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**REPUBLIC OF SOUTH AFRICA**

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**INCOME TAX ACT**

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**REPUBLIEK VAN SUID-AFRIKA**

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**INKOMSTEBELASTING-  
WET**

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**No           , 1997**

**GENERAL EXPLANATORY NOTE:**

[                    ]    Words in bold type in square brackets indicate omissions from existing enactments.

                        Words underlined with a solid line indicate insertions in existing enactments.

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# ACT

**To fix the rates of normal tax payable by persons other than companies in respect of taxable incomes for the years of assessment ending on 28 February 1998 and 30 June 1998, and by companies in respect of taxable incomes for years of assessment ending during the period of 12 months ending on 31 March 1998; to amend the Income Tax Act, 1962; to amend the Income Tax Act, 1996; and to provide for incidental matters.**

**B**E IT ENACTED by the Parliament of the Republic of South Africa, as follows:—

**Rates of normal tax**

**1.** The rates of normal tax to be levied in terms of section 5(2) of the Income Tax Act, 1962 (Act No. 58 of 1962) (hereinafter referred to as the principal Act), in respect of— 5

- (a) the taxable income of any person other than a company for the year of assessment ending on 28 February 1998 or 30 June 1998; and
- (b) the taxable income of any company for any year of assessment ending during the period of 12 months ending on 31 March 1998,

shall be as set forth in the Schedule to this Act. 10

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 and section 2 of Act 36 of 1996

2.(1) Section 1 of the principal Act is hereby amended—

- (a) by the substitution for the words preceding subparagraph (i) of paragraph (e) of the definition of “company” of the following words:  
 “any unit portfolio comprised in any unit trust scheme in securities other than property shares managed or carried on by any company registered as a management company under section 4 of the Unit Trusts Control Act, [1947 (Act No. 18 of 1947)] 1981 (Act No. 54 of 1981), if—”;
- (b) by the substitution for subparagraph (iv) of paragraph (d) of the definition of “connected person” of the following subparagraph:  
 “(iv) any person, other than a company as defined in section 1 of the Companies Act, 1973 (Act No. 61 of 1973), who individually or jointly with any connected person in relation to himself, holds, directly or indirectly, at least 20 per cent of the company’s equity share capital [members’ interest] or voting rights;”;
- (c) by the deletion in the definition of “connected person” of the word “and” at the end of subparagraph (v) of paragraph (d);
- (d) by the insertion after subparagraph (v) of paragraph (d) of the definition of “connected person” of the following paragraph:  
 “(vA) any other company if such other company is managed or controlled by any person which is a connected person in relation to such company; and”;
- (e) by the substitution for item (cc) of subparagraph (vi) of paragraph (d) of the definition of “connected person” of the following item:  
 “(cc) any other close corporation or company which is a connected person in relation to—  
 (i) any member contemplated in item (aa); or  
 (ii) the relative or trust contemplated in item (bb); and”;
- (f) by the substitution for the definition of “executor” of the following definition:  
 “ ‘executor’ means any person to whom letters of administration have been granted by a Master or an Assistant Master of the [Supreme] High Court appointed under the Administration of Estates Act, [1913 (Act No. 24 of 1913)] 1965 (Act No. 66 of 1965), in respect of the estate of a deceased person under any law relating to the administration of estates, and includes a person acting or authorized to act under letters of administration granted outside the Republic but signed and sealed by such a Master or Assistant Master for use within the Republic and, in any case where the estate is not required to be administered under the supervision of such a Master or Assistant Master, the person administering the estate;”;
- (g) by the substitution for the words preceding the proviso to paragraph (e) of the definition of “gross income” of the following words:  
 “any amount determined in accordance with the provisions of the Second Schedule in respect of lump sum benefits received by or accrued to such person from—

- (i) any fund [(other than a fund referred to in paragraph (a) or (b) of the definition of ‘pension fund’)] which has in respect of the current or any previous year of assessment been approved by the Commissioner, whether under this Act or any previous Income Tax Act, as a pension fund, provident fund or retirement annuity fund; or 5
- (ii) a fund referred to in paragraph (a) or (b) of the definition of ‘pension fund’,  
if such person was a member of such fund during any such year:”;
- (h) by the insertion after paragraph (e) of the definition of “gross income” of the following paragraph: 10  
“(eA) where, in relation to a member or the dependants or nominees of a deceased member—
- (i) any amount in a fund contemplated in paragraph (a) or (b) of the definition of ‘pension fund’, the rules of which provide that on retirement of such member a portion of his benefit has to be taken in the form of an annuity, has been transferred to a fund, the rules of which entitle such member, or the dependants or nominees of a deceased member, to a benefit on retirement in the form of a lump sum exceeding one-third of the capitalised value of all benefits (including lump sum payments and annuities); or 15
- (ii) a fund contemplated in paragraph (a) or (b) of the definition of ‘pension fund’, the rules of which provide that on retirement of such member a portion of his benefit has to be taken in the form of an annuity, is wholly or partially converted by way of an amendment to its rules or otherwise, to entitle such member, or the dependants or nominees of a deceased member, to a benefit on retirement in the form of a lump sum exceeding one-third of the capitalised value of all benefits (including lump sum payments and annuities), 20
- an amount equal to two-thirds—
- (aa) of the amount so transferred; or 25
- (bb) in the case of a conversion, of the amount representing the amount converted for the benefit or ultimate benefit of the member or the dependants or nominees of the deceased member: 30
- Provided that the Commissioner may, on application by a fund, in particular circumstances, increase the proportion of one-third contemplated in subparagraph (i) up to a maximum of one-half on the following conditions: 35
- (a) that on 12 March 1997 the proportion of the benefit on retirement in such fund that could be taken in the form of a lump sum was greater than one-third, but not greater than one-half, of the total capitalized value of all benefits; 40
- (b) that the rules of such fund are amended so that the maximum proportion of such member’s benefit on retirement that can be taken in the form of a lump sum is one-third of the total capitalized value of all benefits; and
- (c) such further conditions as the Commissioner may determine from time to time;”; 45
- (i) by the insertion after the definition of “income” of the following definition: “‘insolvent estate’ means an insolvent estate as defined in section 2 of the Insolvency Act, 1936 (Act No. 24 of 1936);”; 50
- (j) by the substitution for paragraph (b) of the definition of “pension fund” of the following paragraph: 55  
“(b) with effect from a date determined by the Commissioner in relation to any fund hereinafter referred to (not being a date earlier than 4 December 1981), any pension fund established for the benefit of employees of a control board as defined in section 1 of the Marketing [Act, 1968 (Act No. 59 of 1968)] of Agricultural Products Act, 1996 (Act No. 47 of 1996), or for the benefit of employees of the Development Bank of Southern Africa, if the Commissioner is satisfied that the rules of such fund are in all material respects identical to those of the Government [Service] Employees’ Pension Fund; or”;

