sy daardie beperkte ekwiteitsinstrument direk van die belastingpligtige verkry het.

(7) By die toepassing van hierdie artikel, tensy uit die samehang anders blyk, beteken—

'beperkte ekwiteitsinstrument' met betrekking tot 'n belastingpligtige, 'n ekwiteitsinstrument—

(a) wat aan enige beperking (behalwe 'n beperking by wyse van wetgewing opgelê) onderhewig is, ingevolge waarvan die belasting-

'equity instrument' means a share or part thereof in the equity share capital of a company or a member's interest in a company which is a close corporation, and includes—

- (a) an option to acquire such a share, part of a share or member's interest; and
- (b) any other financial instrument that is convertible to a share, part of a share or member's interest;

'market value' in relation to an equity instrument means the price which could be obtained upon the sale of that equity instrument between a willing buyer and a willing seller dealing freely at arm's length in an open market and, in the case of a restricted equity instrument, had the restriction to which that equity instrument is subject not existed;

'restricted equity instrument' in relation to a taxpayer means an equity instrument—

- (a) which is subject to any restriction (other than a restriction imposed by legislation) that prevents the taxpayer from freely disposing of that equity instrument at market value;
- (b) which is subject to any restriction that could result in the taxpayer forfeiting ownership of that equity instrument otherwise than at market value;
- (c) if any person has retained the right to impose a restriction contemplated in paragraph (a) or (b) on the disposal of that equity instrument;
- (d) which is an option contemplated in paragraph (a) of the definition of 'equity instrument' and where the equity instrument which can be acquired in terms of that option will be a restricted equity instrument;
- (e) which is a financial instrument contemplated in paragraph (b) of the definition of 'equity instrument' and where the equity instrument to which that financial instrument can be converted will be a restricted equity instrument; or
- (f) if the employer, associated institution in relation to the employer or other person by arrangement with the employer has at the time of acquisition by the taxpayer of the equity instrument undertaken to—
 - (i) cancel the transaction under which that taxpayer acquired the equity instrument; or
 - (ii) repurchase that equity instrument from that taxpayer at a price exceeding its market value on the date of repurchase, if there is a decline in the value of the equity instrument after that acquisition; and

- pligtige verhoed word om vryelik oor daardie ekwiteitsinstrument teen markwaarde te beskik;
- (b) wat aan 'n beperking onderhewig is wat daartoe aanleiding kan gee dat die belastingpligtige eienaarskap in daardie ekwiteitsinstrument verloor anders as teen markwaarde; 5
- (c) indien enige persoon die reg voorbehou om 'n beperking in paragraaf (a) of (b) bedoel met betrekking tot die beskikking oor daardie ekwiteitsinstrument op te lê;
- (d) wat 'n opsie in paragraaf (a) van die omskrywing van 'ekwiteitsinstrument' uitmaak en waar die ekwiteitsinstrument wat ingevolge daardie opsie verkry kan word 'n beperkte ekwiteitsinstrument sal uitmaak; 10
- (e) wat 'n finansiële instrument in paragraaf (b) van die omskrywing van 'ekwiteitsinstrument' uitmaak en waar die ekwiteitsinstrument waarin daardie finansiële instrument omgeskakel kan word 'n beperkte ekwiteitsinstrument sal uitmaak; of 15
- (f) indien die werkgewer, verwante inrigting met betrekking tot die werkgewer of ander persoon in ooreenkoms met die werkgewer op die tydstip wat die belastingpligtige die ekwiteitsinstrument verkry, onderneem het om— 20
- (i) die transaksie waarkragtens daardie belastingpligtige die ekwiteitsinstrument verkry, te kanselleer; of
- (ii) daardie ekwiteitsinstrument van die belastingpligtige terug te koop teen 'n prys wat die markwaarde op die datum van terugkoop oorskry, 25
- in die geval van 'n afname in die waarde van die ekwiteitsinstrument na daardie verkryging;
- 'ekwiteitsinstrument' 'n aandeel of deel daarvan in die ekwiteitsaandelekapitaal van 'n maatskappy of 'n ledebelang in 'n maatskappy wat 'n beslote korporasie is, en sluit in— 30
- (a) 'n opsie om so 'n aandeel, deel van 'n aandeel of ledebelang te verkry; en
- (b) enige ander finansiële instrument wat omgeskakel kan word in 'n aandeel, deel van 'n aandeel of ledebelang; 'markwaarde' met betrekking tot 'n ekwiteitsinstrument, die prys wat by verkoop van daardie ekwiteitsinstrument tussen 'n gewillige koper en gewillige verkoper wat in 'n ope mark onder uiterste voorwaardes beding, verkry kan word en, in die geval van 'n beperkte ekwiteitsinstrument, indien die beperking waaraan daardie ekwiteitsinstrument onderhewig is, nie bestaan het nie; 'onbeperkte ekwiteitsinstrument' 'n ekwiteitsinstrument wat nie 'n beperkte ekwiteitsinstrument is nie; 'vergoeding' ten opsigte van 'n ekwiteitsinstrument, enige bedrag gegee of wat gegee moet word (behalwe in die vorm van dienste gelewer of wat gelewer moet word, of enigiets gedoen, wat gedoen moet word of nie gedoen moet word nie)— 35
- (a) deur die belastingpligtige ten opsigte van daardie ekwiteitsinstrument;
- (b) deur die belastingpligtige ten opsigte van enige ander beperkte ekwiteitsinstrument waaroor daardie belastingpligtige in ruil vir daardie ekwiteitsinstrument beskik het, verminder deur enige bedrag ten opsigte van daardie beskikking ontvang of toegeval wat uit iets anders as daardie ekwiteitsinstrument bestaan, in die mate wat dit nie ingevolge subartikel (4)(b) by die inkomste van die belastingpligtige ingesluit is nie; en 40
- (c) deur enige ander persoon in subartikel (5) bedoel ten opsigte van daardie ekwiteitsinstrument of enige ander ekwiteitsinstrument in paragraaf (b) bedoel, wat in berekening gebring sou word indien dit deur die belastingpligtige ten opsigte van daardie ekwiteitsinstrument of ander ekwiteitsinstrument gegee is, maar sluit nie in nie enige bedrag gegee of wat deur daardie persoon aan die belastingpligtige of aan enige ander persoon in subartikel (5) bedoel gegee moet word: 45
- Met dien verstande dat waar 'n belastingpligtige 'n ekwiteitsinstrument in ruil vir enige ander ekwiteitsinstrument verkry, soos in subartikel (4)(a) bedoel, word die markwaarde van die ekwiteitsinstrument in ruil gegee nie in berekening gebring nie by die bepaling van die vergoeding ten opsigte van die ekwiteitsinstrument aldus verkry; 50

‘unrestricted equity instrument’ means an equity instrument which is not a restricted equity instrument.

(2) Subsection (1) shall come into operation on 26 October 2004 and applies—

- (a) to the extent it inserts section 8B, in respect of any qualifying equity share acquired in terms of a broad-based employee share plan approved on or after that date by the directors or some other person or body of persons with comparable authority conferred under or by virtue of the memorandum and articles of association of the company; and
- (b) to the extent it inserts section 8C, in respect of any equity instrument acquired on or after that date, otherwise than by way of the exercise of any right granted before that date and in respect of which section 8A applies.

Amendment of section 8E of Act 58 of 1962, as inserted by section 6 of Act 70 of 1989 and amended by section 19 of Act 45 of 2003

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

- (a) by the deletion in subsection (1) of the definition of “affected instrument”;
- (b) by the insertion in subsection (1) of the following definition before the definition of “effective date”:

“‘date of issue’ in relation to a share in a company means—

- (a) the date on which it is issued by that company;
- (b) the date on which the holder at any time after the share is issued acquires a right of disposal in respect of that share, otherwise than as a result of the acquisition of that share by that holder;
- (c) the date on which the company at any time after the share is issued undertakes the obligation to redeem that share in whole or in part; and
- (d) the date on which the holder at any time after the share is issued obtains the right to require that share to be redeemed in whole or in part, otherwise than as a result of the acquisition of that share by that holder.”;

- (c) by the insertion in subsection (1) of the following definition after the definition of “effective date”:

“‘hybrid equity instrument’ means—

- (a) any redeemable preference share which the relevant company is obliged to redeem in whole or in part within a period of three years from the date of issue thereof, or which may at the option of the holder be redeemed in whole or in part within the said period, or in respect of which the holder has a right of disposal which may be exercised within the said period; or
- (b) any other share, if—
 - (i) the holder has a right of disposal in respect of such share which may be exercised within a period of three years from the date of issue thereof or at the time of issue of that share, the existence of the company issuing that share is to be terminated within a period of three years or is likely to be terminated within such period upon a reasonable consideration of all the facts at the time that share is issued; and
 - (ii) such share does not rank *pari passu* as regards its participation in dividends with all other ordinary shares in the capital of the relevant company or, where the ordinary shares in such company are divided into two or more classes, with the shares of at least one of such classes, or any dividend payable on such share is to be calculated directly or indirectly with reference to—
 - (aa) any specified rate of interest;
 - (bb) the amount of capital subscribed for such share; or

‘verwante inrigting’ ’n verwante inrigting soos in paragraaf 1 van die Sewende Bylae bedoel; en

‘werkgever’ ’n werkgever soos in paragraaf 1 van die Sewende Bylae bedoel.”.

- (2) Subartikel (1) tree op 26 Oktober 2004 in werking en is van toepassing— 5
- (a) in die mate wat dit artikel 8B invoeg, ten opsigte van enige kwalifiserende ekwiteitsaandeel verkry ingevolge ’n uitgebreide werknemersaandeelplan wat op of na daardie datum deur die direkteur of ander persoon of liggaam van persone met soortgelyke magtiging verleen kragtens of uit hoofde van die akte van oprigting en statute van die maatskappy, goedgekeur; en 10
- (b) in die mate wat dit artikel 8C invoeg, ten opsigte van enige ekwiteitsinstrument op of na daardie datum verkry, anders as by wyse van die uitoefening van enige reg wat voor daardie datum verleen is en ten opsigte waarvan artikel 8A van toepassing is.

Wysiging van artikel 8E van Wet 58 van 1962, soos ingevoeg deur artikel 6 van Wet 70 van 1989 en gewysig deur artikel 19 van Wet 45 van 2003 15

9. (1) Artikel 8E van die Inkomstebelastingwet, 1962, word hierby gewysig—
- (a) deur die volgende omskrywing voor die omskrywing van “effektiewe datum” in subartikel (1) in te voeg:
- “ ‘datum van uitreiking’ met betrekking tot ’n aandeel in ’n maatskappy— 20
- (a) die datum waarop dit deur daardie maatskappy uitgereik is;
- (b) die datum waarop die houer op enige tydstop na die aandeel uitgereik is ’n reg van beskikking ten opsigte van daardie aandeel verkry, anders as weens die verkryging van daardie aandeel deur daardie houer;
- (c) die datum waarop die maatskappy op enige tydstop na die aandeel uitgereik is, die verpligting onderneem om daardie aandeel in geheel of gedeeltelik af te los; en 25
- (d) die datum waarop die houer op enige tydstop na die aandeel uitgereik is die reg verkry om te vereis dat daardie aandeel in geheel of gedeeltelik afgelos word, anders as weens die verkryging van daardie aandeel deur daardie houer;”;
- (b) deur die omskrywing van “geaffekteerde stuk” in subartikel (1) te skrap;
- (c) deur die volgende omskrywing voor die omskrywing van “verkrygingsreg” in subartikel (1) in te voeg:
- “ ‘hibriede ekwiteitsinstrument— 35
- (a) enige aflosbare voorkeuraandeel wat die betrokke maatskappy verplig is om in geheel of gedeeltelik af te los binne ’n tydperk van drie jaar vanaf die datum van uitreiking daarvan, of wat volgens keuse van die houer in geheel of gedeeltelik binne daardie tydperk afgelos kan word, of ten opsigte waarvan die houer ’n reg van beskikking het wat binne daardie tydperk uitgeoefen kan word; of 40
- (b) enige ander aandeel, indien—
- (i) die houer oor ’n reg van beskikking ten opsigte van daardie aandeel beskik wat binne ’n tydperk van drie jaar vanaf die datum van uitreiking daarvan uitgeoefen kan word of op die tydstop van uitreiking van daardie aandeel, die bestaan van die maatskappy wat daardie aandeel uitreik binne ’n tydperk van drie jaar beëindig sal word of, na redelike oorweging van al die feite op die tydstop wat daardie aandeel uitgereik is, waarskynlik beëindig sal word binne daardie tydperk; en 50
- (ii) daardie aandeel nie in gelyke mate staan nie wat betref sy aandeel in dividende met alle ander gewone aandele in die kapitaal van die betrokke maatskappy of, waar die gewone aandele in daardie maatskappy in twee of meer klasse verdeel is, met die aandele van minstens een van daardie klasse, of enige dividend betaalbaar ten opsigte van daardie aandele bereken moet word direk of indirek met verwysing na— 55
- (aa) ’n gespesifiseerde rentekoers;
- (bb) die bedrag van kapitaal ingeskryf ten aansien van daardie aandeel; of 60

- (cc) the amount of any loan or advance made directly or indirectly by the shareholder or by any connected person in relation to the shareholder;”;
- (d) by the substitution in subsection (1) of the definition of “right of acquisition” of the following definition: 5
- “ ‘right of **[acquisition]** disposal’ means a right which the holder of an **[affected]** hybrid equity instrument has to require any party—
- (a) to acquire **[such affected]** that hybrid equity instrument from **[such]** that holder; or
- (b) to procure, facilitate or assist with the redemption in whole or in part of **[such affected]** that hybrid equity instrument or the repayment in whole or in part of the capital subscribed for **[such affected]** that hybrid equity instrument or the conversion of **[such affected]** that hybrid equity instrument into any other share which is redeemable in whole or in part within a period of three years from the date of issue thereof.”; 10 15
- (e) by the substitution for subsection (2) of the following subsection:
- “(2) **[Subject to the provisions of subsections (3) and (4), any]** Any dividend declared by a company on **[an affected instrument]**, a hybrid equity instrument which is declared on or after the date that the share becomes a hybrid equity instrument, shall for the purposes of this Act be deemed in relation to the recipient thereof only to be an amount of interest received by him from a source within the Republic.”; and 20
- (f) by the deletion of subsections (3) and (4).
- (2) Subsection (1) shall come into operation on 26 October 2004 and shall apply in respect of any instrument issued or acquired during any year of assessment commencing on or after that date. 25

Insertion of section 8F in Act 58 of 1962

10. (1) The following section is hereby inserted in the Income Tax Act, 1962, after section 8E: 30

“Limitation of deduction of certain interest payments

8F. (1) For purposes of this section, unless the context otherwise indicates, any word to which a meaning has been ascribed in section 24J bears the meaning so ascribed, and—

‘date of issue’ in relation to an instrument means— 35

(a) the date on which it is issued; and

(b) the date on which that instrument becomes convertible into or exchangeable for a share at any time in the future;

‘hybrid debt instrument’ means an instrument, where—

(a) that instrument is at the option of the issuer convertible into or exchangeable for any share in that issuer or any connected person in relation to that issuer within three years from the date of issue of that instrument; 40

(b) the issuer in relation to that instrument is entitled to repay that instrument in whole or in part within three years from the date of issue of that instrument by the issue of shares by the issuer or any connected person in relation to the issuer to the holder of the instrument; 45

(c) the issuer in relation to that instrument is entitled to repay that instrument in whole or in part within three years from the date of issue of that instrument and is entitled at the time of that repayment to 50

- (cc) die bedrag van enige lening of voorskot direk of indirek deur die aandeelhouer of deur 'n verbonde persoon met betrekking tot die aandeelhouer gemaak”;
- (d) deur die omskrywing van “verkrygingsreg” in subartikel (1) deur die volgende omskrywing te vervang:
- “[verkrygingsreg] reg van beskikking’ ’n reg wat die houer van ’n [geaffekteerde stuk] hibriede ekwiteitsinstrument het om van ’n party te vereis—
- (a) om [bedoelde geaffekteerde stuk] daardie hibriede ekwiteitsinstrument van die houer te verkry; of
- (b) om die aflossing, in die geheel of gedeeltelik, van [bedoelde geaffekteerde stuk] daardie hibriede ekwiteitsinstrument of die terugbetaling in die geheel of gedeeltelik van die kapitaal ingeskryf op [bedoelde geaffekteerde stuk] daardie hibriede ekwiteitsinstrument of die omskepping van [bedoelde geaffekteerde stuk] daardie hibriede ekwiteitsinstrument in ’n ander aandeel wat in die geheel of gedeeltelik binne ’n tydperk van drie jaar vanaf die datum van uitreiking daarvan aflosbaar is, te bewerkstellig, vergemaklik of ondersteun.”;
- (e) deur subartikel (2) deur die volgende subartikel te vervang:
- “(2) [Behoudens die bepalinge van subartikels (3) en (4), word] ’n Dividend deur ’n maatskappy op ’n [geaffekteerde stuk] hibriede ekwiteitsinstrument verklaar wat verklaar word op of na die datum waarop daardie aandeel ’n hibriede ekwiteitsinstrument word, word by die toepassing van hierdie Wet geag met betrekking tot die ontvanger daarvan alleenlik ’n bedrag aan rente te wees wat uit ’n bron binne die Republiek deur hom ontvang is.”; en
- (f) deur subartikels (3) en (4) te skrap.
- (2) Subartikel (1) tree op 26 Oktober 2004 in werking en is van toepassing ten opsigte van enige instrument gedurende enige jaar van aanslag wat op of na daardie datum ’n aanvang neem uitgereik of verkry.

Invoeging van artikel 8F in Wet 58 van 1962

10. (1) Die volgende artikel word hierby in die Inkomstebelastingwet, 1962, na artikel 8E ingevoeg:

“Beperking van aftrekking van sekere rente betalings

8F. (1) By die toepassing van hierdie artikel, tensy uit die samehang anders blyk, dra enige woord waaraan ’n betekenis in artikel 24J geheg is die betekenis aldus daaraan geheg, en beteken—

- ‘datum van uitreiking’ met betrekking tot ’n instrument—
- (a) die datum waarop dit uitgereik is; en
- (b) die datum waarop daardie instrument omskakelbaar word in of omruilbaar word vir ’n aandeel op enige tydstip in die toekoms;
- ‘hibriede skuldinstrument, ’n instrument waar—
- (a) daardie instrument volgens keuse van die uitreiker omskakelbaar is in of omruilbaar is vir enige aandeel in daardie uitreiker of ’n verbonde persoon met betrekking tot daardie uitreiker binne drie jaar vanaf die datum van uitreiking van daardie instrument;
- (b) die uitreiker met betrekking tot daardie instrument geregtig is om daardie instrument in geheel of gedeeltelik terug te betaal binne drie jaar vanaf die datum van uitreiking van daardie instrument deur die uitreiking van aandeel deur die uitreiker of enige verbonde persoon met betrekking tot die uitreiker aan die houer van die instrument;
- (c) die uitreiker met betrekking tot daardie instrument geregtig is om daardie instrument in geheel of gedeeltelik terug te betaal binne drie jaar vanaf die datum van uitreiking van daardie instrument en op die tydstip van daardie terugbetaling geregtig is om van die houer van die instrument te vereis om vir aandeel in die uitreiker of enige verbonde

- require the holder of that instrument to subscribe for or acquire shares in the issuer or any connected person in relation to the issuer; or
- (d) that instrument, other than a listed instrument issued by a listed company, is at the option of the holder convertible into or exchangeable for any share in the issuer or any connected person in relation to the issuer within three years from the date of issue and it is determined on the date of issue that the value of that share at the time of conversion or exchange is likely to exceed the value of the instrument by at least 20 per cent.
- (2) No deduction shall be allowed in terms of this Act in respect of any amount paid or payable by an issuer in terms of a hybrid debt instrument, which is paid or becomes payable after that instrument becomes a hybrid debt instrument.”

(2) Subsection (1) shall come into operation on 26 October 2004 and shall apply in respect of any instrument issued or transferred to an issuer during any year of assessment commencing 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, section 7 of Act 59 of 2000, section 12 of Act 74 of 2002 and section 20 of Act 45 of 2003

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

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

“(cA) any contract made by such person for the disposal of any mineral (including natural oil) won by him or her in the course of mining operations carried on by him or her under any—

(i) mining authorization granted under the Minerals Act, 1991 (Act No. 50 of 1991); or

(ii) prospecting right, mining right, exploration right or production right or mining permit issued in terms of the Mineral and Petroleum Resources Development Act, 2002 (Act No. 28 of 2002),

wheresoever such contract was made or such mining operations were carried on;”;

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

“(fA) any services rendered by **[such]** that person to, or work or labour done by **[such]** that person for, any other person upon, beneath or above the continental shelf referred to in section 8 of the Maritime Zones Act, 1994 (Act No. 15 of 1994), in the course of any operations connected with operations carried on by any person under any—

(i) prospecting permit or mining authorization issued or which may be issued under the Minerals Act, 1991 (Act No. 50 of 1991); **[or]**

(ii) **[any]** prospecting or mining lease granted under the Mining Rights Act, 1967 (Act No. 20 of 1967), or under any sublease granted or which may be granted under any such lease; or

(iii) prospecting right, mining right, exploration right or production right, mining permit, retention permit or reconnaissance permission issued in terms of the Mineral and Petroleum Resources Development Act, 2002 (Act No. 28 of 2002),

persoon met betrekking tot die uitreiker in te skryf of daardie aandeel te verkry; of

- (d) daardie instrument, behalwe 'n genoteerde instrument deur 'n genoteerde maatskappy uitgereik, volgens keuse van die houer omskakelbaar is in of omruilbaar is vir enige aandeel in die uitreiker of enige verbonde persoon met betrekking tot die uitreiker binne drie jaar vanaf die datum van uitreiking en op die datum van uitreiking vasgestel word dat die waarde van daardie aandeel op die tydstip van omskakeling of omruiling waarskynlik die waarde van die instrument met minstens 20 persent sal oorskry.

(2) Geen aftrekking word ingevolge hierdie Wet toegelaat nie ten opsigte van enige bedrag deur 'n uitreiker betaal of betaalbaar ingevolge 'n hibriede skuldinstrument, wat betaal is of betaalbaar word na daardie instrument 'n hibriede skuldinstrument word.”.

(2) Subartikel (1) tree in werking op 26 Oktober 2004 en is van toepassing ten opsigte van enige instrument uitgereik of oorgeplaas aan 'n uitreiker gedurende enige jaar van aanslag wat op of na daardie datum 'n aanvang neem.

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, artikel 7 van Wet 59 van 2000, artikel 12 van Wet 74 van 2002 en artikel 20 van Wet 45 van 2003

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

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

“(cA) 'n kontrak deur so iemand aangegaan vir die vandiehandsetting van enige mineraal (met inbegrip van aardolie) deur hom of haar gewin in die loop van mynbouwerkzaamhede wat deur hom of haar voortgesit word kragtens—

(i) 'n ontginningsmagtiging ingevolge die Mineraalwet, 1991 (Wet 50 van 1991), toegeken; of

(ii) 'n 'prospecting right', 'mining right', 'exploration right' of 'production right' of 'mining permit' uitgereik kragtens die 'Mineral and Petroleum Resources Development Act, 2002' (Wet No. 28 van 2002),

[deur hom voortgesit is,] ongeag waar bedoelde kontrak aangegaan is of bedoelde mynbouwerkzaamhede voortgesit is;”;

- (b) deur paragraaf (fA) van subartikel (1) deur die volgende paragraaf te vervang:

“(fA) enige dienste deur [so iemand] daardie persoon aan 'n ander persoon bewys, of werk of arbeid deur [so iemand] daardie persoon vir 'n ander persoon verrig, op, onder of bo die vastelandsplat bedoel in artikel 8 van die Wet op Maritieme Sones, 1994 (Wet No. 15 van 1994), in die loop van enige werkzaamhede wat verband hou met werkzaamhede wat deur enige persoon voortgesit word kragtens—

(i) 'n prospekteepermit of ontginningsmagtiging wat ingevolge die Mineraalwet, 1991 (Wet No. 50 van 1991), toegeken is of toegeken mag word; [of]

(ii) [kragtens] 'n prospektee- of mynhuur wat ingevolge die Wet op Mynregte, 1967 (Wet 20 van 1967), toegeken is, of wat kragtens 'n onderhuur ingevolge so 'n huur toegeken is of toegeken mag word [, deur enige persoon voortgesit word,]; of

(iii) 'n 'prospecting right', 'mining right', 'exploration right' of 'production right', 'mining permit', 'retention permit' of 'reconnaissance permission' uitgereik kragtens die 'Mineral and Petroleum Resources Development Act, 2002' (Wet No. 28 van 2002),

wheresoever payment for such services or work or labour is or is to be made;”.

(2) Subsection (1) is deemed to have come into operation on the date that the Mineral and Petroleum Resources Development Act, 2002, came into operation.

Amendment of section 9B of Act 58 of 1962, as inserted by section 9 of Act 101 of 1990 and amended by section 11 of Act 129 of 1991, section 9 of Act 141 of 1992, section 6 of Act 113 of 1993, section 7 of Act 36 of 1996, section 26 of Act 30 of 1998, section 16 of Act 53 of 1999 and section 21 of Act 45 of 2003

12. (1) Section 9B of the Income Tax Act, 1962, is hereby amended by the substitution in subsection (1) for the words preceding the proviso of the following words:

“(1) For the purposes of this section ‘affected share’, in relation to any taxpayer, means a listed share in a [listed on a stock exchange as defined in the Stock Exchanges Control Act, 1985 (Act No. 1 of 1985)] company as contemplated in paragraph (a) of the definition of ‘listed company’, which has been disposed of by the taxpayer who immediately prior to such disposal had been the owner of such share as a listed share for a continuous period of at least five years:”.

(2) Subsection (1) shall come into operation on the date that the Securities Services Act, 2004, comes into operation.

Amendment of section 9D of Act 58 of 1962, as inserted by section 9 of Act 28 of 1997 and amended by section 28 of Act 30 of 1998, section 17 of Act 53 of 1999, section 19 of Act 30 of 2000, section 10 of Act 59 of 2000, section 9 of Act 5 of 2001 and section 22 of Act 60 of 2001 and substituted by section 14 of Act 74 of 2002 and amended by section 22 of Act 45 of 2003

13. (1) Section 9D of the Income Tax Act, 1962, is hereby amended by the substitution in subsection (2A) for the words preceding the proviso of the following words:

“(2A) For the purposes of this section the ‘net income’ of a controlled foreign company in respect of a foreign tax year is an amount equal to the taxable income of that company determined in accordance with the provisions of this Act as if that controlled foreign company had been a taxpayer, and as if that company had been a resident for purposes of the definition of ‘gross income’, sections 7(8), 10(1)(h), [10(1)(hA),] 25B and paragraphs 2(1)(a), 12, 24, 70, 71, 72 and 80 of the Eighth Schedule:”.

(2) Subsection (1) shall come into operation on 1 January 2005 and shall apply in respect of any foreign tax year which ends during a year of assessment of a resident ending on or after that date.

Amendment of section 10 of Act 58 of 1962, as amended by section 8 of Act 90 of 1962, section 7 of Act 72 of 1963, section 8 of Act 90 of 1964, section 10 of Act 88 of 1965, section 11 of Act 55 of 1966, section 10 of Act 95 of 1967, section 8 of Act 76 of 1968, section 13 of Act 89 of 1969, section 9 of Act 52 of 1970, section 9 of Act 88 of 1971, section 7 of Act 90 of 1972, section 7 of Act 65 of 1973, section 10 of Act 85 of 1974, section 8 of Act 69 of 1975, section 9 of Act 103 of 1976, section 8 of Act 113 of 1977, section 4 of Act 101 of 1978, section 7 of Act 104 of 1979, section 7 of Act 104 of 1980, section 8 of Act 96 of 1981, section 6 of Act 91 of 1982, section 9 of Act 94 of 1983, section 10 of Act 121 of 1984, section 6 of Act 96 of 1985, section 7 of Act 65 of 1986, section 3 of Act 108 of 1986, section 9 of Act 85 of 1987, section 7 of Act 90 of 1988, section 36 of Act 9 of 1989, section 7 of Act 70 of 1989, section 10 of Act 101 of 1990, section 12 of Act 129 of 1991, section 10 of Act 141 of 1992, section 7 of Act 113 of 1993, section 4 of Act 140 of 1993, section 9 of Act 21 of 1994, section 10 of Act 21 of 1995, section 8 of Act 36 of 1996, section 9 of Act 46 of 1996, section 10 of Act 28 of 1997, section 29 of Act 30 of 1998, section 18 of Act 53 of 1999, section 21 of Act 30 of 2000, section 13 of Act 59 of 2000, sections 9 and 78 of Act 19 of 2001, section 26 of Act 60 of 2001, section 13 of Act 30 of 2002, section 18 of Act 74 of 2002,

ongeag waar betaling vir sodanige dienste of werk of arbeid geskied of moet geskied;”.

(2) Subartikel (1) word geag in werking te getree het op die datum wat die “Mineral and Petroleum Resources Development Act, 2002”, in werking getree het.

Wysiging van artikel 9B van Wet 58 van 1962, soos ingevoeg deur artikel 9 van Wet 101 van 1990 en gewysig deur artikel 11 van Wet 129 van 1991, artikel 9 van Wet 141 van 1992, artikel 6 van Wet 113 van 1993, artikel 7 van Wet 36 van 1996, artikel 26 van Wet 30 van 1998, artikel 16 van Wet 53 van 1999 en artikel 21 van Wet 45 van 2003 5

12. (1) Artikel 9B van die Inkomstebelastingwet, 1962, word hierby gewysig deur die woorde in subartikel (1) wat die voorbehoudsbepaling voorafgaan deur die volgende woorde te vervang: 10

“(1) By die toepassing van hierdie artikel beteken ‘geaffekteerde aandeel’, met betrekking tot enige belastingpligtige, ’n genoteerde aandeel [wat op ’n aandeelbeurs soos in die Wet op Beheer van Aandeelbeurse, 1985 (Wet 1 van 1985), omskryf, genoteer is] in ’n maatskappy in paragraaf (a) van die omskrywing van ’genoteerde maatskappy’ bedoel, wat deur die belastingpligtige vervreem is wat onmiddellik voor bedoelde vervreemding die eienaar van bedoelde aandeel as ’n genoteerde aandeel vir ’n ononderbroke tydperk van ten minste vyf jaar was:”.

(2) Subartikel (1) tree in werking op die datum wat die “Securities Services Act, 2004”, in werking tree. 20

Wysiging van artikel 9D van Wet 58 van 1962, soos ingevoeg deur artikel 9 van Wet 28 van 1997 en gewysig deur artikel 28 van Wet 30 van 1998, artikel 17 van Wet 53 van 1999, artikel 19 van Wet 30 van 2000, artikel 10 van Wet 59 van 2000, artikel 9 van Wet 5 van 2001 en artikel 22 van Wet 60 van 2001 en substituted by artikel 14 van Wet 74 van 2002 en artikel 22 van Wet 45 van 2003 25

13. (1) Artikel 9D van die Inkomstebelastingwet, 1962, word hierby gewysig deur die woorde in subartikel (2A) wat die voorbehoudsbepaling voorafgaan deur die volgende woorde te vervang: 30

“(2A) By die toepassing van hierdie artikel is die ‘netto inkomste’ van ’n beheerde buitelandse maatskappy ten opsigte van ’n buitelandse belastingjaar ’n bedrag gelyk aan die belasbare inkomste van daardie maatskappy ingevolge die bepaling van hierdie Wet bepaal asof daardie beheerde buitelandse maatskappy ’n belastingpligtige was, en asof daardie maatskappy ’n inwoner was vir doeleindes van die woordskrywing van ‘bruto inkomste’, artikels 7(8), 10(1)(h), [10(1)(hA)], 25B en paragrafe 2(1)(a), 12, 24, 70, 71, 72 en 80 van die Agtste Bylae:”.

(2) Subartikel (1) tree op 1 Januarie 2005 in werking en is van toepassing ten opsigte van enige buitelandse belastingjaar wat eindig gedurende ’n jaar van aanslag van ’n inwoner wat op of na daardie datum eindig. 40

Wysiging van artikel 10 van Wet 58 van 1962, soos gewysig deur artikel 8 van Wet 90 van 1962, artikel 7 van Wet 72 van 1963, artikel 8 van Wet 90 van 1964, artikel 10 van Wet 88 van 1965, artikel 11 van Wet 55 van 1966, artikel 10 van Wet 95 van 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 45 50 55

section 36 of Act 12 of 2003, section 26 of Act 45 of 2003 and section 8 of Act 16 of 2004

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

- (a) by the substitution in subsection (1) for subparagraph (iii) of paragraph (d) of the following subparagraph: 5
- “(iii) mutual loan association, fidelity or indemnity fund, trade union, chamber of commerce or industries (or an association of such chambers) or local publicity association [or non-proprietary stock exchange] approved by the Commissioner subject to such conditions as the Minister may prescribe by regulation; or”; 10
- (b) by the substitution in subsection (1) for paragraph (h) of the following paragraph: 10
- “(h) interest which is received or accrued during any year of assessment by or to any person who is not a resident, unless that person— 15
- (i) is a natural person who was physically present in the Republic for a period exceeding 183 days in aggregate during that year; or 15
- (ii) at any time during that year carried on business through a permanent establishment in the Republic, 20
- and for purposes of this paragraph, so much of any dividend distributed to that person by a portfolio of a collective investment scheme referred to in paragraph (e)(i) of the definition of ‘company’ in section 1 out of income derived by that portfolio which is exempt from tax in the hands of that portfolio under paragraph (iA), is deemed to be interest;”; 20
- (c) by the deletion in subsection (1) of paragraph (hA). 25
- (d) by the insertion in subsection (1) after paragraph (nB) of the following paragraph: 25
- “(nC) any amount received by or accrued to that person in the form of a qualifying equity share contemplated in section 8B;”; 30
- (e) by the insertion in subsection (1) before paragraph (nE) of the following paragraph: 30
- “(nD) any amount received by or accrued to that person which constitutes— 30
- (i) an equity instrument contemplated in section 8C acquired by that person and in respect of which that section applies; or 35
- (ii) consideration for the disposal of an equity instrument contemplated in subparagraph (i), 35
- which had not yet vested as contemplated in that section at the time of that acquisition or disposal;”; 35
- (f) by the substitution in subsection (1) for subparagraphs (i) and (ii) of paragraph (nE) of the following subparagraphs: 40
- “(i) upon the cancellation of a transaction under which the taxpayer purchased shares under such scheme, and in respect of which section 8A applies; or 40
- (ii) upon the repurchase from the taxpayer, at a price not exceeding the selling price to him, of shares purchased by him under such scheme, and in respect of which section 8A applies,”; 45
- (g) by the substitution in subsection (1) for subparagraphs (i) and (ii) of paragraph (zI) of the following subparagraphs: 50
- “(i) that amount is granted for the performance by that person of its obligations pursuant to a Public Private Partnership **[as defined in Regulation 16 of the Treasury Regulations issued in terms of section 76 of the Public Finance Management Act, 1999 (Act No. 1 of 1999), where that person performs an institutional function as defined in that Regulation]**; 50
- (ii) that person is required in terms of that Public Private Partnership to expend an amount at least equal to that amount **[for the development of any physical infrastructure of the Republic]** in respect of any improvements on land or buildings owned by any sphere of government; [and]”; and 55
- (h) by the deletion in subsection (1) of subparagraph (iii) of paragraph (zI). 60
- (2) (a) Subsection (1)(a) shall come into operation on a date to be fixed by the President by proclamation in the *Gazette*.

21 van Wet 30 van 2000, artikel 13 van Wet 59 van 2000, artikels 9 en 78 van Wet 19 van 2001, artikel 26 van Wet 60 van 2001, artikel 13 van Wet 30 van 2002, artikel 18 van Wet 74 van 2002, artikel 36 van Wet 12 van 2003, artikel 26 van Wet 45 van 2003 en artikel 8 van Wet 16 van 2004

14. (1) Artikel 10 van die Inkomstebelastingwet, 1962, word hierby gewysig— 5
- (a) deur subparagraaf (iii) van paragraaf (d) van subartikel (1) deur die volgende subparagraaf te vervang:
- “(iii) onderlinge leningsvereniging, getrouheids- of vrywaringsfonds, vakvereniging, sake- of nywerheidskamer (of ’n vereniging van sulke kamers) of plaaslike publiseitsvereniging [**of nie-eiendomseffektebeurs**] deur die Kommissaris goedgekeur behoudens die voorwaardes wat die Minister by regulasie voorskryf; of”;
- (b) deur paragraaf (h) van subartikel (1) deur die volgende paragraaf te vervang: 10
- “(h) rente wat in ’n jaar van aanslag ontvang is deur of toeval aan ’n persoon wat nie ’n inwoner is nie, tensy daardie persoon—
- (i) ’n natuurlike persoon is wat vir ’n tydperk van meer as 183 dae in totaal in daardie jaar fisies in die Republiek teenwoordig was; of
- (ii) op enige tydstip in daardie jaar ’n besigheid deur middel van ’n permanente saak in die Republiek bedryf het, 15
- en by die toepassing van hierdie paragraaf, word soveel van enige dividend aan daardie persoon uitgekeer deur ’n portefeulje bevat in ’n kollektiewe beleggingskema in paragraaf (e)(i) van die omskrywing van ‘maatskappy’ bedoel, uit inkomste deur daardie portefeulje verkry wat kragtens paragraaf (iA) in die hande van daardie portefeulje van belasting vrygestel is, geag rente te wees;”;
- (c) deur paragraaf (hA) van subartikel (1) te skrap; 20
- (d) deur na paragraaf (nB) van subartikel (1) die volgende paragraaf in te voeg: 25
- “(nC) enige bedrag ontvang deur of toegeval aan daardie persoon by wyse van ’n kwalifiserende ekwiteitsaandeel in artikel 8B bedoel;”;
- (e) deur voor paragraaf (nE) van subartikel (1) die volgende paragraaf in te voeg: 30
- “(nD) enige bedrag ontvang deur of toegeval aan daardie persoon wat—
- (i) ’n ekwiteitsinstrument in artikel 8C bedoel uitmaak wat deur daardie persoon verkry is en ten opsigte waarvan daardie artikel van toepassing is; of
- (ii) vergoeding uitmaak vir die beskikking oor ’n ekwiteitsinstrument in subparagraaf (i) bedoel, 35
- wat nog nie op die tydstip van daardie verkryging of beskikking gevestig het soos in daardie artikel bedoel nie;”;
- (f) deur subparagraawe (i) en (ii) van paragraaf (nE) van subartikel (1) deur die volgende subparagraawe te vervang: 40
- “(i) by die kansellasië van ’n transaksie ingevolge waarvan die belastingpligtige aandeel ingevolge bedoelde skema gekoop het en ten opsigte waarvan artikel 8A van toepassing is; of
- (ii) by die herkoop van die belastingpligtige, teen ’n prys wat die verkoopprijs aan hom nie te bowe gaan nie, van aandeel ingevolge bedoelde skema deur hom gekoop en ten opsigte waarvan artikel 8A van toepassing is;”;
- (g) deur subparagraawe (i) en (ii) van paragraaf (zI) van subartikel (1) deur die volgende subparagraawe te vervang: 45
- “(i) daardie bedrag toegestaan is vir die uitvoering deur daardie persoon van sy verpligtinge ingevolge ’n ‘Public Private Partnership’ [**soos omskryf in regulasie 16 van die ‘Treasury Regulations’ uitgereik kragtens artikel 76 van die Wet op Openbare Finansiële Bestuur, 1999 (Wet 1 van 1999), waar daardie persoon ’n ‘institutional function’ soos in daardie Regulasie omskryf, uitvoer**];
- (ii) daardie persoon ingevolge daardie ‘Public Private Partnership’ ’n bedrag minstens gelyk aan daardie bedrag moet aangaan [**vir die ontwikkeling van fisiese infrastruktuur van die Republiek**] ten opsigte van enige verbeteringe aan grond of geboue wat aan enige regeringsfeer behoort; [en]; en 50
- (h) deur subparagraaf (iii) van paragraaf (zI) van subartikel (1) te skrap. 60
- (2) (a) Subartikel (1)(a) tree in werking op ’n datum deur die President by proklamasie in die Staatskoerant bepaal.

(b) Subsection (1)(b) and (c) shall—

(i) in the case of any fund—

(aa) the rules of which and the manner in which it is administered, are substantially similar to a “pension fund”, “provident fund” or “retirement annuity fund” as defined in section 1 of the Income Tax Act, 1962, and

(bb) the receipts and accruals of which are exempt from tax in the country of which that fund is a resident, be deemed to have come into operation on 1 January 2001 and shall apply in respect of any year of assessment commencing on or after that date; or

(ii) in any other case, come into operation on 1 January 2005 and shall apply in respect of any year of assessment ending on or after that date.

(c) Subsection (1)(d) shall come into operation on 26 October 2004 and shall apply in respect of any qualifying equity share received or accrued on or after that date.

(d) Subsection (1)(e) shall come into operation on 26 October 2004 and shall apply in respect of any equity instrument acquired on or after that date, otherwise than in terms of the exercise of any option in respect of which section 8A applies.

(e) Subsection (1)(g) and (h) shall come into operation on the date of promulgation of this Act.

Amendment of section 10A of Act 58 of 1962, as inserted by section 8 of Act 65 of 1973 and amended by section 11 of Act 85 of 1974, section 8 of Act 113 of 1993, section 11 of Act 21 of 1995, section 11 of Act 28 of 1997, section 19 of Act 53 of 1999, section 14 of Act 59 of 2000 and section 11 of Act 5 of 2001

15. Section 10A of the Income Tax Act, 1962, is hereby amended by the substitution for subsection (11) of the following subsection:

“(11) Any cash consideration given by the purchaser under the annuity contract shall be converted to the currency of the Republic by applying the [ruling] average exchange rate [on the day] for the year of assessment during which the consideration is actually paid.”.

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, section 14 of Act 30 of 2002, section 19 of Act 74 of 2002, section 27 of Act 45 of 2003 and section 9 of Act 16 of 2004

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

(a) by the deletion of paragraphs (bC) and (r);

(b) by the substitution in paragraph (g) for subparagraph (vi) of the following subparagraph:

“(vi) the provisions of this paragraph shall not apply in relation to any such expenditure incurred under an agreement concluded on or after 1 July 1983, if the value of such improvements or the amount to be expended on such improvements, as contemplated in paragraph (h) of the

(b) Subartikel (1)(b) en (c)—

(i) in die geval van 'n fonds—

(aa) waarvan die reëls en die wyse waarop dit geadministreer word wesenlik dieselfde is as 'n “pensioenfonds”, “voorsorgsfonds” of 'n “uittrekking-annuïteitsfonds” soos in artikel 1 van die Inkomstebelastingwet, 1962 omskryf; en 5

(bb) die ontvangste en toevallings waarvan van belasting vrygestel is in die land waarvan daardie fonds 'n inwoner is, word geag op 1 Januarie 2001 in werking te getree het en is van toepassing ten opsigte van enige jaar van aanslag wat op of na daardie datum 'n aanvang neem; of 10

(ii) in enige ander geval, tree in werking op 1 Januarie 2005 en is van toepassing ten opsigte van enige jaar van aanslag wat op of na daardie datum eindig.

(c) Subartikel (1)(d) tree op 26 Oktober 2004 in werking en is van toepassing ten opsigte van enige kwalifiserende ekwiteitsaandeel op of na daardie datum ontvang of toegeval. 15

(d) Subartikel (1)(e) tree op 26 Oktober 2004 in werking en is van toepassing ten opsigte van enige ekwiteitsinstrument op of na daardie datum verkry, anders as ingevolge die uitoefening van 'n opsie ten opsigte waarvan artikel 8A van toepassing is.

(e) Subartikel (1)(g) en (h) tree op die datum van afkondiging van hierdie Wet in werking. 20

Wysiging van artikel 10A van Wet 58 van 1962, soos ingevoeg deur artikel 8 van Wet 65 van 1973 en gewysig deur artikel 11 van Wet 85 van 1974, artikel 8 van Wet 113 van 1993, artikel 11 van Wet 21 van 1995, artikel 11 van Wet 28 van 1997, artikel 19 van Wet 53 van 1999, artikel 14 van Wet 59 van 2000 en artikel 11 van Wet 5 van 2001 25

15. Artikel 10A van die Inkomstebelastingwet, 1962, word hierby gewysig deur subartikel (11) deur die volgende subartikel te vervang:

“(11) Enige kontantvergoeding deur 'n koper kragtens 'n jaarkontrak gegee moet na die geldeenheid van die Republiek omgeskakel word deur die [heersende] gemiddelde wisselkoers [op die dag waarop] vir die jaar van aanslag waarin die vergoeding werklik betaal is, toe te pas.” 30

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, artikel 14 van Wet 30 van 2002, artikel 19 van Wet 74 van 2002, artikel 27 van Wet 45 van 2003 en artikel 9 van Wet 16 van 2004 50

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

(a) deur paragrawe (bC) en (r) te skrap;

(b) deur subparagraaf (vi) van paragraaf (g) deur die volgende subparagraaf te vervang:

“(vi) die bepalings van hierdie paragraaf nie van toepassing is nie met betrekking tot enige bedoelde onkoste aangegaan ingevolge 'n ooreenkoms wat op of na 1 Julie 1983 gesluit is, indien die waarde van bedoelde verbeterings of die bedrag wat aan 55

- definition of 'gross income' in section 1, does not for the purposes of this Act constitute income of the person to whom the right to have such improvements effected has accrued, unless the expenditure was incurred pursuant to an obligation to effect improvements in terms of a Public Private Partnership;" 5
- (c) by the addition in paragraph (g) of the following paragraph to the proviso:
 "(vii) if during any year of assessment the agreement whereby the right of use or occupation of the land or buildings is granted is terminated before expiry of the period to which that taxpayer was initially entitled to the use or occupation, as contemplated in paragraph (ii), so much of the allowance which may be allowed under this paragraph, which has not yet been allowed in that year or any previous year of assessment, shall be allowable as a deduction in that year of assessment.;" 10
- (d) by the substitution in paragraph (gC) for the words preceding subparagraph (i) of the following words: 15
 "an allowance in respect of any **[cost]** expenditure actually incurred by the taxpayer during any year of assessment commencing on or after 1 January 2004 to acquire (otherwise than by way of devising, developing or creating) any—"; 20
- (e) by the substitution in paragraph (gC) for paragraphs (aa) and (bb) of the proviso of the following paragraphs: 25
 "(aa) where that **[cost]** expenditure actually incurred by the taxpayer exceeds R5 000, that allowance shall not exceed in any year of assessment— 30
 (A) five per cent of the amount of the **[cost]** expenditure in respect of any invention, patent, copyright or other property of a similar nature or any knowledge connected with the use of such invention, patent, copyright or other property or the right to have such knowledge imparted; or 35
 (B) 10 per cent of the amount of **[that cost]** the expenditure in respect of any design or other property of a similar nature or any knowledge connected with the use of such design or other property or the right to have such knowledge imparted; 40
 (bb) where any such invention, patent, design, copyright or other property or knowledge was acquired from any person who is a connected person in relation to the taxpayer, the allowance under this paragraph shall be calculated on an amount not exceeding the lesser of the cost to that connected person of acquiring, devising, developing or creating that invention, patent, design, copyright or other property or knowledge or the market value of that invention, patent, design, copyright or other property or knowledge as determined on the date upon which it was acquired by the taxpayer;" 45
- (f) by the insertion after paragraph (l) of the following paragraph: 50
 "(lA) an amount equal to the market value of any qualifying equity share granted to an employee of that person as contemplated in section 8B, as determined on the date of grant as defined in that section, which applies *in lieu* of any other deduction which may otherwise be allowed to that person or any other person in respect of the granting of that share: Provided that the deduction under this paragraph may not during any year of assessment in aggregate exceed R3 000 in respect of all qualifying equity shares granted to a single employee and so much as exceeds R3 000 may be carried forward to the immediately succeeding year of assessment and that excess is deemed to be the market value of qualifying equity shares granted to the relevant 55

- bedoelde verbeterings bestee moet word, soos in paragraaf (h) van die omskrywing van 'bruto inkomste' in artikel 1 bedoel, nie by die toepassing van hierdie Wet inkomste uitmaak nie van die persoon aan wie die reg om bedoelde verbeterings te laat aanbring, toegeval het, tensy die onkoste ooreenkomstig 'n 5
verpligting om verbeteringe ingevolge 'n 'Public Private
Partnership' aan te bring, aangegaan is;”;
- (c) deur die volgende paragraaf by die voorbehoudsbepaling by paragraaf (g) te voeg:
- “(vii) indien gedurende enige jaar van aanslag die ooreenkoms 10
ingevolge waarvan die reg van gebruik of okkupasie van die
grond of geboue verleen isp beëindig word voor die verstryking
van die tydperk waarvoor daardie belastingpligtige aanvanklik
tot die gebruik of okkupasie geregtig was, soos in paragraaf (ii) 15
bedoel, word soveel van die vermindering wat kragtens hierdie
paragraaf toegelaat mag word, wat nog nie in daardie jaar of
enige voorafgaande jaar van aanslag toegelaat is nie, as 'n
afrekkings in daardie jaar van aanslag toegelaat.”;
- (d) deur die woorde in paragraaf (gC) wat subparagraaf (i) voorafgaan deur die volgende woorde te vervang: 20
- “'n vermindering ten opsigte van enige **[koste]** onkoste werklik aangegaan deur die belastingpligtige gedurende enige jaar van aanslag wat op of na 1 Januarie 2004 'n aanvang neem om enige—”;
- (e) deur paragrawe (aa) en (bb) van die voorbehoudsbepaling by paragraaf (gC) deur die volgende paragrawe te vervang: 25
- “(aa) waar daardie **[koste]** onkoste werklik deur die belastingpligtige aangegaan R5 000 oorskry, daardie vermindering nie in enige jaar van aanslag—
- (A) vyf persent van die bedrag van die **[koste]** onkoste ten opsigte van enige uitvinding, patent, outeursreg of ander eiendom van 30
soortgelyke aard of enige kennis wat met die gebruik van so 'n uitvinding, patent, outeursreg of ander eiendom verband hou of die reg om daardie kennis meegedeel te word; of
- (B) 10 persent van die bedrag van daardie **[koste]** onkoste ten 35
opsigte van enige model of ander eiendom van 'n soortgelyke aard of enige kennis wat met die gebruik van so 'n model in verband staan of die reg om daardie kennis meegedeel te word, te bowe gaan nie;
- (bb) waar enige so 'n uitvinding, patent, model, outeursreg of ander eiendom of kennis verkry is van 'n persoon wat 'n verbonde persoon 40
is met betrekking tot die belastingpligtige, word die vermindering kragtens hierdie paragraaf vasgestel met verwysing na 'n bedrag wat nie meer is nie as die minste van die koste vir daardie verbonde persoon ten opsigte van die verkryging, uitdink, ontwikkeling of 45
skepping van daardie uitvinding, patent, model, outeursreg of ander
eiendom of kennis of die markwaarde van daardie uitvinding, patent,
model, outeursreg of ander eiendom of kennis soos bepaal op die
datum waarop dit deur die belastingpligtige verkry is;” en
- (f) deur die volgende paragraaf na paragraaf (l) in te voeg:
- “(1A) 'n bedrag gelykstaande aan die markwaarde van die kwalifiserende 50
ekwiteitsaandeel aan 'n wernemer van daardie persoon toegeken soos in artikel 8B bedoel, soos bepaal op die datum van toekenning soos omskryf in daardie artikel, wat toegelaat word in plek van enige ander afrekkings wat andersins toelaatbaar sou wees aan daardie persoon of 55
enige ander persoon ten opsigte van die toekenning van daardie aandeel: Met dien verstande dat die afrekkings kragtens hierdie paragraaf nie in enige jaar van aanslag ten opsigte van alle kwalifiserende ekwiteitsaandeel aan 'n enkele werknemer toegeken, in totaal R3 000 oorskry nie en soveel as wat R3 000 oorskry kan oorgedra word na die onmiddellik daaropvolgende jaar van aanslag en 60
word daardie oorskot by die toepassing van hierdie paragraaf geag die markwaarde van kwalifiserende ekwiteitsaandeel aan die betrokke

employee during that immediately succeeding year for purposes of this paragraph.”.