- (k) by the substitution for the definition of “person” of the following definition:  
 “ ‘person’ includes an insolvent estate, the estate of a deceased person and any trust;”; and
- (l) by the addition to the definition of “representative taxpayer” of the following paragraph:  
 “(f) in respect of the income received by or accrued to an insolvent estate, the trustee or administrator of such insolvent estate,”.

(2)(a) Subsection (1)(g) shall come into operation on 1 March 1998 and shall apply to any lump sum benefits received by or accrued to any person on or after that date.

(b) Subsection (1)(h) shall be deemed to have come into operation on 12 March 1997 and shall apply to all amounts transferred or amounts representing the amounts converted for the benefit of any person on or after that date.

(c) Subsection (1)(i), (k) and (l) shall come into operation on the date of promulgation of this Act and shall apply to any estate voluntarily or compulsorily sequestrated on or after that date.

**Amendment of section 6 of Act 58 of 1962, as inserted by section 5 of Act 104 of 1980 and amended by section 5 of Act 96 of 1981, section 5 of Act 91 of 1982, section 4 of Act 94 of 1983, section 4 of Act 121 of 1984, section 3 of Act 96 of 1985, section 4 of Act 85 of 1987, section 4 of Act 90 of 1988, section 4 of Act 70 of 1989, section 3 of Act 101 of 1990, section 4 of Act 129 of 1991, section 4 of Act 141 of 1992, section 5 of Act 21 of 1995 and section 4 of Act 36 of 1996**

3. Section 6 of the principal Act is hereby amended by the substitution for the expression “R2 660” in paragraph (a) of subsection (2) of the expression “R3 215”.

**Repeal of section 6bis of Act 58 of 1962**

4. Section 6bis of the principal Act is hereby repealed.

**Amendment of section 6quat of Act 58 of 1962, as inserted by section 5 of Act 85 of 1987**

5. Section 6quat of the principal Act is hereby amended—

- (a) by the substitution for subsection (1) of the following subsection:  
 “(1) Subject to the provisions of subsection (2), there shall be deducted from the normal [taxes] tax payable by any resident of the Republic or any person contemplated in section 9C(2)(b) in whose taxable income there is included—

(a) any income [derived] received by or accrued to such resident or person from [a source in] any country other than the Republic; or

(b) any proportional amount of investment income contemplated in section 9D,

a rebate equal to the sum of any taxes on income proved to be payable, without any right of recovery, other than a right of recovery in terms of any entitlement to carry back losses arising during any year of assessment to any year of assessment prior to such year of assessment, by—

- (i) (aa) such resident of the Republic; and  
 (bb) any controlled foreign entity, as contemplated in section 9D, in respect of such proportional amount; or

(ii) such person contemplated in section 9C(2)(b), to the government of such other country in respect of the amount of income so included in that resident’s or person’s taxable income: Provided that—

(a) the rebate under this subsection shall not exceed [so much of the normal tax payable by such resident as is attributable to the inclusion in his

taxable income of the amount of income so included therein] an amount which bears to the total normal tax payable the same ratio as the taxable income attributable to the income so included bears to the total taxable income; and

- (b) where such sum of any taxes payable to the government of any such other country exceeds the rebate as determined in paragraph (a) of this proviso (hereinafter referred to as the excess amount), such excess amount (excluding so much of such excess amount relating to foreign tax paid or payable by any controlled foreign entity which distributes its profits in the form of dividends) may be deducted from any Secondary Tax on Companies which becomes payable after the determination of such excess amount, limited to an amount determined by applying the rate of the Secondary Tax on Companies to the profits attributable to the inclusion of the income contemplated in paragraph (a) of this subsection, after the deduction of—
- (i) any normal tax paid or payable; or
  - (ii) such sum of taxes payable to the government of any such other country,
- whichever amount is the greater.”; and

- (b) by the substitution for subsection (3) of the following subsection:
- “(3) For the purposes of this section ‘resident of the Republic’ means **[a person (other than a company)]** any natural person who is ordinarily resident in the Republic **[or a domestic company]** and any person, other than a natural person, which has its place of effective management in the Republic.”.