(2) (a) Subsection (1)(a) shall be deemed to have come into operation on 1 June 2004 and shall apply in respect of any year of assessment commencing on or after that date.

(b) Subsection (1)(b) and (c) shall come into operation on the date of promulgation of this Act. 5

(c) Subsection (1)(d) and (e) shall be deemed to have come into operation on 1 January 2004 and shall apply in respect of any year of assessment commencing on or after that date.

(d) Subsection (1)(f) shall come into operation on 26 October 2004 and applies in respect of any qualifying equity share granted in terms of a broad-based employee share plan approved on or after that date by the directors or some other person or body of persons with comparable authority conferred under or by virtue of the memorandum and articles of association of the company. 10

Amendment of section 11B of Act 58 of 1962, as inserted by section 29 of Act 45 of 2003 and amended by section 10 of Act 16 of 2004 15

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

(a) by the addition in subsection (1) of the word “or” at the end of paragraph (b) of the definition of “cost”; and

(b) by the addition in subsection (1) of the following paragraph to the definition of “cost”: 20

“(c) where that building, machinery, plant, implement, utensil or article was acquired from any person who is a connected person in relation to the taxpayer, the cost to that connected person of that building, machinery, plant, implement, utensil or article.”; 25

(c) by the substitution in subsection (1) for the definition of ‘trade mark’ of the following definition:

“ ‘trade mark’ means trade mark as defined in the Trade Marks Act, 1993 (Act No. 194 of 1993), and any other property of a similar nature.”.

(2) Subsection (1) shall be deemed to have come into operation on 1 January 2004 and shall apply in respect of any year of assessment commencing on or after that date. 30

Insertion of section 11C in Act 58 of 1962

18. (1) The following section is hereby inserted in the Income Tax Act, 1962, after section 11B:

“Deductions in respect of foreign dividends 35

11C. (1) In determining the taxable income of a person for a year of assessment which is derived from any foreign dividends received by or accrued to that person during that year, there shall be allowed as a deduction any interest actually incurred by that person during that year in the production of income in the form of foreign dividends. 40

(2) The amount of the deduction under subsection (1) is limited to the amount of foreign dividends which are included in the income of the person during the year of assessment.

(3) The amount by which the interest referred to in subsection (1) exceeds the amount of the foreign dividends referred to in subsection (2) (if any), must be reduced by the amount of any foreign dividends received by or accrued to that person during the year of assessment which are exempt from tax and the balance must— 45

(a) be carried forward to the immediately succeeding year of assessment; and 50

(b) be deemed to be an amount of interest actually incurred by that person during that succeeding year of assessment in the production of income in the form of foreign dividends.

werknemer in daardie onmiddellik opvolgende jaar van aanslag |
toegeken te wees;”.

(2)(a) Subartikel (1)(a) word geag op 1 Junie 2004 in werking te getree het en is van
toepassing ten opsigte van enige jaar van aanslag wat op of na daardie datum 'n aanvang
neem.

(b) Subartikel (1)(b) en (c) tree op die datum van afkondiging van hierdie Wet in
werking.

(c) Subartikel (1)(d) en (e) word geag op 1 Januarie 2004 in werking te getree het en
is van toepassing ten opsigte van enige jaar van aanslag wat op of na daardie datum 'n
aanvang neem.

(d) Subartikel (1)(f) tree op 26 Oktober 2004 in werking en is van toepassing ten
opsigte van enige kwalifiserende ekwiteitsaandeel toegeken ingevolge 'n uitgebreide
werknemersaandeelplan goedgekeur op of na daardie datum deur die direkteur of ander
persoon of liggaam van persone met soortgelyke magtiging verleen kragtens of by wyse
van die akte van oprigting en statute van die maatskappy.

Wysiging van artikel 11B van Wet 58 van 1962, soos ingevoeg deur artikel 29 van Wet 45 van 2003 en gewysig deur artikel 10 van Wet 16 van 2004

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

(a) deur die woord “of” aan die einde van paragraaf (b) van die omskrywing van
“koste” in subartikel (1) by te voeg; en

(b) deur die volgende paragraaf by die omskrywing van “koste” in subartikel (1)
te voeg:

“(c) waar daardie gebou, masjinerie, installasie, gereedskap, werktuig of
artikel van enige persoon verkry is wat 'n verbonde persoon met
betrekking tot die belastingpligtige is, die koste vir daardie verbonde
persoon van daardie gebou, masjinerie, installasie, gereedskap,
werktuig of artikel.”;

(c) deur die omskrywing van “handelsmerk” in subartikel (1) deur die volgende
omskrywing te vervang:

“ ‘handelsmerk’ 'n handelsmerk soos in die Wet op Handelsmerke, 1993
(Wet No. 194 van 1993), omskryf, en enige ander eiendom van 'n soortgelyke
aard;”.

(2) Subartikel (1) word geag op 1 Januarie 2004, in werking te getree het en is van
toepassing ten opsigte van enige jaar van aanslag wat op of na daardie datum 'n aanvang
neem.

Invoeging van artikel 11C in Wet 58 van 1962

18. (1) Die volgende artikel word hierby in die Inkomstebelastingwet, 1962,
ingevoeg, na artikel 11B:

“Aftrekkings ten opsigte van buitelandse dividende

11C. (1) By die berekening van die belasbare inkomste van 'n persoon
vir 'n jaar van aanslag uit buitelandse dividende ontvang deur of toegeval
aan daardie persoon in daardie jaar, verkry, word as 'n aftrekking toegelaat
enige rente werklik deur daardie persoon in daardie jaar aangegaan in die
voorbrengring van inkomste in die vorm van buitelandse dividende.

(2) Die bedrag van die aftrekking in subartikel (1) bedoel is beperk tot die
bedrag van die buitelandse dividende wat in die jaar van aanslag by die
inkomste van die persoon ingesluit is.

(3) Die bedrag waarmee die rente in subartikel (1) bedoel die bedrag van
die buitelandse dividende in subartikel (2) bedoel, oorskry (indien enige),
word verminder deur die bedrag van enige buitelandse dividend gedurende
die jaar van aanslag ontvang deur of toegeval aan daardie persoon wat van
belasting vrygestel is en word die balans—

(a) oorgedra na die onmiddellik daaropvolgende jaar van aanslag; en

(b) geag 'n bedrag van rente te wees wat in daardie daaropvolgende jaar
van aanslag werklik deur daardie persoon aangegaan is in die
voortbrenging van inkomste in die vorm van buitelandse dividende.

(4) Notwithstanding section 23(g), a person may elect that there shall be allowed to be deducted from any income of that person in the form of foreign dividends, the amount of withholding tax on dividends proved to be payable in respect of any foreign dividend which is included in the income of that person.

(5) An election made by a person in terms of subsection (4) applies in respect of all foreign dividends received by or accrued to that person during the year of assessment for which the election was made.”.

(2) Subsection (1) shall be deemed to have come into operation on 1 June 2004 and shall—

- (a) in so far as it relates to the deduction of any interest as contemplated in section 11C(1), (2) and (3), apply in respect of any interest incurred or balance of interest carried forward in terms of section 9E(5A) of the Income Tax Act, 1962, to any year of assessment commencing on or after that date; or
- (b) in so far as it relates to the deduction of any withholding tax on dividends as contemplated in section 11C(4) and (5), apply in respect of any dividend received or accrued during any year of assessment commencing on or after that date.

Amendment of section 13quat of Act 58 of 1962, as inserted by section 33 of Act 45 of 2003 and amended by section 12 of Act 16 of 2004

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

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

“(c) that area is prioritised in that municipality’s integrated development plan adopted and undertaken in terms of Chapter 5 of the Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000) as a priority area for further investments to promote business **[and]** or industrial activity **[as well as dense]** or residential settlements to support such activity;”;

- (b) by the substitution in subsection (6) for paragraph (d) of the following paragraph:

“(d) that area proportionately contributes or previously contributed a significant portion of the total revenue collections for all areas located within the current boundaries of that municipality, as measured in the form of—

- (i) **[in the form of]** property rates; or
- (ii) assessed property values **[used to determine those rates]**, and where the contribution from that area is undergoing a sustained real or nominal decline;”;

- (c) by the deletion in subsection (6) of paragraph (f);

- (d) by the substitution in subsection (9) for the words preceding paragraph (a) of the following words:

“(9) Every municipality must provide **[an annual]** a report annually to the Commissioner and the Minister for each urban development zone located within that municipality within such time as is prescribed by the Minister, listing—”;

- (e) by the substitution in subsection (9) for paragraphs (c) and (d) of the following paragraphs:

“(c) the estimated costs incurred by the taxpayer in respect of each building;
(d) the estimated total jobs created as a result of this section;”;

- (f) by the addition to subsection (9) of the following paragraph:

“(g) the average turnover time for all planning and building approvals.”.

(2) Subsection (1) is deemed to have come into operation on 22 December 2003.

(4) Ondanks artikel 23(g), mag 'n persoon kies dat daar as 'n aftrekking van enige inkomste van daardie persoon in die vorm van buitelandse dividende toegelaat word die bedrag van weerhoudingsbelasting op dividende wat bewys word betaalbaar te wees ten opsigte van enige buitelandse dividend wat by die inkomste van daardie persoon ingesluit is. 5

(5) 'n Keuse deur 'n persoon ingevolge subartikel (4) gemaak, is van toepassing ten opsigte van alle buitelandse dividende wat gedurende die jaar van aanslag waarvoor die keuse gemaak is ontvang word deur of toeval aan daardie persoon.”.

(2) Subartikel (1) word geag op 1 Junie 2004 in werking te getree het en is van toepassing— 10

- (a) vir sover dit betrekking het op die aftrekking van enige rente in artikel 11C(1), (2) en (3) bedoel, ten opsigte van enige rente aangeaan of balans van rente ingevolge artikel 9E(5A) van die Inkomstebelastingwet, 1962, oorgedra na enige jaar van aanslag wat op of na daardie datum 'n aanvang neem; of 15
- (b) vir sover dit verband hou met die aftrekking van enige weerhoudingsbelasting op dividende in artikel 11C(4) en (5) bedoel, ten opsigte van enige dividend ontvang of toegeval gedurende enige jaar van aanslag wat op of na daardie datum 'n aanvang neem.

Wysiging van artikel 13quat van Wet 58 van 1962, soos ingevoeg deur artikel 33 van Wet 45 van 2003 en gewysig deur artikel 12 van Wet 16 van 2004 20

19. (1) Artikel 13quat van die Inkomstebelastingwet, 1962, word hierby gewysig—

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

“(c) daardie area geprioritiseer is ingevolge daardie munisipaliteit se geïntegreerde ontwikkelingsplan aangeneem en onderneem ingevolge Hoofstuk 5 van die Wet op Plaaslike Regering: Munisipale Stelsels, 2000 (Wet No. 32 van 2000), as 'n prioriteitsarea vir verdere beleggings om besigheid [en] of nywerheidsaktiwiteite te bevorder [sowel as digte] of residensiële nedersetting om daardie aktiwiteit te ondersteun;”;

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

“(d) daardie area proporsioneel 'n wesenlike gedeelte van die totale plaaslike bestuur se invordering vir alle areas binne die huidige grense van die betrokke munisipaliteit geleë bydra of voorheen bygedra het, gemeet in die vorm van—

- (i) [in die vorm van] eiendomsbelastings; of 35
- (ii) vasgestelde eiendomswaardes [gebruik om daardie belasting te bepaal],

en waar die bydrae van daardie area 'n volgehoue reële of nominale vermindering ondergaan;”;

- (c) deur paragraaf (f) van subartikel (6) te skrap; 40

- (d) deur die woorde in subartikel (9) wat paragraaf (a) voorafgaan deur die volgende woorde te vervang:

“(9) Elke munisipaliteit moet, binne die tydperk deur die Minister voorgeskryf, [’n jaarlikse] jaarliks ’n verslag aan die Kommissaris en die Minister voorsien vir elke stedelike ontwikkelingsone binne daardie munisipaliteit geleë, wat uiteensit—”;

- (e) deur paragrawe (c) en (d) van subartikel (9) deur die volgende paragrawe te vervang:

“(c) die geraamde koste deur die belastingpligtige aangeaan ten opsigte van elke gebou; 50

(d) die geraamde totale aantal werksgeleenthede geskep weens hierdie artikel;”;

- (f) deur die volgende paragraaf by subartikel (9) te voeg:

“(g) die gemiddelde verwerkingstyd vir alle beplannings- en gebougoedkeurings.”. 55

(2) Subartikel (1) word geag op 22 Desember 2003 in werking te getree het.

Insertion of section 20B in Act 58 of 1962

20. (1) The following section is hereby inserted in the Income Tax Act, 1962, after section 20A:

“Limitation of losses from disposal of certain assets

20B. (1) Any deduction which is allowable during any year of assessment under section 11(o) in respect of the disposal by a person during that year of any asset the full consideration of which will not accrue to that person during that year, must be disregarded in that year.

(2) So much of any amount disregarded in terms of subsection (1), which has not otherwise been allowed as a deduction, may be deducted from the income of that person in any subsequent year of assessment to the extent that any consideration which is received by or accrued to that person in that subsequent year from that disposal is included in the income of that person.

(3) If during any year of assessment a person contemplated in subsection (1) proves that no further consideration will accrue to him or her in that year and any subsequent year as contemplated in subsection (2), so much of the amount which was disregarded in terms of subsection (1) as has not been allowed as a deduction in any year, must be allowed as a deduction from the income of that person in that year of assessment.”

(2) Subsection (1) shall come into operation on 1 January 2005 and shall apply in respect of any disposal during any year of assessment commencing on or after that date.

Amendment of section 23F of Act 58 of 1962, as inserted by section 17 of Act 21 of 1994 and substituted by section 30 of Act 30 of 2000 and amended by section 28 of Act 59 of 2000 and section 40 of Act 45 of 2003

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

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

“(2) Where [any] a taxpayer has during any year of assessment disposed of any trading stock in the ordinary course of his or her trade for any consideration the full amount of which will not accrue to him or her during [such] that year of assessment and any expenditure incurred in respect of the acquisition of [such] that trading stock was allowed as a deduction under the provisions of section 11(a) during [such] that year or any previous year of assessment, [the amount of such expenditure so allowed as a deduction shall deemed to have been recovered or recouped by such taxpayer and be included in the income of the taxpayer for the year of assessment during which such trading stock was so disposed of], and there shall be allowed to be deducted in—

- (a) such year, so much of such expenditure which bears to the full amount of such expenditure the same ratio as the amount of such consideration which has accrued to the taxpayer during such year bears to the full amount of such consideration;
- (b) any subsequent year of assessment so much of such expenditure which bears to the full amount of such expenditure, the same ratio as the amount of such consideration which has accrued to the taxpayer during such subsequent year bears to the full amount of such consideration; or
- (c) any year of assessment during which it is shown by such taxpayer that the consideration will never accrue to him, so much of such expenditure as has not been allowed as a deduction in terms of the provisions of paragraph (a) or (b), to the extent that such expenditure was actually paid] any amount

Invoeging van artikel 20B in Wet 58 van 1962

20. (1) Die volgende artikel word hierby in die Inkomstebelastingwet, 1962, gevoeg na artikel 20A:

“Beperking van verliese uit beskikking van sekere bates

20B. (1) Enige aftrekking wat gedurende 'n jaar van aanslag kragtens artikel 11(o) toelaatbaar is ten opsigte van die beskikking deur 'n persoon gedurende daardie jaar oor enige bate waarvan die volle vergoeding nie gedurende daardie jaar aan daardie persoon toeval nie, word in daardie jaar verontagsaam. 5

(2) Soveel van enige bedrag ingevolge subartikel (1) verontagsaam, wat nie andersins as 'n aftrekking toegelaat is nie, word in enige daaropvolgende jaar van aanslag van die inkomste van daardie persoon afgetrek in die mate wat enige vergoeding, wat ontvang word deur of toeval aan daardie persoon in daardie daaropvolgende jaar uit daardie beskikking, by die inkomste van daardie persoon ingesluit is. 10 15

(3) Indien 'n persoon in subartikel (1) bedoel gedurende enige jaar van aanslag bewys dat geen verdere vergoeding aan hom of haar in daardie jaar of enige daaropvolgende jaar soos in subartikel (2) bedoel sal toeval nie, word soveel van die bedrag wat ingevolge subartikel (1) verontagsaam is as wat nie as 'n aftrekking in enige jaar toegelaat is nie, in daardie jaar van aanslag as 'n aftrekking van die inkomste van daardie persoon toegelaat. 20

(2) Subartikel (1) tree op 1 Januarie 2005 in werking en is van toepassing ten opsigte van enige beskikking gedurende enige jaar van aanslag wat op of na daardie datum 'n aanvang neem.

Wysiging van artikel 23F van Wet 58 van 1962, soos ingevoeg deur artikel 17 van Wet 21 van 1994 en vervang deur artikel 30 van Wet 30 van 2000 en gewysig deur artikel 28 van Wet 59 van 2000 en artikel 40 van Wet 45 van 2003 25

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

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

“(2) Waar 'n belastingpligtige gedurende enige jaar van aanslag enige handelsvoorraad in die gewone loop van sy of haar bedryf van die hand gesit het vir enige vergoeding waarvan die volle bedrag nie gedurende [bedoelde] daardie jaar van aanslag aan hom of haar toeval nie en enige onkoste ten opsigte van die verkryging van [bedoelde] daardie handelsvoorraad aangegaan as 'n aftrekking ingevolge die bepalinge van artikel 11(a) gedurende [bedoelde] daardie jaar of enige vorige jaar van aanslag toegestaan is, word [die bedrag van bedoelde onkoste wat aldus as 'n aftrekking toegestaan is, geag deur bedoelde belastingpligtige verhaal of aan hom vergoed te gewees het en by die inkomste van die belastingpligtige ingesluit in die jaar van aanslag waarin bedoelde handelsvoorraad aldus van die hand gesit is, en word 'n aftrekking toegestaan in— 30 35 40

(a) bedoelde jaar, van soveel van bedoelde onkoste as wat tot die totale bedrag van bedoelde onkoste, in dieselfde verhouding staan as die bedrag van bedoelde vergoeding wat gedurende bedoelde jaar aan die belastingpligtige toeval tot die totale bedrag van bedoelde vergoeding staan; 45

(b) enige daaropvolgende jaar van aanslag, van soveel van bedoelde onkoste as wat tot die totale bedrag van bedoelde onkoste, in dieselfde verhouding staan as die bedrag van bedoelde vergoeding wat gedurende bedoelde daaropvolgende jaar aan die belastingpligtige toeval tot die volle bedrag van bedoelde vergoeding staan; of 50

(c) enige jaar van aanslag waarin dit deur die belastingpligtige getoon word dat die vergoeding nooit aan hom sal toeval nie, van soveel van bedoelde onkoste as wat nie as 'n aftrekking ingevolge die bepalinge van paragraaf (a) of (b) toegestaan is nie, in die mate wat bedoelde onkoste werklik betaal is] enige 55

which would otherwise be deducted must, to the extent that it exceeds any amount received or accrued from the disposal of that trading stock be disregarded during that year of assessment.”.

(b) by the insertion after subsection (2) of the following subsections:

“(2A) So much of any amount disregarded in terms of subsection (2) may be deducted from the income of that person in any subsequent year of assessment to the extent that any amount which is received by or accrued to that person in that subsequent year from that disposal is included in the income of that person.

(2B) If during any year of assessment a person contemplated in subsection (2) proves that no further amounts will accrue to him or her in that year and any subsequent year as contemplated in subsection (2A), so much of the amount which was disregarded in terms of subsection (2) as has not been allowed as a deduction in any year, must be allowed as a deduction from the income of that person in that year of assessment.”.

(2) Subsection (1) shall come into operation on 1 January 2005 and shall apply in respect of any disposal during any year of assessment commencing on or after that date.

Insertion of section 24B in Act 58 of 1962

22. (1) The following section is hereby inserted in the Income Tax Act, 1962, after section 24A:

“Transactions where assets are acquired in exchange for shares issued

24B. (1) Subject to subsection (2), if a company acquires any asset from any person in exchange for shares issued by that company—

(a) that company is for purposes of this Act deemed to have actually incurred an amount of expenditure in respect of the acquisition of that asset, which is equal to the market value of that asset as determined at the time of acquisition; and

(b) that person is for purposes of this Act deemed to have disposed of that asset for an amount equal to that market value.

(2) If a company acquires any share or debt instrument which is issued to that company directly or indirectly in exchange for the issue of shares by that company or any connected person in relation to that company, that company is for purposes of this Act deemed not to have incurred any expenditure in respect of the acquisition of that share or debt instrument so acquired.

(3) If a company issues any debt instrument directly or indirectly in exchange for the issue of shares or of a debt instrument which is issued to that company or to a connected person in relation to that company, that company is for purposes of this Act deemed to have incurred expenditure in respect of the acquisition of that share or debt instrument so acquired, only to the extent that the amounts are paid by that company in terms of the debt instrument so issued.”.

(2) Subsection (1) shall—

(a) for purposes of determining any capital gain or capital loss from the disposal of any asset (other than trading stock), be deemed to have come into operation on 1 October 2001 and shall apply in respect of any such asset acquired on or after that date; and

(b) in any other case, come into operation on the date of promulgation and shall apply in respect of any asset acquired on or after that date.

bedrag wat andersins afgetrek sou word in die mate wat dit die bedrag uit die beskikking oor daardie handelsvoorraad ontvang of toegeval, oorskry, in daardie jaar van aanslag verontagsaam.”.

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

“(2A) Soveel van enige bedrag ingevolge subartikel (2) verontagsaam, kan van die inkomste van daardie persoon in enige daaropvolgende jaar van aanslag afgetrek word in die mate wat enige bedrag ontvang deur of toegeval aan daardie persoon uit daardie beskikking in daardie daaropvolgende jaar by die inkomste van daardie persoon ingesluit is.

(2B) Indien ’n persoon in subartikel (2) bedoel gedurende enige jaar van aanslag bewys dat geen verdere bedrae in daardie jaar en enige daaropvolgende jaar aan hom of haar sal toeval nie soos in subartikel (2A) bedoel, word soveel van die bedrag wat ingevolge subartikel (2) verontagsaam is as wat nie in enige jaar as ’n aftrekking toegelaat is nie in daardie jaar van aanslag, as ’n aftrekking van die inkomste van daardie persoon toegelaat.”.

- (2) Subartikel (1) tree op 1 Januarie 2005 in werking en is van toepassing ten opsigte van enige beskikking gedurende enige jaar van aanslag wat op of na daardie datum ’n aanvang neem.

Invoeging van artikel 24B in Wet 58 van 1962

22. (1) Die volgende artikel word hierby in die Inkomstebelastingwet, 1962, gevoeg, na artikel 24A:

“Transaksies waar bates verkry word in ruil vir uitreik van aandele

24B. (1) Behoudens subartikel (2), indien ’n maatskappy ’n bate van enige persoon verkry in ruil vir aandele deur daardie maatskappy uitgereik—

- (a) word daardie maatskappy by die toepassing van hierdie Wet geag ’n bedrag van onkoste ten opsigte van die verkryging van daardie bate gelykstaande aan die markwaarde van daardie bate soos bepaal op die tydstip van verkryging, werklik aan te gegaan het; en
- (b) word daardie persoon by die toepassing van hierdie Wet geag oor daardie bate te beskik het vir ’n bedrag gelykstaande aan daardie markwaarde.

(2) Indien ’n maatskappy enige aandeel of skuldinstrument verkry wat aan daardie maatskappy uitgereik is direk of indirek in ruil vir die uitreik van aandele deur daardie maatskappy of enige verbonde persoon met betrekking tot daardie maatskappy, word daardie maatskappy by die toepassing van hierdie Wet geag geen onkoste ten opsigte van die verkryging van daardie aandeel of skuldinstrument aldus verkry, aan te gegaan het nie.

(3) Indien ’n maatskappy ’n skuldinstrument uitreik direk of indirek in ruil vir die uitreik van aandele of van ’n skuldinstrument, wat aan daardie maatskappy of aan ’n verbonde persoon met betrekking tot daardie maatskappy uitgereik word, word daardie maatskappy by die toepassing van hierdie Wet geag onkoste ten opsigte van die verkryging van daardie aandeel of skuldinstrument aldus verkry aan te gegaan het, slegs in die mate wat die bedrae deur daardie maatskappy ingevolge die skuldinstrument aldus uitgereik, betaal is.”.

- (2) Subartikel (1)—

- (a) vir doeleindes van die bepaling van enige kapitaalwins of kapitaalverlies uit die beskikking oor enige bate (behalwe handelsvoorraad), word geag in werking te getree het op 1 Oktober 2001 en is van toepassing ten opsigte van enige sodanige bate op of na daardie datum verkry; en
- (b) in enige ander geval, tree in werking op die datum van afkondiging van hierdie Wet en is van toepassing ten opsigte van enige bate op of na daardie datum verkry.

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, section 36 of Act 60 of 2001, section 27 of Act 74 of 2002 and section 42 of Act 45 of 2003

23. Section 24I of the Income Tax Act, 1962, is hereby amended by the addition to subsection (2) of the following proviso:

“: Provided that this section does not apply in respect of any exchange item of a person who is not a resident (other than a controlled foreign company), unless that exchange item is attributable to a permanent establishment of that person in the Republic.”.

Amendment of section 24J of Act 58 of 1962, as inserted by section 21 of Act 21 of 1995 and amended by section 14 of Act 36 of 1996, section 19 of Act 28 of 1997 and section 27 of Act 53 of 1999

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

(a) by the addition in subsection (1) of the following proviso to paragraph (b) of the definition of “adjusted initial amount”:

“: Provided that where that instrument forms part of any transaction, operation or scheme—

(i) any payments made by the issuer to any other person pursuant to that transaction, operation or scheme with a purpose or with the probable effect of making payment directly or indirectly to the holder or a connected person in relation to the holder, must be deducted for purposes of this paragraph; and

(ii) in the case where any party to that transaction, operation or scheme is a connected person in relation to that issuer, any payments made by that connected person to any other person pursuant to that transaction, operation or scheme with a purpose or with the probable effect of making payment directly or indirectly to the holder or a connected person in relation to the holder, must be deducted for purposes of this paragraph;”;

(b) by the substitution in subsection (1) for paragraph (a) of the definition of “holder” of the following paragraph:

“(a) means any person who has become entitled to any interest or amount receivable in terms of such income instrument; or”;

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

“ ‘issue price’, in relation to an instrument, means the market value of the consideration given or received, as the case may be, for the issue of the instrument as determined on the date on which that instrument is issued;”;

(d) by the substitution in subsection (1) for paragraph (a) of the definition of “issuer” of the following paragraph:

“(a) means any person who has incurred any interest or has any obligation to repay any amount in terms of such instrument; or”;

(e) by the substitution in subsection (1) for the definition of “transfer price” of the following definition:

“ ‘transfer price’, in relation to the transfer of an instrument, means the market value of the consideration payable or receivable, as the case may be, for the transfer of such instrument as determined on the date on which that instrument is transferred;”;

(f) by the substitution in subsection (1) for subparagraphs (i) and (ii) of paragraph (d) of the proviso to the definition of “yield to maturity” of the following subparagraphs:

“(i) of the rights or interests of a holder in relation to an income instrument [to receive interest] in respect of any amounts receivable in terms of such income instrument, the rate of compound interest in relation to such income instrument shall be redetermined in respect of such holder with reference to the

Wysiging van artikel 24I van Wet 58 van 1962, soos ingevoeg deur artikel 21 van Wet 113 van 1993 en gewysig deur artikel 11 van Wet 140 van 1993, artikel 18 van Wet 21 van 1994, artikel 13 van Wet 36 van 1996, artikel 18 van Wet 28 van 1997, artikel 35 van Wet 30 van 1998, artikel 26 van Wet 53 van 1999, artikel 31 van Wet 59 van 2000, artikel 36 van Wet 60 van 2001, artikel 27 van Wet 74 van 2002 en artikel 42 van Wet 45 van 2003 5

23. Artikel 24I van die Inkomstebelastingwet, 1962, word hierby gewysig deur die volgende voorbehoudsbepaling by subartikel (2) te voeg:

“: Met dien verstande dat hierdie artikel nie van toepassing is nie ten opsigte van enige valuta-item van ’n persoon wat nie ’n inwoner is nie (behalwe ’n beheerde buitelandse maatskappy), tensy daardie valuta-item aan ’n permanente saak van daardie persoon in die Republiek toeskryfbaar is.”. 10

Wysiging van artikel 24J van Wet 58 van 1962, soos ingevoeg deur artikel 21 van Wet 21 van 1995 en gewysig deur artikel 14 van Wet 36 van 1996, artikel 19 van Wet 28 van 1997 en artikel 27 van Wet 53 van 1999 15

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

(a) deur die volgende voorbehoudsbepaling by paragraaf (b) van die omskrywing van “aangepaste aanvangsbedrag” te voeg:

“: Met dien verstande dat waar daardie instrument deel van ’n transaksie, handeling of skema vorm— 20

(i) word enige betalings deur die uitreiker ooreenkomstig daardie transaksie, handeling of skema aan enige ander persoon gemaak met ’n doel of met die waarskynlike gevolg dat betaling direk of indirek aan die houer of ’n verbonde persoon met betrekking tot die houer gemaak word, by die toepassing van hierdie paragraaf afgetrek; en 25

(ii) in die geval waar enige party tot daardie transaksie, handeling of skema ’n verbonde persoon met betrekking tot daardie uitreiker is, word enige betalings deur daardie verbonde persoon ooreenkomstig daardie transaksie, handeling of skema aan enige ander persoon gemaak met ’n doel of met die waarskynlike gevolg dat betaling direk of indirek aan die houer of ’n verbonde persoon met betrekking tot die houer gemaak word, by die toepassing van hierdie paragraaf afgetrek;” 30

(b) deur paragraaf (a) van die omskrywing van “houer” in subartikel (1) deur die volgende paragraaf te vervang: 35

“(a) ’n persoon wat geregtig geword het op enige rente of ’n bedrag ingevolge bedoelde inkomste-instrument ontvangbaar; of”;

(c) deur die omskrywing van “oordragprys” in subartikel (1) deur die volgende omskrywing te vervang: 40

“‘oordragprys’, met betrekking tot die oordrag van ’n instrument, die markwaarde van die teenprestasie betaalbaar of ontvangbaar, na gelang van die geval, vir die oordrag van [bedoelde] daardie instrument soos bepaal op die datum waarop daardie instrument oorgedra word;”;

(d) deur subparagrafe (i) en (ii) van paragraaf (d) van die voorbehoudsbepaling by die omskrywing van “opbrengs tot op vervaldatum” in subartikel (1) deur die volgende subparagrafe te vervang: 45

“(i) van die regte of belange van ’n houer is met betrekking tot ’n inkomste-instrument [om rente] ten opsigte van enige bedrae ontvangbaar ingevolge [bedoelde] daardie inkomste-instrument [te ontvang], die koers van saamgestelde rente met betrekking tot bedoelde inkomste-instrument hervasgestel word ten opsigte van bedoelde houer met verwysing na die toepaslike aangepaste aanvangsbedrag met betrekking tot bedoelde inkomste-instrument voor bedoelde verandering of wysiging vasgestel; of 50

(ii) van die verpligtinge van ’n uitreiker is met betrekking tot ’n instrument [om enige rente] ten opsigte van enige bedrae betaalbaar ingevolge [bedoelde] daardie instrument [te betaal], die koers van saamgestelde rente met betrekking tot bedoelde instrument hervasgestel word ten opsigte van bedoelde uitreiker met verwysing na die toepaslike 55 60

- appropriate adjusted initial amount in relation to such income instrument determined before such variation or alteration; or
- (ii) in the obligations of an issuer in relation to an instrument **[to pay any interest]** in respect of any amounts payable in terms of such instrument, the rate of compound interest in relation to such instrument shall be redetermined in respect of such issuer with reference to the appropriate adjusted initial amount in relation to such instrument determined before such variation or alteration.”;
- (g) by the addition in subsection (1) of the following further proviso to the definition of “yield to maturity”:
- “: Provided further that where that instrument forms part of any transaction, operation or scheme—
- (a) any payments made by the issuer to any other person pursuant to that transaction, operation or scheme with a purpose or with the probable effect of making payment directly or indirectly to the holder or a connected person in relation to the holder; and
- (b) in the case where any party to that transaction, operation or scheme is a connected person in relation to that issuer, any payments made by that connected person to any other person pursuant to that transaction, operation or scheme with a purpose or with the probable effect of making payment directly or indirectly to the holder or a connected person in relation to the holder,
- must be taken into account as amounts payable for purposes of determining that rate of compound interest.”;
- (h) by the addition to subsection (2) of the following words after paragraph (b):
- “which must be deducted from the income of that person derived from carrying on any trade, if that amount is incurred in the production of the income;”; and
- (i) by the substitution in subsection (3) for the words preceding paragraph (a) of the following words:
- “(3) Where any person is the holder in relation to an income instrument during any year of assessment, there shall for the purposes of this Act be deemed to have accrued to **[such]** that person and must be included in the gross income of that person during [such] that year of assessment (whether or not that amount constitutes a receipt or accrual of a capital nature), an amount of interest which is equal to—”.
- (2) Subsection (1) shall come into operation on 1 January 2005 and shall apply in respect of any instrument issued, acquired or transferred on or after that date.

Insertion of section 24M in Act 58 of 1962

25. (1) The following section is hereby inserted in the Income Tax Act, 1962, after section 24L:

“Incurral and accrual of amounts in respect of assets acquired or disposed of for unquantified amount

- 24M.** (1) If a person during any year of assessment disposes of an asset for consideration which consists of or includes an amount which cannot be quantified in that year of assessment, so much of that consideration as—
- (a) cannot be quantified in that year must for purposes of this Act be deemed not to have been accrued to that person in that year; and
- (b) becomes quantifiable during any subsequent year of assessment must for purposes of this Act be deemed to have been accrued to that person from that disposal in that subsequent year.
- (2) If a person during any year of assessment acquires an asset for consideration which consists of or includes an amount which cannot be quantified in that year of assessment, so much of that consideration as—
- (a) cannot be quantified in that year must for purposes of this Act be deemed not to have been incurred by that person in that year; and
- (b) becomes quantifiable during any subsequent year of assessment must for purposes of this Act be deemed to have been incurred by that

- aangepaste aanvangsbedrag met betrekking tot bedoelde instrument voor bedoelde verandering of wysiging vasgestel;”;
- (e) deur die volgende voorbehoudsbepaling by die omskrywing van “opbrengs tot op vervaldatum” in subartikel (1) te voeg:
- “: Met dien verstande voorts dat waar daardie instrument deel van enige transaksie, handeling of skema vorm—
- (a) word enige betalings deur die uitreiker ooreenkomstig daardie transaksie, handeling of skema aan enige ander persoon gemaak met ’n doel of met die waarskynlike gevolg dat betaling direk of indirek aan die houer of ’n verbonde persoon met betrekking tot die houer gemaak word; en
- (b) in die geval waar enige party tot die transaksie, handeling of skema ’n verbonde persoon met betrekking tot daardie uitreiker is, word enige betalings deur daardie verbonde persoon ooreenkomstig daardie transaksie, handeling of skema aan enige ander persoon gemaak met ’n doel of met die waarskynlike gevolg dat betaling direk of indirek aan die houer of ’n verbonde persoon met betrekking tot die houer gemaak word, in berekening gebring as bedrae betaalbaar by die berekening van daardie koers van saamgestelde rente.”;
- (f) deur paragraaf (a) van die omskrywing van “uitreiker” in subartikel (1) deur die volgende paragraaf te vervang:
- “(a) ’n persoon wat ingevolge daardie instrument enige rente [ingevolge bedoelde instrument] aangegaan het of enige verpligting het om ’n bedrag terug te betaal; of”;
- (g) deur die omskrywing van “uitreikingsprys” in subartikel (1) deur die volgende omskrywing te vervang:
- “‘uitreikingsprys’, met betrekking tot ’n instrument, die markwaarde van die teenprestasie gegee of ontvang, na gelang van die geval, vir die uitreik van die instrument soos bepaal op die datum waarop daardie instrument uitgereik is;”;
- (h) deur die volgende woorde in subartikel (2) na paragraaf (b) te voeg:
- “wat van die inkomste van daardie persoon uit die beoefening van ’n bedryf verkry afgetrek moet word, indien daardie bedrag in die voortbrenging van die inkomste aangegaan is;”;
- (i) deur die woorde in subartikel (3) wat paragraaf (a) voorafgaan deur die volgende woorde te vervang:
- “(3) Waar ’n persoon die houer met betrekking tot ’n inkomsteinstrument gedurende ’n jaar van aanslag is, word daar by die toepassing van hierdie Wet geag aan [bedoelde] daardie persoon gedurende [bedoelde] daardie jaar van aanslag ’n bedrag aan rente toe te geval het en by die bruto inkomste van daardie persoon ingesluit (ongeach daardie bedrag ’n ontvangste of toevalling van ’n kapitale aard uitmaak of nie) wat gelyk is aan—”.
- (2) Subartikel (1) tree op 1 Januarie 2005 in werking en is van toepassing ten opsigte van enige instrument wat op of na daardie datum uitgereik, verkry of oorgedra word.

Invoeging van artikel 24M in Wet 58 van 1962

25. (1) Die volgende artikel word hierby in die Inkomstebelastingwet, 1962, gevoeg na artikel 24L:

“Aangaan en toevalling van bedrae ten opsigte van bates vir ongekwantifiseerde bedrag verkry of oor beskik

24M. (1) Indien ’n persoon gedurende enige jaar van aanslag oor ’n bate beskik vir vergoeding wat bestaan uit of insluit enige bedrag wat nie in daardie jaar van aanslag gekwantifiseer kan word nie, word soveel van die vergoeding—

(a) as wat nie in daardie jaar gekwantifiseer kan word nie, by die toepassing van hierdie Wet geag nie aan daardie persoon in daardie jaar toe te geval het nie; en

person in respect of the acquisition of that asset in that subsequent year.

(3) The amount of any recovery or recoupment by a person of any amount allowed as a deduction in respect of any asset contemplated in subsection (1) must, for purposes of section 8(4), be determined with reference to the amounts received by or accrued to that taxpayer in terms of this section.

(4) If an asset which was acquired by a person during any year of assessment as contemplated in subsection (2)—

(a) constitutes a depreciable asset; and

(b) any amount is in terms of subsection (2)(b) deemed to have been actually incurred by that person in any subsequent year of assessment which has not been taken into account in determining the amount of any allowance in respect of that depreciable asset in any previous year and would have been so taken into account had that amount been actually incurred by that person,

so much of the amount as would have been so allowed as an allowance in any previous year must be allowed in that subsequent year of assessment.”.

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

Insertion of section 24N in Act 58 of 1962

26. (1) The following section is hereby inserted in the Income Tax Act, 1962, after section 24M:

“Incurral and accrual of amounts in respect of disposal or acquisition of equity shares

24N. (1) Where a person (hereinafter referred to as ‘the seller’) during a year of assessment disposes of equity shares to any other person (hereinafter referred to as ‘the purchaser’) in the circumstances contemplated in subsection (2), any quantified or quantifiable amount payable by the purchaser to the seller must—

(a) to the extent that it is not due and payable to the seller during that year, be deemed for purposes of this Act—

(i) not to have been accrued to the seller in that year; and

(ii) not to have been incurred by the purchaser during that year; and

(b) to the extent that it becomes due and payable to the seller in any subsequent year of assessment, be deemed for purposes of this Act—

(i) to have been accrued to the seller during that subsequent year; and

(ii) to have been incurred by the purchaser during that subsequent year.

(2) Subsection (1) applies in respect of the disposal by a seller to a purchaser of any equity shares in a company where—

(b) as wat gedurende enige daaropvolgende jaar van aanslag kwantifiseerbaar word, by die toepassing van hierdie Wet geag aan daardie persoon in daardie daaropvolgende jaar toe te geval het uit daardie beskikking.

(2) Indien 'n persoon gedurende enige jaar van aanslag 'n bate verkry vir vergoeding wat bestaan uit of insluit enige bedrag wat nie in daardie jaar van aanslag gekwantifiseer kan word nie, word soveel van daardie vergoeding—

(a) as wat nie in daardie jaar gekwantifiseer kan word nie, by die toepassing van hierdie Wet geag nie deur daardie persoon in daardie jaar aangegaan te gewees het nie; en

(b) as wat in enige daaropvolgende jaar van aanslag kwantifiseerbaar word, by die toepassing van hierdie Wet geag deur daardie persoon in daardie daaropvolgende jaar aangegaan te wees ten opsigte van die verkryging van daardie bate.

(3) Die bedrag van enige verhaling of vergoeding deur 'n persoon van enige bedrag as 'n aftrekking ten opsigte van enige bate in subartikel (1) bedoel toegelaat, word by die toepassing van artikel 8(4) bepaal met verwysing na die bedrae ontvang deur of toegeval aan daardie belastingpligtige ingevolge hierdie artikel.

(4) Indien 'n bate wat deur 'n persoon in enige jaar van aanslag verkry is, soos in subartikel (2) bedoel,—

(a) 'n slytasiebate uitmaak; en

(b) 'n bedrag ingevolge subartikel (2)(b) in enige daaropvolgende jaar van aanslag geag word werklik deur daardie persoon aangegaan te wees wat nie in berekening gebring is by die bepaling van die bedrag van enige toelae ten opsigte van daardie slytasiebate in enige voorafgaande jaar nie en aldus in berekening gebring sou word indien daardie bedrag werklik deur daardie persoon aangegaan was, word soveel van die bedrag wat in enige voorafgaande jaar as 'n toelae aldus toegelaat sou word in daardie daaropvolgende jaar van aanslag toegelaat.”.

(2) Subartikel (1) tree op die datum van inwerkingtreding van hierdie Wet in werking en is van toepassing ten opsigte van enige bate oor beskik of verkry gedurende enige jaar van aanslag wat op of na daardie datum 'n aanvang neem.

Invoeging van artikel 24N in Wet 58 van 1962

26. (1) Die volgende artikel word hierby in die Inkomstebelastingwet, 1962, ingevoeg, na artikel 24M:

“Aangaan en toevalling van bedrae ten opsigte van beskikking oor of verkryging van ekwiteitsaandeel

24N. (1) Waar 'n persoon (hierna 'die verkoper' genoem) gedurende 'n jaar van aanslag oor ekwiteitsaandeel beskik aan 'n ander persoon (hierna 'die koper' genoem) in die omstandighede in subartikel (2) bedoel, word enige gekwantifiseerde of kwantifiseerbare bedrag deur die koper aan die verkoper betaalbaar—

(a) in die mate wat dit nie in daardie jaar aan die verkoper verskuldig en betaalbaar is nie, geag by die toepassing van hierdie Wet—

(i) nie aan die verkoper in daardie jaar toe te val nie; en

(ii) nie deur die koper in daardie jaar aangegaan te wees nie; en

(b) in die mate wat dit in enige daaropvolgende jaar van aanslag aan die verkoper verskuldig en betaalbaar word, geag by die toepassing van hierdie Wet—

(i) toe te val aan die verkoper in daardie daaropvolgende jaar; en

(ii) deur die koper aangegaan te wees in daardie daaropvolgende jaar.

(2) Subartikel (1) is van toepassing ten opsigte van die beskikking deur 'n verkoper aan 'n koper van enige ekwiteitsaandeel in 'n maatskappy waar—

- (a) more than 25 per cent of the amount payable for those shares becomes due and payable by the purchaser after the end of the year of assessment of the seller and the amount payable is based on the future profits of that company;
- (b) the value of the equity shares in that company which have in aggregate been disposed of during that year and in respect of which the provisions of this section apply, exceeds 25 per cent of the total value of equity shares in that company;
- (c) the purchaser and seller are not connected persons in relation to each other after that disposal;
- (d) the purchaser is obliged to return the equity shares to the seller in the event of failure by the purchaser to pay any amount when due; and
- (e) the amount is not payable by the purchaser to the seller in terms of a financial instrument which is payable on demand and which is readily tradeable in the open market.”.

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

Substitution of section 25B of Act 58 of 1962, as inserted by section 27 of Act 129 of 1991 and amended by section 22 of Act 141 of 1992, section 36 of Act 30 of 1998, section 32 of Act 59 of 2000 and section 14 of Act 19 of 2001

27. (1) The following section hereby substitutes section 25B of the Income Tax Act, 1962:

“Income of trusts and beneficiaries of trusts

25B. (1) Any [income] amount received by or accrued to or in favour of any person during any year of assessment in his or her capacity as the trustee of a trust, shall, subject to the provisions of section 7, to the extent to which [such income] that amount has been derived for the immediate or future benefit of any ascertained beneficiary who has a vested right to [such income] that amount during [such] that year, be deemed to be [income] an amount which has accrued to [such] that beneficiary, and to the extent to which [such income] that amount is not so derived, be deemed to be [income] an amount which has accrued to [such] that trust.

(2) Where a beneficiary has acquired a vested right to any [income] amount referred to in subsection (1) in consequence of the exercise by the trustee of a discretion vested in him or her in terms of the relevant deed of trust, agreement or will of a deceased person, [such income] that amount shall for the purposes of that subsection be deemed to have been derived for the benefit of [such] that beneficiary.

(2A) Where during any year of assessment any resident acquires any vested right to any amount representing capital of any trust which is not a resident, [and] that amount must be included in the income of that resident in that year, if—

- (a) [such] that capital arose from—
 - (i) **income received by or accrued to such trust; or**
 - (ii) any receipts and accruals of such trust which would have constituted income if such trust had been a resident, in any previous year of assessment during which [such] that resident had a contingent right to [such income or receipts and accruals] that amount; and
 - (b) [such income or receipts and accruals have] that amount has not been subject to tax in the Republic in terms of [the provisions of] this Act,
- such amount shall be included in the income of such resident in such year of assessment].**

- (a) meer as 25 persent van die bedrag wat ten opsigte van daardie aandeel deur die koper betaalbaar is na die einde van die jaar van aanslag van die verkoper verskuldig en betaalbaar word en waar die bedrag betaalbaar op die toekomstige winste van daardie maatskappy gebaseer is; 5
- (b) die waarde van die ekwiteitsaandeel in daardie maatskappy waaroor in totaal gedurende daardie jaar beskik is en ten opsigte waarvan die bepaling van hierdie artikel van toepassing is, 25 persent van die totale waarde van ekwiteitsaandeel in daardie maatskappy oorskry; 10
- (c) die koper en verkoper nie na daardie beskikking verbonde persone met betrekking tot mekaar is nie; 10
- (d) die koper verplig is om die ekwiteitsaandeel aan die verkoper terug te lewer in die geval waar die koper nalaat om enige bedrag te betaal wanneer verskuldig; en 15
- (e) die bedrag nie deur die koper aan die verkoper ingevolge 'n finansiële instrument wat op aanvraag betaalbaar is en wat in die ope mark verhandelbaar is, betaalbaar is nie. 15
- (2) Subartikel (1) tree op die datum van afkondiging van hierdie Wet in werking en is van toepassing ten opsigte van enige beskikking in enige jaar van aanslag wat op of na daardie datum 'n aanvang neem. 20

Vervanging van artikel 25B van Wet 58 van 1962, soos ingevoeg deur artikel 27 van Wet 129 van 1991 en gewysig deur artikel 22 van Wet 141 van 1992, artikel 36 van Wet 30 van 1998, artikel 32 van Wet 59 van 2000 en artikel 14 van Wet 19 van 2001

27. (1) Die volgende artikel vervang hierby artikel 25B van die Inkomste-belastingwet, 1962: 25

“Inkomste van trusts en begunstigdes van trusts

25B. (1) [Inkomste] Enige bedrag gedurende enige jaar van aanslag ontvang deur of toegeval aan of ten gunste van 'n persoon in sy of haar hoedanigheid as die trustee van 'n trust, word, behoudens die bepaling van artikel 7, vir sover [bedoelde inkomste] daardie bedrag verkry is vir die onmiddellike of toekomstige voordeel van 'n vasgestelde begunstigde wat gedurende daardie jaar 'n gevestigde reg op [bedoelde inkomste] daardie bedrag het, geag [inkomste] 'n bedrag te wees wat toegeval het aan [bedoelde] daardie begunstigde, en vir sover [bedoelde inkomste] daardie bedrag nie aldus verkry is nie, geag [inkomste] 'n bedrag te wees wat aan [bedoelde] daardie trust toegeval het. 30 35

(2) Waar 'n begunstigde 'n gevestigde reg verkry het op [inkomste] 'n bedrag bedoel in subartikel (1) as gevolg van die uitoefening deur 'n trustee van 'n diskresie in hom of haar gevestig ingevolge die betrokke trustakte, ooreenkoms of 'n testament van 'n oorlede persoon, word [bedoelde inkomste] daardie bedrag by die toepassing van daardie subartikel geag vir die voordeel van [bedoelde] daardie begunstigde verkry te gewees het. 40

(2A) Waar 'n inwoner gedurende 'n jaar van aanslag 'n gevestigde reg verkry om te deel in 'n bedrag wat kapitaal van 'n trust, wat nie 'n inwoner is nie, veerteenwoordig, [en] word daardie bedrag ingesluit by die inkomste van daardie inwoner in daardie jaar, indien— 45

(a) [bedoelde] daardie kapitaal ontstaan het uit—

(i) inkomste ontvang deur of toegeval aan bedoelde trust; of

(ii) enige ontvangste en toevallings van daardie trust wat inkomste sou daargestel het indien daardie trust 'n inwoner was, in 'n voorafgaande jaar van aanslag waartydens [bedoelde] daardie inwoner 'n voorwaardelike reg gehad het [om in bedoelde inkomste of ontvangstes en toevallings te deel] tot daardie bedrag; en 50

(b) [bedoelde inkomste of ontvangstes en toevallings] daardie bedrag nie aan belasting in die Republiek ingevolge [die bepaling van] hierdie Wet onderhewig was nie[, word bedoelde bedrag by die inkomste van bedoelde inwoner in bedoelde jaar van aanslag ingesluit]. 55

(3) Any deduction or allowance which may be made under the provisions of this Act in the determination of the taxable income derived by way of any **[income]** amount referred to in subsection (1), **[shall]** must, to the extent to which **[such income]** that amount is under **[the provisions of]** that subsection deemed to be **[income]** an amount which has accrued to—

(a) a beneficiary **[or to the trust]**, be deemed to be a deduction or allowance which may be made in the determination of the taxable income derived by **[such]** that beneficiary **[or trust, as the case may be]**; and

(b) the trust, be deemed to be a deduction or allowance which may be made in the determination of the taxable income derived by that trust.

(4) **[Notwithstanding the provisions of subsection (3), any]** The deduction or allowance contemplated in **[that]** subsection (3) which is deemed to be made in the determination of the taxable income of a beneficiary of a trust during any year of assessment, shall be limited to **[the income which is]** so much of the amount deemed to **[be income which has]** have been received by or accrued to **[such]** that beneficiary in terms of subsection (1), as is included in the income of that beneficiary during **[such]** that year of assessment.

(5) The amount by which the sum of the deductions and allowances contemplated in subsection (4) exceeds the amount included in the income of the beneficiary during a year of assessment as contemplated in that subsection, **[shall]**—

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

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

(6) The amount by which the sum of the deductions and allowances contemplated in subsection (4) exceeds the sum of the amount included in the income of the beneficiary as contemplated in subsection (4) **[of such beneficiary]** and the taxable income of **[such]** the trust as contemplated in subsection (5)(a), **[shall for the purposes of subsection (3)]** must be deemed to be a deduction or allowance for purposes of subsection (3), which may be made in the determination of the taxable income derived by **[such]** that beneficiary by way of **[income]** any amount referred to in subsection (1) during the immediately succeeding year of assessment.

(7) **[The provisions of]** Subsections (4), (5) and (6) **[shall]** do not apply in respect of any **[income]** amount which is deemed to have accrued to any beneficiary in terms of subsection (1), where **[such]** that beneficiary is not subject to tax in the Republic on **[such income]** that amount.”.

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

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, section 22 of Act 30 of 2002, section 31 of Act 74 of 2002 and section 45 of Act 45 of 2003

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

(a) by the substitution in subsection (3)(b)(ii) for item (bb) of the following item:

(3) Enige aftrekking of vermindering wat kragtens die bepaling van hierdie Wet toegestaan kan word by die vasstelling van die belasbare inkomste verkry by wyse van enige **[inkomste]** bedrag bedoel in subartikel (1) word, vir sover **[bedoelde inkomste]** daardie bedrag kragtens **[die bepaling van]** daardie subartikel geag word **[inkomste]** 'n bedrag te wees wat toegeval het— 5

(a) aan 'n begunstigde **[of die trust toegeval het]**, geag 'n aftrekking of vermindering te wees wat toegestaan kan word by die vasstelling van die belasbare inkomste deur daardie begunstigde **[of trust]** verkry, **na gelang van die geval**; en 10

(b) aan die trust, geag 'n aftrekking of vermindering te wees wat toegestaan kan word by die vasstelling van die belasbare inkomste deur daardie trust verkry.

(4) **[Ondanks die bepaling van subartikel (3) word enige]** Die aftrekking of vermindering in **[daardie]** subartikel (3) beoog, wat gedurende enige jaar van aanslag geag word toegestaan te word by die vasstelling van die belasbare inkomste van 'n begunstigde van 'n trust, word beperk tot **[die inkomste wat]** soveel van die bedrag geag **[word inkomste te wees wat gedurende daardie jaar van aanslag]** ontvang te wees deur of toe te geval het aan daardie begunstigde ingevolge subartikel (1) **[toegeval het]**, as wat by die inkomste van daardie begunstigde in daardie jaar van aanslag ingesluit is. 15 20

(5) Die bedrag waarmee die som van die aftrekkings en verminderings in subartikel (4) beoog die **[inkomste]** bedrag wat by die inkomste van die begunstigde in 'n jaar van aanslag ingesluit is soos in daardie subartikel beoog, oorskry, word— 25

(a) geag 'n aftrekking of vermindering te wees wat toegestaan kan word by die vasstelling van die belasbare inkomste van die trust gedurende daardie jaar **[van aanslag]**: Met dien verstande dat die som van daardie aftrekkings en verminderings beperk word tot die belasbare inkomste van daardie trust gedurende daardie jaar van aanslag, soos bereken voordat enige aftrekking of vermindering kragtens hierdie subartikel toegelaat word; of 30

(b) waar die trust nie onderhewig is aan belasting in die Republiek nie, oorgedra en geag 'n aftrekking of vermindering te wees wat toegestaan kan word by die vasstelling van die belasbare inkomste deur daardie begunstigde verkry by wyse van **[inkomste]** bedrae bedoel in subartikel (1) in die onmiddellik daaropvolgende jaar van aanslag. 35

(6) Die bedrag waarmee die som van die aftrekkings en verminderings in subartikel (4) beoog die som van die bedrag ingesluit by die inkomste van die begunstigde soos in subartikel (4) beoog **[van daardie begunstigde]** en die belasbare inkomste van **[daardie]** die trust soos in subartikel (5)(a) beoog, oorskry, word **[by die toepassing van subartikel (3)]** geag 'n aftrekking of vermindering te wees by die toepassing van subartikel (3), wat toegestaan kan word by die vasstelling van die belasbare inkomste deur daardie begunstigde verkry by wyse van **[inkomste]** 'n bedrag bedoel in subartikel (1) in die onmiddellik daaropvolgende jaar van aanslag. 40 45

(7) **[Die bepaling van]** Subartikels (4), (5) en (6) is nie van toepassing nie ten opsigte van enige **[inkomste]** bedrag wat ingevolge subartikel (1) geag word aan 'n begunstigde toe te geval het, waar daardie begunstigde nie op daardie **[inkomste]** bedrag aan belasting in die Republiek onderhewig is nie.”. 50

(2) Subartikel (1) tree op die datum van afkondiging van hierdie Wet in werking en is van toepassing ten opsigte van enige jaar van aanslag wat op of na daardie datum eindig. 55

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, artikel 22 van Wet 30 van 2002, artikel 31 van Wet 74 van 2002 en artikel 45 van Wet 45 van 2003

28. (1) Artikel 30 van die Inkomstebelastingwet, 1962, word hierby gewysig—

(a) deur item (bb) van subartikel (3)(b)(ii) deur die volgende item te vervang: 60

“(bb) in [securities listed on a stock exchange as defined in section 1 of the Stock Exchanges Control Act, 1985 (Act No. 1 of 1985) any listed financial instrument of a company contemplated in paragraph (a) of the definition of ‘listed company’; or”;

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

“(3B) Where an organisation applies for approval before the later of 31 December [2003] 2004 or the last day of its first year of assessment, the Commissioner may approve that organisation for the purposes of this section, or for the purposes of any provision contained in section 10 which was repealed on 15 July 2001, with retrospective effect.”.

(2) Subsection (1)(a) shall come into operation on the date that the Securities Services Act, 2004, comes into operation.

Repeal of section 31A of Act 58 of 1962

29. (1) Section 31A of the Income Tax Act, 1962, is hereby repealed.

(2) Subsection (1) shall come into operation on the date of promulgation of this Act and shall apply in respect of any disposal by a non-resident on or after that date.

Insertion of section 35A in Act 58 of 1962

30. The following section is hereby inserted in the Income Tax Act, 1962, after section 35:

“Withholding of amounts from payments to non-resident sellers of immovable property

35A. (1) Any person (hereinafter referred to as ‘the purchaser’) who must pay any amount to any other person who is not a resident (hereinafter referred to as ‘the seller’), or to any other person for or on behalf of that seller, in respect of the disposal by that seller of any immovable property in the Republic must, subject to subsection (2), withhold from the amount which that person must so pay, an amount equal to—

- (a) 5 per cent of the amount so payable, in the case where the seller is a natural person;
- (b) 7,5 per cent of the amount so payable, in the case where the seller is a company; and
- (c) 10 per cent of the amount so payable, in the case where the seller is a trust.

(2) The seller may apply to the Commissioner, in the form and at the place as the Commissioner may determine, for a directive that no amount or a reduced amount be withheld by the purchaser in terms of subsection (1) solely having regard to—

- (a) any security furnished for the payment of any tax due on the disposal of the immovable property by the seller;
- (b) the extent of the assets of the seller in the Republic;
- (c) whether that seller is subject to tax in respect of the disposal of the immovable property; and
- (d) whether the actual liability of that seller for tax in respect of the disposal of the immovable property is less than the amount contemplated in subsection (1).

(3) The amount withheld from any payment to the seller in terms of subsection (1) is an advance in respect of that seller’s liability for normal tax for the year of assessment during which that property is disposed of by that seller.

(4) The amount withheld by a purchaser in terms of subsection (1), must be paid to the Commissioner—

- (a) where that purchaser is a resident, within 14 days after the date on which that amount was so withheld; or
- (b) where that purchaser is not a resident, within 28 days after the date on which that amount was so withheld.

(5) If amount has been withheld in terms of subsection (1) from any amount payable in a foreign currency, that amount so withheld must be

- “(bb) in [aandele genoteer op ’n aandelebeurs soos omskryf in artikel 1 van die Wet op Beheer van Aandelebeurse, 1985 (Wet 1 van 1985)] enige genoteerde finansiële instrument van ’n maatskappy in paragraaf (a) van die onskrywing van ‘genoteerde maatskappy’ bedoel; of”; en
- (b) deur subartikel (3B) deur die volgende subartikel te vervang:
- “(3B) Waar ’n organisasie voor die laaste van 31 Desember [2003] 2004 of die laaste dag van sy eerste jaar van aanslag om goedkeuring aansoek doen, kan die Kommissaris daardie organisasie vir doeleindes van hierdie artikel of vir doeleindes van enige bepaling in artikel 10 vervat wat op 15 Julie 2001 herroep is, met terugwerkende krag 10 goedkeur.”.

(2) Subartikel (1)(a) tree in werking op die datum waarop die “Securities Services Act, 2004”, in werking tree.

Herroeping van artikel 31A van Wet 58 van 1962

29. (1) Artikel 31A van die Inkomstebelastingwet, 1962, word hierby herroep. 15
- (2) Subartikel (1) tree op die datum van afkondiging van hierdie Wet in werking en is van toepassing ten opsigte van enige beskikking deur ’n nie-inwoner op of na daardie datum.

Invoeging van artikel 35A in Wet 58 van 1962

30. Die volgende artikel word hierby in die Inkomstebelastingwet, 1962, na artikel 35 20 ingevoeg:

“Terughouding van bedrae van betalings aan nie-inwoner verkopers van onroerende eiendom

- 35A. (1) Enige persoon (hierna ‘die koper’ genoem) wat ’n bedrag aan enige ander persoon wat nie ’n inwoner is nie (hierna ‘die verkoper’ genoem), moet betaal of aan enige ander persoon vir of namens daardie verkoper, ten opsigte van die beskikking deur daardie verkoper van enige onroerende eiendom in die Republiek moet, behoudens subartikel (2), ’n bedrag van die bedrag wat daardie persoon moet betaal terughou, gelykstaande aan—
- (a) 5 persent van die bedrag aldus betaalbaar, waar die verkoper ’n natuurlike persoon is; 25
- (b) 7,5 persent van die bedrag aldus betaalbaar, waar die verkoper ’n maatskappy is; en
- (c) 10 persent van die bedrag aldus betaalbaar, waar die verkoper ’n trust is. 30
- (2) Die verkoper kan in die vorm en by die plek wat die Kommissaris bepaal, by die Kommissaris aansoek doen om ’n aanwysing dat geen bedrag of ’n verminderde bedrag deur die koper ingevolge subartikel (1) teruggehou word, slegs met inagneming van— 40
- (a) enige sekuriteit verskaf vir die betaling van enige belasting verskuldig ten opsigte van die beskikking oor die onroerende eiendom deur die verkoper;
- (b) die omvang van die verkoper se bates in die Republiek;
- (c) of die verkoper ten opsigte van die beskikking oor die onroerende eiendom aan belasting onderhewig is; en 45
- (d) of die werklike aanspreeklikheid van daardie verkoper ten opsigte van die beskikking oor die onroerende eiendom minder is as die bedrag in subartikel (1) bedoel.
- (3) Die bedrag van enige betaling aan die verkoper ingevolge subartikel (1) teruggehou, is ’n vooruitbetaling ten opsigte van daardie verkoper se aanspreeklikheid vir normale belasting vir die jaar van aanslag waarin daardie verkoper oor daardie eiendom beskik het. 50
- (4) Die bedrag ingevolge subartikel (1) deur die koper teruggehou, moet aan die Kommissaris betaal word— 55
- (a) waar die koper ’n inwoner is, binne 14 dae na die datum waarop daardie bedrag aldus teruggehou is; of

translated to the currency of the Republic at the spot rate on the date that the amount is paid to the Commissioner.

(6) The purchaser must, together with the payment contemplated in subsection (4), submit to the Commissioner a declaration in the form and containing the information as the Commissioner may prescribe.

(7) If a purchaser knows or should reasonably have known that the seller is not a resident and fails to withhold any amount as required by subsection (1), that purchaser—

- (a) is personally liable for the payment of the amount which he or she failed to withhold; and
- (b) must pay that amount to the Commissioner not later than the date on which payment should have been made if the amount had in fact been withheld.

(8) Subsection (7) does not apply if an estate agent or conveyancer assists in the disposal of the immovable property and that estate agent or conveyancer fails to notify the purchaser as contemplated in subsection (11).

(9) If a purchaser fails to pay any amount contemplated in subsection (1) to the Commissioner within the period allowed for payment in terms of subsection (4), that purchaser—

- (a) is liable for interest at the prescribed rate on any amount outstanding calculated from the day following the last date for payment to the date that the amount is received by the Commissioner; and
- (b) must pay a penalty equal to ten per cent of that amount, in addition to any other penalty or charge for which he or she may be liable under this Act.

(10) The Commissioner may having regard to the circumstances of the case remit the whole or any part of the penalty imposed under subsection (9)(b).

(11) Any estate agent and any conveyancer who is entitled to any remuneration or other payment in respect of services rendered in connection with the disposal of the immovable property by the seller or the registration of transfer, as the case may be, must before any payment is made to the seller each notify the purchaser in writing of the fact that the seller is not a resident and that the provisions of this section may apply.

(12) If an estate agent or conveyancer knows or should reasonably have known that the seller is not a resident and fails to comply with subsection (11), that failing estate agent or conveyancer is jointly and severally liable for the payment of the amount which the purchaser is required to withhold and pay to the Commissioner in terms of this section, but limited to the amount of remuneration or other payment in respect of the services rendered in connection with the disposal of the immovable property by the seller or the registration of transfer, as the case may be.

(13) The purchaser, estate agent or conveyancer, as the case may be, may recover any amount paid in terms of subsection (7) or (12) from the seller.

(14) This section does not apply—

- (a) if the amounts payable by the purchaser to the seller and to any other person for or on behalf of the seller, in respect of the acquisition by that purchaser of the immovable property, in aggregate do not exceed R2 million; or
- (b) in respect of any deposit paid by a purchaser for purposes of securing the disposal of the immovable property by the seller to that purchaser, until the agreement for that disposal has been entered into, in which case any amount which would have been required to be withheld from the amount of that deposit, must be withheld from the first following payments made by that purchaser in respect of that disposal.

(b) waar die koper nie 'n inwoner is nie, binne 28 dae na die datum waarop daardie bedrag aldus teruggehou is.

(5) Indien 'n bedrag ingevolge subartikel (1) teruggehou is van enige bedrag wat in 'n buitelandse geldeenheid betaalbaar is, moet die bedrag aldus teruggehou na die geldeenheid van die Republiek omgerek word teen die kontantkoers op die dag waarop die bedrag aan die Kommissaris betaal word.

(6) Die koper moet, tesame met die betaling in subartikel (4) bedoel, 'n verklaring in die vorm en met die inligting wat die Kommissaris mag bepaal, aan die Kommissaris verstrek.

(7) Indien 'n koper weet of redelijkerwys behoort te gewet het dat die verkoper nie 'n inwoner is nie en nalaat om enige bedrag soos deur subartikel (1) vereis, terug te hou—

(a) is daardie koper persoonlik aanspreeklik vir die betaling van die bedrag wat hy of sy nagelaat het om terug te hou; en

(b) moet daardie koper daardie bedrag aan die Kommissaris betaal nie later nie as die datum waarop betaling gemaak moes word indien die bedrag wel teruggehou was.

(8) Subartikel (7) is nie van toepassing nie waar 'n eiendomsagent of transportbesorger bystand met die beskikking oor die onroerende eiendom verleen en daardie eiendomsagent of transportbesorger nalaat om die koper kennis te gee soos in subartikel (11) bedoel.

(9) Indien 'n koper nalaat om enige bedrag in subartikel (1) bedoel aan die Kommissaris te betaal binne die tydperk ingevolge subartikel (4) daarvoor toegelaat—

(a) is daardie koper vir rente aanspreeklik teen die voorgeskrewe rentekoers op enige uitstaande bedrag, gereken vanaf die dag wat volg op die laaste dag vir betaling tot die datum waarop die bedrag deur die Kommissaris ontvang is; en

(b) moet daardie koper, bykomend tot enige ander boete of heffing waarvoor hy of sy ingevolge hierdie Wet aanspreeklik mag wees, 'n boete gelykstaande aan tien persent van daardie bedrag betaal.

(10) Die Kommissaris kan, met inagneming van die omstandighede van die geval, die geheel of 'n gedeelte van die boete ingevolge subartikel (9)(b) opgelê, kwytskeld.

(11) 'n Eiendomsagent of 'n transportbesorger wat op enige vergoeding of ander betaling ten opsigte van dienste gelewer in verband met die beskikking oor die onroerende eiendom deur die verkoper of die registrasie van oordrag, na gelang van die geval, geregtig is, moet elkeen voordat enige betaling aan die verkoper gemaak word, die koper skriftelik kennis gee van die feit dat die verkoper nie 'n inwoner is nie en dat die bepaling van hierdie artikel van toepassing mag wees.

(12) Indien 'n eiendomsagent of transportbesorger weet of redelijkerwys behoort te gewet het dat die verkoper nie 'n inwoner is nie en nalaat om aan subartikel (11) te voldoen, is die eiendomsagent of transportbesorger wat aldus nagelaat het, gesamentlik en afsonderlik aanspreeklik vir die betaling van die bedrag wat die koper ingevolge hierdie artikel moes terughou en aan die Kommissaris oorbetal, maar beperk tot die bedrag van vergoeding of ander betaling ten opsigte van die dienste gelewer in verband met die beskikking oor die onroerende eiendom deur die verkoper of die registrasie van die oordrag, na gelang van die geval.

(13) Die koper, eiendomsagent of transportbesorger, na gelang van die geval, kan die bedrag ingevolge subartikel (7) of (12) betaal van die verkoper verhaal.

(14) Hierdie artikel is nie van toepassing nie—

(a) waar die bedrag wat deur die koper aan die verkoper en aan enige ander persoon vir of namens die verkoper betaalbaar is ten opsigte van die verkryging deur daardie koper van die onroerende eiendom, in totaal nie R2 miljoen rand oorskry nie; of

(b) ten opsigte van enige deposito deur 'n koper betaal ten einde die beskikking oor die onroerende eiendom deur die verkoper aan daardie koper te verseker, totdat die ooreenkoms vir daardie beskikking aangegaan is, in welke geval enige bedrag wat ten opsigte van daardie

(15) For purposes of this section—

‘conveyancer’ means a ‘conveyancer’ as defined in section 102 of the Deeds Registries Act, 1937 (Act No. 47 of 1937);

‘estate agent’ means an ‘estate agent’ as defined in section 1 of the Estate Agency Affairs Act, 1976 (Act No. 112 of 1976);

‘foreign currency’ means any currency other than the currency of the Republic;

‘immovable property’ means immovable property contemplated in paragraph 2(1)(b)(i) and (2) of the Eighth Schedule.”

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

Amendment of section 36 of Act 58 of 1962, as amended by section 12 of Act 72 of 1963, section 15 of Act 90 of 1964, section 20 of Act 88 of 1965, section 23 of Act 55 of 1966, section 16 of Act 95 of 1967, section 14 of Act 76 of 1968, section 26 of Act 89 of 1969, section 21 of Act 65 of 1973, section 28 of Act 85 of 1974, section 20 of Act 104 of 1980, section 25 of Act 94 of 1983, section 16 of Act 96 of 1985, section 14 of Act 70 of 1989, section 26 of Act 101 of 1990, section 30 of Act 129 of 1991, section 24 of Act 141 of 1992, section 29 of Act 113 of 1993, section 17 of Act 36 of 1996 and section 41 of Act 60 of 2001

31. (1) Section 36 of the Income Tax Act, 1962, is hereby amended by the substitution in subsection (11) for subparagraphs (aa) and (bb) of paragraph (c) of the following subparagraphs, respectively:

“(aa) the amount under this paragraph shall not be calculated for any period during which mining operations are not carried on in accordance with the terms of the relevant—

(A) mining authorization issued under the Minerals Act, 1991 (Act No. 50 of 1991); or

(B) prospecting right, mining right, exploration right or production right, mining permit or retention permit issued in terms of the Mineral and Petroleum Resources Development Act, 2002 (Act No. 28 of 2002);

(bb) notwithstanding anything to the contrary in any law contained, the amount under this paragraph shall not be taken into account for the purpose of—

(A) calculating the capital allowance provided for in section 25(2) of the Mining Rights Act, 1967; [or]

(B) **[for the purpose of]** determining the profits of which a share is payable to the State in terms of any mining authorization issued under the Minerals Act, 1991 (Act No. 50 of 1991); or

(C) determining the amounts payable to the State in terms of the transitional mineral and petroleum provisions contemplated in Schedule 3 of the Taxation Laws Amendment Act, 2004 (Act No. 16 of 2004);”.

(2) Subsection (1) shall be deemed to have come into operation on the date that the Mineral and Petroleum Resources Development Act, 2002, came into operation.

Amendment of section 41 of Act 58 of 1962, as inserted by section 44 of Act 60 of 2001 and substituted by section 34 of Act 74 of 2002 and amended by section 49 of Act 45 of 2003

32. (1) Section 41 of the Income Tax Act, 1962, is hereby amended—

(a) by the substitution in subsection (1) for subparagraph (i) of paragraph (a) of the definition of “domestic financial instrument holding company” of the following subparagraph:

“(i) the amount of that debt is or was included in the income of that company or controlled group company, as the case may be (or in the case of a foreign controlled group company, would have been so included were that foreign company a resident); and”;

(b) by the substitution in subsection (1) for paragraph (b) of the definition of “domestic financial instrument holding company” of the following paragraph:

deposito teruggehou moes word, teruggehou moet word uit die eerste daaropvolgende betalings deur daardie koper ten opsigte van daardie beskikking gemaak.

(15) By die toepassing van hierdie artikel beteken—

‘buitelandse geldeenheid’ enige geldeenheid behalwe die geldeenheid van die Republiek;

‘eiendomsagent’ ’n ‘eiendomsagent’ soos in artikel 1 van die Wet op Eiendomsagentskapaangeleenthede, 1976 (Wet No. 112 van 1976), omskryf;

‘onroerende eiendom’ onroerende eiendom in paragraaf 2(1)(b)(i) en (2) van die Agtste Bylae bedoel; en

‘transportbesorger’ ’n ‘transportbesorger’ soos in artikel 102 van die Registrasie van Aktes Wet, 1937 (Wet No. 47 van 1937), omskryf.”

(2) Subartikel (1) tree in werking op ’n datum bepaal deur die President by proklamasie in die *Staatskoerant*.

Wysiging van artikel 36 van Wet 58 van 1962, soos gewysig deur artikel 12 van Wet 72 van 1963, artikel 15 van Wet 90 van 1964, artikel 20 van Wet 88 van 1965, artikel 23 van Wet 55 van 1966, artikel 16 van Wet 95 van 1967, artikel 14 van Wet 76 van 1968, artikel 26 van Wet 89 van 1969, artikel 21 van Wet 65 van 1973, artikel 28 van Wet 85 van 1974, artikel 20 van Wet 104 van 1980, artikel 25 van Wet 94 van 1983, artikel 16 van Wet 96 van 1985, artikel 14 van Wet 70 van 1989, artikel 26 van Wet 101 van 1990, artikel 30 van Wet 129 van 1991, artikel 24 van Wet 141 van 1992, artikel 29 van Wet 113 van 1993, artikel 17 van Wet 36 van 1996 en artikel 41 van Wet 60 van 2001

31. (1) Artikel 36 van die Inkomstebelastingwet, 1962, word hierby gewysig deur subparagrafe (aa) en (bb) van paragraaf (c) van subartikel (11) onderskeidelik deur die volgende subparagrafe te vervang:

“(aa) die bedrag ingevolge hierdie paragraaf nie bereken word nie vir enige tydperk waartydens mynbou nie voortgesit word nie ooreenkomstig die bepalinge van die toepaslike—

(A) ontginningsmagtigings uitgereik ingevolge die Mineralewet, 1991 (Wet No. 50 van 1991) [voortgesit word nie]; of

(B) ‘prospecting right’, ‘mining right’, ‘exploration right’ of ‘production right’, ‘mining permit’ of ‘retention permit’ uitgereik kragtens die ‘Mineral and Petroleum Resources Development Act, 2002 (Wet No. 28 van 2002);

(bb) ondanks andersluidende wetsbepalinge, word die bedrag ingevolge hierdie paragraaf nie in aanmerking geneem nie by—

(A) die berekening van die kapitaaltoelae waarvoor in artikel 26(2) van die Wet op Mynregte, 1967, voorsiening gemaak word; [of]

(B) [by] die vasstelling van die winste waarvan ’n deel ooreenkomstig ’n ontginningsmagtigings uitgereik ingevolge die Mineralewet, 1991 (Wet No. 50 van 1991), aan die Staat betaalbaar is[, in aanmerking geneem word nie]; of

(C) die vasstelling van die bedrae aan die Staat betaalbaar ingevolge die mineraal en petroleum oorgangsbepalinge in Bylae 3 by die Wysigingswet op Belastingwette, 2004 (Wet No. 16 van 2004), bedoel.”

(2) Subartikel word geag in werking te getree het op die datum waarop die “Mineral and Petroleum Resources Development Act, 2002”, in werking getree het.

Wysiging van artikel 41 van Wet 58 van 1962, soos ingevoeg deur artikel 44 van Wet 60 van 2001 en vervang deur artikel 34 van Wet 74 van 2002 en gewysig deur artikel 49 van Wet 45 van 2003

32. (1) Artikel 41 van die Inkomstebelastingwet, 1962, word hierby gewysig—

(a) deur subparagraaf (i) van paragraaf (a) van die omskrywing van “plaaslike finansiële instrumenthouermaatskappy” in subartikel (1) deur die volgende subparagraaf te vervang:

“(i) die bedrag van daardie skuld by die inkomste van daardie maatskappy of beheerde groepsmaatskappy, na gelang van die geval, ingesluit is of was (of in die geval van ’n beheerde buitelandse groepsmaatskappy, aldus

“(b) any financial instrument held by that company or by any controlled group company in relation to that company, where that company or controlled group company, as the case may be, is **[regulated in terms of]**—

- (i) a bank regulated in terms of the Banks Act, 1990 (Act No. 94 of 1990);
 - (ii) **[the Financial Markets Control Act, 1989 (Act No. 55 of 1989)]** an authorised user regulated in terms of the Securities Services Act, 2004;
 - (iii) an insurer regulated in terms of the Long Term Insurance Act, 1998 (Act No. 52 of 1998);
 - (iv) an insurer regulated in terms of the Short Term Insurance Act, 1998 (Act No. 53 of 1998); or
 - [(v) the Stock Exchanges Control Act, 1985 (Act No. 1 of 1985); or]**
 - (vi) a collective investment scheme regulated in terms of the Unit Trusts Control Act, 1981 (Act No. 54 of 1981), or its successor the Collective Investment Schemes Control Act, 2002 (Act No. 45 of 2002); or”;
- (c) by the substitution in subsection (1) for subparagraph (i) of paragraph (a) of the definition of “foreign financial instrument holding company” of the following subparagraph:
- “(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 (or would have been so included were that foreign company or controlled group company a resident); and”; and
- (d) by the substitution for subsection (2) of the following 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 sections **[31A,] 24B(2) and (3), and 103.”.**

(2) (a) Subsection (1)(b) shall come into operation on the date that the Securities Services Act, 2004, comes into operation.

(b) Subsection (1)(d) shall come into operation on 26 October 2004 and shall apply in respect of any disposal in terms of any company formation transaction, share for share transaction, amalgamation transaction, intra-group transaction, unbundling transaction or liquidation distribution which takes effect on or after that date.

Amendment of section 42 of Act 58 of 1962, as inserted by section 44 of Act 60 of 2001 and substituted by section 34 of Act 74 of 2002 and amended by section 50 of Act 45 of 2003

33. (1) Section 42 of the Income Tax Act, 1962, is hereby amended by the substitution in subsection (9) for paragraph (c) of the following paragraph:

“(c) that financial instrument is being transferred to any company **[regulated in terms of]** that is—

- (i) a bank regulated in terms of the Banks Act, 1990 (Act No. 94 of 1990);
- (ii) **[the Financial Markets Control Act, 1989 (Act No. 55 of 1989)]** an authorised user regulated in terms of the Securities Services Act, 2004;
- (iii) an insurer regulated in terms of the Long Term Insurance Act, 1998 (Act No. 52 of 1998);
- (iv) an insurer regulated in terms of the Short Term Insurance Act, 1998 (Act No. 53 of 1998); or
- [(v) the Stock Exchanges Control Act, 1985 (Act No. 1 of 1985); or]**
- (vi) a collective investment scheme regulated in terms of the Unit Trusts Control Act, 1981 (Act No. 54 of 1981), or its successor the Collective Investment Schemes Control Act, 2002 (Act No. 45 of 2002).”.

(2) Subsection (1) shall come into operation on the date that the Securities Services Act, 2004, comes into operation.

ingesluit sou wees indien daardie buitelandse maatskappy 'n inwoner was); en";

- (b) deur paragraaf (b) van die omskrywing van “plaaslike finansiële instrumenthouermaatskappy” in subartikel (1) deur die volgende paragraaf te vervang: 5
 “(b) enige finansiële instrument gehou deur daardie maatskappy of beheerde groepsmaatskappy met betrekking tot daardie maatskappy, waar daardie maatskappy of beheerde groepsmaatskappy, na gelang van die geval, **gereguleer word deur**—
 (i) 'n bank is wat gereguleer word ingevolge die Bankwet, 1990 (Wet No. 94 van 1990); 10
 (ii) **[die Wet op Beheer van Finansiële Markte, 1989 (Wet No. 55 van 1989)]** 'n 'authorised user' is wat gereguleer word ingevolge die 'Securities Services Act, 2004';
 (iii) 'n versekeraar is wat gereguleer word ingevolge die Langtermyn-versekeringswet, 1998 (Wet No. 52 van 1998); 15
 (iv) 'n versekeraar is wat gereguleer word ingevolge die Korttermynversekeringswet, 1998 (Wet No. 53 van 1998); of
 (v) **die Wet op Beheer van Aandelebeurse (Wet No. 1 van 1985);]**
 (vi) 'n kollektiewe beleggingskema is wat gereguleer word ingevolge die Wet op Beheer van Effektetrustskemas, 1981 (Wet No. 54 van 1981) of sy opvolger die Wet op die Beheer van Kollektiewe Beleggingskemas, 2002 (Wet No. 45 van 2002); of"; 20
 (c) deur subparagraaf (i) van paragraaf (a) van die omskrywing van “buitelandse finansiële instrumenthouermaatskappy” in subartikel (1) deur die volgende subparagraaf te vervang: 25
 “(i) die bedrag van daardie skuld in die inkomste van daardie buitelandse maatskappy of beheerde groepsmaatskappy, na gelang van die geval, ingesluit is of was (of aldus ingesluit sou wees indien daardie buitelandse maatskappy of beheerde groepsmaatskappy 'n inwoner was); en"; en
 (d) deur subartikel (2) deur die volgende subartikel te vervang: 30
 “(2) Die bepalinge van hierdie Deel moet, behoudens die bepalinge van subartikel (5), toegepas word ten opsigte van 'n maatskappyformasietransaksie, 'n aandeel-vir-aandeeltransaksie, 'n amalgamasietransaksie, 'n intragroeptransaksie, 'n ontbondelingstransaksie en 'n likwidasië-uitkering soos in artikels 42, 43, 44, 45, 46 en 47, 35
 respektiewelik beoog, ondanks enige andersluidende bepaling, behalwe artikels **[31A] 24B(2) en (3)** en 103, in die Wet vervat.”
 (2) (a) Subartikel (1)(b) tree in werking op die datum waarop die “Securities Services Act, 2004”, in werking tree.
 (b) Subartikel (1)(d) tree op 26 Oktober 2004 in werking en is van toepassing ten 40
 opsigte van enige beskikking ingevolge 'n maatskappyformasietransaksie, aandeel-vir-aandeeltransaksie, amalgamasietransaksie, intragroeptransaksie, ontbondelings-transaksie of likwidasië-uitkering wat op of na daardie datum in werking tree.

**Wysiging van artikel 42 van Wet 58 van 1962, soos ingevoeg deur artikel 44 van Wet 60 van 2001 en vervang deur artikel 34 van Wet 74 van 2002 en gewysig deur 45
 artikel 50 van Wet 45 van 2003**

33. (1) Artikel 42 van die Inkomstebelastingwet, 1962, word hierby gewysig deur paragraaf (c) van subartikel (9) deur die volgende paragraaf te vervang:

- “(c) daardie finansiële instrument oorgedra word aan enige maatskappy [**wat gereguleer word ingevolge**] wat— 50
 (i) 'n bank is wat gereguleer word ingevolge die Bankwet, 1990 (Wet No. 94 van 1990);
 (ii) **[die Wet op Beheer van Finansiële Markte, 1989 (Wet No. 55 van 1989)]** 'n 'authorised user' is wat gereguleer word ingevolge die 'Securities Services Act, 2004'; 55
 (iii) 'n versekeraar is wat gereguleer word ingevolge die Langtermyn-versekeringswet, 1998 (Wet No. 52 van 1998);
 (iv) 'n versekeraar is wat gereguleer word ingevolge die Korttermyn-versekeringswet, 1998 (Wet No. 53 van 1998); of
 (v) **die Wet op Beheer van Aandelebeurse (Wet No. 1 van 1985);]** 60

Amendment of section 43 of Act 59 of 1962, as inserted by section 44 of Act 60 of 2001 and substituted by section 34 of Act 74 of 2002 and amended by section 51 of Act 45 of 2003

34. Section 43 of the Income Tax Act, 1962, is hereby amended by the substitution for subsection (7) of the following subsection: 5

“(7) The provisions of this section do not apply in respect of the disposal by a person of an 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].”.

Amendment of section 45 of Act 58 of 1962, as inserted by section 44 of Act 60 of 2001 and substituted by section 34 of Act 74 of 2002 and amended by section 53 of Act 45 of 2003 and section 17 of Act 16 of 2004

35. (1) Section 45 of the Income Tax Act, 1962, is hereby amended—

(a) by the substitution for subsection (4) of the following subsection: 15

“(4) (a) This subsection applies in respect of a transferee company which has acquired an asset—

- (i) in terms of a disposal by a transferor company by means of an intra-group transaction; or
- (ii) in terms of one or more disposals subsequent to the disposal contemplated in subparagraph (i) and no capital gain or capital loss was determined in respect of any of those disposals as a result of the application of this Part.

(b) Where a transferee company which has acquired an asset as contemplated in paragraph (a) ceases to form part of any group of companies in relation to the transferor company contemplated in paragraph (a)(i) at any time before the disposal by the transferee company of that asset, that transferee company must—

- (i) except as provided for in subparagraph (ii), be deemed to have disposed of that asset on the day immediately before the date on which that transferee company ceased to form part of that group of companies for an amount equal to the market value of the asset as at that date and as having immediately reacquired that asset for an amount equal to the market value of that asset as at that date; and
- (ii) for purposes of determining a deduction or allowance to which that transferee company may be entitled as contemplated in the definition of ‘allowance asset’ in section 41, be deemed as having immediately reacquired that asset for an amount equal to the lower of the market value of that asset as at that date or the cost of that asset immediately prior to that disposal;” and

(b) by the substitution in subsection (6)(a) for subparagraph (iii) of the following subparagraph: 40

“(iii) that financial instrument is being transferred to any transferee company [regulated in terms of] that is—

- (aa) a bank regulated in terms of the Banks Act, 1990 (Act No. 94 of 1990);
- (bb) [the Financial Markets Control Act, 1989 (Act No. 55 of 1989) an authorised user regulated in terms of the Securities Services Act, 2004;
- (cc) an insurer regulated in terms of the Long Term Insurance Act, 1998 (Act No. 52 of 1998);
- (dd) an insurer regulated in terms of the Short Term Insurance Act, 1998 (Act No. 53 of 1998); or
- [(ee) the Stock Exchanges Control Act, 1985 (Act No. 1 of 1985); or]
- (ff) a collective investment scheme regulated in terms of the Unit Trusts Control Act, 1981 (Act No. 54 of 1981), or its successor the Collective Investment Schemes Control Act, 2002 (Act No. 45 of 2002); or”.

- (vi) 'n kollektiewe beleggingskema is wat geregleer word ingevolge die Wet op Beheer van Effektetrustskemas, 1981 (Wet No. 54 van 1981) of sy opvolger die Wet op Beheer van Kollektiewe Beleggingskemas, 2002 (Wet No. 45 van 2002).”.

(2) Subartikel (1) tree in werking op die datum wat die “Securities Services Act, 2004”, in werking tree. 5

Wysiging van artikel 43 van Wet 59 van 1962, soos ingevoeg deur artikel 44 van Wet 60 van 2001 en vervang deur artikel 34 van Wet 74 van 2002 en gewysig deur artikel 51 van Wet 45 van 2003

34. Artikel 43 van die Inkomstebelastingwet, 1962, word hierby gewysig deur in die Engelse teks subartikel (7) deur die volgende subartikel te vervang: 10

“(7) The provisions of this section do not apply in respect of the disposal by a person of an 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].”.

Wysiging van artikel 45 van Wet 58 van 1962, soos ingevoeg deur artikel 44 van Wet 60 van 2001 en vervang deur artikel 34 van Wet 74 van 2002 en gewysig deur artikel 53 van Wet 45 van 2003 en artikel 17 van Wet 16 van 2004

35. (1) Artikel 45 van die Inkomstebelastingwet, 1962, word hierby gewysig— 20

(a) deur subartikel (4) deur die volgende subartikel te vervang:

“(4) (a) Hierdie subartikel geld ten aansien van 'n oordragnemende maatskappy wat 'n bate verkry het—

- (i) kragtens 'n beskikking deur 'n oordraggewende maatskappy ingevolge 'n intragroeptransaksie; of 25
- (ii) kragtens een of meer beskikkings na die beskikking in subparagraaf (i) bedoel en geen kapitaalwins of kapitaalverlies ten aansien van enige van daardie beskikkings vasgestel is nie vanweë die toepassing van hierdie Deel.

(b) Waar 'n oordragnemende maatskappy wat 'n bate verkry het soos in paragraaf (a) bedoel op enige tydstip voor die beskikking deur daardie oordragnemende maatskappy oor daardie bate ophou om deel te vorm van enige groep maatskappye in verhouding tot die oordraggewende maatskappy in paragraaf (a)(i) bedoel, word daardie oordragnemende maatskappy— 30

- (i) behalwe soos bepaal in subparagraaf (ii), geag oor daardie bate te beskik het vir 'n bedrag gelykstaande aan die markwaarde op daardie datum op die dag onmiddellik voor die datum waarop daardie oordragnemende maatskappy opgehou het om deel te vorm van daardie groep maatskappye en daardie bate onmiddellik weer te verkry het vir 'n bedrag gelykstaande aan die markwaarde van daardie bate op daardie datum; en 35

(ii) vir doeleindes van die vasstelling van 'n aftrekking of toelae waarop daardie oordragnemende maatskappy geregtig mag wees soos in die omskrywing van ‘afskryfbare bate’ in artikel 41 bedoel, geag onmiddellik daardie bate te verkry het vir 'n bedrag gelykstaande aan die minste van die markwaarde van daardie bate op daardie datum of die koste van daardie bate onmiddellik voor daardie beskikking.”; en 40

(b) deur subparagraaf (iii) van subartikel (6)(a) deur die volgende subparagraaf te vervang:

“(iii) daardie finansiële instrument oorgedra word aan enige oordragnemende maatskappy wat [geregleer word ingevolge]— 50

(aa) 'n bank is wat geregleer word ingevolge die Bankwet, 1990 (Wet No. 94 van 1990);

(bb) [die Wet op Beheer van Finansiële Markte, 1989 (Wet No. 55 van 1989)] 'n ‘authorised user’ is wat geregleer word ingevolge die ‘Securities Services Act, 2004’; 55

(cc) 'n versekeraar is wat geregleer word ingevolge die Langtermyn-versekeringswet, 1998 (Wet No. 52 van 1998);

- (2) (a) Subsection (1)(a) shall come into operation on 26 October 2004 and shall apply in respect of any intra-group transaction which takes effect on or after that date.
 (b) Subsection (1)(b) shall come into operation on the date that the Securities Services Act, 2004, comes into operation.

Amendment of section 46 of Act 58 of 1962, as inserted by section 44 of Act 60 of 2001 and amended by section 23 of Act 30 of 2002 and substituted by section 34 of Act 74 of 2002 and amended by section 54 of Act 45 of 2003

36. (1) Section 46 of the Income Tax Act, 1962, is hereby amended—

- (a) by the substitution in subsection (3) for paragraph (a) of the following paragraph:
 “(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 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 and those shares—
 (aa) constitute pre-valuation date assets as contemplated in paragraph 1 of the Eighth Schedule, the valuation date value of those shares as contemplated in paragraph 25 of the Eighth Schedule; or
 (bb) do not constitute pre-valuation date assets as contemplated in paragraph 1 of the Eighth Schedule, the expenditure in respect of those shares allowable in terms of paragraph 20 of the Eighth Schedule; and”;
 (b) by the substitution in subsection (7) for paragraph (b) of the following paragraph:
 “(b) in respect of any disposal of shares in terms of an unbundling transaction to a shareholder—
 (i) who is not [a resident] subject to tax (as defined in this Act or the Tax on Retirement Funds Act, 1996) in the Republic or who is subject to tax in the Republic at a reduced rate as a result of the application of any agreement for the avoidance of double taxation; and
 (ii) where that shareholder acquires more than five per cent of those shares.”.

(2) Subsection (1) shall come into operation on 26 October 2004 and shall apply in respect of any unbundling transaction which takes effect on or after that date.

Amendment of section 47 of Act 58 of 1962, as inserted by section 34 of Act 74 of 2002 and amended by section 55 of Act 45 of 2003

37. (1) Section 47 of the Income Tax Act, 1962, is hereby amended by the substitution in subsection (1) for paragraph (a) of the definition of “liquidation distribution” of the following paragraph:

- “(a) in terms of which any company (hereinafter referred to as the ‘liquidating company’) distributes all its assets (other than assets it elects to use to settle any debts incurred by it in the ordinary course of its trade) to its shareholders in anticipation of or in the course of the liquidation, winding up or deregistration of that company, but only to the extent to which those assets are so disposed of to another company (hereinafter referred to as the ‘holding company’) which—
 (i) is [a resident] subject to tax (as defined in this Act or the Tax on Retirements Funds Act, 1996) in the Republic, unless that company is taxed at a reduced rate in the Republic as a result of the application of any agreement for the avoidance of double taxation; and
 (ii) [which holds] on the date of that disposal holds at least 75 per cent of the equity shares of that liquidating company; and”.

(2) Subsection (1) shall come into operation on 26 October 2004 and shall apply in respect of any liquidation distribution which takes effect on or after that date.

(dd) 'n versekeraar is wat gereguleer word ingevolge die Korttermyn-versekeringswet, 1998 (Wet No. 53 van 1998); of

[(ee) die Wet op Beheer van Aandelebeurse (Wet 1 van 1985);]

(ff) 'n kollektiewe beleggingskema is wat gereguleer word ingevolge die Wet op Beheer van Effektetrustskemas, 1981 (Wet No. 54 van 1981) of sy opvolger die Wet op die Beheer van Kollektiewe Beleggingskemas, 2002 (Wet No. 45 van 2002); of".

(2) (a) Subartikel (1)(a) tree op 26 Oktober 2004 in werking en is van toepassing ten opsigte van enige intragroeptransaksie wat op of na daardie datum in werking tree.

(b) Subartikel (1)(b) tree in werking op die datum wat die "Securities Services Act, 2004", in werking tree.

Wysiging van artikel 46 van Wet 58 van 1962, soos ingevoeg deur artikel 44 van Wet 60 van 2001 en gewysig deur artikel 23 van Wet 30 van 2002 en vervang deur artikel 34 van Wet 74 van 2002 en gewysig deur artikel 54 van Wet 45 van 2003

36. (1) Artikel 46 van die Inkomstebelastingwet, 1962, word hierby gewysig— 15

(a) deur paragraaf (a) van subartikel (3) deur die volgende paragraaf te vervang:

"(a) word daardie aandeelhouer geag die ekwiteitsaandele in die ontbondelingsmaatskappy gehou (hierna die 'aandele voorheen gehou' genoem) te verkry het vir 'n koste [gelyk] gelykstaande aan—

(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) of 22(1) of (2) bedoel; of

(ii) waar die aandele voorheen gehou deur daardie aandeelhouer as kapitale bates gehou is en daardie aandele— 25

(aa) voor-waardasiedatumbates is soos in paragraaf 1 van die Agtste Bylae bedoel, die waardasiedatumwaarde van daardie aandele soos in paragraaf 25 van die Agtste Bylae bedoel; of

(bb) nie voor-waardasiedatumbates is soos in paragraaf 1 van die Agtste Bylae bedoel nie, die onkoste ten opsigte van daardie aandele wat ingevolge paragraaf 20 van die Agtste Bylae toelaatbaar is; en"; en 30

(b) deur paragraaf (b) van subartikel (7) deur die volgende paragraaf te vervang:

"(b) ten opsigte van enige beskikking [van] oor aandele ingevolge 'n ontbondelingstransaksie aan 'n aandeelhouer— 35

(i) wat nie ['n inwoner is nie,] aan belasting (soos in hierdie Wet of die Wet op Belasting op Uittreefondse, 1996), omskryf, in die Republiek onderhewig is nie of wat onderhewig is aan belasting in die Republiek teen 'n verminderde koers weens die toepassing van enige ooreenkoms vir die vermyding van dubbele belasting; en 40

(ii) waar daardie aandeelhouer meer as vyf persent van daardie aandele verkry.".

(2) Subartikel (1) tree op 26 Oktober 2004 in werking en is van toepassing ten opsigte van enige ontbondelingstransaksie wat op of na daardie datum in werking tree. 45

Wysiging van artikel 47 van Wet 58 van 1962, soos ingevoeg deur artikel 34 van Wet 74 van 2002 en gewysig deur artikel 55 van Wet 45 van 2003

37. (1) Artikel 47 van die Inkomstebelastingwet, word hierby gewysig deur paragraaf (a) van die omskrywing van "likwidasië-uitkering" in subartikel (1) deur die volgende paragraaf te vervang: 50

"(a) ingevolge waarvan 'n maatskappy (hierna die "likwiderende maatskappy" genoem) al sy bates (behalwe bates wat dit na keuse wil aanwend ter delging van skulde in die gewone loop van besigheid aangegaan) aan sy aandeelhouers uitkeer in afwagting van of in die loop van die likwidasië of deregistrasie van daardie maatskappy, maar slegs tot die mate waarin daar oor daardie bates so beskik word aan 'n ander maatskappy (hierna die "houermaatskappy" genoem) wat—

(i) ['n inwoner is] aan belasting (soos in hierdie Wet of die Wet op Belasting op Uittreefondse, 1996), omskryf, in die Republiek onderhewig is, tensy 60

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, section 24 of Act 30 of 2002, section 35 of Act 74 of 2002 and section 56 of Act 45 of 2003 5

38. (1) Section 56 of the Income Tax Act, 1962, is hereby amended by the substitution in subsection (1) for paragraph (r) of the following paragraph: 10

“(r) by a company to any other company that is a resident and is a member of the same group of companies as the company making that donation.”.

(2) Subsection (1) shall come into operation on the date of promulgation of this Act and shall apply in respect of any donation which takes effect on or after that date. 15

Amendment of section 58 of Act 58 of 1962

39. Section 58 of the Income Tax Act, 1962, is hereby amended—

(a) by renumbering the existing wording as subsection (1);

(b) by the addition of the following subsection:

“(2) Where a person disposes of a restricted equity instrument, as defined in section 8C, to any other person under the circumstances contemplated in section 8C(5), that restricted equity instrument shall for the purposes of this Part be deemed to have been donated at the time that it is deemed to vest for the purposes of section 8C and to have a value equal to the fair market value of that instrument at that time: Provided that in the determination of the value of that restricted equity instrument a reduction shall be made of an amount equal to the value of any consideration in respect of that donation.”. 20 25

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, section 25 of Act 30 of 2002, section 36 of Act 74 of 2002 and section 58 of Act 45 of 2003 30 35

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

(a) by the substitution in subsection (3) for the words preceding the proviso of the following words:

“(3) Subject to subsection (3A), the net amount of any dividend referred to in subsection (2) shall be the amount by which such dividend declared by a company exceeds the sum of any dividends [(other than— (a) any dividends contemplated in subsection (5)(b), (c), (d) and (f); (b) any foreign dividends; or (c) any dividend which accrued to a borrower as contemplated in the definition of ‘securities lending arrangement’ in respect of a share which was borrowed in terms of such arrangement, but including foreign dividends to the extent that those foreign dividends are exempt in terms of section 10(1)(k)(ii)(aa)),] which have accrued to that company during the dividend cycle in relation to such firstmentioned dividend [accrued to the company]”; 40 45 50

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

“(3A) In determining the sum of the dividends which have accrued to a company as contemplated in subsection (3), no regard must be had to— (a) any dividend contemplated in subsection (5)(b), (c) or (f); (b) any dividend to the extent that the dividend is taxable by virtue of section 10(1)(k)(i)(bb); (c) any dividend which accrued to a borrower as contemplated in the definition of ‘securities lending arrangement’ in respect of a share which was borrowed in terms of that arrangement; or 55

daardie maatskappy belas word in die Republiek teen 'n verminderde koers weens die toepassing van enige ooreenkoms vir die vermyding van dubbele belasting; en

- (ii) [wat] op die datum van daardie beskikking minstens 75 persent van die ekwiteitsaandeel van daardie likwiderende maatskappy hou; en”.

(2) Subartikel (1) tree op 26 Oktober 2004 in werking en is van toepassing ten opsigte van enige likwidasië-uitkering wat op of na daardie datum in werking tree.

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, artikel 24 van Wet 30 van 2002, artikel 35 van Wet 74 van 2002 en artikel 56 van Wet 45 van 2003

38. (1) Artikel 56 van die Inkomstebelastingwet, 1962, word hierby gewysig deur paragraaf (r) van subartikel (1) deur die volgende paragraaf te vervang:

“(r) deur 'n maatskappy aan enige ander maatskappy wat 'n inwoner is en 'n lid is van dieselfde groep van maatskappye as die maatskappy wat daardie skenking maak.”.

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

Wysiging van artikel 58 van Wet 58 van 1962

39. Artikel 58 van die Inkomstebelastingwet, 1962, word hierby gewysig—

- (a) deur die bestaande bewoording as subartikel (1) te hernoem;
- (b) deur die volgende subartikel by te voeg:

“(2) Waar 'n persoon oor 'n beperkte ekwiteitsinstrument, soos in artikel 8C omskryf, beskik aan 'n ander persoon in die omstandighede in artikel 8C(5) bedoel, word daardie beperkte ekwiteitsinstrument by die toepassing van hierdie Deel geag geskenk te wees op die tydstip wat dit geag word vir doeleindes van artikel 8C te vestig en om 'n waarde te hê gelykstaande aan die billike markwaarde van daardie instrument op daardie tydstip: Met dien verstande dat by die bepaling van die waarde van daardie beperkte ekwiteitsinstrument moet 'n vermindering gemaak word van 'n bedrag gelykstaande aan die waarde van enige vergoeding ten opsigte van daardie skenking.”.