**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 and section 6 of Act 36 of 1996**

6. (1) Section 8 of the principal Act is hereby amended—

- (a) by the substitution for the expression “12 000 kilometres” wherever it occurs in paragraphs (aa) and (bb) of the second proviso to subparagraph (ii) of paragraph (b) of subsection (1) of the expression “14 000 kilometres”; and
- (b) by the addition to subsection (4) of the following paragraph:
- “(m) Subject to the provisions of section 20, where—
- (i) as a result of the cancellation, termination or variation of an agreement or due to the prescription, waiver or release of a claim for payment, any person was during any year of assessment relieved or partially relieved from the obligation to make payment of any expenditure actually incurred;
  - (ii) such expenditure was at the date on which such person was so relieved or partially relieved not paid; and
  - (iii) such expenditure or any allowance in relation to such expenditure was in the current or any previous year of assessment allowed as a deduction from such person’s income,
- such person shall for the purposes of paragraph (a) be deemed to have recovered or recouped an amount equal to the amount of the obligation from which the person was so relieved or partially relieved during the year of assessment in which the person was so relieved or partially relieved.”.

(2)(a) Subsection (1)(a) shall be deemed to have come into operation on 1 March 1997.

(b) Subsection (1)(b) shall come into operation on the date of promulgation of this Act and shall apply to any cancellation, termination or variation of an agreement or prescription, waiver or release of any claim 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 and section 9 of Act 21 of 1995** 5

7. Section 9 of the principal Act is hereby amended by the deletion of subsections (2), (3) and (4). 10

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

8. Section 9A of the principal Act is hereby amended by the addition of the following subsection:  
 “(10) The provisions of this section shall not apply to any amount of investment income included in the income of any resident in terms of section 9D.” 15

**Insertion of sections 9C and 9D in Act 58 of 1962**

9. (1) The following sections are hereby inserted in the principal Act after section 9B:

**“Taxation of investment income from foreign sources**

**9C.** (1) For the purposes of this section— 20

‘annuity’ means any annuity other than—

- (a) pensions in consideration of past employment; or
- (b) payments made under the social security system of any other country;

‘interest’ means—

- (a) interest as contemplated in section 24J; 25
- (b) an amount as contemplated in section 24K; or
- (c) any other income which, by the laws of the Republic administered by the Commissioner, is subjected to the same treatment as income from money lent;

‘investment income’ means any income in the form of any annuity, interest, rental income or royalty or any income of a similar nature; 30

‘permanent establishment’ means a permanent establishment as defined from time to time in Article 5 of the Model Tax Convention on Income and on Capital of the Organisation for Economic Co-operation and Development; 35

‘rental income’ means any amount received by or accrued to any person as consideration for the use of, or the right to use, any movable or immovable property;

‘resident’ means any natural person who is ordinarily resident in the Republic and any person other than a natural person which has its place of effective management in the Republic; 40

‘royalty’ means any amount received by or accrued to any person as consideration for the use of, or the right to use, any copyright of literary, artistic or scientific work (including cinematograph films and films, tapes or discs for radio or television broadcasting), any patent, trade mark, design or model, plan, secret formula or process, or any other property or right of a similar nature, or for information concerning industrial, commercial or scientific experience. 45

(2) Subject to the provisions of section 9D(4), any investment income received by or accrued to any— 50

- (a) resident; and

(b) person (other than a resident) arising from the activities carried on by him through a permanent establishment situated in the Republic, from any country other than the Republic during any year of assessment, shall, for the purposes of the definition of 'gross income' in section 1, be deemed to have been received by or accrued to such resident or person from a source within the Republic during such year of assessment. 5

(3) The provisions of this section shall not apply to investment income of a resident—

(a) arising from and effectively connected to the business activities of a substantive business enterprise conducted by such resident through a permanent establishment in any country other than the Republic, where such permanent establishment is suitably equipped for conducting the principal business of such substantive business enterprise; or 10

(b) arising from any assets acquired by any natural person before he became ordinarily resident in the Republic for the first time in respect of the first three consecutive years of assessment ending on or after 28 February 1998. 15

(4) Where any investment income is received or accrued in accordance with this section in the course of the carrying on of any trade outside the Republic, such trade shall for the purposes of sections 11, 20 and 28 be deemed to have been carried on in the Republic. 20

#### **Investment income of controlled foreign entities and investment income arising from donations, settlements or other dispositions**

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

'controlled foreign entity' means any foreign entity in which any resident or residents of the Republic, whether individually or jointly, and whether directly or indirectly, hold more than 50 per cent of the participation rights, or are entitled to exercise more than 50 per cent of the votes or control of such entity; 25

'foreign entity' means any person, other than a natural person, which has its place of effective management in a country other than the Republic; 30

'investment income' means investment income as defined in section 9C(1);

'participation rights' means the right to participate directly or indirectly in the capital or profits of, dividends declared by, or any other distribution or allocation made by, any entity; 35

'resident' means a resident as defined in section 9C(1).

(2) There shall be included in the income of any resident contemplated in the definition of 'controlled foreign entity' in subsection (1), a proportional amount of any investment income received by or accrued to such entity, which bears to the total investment income received by or accrued to such entity, the same ratio as the percentage of the participation rights of such resident in relation to such entity bears to the total participation rights in relation to such entity: Provided that the provisions of this subsection shall not apply to any amount of investment income to which the provisions of subsection (4) are applicable. 40 45

(3) Where any resident acquires during any year of assessment any vested right to participate in any amount representing capital of any controlled foreign entity and—

(a) such capital arose from investment income received by or accrued to such controlled foreign entity in any previous year of assessment during which such resident had a contingent right to participate in such investment income; and 50

(b) such investment income has not been subject to tax in terms of the provisions of this Act, such amount shall be included in the income of such resident in such year of assessment. 55



(4) Where by reason of or in consequence of any donation, settlement or other disposition (other than a donation, settlement or other disposition to a foreign entity of a public character) made by any resident, investment income is received by or accrued to any person—

- (a) who is not a resident; or
- (b) who is a resident and to whom the provisions of section 7(3), (4), (5), (6) or (7) would have applied, had such income been received or accrued from a source within the Republic,

there shall be included in the income of such resident so much of the amount of any investment income as is attributable to such donation, settlement or other disposition.