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, artikel 25 van Wet 30 van 2002, artikel 36 van Wet 74 van 2002 en artikel 58 van Wet 45 van 2003

40. (1) Artikel 64B van die Inkomstebelastingwet, 1962, word hierby gewysig—

- (a) deur die woorde in subartikel (3) wat die voorbehoudsbepaling voorafgaan deur die volgende woorde te vervang:

“(3) Behoudens subartikel (3A), is die netto bedrag van 'n dividend bedoel in subartikel (2) [is] die bedrag waarmee daardie dividend deur 'n maatskappy verklaar die som van enige dividende, [(behalwe—

- (a) enige dividende beoog in subartikel (5)(b), (c), (d) en (f);
- (b) enige buitelandse dividende; of
- (c) enige dividend wat aan 'n lener soos bedoel in die omskrywing van “aandeleleningsreëling” toeval ten opsigte van 'n aandeel wat ingevolge so 'n reëling geleen is,

- (d) any foreign dividend, other than a foreign dividend which accrued to that company (hereinafter referred to as the 'recipient company')—
- (i) in circumstances other than as contemplated in subparagraph (ii) to the extent that the profits from which the dividend is distributed relate to an amount which has been subject to tax in the Republic in terms of this Act without reduction as a result of the application of any agreement for the avoidance of double taxation, at the rate applicable to a company which either—
 - (aa) mines for gold on any gold mine and which is in terms of an option exercised by it exempt from the payment of secondary tax on companies; or
 - (bb) has its place of residence outside the Republic and carries on a trade through a branch or agency within the Republic; or
 - (ii) to the extent that that foreign dividend arose directly or indirectly from any dividend declared by a company which is a resident (hereinafter referred to as the 'resident company') and which was subject to secondary tax on companies: Provided that where—
 - (aa) at least 10 per cent of the equity share capital in that resident company is indirectly held by that recipient company through any foreign company as defined in section 9D (hereinafter referred to as an 'intermediate company'); and
 - (bb) no other resident directly or indirectly holds an equal or greater interest in the equity share capital of that resident company (other than an interest held indirectly through that recipient company),
 so much of any foreign dividend which accrues to the recipient company from an intermediate company as does not exceed the aggregate amount of all dividends declared by that resident company to any intermediate company while that recipient company holds at least that interest in that resident company, which have not previously been taken into account under this paragraph, is deemed to arise indirectly from a dividend declared by that resident company.”;
- (c) by the deletion in subsection (5) of paragraph (d);
- (d) by the substitution in subsection (5) for subparagraph (iii) of paragraph (f) of the following subparagraph:
- “(iii) that shareholder **[is a resident]** would be subject to secondary tax on companies should that shareholder—
- (aa) declare a dividend from that dividend so declared by that company; and
 - (bb) not elect that this paragraph must apply in respect of that dividend; and”;
- (e) by the substitution in subsection (5) for the proviso to paragraph (f) of the following proviso:
- “Provided that for purposes of this paragraph, where that shareholder was formed solely by one **[or more companies]** company within that group of companies, that shareholder must be deemed—
- (a) to have been in existence **[and to have been the controlling company in relation to that company declaring the dividend]** from the date on which the controlling company in relation to that shareholder was formed; and
 - (b) to have been the controlling company in relation to the company declaring the dividend from the date on which that company declaring the dividend formed part of the same group of companies as the controlling company in relation to the shareholder.”;
- (f) by the substitution in subsection (7) for paragraph (ii) of the proviso of the following paragraph:

- maar met inbegrip van buitelandse dividende in die mate wat daardie buitelandse dividende ingevolge artikel 10(1)(k)(ii)(aa) **vrygestel is**,] wat gedurende die dividendsiklus met betrekking tot bedoelde eersgenoemde dividend aan die maatskappy toeval, oorskry:”;
- (b) deur na subartikel (3) die volgende subartikel in te voeg: 5
- “(3A) By die vasstelling van die som van die dividende wat aan ’n maatskappy toeval soos in subartikel (3) bedoel, word daar nie in ag geneem nie—
- (a) enige dividend in subartikel (5)(b), (c) of (f) bedoel; 10
- (b) enige dividend in die mate wat die dividend kragtens artikel 10(1)(k)(i)(bb) belasbaar is;
- (c) enige dividend wat aan ’n lener soos in die omskrywing van ‘aandeleleningsreëling’ bedoel, toeval ten opsigte van ’n aandeel wat ingevolge so ’n reëling geleen is; of
- (d) enige buitelandse dividend, behalwe ’n buitelandse dividend wat aan daardie maatskappy (hierna die ‘ontvangermaatskappy’ genoem) toeval— 15
- (i) in die omstandighede anders as in subparagraaf (ii) bedoel, in die mate wat die winste waaruit die dividend uitgekeer is verband hou met ’n bedrag wat ingevolge hierdie Wet in die Republiek aan belasting onderhewig was sonder vermindering weens die toepassing van enige ooreenkoms vir die vermyding van dubbele belasting, teen ’n koers van toepassing op ’n maatskappy wat óf—
- (aa) vir goud myn op enige goudmyn en wat ingevolge ’n keuse deur die maatskappy uitgeoefen van die betaling van sekondêre belasting op maatskappye vrygestel is; of 25
- (bb) sy plek van inwoning buite die Republiek het en ’n bedryf deur ’n tak of agentskap binne die Republiek bedryf; of 30
- (ii) in die mate wat daardie buitelandse dividend ontstaan het direk of indirek uit enige dividend verklaar deur ’n maatskappy wat ’n inwoner is (hierna ‘die inwonermaatskappy’ genoem) en wat aan sekondêre belasting op maatskappye onderhewig was: Met dien verstande dat waar— 35
- (aa) minstens 10 persent van die ekwiteitsaandelekapitaal in daardie inwonermaatskappy indirek deur daardie ontvangermaatskappy gehou word deur enige buitelandse maatskappy, soos in artikel 9D omskryf (hierna ‘die tussenmaatskappy’ genoem); en 40
- (bb) geen ander inwoner direk of indirek ’n gelyke of groter belang in die ekwiteitsaandelekapitaal van daardie inwonermaatskappy hou nie (behalwe ’n belang indirek deur daardie ontvangermaatskappy gehou), 45
- word soveel van enige buitelandse dividend wat aan die ontvangermaatskappy toeval vanaf ’n tussenmaatskappy as wat nie die totale bedrag van alle dividende deur daardie inwonermaatskappy aan enige tussenmaatskappy verklaar terwyl daardie ontvangermaatskappy minstens daardie belang in daardie inwonermaatskappy hou en wat nie voorheen kragtens hierdie paragraaf in berekening gebring is nie, geag te ontstaan het indirek uit ’n dividend deur daardie inwonermaatskappy verklaar.”; 50
- (c) deur paragraaf (d) van subartikel (5) te skrap;
- (d) deur subparagraaf (iii) van paragraaf (f) van subartikel (5) deur die volgende subparagraaf te vervang: 55
- “(iii) indien daardie aandeelhouer [**’n inwoner is**] aan sekondêre belasting op maatskappye onderhewig sou wees indien daardie aandeelhouer—
- (aa) ’n dividend sou verklaar uit daardie dividend aldus deur daardie maatskappy verklaar; en 60
- (bb) nie kies dat hierdie paragraaf ten opsigte van daardie dividend van toepassing moet wees nie; en”;

“(ii) for the purposes of **[paragraph (b)]** this subsection the expression ‘month’ means any of the twelve portions into which any calendar year is divided.”; and

(g) by the substitution for subsection (11) of the following subsection:

“(11) The provisions of this Act relating to the assessment and recovery of normal tax and additional tax in the event of default or omission shall with the changes required by the context *mutatis mutandis* apply [for the purposes of the assessment and recovery] in respect of secondary tax on companies.”

(2) (a) Subsection (1)(a), (c), (e), (f) and (g) shall come into operation on the date of promulgation and shall apply in respect of any dividend declared on or after that date.

(b) Subsection (1)(b) shall—

(i) to the extent that it inserts the provisions relating to foreign dividends in section 64B(3A)(d)(ii), be deemed to have come into operation on 1 June 2004 and shall apply in respect of the aggregate amount of dividends declared by the resident company during any year of assessment of the recipient which commences on or after that date; and

(ii) to the extent that it inserts the provisions in section 64B(3A)(a), (b), (c) and (d)(i), come into operation on the date of promulgation and shall apply in respect of any dividend declared on or after that date.

(c) Subsection (1)(d) is deemed to have come into operation on 26 August 2004 and applies in respect of any dividend declared on or after that date and where—

(i) any dividend is purportedly declared before 26 August 2004; and

(ii) an election in respect of that dividend in terms of section 64B(5)(f)(v) of the Income Tax Act, 1962, is received by the Commissioner on or after 26 August 2004,

that dividend is deemed to have been declared on 26 August 2004 for the purposes of this paragraph, unless it is proven to the satisfaction of the Commissioner that such dividend was actually declared before that date: Provided that any decision by the Commissioner in this regard shall be subject to objection and appeal in terms of Part III of Chapter III of the Income Tax Act, 1962.

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, section 43 of Act 59 of 2000, section 37 of Act 74 of 2002, section 38 of Act 12 of 2003 and section 59 of Act 45 of 2003

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

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

“(b) the shareholder or any connected person in relation to that shareholder is released or relieved from any obligation measurable in money which is owed to that company by that shareholder or connected person, to the extent that the amount so owed was not already deemed to be a dividend declared by that company in terms of paragraph (g);”;

(b) by the addition in subsection (2) of the word “or” at the end of paragraph (g);

(c) by the addition to subsection (2) of the following paragraph:

“(h) that amount is incurred by that company in terms of an instrument in respect of which section 8F applies;”;

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

“(bA) where the amount constitutes cash or an asset which is transferred by the company in terms of a disposal or acquisition of an asset for consideration which reflects an arm’s length price;”;

(e) by the substitution in subsection (4) for the words in paragraph (f) preceding subparagraph (i) of the following words:

“(f) to any loan or credit granted to a shareholder of the company or any connected person in relation to the shareholder during any year of assessment of the company granting the loan or credit, if—”;

(f) by the deletion in subsection (4) of paragraphs (g) and (j);

- (e) deur die voorbehoudsbepaling by paragraaf (f) van subartikel (5) deur die volgende voorbehoudsbepaling te vervang:
- “Met dien verstande dat by die toepassing van hierdie paragraaf, waar daardie aandeelhouer gevorm is uitsluitlik deur een [**of meer maatskappye**] maatskappy binne daardie groep van maatskappye, word daardie aandeelhouer geag—
- (a) te bestaan het [**en om die beherende maatskappy met betrekking tot daardie maatskappy wat die dividend verklaar te gewees het**] vanaf die datum waarop die beherende maatskappy met betrekking tot daardie aandeelhouer gevorm is; en
- (b) die beherende maatskappy met betrekking tot die maatskappy wat die dividend verklaar te gewees het vanaf die datum waarop daardie maatskappy wat die dividend verklaar deel gevorm het van dieselfde groep van maatskappye as die beherende maatskappy met betrekking tot die aandeelhouer;”;
- (f) deur paragraaf (ii) van die voorbehoudsbepaling by subartikel (7) deur die volgende paragraaf te vervang:
- “(ii) by die toepassing van [**paragraaf (b)**] hierdie subartikel die uitdrukking ‘maand’ enigee van die twaalf dele waarin ’n kalenderjaar ingedeel is, beteken.”; en
- (g) deur subartikel (11) deur die volgende subartikel te vervang:
- “(11) Die bepalings van hierdie Wet met betrekking tot die aanslag en verhalings van normale belasting en addisionele belasting in die geval van versuim of nalate is met die veranderings deur die inhoud vereis mutatis mutandis van toepassing [**vir die doeleindes van die aanslag en verhalings**] ten opsigte van sekondêre belasting op maatskappye.”.
- (2) (a) Subartikel (1)(a), (c), (e), (f) en (g) tree op die datum van afkondiging van hierdie Wet in werking en is van toepassing ten opsigte van enige dividend op of na daardie datum verklaar.
- (b) Subartikel (1)(b)—
- (i) word in die mate wat dit die bepalings met betrekking tot buitelandse dividende in artikel 64B(3A)(d)(ii) invoeg, geag op 1 Junie 2004 in werking te getree het en is van toepassing ten opsigte van die totale bedrag van dividende deur die inwonermaatskappy gedurende enige jaar van aanslag van die ontvanger wat op of na daardie datum ’n aanvang neem, verklaar; en
- (ii) in die mate wat dit die bepalings in artikel 64B(3A)(a), (b), (c) en (d)(i) invoeg, tree in werking op die datum van afkondiging en is van toepassing ten opsigte van enige dividend op of na daardie datum verklaar.
- (c) Subartikel (1)(d) word geag op 26 Augustus 2004 in werking te getree het en is van toepassing ten opsigte van enige dividend op of na daardie datum verklaar en waar—
- (i) enige dividend beweer word voor 26 Augustus 2004 verklaar te gewees het; en
- (ii) ’n keuse ten opsigte van daardie dividend ingevolge artikel 64B(5)(f)(v) van die Inkomstebelastingwet, 1962, op of na 26 Augustus 2004 deur die Kommissaris ontvang is,
- word daardie dividend vir doeleindes van hierdie paragraaf geag op 26 Augustus 2004 verklaar te gewees het, tensy dit tot bevrediging van die Kommissaris bewys word dat daardie dividend werklik voor daardie datum verklaar is: Met dien verstande dat enige beslissing deur die Kommissaris in hierdie verband aan beswaar en appèl ingevolge Deel III van Hoofstuk III van die Inkomstebelastingwet, 1962, onderhewig is.
- 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, artikel 43 van Wet 59 van 2000, artikel 37 van Wet 74 van 2002, artikel 38 van Wet 12 van 2003 en artikel 59 van Wet 45 van 2003**
41. (1) Artikel 64C van die Inkomstebelastingwet, 1962, word hierby gewysig—
- (a) deur paragraaf (b) van subartikel (2) deur die volgende paragraaf te vervang:
- “(b) die aandeelhouer of enige verbonde persoon met betrekking tot die aandeelhouer onthef word van enige verpligting meetbaar in geld wat deur die aandeelhouer of verbonde persoon aan die maatskappy

- (g) by the substitution in subsection (4) for paragraph (i) of the following paragraph:

“(i) to any loan or credit granted to a trust by a company to enable [such] that trust to purchase shares in [such] that company or the controlling company in relation to that company with a view to the resale of [such] those shares by [such] that trust to employees of [such] that company [or of an associated company in relation to such company], under a share incentive scheme operated by the company for the benefit of [such] those employees;”;

- (h) by the substitution in subsection (4) for paragraph (k) of the following paragraph:

“(k) to any amount contemplated in subsection (2)(a), (b), (c), (d) or (g) distributed, transferred, released, relieved, paid, settled, used, applied, granted or made available for the benefit of any shareholder which is a resident or any connected person in relation to the shareholder, which is a resident—

- (i) if that shareholder is a company that is a member of the same group of companies as the company which is deemed to have declared that dividend; and

- (ii) to the extent that the amount does not exceed the company's profits and reserves available for distribution that arose during the period that the shareholder was a member of the same group of companies as the company which is deemed to have declared that dividend: Provided that any profits and reserves taken into account for purposes of this paragraph may not be taken into account in applying this paragraph in respect of any future amounts distributed, transferred, released, relieved, paid, settled, used, applied, granted or made available; and”;

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

“(6) For purposes of this section and section 64B, the dividend contemplated in subsection (2)[(a), (b), (c), (d) and (f)] shall respectively be deemed to have been declared by the company on the date that—

(a) the cash or asset is distributed or transferred as contemplated in subsection (2)(a);

(b) the obligation is released or relieved as contemplated in subsection (2)(b);

(c) the debt is paid or settled as contemplated in subsection (2)(c);

(d) the amount is used or applied as contemplated in subsection (2)(d);

[or] (e) the loan or advance is made available[, **as the case may be**] as contemplated in subsection (2)(g); or

(f) the amount is incurred as contemplated in subsection (2)(h).”

(2) (a) Subsection (1)(a), (d), (e), (f), (g) and (h) shall come into operation on the date of promulgation and shall apply in respect of any amount distributed, transferred, released, relieved, paid, settled, used, applied, granted or made available on or after that date.

(b) Subsection (1)(b) and (c) shall come into operation on 26 October 2004 and shall apply in respect of any amount incurred in terms of an instrument issued or acquired during any year of assessment commencing on or after that date.

(c) Subsection (1)(i) shall—

- (i) to the extent that it inserts a reference to subsection (2)(h) in subsection (6) come into operation on 26 October 2004 and shall apply in respect of any amount incurred in terms of an instrument issued or acquired during any year of assessment commencing on or after that date; and

- (ii) to the extent that it amends the rest of subsection (6) come into operation on the date of promulgation and shall apply in respect of any amount distributed, transferred, released, relieved, paid, settled, used, applied or made available on or after that date.

- verskuldig is, in die mate wat die bedrag aldus verskuldig nie reeds kragtens paragraaf (g) geag was 'n dividend te wees wat deur daardie maatskappy verklaar is nie;”;
- (b) deur die woord “of” aan die einde van paragraaf (g) van subartikel (2) by te voeg;
- (c) deur die volgende paragraaf by subartikel (2) te voeg:
“(h) daardie bedrag deur daardie maatskappy ingevolge 'n instrument ten opsigte waarvan artikel 8F van toepassing is, aangegaan is;”;
- (d) deur die volgende paragraaf na paragraaf (b) van subartikel (4) in te voeg:
“(bA) waar die bedrag uit kontant of 'n bate bestaan wat deur die maatskappy oorgeplaas is ingevolge 'n beskikking of verkryging van 'n bate vir vergoeding wat 'n prys onder uiterste voorwaardes beding daarstel;”;
- (e) deur die woorde in paragraaf (f) van subartikel (4) wat subparagraaf (i) vooraangaan deur die volgende woorde te vervang:
“(f) op enige lening of krediet aan 'n aandeelhouer van die maatskappy of verbonde persoon met betrekking tot die aandeelhouer toegestaan gedurende 'n jaar van aanslag van die maatskappy wat die lening of krediet toestaan, indien—”;
- (f) deur paragraaf (g) en (j) van subartikel (4) te skrap;
- (g) deur paragraaf (i) van subartikel (4) deur die volgende paragraaf te vervang:
“(i) op enige lening of krediet toegestaan aan 'n trust deur 'n maatskappy om [bedoelde] daardie trust in staat te stel om aandele in [bedoelde] daardie maatskappy of die beherende maatskappy met betrekking tot daardie maatskappy te koop, met die oog op die herverkoop van [bedoelde] daardie aandele deur [bedoelde] daardie trust aan werknemers van [bedoelde] daardie maatskappy [of van 'n verwante maatskappy met betrekking tot bedoelde maatskappy], ingevolge 'n aandeel-aansporingskema deur die maatskappy bedryf vir die voordeel van [bedoelde] daardie werknemers;”;
- (h) deur paragraaf (k) van subartikel (4) deur die volgende paragraaf te vervang:
“(k) op enige bedrag in subartikel (2)(a), (b), (c), (d) of (g) bedoel uitgekeer, oorgeplaas, onthef, opgehef, betaal, vereffen, gebruik, aangewend, toegestaan of beskikbaar gemaak vir die voordeel van enige aandeelhouer wat 'n inwoner is of enige verbonde persoon met betrekking tot die aandeelhouer, wat 'n inwoner is—
 (i) indien daardie aandeelhouer 'n maatskappy is wat 'n lid is van dieselfde groep van maatskappye as die maatskappy wat geag word daardie dividend te verklaar het; en
 (ii) in die mate wat die bedrag nie die maatskappy se winste en reserwes wat vir uitkering beskikbaar is, wat ontstaan het gedurende die tydperk wat die aandeelhouer 'n lid van dieselfde groep van maatskappye as die maatskappy was geag word daardie dividend te verklaar het, oorskry nie: Met dien verstande dat enige winste en reserwes wat vir doeleindes van hierdie paragraaf in berekening gebring is, nie by die toepassing van hierdie paragraaf in berekening gebring word ten opsigte van enige toekomstige bedrae uitgekeer, oorgeplaas, onthef, opgehef, betaal, vereffen, gebruik, aangewend, toegestaan of beskikbaar gemaak nie; en”;
- (i) deur subartikel (6) deur die volgende subartikel te vervang:
“(6) By die toepassing van hierdie artikel en artikel 64B, word die dividend in subartikel (2)[(a), (b), (c), (d) en (f)] bedoel onderskeidelik geag deur die maatskappy verklaar te gewees het op die datum wat—
(a) die kontant of bate uitgekeer of oorgeplaas is soos in subartikel (2)(a) bedoel;
(b) die verpligting onthef of opgehef is soos in subartikel (2)(b) bedoel;
(c) die skuld betaal of vereffen is soos in subartikel (2)(c) bedoel;
(d) die bedrag gebruik of aangewend is soos in subartikel (2)(d) bedoel; [of]
(e) die lening of voorskot beskikbaar gemaak is, na gelang van die geval] soos in subartikel (2)(g) bedoel;
(f) die bedrag aangegaan is soos in subartikel (2)(h) bedoel.”.
- (2) (a) Subartikel (1)(a), (d), (e), (f), (g) en (h) tree op die datum van afkondiging van hierdie Wet in werking en is van toepassing ten opsigte van enige bedrag op of na

Amendment of section 103 of Act 58 of 1962, as amended by section 14 of Act 101 of 1978, section 37 of Act 121 of 1984, section 19 of Act 70 of 1989, section 29 of Act 36 of 1996, section 45 of Act 30 of 1998, section 52 of Act 59 of 2000 and section 33 of Act 5 of 2001

42. (1) Section 103 of the Income Tax Act, 1962, is hereby amended by the substitution in subsection (5) for paragraph (a) of the following paragraph: 5

“(a) Where under any transaction, operation or scheme—

- (i) any taxpayer has ceded [his] the right to receive any amount of [interest] income in exchange for any amount of dividends; and
- (ii) in consequence of [such] that cession the [taxpayer’s] liability for normal tax of the taxpayer or any other party to the transaction, operation or scheme, as determined before applying the provisions of this subsection, has been reduced or extinguished, 10

the Commissioner shall determine the liability for normal tax of the taxpayer and any other party to the transaction, operation or scheme as if [such] that cession had not been effected.” 15

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

Amendment of paragraph 1 of Second Schedule to Act 58 of 1962, as amended by section 31 of Act 90 of 1962, section 23 of Act 90 of 1964, section 34 of Act 88 of 1971, section 34 of Act 69 of 1975, section 26 of Act 113 of 1977, section 17 of Act 104 of 1979, section 27 of Act 104 of 1980, section 28 of Act 96 of 1981, section 46 of Act 94 of 1983, section 24 of Act 65 of 1986, section 43 of Act 101 of 1990, section 35 of Act 21 of 1995, section 41 of Act 28 of 1997, section 47 of Act 30 of 1998 and section 82 of Act 45 of 2003 20 25

43. Paragraph 1 of the Second Schedule to the Income Tax Act, 1962, is hereby amended by the substitution in “formula C” for item (bb) of subparagraph (i) of paragraph (b) of the following item:

“(bb) years of pensionable service purchased after 1 March 1998 by [non-statutory force members] a ‘former member of a non-statutory force or service’ as defined in the Government Employees’ Pension Law, 1996 (Proclamation No. 21 of 1996), in respect of any previous or other periods of service accounted for prior to 1 March 1998; or” 30

Substitution of paragraph 2A of Second Schedule to Act 58 of 1962, as inserted by section 43 of Act 28 of 1997 and amended by section 49 of Act 30 of 1998 35

44. (1) Paragraph 2A of the Second Schedule to the Income Tax Act, 1962, is hereby amended by the substitution for the words preceding the proviso of the following words:

“2A. For the purposes of paragraph 2, where any lump sum benefit is received or accrues from a fund referred to in paragraph (a) or (b) of the definition of ‘pension fund’ in section 1 of this Act, the amount of such lump sum benefit shall be deemed to be an amount equal to the amount determined in accordance with formula C:” 40

(2) Subsection (1) shall be deemed to have come into operation on 1 March 1998.

Substitution of paragraph 2B of Second Schedule to Act 58 of 1962, as inserted by section 42 of Act 53 of 1999 and amended by section 64 of Act 60 of 2001 45

45. Paragraph 2B of the Second Schedule to the Income Tax Act, 1962, is hereby amended by the substitution for the words preceding the proviso of the following words:

“2B. For the purposes of [paragraph] paragraphs 2 and 2A, where a court [granting an decree of divorce in respect of any member of a pension fund, provident fund or retirement annuity fund] has made an order that any part of the pension interest of [that] a member of a pension fund, provident fund or retirement annuity fund shall be paid to the former spouse of [such] that member, as provided for in [section 7 (8) of] the Divorce Act, 1979 (Act No. 70 of 1979), the amount of [such] that part [shall be] is deemed to be an amount that accrues to 50 55

daardie datum uitgekeer, oorgeplaas, onthef, opgehef, betaal, vereffen, gebruik, aangewend, toegestaan of beskikbaar gemaak.

(b) Subartikel (1)(b) en (c) tree op 26 Oktober 2004 in werking en is van toepassing ten opsigte van enige bedrag aangegaan ingevolge 'n instrument gedurende enige jaar van aanslag wat op of na daardie datum 'n aanvang neem, uitgereik of verkry.

(c) Subartikel (1)(i)—

(i) in die mate wat dit 'n verwysing na subartikel (2)(h) in subartikel (6) invoeg, tree op 26 Oktober 2004 in werking en is van toepassing ten opsigte van enige bedrag aangegaan ingevolge 'n instrument gedurende enige jaar van aanslag wat op of na daardie datum 'n aanvang neem, uitgereik of verkry; en

(ii) in die mate wat dit die res van subartikel (6) wysig, tree op die datum van afkondiging van hierdie Wet in werking en is van toepassing ten opsigte van enige bedrag op of na daardie datum uitgekeer, oorgeplaas, onthef, opgehef, betaal, vereffen, gebruik, aangewend, toegestaan of beskikbaar gemaak.

Wysiging van artikel 103 van Wet 58 van 1962, soos gewysig deur artikel 14 van Wet 101 van 1978, artikel 37 van Wet 121 van 1984, artikel 19 van Wet 70 van 1989, artikel 29 van Wet 36 van 1996, artikel 45 van Wet 30 van 1998, artikel 52 van Wet 59 van 2000 en artikel 33 van Wet 5 van 2001

42. (1) Artikel 103 van die Inkomstebelastingwet, 1962, word hierby gewysig deur paragraaf (a) van subartikel (5) deur die volgende paragraaf te vervang:

“(a) Waar ingevolge 'n transaksie, handeling of skema—

(i) 'n belastingpligtige [sy] die reg om 'n bedrag aan [rente] inkomste te ontvang, gesedeer het in ruil vir 'n bedrag aan dividende; en

(ii) as gevolg van [bedoelde] daardie sessie die [belastingpligtige se] aanspreeklikheid van die belastingpligtige of enige ander party tot die transaksie, handeling of skema vir normale belasting, soos vasgestel voor die toepassing van die bepalings van hierdie subartikel, verminder of uitgewis is,

kan die Kommissaris die aanspreeklikheid vir normale belasting van die belastingpligtige en enige ander party tot die transaksie, handeling of skema vasstel asof [bedoelde] daardie sessie nie uitgevoer is nie.”

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

Wysiging van paragraaf 1 van Tweede Bylae by Wet 58 van 1962, soos gewysig deur artikel 31 van Wet 90 van 1962, artikel 23 van Wet 90 van 1964, artikel 34 van Wet 88 van 1971, artikel 34 van Wet 69 van 1975, artikel 26 van Wet 113 van 1977, artikel 17 van Wet 104 van 1979, artikel 27 van Wet 104 van 1980, artikel 28 van Wet 96 van 1981, artikel 46 van Wet 94 van 1983, artikel 24 van Wet 65 van 1986, artikel 43 van Wet 101 van 1990, artikel 35 van Wet 21 van 1995, artikel 41 van Wet 28 van 1997, artikel 47 van Wet 30 van 1998 en artikel 82 van Wet 45 van 2003

43. Paragraaf 1 van die Tweede Bylae by die Inkomstebelastingwet, 1962, word hierby gewysig deur item (bb) van subparagraaf (i) van paragraaf (b) van ‘formule C’ deur die volgende item te vervang:

“(bb) jare van pensioendraende diens verteenwoordig wat na 1 Maart 1998 inbetaal is deur 'n [‘non-statutory force member’] ‘former member of a non-statutory force or service’ soos omskryf in die “Government Employees Pension Law”, 1996 (Proklamasie 21 van 1996), ten opsigte van enige vorige of ander tydperk van diens wat voor 1 Maart 1998 verantwoord is; of”.

Vervanging van paragraaf 2A van Tweede Bylae by Wet 58 van 1962, soos ingevoeg deur artikel 43 van Wet 28 van 1997 en gewysig deur artikel 49 van Wet 30 van 1998

44. (1) Paragraaf 2A van die Tweede Bylae by die Inkomstebelastingwet, 1962, word hierby gewysig deur die woorde wat die voorbehoudsbepaling voorafgaan deur die volgende woorde te vervang:

[such] that [person] member on the date on which the pension interest, of which [such] that amount forms part, accrues to [such] that [person] member.”.

Amendment of paragraph 1 of Fourth Schedule to Act 58 of 1962, as added by section 19 of Act 6 of 1963 and amended by section 22 of Act 72 of 1963, section 44 of Act 89 of 1969, section 24 of Act 52 of 1970, section 37 of Act 88 of 1971, section 47 of Act 85 of 1974, section 6 of Act 30 of 1984, section 38 of Act 121 of 1984, section 20 of Act 70 of 1989, section 44 of Act 101 of 1990, section 44 of Act 129 of 1991, section 33 of Act 141 of 1992, section 48 of Act 113 of 1993, section 16 of Act 140 of 1993, section 37 of Act 21 of 1995, section 34 of Act 36 of 1996, section 44 of Act 28 of 1997, section 52 of Act 30 of 1998, section 52 of Act 30 of 2000, section 53 of Act 59 of 2000, section 19 of Act 19 of 2001 and section 32 of Act 30 of 2002

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

- (a) by the substitution in the definition of “provisional taxpayer” for paragraph (d) of the following paragraph:

“(d) any person [(other than a person referred to in paragraph 18(1)(c))] who is notified by the Commissioner that he or she is a provisional taxpayer;”;

- (b) by the insertion in the definition of “remuneration” after paragraph (c) of the following paragraphs:

“(d) the market value of any qualifying equity share contemplated in section 8B, determined on the date of disposal, which has been disposed of by that person and where the receipts and accruals from that disposal must be included in that person’s income under that section;

(e) any gain determined in terms of section 8C which is required to be included in the income of that person;”.

(2) Subsection (1)(b) shall come into operation on 26 October 2004 and applies in respect of any qualifying equity share disposed of or any gain made on or after that date.

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, section 34 of Act 30 of 2002, section 58 of Act 74 of 2002 and section 24 of Act 16 of 2004

47. Paragraph 18 of the Fourth Schedule to the Income Tax Act, 1962, is hereby amended by the substitution in subparagraph (1) for item (a) of the following item:

“(a) in respect of any [period] year of assessment in respect of which provisional tax would but for the provisions of this item be payable by him or her, any person (other than a company or a director of a private company) who satisfies the Commissioner that apart from any taxable income which he or she may derive by way of remuneration, or any amount referred to in paragraph (iii) of the definition of ‘remuneration’ in paragraph 1, he or she will not during that [period] year of assessment derive any taxable income in excess of R10 000;”.

Amendment of paragraph 27 of Fourth Schedule to Act 58 of 1962, as amended by section 43 of Act 121 of 1984 and section 29 of Act 65 of 1986

48. Paragraph 27 of the Fourth Schedule to the Income Tax Act, 1962, is hereby amended by the substitution for subparagraph (1) of the following subparagraph:

“(1) If any provisional taxpayer fails to pay any amount of provisional tax for which he or she is liable within the period allowed for payment thereof in terms of paragraph 21 [22] or 23, or [sub-paragraph (1) of] paragraph 25(1), or within such extended period as the Commissioner may allow in terms of [sub-paragraph (2) of] paragraph 25(2), he [shall] or she must, in addition to any other penalty or charge incurred by him or her under this Act, pay to the Commissioner a penalty equal to ten per cent of the amount not paid.”.

“2A. By die toepassing van paragraaf 2, waar ’n enkelbedragvoordeel ontvang word of toeval van ’n fonds in paragraaf (a) of (b) van die omskrywing van ‘pensioenfondse’ in artikel 1 van hierdie Wet bedoel, word die bedrag van bedoelde enkelbedragvoordeel geag ’n bedrag te wees gelykstaande aan die bedrag ingevolge formule C vasgestel:”.

(2) Subartikel (1) word geag op 1 Maart 1998 in werking te getree het.

Vervanging van paragraaf 2B van die Tweede Bylae by Wet 58 van 1962, soos ingevoeg deur artikel 42 van Wet 53 van 1999 en gewysig deur artikel 64 van Wet 60 van 2001

45. Paragraaf 2B van die Tweede Bylae by die Inkomstebelastingwet, 1962, word hierby gewysig deur die woorde wat die voorbehoudsbepaling voorafgaan deur die volgende woorde te vervang:

“2B. By die toepassing van [paragraaf] paragrafe 2 en 2A, waar ’n hof [wat ’n egskeidingsbevel ten opsigte van ’n lid van ’n pensioenfonds, voorsorgsfonds of uittredingannuïteitsfonds toestaan,] ’n bevel gemaak het dat ’n gedeelte van die pensioenbelang van [daardie] ’n lid van ’n pensioenfonds, voorsorgsfonds of uittredingannuïteitsfonds aan die vorige eggenoot van daardie lid betaal moet word, soos in [artikel 7(8) van] die Wet op Egskeiding, 1979 (Wet No. 70 van 1979), bedoel, word die bedrag van daardie gedeelte ’n bedrag geag te wees wat aan daardie [persoon] lid toegeval het op die datum waarop die pensioenbelang, waarvan daardie bedrag ’n deel vorm, aan daardie [persoon] lid toeval:”.

Wysiging van paragraaf 1 van Vierde Bylae by Wet 58 van 1962, soos ingevoeg deur artikel 19 van Wet 6 van 1963 en gewysig deur artikel 22 van Wet 72 van 1963, artikel 44 van Wet 89 van 1969, artikel 24 van Wet 52 van 1970, artikel 37 van Wet 88 van 1971, artikel 47 van Wet 85 van 1974, artikel 6 van Wet 30 van 1984, artikel 38 van Wet 121 van 1984, artikel 20 van Wet 70 van 1989, artikel 44 van Wet 101 van 1990, artikel 44 van Wet 129 van 1991, artikel 33 van Wet 141 van 1992, artikel 48 van Wet 113 van 1993, artikel 16 van Wet 140 van 1993, artikel 37 van Wet 21 van 1995, artikel 34 van Wet 36 van 1996, artikel 44 van Wet 28 van 1997, artikel 52 van Wet 30 van 1998, artikel 52 van Wet 30 van 2000, artikel 53 van Wet 59 van 2000, artikel 19 van Wet 19 van 2001 en artikel 32 van Wet 30 van 2002

46. (1) Paragraaf 1 van die Vierde Bylae by die Inkomstebelastingwet, 1962, word hierby gewysig—

(a) deur paragraaf (d) van die omskrywing van “voorlopige belastingpligtige” deur die volgende paragraaf te vervang:

“(d) ’n persoon [(behalwe ’n persoon in paragraaf 18(1)(c) bedoel)] wat deur die Kommissaris in kennis gestel word dat hy of sy ’n voorlopige belastingpligtige is;”;

(b) deur die volgende paragrafe by die omskrywing van “besoldiging” in te voeg na paragraaf (c):

“(d) die markwaarde van ’n kwalifiserende ekwiteitsaandeel in artikel 8B bedoel, vasgestel op die datum van beskikking, waaroor deur daardie persoon beskik is en waar die ontvangste en toevallings van daardie beskikking kragtens daardie artikel by daardie persoon se inkomste ingesluit moet word;

(e) enige wins ingevolge artikel 8C vasgestel wat in daardie persoon se inkomste ingesluit moet word;”.

(2) Subartikel (1)(b) tree op 26 Oktober 2004 in werking en is van toepassing ten opsigte van enige kwalifiserende ekwiteitsaandeel oor beskik of enige wins gemaak op of na daardie datum.

Amendment of paragraph 28 of Fourth Schedule to Act 58 of 1962, as amended by section 29 of Act 90 of 1964, section 30 of Act 95 of 1967, section 48 of Act 89 of 1969, section 48 of Act 88 of 1971, section 23 of Act 90 of 1972, section 55 of Act 85 of 1974, section 53 of Act 94 of 1983, section 44 of Act 121 of 1984 and section 30 of Act 65 of 1986

49. Paragraph 28 of the Fourth Schedule to the Income Tax Act, 1962, is hereby amended by the substitution for subparagraph (8) of the following subparagraph:

“(8) For the purposes of this paragraph, ‘taxes’ means the normal tax levied under this Act **[but excluding any normal tax payable by a close corporation under section 40A(4)(b)]**.”.

Amendment of paragraph 2 of Seventh Schedule to Act 58 of 1962, as added by section 46 of Act 121 of 1984 and amended by section 27 of Act 96 of 1985, section 56 of Act 101 of 1990, section 49 of Act 28 of 1997 and section 54 of Act 30 of 1998

50. (1) Paragraph 2 of the Seventh Schedule to the Income Tax Act, 1962, is hereby amended—

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

“(a) any asset consisting of any goods, commodity, **[marketable security]** ~~financial instrument~~ or property of any nature (other than money) has been acquired by the employee from the employer or any associated institution in relation to the employer or from any person by arrangement with the employer, either for no consideration or for a consideration given by the employee which is less than the value of such asset, as determined under paragraph 5(2): Provided that the provisions of this subparagraph shall not apply in respect of—

- (i) any meal, refreshment, voucher, board, fuel, power or water with which the employee has been provided as contemplated in subparagraph (c) or (d); **[or]**
- (ii) **[in respect of]** any marketable security acquired by the exercise by the employee, as contemplated in section 8A **[of this Act]**, of any right to acquire any marketable security; **[or]**
- (iii) any qualifying equity share acquired by an employee as contemplated in section 8B; or
- (iv) any equity instrument contemplated in section 8C; or”.

(b) by the substitution for item (f) of the following item:

“(f) a loan (other than a loan **[which was treated as a dividend under the provisions of section 8B of this Act prior to the repeal thereof by section 6 of the Income Tax Act, 1990]** for purposes of the payment by the employee of any consideration in respect of any qualifying equity share contemplated in section 8B to comply with the minimum requirements of the Companies Act, 1973 (Act No. 61 of 1973), or the payment of any stamp duties or uncertificated securities tax payable in respect of that share, or a loan in respect of which a subsidy is payable as contemplated in subparagraph (gA)) has been granted to the employee, whether by the employer or by any other person by arrangement with the employer or any associated institution in relation to the employer, and either no interest is payable by the employee on such loan or interest is payable by him thereon at a rate of lower than the official rate of interest; or”.

(2) Subsection (1) shall come into operation on 26 October 2004 and shall apply in respect of any equity instrument or qualifying equity share acquired on or after that date.

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, section 63 of Act 74 of 2002, section 90 of Act 45 of 2003 and section 25 of Act 16 of 2004

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

(a) by the substitution in the definition of “recognised exchange” of paragraph (a) of the following paragraph:

“(a) **[a stock]** an exchange licensed under the [Stock Exchanges Control Act, 1985 (Act no. 1 of 1985) Securities Services Act, 2004;];”;

Wysiging van paragraaf 18 van Vierde Bylae by Wet 58 van 1962, soos bygevoeg
 deur 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 5
 36 van 1996, artikel 24 van Wet 19 van 2001, artikel 34 van Wet 30 van 2002, artikel
 58 van Wet 74 van 2002 en artikel 24 van Wet 16 van 2004

47. Paragraaf 18 van die Vierde Bylae by die Inkomstebelastingwet, 1962, word
 hierby gewysig deur item (a) van subparagraaf (1) deur die volgende item te vervang:
 “(a) ten opsigte van enige [tydperk] jaar van aanslag ten opsigte waarvan 10
 voorlopige belasting by ontstentenis van die bepalinge van hierdie item deur
 hom of haar betaalbaar sou wees, ’n persoon (behalwe ’n maatskappy of ’n
 direkteur van ’n private maatskappy) wat tot bevrediging van die
 Kommissaris bewys dat afgesien van enige belasbare inkomste wat hy of sy
 by wyse van besoldiging of ’n bedrag bedoel in paragraaf (iii) van die 15
 omskrywing van ‘besoldiging’ in paragraaf (1) mag verkry, hy of sy nie
 gedurende daardie [tydperk] jaar van aanslag ’n belasbare inkomste wat
 R10 000 te bowe gaan, sal verkry nie;”.

Wysiging van paragraaf 27 van Vierde Bylae by Wet 58 van 1962, soos gewysig
 deur artikel 43 van Wet 121 van 1984 en artikel 29 van Wet 65 van 1986 20

48. Paragraaf 27 van die Vierde Bylae by die Inkomstebelastingwet, 1962, word
 hierby gewysig deur subparagraaf (1) deur die volgende subparagraaf te vervang:
 “(1) Indien ’n voorlopige belastingpligtige versuim om enige bedrag aan
 voorlopige belasting waarvoor hy of sy aanspreeklik is te betaal binne die tydperk
 ingevolge paragraaf 21 [22] of 23 of [sub-paragraaf (1) van] paragraaf 25(1) vir 25
 die betaling daarvan toegelaat, of binne ’n langer tydperk wat die Kommissaris
 ingevolge [sub-paragraaf (2) van] paragraaf 25(2) mag toelaat, moet hy of sy,
 afgesien van enige ander boete of heffing wat hy of sy ingevolge hierdie Wet
 oploop, aan die Kommissaris ’n boete betaal gelyk aan tien persent van die bedrag
 wat nie betaal is nie.”. 30

Wysiging van paragraaf 28 van Vierde Bylae by Wet 58 van 1962, soos gewysig
 deur artikel 29 van Wet 90 van 1964, artikel 30 van Wet 95 van 1967, artikel 48 van
 Wet 89 van 1969, artikel 48 van Wet 88 van 1971, artikel 23 van Wet 90 van 1972,
 artikel 55 van Wet 85 van 1974, artikel 53 van Wet 94 van 1983, artikel 44 van Wet
 121 van 1984 en artikel 30 van Wet 65 van 1986 35

49. Paragraaf 28 van die Vierde Bylae by die Inkomstebelastingwet, 1962, word
 hierby gewysig deur subparagraaf (8) deur die volgende subparagraaf te vervang:
 “(8) By die toepassing van hierdie paragraaf beteken ‘belastinge’ die normale
 belasting wat ingevolge hierdie Wet gehef word[, maar met uitsluiting van enige
 normale belasting deur ’n beslote korporasie ingevolge artikel 40A(4)(b) 40
 betaalbaar].”.

Wysiging van paragraaf 2 van Sewende Bylae by Wet 58 van 1962, soos ingevoeg
 deur artikel 46 van Wet 121 van 1984 en gewysig deur artikel 27 van Wet 96 van
 1985, artikel 56 van Wet 101 van 1990, artikel 49 van Wet 28 van 1997 en artikel 54
 van Wet 30 van 1998 45

50. (1) Paragraaf 2 van die Sewende Bylae by die Inkomstebelastingwet, 1962, word
 hierby gewysig—

(a) deur paragraaf (a) deur die volgende paragraaf te vervang:
 “(a) enige bate bestaande uit enige goed, kommoditeit, [handelseffekte]
 finansiële instrument of eiendom van watter aard ook al (behalwe geld) 50
 deur die werknemer vanaf die werkgever of ’n verwante inrigting met
 betrekking tot die werkgever of vanaf iemand in ooreenkoms met die
 werkgever verkry is, òf vir geen vergoeding nie òf vir ’n vergoeding
 deur die werknemer gegee wat minder is as die waarde van bedoelde bate
 soos ingevolge paragraaf 5(2) vasgestel: Met dien verstande dat die 55

(b) by the deletion in the definition of “recognised exchange” of paragraph (b).

(2) Subsection (1) shall come into operation on the date that the Securities Services Act, 2004, comes into operation.

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, section 66 of Act 60 of 2001, section 64 of Act 74 of 2002 and section 91 of Act 45 of 2003 5

52. Paragraph 2 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 paragraph 97, this Schedule applies to the disposal on or after 10 valuation date of—”.

Amendment of paragraph 3 of Eighth Schedule to Act 58 of 1962, as inserted by section 38 of Act 5 of 2001 and amended by section 67 of Act 60 of 2001

53. (1) Paragraph 3 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended— 15

(a) by the substitution in item (b) for subitem (i) of the following subitem:

“(i) so much of any amount received by or accrued to that person during the current year of assessment, as constitutes part of the proceeds of that disposal which has not been taken into account—

(aa) during any year in determining the capital gain or capital loss in 20 respect of that disposal; or

(bb) in the redetermination of the capital gain or capital loss in terms of paragraph 25(2); or”;

(b) by the substitution in item (b) for subitem (ii) of the following subitem:

“(ii) so much of the base cost of that asset that has been taken into account in determining the capital gain or capital loss in respect of that disposal as has been recovered or recouped during the current year of assessment and which has not been taken into account in the redetermination of the capital gain or capital loss in terms of paragraph 25(2); or”; and 25

(c) by the addition to item (b) of the following subitem: 30

“(iii) the sum of—

(aa) any capital gain redetermined in terms of paragraph 25(2) in the current year of assessment in respect of that disposal; and

(bb) any capital loss (if any) determined in respect of that disposal in terms of paragraph 25 for the last year of assessment during which that paragraph 35 applied in respect of that disposal.”.

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

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 and section 65 of Act 74 of 2002 40

54. (1) Paragraph 4 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended—

(a) by the deletion in item (b) of the word “or” at the end of paragraph (cc) of 45 subitem (i);

(b) by the addition in item (b) to subitem (i) of the following words after paragraph (cc):

“and which have not been taken into account in the redetermination of the capital gain or capital loss in terms of paragraph 25(2);” 50

(c) by the substitution in item (b) for subitem (ii) of the following subitem:

“(ii) so much of [the base cost of] any expenditure incurred during the current year of assessment in respect of that asset, which is allowable in terms of paragraph 20 and that has not been taken into account—

(aa) during any year in determining the capital gain or capital loss in 55 respect of that disposal[, as has been paid or has become due and payable during the current year of assessment]; or

bepalings van hierdie subparagraaf nie van toepassing is nie ten opsigte van—

(i) enige maaltyd, verversing, bewysstuk, losies, brandstof, krag of water waarvan die werknemer voorsien is soos in subparagraaf (c) of (d) beoog; [of]

(ii) **[ten opsigte van]** handelseffekte verkry deur die uitoefening deur die werknemer, soos in artikel 8A **[van hierdie Wet]** beoog, van 'n reg om handelseffekte te verkry; [of]

(iii) enige kwalifiserende ekwiteitsaandeel deur 'n werknemer verkry soos in artikel 8B bedoel; of

(iv) enige ekwiteitsinstrument in artikel 8C bedoel; of".

(b) deur item (f) deur die volgende item te vervang:

"(f) 'n lening (behalwe 'n lening [wat ingevolge die bepalings van artikel 8B van hierdie Wet as 'n dividend behandel was voor die herroeping daarvan deur artikel 6 van die Inkomstebelastingwet, 1990,] vir doeleindes van die betaling deur die werknemer van enige vergoeding ten opsigte van enige kwalifiserende ekwiteitsaandeel in artikel 8B bedoel ten einde aan die minimum vereistes van die Maatskappywet, 1973 (Wet No. 61 van 1973), te voldoen of vir die betaling van enige seëlregte of belasting op sertifikaatlose aandele ten opsigte van daardie aandeel, of 'n lening ten opsigte waarvan 'n subsidie betaalbaar is soos in subparagraaf (gA) beoog) aan die werknemer verleen is, hetsy deur die werkgever of deur 'n ander persoon volgens 'n ooreenkoms met die werkgever of 'n verwante inrigting met betrekking tot die werkgever, en òf geen rente deur die werknemer op daardie lening betaalbaar is nie òf rente daarop teen 'n koers laer as die amptelike rentekoers deur hom betaalbaar is; of"

(2) Subartikel (1) tree op 26 Oktober 2004 in werking en is van toepassing ten opsigte van enige ekwiteitsinstrument of kwalifiserende ekwiteitsaandeel op of na daardie datum verkry.

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, artikel 63 van Wet 74 van 2002, artikel 90 van Wet 45 van 2003 en artikel 25 van Wet 16 van 2004

51. (1) Paragraaf 1 van die Agtste Bylae by die Inkomstebelastingwet, 1962, word hierby gewysig—

(a) deur paragraaf (a) van die omskrywing van "erkende beurs" deur die volgende paragraaf te vervang:

"(a) 'n [aandelebeurs] beurs gelisensieer kragtens die [Wet op Beheer van Aandelebeurse, 1985 (Wet No. 1 van 1985)] 'Securities Services Act, 2004';"

(b) deur die omskrywing van paragraaf (b) van "erkende beurs" te skrap.

(2) Subartikel (1) tree in werking op die datum wat die "Securities Services Act, 2004", in werking tree.

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, artikel 66 van Wet 60 van 2001, artikel 64 van Wet 74 van 2002 en artikel 91 van Wet 45 van 2003

52. Paragraaf 2 van die Agtste Bylae by die Inkomstebelastingwet, 1962, word hierby gewysig deur in die Engelse teks die woorde in subparagraaf (1) wat paragraaf (a) voorafgaan deur die volgende woorde te vervang:

"(1) Subject to paragraph 97, this Schedule applies to the disposal on or after valuation date of—"

(bb) in the redetermination of the capital gain or capital loss in terms of paragraph 25(2); or.”;

(d) by the addition to item (b) of the following subitem:

“(iii) the sum of—

(aa) any capital loss redetermined in terms of paragraph 25(2) in the current year of assessment in respect of that disposal; and 5

(bb) any capital gain (if any) determined in respect of that disposal in terms of paragraph 25 for the last year of assessment during which that paragraph applied in respect of that disposal.”.

(2) Subsection (1) shall come into operation on the date of promulgation of this Act and shall apply in respect of any disposal during any year of assessment commencing on or after that date. 10

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, section 67 of Act 74 of 2002 and section 92 of Act 45 of 2003 15

55. (1) Paragraph 11 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended by the addition to subparagraph (2) of the following item:

“(j) which constitutes an equity instrument contemplated in section 8C, which has not yet vested as contemplated in that section;”.

(2) Subsection (1) shall come into operation on 26 October 2004 and shall apply in respect of any equity instrument acquired on or after that date. 20

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, section 68 of Act 74 of 2002 and section 93 of Act 45 of 2003

56. (1) Paragraph 12 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended by the substitution in subparagraph (2) for item (a) of the following item: 25

“(a) a person who ceases to be a resident, in respect of all assets of that person other than—

(i) assets in the Republic listed in paragraph 2(1)(b)(i) and (ii);

(ii) any qualifying equity share contemplated in section 8B, which was granted to that person less than five years before the date on which that person so ceases to be a resident; and 30

(iii) any equity instrument contemplated in section 8C, which had not yet vested as contemplated in that section at the time that the person so ceases to be a resident;”. 35

(2) Subsection (1) shall come into operation on 26 October 2004 and shall apply in respect of any person who ceases to be a resident on or after that date.

Amendment of paragraph 13 of Eighth Schedule to Act 58 of 1962, as inserted by section 38 of Act 5 of 2001 and amended by section 69 of Act 74 of 2002

57. (1) Paragraph 13 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended by the substitution in subparagraph (1) for subitem (viii) of item (a) of the following subitem: 40

“(viii) the termination of an option granted by a company to a person to acquire a share, [unit] participatory interest or debenture of that company, the date on which that option terminates; or”.

(2) Subsection (1) shall be deemed to have come into operation on the date that the Collective Investment Schemes Control Act, 2002 (Act No. 45 of 2002), came into operation. 45

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, section 75 of Act 60 of 2001, section 71 of Act 74 of 2002 and section 95 of Act 45 of 2003 50

58. (1) Paragraph 20 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended—

(a) by the substitution in subparagraph (1) for the words in item (g) preceding subitem (i) of the following words: 55

Wysiging van paragraaf 3 van Agtste Bylae by Wet 58 van 1962, soos ingevoeg deur artikel 38 van Wet 5 van 2001 en gewysig deur artikel 67 van Wet 60 van 2001

53. (1) Paragraaf 3 van die Agtste Bylae by die Inkomstebelastingwet, 1962, word hierby gewysig—

- (a) deur subitem (i) van item (b) deur die volgende subitem te vervang: 5
 - “(i) soveel van enige bedrag ontvang deur of toegeval aan sodanige persoon gedurende die huidige jaar van aanslag, wat deel uitmaak van die opbrengs van daardie beskikking wat nie in berekening gebring is nie—
 (aa) gedurende enige jaar by die vasstelling van die kapitaalwins of kapitaalverlies ten opsigte van sodanige beskikking; of 10
 (bb) in die herberekening van die kapitaalwins of kapitaalverlies ingevolge paragraaf 25(2); of”;
- (b) deur subitem (ii) van item (b) deur die volgende subitem te vervang: 15
 - “(ii) soveel van die basiskoste van daardie bate wat in berekening gebring is by die vasstelling van die kapitaalwins of kapitaalverlies ten opsigte van daardie beskikking, as wat herwin of verhaal is gedurende die huidige jaar van aanslag en wat nie in berekening gebring is in die herberekening van die kapitaalwins of kapitaalverlies ingevolge paragraaf 25(2) nie; of.”; en
- (c) deur die volgende subitem by item (b) te voeg: 20
 - “(iii) die som van—
 (aa) enige kapitaalwins herbereken ingevolge paragraaf 25(2) in die huidige jaar van aanslag ten opsigte van daardie beskikking; en
 (bb) enige kapitaalverlies (indien enige) bereken ten opsigte van daardie beskikking ingevolge paragraaf 25 in die laaste jaar van aanslag waarin daardie paragraaf van toepassing was ten opsigte van daardie beskikking.”. 25

(2) Subartikel (1) tree op die datum van afkondiging van hierdie Wet in werking en is van toepassing ten opsigte van enige beskikking gedurende enige jaar van aanslag wat op of na daardie datum ’n aanvang neem. 30

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 en artikel 65 van Wet 74 van 2002

54. (1) Paragraaf 4 van die Agtste Bylae by die Inkomstebelastingwet, 1962, word hierby gewysig— 35

- (a) deur die woord “of” aan die einde van paragraaf (cc) van subitem (i) van item (b) te skrap;
- (b) deur die volgende woorde in item (b) na paragraaf (cc) van subitem (i) te voeg: 40
 - “en wat nie in berekening gebring is by die herberekening van die kapitaalwins of kapitaalverlies ingevolge paragraaf 25(2) nie;”;
- (c) deur subitem (ii) van item (b) deur die volgende subitem te vervang: 45
 - “(ii) soveel van [die basiskoste van] enige onkoste gedurende die huidige jaar van aanslag aangegaan ten opsigte van daardie bate [as] wat ingevolge paragraaf 20 toelaatbaar is en wat nie in ag geneem is nie—
 (aa) gedurende enige jaar van aanslag by die vasstelling van die kapitaalwins of kapitaalverlies ten opsigte van daardie beskikking[, as wat betaal is of wat verskuldig en betaalbaar geword het gedurende die lopende jaar van aanslag]; of
 (bb) by die herberekening van die kapitaalwins of kapitaalverlies ingevolge paragraaf 25(2); of”;
- (d) deur die volgende subitem by item (b) te voeg: 50
 - “(iii) die som van—
 (aa) enige kapitaalverlies herbereken ingevolge paragraaf 25(2) in die huidige jaar van aanslag ten opsigte van daardie beskikking; en 55
 (bb) enige kapitaalwins (indien enige) bereken ten opsigte van daardie beskikking ingevolge paragraaf 25 in die laaste jaar van aanslag waarin daardie paragraaf van toepassing was ten opsigte van daardie beskikking.”.

- “(g) the following [amounts] expenditure actually incurred [as expenditure] which is 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 exchange or a participatory interest in a portfolio of a collective investment scheme—”; and 5
- (b) by the substitution in subparagraph (1) for the proviso in item (g) of the following proviso:
- “Provided that if that asset constitutes a share listed on a recognised exchange or a participatory interest in a portfolio of a collective investment scheme, the expenditure contemplated in subitems (i) to (iii) in respect of that asset must for the purposes of this [subparagraph] item be reduced by two-thirds;” 10
- (c) by the substitution in subparagraph (1) for subitem (i) of item (h) of the following subitem:
- “(i) a marketable security or an equity instrument, the acquisition or vesting, as the case may be, of which resulted in the determination of any gain or loss to be included in or deducted from any [that] person’s income in terms of section 8A or 8C, the market value of that marketable security or equity instrument that was taken into account in determining the amount of that gain or loss (including where the gain and loss so determined was nil) [or, where the gain so determined was nil, the amount of the consideration taken into account under section 8A in respect of that acquisition;]”; 15
- (d) by the addition in subparagraph (3) of the word “or” at the end of item (a) and the deletion of the word “or” at the end of item (b); and 25
- (e) by the deletion in subparagraph (3) of item (c).
- (2) (a) Subsection (1)(c) shall come into operation on 26 October 2004 and shall apply in respect of any disposal of an equity instrument acquired on or after that date.
- (b) Subsection (1)(d) and (e) shall come into operation on the date of promulgation of this Act and shall apply in respect of any disposal during a year of assessment commencing on or after that date. 30

Amendment of paragraph 20A of Eighth Schedule to Act 58 of 1962, as inserted by section 96 of Act 45 of 2003

59. Paragraph 20A of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended by the substitution in subparagraph (2) for item (b) of the following item: 35
- “(b) in any other case, any amount allowable in terms of paragraph 20.”.

Amendment 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 and section 73 of Act 74 of 2002

60. (1) Paragraph 25 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended— 40
- (a) by renumbering the existing wording as subparagraph (1);
- (b) by the addition of the following subparagraphs:
- “(2) If a person has determined the base cost as contemplated in subparagraph (1) of a pre-valuation date asset which was disposed of during any prior year of assessment and in the current year of assessment— 45
- (a) any amount of proceeds is received or accrued in respect of that disposal which has not been taken into account in any prior year in determining the capital gain or capital loss in respect of that disposal; 50
- (b) any amount of proceeds which was taken into account in determining the capital gain or capital loss in respect of that disposal has become irrecoverable, or has become repayable or that person is no longer entitled to those proceeds as a result of the cancellation, termination or variation of any agreement or due to the prescription or waiver of a claim or a release from an obligation or any other event during the current year; 55

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

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, artikel 67 van Wet 74 van 2002 en artikel 92 van Wet 45 van 2003 5

55. (1) Paragraaf 11 van die Agtste Bylae by die Inkomstebelastingwet, 1962, word hierby gewysig deur die volgende item by subparagraaf (2) te voeg:

“(j) wat 'n ekwiteitsinstrument in artikel 8C bedoel uitmaak, wat nog nie gevestig het nie soos in daardie artikel bedoel;”.

(2) Subartikel (1) tree op 26 Oktober 2004 in werking en is van toepassing ten opsigte van enige ekwiteitsinstrument op of na daardie datum verkry. 10

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, artikel 68 van Wet 74 van 2002 en artikel 93 van Wet 45 van 2003 15

56. (1) Paragraaf 12 van die Agtste Bylae by die Inkomstebelastingwet, 1962, word hierby gewysig deur item (a) van subparagraaf (2) deur die volgende item te vervang:

“(a) 'n persoon wat ophou om 'n inwoner te wees, ten opsigte van alle bates van daardie persoon behalwe—

(i) bates in die Republiek in paragraaf 2(1)(b)(i) en (ii) gelys; 20

(ii) enige kwalifiserende ekwiteitsaandeel in artikel 8B bedoel wat aan daardie persoon toegeken is minder as vyf jaar voor die datum waarop daardie persoon aldus ophou om 'n inwoner te wees; en

(iii) enige ekwiteitsinstrument in artikel 8C bedoel wat nog nie op die tydstip wat die persoon aldus ophou om 'n inwoner te wees gevestig het nie soos in daardie artikel bedoel;” 25

(2) Subartikel (1) tree op 26 Oktober 2004 in werking en is van toepassing ten opsigte van enige persoon wat op of na daardie datum ophou om 'n inwoner te wees.

Wysiging van paragraaf 13 van Agtste Bylae by Wet 58 van 1962, soos ingevoeg deur artikel 38 van Wet 5 van 2001 en gewysig deur artikel 69 van Wet 74 van 2002 30

57. (1) Paragraaf 13 van die Agtste Bylae by die Inkomstebelastingwet, 1962, word hierby gewysig deur subitem (viii) van item (a) van subparagraaf (1) deur die volgende subitem te vervang:

“(viii) die beëindiging van 'n opsie toegestaan deur 'n maatskappy aan 'n persoon om 'n aandeel, [eenheid] deelnemende belang of skuldbrief van daardie maatskappy te verkry, die datum waarop daardie opsie beëindig word; of” 35

(2) Subartikel (1) word geag in werking te getree het op die datum wat die “Collective Investment Schemes Control Act, 2002” (Wet No. 45 van 2002), in werking getree het.

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, artikel 75 van Wet 60 van 2001, artikel 71 van Wet 74 van 2002 en artikel 95 van Wet 45 van 2003 40

58. (1) Paragraaf 20 van die Agtste Bylae by die Inkomstebelastingwet, 1962, word hierby gewysig—

(a) deur die woorde in item (g) van subparagraaf (1) wat subitem (i) voorafgaan deur die volgende woorde te vervang: 45

“(g) die volgende [bedrae] onkoste 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 beurs of 'n deelnemende belang in 'n portefeulje van 'n kollektiewe beleggingskema daarstel—; en 50

(b) deur die voorbehoudsbepaling by item (g) van subparagraaf (1) deur die volgende voorbehoudsbepaling te vervang:

“Met dien verstande dat indien daardie bate 'n aandeel genoteer op 'n erkende beurs of 'n deelnemende belang in 'n portefeulje van 'n 55

- (c) any amount of expenditure is incurred which forms part of the base cost of that asset which has not been taken into account in any prior year in determining the capital gain or loss in respect of that disposal; or
- (d) any amount of base cost of that asset that has been taken into account in any prior year in determining the capital gain or capital loss in respect of that disposal, has been recovered or recouped, that person must redetermine the base cost of that asset in terms of subparagraph (1) and the capital gain or capital loss from the disposal of that asset, having regard to the full amount of the proceeds and base cost so redetermined.
- (3) The amount of capital gain or capital loss redetermined in the current year of assessment in terms of subparagraph (2), must be taken into account in determining any capital gain or capital loss from that disposal in that current year, as contemplated in paragraph 3(1)(b)(iii) or 4(1)(b)(iii)."

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

Amendment of paragraph 33 of Eighth Schedule to Act 58 of 1962, as inserted by section 38 of Act 5 of 2001 and amended by section 80 of Act 74 of 2002 and substituted by section 99 of Act 45 of 2003

61. (1) Paragraph 33 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended—

- (a) by the addition in subparagraph (3) of the word "or" at the end of item (b);
- (b) by the deletion in subparagraph (3) of item (c).

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

Insertion of paragraph 35A in Eighth Schedule to Act 58 of 1962

62. (1) The following paragraph is hereby inserted in the Eighth Schedule to the Income Tax Act, 1962, after paragraph 35:

"Disposal of certain debt claims

35A. (1) This paragraph applies where—

- (a) a person has disposed of an asset during any year of assessment, all the proceeds of which will not accrue to that person in that year;
- (b) that person subsequently disposes of any right to claim payment in respect of that disposal; and
- (c) that claim includes any amount which has not yet accrued to that person at the time of the disposal of that claim.

(2) So much of any consideration received by or accrues to a person from the disposal of a claim contemplated in subparagraph (1)(b) as is attributable to any amount which has not yet accrued to that person as contemplated in subparagraph (1)(c), must be treated as an amount of consideration which accrues to that person in respect of the disposal of the asset contemplated in subparagraph (1)(a).

(3) So much of any capital gain or capital loss determined in respect of the disposal by the person of the right to claim payment as contemplated in subparagraph (1)(b), as is attributable to any amount which has not yet accrued to that person, must be disregarded."

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

kollektiewe beleggingskema daarstel, die onkoste in subitems (i) tot (iii) bedoel ten opsigte van daardie bate by die toepassing van hierdie [subparagraaf] item met twee-derdes verminder moet word;”;

- (c) deur subitem (i) van item (h) van subparagraaf (1) deur die volgende subitem te vervang:

“(i) ’n handelseffek of ’n ekwiteitsinstrument, die verkryging of vestiging, na gelang van die geval, waarvan aanleiding gegee het tot die vasstelling van ’n wins of verlies wat in daardie persoon se inkomste [kragtens artikel 8A] ingesluit is of daarvan afgetrek is kragtens artikel 8A of 8C, die markwaarde van daardie handelseffek of ekwiteitsinstrument wat in berekening gebring is by die vasstelling van daardie wins of verlies (ingesluit waar die wins en verlies aldus vasgestel nul is) [of, waar die wins aldus vasgestel nul was, die bedrag van die vergoeding in berekening gebring kragtens artikel 8A ten opsigte van daardie verkryging];”;

- (d) deur die woord “of” aan die einde van item (a) van subparagraaf (3) by te voeg en die woord “of” aan die einde van item (b) te skrap; en

- (e) deur item (c) van subparagraaf (3) te skrap.

(2) (a) Subartikel (1)(c) tree op 26 Oktober 2004 in werking en is van toepassing ten opsigte van enige beskikking oor ’n ekwiteitsinstrument wat op of na daardie datum verkry is.

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

Wysiging van paragraaf 20A van Agtste Bylae by Wet 58 van 1962, soos ingevoeg deur artikel 96 van Wet 45 van 2003

59. Paragraaf 20A van die Agtste Bylae by die Inkomstebelastingwet, 1962, word hierby gewysig deur item (b) van subparagraaf (2) deur die volgende item te vervang:

“(b) in enige ander geval, ’n bedrag toelaatbaar ingevolge paragraaf 20, oorskry nie.”.

Wysiging 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 en artikel 73 van Wet 74 van 2002

60. (1) Paragraaf 25 van die Agtste Bylae by die Inkomstebelastingwet, 1962, word hierby gewysig—

- (a) deur die bestaande woorde as subparagraaf (1) te hernoem; en

- (b) deur die volgende subparagrafe by te voeg:

“(2) Waar ’n persoon die basiskoste vasgestel het soos in subparagraaf

- (1) bedoel van ’n voor-waardasiedatumbate waaroor gedurende enige vorige jaar van aanslag beskik is en in die huidige jaar van aanslag—

- (a) enige bedrag van opbrengs ontvang word of toeval ten opsigte van daardie beskikking wat nie in berekening gebring is nie in enige vorige jaar by die vasstelling van die kapitaalwins of kapitaalverlies ten opsigte van daardie beskikking nie;

- (b) enige bedrag van opbrengs wat in berekening gebring is by die vasstelling van die kapitaalwins of kapitaalverlies ten opsigte van daardie beskikking onverhaalbaar word, of terugbetaalbaar word of daardie persoon nie meer geregtig op daardie opbrengs is nie weens die kansellatie, beëindiging of variasie van enige ooreenkomst of weens die verjaring of afstanddoening van ’n eis of kwytskelding van ’n verpligting of enige ander gebeurtenis gedurende die huidige jaar;

- (c) enige bedrag van onkoste aangegaan word wat deel van die basiskoste van daardie bate vorm wat nie in berekening gebring is in enige vorige jaar by die vasstelling van die kapitaalwins of kapitaalverlies ten opsigte van daardie beskikking nie; of

- (d) enige bedrag van die basiskoste van daardie bate wat in berekening gebring is in enige vorige jaar by die vasstelling van die

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 and section 81 of Act 74 of 2002

- 63.** (1) Paragraph 38 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended— 5
- (a) by the substitution in subparagraph (1) for item (a) of the following item:
 - “(a) the person who disposed of that asset must be treated as having disposed of that asset for [**proceeds**] an amount received or accrued equal to the market value of that asset as at the date of that disposal; and”;
 - (b) by the substitution for subparagraph (2) of the following subparagraph: 10
 - “(2) Subparagraph (1) does not apply in respect of the disposal of—
 - (a) a right contemplated in section 8A;
 - (b) an asset in the circumstances contemplated in section 10(1)(nE);
 - (c) a qualifying equity share contemplated in section 8B by an employer, associated institution or any other person by arrangement with the employer, as contemplated in paragraph 1 of the Seventh Schedule, to an employee; 15
 - (d) an equity instrument contemplated in section 8C in respect of which that section applies and which had not yet vested as contemplated in that section at the time of that disposal; or 20
 - (e) any asset in respect of which section 24B applies.”.
- (2) Subsection (1)(b) shall—
- (a) to the extent that it inserts paragraphs (c) and (d), come into operation on 26 October 2004 and shall apply in respect of the disposal of any equity instrument or qualifying equity share acquired on or after that date; 25
 - (b) to the extent it inserts paragraph (e), be deemed to have come into operation on 1 October 2001 and shall apply in respect of any asset acquired on or after that date.

Insertion of paragraph 39A in Eighth Schedule to Act 58 of 1962

- 64.** (1) The following paragraph is hereby inserted in the Eighth Schedule to the Income Tax Act, 1962, after paragraph 39: 30

“Disposal of asset for unaccrued amounts of proceeds

39A. (1) Where a person during any year of assessment disposes of an asset and all the proceeds from the disposal of that asset will not accrue to that person during that year, that person must, when determining the aggregate capital gain or aggregate capital loss for that year or any subsequent year of assessment, disregard any capital loss determined in respect of that disposal. 35

(2) A person's capital loss which is disregarded during any year of assessment in terms of subparagraph (1) which has not otherwise been allowed as a deduction may be deducted from that person's capital gains determined in any subsequent year in respect of the disposal of the asset contemplated in subparagraph (1). 40

(3) If during any year of assessment a person shows that no further proceeds will accrue to that person from the disposal contemplated in subparagraph (1), so much of the capital loss contemplated in that subparagraph as has not been deducted from any subsequent capital gains as contemplated in subparagraph (2), may be taken into account in determining that person's aggregate capital gain or aggregate capital loss for that year of assessment.”. 45 50

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

kapitaalwins of kapitaalverlies ten opsigte van daardie beskikking, vergoed of verhaal is,

moet daardie persoon die basiskoste van daardie bate ingevolge subparagraaf (1) herbereken en die kapitaalwins of kapitaalverlies uit die beskikking oor daardie bate, met inagneming van die volle bedrag van die opbrengs en die basiskoste aldus herbereken. 5

(3) Die bedrag van kapitaalwins of kapitaalverlies in die huidige jaar van aanslag ingevolge subparagraaf (2) herbereken, moet in berekening gebring word in die vasstelling van enige kapitaalwins of kapitaalverlies in daardie huidige jaar ten opsigte van daardie beskikking oor die bate, soos in paragraaf 3(1)(b)(iii) of 4(1)(b)(iii) bedoel.”. 10

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

Wysiging van paragraaf 33 van Agtste Bylae by Wet 58 van 1962, soos ingevoeg deur artikel 38 van Wet 5 van 2001 en gewysig deur artikel 80 van Wet 74 van 2002 en vervang deur artikel 99 van Wet 45 van 2003 15

61. (1) Paragraaf 33 van die Agtste Bylae by die Inkomstebelastingwet, 1962, word hierby gewysig—

(a) deur die woord “of” aan die einde van item (b) van subparagraaf (3) by te voeg; 20

(b) deur item (c) van subparagraaf (3) te skrap.

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

Invoeging van paragraaf 35A in Agtste Bylae by Wet 58 van 1962

62. (1) Die volgende paragraaf word hierby in die Agtste Bylae by die Inkomstebelastingwet, 1962, ingevoeg na paragraaf 35: 25

“Beskikking oor sekere skuldeise

35A. (1) Die paragraaf is van toepassing waar—

(a) 'n persoon gedurende enige jaar van aanslag oor 'n bate beskik, waarvan al die opbrengs nie aan daardie persoon gedurende daardie jaar toeval nie; 30

(b) daardie persoon daarna oor enige reg om betaling ten opsigte van daardie beskikking te eis, beskik; en

(c) daardie eis 'n bedrag insluit wat op die tydstip van die beskikking oor daardie eis nog nie aan daardie persoon toegeval het nie. 35

(2) Soveel van enige vergoeding ontvang deur of wat toeval aan 'n persoon uit die beskikking oor 'n eis in subparagraaf (1)(b) bedoel wat aan enige bedrag wat nog nie aan daardie persoon toegeval het nie soos in subparagraaf (1)(c) bedoel, toeskryfbaar is, word geag 'n bedrag van vergoeding te wees wat toeval aan daardie persoon ten opsigte van die beskikking oor die bate in subparagraaf (1)(a) bedoel. 40

(3) Soveel van enige kapitaalwins of kapitaalverlies vasgestel ten opsigte van die beskikking deur die persoon oor die reg om betaling te eis soos in subparagraaf (1)(b) bedoel, as wat aan enige bedrag wat nog nie aan daardie persoon toegeval het nie toeskryfbaar is, moet verontagsaam word.”. 45

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

Amendment of paragraph 56 of Eighth Schedule to Act 58 of 1962, as inserted by section 38 of Act 5 of 2001, substituted by section 99 of Act 60 of 2001 and amended by section 88 of Act 74 of 2002

65. Paragraph 56 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended—

- (a) by the deletion in subparagraph (2) of the word “or” at the end of item (b) and the addition of the word “or” at the end of item (c); and
- (b) by the addition to subparagraph (2) of the following item:
 - “(d) a capital gain which the creditor proves must be or was included in the determination of the aggregate capital gain or aggregate capital loss of any acquirer of the claim.”.

Amendment of section 1 of Act 91 of 1964, as amended by section 1 of Act 95 of 1965, section 1 of Act 57 of 1996, section 1 of Act 105 of 1969, section 1 of Act 98 of 1970, section 1 of Act 71 of 1975, section 1 of Act 112 of 1977, section 1 of Act 110 of 1979, sections 1 and 15 of Act 98 of 1980, section 1 of Act 89 of 1984, section 1 of Act 84 of 1987, section 1 of Act 68 of 1989, section 1 of Act 59 of 1990, section 1 of Act 19 of 1994, section 57 of Act 30 of 1998, section 46 of Act 53 of 1999, section 58 of Act 30 of 2000, section 60 of Act 59 of 2000, section 113 of Act 60 of 2001 and section 131 of Act 45 of 2003

66. Section 1 of the Customs and Excise Act, 1964, is hereby amended—

- (a) by the substitution for the definition of “common customs area” of the following definition:
 - “‘common customs area’ means the combined areas of the Member States of SACU;”;
- (b) by the substitution for the definition of “customs duty” of the following definition:
 - “‘customs duty’ means, subject to the provisions of subsection (3), any duty leviable under Schedule No. 1 (except Parts 3, 4 and 5 thereof) or No. 2 on goods imported into the Republic;”;
- (c) by the insertion after the definition of “rule” of the following definitions:
 - “‘SACU’ means the Southern African Customs Union between the Republic of Botswana, the Kingdom of Lesotho, the Republic of Namibia, the Republic of South Africa and the Kingdom of Swaziland; ‘SACU Agreement’ means the Southern African Customs Union Agreement published in Schedule No. 10;”;
- (d) by the substitution for subsection (3) of the following subsection:
 - “(3) For the purposes of the SACU Agreement—
 - (a) ‘customs duty’ includes, except for the purposes of articles 32, 33 and 34 of the said agreement, any duty leviable under Part 3, 5 or 8 of Schedule No. 1 on goods imported;
 - (b) ‘excise duty’ includes, except for the purposes of articles 32, 33 and 34 of the said agreement, any duty leviable under Part 3, 5 or 8 of Schedule No. 1 on goods manufactured in the common customs area.”.

Amendment of section 44 of Act 91 of 1964, as amended by section 10 of Act 95 of 1965, section 5 of Act 57 of 1996, section 16 of Act 105 of 1969, section 7 of Act 71 of 1975, section 8 of Act 112 of 1977, section 5 of Act 110 of 1979, section 3 of Act 89 of 1984, section 13 of Act 84 of 1987, section 21 of Act 59 of 1990, section 3 of Act 98 of 1993, section 33 of Act 45 of 1995, section 51 of Act 53 of 1999, section 43 of Act 19 of 2001, section 125 of Act 60 of 2001 and section 136 of Act 45 of 2003

67. Section 44 of the Customs and Excise Act, 1964, is hereby amended—

- (a) by the substitution in subsection (11) for paragraph (a) of the following paragraph:
 - “(a) Notwithstanding anything to the contrary contained in this Act [contained], but subject to the provisions of sections 47 (10) and (11), 65 (7) and (7A) and 69 (6) and (7) and subsection (12) of this section, except where this subsection otherwise provides in respect of any matter to which any of such provisions relate, there shall be no liability for any underpayment of duty on any goods [where such underpayment is due

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 en artikel 81 van Wet 74 van 2002

63. (1) Paragraaf 38 van die Agtste Bylae by die Inkomstebelastingwet, 1962, word hierby gewysig—

(a) deur item (a) van subparagraaf (1) deur die volgende item te vervang:

“(a) moet die persoon wat oor daardie bate beskik het geag word oor daardie bate te beskik het vir ’n **[opbrengs gelyk]** ’n bedrag ontvang of toegeval wat gelykstaande is aan die markwaarde van daardie bate soos op die datum van daardie beskikking; en”;

(b) deur subparagraaf (2) deur die volgende subparagraaf te vervang:

“(2) Subparagraaf (1) is nie van toepassing nie ten opsigte van die beskikking oor—

(a) ’n reg in artikel 8A bedoel; **[of]**

(b) ’n bate in die omstandighede in artikel 10(1)(nE) bedoel;

(c) ’n kwalifiserende ekwiteitsaandeel in artikel 8B bedoel deur ’n werkgewer, verwante inrigting of ’n ander persoon by ooreenkoms met die werkgewer soos in paragraaf 1 van die Sewende Bylae bedoel, aan ’n werknemer;

(d) ’n ekwiteitsinstrument in artikel 8C bedoel ten opsigte waarvan daardie artikel van toepassing is en wat op die tydstip van daardie beskikking nog nie gevestig het nie soos in daardie artikel bedoel;

(e) ’n bate ten opsigte waarvan artikel 24B van toepassing is.”.

(2) Subartikel (1)(b)—

(a) in die mate wat dit paragrafe (c) en (d) invoeg, tree op 26 Oktober 2004 in werking en is van toepassing ten opsigte van die beskikking oor ’n ekwiteitsinstrument of kwalifiserende ekwiteitsaandeel op of na daardie datum verkry;

(b) in die mate wat dit paragraaf (e) invoeg, word geag in werking te getree het op 1 Oktober 2001 en is van toepassing ten opsigte van enige bate op of na daardie datum verkry.

Invoeging van paragraaf 39A in Agtste Bylae by Wet 58 van 1962

64. (1) Die volgende paragraaf word hierby in die Agtste Bylae by die Inkomstebelastingwet, 1962, ingevoeg na paragraaf 39:

“**Beskikking oor bate vir bedrae van opbrengs wat nog nie toeval nie**

39A. (1) Waar ’n persoon gedurende enige jaar van aanslag oor ’n bate beskik en al die opbrengs van die beskikking oor daardie bate nie in daardie jaar aan daardie persoon toeval nie, moet daardie persoon by die vasstelling van die totale kapitaalwins of totale kapitaalverlies vir daardie jaar of enige daaropvolgende jaar van aanslag enige kapitaalverlies ten opsigte van daardie beskikking verontagsaam.

(2) ’n Persoon se kapitaalverlies wat gedurende enige jaar van aanslag ingevolge subparagraaf (1) verontagsaam is en wat nie andersins as ’n aftrekking toegelaat is nie, mag afgetrek word van daardie persoon se kapitaalwinste vasgestel in enige daaropvolgende jaar ten opsigte van die beskikking oor die bate in subparagraaf (1) bedoel.

(3) Indien gedurende enige jaar van aanslag ’n persoon bewys dat geen verdere opbrengs aan daardie persoon uit die beskikking in subparagraaf (1) bedoel sal toeval nie, kan soveel van die kapitaalverlies in daardie subparagraaf bedoel wat nie van enige daaropvolgende kapitaalwinste in subparagraaf (2) bedoel afgetrek is nie, in berekening gebring word by die vasstelling van daardie persoon se totale kapitaalwins of totale kapitaalverlies vir daardie jaar van aanslag.”.

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

to the acceptance of a bill of entry bearing any incorrect information, after a period of two years from the date of entry of such goods: **Provided that such liability shall not cease—**

- (i) if a false declaration has been made for the purposes of this Act; or
- (ii) in respect of any such underpayment discovered during any inspection from a date two years prior to the date on which such inspection commenced.]—
- (i) after a period of two years from the date of acceptance of a bill of entry; or
- (ii) where such underpayment was discovered during an inspection, two years prior to the date on which such inspection commenced: **Provided that such liability shall, subject to paragraph (c), not cease even if an underpayment is discovered after an earlier assessment and payment of an amount in respect of any inspection during the period concerned, where such underpayment is the result of—**
 - (aa) fraud;
 - (bb) misrepresentation;
 - (cc) non-disclosure of any material facts; or
 - (dd) any false declaration for the purposes of the Act.”; and
- (b) by the substitution in subsection (11) for paragraph (c) of the following paragraph:

“(c) Except where the Commissioner may otherwise determine [**the circumstances of each case,**] in exceptional circumstances, where any [**false declaration has been made for the purposes of this Act**] underpayment arises from the circumstances contemplated in the proviso to paragraph (a), there shall be no limitation on the period of liability for underpayment of duty or the period for which any books, accounts or any other documents, in whatever form available, are required to be produced to or may be inspected by an officer.”.

Amendment of section 47 of Act 91 of 1964, as amended by section 11 of Act 95 of 1965, section 17 of Act 105 of 1969, section 2 of Act 7 of 1974, section 7 of Act 105 of 1976, section 10 of Act 112 of 1977, section 6 of Act 110 of 1979, sections 9 and 15 of Act 98 of 1980, section 8 of Act 86 of 1982, section 6 of Act 52 of 1986, section 15 of Act 84 of 1987, section 4 of Act 69 of 1988, section 6 of Act 68 of 1989, section 22 of Act 59 of 1990, section 3 of Act 61 of 1992, section 37 of Act 45 of 1995, section 4 of Act 44 of 1996, section 63 of Act 30 of 1998, section 53 of Act 53 of 1999, section 126 of Act 60 of 2001, section 104 of Act 74 of 2002 and section 138 of Act 45 of 2003

68. Section 47 of the Customs and Excise Act, 1964, is hereby amended by the substitution in subsection (10) for paragraph (b) of the following paragraph:

“(b) subject to section 44 (11) (c), any [**false declaration is made for the purposes of this Act**] underpayment arises from the circumstances contemplated in the proviso to section 44(11)(a).”.

Amendment of section 55 of Act 91 of 1964, as amended by section 12 of Act 95 of 1965, section 6 of Act 103 of 1972, section 15 of Act 112 of 1977, section 8 of Act 61 of 1992 and section 3 of Act 16 of 1997

69. Section 55 of the Customs and Excise Act, 1964, is hereby amended by the substitution in subsection (2) for paragraph (a) of the following paragraph:

“(a) The imposition of any anti-dumping duty in the case of dumping as defined in the [**Board on Tariffs and Trade Act, 1986 (Act No. 107 of 1986)**] International Trade Administration Act, 2002 (Act No. 71 of 2002), a countervailing duty in the case of subsidized export as so defined or a safeguard duty in the case of disruptive competition as so defined and the rate at which or the circumstances in which such duty is imposed in respect of any imported goods shall be in accordance with any request by the Minister of Trade and Industry [**and for Economic Co-ordination**] under the provisions of the [**Board on Tariffs and Trade Act, 1986**] International Trade Administration Act, 2002.”.

Wysiging van paragraaf 56 van Agtste Bylae by Wet 58 van 1962, soos ingevoeg deur artikel 38 van Wet 5 van 2001, vervang deur artikel 99 van Wet 60 van 2001 en gewysig deur artikel 88 van Wet 74 van 2002

65. Paragraaf 56 van die Agtste Bylae by die Inkomstebelastingwet, 1962, word hierby gewysig—

- (a) deur die woord “of” aan die einde van item (b) van subparagraaf (2) te skrap en die woord “of” aan die einde van item (c) by te voeg; en
- (b) deur die volgende item by subparagraaf (2) te voeg:
 - “(d) ’n kapitaalwinst wat die skuldeiser bewys ingesluit was of moet word by die vasstelling van die totale kapitaalwinst of totale kapitaalverlies van enige persoon wat die eis verkry.”.

Wysiging van artikel 1 van Wet 91 van 1964, soos gewysig deur artikel 1 van Wet 95 van 1965, artikel 1 van Wet 57 van 1996, artikel 1 van Wet 105 van 1969, artikel 1 van Wet 98 van 1970, artikel 1 van Wet 71 van 1975, artikel 1 van Wet 112 van 1977, artikel 1 van Wet 110 van 1979, artikels 1 en 15 van Wet 98 van 1980, artikel 1 van Wet 89 van 1984, artikel 1 van Wet 84 van 1987, artikel 1 van Wet 68 van 1989, artikel 1 van Wet 59 van 1990, artikel 1 van Wet 19 van 1994, artikel 57 van Wet 30 van 1998, artikel 46 van Wet 53 van 1999, artikel 58 van Wet 30 van 2000, artikel 60 van Wet 59 van 2000, artikel 113 van Wet 60 van 2001 en artikel 131 van Wet 45 van 2003

66. Artikel 1 van die Doeane- en Aksynswet, 1964, word hierby gewysig—

- (a) deur die omskrywing van “gemeenskaplike doeanegebied” deur die volgende omskrywing te vervang:
 - “‘gemeenskaplike doeanegebied’ beteken die gekombineerde gebiede van die Lidlande van SADU;”;
- (b) deur die omskrywing van “doeanereg” deur die volgende omskrywing te vervang:
 - “‘doeanereg’, behoudens die bepalings van subartikel (3), enige reg wat ingevolge Bylae No. 1 (behalwe Dele 3, 4 en 5 daarvan) of No. 2 op in die Republiek ingevoerde goedere hefbaar is;”;
- (c) deur na die omskrywing van “regulasie” die volgende omskrywings in te voeg:
 - “‘SADU’, die Suider-Afrikaanse Doeane-Unie tussen die Republiek van Botswana, die Koninkryk van Lesotho, die Republiek van Namibia, die Republiek van Suid-Afrika en die Koninkryk van Swaziland; ‘SADU Ooreenkoms’, die Suider-Afrikaanse Doeane-Unie Ooreenkoms in Bylae No. 10 gepubliseer”;
- (d) deur subartikel (3) deur die volgende subartikel te vervang:
 - “(3) Vir die doeleindes van die SADU Ooreenkoms beteken —
 - (a) ‘aksynsreg’ ook, behalwe vir die doeleindes van artikels 32, 33 en 34 van genoemde ooreenkoms, enige reg wat ingevolge Deel 3, 5 of 8 van Bylae No. 1 op goedere wat in die gemeenskaplike doeanegebied vervaardig is, hefbaar is;
 - (b) ‘doeanereg’ ook, behalwe vir die doeleindes van artikels 32, 33 en 34 van genoemde ooreenkoms, enige reg wat ingevolge Deel 3, 5 of 8 van Bylae No. 1 op ingevoerde goedere, hefbaar is.”.

Wysiging van artikel 44 van Wet 91 van 1964, soos gewysig deur artikel 10 van Wet 95 van 1965, artikel 5 van Wet 57 van 1966, artikel 16 van Wet 105 van 1969, artikel 7 van Wet 71 van 1975, artikel 8 van Wet 112 van 1977, artikel 5 van Wet 110 van 1979, artikel 3 van Wet 89 van 1984, artikel 13 van Wet 84 van 1987, artikel 21 van Wet 59 van 1990, artikel 3 van Wet 98 van 1993, artikel 33 van Wet 45 van 1995, artikel 51 van Wet 53 van 1999, artikel 43 van Wet 19 van 2001, artikel 125 van Wet 60 van 2001 en artikel 136 van Wet 45 van 2003

67. Artikel 44 van die Doeane- en Aksynswet, 1964, word hierby gewysig—

- (a) deur in subartikel (11) paragraaf (a) deur die volgende paragraaf te vervang:
 - “(a) Ondanks andersluidende bepalings [van] vervat in hierdie Wet, maar behoudens die bepalings van artikels 47 (10) en (11), 65 (7) en (7A) en 69 (6) en (7) en subartikel (12) van hierdie artikel, behalwe waar

Amendment of section 65 of Act 91 of 1964, as substituted by section 13 of Act 86 of 1982 and amended by section 8 of Act 101 of 1985, section 8 of Act 52 of 1986, section 48 of Act 45 of 1995, section 5 of Act 44 of 1996, section 59 of Act 53 of 1999, section 128 of Act 60 of 2001 and section 144 of Act 45 of 2003

70. Section 65 of the Customs and Excise Act, 1964, is hereby amended by the substitution in subsection (7) for paragraph (b) of the following paragraph: 5

“(b) subject to section 44 (11) (c), any **[false declaration is made for the purposes of this Act]** underpayment arises from the circumstances contemplated in the proviso to section 44 (11) (a),”.

Amendment of section 69 of Act 91 of 1964, as substituted by section 12 of Act 68 of 1989 and amended by section 1 of Act 111 of 1991, section 3 of Act 105 of 1992, section 6 of Act 98 of 1993, section 6 of Act 44 of 1996, section 61 of Act 53 of 1999, section 49 of Act 19 of 2001, section 129 of Act 60 of 2001 and section 145 of Act 45 of 2003 10

71. Section 69 of the Customs and Excise Act, 1964, is hereby amended by the substitution in subsection (6) for paragraph (b) of the following paragraph: 15

“(b) subject to section 44(11)(c), **[false declaration is made for the purpose of this Act]** any underpayment arises from the circumstances contemplated in the proviso to section 44(11)(a),”.

Substitution of the long title of Act 91 of 1964, as substituted by section 66 of Act 30 of 2000 20

72. The long title of the Customs and Excise Act, 1964 is hereby substituted with the following title:

“**To provide for the levying of customs and excise duties and a surcharge for a fuel levy [and], for an air passenger tax and an environmental levy; the prohibition and control of the importation, export, manufacture or use of certain goods; and for matters incidental thereto.**” 25

Amendment of section 1 of Act 77 of 1968, as amended by section 16 of Act 103 of 1969, section 5 of Act 66 of 1973, section 7 of Act 88 of 1974, section 19 of Act 106 of 1980, section 3 of Act 118 of 1984, section 17 of Act 87 of 1988, section 36 of Act 9 of 1989, section 3 of Act 69 of 1989, section 5 of Act 136 of 1991, section 4 of Act 20 of 1994, section 16 of Act 27 of 1997, section 34 of Act 34 of 1997, section 77 of Act 30 of 1998, section 74 of Act 53 of 1999, section 40 of Act 5 of 2001, section 54 of Act 19 of 2001, section 141 of Act 60 of 2001, section 42 of Act 12 of 2003 and section 37 of Act 16 of 2004 30 35

73. (1) Section 1 to the Stamp Duties Act, 1968, is hereby amended—

(a) by the substitution for the definition of “**duly stamped**” of the following paragraph:

“‘**duly stamped**’ in relation to any instrument requiring to be stamped under this Act, means that such instrument has been stamped as required by this Act for the proper amount of duty and the amount of any interest, penalty or additional duty incurred under **[section 9(1)(a)]** sections 9, 9A and 9B and, where adhesive stamps have been used, that such stamps have been defaced as required by this Act;” 40

(b) by the substitution for paragraph (a) of the definition of “**stamp**” of the following paragraph: 45

“(a) when used as a noun, means—

- (i) an adhesive stamp approved by the **[Minister]** Commissioner for use under this Act; **[or]**
- (ii) an impression made by means of a die approved by the Commissioner; 50
- (iii) a special receipt of the payment of that duty in accordance with section 5(1)(ii) and (iii); or
- (iv) the words ‘duty paid’ where an electronic receipt has been issued in accordance with section 5(1)(iv); and”. 55

hierdie subartikel andersins bepaal ten opsigte van enige aangeleentheid waarop enige van sodanige bepalings betrekking het, is daar geen aanspreeklikheid vir enige onderbetaling van reg op enige goedere [waar sodanige onderbetaling toe te skryf is aan die aanvaarding van 'n klaringsbrief wat verkeerde inligting bevat: Met dien verstande dat sodanige aanspreeklikheid nie eindig nie— 5

- (i) indien 'n valse verklaring gemaak is vir die doeleindes van hierdie Wet; of
- (ii) ten opsigte van sodanige onderbetaling ontdek gedurende enige inspeksie vanaf 'n datum twee jaar voor die datum waarop sodanige inspeksie 'n aanvang geneem het.]— 10

- (i) na 'n tydperk van twee jaar vanaf die datum van aanvaarding van 'n klaringsbrief; of
- (ii) waar sodanige onderbetaling tydens 'n inspeksie ontdek is, twee jaar voor die datum waarop sodanige inspeksie 'n aanvang geneem het: 15

Met dien verstande dat sodanige aanspreeklikheid, behoudens paragraaf (c), nie opgehef word nie, selfs al sou 'n onderbetaling ontdek word na 'n vroeër aanslag en betaling van 'n bedrag ten opsigte van enige inspeksie tydens die genoemde tydperk, waar sodanige onderbetaling die gevolg is van— 20

(aa) bedrog;

(bb) wanvoorstelling;

(cc) nie-openbaarmaking van enige wesenlike feite; of

(dd) enige valse verklaring vir die doeleindes van die Wet.”; en 25

- (b) deur in subartikel (11) paragraaf (c) deur die volgende paragraaf te vervang:

“(c) Behalwe waar die Kommissaris in buitengewone omstandighede anders bepaal [die omstandighede van elke geval,] waar enige [valse verklaring vir die doeleindes van hierdie Wet gemaak is] onderbetaling ontstaan uit die omstandighede wat in die voorbehoudsbepaling by paragraaf (a) bedoel word, is daar geen beperking op die tydperk van aanspreeklikheid vir die onderbetaling van reg of die tydperk waarvoor enige boeke, rekeninge of enige ander dokumente, in watter vorm ook al beskikbaar, voorgelê moet word aan of deur 'n beampte ondersoek kan word nie.”. 30 35

Wysiging van artikel 47 van Wet 91 van 1964, soos gewysig deur artikel 11 van Wet 95 van 1965, artikel 17 van Wet 105 van 1969, artikel 2 van Wet 7 van 1974, artikel 7 van Wet 105 van 1976, artikel 10 van Wet 112 van 1977, artikel 6 van Wet 110 van 1979, artikels 9 en 15 van Wet 98 van 1980, artikel 8 van Wet 86 van 1982, artikel 6 van Wet 52 van 1986, artikel 15 van Wet 84 van 1987, artikel 4 van Wet 69 van 1988, artikel 6 van Wet 68 van 1989, artikel 22 van Wet 59 van 1990, artikel 3 van Wet 61 van 1992, artikel 37 van Wet 45 van 1995, artikel 4 van Wet 44 van 1996, artikel 63 van Wet 30 van 1998, artikel 53 van Wet 53 van 1999, artikel 126 van Wet 60 van 2001, artikel 104 van Wet 74 van 2002 en artikel 138 van Wet 45 van 2003 40

68. Artikel 47 van die Doeane- en Aksynswet, 1964, word hierby gewysig deur in subartikel (10) paragraaf (b) deur die volgende paragraaf te vervang: 45

“(b) behoudens artikel 44(11)(c), 'n [valse verklaring vir die doeleindes van hierdie Wet gemaak word] onderbetaling ontstaan uit die omstandighede wat in die voorbehoudsbepaling by artikel 44(11)(a) bedoel word.” 50

Wysiging van artikel 55 van Wet 91 van 1964, soos gewysig deur artikel 12 van Wet 95 van 1965, artikel 6 van Wet 103 van 1972, artikel 15 van Wet 112 van 1977, artikel 8 van Wet 61 van 1992 en artikel 3 van Wet 16 van 1997

69. Artikel 55 van die Doeane- en Aksynswet, 1964, word hierby gewysig deur in subartikel (2) paragraaf (a) deur die volgende paragraaf te vervang: 55

“(a) Die oplegging van enige anti-dumpingreg in die geval van dumping soos omskryf in die [Wet op die Raad op Tariewe en Handel, 1986 (Wet No. 107 van 1986)] Wet op Internasionale Handelsadministrasie, 2002 (Wet No. 71 van 2002) kontrareg in die geval van

(2) Subsection (1)(a) shall come into operation on 1 January 2005 and shall apply in respect of all instruments executed on or after that date.

Amendment of section 5 of Act 77 of 1968, as amended by section 9 of Act 89 of 1972, section 7 of Act 66 of 1973, section 9 of Act 114 of 1977, section 5 of Act 118 of 1984, section 10 of Act 86 of 1987, section 19 of Act 87 of 1988, section 6 of Act 136 of 1991, section 6 of Act 136 of 1992, section 79 of Act 30 of 1998 and section 68 of Act 30 of 2000 5

74. (1) Section 5 of the Stamp Duties Act, 1968, is hereby amended—

(a) by the substitution in subsection (1) for the words preceding the proviso of the following words: 10

“(1) The payment of any duty, **[or of any] interest, penalty or additional duty** incurred under **[section 9] sections 9, 9A or 9B** shall, save as is otherwise specially provided in this Act, be denoted by means of adhesive revenue stamps for the amount of **[such] that duty [or adhesive penalty stamps for the amount of such penalty]**, interest, 15
penalty or additional duty, and **[such] those stamps [shall] must** be affixed to the instrument chargeable with the duty, **[or] interest, penalty or additional duty** and be defaced as prescribed by this Act.”;

(b) by the addition in subsection (1) of the following paragraphs to the proviso: 20
“(iv) where any person meets the requirements for the stamping of an

instrument by electronic means as prescribed by the Commissioner, any electronic payments made by that person may be acknowledged by means of the issue of an electronic receipt, and any such instrument which bears on its face the words ‘duty paid’, shall for the purposes of this Act be deemed to be duly stamped to the value of that electronic receipt; 25

(v) where the amount of duty, interest, penalty and additional duty payable in respect of any instrument in aggregate equals an amount of R200 or more, that duty, interest, penalty and additional duty may not be denoted by way of adhesive stamps or an impression as contemplated in 30
paragraph (ii).”.

(2) Subsection (1)(a) shall come into operation on 1 January 2005 and shall apply in respect of all instruments executed on or after that date.

Amendment of section 6 of Act 77 of 1968, as amended by section 10 of Act 114 of 1977, section 6 of Act 118 of 1984, section 20 of Act 87 of 1988 and section 8 of Act 32 of 1999 35

75. (1) Section 6 of the Stamp Duties Act, 1968, is hereby amended—

(a) by the deletion of subsection (2);

(b) by the substitution for subsection (4) of the following subsection: 40

“(4) All facts and circumstances affecting the liability of any instrument to duty or the amount of duty with which any instrument is chargeable shall be fully and truly set forth in the instrument[, and any person who, with intent to evade the payment of duty—

(a) executes any instrument in which all such facts and circumstances are not fully and truly set forth; or 45

(b) being employed or concerned in or about the preparation of any instrument, fails fully and truly to set forth therein all such facts and circumstances, shall incur a penalty not exceeding R1 000].”.

(2) Subsection (1) shall come into operation on 1 January 2005 and shall apply in respect of any investment executed on or after that date. 50

gesubsidieerde uitvoer soos aldus omskryf of beveiligingsreg in die geval van ontwrigtende mededinging soos aldus omskryf en die skaal waarteen of die omstandighede waarin sodanige reg ten opsigte van enige ingevoerde goedere opgelê word, moet ooreenstem met enige versoek deur die Minister van Handel en Nywerheid **[en vir Ekonomiese Koördinerings wees]** kragtens die bepalings van die **[Wet op die Raad op Tariewe en Handel, 1986]** Wet op Internasionale Handelsadministrasie, 2002." 5

Wysiging van artikel 65 van Wet 91 van 1964, soos vervang deur artikel 13 van Wet 86 van 1982 en gewysig deur artikel 8 van Wet 101 van 1985, artikel 8 van Wet 52 van 1986, artikel 48 van Wet 45 van 1995, artikel 5 van Wet 44 van 1996, artikel 59 van Wet 53 van 1999, artikel 128 van Wet 60 van 2001 en artikel 144 van Wet 45 van 2003 10

70. Artikel 65 van die Doeane- en Aksynswet, 1964, word hierby gewysig deur in subartikel (7) paragraaf (b) deur die volgende paragraaf te vervang: 15

"(b) onderworpe aan artikel 44(11)(c), **[valse verklaring vir doeleindes van hierdie Wet gemaak word,]** 'n onderbetaling ontstaan uit die omstandighede wat in die voorbehoudsbepaling by artikel 44 (11) (a) bedoel word."

Wysiging van artikel 69 van Wet 91 van 1964, soos vervang deur artikel 12 van Wet 68 van 1989 en gewysig deur artikel 1 van Wet 111 van 1991, artikel 3 van Wet 105 van 1992, artikel 6 van Wet 98 van 1993, artikel 6 van Wet 44 van 1996, artikel 61 van Wet 53 van 1999, artikel 49 van Wet 19 van 2001, artikel 129 van Wet 60 van 2001 en artikel 145 van Wet 45 van 2003 20

71. Artikel 69 van die Doeane- en Aksynswet, 1964, word hierby gewysig deur in subartikel (6) paragraaf (b) deur die volgende paragraaf te vervang: 25

"(b) behoudens artikel 44(11)(c), **[’n valse verklaring vir doeleindes van hierdie Wet gemaak word,]** 'n onderbetaling ontstaan uit die omstandighede wat in die voorbehoudsbepaling by artikel 44(11)(a) bedoel word."

Vervanging van die lang titel van Wet 91 van 1964, soos vervang deur artikel 66 van Wet 30 van 2000 30

72. Die lang titel van die Doeane- en Aksynswet, 1964, word hierby deur die volgende titel vervang:

"Om voorsiening te maak vir die heffing van doeane- en aksynsregte en 'n bobelasting [;]vir 'n brandstofheffing, vir 'n lugpassassierbelasting en 'n omgewingsheffing; die verbod van en beheer oor die invoer, uitvoer, vervaardiging of gebruik van sekere goedere; en vir aangeleenthede wat daarmee in verband staan." 35

Wysiging van artikel 1 van Wet 77 van 1968, soos gewysig deur artikel 16 van Wet 103 van 1969, artikel 5 van Wet 66 van 1973, artikel 7 van Wet 88 van 1974, artikel 19 van Wet 106 van 1980, artikel 3 van Wet 118 van 1984, artikel 17 van Wet 87 van 1988, artikel 36 van Wet 9 van 1989, artikel 3 van Wet 69 van 1989, artikel 5 van Wet 136 van 1991, artikel 4 van Wet 20 van 1994, artikel 16 van Wet 27 van 1997, artikel 34 van Wet 34 van 1997, artikel 77 van Wet 30 van 1998, artikel 74 van Wet 53 van 1999, artikel 40 van Wet 5 van 2001, artikel 54 van Wet 19 van 2001, artikel 141 van Wet 60 van 2001, artikel 42 van Wet 12 van 2003 en artikel 37 van Wet 16 van 2004 40 45

73. (1) Artikel 1 van die Wet op Seëlregte, 1968, word hierby gewysig—

(a) deur die omskrywing van "**behoorlik geseël**" deur die volgende omskrywing te vervang:

"**'behoorlik geseël'** met betrekking tot 'n stuk wat ingevolge hierdie Wet geseël moet word, dat dié stuk volgens voorskrif van hierdie Wet vir die toepaslike bedrag aan seëlreg en die bedrag van rente, **[’n]** boete of addisionele seëlreg wat ingevolge **[artikel 9(1)(a)]** artikels 9, 9A en 9B opgeloop is, geseël is, en waar plakseëls gebruik is, dat die plakseëls gerojceer is soos deur hierdie Wet vereis;" 50 55

Amendment of section 7 of Act 77 of 1968, as amended by section 18 of Act 103 of 1969, section 10 of Act 89 of 1972, section 8 of Act 66 of 1973, section 3 of Act 70 of 1975, section 5 of Act 87 of 1982, section 7 of Act 118 of 1984, section 5 of Act 69 of 1989, section 55 of Act 19 of 2001, section 43 of Act 12 of 2003, section 156 of Act 45 of 2003 and section 38 of Act 16 of 2004

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76. (1) Section 7 of the Stamp Duties Act, 1968, is hereby amended by the deletion in subsection (1) of paragraph (b).

(2) Subsection (1) shall come into operation on 1 January 2005 and shall apply in respect of any instrument executed on or after that date.