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

(6) The amount apportioned to any resident under the provisions of this section, shall be converted at a date not later than the end of the financial year of the resident to the currency of the Republic and the ruling exchange rate at that date shall be applied to determine the value of the amount to be included in the income of such resident.

(7) Any resident who, at any time during any year of assessment, has a participating right contemplated in subsection (2) or a vested right contemplated in subsection (3) or makes any donation, settlement or other disposition as contemplated in subsection (4), shall disclose such fact to the Commissioner in writing when submitting his return of income for such year and at the same time furnish such information as may be required by the Commissioner for the purposes of this section.

(8) The provisions of section 11 shall *mutatis mutandis* apply in respect of investment income contemplated in subsection (2) or (4), which is received by or accrued to a controlled foreign entity in the course of the carrying on of any trade by such entity outside the Republic: Provided that any deductions or allowances contemplated in such section, shall be apportioned by applying the same ratio as determined in subsection (2) or (4), as the case may be, and such portion shall be deemed to be a deduction or allowance which may be made in the determination of the taxable income of such resident: Provided further that—

- (a) any such deductions or allowances shall be limited to the amount of such investment income; and
- (b) any amount whereby such deductions or allowances exceed the amount of such investment income, shall be carried forward to the immediately succeeding year of assessment and shall be allowed as a deduction in such succeeding year of assessment if such controlled foreign entity carries on such trade during such succeeding year of assessment.

(9) The provisions of this section shall not apply—

- (a) where the foreign tax actually paid or payable in any country other than the Republic, relating to the proportional amount contemplated in subsection (2) or (4), after taking into consideration any deductions or allowances under the taxation provisions of such other country determined at the ratio as contemplated in subsection (2) or (4), as the case may be, is more than 85 per cent of the normal tax payable in the Republic: Provided that for the purposes of the determination of the tax payable in the Republic on such proportional amount, such tax shall be an amount which bears to the total normal tax payable the same ratio as such proportional amount bears to the total income in relation to such resident;
- (b) where the investment income arises from and is effectively connected to the business activities of a substantive business enterprise conducted through a permanent establishment as defined in section 9C(1), in any country other than the Republic, where such permanent

- establishment is suitably equipped for conducting the principal business of such substantive business enterprise;
- (c) in relation to the proportional amount of any investment income attributable to any natural person, arising from any asset acquired by a controlled foreign entity in relation to such natural person, before such natural person became ordinarily resident in the Republic for the first time, in respect of the first three consecutive years of assessment ending on or after 28 February 1998; or
- (d) to investment income which is taxable in a country which the Minister of Finance has identified by notice in the *Gazette* as a country whose tax on income is determined on a basis which is substantially the same as that of the Republic.”.

(2) Subsection (1) shall be deemed to have come into operation on 1 July 1997 and shall apply in respect of any investment income received or accrued 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 and section 9 of Act 46 of 1996**

10.(1) Section 10 of the principal Act is hereby amended—

- (a) by the substitution for paragraph (cA) of the following paragraph:
- “(cA) the receipts and accruals of—
- (i) any institution, board or body (other than a company registered or deemed to be registered under the Companies Act, 1973 (Act No. 61 of 1973), or under any law repealed by that Act and any co-operative formed and incorporated or deemed to be formed and incorporated under the Co-operatives Act, 1981 (Act No. 91 of 1981), and any close corporation and any trust) established by or under any law and which, in the furtherance of its sole [object] or [one of its] principal [objects] object—
- (aa) conducts scientific, technical or industrial research; [or]
- (bb) provides necessary or useful commodities, amenities or services to the State (including any provincial administration) or members of the general public; or
- (cc) carries on activities (including the rendering of financial assistance by way of loans or otherwise) designed to promote commerce, industry or agriculture or any branch thereof;
- (ii) any South African company all the shares of which are held by any such institution, board or body, if the operations of such company are ancillary or complementary to the object of such institution, board or body:
- Provided that such institution, board, [or] body or company—
- (a) has been approved by the Commissioner subject to such conditions as he may deem necessary to ensure that the activities of such institution, board, body or company are wholly or mainly directed to the furtherance of its sole or principal object;

- (b) is by law or under its constitution—
  - (i) not permitted to distribute any of its profits or gains to any person, **[and]** other than, in the case of such company, to its shareholders;
  - (ii) **[is]** required to utilise its funds solely for investment or the **[objects]** object for which it has been established; **and**
  - (iii) required on dissolution—
    - (aa) where the institution, board, body or company is established under any law, to transfer its assets to some other institution, board or body which has been granted exemption from tax in terms of this paragraph and which has objects similar to those of such institution, board, body or company; or
    - (bb) where the institution, board or body is established by law, to transfer its assets to—
      - (A) some other institution, board or body which has been granted exemption from tax in terms of this paragraph and which has objects similar to those of such institution, board, body or company; or
      - (B) to the State:

Provided further that—

- (a) where the Commissioner is satisfied that any such institution, board, body or company has during any year of assessment failed to comply with the provisions of this paragraph, he may withdraw his approval of the institution, board, body or company with effect from the commencement of that year of assessment;
- (b) where the institution, board, body or company fails to transfer, or take reasonable steps to transfer, its assets as contemplated in paragraph (b)(iii) of the first proviso, the accumulated net revenue which has not been distributed shall be deemed for the purposes of this Act to be an amount of taxable income which accrued to such institution, board, body or company during the year of assessment contemplated in paragraph (a); and
- (c) any decision of the Commissioner in the exercise of his discretion under this paragraph shall be subject to objection and appeal;”;
- [(ii) any South African company all the shares of which are held by any such institution, board or body, if the operations of such company are ancillary or complementary to the objects of such institution, board or body]**
- (b) by the substitution for subparagraph (i) of paragraph (cH) of subsection (1) and item (aa) of that subparagraph of the following subparagraph and item:
  - “(i) the sole **[or principal]** object of such company, society, association or trust is to receive, hold and apply moneys contributed to such company, society, association or trust in accordance with section 11(hA) in order to discharge any of the following or like obligations imposed upon any person in terms of any law **[relating to]** which regulates mining operations, namely—
    - (aa) the rehabilitation of disturbances of the surface of land and the prevention and combating of pollution of the air, land, sea or other water where such disturbances and pollution are **[connected with]** due to mining, prospecting, quarrying or similar operations;”;
- (c) by the substitution for subparagraphs (ii), (iii) and (iv) of paragraph (cH) of subsection (1) of the following subparagraphs, respectively:
  - “(ii) such company, society or association is under its constitution, or such trust is under the instrument establishing such **[fund]** trust, not permitted to distribute any of its profits or gains to any person and is required to utilize its funds solely for **[investment or]** the **[objects]** object for which it has been established: Provided that such company, society, association or trust shall be permitted to invest its funds in

- institutions approved by the Commissioner, until such time as such funds are required;
- (iii) in terms of the constitution of such company, society or association or the instrument establishing such trust it will upon its winding-up or liquidation be obliged to give or transfer its assets remaining after the satisfaction of its liabilities to some other company, society, association or trust with [objects] a similar object to [those] that of the said company, society, association or trust; and 5
- (iv) the Commissioner has approved such company, society, association or trust on such conditions as he may deem necessary to ensure that the activities of such company, society, association or trust are wholly [or mainly] directed to the furtherance of its sole [or principal] object;”; 10
- (d) by the substitution for the expression “R1 500” in item (aa) of subparagraph (i) of paragraph (cI) of subsection (1) of the expression “R1 800”;
- (e) by the deletion of paragraph (mA) of subsection (1); 15
- (f) by the substitution for the expressions “R36 000” and “R1 200” in subparagraphs (ii) and (iii) of the proviso to paragraph (q) of subsection (1) of the expressions “R50 000” and “R1 600”, respectively;
- (g) by the deletion of subparagraphs (iv) and (vii) of paragraph (t) of subsection (1); 20
- (h) by the substitution for paragraph (zH) of subsection (1) of the following paragraph:
- “(zH) any amount received by or accrued to or in favour of any person from the State in terms of—
- (i) the Regional Industrial Development Programme, which came into operation on 1 May 1991; 25
- (ii) the Simplified Regional Industrial Development Programme, which came into operation on 1 October 1993 by way of a grant;
- (iii) the Small/Medium Manufacturing Development Programme, which came into operation on 1 October 1996 by way of a grant; and 30
- (iv) the Tax Holiday Scheme contemplated in section 37H, which came into operation on 1 October 1996 by way of a grant.”.
- (2)(a) Subsection (1)(a) shall come into operation on the date of promulgation of this Act: Provided that any institution, board, body or company whose receipts and accruals were exempt from tax in terms of the provisions of section 10(1)(cA) of the principal Act prior to the amendment thereof by this section, and which institution, board, body or company applies for approval by the Commissioner on or before 30 September 1997, shall continue to enjoy such exemption until written notification by the Commissioner of his decision in the exercise of his discretion in terms of such section 10(1)(cA) of the principal Act. 40
- (b) Subsection (1)(b) and (c) shall come into operation on the date of promulgation of this Act.
- (c) Subsection (1)(e) shall be deemed to have come into operation on 1 January 1997.
- (d) Subsection (1)(g) shall come into operation on 1 July 1998. 45
- (e) Subsection (1)(h) shall—
- (i) in so far as it inserts subparagraph (ii) in section 10(1)(zH) of the principal Act, be deemed to have come into operation on 1 October 1993; and
- (ii) in so far as it inserts subparagraphs (iii) and (iv) in section 10(1)(zH) of the principal Act, be deemed to have come into operation on 1 October 1996. 50

**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 and section 11 of Act 21 of 1995** 55

**11.(1)** Section 10A of the principal Act is hereby amended—

- (a) by the substitution for the definition of “valuator” in subsection (1) of the following definition:
- “ ‘valuator’, in relation to an insurer, means the valuator of the insurer contemplated in section 10 of the Insurance Act, 1943 (Act No. 27 of 1943), 60

or any similar provision contained in the laws of the country where any annuity is payable.”;

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

“(2) There shall be exempt from normal tax so much of any annuity amount payable to a purchaser or his deceased or insolvent estate or his spouse or surviving spouse (as contemplated in paragraph (a) of the definition of ‘annuity contract’ in subsection (1)), or to the deceased or insolvent estate of such spouse or surviving spouse as is determined in accordance with subsection (3) to represent the capital element of such amount.”;

- (c) by the substitution for the words preceding the proviso to subsection (4) of the following words:

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

(2)(a) Subsection (1)(a) and (c) shall be deemed to come into operation on 1 July 1997 and shall apply in respect of any investment income received or accrued on or after that date.