Amendment of section 8 of Act 77 of 1968

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77. (1) Section 8 of the Stamp Duties Act, 1968, is hereby amended—

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

“(b) Any such instrument not stamped before or at the time of execution may, except as is otherwise specifically provided in this Act, be stamped within [twenty-one] 30 days thereafter by or in the presence of the person liable under this Act to stamp the instrument, or any party thereto [or any banker to whom such instrument has been presented in the ordinary course of such banker’s business or in the presence of an authorized revenue officer].”;

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(b) by the addition to subsection (1) of the following paragraphs:

“(c) In respect of the registration of transfer of a marketable security—

(i) in the case where registration is in the name of a broker, or the nominee of a broker, the instrument of transfer referred to in section 23 must be stamped before the expiry of a period of 3 months from the date of execution of the relevant instrument of transfer; or

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(ii) in any other case, the instrument of transfer referred to in section 23 must be stamped before the expiry of a period of six months from the date of execution of the relevant instrument of transfer; or

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(d) In respect of the acquisition by any person from any other person under any of the circumstances mentioned in item 15(5)(a), (b) or (c) to Schedule 1, the relevant deed or declaration referred to in section 23(15) must be stamped before the expiry of a period of six months from the date of that acquisition.

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(e) Where any instrument which makes provision for the payment of rental or any ‘other consideration’ as contemplated in section 22(6), which cannot be quantified at the time of execution of that instrument, it must be stamped annually by a lessor within six months after the end of—

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(i) any year of assessment, as defined in section 1 of the Income Tax Act, 1962 (Act No. 58 of 1962), of any lessor who is a taxpayer, as defined in section 1 of the Income Tax Act, 1962; or

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(ii) the twelve months ending on the last day of February each year in the case of any other lessor,

during which that consideration became quantifiable.”;

(c) by the substitution for subsections (2) and (3) of the following subsections:

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“(2) Every instrument chargeable with duty, which is executed outside the Republic [shall] must, save as is otherwise specifically provided in this Act, within [twenty-one] 30 days after the date on which it is first received in the Republic, be stamped by the person so receiving it, and it [shall be] is the duty of [such] that person to note thereon the date of receipt and sign [such] that note.

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(3) If any person is in doubt as to whether he or she is liable to stamp any instrument, or as to the extent of his or her liability, and he or she has within [twenty-one] 30 days after the date of execution of [such] that instrument, or if [such] that instrument was executed outside the

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- (b) deur die vervanging van paragraaf (a) van die omskrywing van “seël” deur die volgende omskrywing:

“(a) wanneer dit as ’n selfstandige naamwoord [**gebesig**] gebruik word—

(i) ’n plakseël deur die [**Minister**] **Kommissaris** goedgekeur vir gebruik ingevolge hierdie Wet; [of]

(ii) ’n afdruk gemaak deur middel van ’n stempel deur die Kommissaris goedgekeur;

(iii) ’n spesiale kwitansie ingevolge artikel 5(1)(ii) en (iii); of

(iv) die woorde ‘seëlreg betaal’ waar ’n elektroniese kwitansie uitgereik is ingevolge artikel 5(1)(iv); en”.

- (2) Subartikel (1)(a) tree op 1 Januarie 2005 in werking en is van toepassing op alle instrumente op of na daardie datum verly.

Wysiging van artikel 5 van Wet 77 van 1968, soos gewysig deur artikel 9 van Wet 89 van 1972, artikel 7 van Wet 66 van 1973, artikel 9 van Wet 114 van 1977, artikel 5 van Wet 118 van 1984, artikel 10 van Wet 86 van 1987, artikel 19 van Wet 87 van 1988, artikel 6 van Wet 136 van 1991, artikel 6 van Wet 136 van 1992, artikel 79 van Wet 30 van 1998 en artikel 68 van Wet 30 van 2000

74. (1) Artikel 5 van die Wet op Seëlregte, 1968, word hierby gewysig—

- (a) deur in subartikel (1) die woorde wat die voorbehoudsbepaling voorafgaan deur die volgende woorde te vervang:

“(1) Die betaling van ’n seëlreg, [of van ’n] rente, boete of addisionele seëlreg wat ingevolge [**artikel 9**] artikels 9, 9A of 9B opgehoop is, moet, behalwe vir sover hierdie Wet uitdruklik anders bepaal, aangedui word deur middel van inkomsteplakseëls vir die bedrag van bedoelde seëlreg [**of boeteplakseëls vir die bedrag van bedoelde boete**], rente, boete of addisionele seëlreg en [**bedoelde**] sodanige seëls moet op die instrument onderhewig aan die seëlreg, [of] rente, boete of addisionele seëlreg, [onderhewige stuk] vasgeplak word en volgens voorskrif van hierdie Wet gerojear word.”;

- (b) deur in subartikel (1) die volgende paragrafe in die voorbehoudsbepaling in te voeg:

“(iv) waar enige persoon aan die vereistes soos voorgeskryf deur die Kommissaris om ’n instrument elektronies te kan seël voldoen, kan enige elektroniese betaling deur daardie persoon gemaak, erken word deur die uitreiking van ’n elektroniese kwitansie, en enige sodanige instrument waar die woorde ‘seëlreg betaal’ op die voorkant daarvan voorkom, word by die toepassing van hierdie Wet geag behoorlik geseël te wees tot die waarde van daardie elektroniese kwitansie;

- (v) waar die bedrag van seëlreg, rente, boete of addisionele seëlreg betaalbaar ten opsigte van enige instrument in totaal gelykstaande is aan of meer is as ’n bedrag van R200, mag daardie seëlreg, rente, boete en addisionele seëlreg nie deur middel van plakseëls of ’n stempelseël soos beoog in paragraaf (ii) aangedui word nie.”.

- (2) Subartikel 1(a) tree op 1 Januarie 2005 in werking en is van toepassing op enige instrument op of na daardie datum verly.

Wysiging van artikel 6 van Wet 77 van 1968, soos gewysig deur artikel 10 van Wet 114 van 1977, artikel 6 van Wet 118 van 1984, artikel 20 van Wet 87 van 1988 en artikel 8 van Wet 32 van 1999

75. (1) Artikel 6 van die Wet op Seëlregte, 1968, word hierby gewysig—

- (a) deur subartikel (2) te skrap;

- (b) deur subartikel (4) deur die volgende subartikel te vervang:

“(4) Alle feite en omstandighede aangaande die vraag of ’n stuk aan seëlreg onderhewig is, of die bedrag van die seëlreg daarop hefbaar, moet volledig en juis in die stuk uiteengesit word [, en iemand wat met die doel om betaling van seëlreg te ontduik—

- (a) ’n stuk verly waarin al dié feite en omstandighede nie volledig en juis uiteengesit is nie; of

Republic, after the date [such] that instrument was first received in the Republic, lodged it with an [authorized] authorised revenue officer for submission to the Commissioner for his or her decision as to whether [such] that liability exists or as to the extent of [such] that liability, the date on which the decision of the Commissioner is communicated to the person who lodged [such] that instrument as aforesaid, [shall] must for the purposes of this Act be deemed to be the date of execution of the instrument or the date on which [such] that instrument was first received in the Republic, as the case may be.” 5

(2) Subsection (1) shall come into operation on 1 January 2005 and shall apply to all instruments executed on or after that date or in respect of any duty payable in respect of rental or “other consideration” which becomes quantifiable on or after that date. 10

Amendment of section 9 of Act 77 of 1968, as amended by section 21 of Act 87 of 1988, section 5 of Act 20 of 1994 and section 142 of Act 60 of 2001

78. (1) Section 9 of the Stamp Duties Act, 1968, is hereby amended— 15

(a) by the substitution for the heading of the following heading:

“Interest on late payments”;

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

“(1) If any duty is not paid in full within the period for payment prescribed by section 8, interest shall be paid at a rate of 10 per cent per annum on the balance of duty outstanding in respect of each month or part thereof during which it remains unpaid, reckoned from the day following the last date for payment contemplated in section 8 to the date of payment to the Commissioner.”; 20

(c) by the deletion of subsection (4). 25

(2) Subsection (1)(a) and (b) shall come into operation on 1 January 2005 and shall apply in respect of all instruments executed on or after that date.

Insertion of section 9A in Act 77 of 1968

79. (1) The following section is hereby inserted in the Stamp Duties Act, 1968, after section 9: 30

“Penalty for failure to pay duty within prescribed period

9A. (1) If any person who is liable for the payment of duty under this Act, fails to pay any amount of that duty within the period for the payment thereof as specified in section 8, that person must, in addition to the amount of that duty, pay a penalty equal to 10 per cent of that amount of duty. 35

(2) If the Commissioner is satisfied that the failure on the part of the person concerned or any other person under the control or acting on behalf of that person to stamp the instrument within the period contemplated in subsection 8 was not due to an intent not to stamp the instrument or to postpone the payment of the duty, the Commissioner may remit in whole or in part any penalty payable in terms of subsection (1).” 40

(2) Subsection (1) shall come into operation on 1 January 2005 and shall apply in respect of all instruments executed on or after that date.

- (b) terwyl hy werksaam of betrokke is by of in verband met die opmaak van 'n stuk, nie al dié feite en omstandighede volledig en juis daarin uiteensit nie, loop 'n boete op van hoogstens R1 000].”.

(2) Subartikel 1 tree in werking op 1 Januarie 2005 en is van toepassing op enige instrument op of na daardie datum verly. 5

Wysiging van artikel 7 van Wet 77 van 1968, soos gewysig deur artikel 18 van Wet 103 van 1969, artikel 10 van Wet 89 van 1972, artikel 8 van Wet 66 van 1973, artikel 3 van Wet 70 van 1975, artikel 5 van Wet 87 van 1982, artikel 7 van Wet 118 van 1984, artikel 5 van Wet 69 van 1989, artikel 55 van Wet 19 van 2001, artikel 43 van Wet 12 van 2003, artikel 156 van Wet 45 van 2003 en artikel 38 van Wet 16 van 2004 10

76. (1) Artikel 7 van die Wet op Seëlregte, 1968, word hierby gewysig deur paragraaf (b) van subartikel (1) te skrap.

(2) Subartikel 1 tree op 1 Januarie 2005 in werking en is van toepassing op enige instrument op of na daardie datum verly. 15

Wysiging van artikel 8 van Wet 77 van 1968

77. (1) Artikel 8 van die Wet op Seëlregte, 1968, word hierby gewysig—

- (a) deur in subartikel (1) paragraaf (b) deur die volgende paragraaf te vervang:

“(b) So 'n stuk wat nie voor of ten tyde van verlyding geseël word nie, behalwe vir sover as wat daar in hierdie Wet uitdruklik anders bepaal word, kan binne [een-en-twintig] 30 dae daarna geseël word deur of in die teenwoordigheid van die persoon wat kragtens hierdie Wet aanspreeklik is om dit te seël of 'n party daarby [of 'n bankier aan wie daardie stuk voorgelê is in die gewone loop van die bankier se besigheid of in die teenwoordigheid van 'n bevoegde belastingbeamppte].”; 20 25

- (b) deur die volgende paragrawe by subartikel (1) te voeg:

“(c) Ten aansien van die registrasie van oordrag van 'n handelseffek—

- (i) in die geval waar registrasie in die naam van 'n makelaar, of die genomineerde van 'n makelaar, plaasvind, moet die instrument van oordrag soos beoog in artikel 23 geseël word voor die verstryking van 'n periode van 3 maande vanaf die datum van verlyding van daardie instrument van oordrag; of 30
- (ii) in enige ander geval, moet die instrument van oordrag soos beoog in artikel 23 geseël word voor die verstryking van 'n periode van 6 maande vanaf die datum van verlyding van daardie instrument van oordrag. 35

(d) In die geval van die verkryging van handelseffekte deur enige persoon van enige ander persoon onder enige van die omstandighede soos genoem in item 15(5)(a), (b) of (c) van Bylaag 1, moet die tersaaklike akte of verklaring soos beoog in artikel 23(15), geseël word voor die verstryking van 'n periode van 6 maande vanaf die datum van daardie verkryging. 40

(e) Waar daar in enige instrument voorsiening gemaak is vir die betaling van huur of enige 'ander vergoeding' soos bepaal in artikel 22(6); wat nie tydens die verlyding van die instrument gekwantifiseer kan word nie, moet dit jaarliks geseël word deur die verhuurder binne ses maande na die einde van— 45

- (i) enige jaar van aanslag, soos omskryf in artikel 1 van die Inkomstebelastingwet, 1962 (Wet No. 58 van 1962), van enige verhuurder wat 'n belastingpligtige is, soos omskryf in artikel 1 van die Inkomstebelastingwet, 1962; of 50

(ii) die twaalf maande wat eindig op die laaste dag van Februarie van elke jaar, in die geval van enige ander verhuurder, waarin die vergoeding kwantifiseerbaar geword het.”; 55

- (c) deur subartikels (2) en (3) deur die volgende subartikels te vervang:

“(2) Elke aan seëlreg onderhewige stuk wat buite die Republiek verly word, moet, behalwe vir sover in hierdie Wet uitdruklik anders bepaal word, binne [een-en-twintig] 30 dae na die datum waarop dit vir die

Insertion of section 9B in Act 77 of 1968

80. (1) The following section is hereby inserted in the Stamp Duties Act, 1968, after section 9A:

“Additional duty in case of evasion

9B. (1) Where a person liable to pay duty in terms of section 7, or any person contemplated in section 12A, fails to perform any duty imposed by this Act or does or omits to do anything, with intent—

(a) to evade the payment of any amount of duty payable by him or her; or

(b) to cause a refund to him or her by the Commissioner of any amount of duty, which is in excess of the amount properly refundable to him or her,

that person shall be chargeable with additional duty not exceeding an amount equal to double the amount of duty contemplated in paragraph (a) or the amount in excess as contemplated in paragraph (b), as the case may be.

(2) The amount of the additional duty must be assessed by the Commissioner and must be paid by the person referred to in subsection (1) within the period that the Commissioner may allow.

(3) The power conferred upon the Commissioner by this section applies in addition to any other right conferred upon the Commissioner by this Act.”

(2) Subsection (1) shall come into operation on 1 January 2005 and shall apply in respect of all instruments executed on or after that date.

Amendment of section 10 of Act 77 of 1968, as amended by section 5 of Act 95 of 1978 and section 56 of Act 19 of 2001

81. (1) Section 10 of the Stamp Duties Act, 1968, is hereby amended—

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

“(d) in the case of any other instrument, by the person liable under this Act to stamp the instrument or by any party thereto or by an **[authorized] authorised revenue officer [or by a banker to whom the instrument has been presented in the ordinary course of such banker’s business].**”;

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

“(2) Where duty on any instrument is denoted by adhesive revenue stamps and such instrument has been stamped as provided in section 9 or, where the instrument has been stamped as provided in section 8 but the stamps thereon have not been defaced as provided in subsection (1) of this section, the stamps shall, subject to the payment of any interest, penalty or additional duty incurred under **[section] sections 9(1), 9A and 9B** in respect of such instrument, be defaced by an **[authorized] authorised revenue officer [or by a banker to whom such instrument has been presented in the ordinary course of such banker’s business].**”;

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

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

“(5) An authorised revenue officer shall not **[be required to]** deface the stamps affixed to any instrument unless he or she is satisfied that the duty in respect of **[such] that** instrument, and any interest, penalties and additional duty incurred in respect of **[such] that** instrument under this Act, have been paid in full.”;

(e) by the substitution for subsection (7) of the following subsection:

“(7) Any public officer, **[banker,]** firm or company required or empowered by this Act to deface any adhesive stamp may deface the stamp by impressing thereon in indelible ink by means of a rubber stamp or other device the date and, in the case of such **[banker,]** firm or company, the name of the **[bank,]** firm or company.”

(2) Subsection (1)(b) and (d) shall come into operation on 1 January 2005 and shall apply to all instruments executed on or after that date.

eerste keer in die Republiek ontvang word, geseël word deur die persoon wat dit aldus ontvang, en dit is die plig van dié persoon om die datum van ontvangs daarop aan te teken en die aantekening te onderteken.

(3) Indien iemand in twyfel verkeer oor die vraag of hy of sy aanspreeklik is om 'n stuk te seël of in hoeverre hy of sy aldus aanspreeklik is, en hy of sy dié stuk binne **[een-en-twintig]** 30 dae na die datum van verlyding daarvan, of, indien **[dié]** daardie stuk buite die Republiek verly is, na die datum waarop daardie stuk vir die eerste keer in die Republiek ontvang is, by 'n bevoegde belastingbeambte ingedien het om aan die Kommissaris voorgelê te word vir sy of haar beslissing oor die vraag of hy of sy aldus aanspreeklik is of in hoeverre hy of sy aldus aanspreeklik is, word die datum waarop die beslissing van die Kommissaris meegedeel word aan die persoon wat **[dié]** daardie stuk soos voormeld voorgelê het, by die toepassing van hierdie Wet geag die datum van verlyding van **[dié]** daardie stuk te wees of die datum waarop daardie stuk vir die eerste keer in die Republiek ontvang is, na gelang van die geval.”.

(2) Subartikel (1) tree op 1 Januarie 2005 in werking en is van toepassing op alle instrumente op of na daardie datum verly of ten opsigte van enige seëlreg betaalbaar ingevolge huur of “ander vergoeding” wat op of na daardie datum kwantifiseerbaar word.

Wysiging van artikel 9 van Wet 77 van 1968, soos gewysig deur artikel 21 van Wet 87 van 1988, artikel 5 van Wet 20 van 1994 en artikel 142 van Wet 60 van 2001

78. (1) Artikel 9 van die Wet op Seëlregte, 1968, word hierby gewysig—

(a) deur die opskrif deur die volgende opskrif te vervang:

“Rente op laatbetalings”;

(b) deur subartikel (1) deur die volgende subartikel te vervang:

“(1) Waar enige seëlreg nie ten volle betaal is nie binne die tydperk vir betaling soos beoog in artikel 8, sal rente betaal word teen 'n koers van 10 persent per jaar op die balans van die seëlreg uitstaande, vir elke maand of gedeelte daarvan waartydens dit onbetaald bly, bereken vanaf die dag wat volg op die laaste dag vir betaling soos beoog in artikel 8, tot die dag van betaling aan die Kommissaris.”;

(c) deur subartikel (4) te skrap.

(2) Subartikels (1)(a) en (b) tree op 1 Januarie 2005 in werking en is van toepassing op alle instrumente op of na daardie datum verly.

Invoeging van artikel 9A in Wet 77 van 1968

79. (1) Die volgende artikel word hierby ingevoeg in die Wet op Seëlregte, 1968, na artikel 9:

“Boete vir versuim om seëlreg binne voorgeskrewe tydperk te betaal

9A. (1) Indien enige persoon wat aanspreeklik is vir die betaling van seëlreg ingevolge hierdie Wet, versuim om enige bedrag van daardie seëlreg te betaal binne die tydperk vir die betaling daarvan soos beoog in artikel 8, moet daardie persoon, bykomend tot die bedrag van daardie seëlreg, 'n boete betaal wat gelykstaande is aan 10 persent van daardie seëlreg.

(2) Indien die Kommissaris oortuig is dat die versuim deur daardie persoon of enige ander persoon wat onder die beheer van of namens daardie persoon optree, om 'n instrument te seël binne die periode soos beoog in subartikel 8, nie was met die opset om 'n instrument nie te seël nie, of die aanspreeklikheid vir die betaling van die seëlreg uit te stel nie, kan die Kommissaris die boete betaalbaar in subartikel (1) in geheel of gedeeltelik terugtrek.”.

(2) Subartikel (1) tree op 1 Januarie 2005 in werking en is van toepassing op alle instrumente op of na daardie datum verly.

Substitution of section 11 of Act 77 of 1968

82. (1) The following section hereby substitutes section 11 of the Stamp Duties Act, 1968:

“Adjudication respecting liability for stamp duty, interest, [or] penalty or additional duty”

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11. A note or certificate made on or in respect of any instrument and signed by the Commissioner or by his or her authority, stating that the instrument is duly stamped or is not chargeable with duty, interest, [or] penalty or additional duty [**penalty or further duty or penalty**], shall for all purposes be conclusive evidence of the fact so noted or certified.”

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(2) Subsection (1) shall come into operation on 1 January 2005 and shall apply to all instruments executed on or after that date.

Amendment of section 12 of Act 77 of 1968

83. (1) Section 12 of the Stamp Duties Act, 1968, is hereby amended—

(a) by the substitution for paragraph (b) of the following paragraph: 15

“(b) in any proceedings by or on behalf of the State for the recovery of any duty on the instrument or of any interest, penalty or additional duty alleged to have been incurred under this Act in respect of [such] that instrument.”;

(b) by the substitution for the proviso of the following proviso: 20

“Provided that the court before which any such instrument is tendered may permit or direct that, subject to the payment of any interest, penalty and additional duty incurred in respect of [such] that instrument under [section 9(1)] sections 9, 9A and 9B, the instrument be stamped in accordance with the provisions of this Act and upon the instrument being 25
duly stamped may admit it in evidence.”.

(2) Subsection (1) shall come into operation on 1 January 2005 and shall apply to all instruments executed on or after that date.

Amendment of section 12A of Act 77 of 1968, as inserted by section 6 of Act 72 of 1970

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84. (1) Section 12A of the Stamp Duties Act, 1968, is hereby amended—

(a) by the substitution for the heading of the following heading:

“Person making use of instrument not duly stamped to be liable for unpaid duty, interest [and] penalty and additional duty thereon”;

(b) by the substitution for subsection (1) of the following subsection: 35

“(1) Any person who for any purpose in connection with a business conducted by him or her keeps or retains, or who in any manner other than a manner contemplated in section 12 makes use of, an instrument which is required to be stamped under this Act but has not been duly stamped, [shall be] is liable for the unpaid duty in respect of [such] that 40
instrument and any unpaid interest, penalty and additional duty incurred in respect of [such] that instrument under [section 9(1)] sections 9, 9A and 9B.”;

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

“(2) The provisions of subsection (1) shall not be construed as 45
relieving any person who under any other provision of this Act is liable for the duty or any interest, penalty or additional duty in respect of any instrument, from his or her liability to pay any unpaid amount of [such] that duty, interest, [or] penalty or additional duty.”.

(2) Subsection (1) shall come into operation on 1 January 2005 and shall apply to all 50
instruments executed on or after that date.

Invoeging van artikel 9B in Wet 77 van 1968

80. (1) Die volgende artikel word hierby in die Wet op Seëlregte, 1968, ingevoeg, na artikel 9A:

“Addisionele seëlreg in geval van ontduiking

9B. (1) Waar 'n persoon wat aanspreeklik is om seëlreg ingevolge artikel 7 te betaal, of enige persoon beoog in artikel 12A, versuim om enige plig te verrig wat deur hierdie Wet opgelê word of enigiets doen of nalaat om dit te doen, met die opset—

(a) om die betaling van enige bedrag van seëlreg wat deur hom of haar betaalbaar is, te ontduik; of

(b) om 'n terugbetaling aan hom of haar deur die Kommissaris te verkry, van enige bedrag seëlreg wat meer is as die bedrag behoorlik aan hom of haar terugbetaalbaar,

is daardie persoon aanspreeklik vir addisionele seëlreg wat nie meer is as 'n bedrag gelykstaande aan dubbel die bedrag van die seëlreg soos bedoel in paragraaf (a), of die oorskotbedrag bedoel in paragraaf (b), na gelang van die geval.

(2) Die bedrag van die addisionele seëlreg word deur die Kommissaris aangeslaan en moet betaal word deur die persoon waarna in subartikel (1) verwys word binne die tydperk wat die Kommissaris toelaat.

(3) Die bevoegdheid deur hierdie artikel aan die Kommissaris verleen geld bo en behalwe enige reg deur hierdie Wet aan die Kommissaris verleen.”

(2) Subartikel (1) tree op 1 Januarie 2005 in werking en is van toepassing op alle instrumente op of na daardie datum verly.

Wysiging van artikel 10 van Wet 77 van 1968, soos gewysig deur artikel 5 van Wet 95 van 1978 en artikel 56 van Wet 19 van 2001

81. (1) Artikel 10 van die Wet op Seëlregte, 1968, word hierby gewysig—

(a) deur paragraaf (d) in subartikel (1) deur die volgende paragraaf te vervang:

“(d) in die geval van 'n ander stuk, deur die persoon wat ingevolge hierdie Wet verplig is om die stuk te seël of deur 'n party daarby of deur 'n bevoegde belastingbeampte **[of deur 'n bankier aan wie die stuk voorgelê is in die gewone loop van dié bankier se besigheid].**”;

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

“(2) Wanneer seëlreg op 'n stuk deur middel van inkomsteplakseëls aangedui word en dié stuk volgens voorskrif van artikel 9 geseël is of, waar die stuk volgens voorskrif van artikel 8 geseël is maar die seëls daarop nie volgens voorskrif van subartikel (1) van hierdie artikel gerojear is nie, moet die seëls, onderworpe aan die betaling van [’n] rente, boete of addisionele seëlreg wat ingevolge [artikel] artikels 9(1), 9A en 9B ten opsigte van daardie stuk opgeloop [is] het, gerojear word deur 'n bevoegde belastingbeampte **[of deur 'n bankier aan wie bedoelde stuk in die gewone loop van die bankier se besigheid voorgelê is].**”;

(c) deur subartikel (3) te skrap;

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

“(5) 'n Bevoegde belastingbeampte [is] sal nie [verplig om] seëls wat op 'n stuk geplak is, [te] rojear nie tensy hy of sy nie oortuig is dat die seëlreg ten opsigte van daardie stuk en enige rente, boetes en addisionele seëlreg wat ten opsigte van daardie stuk ingevolge hierdie Wet opgeloop het, ten volle betaal is nie.”;

(e) deur subartikel (7) deur die volgende subartikel te vervang:

“(7) 'n Openbare amptenaar, **[bankier,]** firma of maatskappy wat deur hierdie Wet verplig of gemagtig word om 'n plakseël te rojear, kan die seël rojear deur die datum en, in die geval van so 'n **[bankier,]** firma of maatskappy, die naam van die **[bank,]** firma of maatskappy, op die seël deur middel van 'n rubberstempel of ander toestel in merkink af te druk.”.

Amendment of section 13 of Act 77 of 1968

85. (1) Section 13 of the Stamp Duties Act, 1968, is hereby amended by the substitution in subsection (1) for paragraph (b) of the following paragraph:

“(b) In the event of any refusal by any person to have any such instrument duly stamped, or if any public officer has reason to believe that fraud or evasion of duty was intended, the public officer [shall] must impound the instrument and transmit it to the Commissioner for the purpose of the recovery of the duty and any interest, penalty and additional duty incurred.”.

(2) Subsection (1) shall come into operation on 1 January 2005 and shall apply to all instruments executed on or after that date.

Substitution of section 15 of Act 77 of 1968

86. (1) The following section hereby substitutes section 15 of the Stamp Duties Act, 1968:

“Stamping of unstamped instruments with amount of duty, interest, [and] penalty and additional duty recovered

15. Upon the recovery under section 30 of the duty or any interest, penalty or additional duty payable in respect of any instrument, the duty, [or] interest, penalty or additional duty recovered shall be denoted on the instrument by means of [the appropriate revenue or penalty stamps] a special receipt or, if the Commissioner so directs, a note or certificate may be made on the instrument and signed by the Commissioner or by his or her authority stating that the instrument is duly stamped.”.

(2) Subsection (1) shall come into operation on 1 January 2005 and shall apply to all instruments executed on or after that date.

Substitution of section 19 of Act 77 of 1968, as substituted by section 6 of Act 69 of 1989 and amended by section 75 of Act 53 of 1999 and amended by section 39 of Act 16 of 2004

87. (1) The following section hereby substitutes section 19 of the Stamp Duties Act, 1968:

“Debit entries

19. The duty payable in terms of Item 6 of Schedule 1 in respect of any debit entry in an account shall not be denoted by means of stamps, but shall be paid by the banker or person carrying on the credit card scheme concerned or by the institution or Postbank, as the case may be, within a period of 30 days after the end of the month during which that entry is made.”.

(2) Subsection (1) shall come into operation on 1 January 2005 and shall apply to all instruments executed on or after that date.

(2) Subartikel (1)(b) en (d) tree op 1 Januarie 2005 in werking en is van toepassing op alle instrumente op of na daardie datum verly.

Vervanging van artikel 11 van Wet 77 van 1968

82. (1) Die volgende artikel vervang hierby artikel 11 van die Wet op Seëlregte, 1968:

“Beslissing aangaande aanspreeklikheid vir seëlreg, rente, [of] boete of addisionele seëlreg 5

11. 'n Aantekening of sertifikaat op of ten opsigte van 'n stuk aangebring en deur die Kommissaris of op sy of haar gesag onderteken waarin verklaar word dat die stuk behoorlik geseël is of nie aan seëlreg, rente, [of] boete of addisionele seëlreg [of verdere seëlreg of boete] onderhewig is nie, is vir 10
alle doeleindes afdoende bewys van die feit aldus aangeteken of gesertifiseer.”.

(2) Subartikel (1) tree op 1 Januarie 2005 in werking en is van toepassing op alle instrumente op of na daardie datum verly.

Wysiging van artikel 12 van Wet 77 van 1968

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83. (1) Artikel 12 van die Wet op Seëlregte, 1968, word hierby gewysig—

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

“(b) by 'n geding deur of ten behoeve van die Staat vir die invordering van seëlreg op die stuk of van rente, boete of addisionele seëlreg wat na bewering ingevolge hierdie Wet ten opsigte van [die] daardie stuk 20
opgehoop [is] het.”.

(b) deur die voorbehoudsbepaling deur die volgende voorbehoudsbepaling te vervang:

“Met dien verstande dat die hof waarin die stuk aangebied word, kan toelaat of gelas dat [die] daardie stuk, onderworpe aan betaling van enige 25
rente, [’n] boete of addisionele seëlreg wat ingevolge [artikel 9(1)] artikels 9, 9A en 9B ten opsigte van die stuk opgehoop [is] het, ooreenkomstig die bepalings van hierdie Wet geseël word en die stuk, nadat dit behoorlik geseël is, as bewys kan toelaat.”.

(2) Subartikel (1) tree op 1 Januarie 2005 in werking en is van toepassing op alle 30
instrumente op of na daardie datum verly.

Wysiging van artikel 12A van Wet 77 van 1968, soos ingevoeg deur artikel 6 van Wet 72 van 1970

84. (1) Artikel 12A van die Wet op Seëlregte, 1968 word hierby gewysig—

(a) deur die opskrif deur die volgende opskrif te vervang: 35

“Iemand wat gebruik maak van stuk wat nie behoorlik geseël is nie, is aanspreeklik vir onbetaalde seëlreg, rente, [en] boete en addisionele seëlreg daarop”;

(b) deur subartikel (1) deur die volgende subartikel te vervang:

“(1) Iemand wat 'n stuk wat ingevolge hierdie Wet geseël moet word 40
maar nie behoorlik geseël is nie, behou of terughou vir enige doel in verband met 'n besigheid deur hom of haar gedryf, of wat op 'n ander wyse as [n] in artikel 12 beoog[de wyse] van so 'n stuk gebruik maak, is aanspreeklik vir die onbetaalde seëlreg ten opsigte van daardie stuk en 'n onbetaalde rente, boete en addisionele seëlreg wat ten opsigte van 45
daardie stuk ingevolge [artikel 9(1)] artikels 9, 9A en 9B opgehoop [is] het.”;

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

“(2) Die bepalings van subartikel (1) word nie so uitgelê dat dit iemand wat ingevolge 'n ander bepaling van hierdie Wet vir die seëlreg, 50
[of n] rente, boete of addisionele seëlreg ten opsigte van 'n stuk aanspreeklik is, van sy aanspreeklikheid om 'n onbetaalde bedrag van daardie seëlreg, rente, [of] boete of addisionele seëlreg te betaal, onthef nie.”.

Amendment of section 22 of Act 77 of 1968, as amended by section 19 of Act 103 of 1969, section 11 of Act 114 of 1977, section 6 of Act 95 of 1978, section 6 of Act 102 of 1979, section 24 of Act 87 of 1988, section 7 of Act 69 of 1989 and section 6 of Act 20 of 1994

88. (1) Section 22 of the Stamp Duties Act, 1968, is hereby amended by the substitution for subsection (6) of the following subsection: 5

“(6) The expression ‘other consideration’ in Item 14(1) of Schedule 1 includes—

- (a) the value of improvements which the lessee is obliged to effect on the land or to the buildings leased by him or her and that value is deemed to be the amount stipulated in the lease as the value or, where no amount is so stipulated, the fair and reasonable value determined by the Commissioner; and 10
- (b) any acceptance by the lessee of a liability for payments for which the lessor would otherwise be liable;

Provided that payment of any amount in terms of a stipulation in a lease is deemed not to be ‘other consideration’, where the amount— 15

- (i) constitutes charges which relate to public services rendered or utilities provided to the lessee; or
- (ii) relates to the duty payable by the lessor on that lease or agreement of lease.”. 20

(2) Subsection (1) shall come into operation on 1 January 2005 and shall apply in respect of all instruments executed on or after that date. 20

Amendment of section 23 of Act 77 of 1968, as amended by section 20 of Act 103 of 1969, section 13 of Act 92 of 1971, section 11 of Act 89 of 1972, section 10 of Act 66 of 1973, section 10 of Act 88 of 1974, section 20 of Act 106 of 1980, section 6 of Act 87 of 1982, section 5 of Act 92 of 1983, section 25 of Act 87 of 1988, section 8 of Act 69 of 1989, section 7 of Act 136 of 1991, section 13 of Act 37 of 1996, section 19 of Act 27 of 1997, section 80 of Act 30 of 1998, section 76 of Act 53 of 1999, section 157 of Act 45 of 2003 and section 40 of Act 16 of 2004 25

89. (1) Section 23 of the Stamp Duties Act, 1968, is hereby amended—

- (a) by the substitution in subsection (1B) for paragraph (c) of the following paragraph: 30

“(c) The company or corporate body issuing any shares, stock or debentures to which the provisions of paragraph (a) or (b) apply shall be responsible for compliance with those provisions[, and if such company or corporate body or any officer thereof fails to comply with any requirement thereof, such company or corporate body shall, in addition to being liable for any unpaid duty which is payable in respect of the issue of the shares, stock or debentures in question, incur a penalty not exceeding R1 000].”; 35

- (b) by the deletion in subsection (2) of paragraph (b);
- (c) by the deletion of subsection (7); 40
- (d) by the deletion of subsections (8) and (9);
- (e) by the substitution for subsection (11) of the following subsection: 45

“(11) The duty payable under Item 15(4) of Schedule 1 shall be denoted on a copy of any application to court, take-over offer or resolution, as the case may be, required in respect of any scheme referred to in subsection (10), and the company of which the shares in question are cancelled or redeemed shall endorse on [such] that copy the market value of [such] those shares and the amount payable in respect of the redemption of those shares, including any premium so payable, as determined in accordance with [the said] subsection (10) and, in the case of any take-over offer, the date of the final acceptance of [such] that offer and [shall] must retain [such] that copy, which [shall] must at all reasonable times during a period of [three] five years after the relevant date referred to in subsection (13), be open for inspection by any person acting under the authority of the Commissioner.”; 50 55

- (f) by the deletion in subsection (15) of paragraph (b); and

(2) Subartikel (1) tree op 1 Januarie 2005 in werking en is van toepassing op alle instrumente op of na daardie datum verly.

Wysiging van artikel 13 van Wet 77 van 1968

85. (1) Artikel 13 van die Wet op Seëlregte, 1968, word hierby gewysig deur paragraaf (b) in subartikel (1) deur die volgende paragraaf te vervang:

“(b) Ingeval iemand weier om so ’n stuk behoorlik te laat seël of indien ’n openbare amptenaar rede het om te vermoed dat bedrog of ontduiking van seëlreg beoog was, moet die openbare amptenaar op die stuk beslag lê en dit aan die Kommissaris stuur sodat hy of sy die seëlreg en enige rente, [opgeloopte] boete en addisionele seëlreg kan vorder.”.

(2) Subartikel (1) tree op 1 Januarie 2005 in werking en is van toepassing op alle instrumente op of na daardie datum verly.

Vervanging van artikel 15 van Wet 77 van 1968

86. (1) Die volgende artikel vervang hierby artikel 15 van die Wet op Seëlregte, 1968:

“Seëling van ongeseelede stukke met bedrag van seëlreg, rente, [en] boete en addisionele seëlreg ingevorder

15. Wanneer die seëlreg, rente, [of ’n] boete of addisionele seëlreg wat ten opsigte van ’n stuk betaalbaar is, ingevolge artikel 30 ingevorder word, moet die ingevorderde seëlreg, rente, [of] boete of addisionele seëlreg op die stuk deur middel van [die nodige inkomste- of boeteseëls] ’n spesiale kwitansie aangedui word of, indien die Kommissaris aldus gelas, kan daar op die stuk ’n aantekening of sertifikaat aangebring en deur die Kommissaris of op sy of haar gesag onderteken word waarin vermeld word dat die stuk behoorlik geseël is.”.

(2) Subartikel (1) tree op 1 Januarie 2005 in werking en is van toepassing op alle instrumente op of na daardie datum verly.

Vervanging van artikel 19 van Wet 77 van 1968, soos vervang deur artikel 6 van Wet 69 van 1989 en gewysig deur artikel 75 van Wet 53 van 1999 en artikel 39 van Wet 16 van 2004

87. (1) Die volgende artikel vervang hierby artikel 19 van die Wet op Seëlregte, 1968:

“Debietposte

19. Die seëlreg wat ingevolge Item 6 van Bylae 1 betaalbaar is ten opsigte van ’n debetpos in ’n rekening word nie deur middel van seëls aangedui nie maar word betaal deur die bankier of persoon wat die betrokke kredietkaartskema bedryf of deur die instelling of Posbank, na gelang van die geval, binne ’n tydperk van 30 dae na die einde van die maand waarin daardie pos gemaak word.”.

(2) Subartikel (1) tree op 1 Januarie 2005 in werking en is van toepassing op alle instrumente op of na daardie datum verly.

Wysiging van artikel 22 van Wet 77 van 1968, soos gewysig deur artikel 19 van Wet 103 van 1969, artikel 11 van Wet 114 van 1977, artikel 6 van Wet 95 van 1978, artikel 6 van Wet 102 van 1979, artikel 24 van Wet 87 van 1988, artikel 7 van Wet 69 van 1989 en artikel 6 van Wet 20 van 1994

88. (1) Artikel 22 van die Wet op Seëlregte, 1968, word hierby gewysig deur subartikel (6) deur die volgende subartikel te vervang:

“(6) Die uitdrukking ‘ander vergoeding’ in Item 14(1) van Bylae 1 sluit in—
(a) die waarde van verbeterings wat die huurder moet aanbring op die grond of aan die geboue deur hom of haar gehuur en daardie waarde word geag die bedrag te wees wat in die huurooreenkoms beding word as sodanige waarde, of waar geen bedrag aldus beding word nie, die billike en redelike waarde wat deur die Kommissaris bepaal word; en

(g) by the substitution for subsection (16) of the following subsection:

“(16) Any deed or declaration referred to in subsection (15) [shall] must at all reasonable times during a period of [three] five years after it has come into the possession of the person with whom it is lodged as contemplated in [the said] subsection (15), be open for inspection by any person acting under the authority of the Commissioner.”.

(2) (a) Subsections (1)(d) and (f) shall come into operation on the date of promulgation of this Act.

(b) Subsection (1) (a), (b), (c) and (e) shall come into operation on 1 January 2005 and shall apply to all instruments executed on or after that date.

Amendment of Item 14 of Schedule 1 to Act 77 of 1968, as amended by section 19 of Act 114 of 1977 and section 7 of Act 95 of 1978

90. (1) Item 14 of Schedule 1 to the Stamp Duties Act, 1968, is hereby amended—

(a) by the substitution in paragraph (1) before subparagraph (a) of the following paragraph:

“(1) In respect of [any such] a lease or agreement, an amount of duty calculated [in accordance with the following scale] on a sum equal to the aggregate amount of rent payable (exclusive of value-added tax) in respect of the period for which the lease or agreement is required to be stamped as provided in section 22 of this Act, plus the amount of any other consideration whatsoever, the amount of which is quantifiable at the time of execution of that lease or agreement (excluding the duty payable under this item and exclusive of value-added tax) due or payable in respect or by virtue of [such] that lease or agreement at a rate of 0,5% of the quantifiable amount of the lease: Provided that where an amount of consideration in respect of a lease or agreement of lease is not quantifiable at the time of execution of the lease, the duty calculated at a rate of 0,5% on the sum of the amounts of that consideration which became quantifiable (exclusive of value-added tax) during any year of assessment, as defined in section 1 of the Income Tax Act 1962 (Act No. 58 of 1962), of any lessor who is a taxpayer, as defined in section 1 of the Income Tax Act, 1962, or in the 12 months ending on the last day of February each year in the case of any other lessor:”;

(b) by the deletion in paragraph (1) of subparagraphs (a), (b), (c) and (d);

(c) by the deletion in paragraph (1) of the proviso;

(d) by the deletion of paragraph (3); and

(e) by the insertion after subitem (1) of the following exemption from duty:

“*Exemption from duty under paragraph (1):*

For the purposes of this Item, no duty shall be payable in the event that the duty calculated on a lease or agreement of lease does not in aggregate exceed R200 over the period of the lease: Provided that this exemption shall not apply where the total consideration payable in respect of a lease or agreement of lease is not quantifiable at the time of execution of that lease.”.

(2) Subsection (1) shall come into operation on 1 January 2005 and shall apply in respect of all instruments executed on or after that date.

(b) enige aanvaarding deur die huurder van aanspreeklikheid vir betalings waarvoor die verhuurder andersins aanspreeklik sou wees:

Met dien verstande dat die betaling van enige bedrag ingevolge 'n bepaling in 'n huurooreenkoms nie geag word 'ander vergoeding' te wees nie, waar die bedrag—

(i) bestaan uit heffings wat verband hou met openbare dienste gelewer of utiliteite verskaf aan die huurder; of

(ii) verband hou met die seëlreg betaalbaar deur die verhuurder ten opsigte van daardie huur of huurooreenkoms.”.

(2) Subartikel (1) tree op 1 Januarie 2005 in werking en is van toepassing ten opsigte van alle instrumente op of na daardie datum verly.

Wysiging van artikel 23 van Wet 77 van 1968, soos gewysig deur artikel 20 van Wet 103 van 1969, artikel 13 van Wet 92 van 1971, artikel 11 van Wet 89 van 1972, artikel 10 van Wet 66 van 1973, artikel 10 van Wet 88 van 1974, artikel 20 van Wet 106 van 1980, artikel 6 van Wet 87 van 1982, artikel 5 van Wet 92 van 1983, artikel 25 van Wet 87 van 1988, artikel 8 van Wet 69 van 1989, artikel 7 van Wet 136 van 1991, artikel 13 van Wet 37 van 1996, artikel 19 van Wet 27 van 1997, artikel 80 van Wet 30 van 1998, artikel 76 van Wet 53 van 1999, artikel 157 van Wet 45 van 2003 en artikel 40 van Wet 16 van 2004

89. (1) Artikel 23 van die Wet op Seëlregte, 1968, word hierby gewysig—

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

“(c) Die maatskappy of regspersoon wat aandeel, effekte of skuldbriewe uitreik waarop die bepalings van paragraaf (a) of (b) van toepassing is, is verantwoordelik vir die nakoming van daardie bepalings, en indien daardie maatskappy of regspersoon of 'n beampte daarvan versuim om aan 'n vereiste daarvan te voldoen, loop daardie maatskappy of regspersoon, benewens die aanspreeklikheid vir onbetaalde seëlreg wat ten opsigte van die uitreiking van die betrokke aandeel, effekte of skuldbriewe betaalbaar is, 'n boete van hoogstens R1 000 op.”;

(b) deur paragraaf (b) in subartikel (2) te skrap;

(c) deur subartikel (7) te skrap;

(d) deur subartikels (8) en (9) te skrap;

(e) deur subartikel (11) deur die volgende subartikel te vervang:

“(11) Die seëlreg wat ingevolge Item 15(4) van Bylae 1 betaalbaar is, word aangedui op 'n afskrif van 'n aansoek aan die hof, oorname-aanbod of besluit, na gelang van die geval, wat nodig is ten opsigte van 'n in subartikel (10) bedoelde plan, en die maatskappy waarvan die betrokke aandeel ingetrek of afgelos word, endosseer op [bedoelde] daardie afskrif die markwaarde van daardie aandeel en die bedrag betaalbaar ten opsigte van die aflossing van daardie aandeel, met inbegrip van enige aldus betaalbare premie, soos volgens voorskrif van [genoemde] subartikel (10) vasgestel en, in die geval van 'n oorname-aanbod, die datum van die finale aanvaarding van [bedoelde] daardie aanbod en behou daardie afskrif, wat te alle redelike tye gedurende 'n tydperk van [drie] vyf jaar na die betrokke datum in subartikel (13) bedoel beskikbaar moet wees vir insae deur iemand wat op gesag van die Kommissaris handel.”;

(f) deur paragraaf (b) in subartikel (15) te skrap; en

(g) deur subartikel (16) deur die volgende subartikel te vervang:

“(16) 'n Akte of verklaring in subartikel (15) bedoel, moet te alle redelike tye gedurende 'n tydperk van [drie] vyf jaar nadat dit in die besit gekom het van die persoon by wie dit ingedien word soos in [bedoelde] subartikel (15) beoog, beskikbaar wees vir insae deur iemand wat op gesag van die Kommissaris handel.”.

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

(b) Subartikel (1)(a), (b), (c) en (e) tree op 1 Januarie 2005 in werking en is van toepassing op alle instrumente op of na daardie datum verly.

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, section 56 of Act 30 of 2002, section 113 of Act 74 of 2002 and section 163 of Act 45 of 2003

91. (1) 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 subparagraph (i) of the following subparagraph: 15

“(i) where the securities are **[interest-bearing]** debentures, including debenture stock, debenture bonds and similar securities of a juristic person, whether constituting a charge on the assets of the juristic person or not, and which constitute instruments as contemplated in section 24J of the Income Tax Act, 1962 **[unless convertible into shares or similar equity interest or eligible to participate in dividends]**”;

- (b) by the deletion in paragraph (3) of subparagraph (a);

- (c) by the substitution for subparagraph (h) of paragraph (3) of the following subparagraph: 25

“(h) where transfer is registered—for every R10, or part thereof, of the amount or value of the consideration given or, where no consideration is given or the consideration given is less than the value of the marketable security transferred, of the value of the marketable security transferred:0 025” 30

- (d) by the deletion under the *Exemptions from the duty under paragraph (3)* of subparagraph (t);

- (e) by the substitution in *Exemptions from the duty under paragraph (3)* for subparagraph (z) of the following subparagraph: 35

“(z) where the securities are **[interest-bearing]** debentures, including debenture stock, debenture bonds and similar securities of a juristic person, whether constituting a charge on the assets of the juristic person or not, and which constitute instruments as contemplated in section 24J of the Income Tax Act, 1962 **[unless convertible into shares or similar equity interest or eligible to participate in dividends]**”; and 40

- (f) by the insertion in Paragraph (5) before the *Exemptions from the duty under paragraph (5)* of the following paragraph: 45

“The duty payable in terms of Item 15(5)(viii) does not apply in respect of the acquisition of any marketable security on or after 1 January 2005.” 50

(2) Notwithstanding the deletion by subsection (1)(b) of paragraph 3(a) of Item 15 of Schedule I to the Stamp Duties Act, 1968, these provisions remain in force in respect of any liability for an amount of duty which could have been imposed in respect of the registration of transfer of any marketable security which was sold or disposed of on or before 26 March 1969.

Wysiging van item 14 van Bylae 1 by Wet 77 van 1968, soos gewysig deur artikel 19 van Wet 114 van 1977 en artikel 7 van Wet 95 van 1978

90. (1) Item 14 van Bylae 1 by die Wet op Seëlregte, 1968, word hierby gewysig—

(a) deur in paragraaf (1) voor subparagraaf (a) die volgende paragraaf te vervang:

“(1) Ten opsigte van so ’n huur of ooreenkoms, ’n bedrag aan seëlreg 5
bereken [volgens onderstaande skaal] op ’n som [gelyk] gelykstaande
aan die totale bedrag van die huurgeld wat betaalbaar is (uitgesluit
belasting op toegevoegde waarde) ten opsigte van die tydperk waarvoor 10
die huur of ooreenkoms, volgens voorskrif van artikel 22 van hierdie Wet
geseël moet word, tesame met die bedrag van enige ander vergoeding
van watter aard ook al, waarvan die bedrag kwantifiseerbaar is ten tye
van die verlyding van daardie huur of ooreenkoms (behalwe die seëlreg
ingevolge hierdie item betaalbaar en uitgesluit belasting op toegevoegde
waarde) ten opsigte of uit hoofde van bedoelde huur of ooreenkoms teen 15
’n tarief van 0,5% van die kwantifiseerbare bedrag van die huur: Met
dien verstande dat waar die bedrag van vergoeding ingevolge ’n huur of
ooreenkoms nie kwantifiseerbaar is ten tye van die verlyding van die
huur nie, die seëlreg bereken word teen ’n tarief van 0,5% op die som van
die bedrae van daardie vergoeding wat kwantifiseerbaar geword het 20
(uitgesluit belasting op toegevoegde waarde) gedurende enige jaar van
aanslag, soos omskryf in artikel 1 van die Inkomstebelastingwet, 1962
(Wet No. 58 van 1962), van enige verhuurder wie ’n belastingpligtige is,
soos omskryf in artikel 1 van die Inkomstebelastingwet, 1962, of in die
12 maande wat eindig op die laaste dag van Februarie van elke jaar, in die 25
geval van enige ander verhuurder.”;

(b) deur subparagraawe (a), (b), (c) en (d) in paragraaf (1) te skrap;

(c) deur die voorbehoudsbepaling tot paragraaf (1) te skrap;

(d) deur artikel (3) te skrap; en

(e) deur die volgende vrystelling van seëlreg na subitem (1) in te voeg:

“Vrystelling van seëlreg ingevolge paragraaf (1): 30

Vir doeleindes van hierdie Item, sal geen seëlreg betaalbaar wees in die
geval waar die seëlreg wat bereken word op ’n huur of huurooreenkoms
nie in totaal R200 oorskry oor die tydperk van die huur nie: Met dien
verstande dat hierdie vrystelling nie van toepassing sal wees nie, waar
die totale vergoeding betaalbaar ingevolge ’n huur of huurooreenkoms 35
nie kwantifiseerbaar is ten tye van die verlyding van daardie
huurooreenkoms nie.”.

(2) Subartikel (1) tree op 1 Januarie 2005 in werking en is van toepassing op alle instrumente op of na daardie datum verly.