(b) Subsection (1)(b) shall come into operation on the date of promulgation of this Act and shall apply in respect of the estate of any person who dies or whose estate is voluntarily or compulsorily sequestrated on or after that date.

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

12. Section 11 of the principal Act is hereby amended—

- (a) by the substitution for paragraph (hA) of the following paragraph:

“(hA) so much of any amount paid (other than an amount in respect of which any deduction or allowance has been or will be granted under any other provision of this Act) by a taxpayer engaged in mining, prospecting, quarrying or similar operations to a company, society, association of persons or trust [fund] referred to in section 10(1)(cH) to be used by such company, society, association or trust [fund] for the purposes contemplated in such section [as in the special circumstances of the trade of the taxpayer is reasonable]: Provided that such amount shall be determined and such payment shall be made in accordance with—

(i) the constitution of such company, society or association of persons; or

(ii) the instrument establishing such trust, as has been approved by the Commissioner in terms of section 10(1)(cH);”;

and

- (b) by the substitution for paragraph (s) of the following paragraph:  
 “(s) in the case of a fixed property company as defined in section 1 of the Unit Trusts Control Act, [1947 (Act No. 18 of 1947)] 1981 (Act No. 54 of 1981), the dividends (other than those distributed out of profits of a capital nature) distributed by such company during the year of assessment on shares included in a unit portfolio comprised in any unit trust scheme in property shares authorised under the said Act;”.

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

13. Section 12B of the principal Act is hereby amended by the substitution for paragraph (f) of subsection (1) of the following paragraph:  
 “(f) machinery, implement, utensil or article (other than livestock) which is on or after 1 July 1988 brought into use for the first time by any taxpayer and used by him [for farming purposes] in the carrying on of his farming operations, except any motor vehicle the sole or primary function of which is the conveyance of persons or any caravan or any aircraft (other than an aircraft used solely or mainly for the purpose of crop-spraying) or any office furniture or equipment.”.

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

14. Section 14 of the principal Act is hereby amended by the addition of the following subsection:  
 “(6)(a) The provisions of subsection (1A) shall only apply to any parent company as contemplated in that subsection in relation to any allowance arising from any assessed loss incurred by the subsidiary company as contemplated in that subsection in so far as such assessed loss arises from the business carried on by such subsidiary company as the owner of any ship acquired in terms of an agreement formally and finally signed by all parties to the agreement on or before 12 March 1997.  
 (b) Where a parent company as contemplated in subsection (1D) made an election as contemplated in that subsection, such parent company and a subsidiary company as contemplated in that subsection in relation to such parent company, shall, notwithstanding the provisions of that subsection, for the purposes of this Act only be deemed to be or to have been one and the same company in so far as it relates to any business carried on by such subsidiary company as the owner of any ship acquired in terms of an agreement formally and finally signed by all parties to the agreement on or before 12 March 1997.”.

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

15. Section 20 of the principal Act is hereby amended by the substitution for subparagraph (i) of paragraph (a) of subsection (1) of the following subparagraph:  
 “(i) no person whose estate has been voluntarily or compulsorily sequestered shall [unless the order of sequestration has been set aside] be entitled to carry forward any assessed loss incurred prior to the date of sequestration, unless the order of sequestration has been set aside, in which case the amount to be so carried forward shall be reduced by an amount which was allowed to be set off against the income of the insolvent estate of such person from the carrying on of any trade in the Republic;”.

**Insertion of section 23G in Act 58 of 1962**

16.(1) The following section is hereby inserted in the principal Act after section 23F:

**“Sale and leaseback arrangements**

**23G.(1)** For the purposes of this section—

‘asset’ means any asset, whether movable or immovable, or corporeal or 5  
incorporeal;

‘sale and leaseback arrangement’ means any arrangement whereby—

- (a) any person disposes of any asset (whether directly or indirectly) to any 10  
other person; and
- (b) such person or any connected person in relation to such person leases 10  
(whether directly or indirectly) such asset from such other person.

(2) Where the receipts or accruals of any person, who is a lessee or 15  
sublessee in relation to a sale and leaseback arrangement, do not for the 15  
purposes of this Act constitute income of such person—

- (a) any amount which is received by or accrues to any lessor in relation to 15  
such sale and leaseback arrangement, shall be limited to an amount 15  
which constitutes interest as contemplated in section 24J; and
- (b) such lessor shall, notwithstanding the provisions of this Act, not be 20  
entitled to any deduction in terms of section 11(e), (f) or (gA), 12B, 20  
12C or 13 in respect of an asset which is the subject matter of such sale 20  
and leaseback arrangement.

(3) Where the receipts or accruals of any person, who is a lessor in 25  
relation to a sale and leaseback arrangement, arising from such arrangement 25  
do not for the purposes of this Act constitute income of such person, any 25  
deduction to which a lessee or sublessee in relation to such sale and 25  
leaseback arrangement is entitled under the provisions of this Act shall, 25  
subject to the provisions of section 11(f), be limited to an amount which 25  
constitutes interest as contemplated in section 24J.

(4) The provisions of subsection (2)(a) shall not apply to any person who 30  
is both a lessor and a lessee in relation to the same sale and leaseback 30  
arrangement during any year of assessment.”.

(2) The provisions of subsection (1) shall be deemed to have come into operation on 5 June 1997 and shall apply in respect of any such arrangement entered into on or after that date.

**Amendment of section 24 of Act 58 of 1962, as substituted by section 16 of Act 65 35  
of 1986 and amended by section 6 of Act 108 of 1986 and section 23 of Act 101 of 35  
1990**

17.(1) Section 24 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

“(1) Subject to the provisions of section 24J, if any taxpayer has entered into 40  
any agreement with any other person in respect of any property the effect of 40  
which is that, in the case of movable property, the ownership shall pass or, in 40  
the case of immovable property, transfer shall be passed from the taxpayer to 40  
that other person, upon or after the receipt by the taxpayer of the whole or a 45  
certain portion of the amount payable to the taxpayer under the agreement, the 45  
whole of that amount shall for the purposes of this Act be deemed to have 45  
accrued to the taxpayer on the day on which the agreement was entered into.”.

(2) Subsection (1) shall come into operation on 1 January 1998 and shall apply in respect of any instrument issued or transferred on or after that date.

**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 and section 13 of Act 36 of 1996**

18. Section 24I of the principal Act is hereby amended—
- (a) by the addition of the word “or” at the end of subparagraph (iv) of paragraph (b) of subsection (5); and
  - (b) by the insertion after subparagraph (iv) of paragraph (b) of subsection (5) of the following subparagraph:
    - “(v) recorded during that year of assessment at the forward rate on the transaction date as contemplated in paragraph (a)(i) of the definition of ‘ruling exchange rate’.”

**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**

- 19.(1) Section 24J of the principal Act is hereby amended—
- (a) by the substitution for the definition of “interest” in subsection (1) of the following definition:
    - “ ‘interest’ includes the—
    - (a) gross amount of any interest or related finance charges, discount or premium payable or receivable in terms of or in respect of a financial arrangement;
    - (b) gross amount of any amount payable by a borrower to the lender, in respect of any interest-bearing arrangement, irrespective of the term of such arrangement, which would have constituted a ‘lending arrangement’ as defined in section 23(1) of the Stamp Duties Act, 1968 (Act No. 77 of 1968), had the term of such arrangement been less than six months to which the lender would, but for such lending arrangement, have been entitled; and
    - (c) absolute value of the difference between all amounts receivable and payable by a person in terms of a sale and leaseback arrangement as contemplated in section 23G throughout the full term of such arrangement, to which such person is a party, irrespective of whether such amount is—
      - [a] (i) calculated with reference to a fixed rate of interest or a variable rate of interest; or
      - [(b)](ii) payable or receivable as a lump sum or in unequal instalments during the term of the financial arrangement;”;
  - (b) by the insertion after the definition of “interest” in subsection (1) of the following definition:
    - “ ‘interest rate agreement’ means an interest rate agreement as defined in section 24K;”;
  - (c) by the substitution for the exclusions to the definition of “instrument” in subsection (1) of the following exclusion:
    - “[(A)] any lease agreement (other than a sale and leaseback arrangement as contemplated in section 23G); **and**
    - (B) any agreement qualifying for an allowance contemplated in section 24(2) to the extent that such section is applicable to the holder of such agreement]**”;
  - (d) by the substitution for paragraph (a) of subsection (9) of the following paragraph:
    - “(a) Any company whose business comprises the dealing in instruments (including the short selling of instruments) or interest rate agreements may elect that the provisions of subsections (2) to (8), inclusive, and section 24K shall not apply to all such instruments or interest rate agreements in respect of which it so deals in.”;
  - (e) by the substitution for subparagraph (ii) of paragraph (b) of subsection (9) of the following subparagraph:
    - “(ii) be accompanied by a statement setting forth full details of the methodology to be applied by the company to determine the market



- value as contemplated in paragraph (c) in relation to all instruments or interest rate agreements contemplated in paragraph (a);”;
- (f) by the substitution for items (A) and (B) of subparagraph (iii) of paragraph (b) of subsection (9) of the following items, respectively:
- “(A) the methodology to be applied by such company to determine the market value as contemplated in paragraph (c) in respect of such instruments or interest rate agreements; and 5
- (B) the manner in which such market value in relation to such instruments or interest rate agreements is to be taken into account in the determination of the taxable income of such company during any year of assessment; and”;
- (g) by the substitution for subparagraph (iv) of paragraph (b) of subsection (9) of the following subparagraph:
- “(iv) subject to the provisions of paragraphs (e) and (f), be binding upon such company in respect of all such instruments and interest rate agreements during the year of assessment in which it took effect and every succeeding year of assessment.”;
- (h) by the substitution for paragraphs (c) and (d) of subsection (9) of the following paragraphs, respectively:
- “(c) The market value in relation to all instruments and interest rate agreements contemplated in paragraph (a) of a company which made an election as contemplated in such paragraph shall be determined in accordance with commercially accepted practice which is applied by such company consistently in respect of all such instruments and interest rate agreements for financial reporting purposes to its shareholders. 20 25
- (d) Any instrument or interest rate agreement contemplated in paragraph (a) which as a result of an election made in terms of such paragraph is to be dealt with on a market value basis as contemplated in the foregoing provisions of this subsection shall (subject to the provisions of paragraphs (e) and (f)) be so dealt with until the date of redemption or transfer of such instrument or interest rate agreement.”;
- (i) by the substitution for the words preceding the proviso to subparagraph (ii) of paragraph (f) of subsection (9) of the following words:
- “an appropriate adjustment shall be made to the taxable income of such company during such year of assessment in relation to all instruments or interest rate agreements contemplated in paragraph (a) of the company held and not disposed of or not redeemed by it, as the case may be, as at the end of such year of assessment, having regard to all interest which would have been deemed to have been incurred by or accrued to such company had the provisions of this subsection not been applicable during all years of assessment before such year of assessment and all amounts which have been included in or deducted from the income of such company during such years of assessment.”;
- (2)(a) Subsection (1)(a) shall—
- (i) in so far as it relates to paragraph (b) of the definition of “interest” in section 24J of the principal Act, for the purposes of the principal Act, come into operation on the date of promulgation of this Act and shall apply in respect of amounts payable after that date; 45
- (ii) in so far as it relates to paragraph (b) of the definition of “interest” in section 24J of the principal Act, for the purposes of the Tax on Retirement Funds Act, 1996 (Act No. 38 of 1996), be deemed to have come into operation on 1 March 1997 and shall apply in respect of amounts payable on or after that date; 50
- (iii) in so far as it inserts paragraph (c) of the definition of “interest” in section 24J of the principal Act, be deemed to have come into operation on 5 June 1997. 55
- (b) Subsection (1)(b), (d), (e), (f), (g), (h) and (i) shall come into operation on the date of promulgation of this Act and shall apply in respect of any interest rate agreement entered into on or after that date.
- (c) Subsection (1)(c) shall—
- (i) in so far as it amends item (A) of the definition of “instrument” in 60