**Wysiging van item 15 van Bylae 1 by Wet 77 van 1968, soos vervang deur artikel 13 40
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 45
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 50
2000, artikel 63 van Wet 59 van 2000, artikel 42 van Wet 5 van 2001, artikel 147 van
Wet 60 van 2001, artikel 56 van Wet 30 van 2002, artikel 113 van Wet 74 van 2002
en artikel 163 van Wet 45 van 2003**

91. (1) Item 15 van Bylae 1 by die Wet op Seëlregte, 1968, word hierby gewysig—

(a) deur subparagraaf (i) in *Vrystellings van die seëlreg ingevolge paragraaf (1)* 55
of (2) deur die volgende subparagraaf te vervang:

“(i) waar die effekte [rentedraende] skuldbriewe, met inbegrip van
skuldbriefeffekte, skuldbriefverbande of soortgelyke effekte van ’n
regspersoon is, en wat instrumente soos beoog in artikel 24J van die
Inkomstebelastingwet, 1962 daarstel ongeag of dit ’n beswaring op die 60

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 1 of Act 61 of 1993, 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 34 of Act 34 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, section 148 of Act 60 of 2001, section 114 of Act 74 of 2002, section 47 of Act 12 of 2003, section 164 of Act 45 of 2003 and section 43 of Act 16 of 2004

92. (1) Section 1 of the Value-Added Tax Act, 1991, is hereby amended—

(a) by the substitution for the definition of “**consideration**” of the following definition:

“‘**consideration**’, in relation to the supply of goods or services to any person, includes any payment made or to be made (including any deposit on any returnable container and tax), whether in money or otherwise, or any act or forbearance, whether or not voluntary, in respect of, in response to, or for the inducement of, the supply of any goods or services, whether by that person or by any other person, but does not include any payment made by any person as [an unconditional gift] a donation to any association not for gain;”;

(b) by the deletion in the definition of “**domestic goods and services**” of the word “or” at the end of paragraph (d);

(c) by the addition to the definition of “**domestic goods and services**” of the following paragraphs:

“(f) laundry; or

(g) nursing services;”;

(d) by the insertion after the definition of “**donated goods or services**” of the following definition:

“‘**donation**’ means a payment whether in money or otherwise voluntarily made to any association not for gain for the carrying on or the carrying out of the purposes of that association and in respect of which no identifiable direct valuable benefit arises or may arise in the form of a supply of goods or services to the person making that payment or in the form of a supply of goods or services to any other person who is a connected person in relation to the person making the payment, but does not include any payment made by a public authority or a local authority;”;

(e) by the substitution in the definition of “**enterprise**” for paragraph (ii) of the proviso of the following paragraph:

“[the supply outside the Republic of goods or services by any concern from] any branch or main business [thereof where such branch or main business in permanently located at premises] of an enterprise permanently situated at premises outside the Republic shall be deemed to be carried on by a person separate from the vendor, if—

(aa) the branch or main business can be separately identified; and

(bb) an independent system of accounting is maintained by the concern in respect of the branch or main business [,

shall be deemed not to be effected in the course of furtherance of any enterprise or activity carried on by such concern];”;

(f) by the insertion in the definition of “**enterprise**” of the following paragraph to the proviso:

“(ix) where a person carries on or intends carrying on an enterprise or activity supplying commercial accommodation as contemplated in paragraph (a) of the definition of ‘commercial accommodation’ in section 1, and the total value of taxable supplies made by that person in the preceding period of 12 months or which it can reasonably be expected that that person will make in a period of 12 months, as the case may be, will not exceed R60 000, shall be deemed not to be the carrying on of an enterprise;”;

bates van die regspersoon uitmaak of nie[, **tensy dit in aandele of soorgelyke ekwiteitsbelange omgeskakel kan word of geregtig is om in dividende te deel**];”;

- (b) deur subparagraaf (a) in paragraaf (3) te skrap;
(c) deur subparagraaf (h) in paragraaf (3) deur die volgende subparagraaf te 5
vervang:

“(h) waar registrasie van oordrag plaasvind—vir elke R10, of deel daarvan van die bedrag of waarde van die vergoeding gegee of, waar geen vergoeding gegee word nie, of die vergoeding gegee minder is as die waarde van die handelseffek wat oorgedra word, van die waarde van die 10
handelseffek wat oorgedra word: 0 025”;

- (d) deur subparagraaf (t) in die *Vrystellings van die seëlreg ingevolge paragraaf (3)* te skrap;

- (e) deur subparagraaf (z) in *Vrystellings van die seëlreg ingevolge paragraaf (3)* deur die volgende subparagraaf te vervang: 15

“(z) waar die effekte [rentedraende] skuldbriewe, met inbegrip van skuldbriefeffekte, skuldbriefverbande of soortgelyke effekte van ’n regspersoon is, en wat instrumente soos beoog in artikel 24J van die Inkomstebelastingwet, 1962, daarstel, ongeag of dit ’n beswaring op die bates van die regspersoon uitmaak of nie[, **tensy dit in aandele of 20
soorgelyke ekwiteitsbelange omgeskakel kan word of geregtig is om in dividende te deel**];” en

- (f) deur die volgende paragraaf in paragraaf (5) voor die *Vrystellings van die seëlreg ingevolge paragraaf (5)* in te voeg:

“Die seëlreg betaalbaar ingevolge Item 15(5)(viii) is nie van toepassing 25
op enige verkryging van ’n handelseffek op of na 1 Januarie 2005 nie.”.

(2) Ondanks die skrapping deur subartikel (1)(b) van paragraaf 3(a) van Item 15 van Bylae I by die Wet op Seëlregte, 1968, bly hierdie bepalinge van krag ten opsigte van enige aanspreeklikheid vir ’n bedrag van reg wat daarkragtens opgelê kon word ten opsigte van die registrasie van oordrag van enige handelseffek wat voor of op 26 Maart 30
1969 verkoop of oor beskik is.

Wysiging van artikel 1 van Wet 89 van 1991, soos gewysig deur artikel 21 van Wet 136 van 1991, paragraaf 1 van Goewermmentskennisgewing 2695 van 8 November 1991, artikel 12 van Wet 136 van 1992, artikel 1 van Wet 61 van 1993, artikel 22 van 35
Wet 97 van 1993, artikel 9 van Wet 20 van 1994, artikel 18 van Wet 37 van 1996, artikel 23 van Wet 27 van 1997, artikel 34 van Wet 34 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, artikel 148 van Wet 60 van 2001, artikel 114 van Wet 74 van 2002, artikel 47 van Wet 12 van 2003, artikel 164 van Wet 45 van 2003 en 40
artikel 43 van Wet 16 van 2004

92. (1) Artikel 1 van die Wet op Belasting op Toegevoegde Waarde, 1991, word hierby gewysig—

- (a) deur die volgende omskrywing voor die omskrywing van “**edele metale**” in te voeg:

“**‘donasie’** beteken ’n betaling hetsy in geld of andersins vrywilliglik 45
gemaak aan ’n vereniging sonder winsoogmerk vir die bedryf of uitvoering van die doeleindes van daardie vereniging en ten opsigte waarvan geen identifiseerbare regstreekse waardevolle voordeel ontstaan of mag ontstaan in die vorm van ’n lewering van goed of dienste aan die persoon wat daardie betaling maak of in die vorm van ’n lewering van 50
goed of dienste aan ’n ander persoon wat ’n verbonde persoon is met betrekking tot die persoon wat die betaling maak nie, maar met uitsluiting van ’n betaling deur ’n openbare bestuur of ’n plaaslike bestuur;”;

- (b) deur die woord “of” aan die einde van paragraaf (d) in die omskrywing van 55
“**huishoudelike goed en dienste**” te skrap;

- (c) deur by die omskrywing van “**huishoudelike goed en dienste**” die volgende paragrawe by te voeg:

“(f) was- en strykgoed; of
(g) verplegingsdienste;”;

- (d) deur die woorde voor paragraaf (a) in die omskrywing van “**motor**” deur die 60
volgende woorde te vervang:

- (g) by the insertion after the definition of “**goods**” of the following definition:
 “**grant**” means any appropriation, grant in aid, subsidy or contribution transferred, granted or paid to a vendor by a public authority, local authority or constitutional institution listed in Schedule 1 to the Public Finance Management Act, 1999 (Act No. 1 of 1999), but does not include— 5
- (a) a payment made for the supply of any goods or services to that public authority or local authority, including all goods or services supplied to a public authority, local authority or constitutional institution listed in Schedule 1 to the Public Finance Management Act, 1999 (Act No. 1 of 1999) in accordance with a procurement process prescribed— 10
- (i) in terms of the Regulations issued under section 76(4)(c) of the Public Finance Management Act, 1999 (Act No. 1 of 1999); or 15
- (ii) in terms of Chapter 11 of the Local Government: Municipal Finance Management Act, 2003 (Act No. 56 of 2003), or any other similar process; or
- (b) a payment contemplated in section 8(23);”;
- (h) by the substitution in the definition of “**motor car**” for the words preceding paragraph (a) of the following words: 20
- “**motor car**” includes a motor car, station wagon, minibus, double cab light delivery vehicle and any other motor vehicle of a kind normally used on public roads, which has three or more wheels and is constructed or [adapted] converted wholly or mainly for the carriage of passengers, but does not include—”; 25
- (i) by the deletion in the definition of “**motor car**” of the word “or” at the end of paragraph (c);
- (j) by the addition to the definition of “**motor car**” of the following paragraphs: 30
- “(e) game viewing vehicles (other than sedans, station wagons, minibuses or double cab light delivery vehicles) constructed or permanently converted for the carriage of seven or more passengers for game viewing in national parks, game reserves, sanctuaries or safari areas and used exclusively for that purpose, other than use which is merely incidental and subordinate to that use; or 35
- (f) vehicles, constructed as or permanently converted into hearses for the transport of deceased persons and used exclusively for that purpose;”;
- (k) by the substitution for the definition of “**public authority**” of the following definition: 40
- “**public authority**” means—
- (i) any department or division of the public service [(including a provincial administration, the South African National Defence Force, the South African Police Service and Correctional Services)] as listed in Schedules 1, 2 or 3 of the Public Service Act, 1994 (Act No. 103 of 1994); or 45
- (ii) any public entity listed in Part A or C of Schedule 3 to the Public Finance Management Act, 1999 (Act No. 1 of 1999); or
- (iii) any other public entity designated by the Minister for the purposes of this Act to be a public authority;”;
- (l) by the deletion of the definition of “**unconditional gift**”; and 50
- (m) by the substitution for the definition of “**welfare organisation**” of the following definition:
- “**welfare organisation**” means any [association not for gain] public benefit organisation which [is registered under the Nonprofit Organisations Act, 1997 (Act No. 71 of 1997) and] is exempt from income tax in terms of section 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 60
- under the headings—
- (a) welfare and humanitarian;
- (b) health care;

- “**motor**” ook ’n motor, stasiewa, minibus, dubbelkajuit-ligte-afleveringsvoertuig en enige ander motorvoertuig van ’n soort wat normaalweg op openbare paaie gebruik word, wat drie of meer wiele het en geheel en al of hoofsaaklik vir die vervoer van passasiers gekonstrueer of [aangepas] omskep is, maar met uitsluiting van—”;
- (e) deur die woord “of” aan die einde van paragraaf (c) in die omskrywing van “**motor**” te skrap;
- (f) deur die volgende paragrawe by die omskrywing van “**motor**” in te voeg:
- “(e) wildbesigtigingsvoertuie (anders as sedans, stasiewaens, mini-busse of dubbelkajuit-ligte-afleveringsvoertuie) gekonstrueer of permanent omskep vir die vervoer van sewe of meer passasiers vir wildbesigtiging in nasionale parke, wildreservate, reservate of safari areas en uitsluitlik vir daardie doel gebruik, anders as gebruik wat slegs toevallig en ondergeskik tot daardie doel is;
- (f) voertuie gekonstrueer as of permanent omskep in lykswaens vir die vervoer van afgestorwe persone en uitsluitlik vir daardie doel gebruik;”;
- (g) deur paragraaf (ii) van die voorbehoudsbepaling tot die omskrywing van “**onderneming**” deur die volgende paragraaf te vervang:
- (ii) [die lewering buite die Republiek van goed of dienste deur ’n instansie uit] ’n tak of hoofbesigheid [daarvan waar daardie tak of hoofbesigheid] van enige onderneming wat permanent op ’n perseel buite die Republiek geleë is word geag deur ’n persoon afsonderlik van die ondernemer bedryf te word, indien—
- (aa) die tak of hoofbesigheid afsonderlik geïdentifiseer kan word; en
- (bb) ’n onafhanklike rekeningkundige stelsel deur die instansie ten opsigte van die tak of hoofbesigheid gehandhaaf word[, geag word nie in die loop of ter bevordering van enige onderneming of bedrywigheid wat deur daardie instansie bedryf word, bewerkstellig te wees nie];
- (h) deur in die omskrywing van “**onderneming**” die volgende paragraaf by die voorbehoudsbepaling te voeg:
- “(ix) waar ’n persoon ’n onderneming bedryf of van voorneme is om ’n onderneming te bedryf of ’n aktiwiteit beoefen wat kommersiële huisvesting lewer soos beoog in paragraaf (a) van die omskrywing van ‘kommersiële huisvesting’ in artikel 1, en die totale waarde van belasbare lewerings gemaak deur daardie persoon in die voorafgaande tydperk van 12 maande of dat daar redelikerwys verwag kan word dat daardie persoon in ’n periode van 12 maande, na gelang die geval, nie R60 000 sal oorskry nie, sal daardie persoon geag word om nie ’n onderneming te bedryf nie;”;
- (i) deur die omskrywing van “**openbare bestuur**” deur die volgende omskrywing te vervang:
- “**openbare bestuur**”—
- (i) ’n departement of afdeling van die staatsdiens [(met inbegrip van ’n provinsiale administrasie, die Suid-Afrikaanse Nasionale Weermag, die Suid-Afrikaanse Polisiediens en die Korrektiewe Dienste)] soos gelys in Bylaes 1, 2 of 3 van die Staatsdienswet, 1994 (Wet No. 103 van 1994); of
- (ii) enige openbare entiteit gelys in Deel A of C van Bylae 3 by die Wet op Openbare Finansiële Bestuur, 1999 (Wet No. 1 van 1999); of
- (iii) enige ander openbare entiteit deur die Minister vir die doeleindes van hierdie Wet as ’n openbare bestuur aangewys;”;
- (j) deur die skraping van die omskrywing van “**onvoorwaardelike skenking**”;
- (k) deur die volgende omskrywing na die omskrywing van “**skip op vreemde vaart**” in te voeg:

- (c) land and housing;
- (d) education and development; or
- (e) conservation, environment and animal welfare.”.

(2) Subsection (1)(g) and (k) shall come into operation on a date 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, section 149 of Act 60 of 2001, section 115 of Act 74 of 2002 and section 44 of Act 16 of 2004

93. Section 2 of the Value-Added Tax Act, 1991, is hereby amended—

- (a) by the substitution in subsection (1)(k) for the words preceding the proviso of the following words:
 “the buying or selling of [**futures contracts or option contracts as defined in section 1 of the Financial Markets Control Act, 1989 (Act No. 55 of 1989), or any similar contract**] any derivative.”;
- (b) by the substitution for paragraph (i) of subsection (2) of the following paragraph:
 “‘**cheque**’ means a [**cheque as defined in section 1 of the Stamp Duties Act**] bill drawn on a bank payable on demand, a postal order, a money order, a traveller’s cheque, or any order or [**authorization**] authorisation (whether in writing, by electronic means, or otherwise) to a financial institution to credit or debit any account.”; and
- (c) by the insertion after the definition of “**debt security**” in subsection (2) of the following definition:
 “(iiiA) “**derivative**” means a derivative as defined for purposes of Statement AC 133 of generally accepted accounting practice.”.

Amendment of section 7 of Act 89 of 1991, as amended by section 165 of Act 45 of 2003

94. Section 7 of the Value-Added Tax Act, 1991, is hereby amended—

- (a) by the substitution in subsection (3) for paragraphs (a) and (b) of the following paragraphs:
 “(a) Where any goods manufactured in the Republic, being of a class or kind subject to excise duty or environmental levy under Part 2 or 3 of Schedule No. 1 to the Customs and Excise Act, have been supplied at a price which does not include such excise duty or environmental levy and tax has become payable in respect of the supply in terms of subsection (1)(a), value-added tax shall be levied and paid at the rate of 14 per cent for the benefit of the National Revenue Fund on an amount equal to the amount of such excise duty or environmental levy which, subject to any rebate of such excise duty or environmental levy under the said Act, is paid.
 (b) The tax payable in terms of paragraph (a) shall be paid by the person liable in terms of the Customs and Excise Act for the payment of the said excise duty or environmental levy.”; and
- (b) by the substitution in subsection (3) for paragraph (d) of the following paragraph:
 “(d) Subject to this Act, the provisions of the Customs and Excise Act relating to the clearance of goods subject to excise duty or environmental levy and the payment of [**such**] that excise duty or environmental levy shall *mutatis mutandis* have effect as if enacted in this Act.”.

- “**subsidie**” enige toe-eiening, hulptoelae, subsidie of bystand, oorgedra, toegestaan of betaal aan ’n ondernemer deur ’n openbare bestuur of ’n plaaslike bestuur of ’n grondwetlike instelling gelys in Bylae 1 by die Wet op Openbare Finansiële Bestuur, 1999 (Wet No. 1 van 1999), maar met die uitsluiting van— 5
- (a) ’n betaling wat gemaak is vir die lewering van enige goed of dienste aan daardie openbare bestuur of plaaslike bestuur, ingesluit alle goed of dienste gelewer aan ’n openbare bestuur, plaaslike bestuur of grondwetlike instelling gelys in Bylae 1 by die Wet op Openbare Finansiële Bestuur, 1999 (Wet No. 1 van 1999), ooreenkomstig ’n verkrygings proses voorgeskryf— 10
- (i) ingevolge die Regulasies uitgereik ingevolge artikel 76(4)(c) van die Wet op Openbare Finansiële Bestuur, 1999 (Wet No. 1 van 1999); of
- (ii) ingevolge Hoofstuk 11 van die Wet op Plaaslike Regering: Munisipale Finansiële Bestuur, 2003 (Wet No. 56 van 2003), of enige ander soortgelyke proses; of 15
- (b) ’n betaling soos bedoel in artikel 8(23);”;
- (l) deur die omskrywing van “**vergoeding**” deur die volgende omskrywing te vervang: 20
- “**vergoeding**”, met betrekking tot die lewering van goed of dienste aan ’n persoon, ook enige betaling gemaak of gemaak te word (met inbegrip van ’n deposito op ’n terugsendbare houër en belasting), hetsy in geld of andersins, of enige handeling of toegewendheid, hetsy vrywillig of nie, ten opsigte van, in antwoord op, of as aansporing vir, die lewering van enige goed of dienste, hetsy deur daardie persoon of ’n ander persoon, maar met uitsluiting van ’n betaling deur ’n persoon gemaak aan ’n vereniging sonder winsoogmerk as ’n [onvoorwaardelike skenking] donasie;” en 25
- (m) deur die vervanging vir die omskrywing van “**welsynsorganisasie**” deur die volgende omskrywing: 30
- “**welsynsorganisasie**” ’n [vereniging sonder winsoogmerk] openbare weldaadsorganisasie wat [ingevolge die Wet op Organisasies sonder Winsoogmerk, 1997 (Wet No. 71 van 1997), geregistreer is en] vrygestel is van inkomstebelasting ingevolge artikel 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— 40
- (a) welsyn en humanitêr;
- (b) gesondheidsorg;
- (c) grond en behuising;
- (d) onderwys en ontwikkeling; of 45
- (e) bewaring, omgewing en dierewelsyn.”.
- (2) Subartikel (1) (i) en (k) tree in werking op die datum deur die President by proklamasie in die *Staatskoerant* bepaal.
- 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, artikel 149 van Wet 60 van 2001, artikel 115 van Wet 74 van 2002 en artikel 44 van Wet 16 van 2004** 50
- 93. Artikel 2 van die Wet op Belasting op Toegevoegde Waarde, 1991, word hierby gewysig—** 55
- (a) deur die woorde voor die eerste voorbehoudsbepaling in paragraaf (k) in subartikel (1) deur die volgende woorde te vervang:
- “die koop of verkoop van [termynkontrakte of opsiekontrakte soos omskryf in artikel 1 van die Wet op Beheer van Finansiële Markte 60

Amendment of section 8 of Act 89 of 1991, as amended by section 24 of Act 136 of 1991, paragraph 4 of Government Notice 2695 of 8 November 1991, section 15 of Act 136 of 1992, section 24 of Act 97 of 1993, section 11 of Act 20 of 1994, section 20 of Act 46 of 1996, section 25 of Act 27 of 1997, section 83 of Act 53 of 1999, section 67 of Act 19 of 2001, section 151 of Act 60 of 2001 and section 166 of Act 45 of 2003 5

95. (1) Section 8 of the Value-Added Tax Act, 1991, is hereby amended—

(a) by the addition in subsection (2) of the following paragraph to the proviso:

“(iv) this subsection shall not apply to a vendor that is a constitutional institution listed in Schedule 1 to the Public Finance Management Act, 1999 (Act No. 1 of 1999) or a public authority, respectively, where that vendor (other than a vendor who applied and was registered as a vendor during the period 22 December 2003 to 31 March 2005) ceases to be a vendor as a result of— 10

(aa) the substitution of the definition of ‘public authority’ in the Revenue Laws Amendment Act, 2004 or the insertion of paragraph (viii) to the proviso to the definition of ‘enterprise’ in the Revenue Laws Amendment Act, (Act No. 45 of 2003); 15
or

(bb) the re-classification of that vendor or part of that vendor’s activities within the Schedules to the Public Finance Management Act, 1999 (Act No. 1 of 1999) subsequent to the introduction of the Revenue Laws Amendment Act, 2004.”; 20

(b) by the insertion after subsection (2A) of the following subsection:

“(2B) Where a supply is deemed to have been made by a vendor in terms of subsection (2) and that vendor ceases on or before 30 June 2005 to be a vendor solely as a consequence of the introduction of proviso (ix) to the definition of ‘enterprise’ in section 1, the tax payable to the Commissioner in respect of that deemed supply shall, if the amount thereof is in excess of R3 000, be paid to the Commissioner in so many equal monthly instalments as the Commissioner may allow.”; 25 30

(c) by the insertion after subsection (5) of the following subsection:

“(5A) For the purposes of section 11(2)(t), a vendor (excluding a designated entity) shall be deemed to supply services to any public authority, local authority or constitutional institution listed in Schedule 1 to the Public Finance Management Act, 1999 (Act No. 1 of 1999) to the extent of any grant paid to or on behalf of that vendor in respect of the taxable supply of goods or services by that vendor.”. 35

(d) by the substitution for subsection (14) of the following subsection:

“(14) For the purposes of this Act—

(a) where any goods are supplied by a vendor to a person otherwise than in the circumstances contemplated in paragraph 2(b) of the Seventh Schedule to the Income Tax Act, and a deduction under section 16(3) in respect of the acquisition by the vendor of [such] those goods was denied in terms of section 17(2) or would have been denied if section 7 of this Act had been applicable prior to the commencement date, the vendor shall be deemed to have supplied the goods otherwise than in the course or furtherance of his enterprise; 40 45

(b) where any input tax is allowed in terms of section 18(9) in respect of a game viewing vehicle or a hearse as contemplated in paragraph (e) or (f) of the definition of ‘motor car’ in section 1, the subsequent supply of that game viewing vehicle or hearse shall be deemed to be supplied in the course of the vendor’s enterprise.”; 50

(e) by the insertion after subsection (14) of the following subsection:

“(14A) For the purposes of this Act, where input tax has been allowed on the conversion of a game viewing vehicle or a hearse, as contemplated in paragraph (e) or (f) of the definition of ‘motor car’ in section 1 and that game viewing vehicle or hearse is subsequently applied for purposes other than those purposes as contemplated in paragraph (e) or (f) of the definition of ‘motor car’ in section 1, a supply of that game viewing vehicle or hearse shall be deemed to take place.”; and 55 60

(f) by the substitution for subsection (21) of the following subsection:

1989 (Wet No. 55 van 1989), of enige soortgelyke kontrak] enige afgeleide instrument.”;

- (b) deur paragraaf (vi) van subartikel (2) deur die volgende paragraaf te vervang:
 “‘tjek’ ’n [tjek soos in artikel 1 van die Wet op Seëlregte omskryf] wissel getrek op ’n bank wat betaalbaar is op aanvraag, ’n posorder, ’n poswissel, ’n reisigerstjek of ’n opdrag of magtiging (hetsy op skrif, deur ’n elektroniese middel of op ’n ander wyse) aan ’n finansiële instelling om ’n rekening te krediteer of debiteer;”; en
- (c) deur paragraaf (i) van subartikel (1) as paragraaf (iA) te hernoem; en
- (d) deur die volgende omskrywing voor die omskrywing van “aftreeskema” in subartikel (2) in te voeg:
 “(i) ‘afgeleide instrument’ ’n afgeleide instrument soos omskryf vir doeleindes van standpunt AC133 van die algemeen aanvaarde rekeningkundige praktyk;”.

Wysiging van artikel 7 van Wet 89 van 1991, soos gewysig deur artikel 165 van Wet 45 van 2003

94. Artikel 7 van die Wet op Belasting op Toegevoegde Waarde, 1991, word hierby gewysig—

- (a) deur paragrawe (a) en (b) in subartikel (3) deur die volgende paragrawe te vervang:
 “(a) Waar goed wat in die Republiek vervaardig is, synde van ’n klas of soort wat ingevolge Deel 2 of 3 van Bylae 1 by die Doeane- en Aksynswet aan aksynsreg of omgewingsheffing onderworpe is, gelewer is teen ’n prys wat bedoelde aksynsreg of omgewingsheffing nie insluit nie en belasting ten opsigte van die lewering ingevolge subartikel (1)(a) betaalbaar geword het, word belasting op toegevoegde waarde teen die koers van 14 persent gehef en betaal ten bate van die Nasionale Inkomstefonds op ’n bedrag gelyk aan die bedrag van bedoelde aksynsreg of omgewingsheffing wat, behoudens ’n korting van bedoelde aksynsreg of omgewingsheffing kragtens die vermelde Wet, betaalbaar [word] is.
- (b) Die belasting wat ingevolge paragraaf (a) betaalbaar is, word betaal deur die persoon wat ingevolge die Doeane- en Aksynswet aanspreeklik is vir die betaling van genoemde aksynsreg of omgewingsheffing.”; en
- (b) deur paragraaf (d) in subartikel (3) deur die volgende paragraaf te vervang:
 “(d) Behoudens die bepalinge van hierdie Wet, is die bepalinge van die Doeane- en Aksynswet met betrekking tot die klaring van goed wat aan aksynsreg of omgewingsheffing onderworpe is en die betaling van [bedoelde] daardie aksynsreg of omgewingsheffing, *mutatis mutandis* van toepassing asof dit in hierdie Wet verorden is.”.

Wysiging van artikel 8 van Wet 89 van 1991, soos gewysig deur artikel 24 van Wet 136 van 1991, paragraaf 4 van Goewermmentskennisgewing 2695 van 8 November 1991, artikel 15 van Wet 136 van 1992, artikel 24 van Wet 97 van 1993, artikel 11 van Wet 20 van 1994, artikel 20 van Wet 46 van 1996, artikel 25 van Wet 27 van 1997, artikel 83 van Wet 53 van 1999, artikel 67 van Wet 19 van 2001, artikel 151 van Wet 60 van 2001 en artikel 166 van Wet 45 van 2003

95. (1) Artikel 8 van die Wet op Belasting op Toegevoegde Waarde, 1991, word hierby gewysig—

- (a) deur die volgende paragraaf by die voorbehoudsbepaling in subartikel (2) in te voeg:
 “(iv) hierdie subartikel sal nie van toepassing wees op ’n ondernemer wat ’n grondwetlike instelling soos gelys in Bylae 1 by die Wet op Openbare Finansiële Bestuur, 1999 (Wet No. 1 van 1999) of ’n openbare bestuur, onderskeidelik, is nie, waar daardie ondernemer (behalwe ’n ondernemer wie aansoek gedoen het en geregistreer was as ’n ondernemer gedurende die periode van 22 Desember 2003 tot 31 Maart 2005) opgehou het om ’n ondernemer te wees as gevolg van—

“(21) For the purposes of this Act, compensation or any other payment, other than an amount contemplated in section 12(a), received by a vendor in consequence of the expropriation of **[land, including an improvement thereto]** fixed property, is deemed to be received in respect of a supply of goods made in the course or furtherance of an enterprise unless that **[land or improvement thereto]** fixed property forms no part of the assets held or used by the vendor for the purposes of an enterprise.”.

(2) Subsection (1)(a) and (c) shall come into operation on a date or dates fixed by the President by proclamation in the *Gazette*.

Amendment of section 9 of Act 89 of 1991, as amended by section 25 of Act 136 of 1991 and section 167 of Act 45 of 2003

96. Section 9 of the Value-Added Tax Act, 1991, is hereby amended by the addition of the following subsection after subsection (9):

“(10) Where any supply of a game viewing vehicle or a hearse is deemed to be made as contemplated in section 8(14)(b) or 8(14A) the time of supply shall be deemed to be the time that the game viewing vehicle or hearse is supplied as contemplated in those sections.”.

Amendment of section 10 of Act 89 of 1991, as amended by section 26 of Act 136 of 1991, paragraph 5 of Government Notice 2695 of 8 November 1991, section 16 of Act 13 of 1992, section 26 of Act 97 of 1993, section 12 of Act 20 of 1994, section 21 of Act 37 of 1996, section 22 of Act 46 of 1996, section 27 of act 27 of 1997, section 84 of Act 53 of 1999, section 68 of Act 19 of 2001, section 152 of Act 60 of 2001 and section 168 of Act 45 of 2003

97. Section 10 of the Value-Added Tax Act, 1991, is hereby amended by the insertion of the following subsection after subsection (23):

“(24) Where a game viewing vehicle or a hearse is deemed to be supplied by a vendor in terms of section 8(14)(b) or (14A) the supply shall be deemed to be made for a consideration in money equal to the open market value, of that game viewing vehicle or hearse.”.

Amendment of section 11 of Act 89 of 1991, as amended by section 27 of Act 136 of 1991, paragraph 6 of Government Notice 2695 of 8 November 1991, section 17 of Act 136 of 1992, section 27 of Act 97 of 1993, section 13 of Act 20 of 1994, section 28 of Act 27 of 1997, section 89 of Act 30 of 1998, section 85 of Act 53 of 1999, section 77 of Act 30 of 2000, section 43 of Act 5 of 2001, section 153 of Act 60 of 2001, section 169 of Act 45 of 2003 and section 46 of Act 16 of 2004

98. (1) Section 11 of the Value-Added Tax Act, 1991, is hereby amended—

(a) by the substitution in subsection (1) for paragraphs (c) and (d) of the following paragraphs:

“(c) the goods (being movable goods) are supplied to a lessee or other person under a rental agreement, charter party or agreement for chartering, if the goods are used exclusively in an export country or in a customs controlled area: Provided that this subsection shall not apply where a ‘motor car’ as defined in section 1 is supplied to a person located in a customs controlled area; or

(d) the goods (being movable goods) are supplied to a lessee or other person under a rental agreement, charter party or agreement for chartering, if **[such]** those goods are used by **[such]** that lessee or other person exclusively in any commercial, financial, industrial, mining, farming, fishing or professional concern conducted in an export country and payment of rent or other consideration under **[such]** that agreement is effected from such export country; or”;

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

“(m) a vendor supplies movable goods, (excluding any ‘motor car’ as defined in section 1), in terms of a sale or instalment credit agreement

- (aa) die vervanging van die omskrywing van 'openbare bestuur' in die Wysigingswet op Inkomstewette, 2004 of die invoeging van paragraaf (viii) in die voorbehoudsbepaling tot die omskrywing van 'onderneming' in die Wysigingswet op Inkomstewette, 2003 (Wet No. 45 van 2003); of 5
- (bb) die herklassifisering van daardie ondernemer of 'n gedeelte van daardie ondernemer se aktiwiteite binne die Bylaes by die Wet op Openbare Finansiële Bestuur, 1999, (Wet No. 1 van 1999) na die inwerkingtreding van die Wysigingswet op Inkomstewette, 2004.”; 10
- (b) deur die volgende subartikel na subartikel (2A) in te voeg:
- “(2B) Waar 'n lewering ingevolge subartikel (2) geag word deur 'n ondernemer gedoen te gewees het en daardie ondernemer op of voor 30 Junie 2005 ophou om 'n ondernemer te wees slegs as gevolg van die inwerkingtreding van voorbehoudsbepaling (ix) tot die omskrywing van 'onderneming' in artikel 1, is die belasting betaalbaar aan die Kommissaris in die geval van daardie geagte lewering, indien die bedrag daarvan R3 000 oorskry, in soveel gelyke maandelikse paaielemente aan die Kommissaris betaalbaar as wat die Kommissaris toelaat.”; 15
- (c) deur die volgende subartikel na subartikel (5) in te voeg: 20
- “(5A) By die toepassing van artikel 11(2)(t) word 'n ondernemer (met die uitsluiting van 'n aangewese entiteit) geag dienste aan 'n openbare bestuur, plaaslike bestuur of grondwetlike instelling gelys in Bylae 1 by die Wet op Openbare Finansiële Bestuur, 1999 (Wet No. 1 van 1999) te lewer tot die mate van enige subsidie betaal aan of namens daardie ondernemer met betrekking tot die belasbare lewering van goed of dienste deur daardie ondernemer.”; 25
- (d) deur subartikel (14) deur die volgende subartikel te vervang:
- “(14) By die toepassing van hierdie Wet—
- (a) waar enige goed deur 'n ondernemer aan 'n persoon gelewer word anders as in die omstandighede beoog in paragraaf 2(b) van die Sewende Bylae by die Inkomstebelastingwet, en 'n aftrekking ingevolge artikel 16(3) ten opsigte van die verkryging deur die ondernemer van [bedoelde] daardie goed ingevolge artikel 17(2) ontsê is of ontsê sou gewees het indien artikel 7 van hierdie Wet voor die aanvangsdatum van toepassing was, word die ondernemer geag die goed anders as in die loop of ter bevordering van sy onderneming te gelewer het; 30
- (b) waar enige insetbelasting toegelaat is ingevolge artikel 18(9) met betrekking tot 'n wildbesigtigingsvoertuig of 'n lykswa soos beoog in paragraaf (e) of (f) van die omskrywing van 'motor' in artikel 1 word die daaropvolgende lewering van daardie wildbesigtigingsvoertuig of lykswa geag gelewer te wees in die loop van die ondernemer se onderneming.”; 35
- (e) deur die volgende subartikel na subartikel 14 in te voeg: 40
- “(14A) By die toepassing van hierdie Wet, waar insetbelasting toegelaat was op die omskepping van 'n wildbesigtigingsvoertuig of 'n lykswa, soos beoog in paragraaf (e) of (f) van die omskrywing van 'motor' in artikel 1 en daardie wildbesigtigingsvoertuig of lykswa word daarna aangewend vir doeleindes anders as daardie doeleindes soos beoog in paragraaf (e) of (f) van die omskrywing van 'motor' in artikel 1, sal 'n lewering van daardie wildbesigtigingsvoertuig of lykswa geag plaas te vind.”; en 45
- (f) deur subartikel (21) deur die volgende subartikel te vervang: 50
- “(21) By die toepassing van hierdie Wet word kompensasie of enige ander betaling, uitgesonderd 'n bedrag bedoel in artikel 12(a), deur 'n ondernemer ontvang ten gevolge van die onteining van [grond, met inbegrip van 'n verbetering daarop] vasgoed, geag ontvang te wees ten opsigte van 'n lewering van goed gemaak in die loop of ter bevordering van 'n onderneming, tensy daardie [land of verbetering daarop] vasgoed nie deel vorm van die bates gehou of gebruik deur die ondernemer vir doeleindes van 'n onderneming nie.”. 55 60

- to a registered vendor in a customs controlled area and those goods are either—
- (i) physically delivered by the supplier to the recipient; or
 - (ii) physically delivered by a VAT registered cartage contractor, engaged by the supplier, whose main activity is that of transporting goods: Provided that this subsection shall not apply where the cartage contractor is not liable to the supplier for delivery of the goods and that supplier is not liable for the full cost relating to that delivery;”;
- (c) by the substitution in subsection (1) for subparagraph (ii) of paragraph (n) of the following subparagraph:
- “(ii) any prospecting right, mining right, exploration right, **[or]** production right, mining permit or retention permit as defined in section 1 of the Mineral and Petroleum Resources Development Act, 2002 (Act No. 28 of 2002), wholly or partly renewed in terms of that Act.”;
- (d) by the insertion in subsection (1) after paragraph (o) of the following paragraph:
- “(p)(i) the supply of an enterprise or part of an enterprise as a going concern, by a vendor to that vendor’s branch or division, which branch or division is separately registered in terms of section 50(2): Provided that that enterprise or part, as the case may be, shall not be disposed of as a going concern unless—
- (aa) that enterprise or part is capable of separate operation; and
 - (bb) will be an income-earning activity on the date of transfer thereof; and
 - (cc) a tax invoice issued in accordance with section 20 in relation to that supply is inclusive of tax at the rate of zero per cent; or
- (ii) the supply of an enterprise, branch or division, as contemplated in section 50(2), as a going concern to a separately registered enterprise of that vendor: Provided that that enterprise or part, as the case may be, shall not be disposed of as a going concern unless—
- (aa) that enterprise or part is capable of separate operation; and
 - (bb) will be an income-earning activity on the date of transfer thereof; and
 - (cc) a tax invoice issued in accordance with section 20 in relation to that supply is inclusive of tax at the rate of zero per cent;”;

(e) by the substitution in subsection (2) for subparagraph (iii) of paragraph (h) of the following subparagraph:

“(iii) the storage, repair, maintenance, cleaning, management or arranging the provision of a container referred to in paragraph **[2(i) of Part A] (1)(i)** of Schedule 1 or the arranging of **[such] those** services,”;

(f) by the addition to subsection (2) of the following paragraph:

“(t) the services are deemed to be supplied in terms of section 8(5A);”.

(2) (a) Subsection (1)(a) shall—

 - (i) to the extent it inserts the words “being movable goods” in section 11(1)(c) and (d) of the Value-Added Tax Act, 1991, come into operation on the date of promulgation; and
 - (ii) to the extent it amends the rest of section 11(1)(c) of the Value-Added Tax Act, 1991, come into operation on the date that section 21A of the Customs and Excise Act, 1964, comes into operation.

(b) Subsection (1)(b) shall come into operation on the date section 21A of the Customs and Excise Act, 1964, comes into operation.

(c) Subsection (1)(f) shall come into operation on a date fixed by the President by proclamation in the *Gazette*.

(2) Subartikel (1) (a) en (c) tree in werking op 'n datum of datums deur die President by proklamasie in die *Staatskoerant* bepaal.

Wysiging van artikel 9 van Wet 89 van 1991, soos gewysig deur artikel 25 van Wet 136 van 1991 en artikel 167 van Wet 45 van 2003

96. Artikel 9 van die Wet op Belasting op Toegevoegde Waarde, 1991, word hierby 5
gewysig deur die volgende subartikel na subartikel (9) in te voeg:

“(10) Waar die lewering van ’n wildbesigtigingsvoertuig of ’n lykswa geag word
gedoen te wees soos in artikel 8(14)(b) of 8(14A) beoog, word die tyd van lewering
geag die tyd te wees dat die wildbesigtigingsvoertuig of lykswa gelewer is soos
beoog in daardie artikels.”.

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**Wysiging van artikel 10 van Wet 89 van 1991, soos gewysig deur artikel 26 van Wet
136 van 1991, paragraaf 5 van Goewermentskennisgewing 2695 van 8 November
1991, artikel 16 van Wet 13 van 1992, artikel 26 van Wet 97 van 1993, artikel 12 van
Wet 20 van 1994, artikel 21 van Wet 37 van 1996, artikel 22 van Wet 46 van 1996,
artikel 27 van Wet 27 van 1997, artikel 84 van Wet 53 van 1999, artikel 68 van Wet 15
19 van 2001, artikel 152 van Wet 60 van 2001 en artikel 168 van Wet 45 van 2003**

97. Artikel 10 van die Wet op Belasting op Toegevoegde Waarde, 1991, word hierby
gewysig deur die volgende subartikel na subartikel (23) in te voeg:

“(24) Waar ’n wildbesigtigingsvoertuig of ’n lykswa ingevolge artikel 8(14)(b)
of (14A) geag deur ’n ondernemer gelewer te wees, word die lewering geag gedoen 20
te wees vir ’n vergoeding in geld gelyk aan die ope markwaarde van daardie
wildbesigtigingsvoertuig of lykswa.”.

**Wysiging van artikel 11 van Wet 89 van 1991, soos gewysig deur artikel 27 van Wet
136 van 1991, paragraaf 6 van Goewermentskennisgewing 2695 van 8 November
1991, artikel 17 van Wet 136 van 1992, artikel 27 van Wet 97 van 1993, artikel 13 25
van Wet 20 van 1994, artikel 28 van Wet 27 van 1997, artikel 89 van Wet 30 van
1998, artikel 85 van Wet 53 van 1999, artikel 77 van Wet 30 van 2000, artikel 43 van
Wet 5 van 2001, artikel 153 van Wet 60 van 2001, artikel 169 van Wet 45 van 2003
en artikel 46 van Wet 16 van 2004**

98. (1) Artikel 11 van die Wet op Belasting op Toegevoegde Waarde, 1991, word 30
hierby gewysig—

(a) deur paragrawe (c) en (d) in subartikel (1) deur die volgende paragrawe te
vervang:

“(c) die goed (wat roerende goed is) gelewer word aan ’n huurder of ander
persoon kragtens ’n huurooreenkoms, vragkontrak of ooreenkoms vir 35
vervragting, indien die goed uitsluitlik in ’n uitvoerland of in ’n
doeanebeheerdegebied gebruik word; Met dien verstande dat hierdie
subartikel nie van toepassing is waar ’n ’motor’ soos omskryf in artikel
1 gelewer is aan ’n persoon in ’n doeanebeheerdegebied; of

(d) die goed (wat roerende goed is) gelewer word aan ’n huurder of ander 40
persoon kragtens ’n huurooreenkoms, vragkontrak of ooreenkoms vir
vervragting, indien daardie goed uitsluitlik deur daardie huurder of ander
persoon gebruik word in ’n kommersiële, finansiële, nywerheids-,
mynbou-, boerdery-, vissery- of professionele saak wat in ’n uitvoerland
bedryf word en betaling van huurgeld of ander vergoeding kragtens 45
[bedoelde] daardie ooreenkoms van daardie uitvoerland bewerkstellig
word; of”;

(b) deur paragraaf (m) in subartikel 1 deur die volgende paragraaf te vervang:

“(m) ’n ondernemer lewer roerende goed (uitgesluit enige ’motor’ soos
omskryf in artikel 1), ingevolge ’n verkoop of paaientekrediet- 50
ooreenkoms aan ’n geregistreerde ondernemer in ’n doeanebe-
heerdegebied en daardie goed word of—

(i) fisies afgelewer deur die verskaffer aan die ontvanger; of

(ii) fisies afgelewer deur ’n BTW geregistreerde vervoer- 55
kontraakteur, in diens van die verskaffer, wie se hoofaktiwiteit
die vervoer van goed is: Met dien verstande dat hierdie
subartikel nie van toepassing is waar die vervoerkontraakteur

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, section 154 of Act 60 of 2001 and section 117 of Act 74 of 2002

- 99.** Section 12 of the Value-Added Tax Act, 1991, is hereby amended— 5
- (a) by the substitution in paragraph (c) for subparagraph (i) of the following subparagraph: 10
- “(i) a dwelling under an agreement for the letting and hiring thereof, and any ‘right of occupation’ as defined in section 1 of the Housing Development Schemes for Retired Persons Act, 1988 (Act No. 65 of 1988);”;
- (b) by the substitution for paragraph (g) of the following paragraph: 15
- “(g) the supply by any person in the course of a transport business of any service comprising the transport by that person in a vehicle (other than a game viewing vehicle contemplated in paragraph (e) of the definition of ‘motor car’ in section 1) operated by him of fare-paying passengers and their personal effects by road or railway (excluding a funicular railway), not being a supply of any such service which, but for this paragraph, would be charged with tax at the rate of zero per cent under section 11(2)(a);”;
- (c) by the deletion in paragraph (h) of subitem (D) of item (cc) of subparagraph (i); and 20
- (d) by the addition in paragraph (h) of the following subparagraph: 25
- “(iii) the supply of services to learners or students or intended learners or students by the Joint Matriculation Board referred to in section 15 of the Universities Act, 1955 (Act No. 61 of 1955);”.

Amendment of section 13 of Act 89 of 1991, as amended by section 29 of Act 136 of 1991, section 19 of Act 136 of 1992, section 29 of Act 97 of 1993, section 15 of Act 20 of 1994, section 30 of Act 27 of 1997, section 86 of Act 53 of 1999, section 70 of Act 19 of 2001, section 155 of Act 60 of 2001 and section 170 of Act 45 of 2003 30

- 100.** (1) Section 13 of the Value-Added Tax Act, 1991, is hereby amended—
- (a) by the substitution in subsection (1) for the words preceding the proviso of the following words: 35
- “For the purposes of this Act goods shall be deemed to be imported into the Republic on the date on which the goods are in terms of [section 10] the provisions of the Customs and Excise Act deemed to be imported;”;
- (b) by the substitution in subsection (1) for paragraph (ii) of the following paragraph: 40
- “(ii) where any goods have been imported and entered in a licensed Customs and Excise warehouse [or customs controlled area] but have not been entered for home consumption, any supply of [such] those goods before they are entered for home consumption shall be zero-rated for the purposes of this Act;”;
- (c) by the deletion of subsection (4).
- (2) (a) Subsection (1)(a) and (c) shall come into operation on the date of promulgation of this Act. 45
- (b) Subsection (1)(b) shall come into operation on the date that section 21A of the Customs and Excise Act, 1964, comes into operation.

- nie aanspreeklik is teenoor die verskaffer vir aflewering van goed en daardie verskaffer nie aanspreeklik is vir die volle koste wat verband hou met daardie aflewering.”;
- (c) deur subparagraaf (ii) van paragraaf (n) in subartikel (1) deur die volgende subparagraaf te vervang: 5
- “(ii) enige ‘prospecting right’, ‘mining right’, ‘exploration right’, [of] ‘production right’, ‘mining [right]’ permit of ‘retention permit’ soos omskryf in [Bylae] artikel 1 [by] van die ‘Mineral and Petroleum Resources Development Act, 2002’ (Wet No. 28 van 2002), ten volle of gedeeltelik hernu ingevolge daardie Wet.”; 10
- (d) deur die volgende paragraaf na paragraaf (o) in subartikel (1) in te voeg:
- “(p)(i) die lewering van ’n onderneming of ’n gedeelte van ’n onderneming as ’n lopende saak deur ’n ondernemer aan daardie ondernemer se tak of afdeling wat afsonderlik ingevolge artikel 50(2) geregistreer is: Met dien verstande dat daardie onderneming of gedeelte, na gelang van die geval, nie as ’n lopende saak van die hand gesit word nie, tensy— 15
- (aa) daardie onderneming of gedeelte afsonderlik bedryf kan word; en 20
- (bb) ’n inkomste-verdienende bedrywigheid sal wees op die datum van oordrag daarvan; en
- (cc) ’n belastingfaktuur uitgereik soos beoog in artikel 20 met betrekking tot daardie lewering belasting teen die koers van nul persent insluit; of 25
- (ii) die lewering van ’n onderneming, tak of afdeling, soos beoog in artikel 50(2), as ’n lopende saak aan ’n afsonderlike geregistreerde onderneming van daardie ondernemer: Met dien verstande dat daardie onderneming of gedeelte, na gelang van die geval, nie as ’n lopende saak van die hand gesit word nie, tensy— 30
- (aa) daardie onderneming of gedeelte afsonderlik bedryf kan word; en
- (bb) ’n inkomste-verdienende bedrywigheid sal wees op die datum van oordrag daarvan; en
- (cc) ’n belastingfaktuur uitgereik soos beoog in artikel 20 met betrekking tot daardie lewering belasting teen die koers van nul persent insluit.”; 35
- (e) deur subparagraaf (iii) van paragraaf (h) in subartikel (2) deur die volgende subparagraaf te vervang:
- “(iii) die berging, herstel, onderhoud, skoonmaak, bestuur of reëling van die voorsiening van ’n houer waarna in paragraaf [2 (i) van Deel A] 1(i) van Bylae 1 verwys word of die reëling van [bedoelde] daardie dienste.”; 40
- (f) deur die volgende paragraaf in subartikel (2) in te voeg: 45
- “(t) die dienste ingevolge artikel 8(5A) geag gelewer te wees.”.
- (2) (a) Subartikel 1(a) tree—
- (i) tot die mate dat dit die woorde “wat roerende goed is” in artikels 11(1)(c) en (d) van die Wet op Belasting op Toegevoegde Waarde, 1991, invoeg, in werking op die datum van afkondiging; en
- (ii) tot die mate dat dit die res van artikel 11(1)(c) van die Wet op Belasting op Toegevoegde Waarde, 1991, wysig, in werking op die datum waarop artikel 21A van die Doeane- en Aksynswet, 1964, in werking tree. 50
- (b) Subartikel (1)(b) tree in werking op die datum waarop artikel 21A van die Doeane- en Aksynswet, 1964, in werking tree.
- (c) Subartikel (1)(f) tree in werking op ’n datum deur die President by proklamasie in die Staatskoerant bepaal. 55

Amendment of section 14 of Act 89 of 1991, as amended by section 171 of Act 45 of 2003

101. Section 14 of the Value-Added Tax Act, 1991, is hereby amended—

- (a) by the deletion in subsection (5) of the word “or” at the end of paragraph (a);
- (b) by the insertion in subsection (5) of the word “or” at the end of paragraph (c); 5
- (c) by the addition to subsection (5) of the following paragraph:
“(d) a supply by a person of services as contemplated in terms of proviso (iii)(aa) to the definition of ‘enterprise’ in section 1;”.

Amendment of section 17 of Act 89 of 1991, as amended by section 31 of Act 136 of 1991, paragraph 9 of Government Notice 2695 of 8 November 1991, section 22 of Act 136 of 1992, section 31 of Act 97 of 1993, section 17 of Act 20 of 1994, section 33 of Act 27 of 1997, section 92 of Act 30 of 1998, section 88 of Act 53 of 1999 and section 173 of Act 45 of 2003 10

102. Section 17 of the Value-Added Tax Act, 1991, is hereby amended—

- (a) by the substitution in subsection (2) for subparagraph (iii) of paragraph (a) of the following subparagraph: 15
“(iii) such goods or services consist of a meal or refreshment supplied by the vendor as operator of any conveyance to a passenger [and] or [a] crew member, in such conveyance during a journey, where such meal or refreshment is supplied as part of or in conjunction with the transport service supplied by the vendor, where the supply of such transport service is a taxable supply;”;
- (b) by the substitution in subsection (2) for subparagraph (vii) of paragraph (a) of the following subparagraph: 20
“(vii) such goods or services [(where no consideration relating specifically to the supply of entertainment is payable shall be deemed to constitute a single supply for purposes of this subsection)] are acquired by a vendor for an employee or office holder of such vendor, that are incidental to the admission into a medical care facility[.]; or”;
- (c) by the addition in subsection (2) of the following subparagraph to paragraph (a): 25
“(viii) such goods or services consist of a meal or refreshment supplied by the vendor as operator of any ship or vessel (otherwise than in the circumstances contemplated in subparagraph (iii)) in such ship or vessel to a crew member of such ship or vessel, where such meal or refreshment is supplied in the course of making a taxable supply by that vendor;”. 30 35

Amendment of section 18 of Act 89 of 1991, as amended by section 32 of Act 136 of 1991, section 23 of Act 136 of 1992, section 32 of Act 97 of 1993, section 18 of Act 20 of 1994, section 34 of Act 27 of 1997, section 93 of Act 30 of 1998, section 89 of Act 53 of 1999 and section 174 of Act 45 of 2003 40

103. (1) Section 18 of the Value-Added Tax Act, 1991, is hereby amended—

- (a) by the substitution for the heading of the following heading:
“Change in use adjustments”;
- (b) by the deletion in subsection (4) of the word “or” at the end of paragraph (ii) of the proviso and the addition of the word “or” at the end of paragraph (iii); 45
- (c) by the addition in subsection (4) to the proviso of the following paragraph:
“(iv) this subsection shall not apply where a constitutional institution listed in Schedule 1 or a public entity listed in Part A or C of Schedule 3 to the Public Finance Management Act, 1999 (Act No. 1 of 1999), is re-classified within the Schedules to the Public Finance Management Act, 1999 (Act No. 1 of 1999) and applies those goods or services for the purposes of consumption, use or supply in the course of making taxable supplies.”; and 50
- (d) by the addition of the following subsections: 55
“(9) Where a vendor has acquired or imported a motor car (in respect of which input tax has been denied in terms of section 17(2)(c)) and has subsequently converted that motor car into a game viewing vehicle or a

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, artikel 154 van Wet 60 van 2001 en artikel 117 van Wet 74 van 2002

99. Artikel 12 van die Wet op Belasting op Toegevoegde Waarde, 1991, word hierby gewysig— 5

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

“(i) ’n woning ingevolge ’n ooreenkoms vir die huur en verhuring daarvan en enige ‘reg van okkupasie’ soos omskryf in artikel 1 van die Wet op Behuisingsontwikkelingskemas vir Afgetrede Persone, 1988 (Wet No. 65 van 1988);”;

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

“(g) die lewering deur ’n persoon in die loop van ’n vervoeronderneming van ’n diens bestaande uit die vervoer deur daardie persoon in ’n voertuig (behalwe ’n wildebegigtigingsvoertuig soos beoog in paragraaf (e) van die omskrywing van ‘motor’ in artikel 1) deur hom in bedryf gestel van reisgeldbetalende passasiers en hul persoonlike bagasie per pad of spoorweg (uitgesonderd. ’n kabelspoor), behalwe die lewering van ’n bedoelde diens wat, by ontstentenis van hierdie paragraaf, aan belasting teen die koers van nul persent ingevolge artikel 11(2)(a) onderworpe sou wees;”;

(c) deur subitem (D) van item (cc) van subparagraaf (i) in paragraaf (h) te skrap; en

(d) deur die volgende subparagraaf by paragraaf (h) in te voeg:

“(iii) die lewering van dienste aan leerlinge of studente of voornemende leerlinge of studente deur die Gesamentlike Matrikulasieraad bedoel in artikel 15 van die Wet op Universiteite, 1955 (Wet No. 61 van 1955);”.

Wysiging van artikel 13 van Wet 89 van 1991, soos gewysig deur artikel 29 van Wet 136 van 1991, artikel 19 van Wet 136 van 1992, artikel 29 van Wet 97 van 1993, artikel 15 van Wet 20 van 1994, artikel 30 van Wet 27 van 1997, artikel 86 van Wet 53 van 1999, artikel 70 van Wet 19 van 2001, artikel 155 van Wet 60 van 2001 en artikel 170 van Wet 45 van 2003 30

100. (1) Artikel 13 van die Wet op Belasting op Toegevoegde Waarde, 1991, word hierby gewysig— 35

(a) deur die woorde wat die voorbehoudsbepaling tot subartikel (1) voorafgaan deur die volgende woorde te vervang:

“By die toepassing van hierdie Wet word goed geag in die Republiek ingevoer te wees op die datum waarop die goed ingevolge die bepalings [artikel 10] van die Doeane- en Aksynswet geag word ingevoer [word ingevoer] te word;”;

(b) deur paragraaf (ii) in subartikel (1) deur die volgende paragraaf te vervang:

“(ii) waar enige goed ingevoer is en geklaar is in ’n gelisensieerde Doeane- en Aksynspakhuis [of doeanebeheerdegebied], maar nie vir binnelandse verbruik geklaar is nie, ’n lewering van [bedoelde] daardie goed voordat dit vir binnelandse verbruik geklaar word, sal by die toepassing van die Wet aan die nulkoeers van belasting onderhewig [sal] wees;”;

(c) deur subartikel (4) te skrap.

(2) (a) Subartikel (1)(a) en (c) tree in werking op die datum van afkondiging van hierdie Wet. 50

(b) Subartikel (1)(b) tree in werking op die datum dat artikel 21A van die Doeane- en Aksynswet, 1964, in werking tree.

hearse, as contemplated in paragraph (e) or (f) of the definition of 'motor car' in section 1, that motor car is deemed to be supplied in that tax period to that vendor, and the Commissioner shall allow that vendor to make a deduction in terms of section 16(3) of an amount equal to the tax fraction of the lesser of—

(a) the adjusted cost; or

(b) the open market value,

of that motor car on the day before that conversion: Provided that this deduction excludes any amount of input tax which qualifies or has qualified for a deduction under another provision of this Act.

(10) Where—

(a) goods or services have been supplied by a vendor at the zero rate in terms of sections 11(1)(c), 11(1)(m) or 11(2)(k) to a registered vendor who is a customs controlled area enterprise; or

(b) goods have been imported into the Republic by a registered vendor who is a customs controlled area enterprise for use, consumption or supply in that area and those goods are exempt from tax in terms of section 13(3),

and those goods or services were acquired for the purposes of entertainment in respect of which a deduction of input tax would have been denied in terms of section 17(2), those goods or services shall be deemed to be supplied by him in the same tax period in which they were so acquired, in accordance with the formula:

$$A \times B$$

in which formula—

'A' represents the rate of tax levied in terms of section 7(1); and
'B' represents—

(a) the cost to the vendor of the acquisition of those goods or services which were supplied to him in terms of sections 11(1)(c), 11(1)(m) or 11(2)(k); or

(b) the value to be placed on the importation of goods into the Republic as determined in terms of section 13(2)."

(2) (a) Subsection (1)(b) and (c) shall come into operation on a date fixed by the President by proclamation in the *Gazette*.

(b) Subsection (1)(d) shall—

(i) to the extent that it inserts subsection (9) in section 18 of the Value-Added Tax Act, 1991, come into operation on the date of promulgation of this Act and shall apply in respect of any motor car acquired or imported on or after that date; and

(ii) to the extent that it inserts subsection (10) in section 18 of the Value-Added Tax Act, 1991, come into operation on the date that section 21A of the Customs and Excise Act, 1964, comes into operation.

Wysiging van artikel 14 van Wet 89 van 1991, soos gewysig deur artikel 171 van Wet 45 van 2003

101. Artikel 14 van die Wet op Belasting op Toegevoegde Waarde, 1991, word hierby gewysig—

- (a) deur die woord “of” aan die einde van paragraaf (a) in subartikel (5) te skrap; 5
- (b) deur die woord “of” aan die einde van paragraaf (c) in subartikel (5) in te voeg;
- (c) deur die volgende paragraaf in subartikel (5) by te voeg:
 - “(d) ’n lewering deur ’n persoon van dienste soos beoog ingevolge die voorbehoudsbepaling (iii)(aa) tot die omskrywing van ‘onderneming’ in artikel 1;”.

Wysiging van artikel 17 van Wet 89 van 1991, soos gewysig deur artikel 31 van Wet 136 van 1991, paragraaf 9 van Goewermentskennisgewing 2695 van 8 November 1991, artikel 22 van Wet 136 van 1992, artikel 31 van Wet 97 van 1993, artikel 17 van Wet 20 van 1994, artikel 33 van Wet 27 van 1997, artikel 92 van Wet 30 van 1998, artikel 88 van Wet 53 van 1999 en artikel 173 van Wet 45 van 2003

102. Artikel 17 van die Wet op Belasting op Toegevoegde Waarde, 1991, word hierby gewysig—

- (a) deur subparagraaf (iii) van paragraaf (a) in subartikel (2) deur die volgende subparagraaf te vervang: 20
 - “(iii) [genoemde] daardie goed of dienste bestaan uit ’n maaltyd of verversings wat gelewer word deur die ondernemer as bediener van ’n vervoermiddel aan ’n passasier [en] of [’n] bemanningslid, in daardie vervoermiddel tydens ’n reis, waar daardie maaltyd of verversing gelewer word as deel van of gekoppel aan die vervoerdiens gelewer deur die ondernemer waar die lewering van bedoelde vervoerdiens ’n belasbare lewering is;”;
- (b) deur subparagraaf (vii) van paragraaf (a) in subartikel (2) deur die volgende subparagraaf te vervang:
 - “(vii) genoemde goed of dienste [(waar geen vergoeding wat spesifiek verband hou met die lewering van onthaal betaalbaar is nie sal gaag een lewering te wees vir doeleindes van hierdie subartikel)] verkry is deur ’n ondernemer vir ’n werknemer of ampsbekleër van sodanige ondernemer, wat toevallig is tot die opname in ’n mediese sorgeneheid[.]; of”;
- (c) deur die volgende subparagraaf by paragraaf (a) in subartikel (2) in te voeg:
 - “(viii) genoemde goed of dienste bestaan uit ’n maaltyd of verversings wat gelewer word deur ’n ondernemer as bediener van ’n skip of vaartuig (behalwe in die omstandighede beoog in subparagraaf (iii)) in daardie skip of vaartuig aan ’n bemanningslid van daardie skip of vaartuig, waar daardie maaltyd of verversings gelewer word in die loop van die doen van ’n belasbare lewering deur daardie ondernemer;”.

Wysiging van artikel 18 van Wet 89 van 1991, soos gewysig deur artikel 32 van Wet 136 van 1991, artikel 23 van Wet 136 van 1992, artikel 32 van Wet 97 van 1993, artikel 18 van Wet 20 van 1994, artikel 34 van Wet 27 van 1997, artikel 93 van Wet 30 van 1998, artikel 89 van Wet 53 van 1999 en artikel 174 van Wet 45 van 2003

103. (1) Artikel 18 van die Wet op Belasting op Toegevoegde Waarde, 1991, word hierby gewysig—

- (a) deur die opskrif deur die volgende opskrif te vervang: 50
 - “Verandering in gebruik verrekenings”;
- (b) deur die woord “of” aan die einde van paragraaf (ii) van die voorbehoudsbepaling in subartikel (4) te skrap en deur die woord “of” in te voeg aan die einde van paragraaf (iii);
- (c) deur in subartikel (4) die volgende paragraaf by die voorbehoudsbepaling te voeg: 55
 - “(iv) hierdie subartikel is nie van toepassing nie waar ’n grondwetlike instelling gelys in Bylae 1 of ’n openbare entiteit gelys in Deel A of

Amendment of section 20 of Act 89 of 1991, as amended by paragraph 11 of Government Notice 2695 of 8 November 1991, section 25 of Act 136 of 1992, section 33 of Act 97 of 1993, section 35 of Act 27 of 1997, section 94 of Act 30 of 1998, section 91 of Act 53 of 1999, section 157 of Act 60 of 2001, section 175 of Act 45 of 2003 and section 47 of Act 16 of 2004

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104. (1) Section 20 of the Value-Added Tax Act, 1991, is hereby amended—

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

“Except as otherwise provided in this section, a supplier, being a registered vendor, making a taxable supply (other than a supply contemplated in section 8(10)) to a recipient, **[shall, at the request of the recipient, provide that recipient,]** must within 21 days **[after receiving that request, with]** of the date of that supply issue a tax invoice containing such particulars as are specified in this section.”;

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- (b) by the deletion of subsection (1A);

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- (c) by the substitution in subsection (4) for paragraph (e) of the following paragraph:

“(e) full and proper description of the goods (indicating, where applicable, that the goods are second-hand goods) or services supplied.”;

- (d) by the substitution in subsection (5) for the words preceding paragraph (a) of the following words:

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“(5) Notwithstanding anything in subsection (4), where the consideration in money for a supply does not exceed **[R1 000]** R3 000, a tax invoice (abridged tax invoice) shall be in the currency of the Republic and shall contain the particulars specified in that subsection or the following particulars.”;

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- (e) by the substitution in subsection (5) for paragraph (d) of the following paragraph:

“(d) a description of the goods (indicating, where applicable, that the goods are second-hand goods) or services supplied.”; and

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- (f) by the substitution in subsection (8) for the words preceding paragraph (a) of the following words:

“(8) Notwithstanding anything in this section, where a supplier makes a supply (not being a taxable supply) of second-hand goods or of goods as contemplated in section 8(10) to a recipient, being a registered vendor, the recipient shall in the form as the Commissioner may prescribe, where the value of the supply is R1 000 or more, obtain and maintain a declaration by the supplier stating whether the supply is a taxable supply or not and shall further maintain sufficient records to enable the following particulars to be ascertained.”;

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(2) (a) Subsection (1)(a), (b), (c), (d) and (e) shall come into operation on 1 March 2005 and shall apply in respect of any supply made on or after that date.

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

C van Bylae 3 by die Wet op Openbare Finansiële Bestuur, 1999 (Wet No. 1 van 1999), hergeklassifiseer is in die Bylaes tot die Wet op Openbare Finansiële Bestuur, 1999 (Wet No. 1 van 1999), en daardie goed of dienste aangewend word vir die doeleindes van verbruik, gebruik of lewering in die loop van die doen van belasbare lewerings.”; en

(d) deur die volgende subartikels in te voeg:

“(9) Waar ’n ondernemer ’n motor (waarop insetbelasting ingevolge artikel 17(2)(c) ontsê is), verkry of ingevoer het en daardie motor daarna omskep het in ’n wildbesigtigingsvoertuig of ’n lykswa, soos beoog in paragraaf (e) of (f) van die omskrywing van motor in artikel 1, sal daardie motor geag word gelewer te wees aan daardie ondernemer in daardie belastingtydperk, en die Kommissaris sal die ondernemer toelaat om ’n aftrekking ingevolge artikel 16(3) te maak van ’n bedrag gelyk aan die belastingbreukdeel van die laagste van—

(a) die aangepaste koste; of

(b) die ope markwaarde,

van daardie motor op die dag voor daardie omskepping: Met dien verstande dat hierdie aftrekking enige bedrag van insetbelasting wat kwalifiseer of gekwalifiseer het vir ’n aftrekking onder enige ander bepaling van hierdie Wet, uitsluit.

(10) Waar—

(a) goed of dienste deur ’n ondernemer ingevolge artikels 11(1)(c), 11(1)(m) of 11(2)(k) teen die nulkoers gelewer is aan ’n geregistreerde ondernemer wat ’n doeanebeheerdegebied-onderneming is; of

(b) goed deur ’n geregistreerde ondernemer wat ’n doeanebeheerdegebied-onderneming is in die Republiek ingevoer is vir gebruik, verbruik of lewering in daardie area en daardie goed vrygestel is van belasting ingevolge artikel 13(3),

en daardie goed of dienste was verkry vir doeleindes van onthaal waarvoor ’n aftrekking van insetbelasting ingevolge artikel 17(2) ontsê sou gewees het, sal daardie goed of dienste geag gelewer te wees deur hom in dieselfde belastingtydperk waarin dit verkry was, ooreenkomstig die formule:

$$A \times B$$

in welke formule—

‘A’ die belastingkoers gehef ingevolge 7(1) voorstel; en

‘B’ verteenwoordig—

(a) die koste vir die ondernemer van die verkryging van daardie goed of dienste wat aan hom ingevolge artikels 11(1)(c), 11(1)(m) of 11(2)(k) gelewer is;”; of

(b) die waarde wat op die invoer van goed in die Republiek soos bepaal ingevolge artikel 13(2).”.

(2) (a) Subartikel 1(b) en (c) tree in werking op ’n datum deur die President by proklamasie in die Staatskoerant bepaal.

(b) Subartikel 1(d) tree—

(i) in die mate wat dit subartikel (9) in artikel 18 van die Wet op Belasting op Toegevoegde Waarde, 1991, invoeg, in werking op die datum van afkondiging van hierdie Wet en is van toepassing op enige motor verkry of ingevoer op of na daardie datum; en

(ii) tot die mate dat dit subartikel (10) in artikel 18 van die Wet op Belasting op Toegevoegde Waarde, 1991, invoeg, in werking op die datum waarop artikel 21A van die Doeane- en Aksynswet, 1964, in werking tree.

Amendment of section 39 of Act 89 of 1991, as amended by section 30 of Act 136 of 1992, section 3 of Act 61 of 1993, section 23 of Act 20 of 1994, section 40 of Act 27 of 1997, section 166 of Act 60 of 2001 and section 184 of Act 45 of 2003, section 50 of Act 16 of 2004

- 105.** Section 39 of the Value-Added Tax Act, 1991, is hereby amended— 5
- (a) by the deletion of subsection (3);
 - (b) by the substitution in subsection (7) for the words preceding paragraph (a) of the following words: 10

“To the extent that the Commissioner is satisfied that the failure on the part of the person concerned or any other person under the control or acting on behalf of that person to make payment of the tax within the period for payment contemplated in subsection (1)(a), (2), [(3),] (4), (6) or (6A) or on the date referred to in subsection (5), as the case may be—”;
 - (c) by the substitution in subsection (7) for the words following subparagraph (ii) of paragraph (a) of the following words: 15

“he may remit, in whole or in part, the interest payable in terms of this section; or”;
 - (d) by the substitution in subsection (7) for paragraph (b) of the following paragraph: 20

“(b) was not due to an intent not to make payment or to postpone liability for the payment of the tax, he may remit, in whole or in part, any penalty payable in terms of this section.”.

Amendment of section 48 of Act 89 of 1991, as amended by section 99 of Act 53 of 1999 and section 186 of Act 45 of 2003 25

- 106.** Section 48 of the Value-Added Tax Act, 1991, is hereby amended by the substitution for subsection (9) of the following subsection:
- “(9) Where a vendor is a company, every member, shareholder [**and**] or director who controls or is regularly involved in the management of the company’s overall financial affairs shall be personally [**liability**] liable for the tax, additional tax, 30 penalty or interest for which the company is liable.”.

Amendment of section 68 of Act 89 of 1991, as amended by section 39 of Act 136 of 1992 and section 26 of Act 20 of 1994

- 107.** Section 68 of the Value-Added Tax Act, 1991, is hereby amended by the substitution in subsection (1) for paragraph (a) of the following paragraph: 35
- “(a) by any person enjoying full or limited immunity, rights or privileges under [**section 3 of the Diplomatic Immunities and Privileges Act, 1989 (Act No. 74 of 1989)]** sections 3, 4, 5 and 6 of the Diplomatic Immunities and Privileges Act, 2001 (Act No. 37 of 2001), or under an agreement or otherwise as contemplated in section [4] 7 of that Act or under the recognized principles 40 of international law; or”.

Wysiging van artikel 20 van Wet 89 van 1991, soos gewysig deur paragraaf 11 van Goewermentskennisgewing 2695 van 8 November 1991, artikel 25 van Wet 136 van 1992, artikel 33 van Wet 97 van 1993, artikel 35 van Wet 27 van 1997, artikel 94 van Wet 30 van 1998, artikel 91 van Wet 53 van 1999, artikel 157 van Wet 60 van 2001, artikel 175 van Wet 45 van 2003 en artikel 47 van Wet 16 van 2004

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104. (1) Artikel 20 van die Wet op Belasting op Toegevoegde Waarde, 1991, word hierby gewysig—

- (a) deur die woorde wat die voorbehoudsbepaling in subartikel (1) voorafgaan deur die volgende woorde te vervang:

“Behalwe soos anders in hierdie artikel bepaal, moet ’n leweraar wat ’n geregistreerde ondernemer is, en wat ’n belasbare lewering maak (behalwe ’n lewering beoog in artikel 8 (10)) aan ’n ontvanger [**op versoek van die ontvanger**] binne 21 dae van die datum van daardie lewering [na ontvangs van die versoek die ontvanger voorsien van] ’n belastingfaktuur uitreik waarin die besonderhede vervat word wat in hierdie artikel vermeld word:”;

- (b) deur subartikel (1A) te skrap;

- (c) deur paragraaf (e) in subartikel (4) deur die volgende paragraaf te vervang:

“(e) ’n volledige en behoorlike beskrywing van die goed (wat aantoon, indien van toepassing, dat die goed tweedehandse goed is) of dienste gelewer;”;

- (d) deur die woorde wat paragraaf (a) in subartikel (5) voorafgaan deur die volgende woorde te vervang:

“(5) Ondanks die bepalinge van subartikel (4), waar ’n vergoeding in geld hoogstens **[R1 000]** R3 000 is, moet ’n belastingfaktuur (verkorte belastingfaktuur) in die geldeenheid van die Republiek wees en moet dit die besonderhede vermeld in daardie subartikel of die volgende besonderhede bevat:”;

- (e) deur paragraaf (d) in subartikel (5) deur die volgende paragraaf te vervang:

“(d) ’n beskrywing van die goed (wat aantoon, indien van toepassing, dat die goed tweedehandse goed is) of dienste gelewer;”;

- (f) deur die woorde wat paragraaf (a) in subartikel (8) voorafgaan deur die volgende woorde te vervang:

“(8) Ondanks enige bepaling van hierdie artikel, waar ’n leweraar ’n lewering maak (wat nie ’n belasbare lewering is nie) van tweedehandse goed of van goed soos in artikel 8(10) beoog aan ’n ontvanger wat ’n geregistreerde ondernemer is, moet die ontvanger in die vorm wat die Kommissaris mag voorskryf, waar die waarde van die lewering R1 000 of meer is, ’n verklaring deur die leweraar verkry en behou wat meld of die lewering ’n belasbare lewering is al dan nie en moet verder voldoende aantekeninge behou waaruit die volgende besonderhede vasgestel kan word:”

(2)(a) Subartikel (1)(a), (b), (c), (d) en (e) tree op 1 Maart 2005 in werking en is van toepassing op enige lewering op of na daardie datum gemaak.

- (b) Subartikel (1)(f) tree in werking op die datum van afkondiging van hierdie Wet.

Wysiging van artikel 39 van Wet 89 van 1991, soos gewysig deur artikel 30 van Wet 136 van 1992, artikel 3 van Wet 61 van 1993, artikel 23 van Wet 20 van 1994, artikel 40 van Wet 27 van 1997, artikel 166 van Wet 60 van 2001, artikel 184 van Wet 45 van 2003 en artikel 50 van Wet 16 van 2004

105. Artikel 39 van die Wet op Belasting op Toegevoegde Waarde, 1991, word hierby gewysig—

- (a) deur subartikel (3) te skrap;

- (b) deur die woorde wat paragraaf (a) in subartikel (7) voorafgaan te vervang deur die volgende woorde:

“In die mate wat die Kommissaris oortuig is dat die versuim aan die kant van die betrokke persoon of enige ander persoon onder die beheer van of wat namens daardie persoon optree om betaling van die belasting binne die tydperk vir betaling beoog in subartikel (1)(a), (2), [(3)], (4), (6) of (6A) of op die datum in subartikel (5) bedoel, na gelang van die geval, te doen—”;

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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, section 121 of Act 74 of 2002, section 189 of Act 45 of 2003 and sections 52, 53, 54 and 55 of Act 16 of 2004

108. Schedule 1 of the Value-Added Tax Act, 1991, is hereby amended—
- (a) by the substitution in paragraph 5 for the words preceding subparagraph (a) of the following words:

“Goods, excluding clothing and food, forwarded unsolicited and free of charge by a non-resident to—”;
 - (b) by the substitution in item 409.00 for paragraph (i) of subitem 409.01/00.00/01.00 of the following paragraph:

“(i) the supply of those goods was charged with tax at the rate of zero per cent in terms of section 11(1)(a); or”;
 - (c) by the substitution in item 409.00 for paragraph (i) of subitem 409.02/00.00/01.00 of the following paragraph:

“(i) the supply of those goods was charged with tax at the rate of zero per cent in terms of section 11(1)(a); or”;
 - (d) by the substitution in item 409.00 for paragraph (i) of subitem 409.06/00.00/01.00 of the following paragraph:

“(i) the supply of those goods was charged with tax at the rate of zero per cent in terms of section 11(1)(a); or”.

Amendment of section 1 of Act 31 of 1998

109. (1) Section 1 of the Uncertificated Securities Tax Act, 1998, is hereby amended—
- (a) by the insertion after the definition of “**beneficial ownership**” of the following definition:

“**‘closing price’** means the closing price at which the securities were traded on the exchange on which the securities are listed, as determined by that exchange on each day on which trade in those securities occurs on that exchange: Provided that where the securities were not traded on the date of the transaction or other manner of acquisition, the closing price of those securities shall be deemed to be the closing price of those securities on the last business day, preceding the date of the transaction or other manner of acquisition, on which those securities were traded on that exchange, as determined by the exchange on which those securities are listed;”;
 - (b) by the insertion after the definition of “**Commissioner**” of the following definition:

“**‘exchange’** means an exchange as defined in section 1 and licensed under section 10 of the Securities Services Act, 2004;”;
 - (c) by the insertion after the definition of “**lending arrangement**” of the following definition:

“**‘lowest price’** means the lowest price at which the securities were traded on the exchange on which the securities are listed, as determined by that exchange on each day on which trade in those securities occurs on that exchange: Provided that where the securities were not traded on the date of the transaction or other manner of acquisition, the lowest price of those securities shall be deemed to be the lowest price of those securities on the last business day, preceding the date of the transaction or other manner of acquisition, on which those securities were traded on that exchange, as determined by the exchange on which those securities are listed;”;
 - (d) by the substitution for the definition of “**member**” of the following definition:

“**‘member’** means any person [admitted as a member of a stock exchange] who is an authorised user as defined in section 1 of the Securities Services Act, 2004, providing services in respect of the buying and selling of securities;”;
 - (e) by the substitution for the definition of “**participant**” of the following definition:

- (c) deur die woorde wat volg op subparagraaf (ii) van paragraaf (a) in subartikel (7) deur die volgende woorde te vervang:

“kan hy die rente betaalbaar ingevolge hierdie artikel in geheel of gedeeltelik kwytsekeld; of”;

- (d) deur paragraaf (b) in subartikel (7) deur die volgende paragraaf te vervang: 5

“nie te wyte was aan ’n bedoeling om nie te betaal nie of om die aanspreeklikheid vir die betaling van die belasting uit te stel nie, kan hy enige boete wat ingevolge hierdie artikel betaalbaar is, in geheel of gedeeltelik kwytsekeld.”.

Wysiging van artikel 48 van Wet 89 van 1991, soos gewysig deur artikel 99 van Wet 53 van 1999 en artikel 186 van Wet 45 van 2003 10

106. Artikel 48 van die Wet op Belasting op Toegevoegde Waarde, 1991, word hierby gewysig deur subartikel (9) deur die volgende subartikel te vervang:

“(9) Waar ’n ondernemer ’n maatskappy is, is elke lid, aandeelhouer [en] of direkteur wat gereeld betrokke is by die bestuur of beheer van die maatskappy se oorhoofste finansiële aktiwiteite persoonlik aanspreeklik vir die betaling van die belasting, addisionele belasting, boete [en] of rente waarvoor die maatskappy aanspreeklik is.”. 15

Wysiging van artikel 68 van Wet 89 van 1991, soos gewysig deur artikel 39 van Wet 136 van 1992 en artikel 26 van Wet 20 van 1994 20

107. Artikel 68 van die Wet op Belasting op Toegevoegde Waarde, 1991, word hierby gewysig deur paragraaf (a) in subartikel (1) deur die volgende paragraaf te vervang:

“(a) deur ’n persoon wat volle of beperkte immuniteit, regte of voorregte geniet ingevolge [artikel 3 van die Wet op Diplomatieke Immuniteit en Voorregte, 1989 (Wet 74 van 1989)], artikels 3, 4, 5 en 6 van die Wet op Diplomatieke Immuniteit en Voorregte, 2001 (Wet No. 37 van 2001) of ingevolge ’n ooreenkoms of andersins soos bedoel in artikel [4] 7 van daardie Wet of ingevolge erkende beginsels van die volkereg; of”. 25

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, artikel 121 van Wet 74 van 2002, artikel 189 van Wet 45 van 2003 en artikels 52, 53, 54 en 55 van Wet 16 van 2004 30

108. Bylae 1 by die Wet op Belasting op Toegevoegde Waarde, 1991, word hierby gewysig—

- (a) deur die woorde wat subparagraaf (a) in paragraaf 5 voorafgaan deur die volgende woorde te vervang: 35

“Goed, uitgesluit klere en voedsel, wat ongevraagd en gratis deur ’n nie-inwoner versend word aan—”;

- (b) deur paragraaf (i) van subitem 409.01/00.00/01.00 in item 409.00 deur die volgende paragraaf te vervang: 40

“(i) die lewering van daardie goed aan belasting teen die koers van nul present ingevolge artikel 11(1)(a) onderworpe was; of”;

- (c) deur paragraaf (i) van subitem 409.02/00.00/01.00 in item 409.00 deur die volgende paragraaf te vervang:

“(i) die lewering van daardie goed aan belasting teen die koers van nul present ingevolge artikel 11(1)(a) onderworpe was; of”;

- (d) deur paragraaf (i) van subitem 409.06/00.00/01.00 in item 409.00 deur die volgende paragraaf te vervang:

“(i) die lewering van daardie goed aan belasting teen die koers van nul present ingevolge artikel 11(1)(a) onderworpe was; of”. 50

Wysiging van artikel 1 van Wet 31 van 1998

109. (1) Artikel 1 van die Wet op Belasting op Sertifikaatlose Aandele, 1998, word hierby gewysig—

- (a) deur die omskrywing van “aandele” deur die volgende omskrywing te vervang: 55

“‘participant’ means [a participant as defined in the Custody and Administration of Securities Act, 1992 (Act No. 85 of 1992)] any person who holds in custody and administers securities or an interest in securities and who has been accepted in terms of section 34 of the Securities Services Act, 2004, by a central securities depository as a participant in that central securities depository;”;

(f) by the deletion of the definition of “ruling price”;

(g) by the substitution for the definition of “securities” of the following definition:

“‘securities’ means [listed securities as defined in section 1 of the Stock Exchange Control Act, 1985 (Act No. 1 of 1985),] —

(a) shares, depository receipts in public companies and other equivalent equities; and

(b) derivative instruments and debentures that are convertible into any instrument contemplated in paragraph (a), that are listed on an exchange in the Republic;”;

(h) by the deletion of the definitions of “stock-broker” and “stock exchange”.

(2)(a) Subsection (1)(a), (c) and (f) shall come into operation on 1 March 2005.

(b) Subsection (1)(b), (d), (e), (g) and (h) shall come into operation on the date on which the Securities Services Act, 2004 comes into operation.

Amendment of section 5 of Act 31 of 1998

110. (1) Section 5 of the Uncertificated Securities Tax Act, 1998, is hereby amended by the substitution in subsection (2) for paragraph (b) of the following paragraph:

“(b) if no amount referred to in paragraph (a) is declared, or if the amount so declared is less than the [fair market value] lowest price of the securities on the date of the relevant transaction or other manner of acquisition, the [ruling] closing price of those securities on the [business day immediately preceding the day on which the transfer of such securities is effected by the participant] date of the relevant transaction or other manner of acquisition.”.

(2) Subsection (1) shall come into operation on 1 March 2005 and shall apply in respect of any change in beneficial ownership on or after that date.

“aandele” [genoteerde aandele soos omskryf in artikel 1 van die Wet op Beheer van Aandelebeurse, 1985 (Wet No. 1 van 1985),]—

(a) aandele en ‘depository receipts’ in publieke maatskappye en ander soortgelyke ekwiteite; en

(b) afgeleide instrumente en skuldbriewe wat omskakelbaar is in enige instrument soos in paragraaf (a) bedoel, wat op ’n beurs in die Republiek genoteer is;”;

(b) deur die omskrywings van “aandelebeurs” en “aandelemakelaar” te skrap;

(c) deur die invoeging na die omskrywing van “belasting” van die volgende omskrywing—

“beurs” ’n beurs soos omskryf in artikel 1 en gelisensieër ingevolge artikel 10 van die ‘Securities Services Act, 2004’;”;

(d) deur die vervanging van die omskrywing van “deelnemer” deur die volgende omskrywing:

“deelnemer” [’n deelnemer soos omskryf in die Wet op die Bewaring en Administrasie van Aandele, 1992 (Wet No. 85 van 1992)] enige persoon wat aandele, of ’n belang in sodanige aandele, in bewaring hou en administreer en wat ingevolge artikel 34 van die ‘Securities Services Act, 2004’, aanvaar is deur ’n sentrale effektebewaarnemer as ’n deelnemer in daardie sentrale effektebewaarnemer;”;

(e) deur die omskrywing van “heersende prys” te skrap;

(f) deur die volgende omskrywing na die omskrywing van “Kommissaris” in te voeg:

“laagste-prys” die laagste prys waarteen die aandele verhandel is op die beurs waarop die aandele genoteer is, soos vasgestel deur daardie beurs op elke dag waarop verhandeling in daardie aandele op daardie beurs plaasvind: Met dien verstande dat waar die aandele nie verhandel is op die datum van die tersaaklike transaksie of ander wyse van verkryging nie, word die laagste prys van daardie aandele geag te wees die laagste prys op die laaste besigheidsdag wat die datum van die tersaaklike transaksie of ander wyse van verkryging voorafgaan, waarop daardie aandele verhandel is soos bepaal deur die beurs waarop daardie aandele genoteer is;”;

(g) deur die omskrywing van “lid” deur die volgende omskrywing te vervang:

“lid” ’n persoon [wat as ’n lid van ’n aandelebeurs toegelaat is] wat ’n ‘authorised user’ is soos omskryf in artikel 1 van die ‘Securities Services Act, 2004’, wat dienste rakende die koop en verkoop van aandele lewer;”;

(h) deur die volgende omskrywing na die omskrywing van “persoon” in te voeg:

“sluitingsprys” die sluitingsprys waarteen die aandele verhandel is op die beurs waarop die aandele genoteer is, soos vasgestel deur daardie beurs op elke dag waarop verhandeling in daardie aandele op daardie beurs plaasvind: Met dien verstande dat waar die aandele nie verhandel is op die datum van die tersaaklike transaksie of ander wyse van verkryging nie, word die sluitingsprys van daardie aandele geag te wees die sluitingsprys waarteen die aandele verhandel is op daardie beurs op die laaste besigheidsdag wat die datum van die tersaaklike transaksie of ander wyse van verkryging voorafgaan, soos bepaal deur die beurs waarop daardie aandele genoteer is;”.

(2) (a) Subartikel (1)(e), (f) en (h) tree op 1 Maart 2005 in werking.

(b) Subartikel (1)(a), (b), (c), (d) en (g) tree in werking op die datum waarop die “Securities Services Act, 2004”, in werking tree.

Wysiging van artikel 5 van Wet 31 van 1998

110. (1) Artikel 5 van die Wet op Belasting op Sertifikaatlose Aandele, 1998, word hierby gewysig deur paragraaf (b) van subartikel (2) deur die volgende paragraaf te vervang:

“(b) indien geen bedrag in paragraaf (a) bedoel, verklaar word nie, of indien die bedrag aldus verklaar minder is as die [billike markwaarde] laagste prys van die aandele op die datum van die tersaaklike transaksie of ander wyse van

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, section 60 of Act 30 of 2002, section 122 of Act 74 of 2002 and section 191 of Act 45 of 2003

111. (1) Section 6 of the Uncertificated Securities Tax Act, 1998, is hereby amended— 5

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

“(iv) to the extent that the securities are instruments as contemplated in section 24J of the Income Tax Act, 1962 (Act No. 58 of 1962);” and

(b) by the substitution in subsection (1) for item (aa) of subparagraph (i) of paragraph (b) of the following paragraph: 10

“(aa) a member who has purchased the securities for his, her or its own account and benefit;”;

(c) by the substitution in subsection (1) for subparagraph (iii) of paragraph (b) of the following paragraph: 15

“(iii) to the extent that the securities are instruments as contemplated in section 24J of the Income Tax Act, 1962 (Act No. 58 of 1962);”;

(d) by the substitution in subsection (1) for subitems (A), (B) and (C) of item (gg) of subparagraph (ix) of paragraph (b) of the following subitems:

“(A) in subparagraphs [(i) to (vi)] (aa) to (ff) regardless of whether or not an election has been made for the provisions of that section to apply; 20

(B) in subparagraph [(i), (ii) or (iii)] (aa), (bb) or (cc) regardless of the market value of the asset disposed of in exchange for those securities; or

(C) in subparagraphs [(i) to (vi)] (aa) to (ff) regardless of whether or not that person acquired those securities as capital assets or as trading stock.”. 25

(2) Subsection (1) shall come into operation on 1 March 2005 and shall apply in respect of any change in beneficial ownership on or after that date.

Amendment of section 121 of Act 60 of 2001, as amended by section 202 of Act 45 of 2003

112. Section 121(1) of the Second Revenue Laws Amendment Act, 2001, which inserts section 21A of the Customs and Excise Act, 1964, is hereby amended— 30

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

“(4) Notwithstanding anything to the contrary contained in this section or any other provision of this Act, goods to which subsection (7) relates shall, subject to any exception or adaptation prescribed in any Schedule or rule even if free of duty, be deemed to be goods liable to duty for the purposes of the application of any provision of this Act.”; 35

(b) by the deletion of subsections (10), (15) and (16);

(c) (i) by renumbering subsection (11) as subsection (10); 40

(ii) by renumbering subsection (12) as subsection (11);

(iii) by renumbering subsection (13) as subsection (12);

(iv) by renumbering subsection (14) as subsection (13);

(v) by renumbering subsection (17) as subsection (14);

(vi) by renumbering subsection (18) as subsection (15); and 45

(vii) by renumbering subsection (19) as subsection (16).

Amendment of section 153 of Act 60 of 2001

113. Section 153 of the Second Revenue Laws Amendment Act, 2001, is hereby amended by the deletion in subsection (1) of paragraph (c).

verkryging, die [heersende prys] sluitingsprys van daardie aandele op die [besigheidsdag wat die dag waarop die oordrag van daardie aandele deur die deelnemer bewerkstellig is, onmiddellik voorafgaan] datum van die tersaaklike transaksie of ander wyse van verkryging.”.

(2) Subartikel (1) tree op 1 Maart 2005 in werking en is van toepassing op enige verandering in voordelige eienaarskap op of na daardie datum. 5

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, artikel 60 van Wet 30 van 2002, artikel 122 van Wet 74 van 2002 en artikel 191 van Wet 45 van 2003 10

111. (1) Artikel 6 van die Wet op Belasting op Sertifikaatlose Aandele, 1998, word hierby gewysig—

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

“(iv) tot die mate waarin die aandele instrumente is soos beoog in artikel 24J van die Inkomstebelastingwet, 1962 (Wet No. 58 van 1962);” 15

(b) deur in subartikel (1) item (aa) van subparagraaf (i) van paragraaf (b) deur die volgende item te vervang:

“(aa)n lid is wat aandele vir sy of haar eie rekening en voordeel gekoop het;” 20

(c) deur in subartikel (1) subparagraaf (iii) van paragraaf (b) deur die volgende subparagraaf te vervang:

“(iii) tot die mate waarin die aandele instrumente is soos beoog in artikel 24J van die Inkomstebelastingwet, 1962 (Wet No. 58 van 1962);”;

(d) deur in subartikel (1) subitems (A), (B) en (C) van item (gg) van subparagraaf (ix) van paragraaf (b) deur die volgende subitems te vervang: 25

“(A) in items [(i) tot (vi)] (aa) tot (ff) ongeag of ’n keuse uitgeoefen is of nie dat die bepalings van daardie artikel van toepassing is;

(B) in items [(i), (ii) of (iii)] (aa); (bb) of (cc) ongeag die markwaarde van die bate oor beskik in ruil vir daardie aandele; of 30

(C) ingevolge items [(i) tot (vi)] (aa) tot (ff) ongeag of daardie persoon daardie aandele as kapitaalbate of as handelsvoorraad verkry het.”.

(2) Subartikel (1) tree op 1 Maart 2005 in werking en is van toepassing op enige verandering in voordelige eienaarskap op of na daardie datum.

Wysiging van artikel 121 van Wet 60 van 2001, soos gewysig deur artikel 202 van Wet 45 van 2003 35

112. Artikel 121(1) van die Tweede Wysigingswet op Inkomstewette, 2001, wat artikel 21A van die Doeane- en Aksynswet, 1964 invoeg, word hierby gewysig—

(a) deur subartikel (4) deur die volgende subartikel te vervang:

“(4) Ondanks andersluidende bepalings in hierdie artikel of enige ander bepaling van hierdie Wet, word goedere waarop subartikel (7) betrekking het, behoudens enige uitsondering of aanpassing in enige Bylae of reël voorgeskryf, selfs indien vry van reg vir die doeleindes om enige bepaling van hierdie Wet toe te pas, geag goedere onderhewig aan reg te wees.”; 40

(b) deur subartikels (10), (15) en (16) te skrap;

(c) (i) deur subartikel (11) as subartikel (10) te hernoem;

(ii) deur subartikel (12) as subartikel (11) te hernoem;

(iii) deur subartikel (13) as subartikel (12) te hernoem;

(iv) deur subartikel (14) as subartikel (13) te hernoem; 50

(v) deur subartikel (17) as subartikel (14) te hernoem;

(vi) deur subartikel (18) as subartikel (15) te hernoem; en

(vii) deur subartikel (19) as subartikel (16) te hernoem.

Amendment of section 103 of Act 74 of 2002

114. Section 103 of the Revenue Laws Amendment Act, 2002, which inserts section 37B of the Customs and Excise Act, 1964 is hereby amended—

- (a) by the substitution in section 37B(2) for paragraph (a) of the following paragraph:

“(a) (i) Except where otherwise provided—

(aa) in this section;

(bb) by the Minister in any amendment of any Schedule in terms of any provision of this Act; or

(cc) by the Commissioner in any rule, the provisions of this Act governing the administration of excisable goods or fuel levy goods, including the manufacture, levying of duty and granting of any rebate or refund of duty on such goods, shall apply *mutatis mutandis* to biofuel.

(ii) For the purposes of paragraph (i) unless otherwise specified in any Schedule or rule such provisions relating to distillate fuel or petrol shall be deemed to include respectively a reference to biodiesel or bioethanol or any mixtures thereof with distillate fuel or petrol.”;

- (b) by the insertion of the following paragraph in subsection (2) after paragraph (b):

“(c) The Commissioner may, except if any provision of this Act otherwise provides, in respect of biofuel manufactured in the Republic by any person for his or her own use and not for sale or other disposal by rule—

(i) (aa) exempt for any period any person or biofuel or any quantity of biofuel manufactured by such person from payment of duty;

(bb) cancel any such exemption under circumstances prescribed by rule;

(ii) prescribe, subject to paragraph (b), conditions and other requirements in respect of such exemption;

(iii) prescribe procedures relating to the manufacture and removal of biofuel for home consumption.”;

- (c) by the substitution in section 37B(4) for paragraph (a) of the following paragraph:

“(a) require any seller of biofuel who is not a manufacturer to register in terms of section 59A.”;

- (d) by the substitution for subsection (2) of section 103 of the Revenue Laws Amendment Act, 2002, of the following subsection:

“(2) Subsection (1), which may be determined to come into operation separately for biodiesel and bioethanol, shall come into operation on a date or dates to be determined by the President by Proclamation in the Gazette.”.

Repeal of section 46 of Act 16 of 2004

115. Section 46 of the Taxation Laws Amendment Act, 2004, is hereby repealed.

Amendment of section 59 of Act 45 of 2003

116. Section 59 of the Revenue Laws Amendment Act, 2003, is hereby amended by the substitution for subsection (2) of the following subsection:

“(2) (a) Subsection (1)(a) to (l), (n), (o) and (p) shall come into operation on the date of promulgation of this Act and shall apply in respect of any cash or asset distributed, any obligation relieved, any debt settled, any amount applied, any adjustment or any loan or advance granted on or after that date.

(b) Subsection (1)(m) shall be deemed to have come into operation on 6 November 2002 and shall apply in respect of any cash or asset distributed, any obligation relieved, any debt settled, any amount applied, any adjustment or any loan or advance granted on or after that date.”.

Wysiging van artikel 153 van Wet 60 van 2001

113. Artikel 153 van die Tweede Wysigingswet op Inkomstewette, 2001, word hierby gewysig deur paragraaf (c) van subartikel (1) te skrap.

Wysiging van artikel 103 van Wet 74 van 2002

114. Artikel 103 van die Wysigingswet op Inkomstewette, 2002, wat artikel 37B in die Doeane- en Aksynswet, 1964, invoeg, word hierby gewysig—

- (a) deur in artikel 37B(2) paragraaf (a) deur die volgende paragraaf te vervang:
- “(a) (i) Behalwe waar anders bepaal—
- (aa) in hierdie artikel;
- (bb) deur die Minister in enige wysiging van enige Bylae kragtens enige bepaling van hierdie Wet; of
- (cc) deur die Kommissaris in enige reël,
- is die bepalings van hierdie Wet wat die administrasie van synsbare goedere of brandstofheffinggoedere beheers, insluitende die vervaardiging, die heffing van reg en die toestaan van enige korting of terugbetaling van reg op sodanige goedere *mutatis mutandis* op biobrandstof van toepassing.
- (ii) Vir die doeleindes van paragraaf (i), tensy anders bepaal in enige Bylae of reël word sodanige bepalings met betrekking tot distillaatbrandstof of petrol geag om respektiewelik ’n verwysing na biodiesel of bioethanol of enige mengsels daarvan met distillaatbrandstof of petrol in te sluit.”;
- (b) deur in subartikel (2) die volgende paragraaf na paragraaf (b) in te voeg:
- “(c) Die Kommissaris kan, behalwe waar enige bepaling van hierdie Wet anders bepaal ten opsigte van biobrandstof wat in die Republiek deur enige persoon vir eie gebruik en nie vir verkoop of ander beskikking vervaardig is nie, by reël—
- (i) (aa) vir enige tydperk enige persoon of biobrandstof of enige hoeveelheid biobrandstof vervaardig deur sodanige persoon van die betaling van reg vrystel;
- (bb) enige sodanige vrystelling kanselleer onder omstandighede by reël voorgeskryf;
- (ii) behoudens paragraaf (b), enige voorwaardes en ander vereistes ten opsigte van sodanige vrystelling voorskryf;
- (iii) prosedures met betrekking tot die vervaardiging en verwydering van biobrandstof vir binnelandse verbruik voorskryf.”;
- (c) deur in artikel 37B(4) paragraaf (a) deur die volgende paragraaf te vervang:
- “(a) van enige verkoper van biobrandstof wat nie ’n vervaardiger is nie vereis om ingevolge artikel 59A te registreer.”;
- (d) deur subartikel (2) van artikel 103 van die Wysigingswet op Inkomstewette, 2002, deur die volgende subartikel te vervang:
- “(2) Subartikel (1), wat bepaal kan word om afsonderlik vir biodiesel en bioethanol in werking te tree, tree in werking op ’n datum of datums deur die President by Proklamasie in die *Staatskoerant* bepaal.”.

Herroeping van artikel 46 van Wet 16 van 2004

115. Artikel 46 van die Wysigingswet op Belastingwette, 2004, word hierby herroep.

Wysiging van artikel 59 van Wet 45 van 2003

116. Artikel 59 van die Wysigingswet op Inkomstewette, 2003, word hierby gewysig deur subartikel (2) deur die volgende subartikel te vervang:

- “(2)(a) Subartikel (1)(l), (n), (o) en (p) tree in werking op die datum van afkondiging van hierdie Wet en is van toepassing ten opsigte van enige kontant of bate uitgekeer, enige verpligting opgehef, enige skuld betaal, enige bedrag aangewend, enige aanpassing of enige lening of voorskot toegestaan op of na daardie datum.
- (b) Subartikel (1)(m) word geag op 6 November 2002 in werking te getree het en is van toepassing ten opsigte van enige kontant of bate uitgekeer, enige verpligting opgehef, enige skuld betaal, enige bedrag aangewend, enige aanpassing of enige lening of voorskot toegestaan op of na daardie datum.”.

Amendment of section 163 of Act 45 of 2003

117. Section 163 of the Revenue Laws Amendment Act, 2003, is hereby amended by the addition to subsection (2) of the following paragraph:

- “(c) Notwithstanding the deletion by subsection (1)(f) and (o) of paragraph (3)(b) to (g) and paragraph (5)(i) to (vi) of Item 15 of Schedule 1 to the Stamp Duties Act, 1968, these provisions remain in force in respect of any liability for an amount of duty which could have been imposed in terms thereof in respect of—
- (i) the registration of transfer of any marketable security which was sold or disposed of on or before 31 March 1997; or
 - (ii) the acquisition of any marketable security on or before that date.”.

Amendment of section 164 of Act 45 of 2003

118. Section 164 of the Revenue Laws Amendment Act, 2003, is hereby amended—

- (a) by the deletion in subsection (1) of paragraphs (b), (e) and (h); and
 - (b) by the substitution in subsection (2) for paragraph (a) of the following paragraph:
- “(2) (a) Subsection (1)[(b),] (c), [(e)], (g), [(h)], (i), (j) and (o) shall come into operation on a date fixed by the President by proclamation in the *Gazette*.”.

Repeal of section 165 of Act 45 of 2003

119. Section 165 of the Revenue Laws Amendment Act, 2003, is hereby repealed.

Amendment of section 166 of Act 45 of 2003, as amended by section 66 of Act 16 of 2004

120. Section 166 of the Revenue Laws Amendment Act, 2003, is hereby amended—

- (a) by the deletion in subsection (1) of paragraph (a); and
 - (b) by the substitution for subsection (2) of the following subsection:
- “(2) Subsection (1)[(a),] (b) and (d) shall to the extent it inserts subsection (23) come into operation on the date determined by the President by proclamation in the *Gazette*.”.

Amendment of section 169 of Act 45 of 2003

121. Section 169 of the Revenue Laws Amendment Act, 2003, is hereby amended by the deletion in subsection (1) of paragraph (a).

Amendment of section 170 of Act 45 of 2003

122. Section 170 of the Revenue Laws Amendment Act, 2003, is hereby amended by the deletion in subsection (1) of paragraphs (a) and (c).

Amendment of section 173 of Act 45 of 2003

123. Section 173 of the Revenue Laws Amendment Act, 2003 is hereby amended—

- (a) by the deletion in subsection (1) of paragraph (c);
- (b) by the deletion of subsection (2).

Short title and commencement

124. (1) This Act shall be called the Revenue Laws Amendment Act, 2004.

(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 2005.

Wysiging van artikel 163 van Wet 45 van 2003

117. Artikel 163 van die Wysigingswet op Inkomstewette, 2003, word hierby gewysig deur die volgende paragraaf by subartikel (2) te voeg:

- “(c) Ondanks die skapping van subartikels (1)(f) en (o) van paragraaf (3)(b) tot (g) en paragraaf (5)(i) tot (vi) van Item 15 van Bylae 1 by die Wet op Seelregte, 1968, bly hierdie bepalings van krag ten opsigte van enige aanspreeklikheid vir ’n bedrag van reg wat daarkragtens opgelê kon word ten opsigte van—
- (i) die registrasie van oordrag van enige handelseffek wat voor of op 31 Maart 1997 verkoop of oor beskik is; of
 - (ii) die verkryging van enige handelseffek op of voor daardie datum.”.

Wysiging van artikel 164 van Wet 45 van 2003

118. Artikel 164 van die Wysigingswet op Inkomstewette, 2003, word hierby gewysig—

- (a) deur paragrawe (b), (e) en (h) van subartikel (1) te skrap; en
- (b) deur paragraaf (a) van subartikel (2) deur die volgende paragraaf te vervang:

“(2) (a) Subartikel (1)[(b),] (c), [(e)], (g), [(h)], (i), (j) en (o) tree in werking op ’n datum deur die President by proklamasie in die *Staatskoerant* bepaal.”.

Herroeping van artikel 165 van Wet 45 van 2003

119. Artikel 165 van die Wysigingswet op Inkomstewette, 2003, word hierby herroep.

Wysiging van artikel 166 van Wet 45 van 2003, soos gewysig deur artikel 66 van Wet 16 van 2004

120. Artikel 166 van die Wysigingswet op Inkomstewette, 2003, word hierby gewysig—

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

“(2) Subartikel (1)[(a),] (b) en (d) in die mate wat dit subartikel (23) invoeg, tree in werking op ’n datum deur die President by proklamasie in die *Staatskoerant* bepaal.”.

Wysiging van artikel 169 van Wet 45 van 2003

121. Artikel 169 van die Wysigingswet op Inkomstewette, 2003, word hierby gewysig deur paragraaf (a) van subartikel (1) te skrap.

Wysiging van artikel 170 van Wet 45 van 2003

122. Artikel 170 van die Wysigingswet op Inkomstewette, 2003, word hierby gewysig deur paragrawe (a) en (c) van subartikel (1) te skrap.

Wysiging van artikel 173 van Wet 45 van 2003

123. Artikel 173 van die Wysigingswet op Inkomstewette, 2003, word hierby gewysig—

- (a) deur paragraaf (c) van subartikel (1) te skrap;
- (b) deur subartikel (2) te skrap.

Kort titel en inwerkingtreding

124. (1) Hierdie Wet heet die Wysigingswet op Inkomstewette, 2004.
 (2) Behalwe vir sover hierdie Wet anders bepaal of dit 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 45
 jare van aanslag wat op of na 1 Januarie 2005 eindig.