- section 24J of the principal Act, be deemed to have come into operation on 5 June 1997;
- (ii) in so far as it relates to the deletion of item (B) of the definition of “instrument” in section 24J of the principal Act, come into operation on 1 January 1998 and shall apply in respect of any instrument issued or transferred on or after that date. 5

**Insertion of section 24K in Act 58 of 1962**

20.(1) The following section is hereby inserted in the principal Act after section 24J:

**“Incurral and accrual of amounts in respect of interest rate agreements 10**

**24K.(1)** For the purposes of this section ‘interest rate agreement’ means any agreement in terms of which any person—

- (a) acquires the right to receive—
- (i) an amount calculated by applying any rate of interest to a notional principal amount specified or referred to in such agreement; or 15
  - (ii) an amount calculated with reference to the difference between any combination of rates of interest applied to a notional principal amount specified or referred to in such agreement; or
  - (iii) a fixed amount specified or referred to in such agreement as consideration in terms of such agreement whereunder the obligation is imposed to pay any other amount as contemplated in paragraph (b)(i) in terms of such agreement or an amount equal to the difference between such fixed amount and such other amount; or 20
- or
- (b) becomes liable to pay— 25
- (i) an amount calculated by applying any rate of interest to a notional principal amount specified or referred to in such agreement; or
  - (ii) an amount calculated with reference to the difference between any combination of rates of interest applied to a notional principal amount specified or referred to in such agreement; or 30
  - (iii) a fixed amount specified or referred to in such agreement as consideration in terms of such agreement whereunder the right is acquired to receive any other amount as contemplated in paragraph (a)(i) in terms of such agreement or an amount equal to the difference between such fixed amount and such other amount. 35

(2) Any amount contemplated in the definition of ‘interest rate agreement’ in subsection (1) shall for the purposes of this Act be deemed to have been incurred by or accrued to, as the case may be, a person contemplated in such definition on a day to day basis (which conforms with generally accepted accounting practice and is consistently applied for all financial reporting purposes) during the period in respect of which it is calculated. 40

(3) Where any amount contemplated in subsection (2) is to be calculated with reference to a variable rate for the purposes of such subsection, such amount shall be calculated with reference to the variable rate applicable on the date such amount is to be calculated to determine all amounts payable or receivable after such date.” 45

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

**Insertion of section 25C in Act 58 of 1962**

21. The following section is hereby inserted in the principal Act after section 25B:

**“Income of insolvent estates**

**25C.** Where the whole or a part of any business undertaking of any person whose estate has been voluntarily or compulsorily sequestrated, is transferred to the trustee or administrator of such person’s insolvent estate, the estate of such person prior to sequestration and such person’s insolvent estate shall, for the purposes of this Act, and subject to any such adjustments as may be necessary, be deemed to be one and the same person.”.

**Amendment of section 55 of Act 58 of 1962, as amended by section 25 of Act 90 of 1988**

22. Section 55 of the principal Act is hereby amended by the substitution for the words “Supreme Court” in paragraph (d) of subsection (2) of the words “High Court”.

**Amendment of section 62 of Act 58 of 1962, as amended by section 8 of Act 114 of 1977 and section 36 of Act 101 of 1990**

23.(1) Section 62 of the principal Act is hereby amended by the substitution for paragraph (a) of the proviso to subsection (2) of the following paragraph:

“(a) where it is established to the satisfaction of the Commissioner that the property which is subject to any such interest could not reasonably be expected to produce an annual yield equal to 12 per cent on such value of the property, the Commissioner may fix such sum as representing the annual yield as may seem to him to be reasonable, and the sum so fixed shall for the purposes of [paragraph] paragraphs (a) and (c) of subsection (1) be deemed to be the annual value of the enjoyment of such property;”.

(2) Section (1) shall come into operation on the date of promulgation of this Act and shall apply to any property disposed of under a donation which takes effect on or after that date.

**Repeal of Part VI of Chapter II of Act 58 of 1962**

24.(1) Part VI of Chapter II of the principal Act is hereby repealed.  
(2) Subsection (1) shall come into operation on 1 January 1998.

**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 and section 13 of Act 46 of 1996**

25.(1) Section 64B of the principal Act is hereby amended—

- (a) by the substitution for the definition of “share incentive scheme” in subsection (1) of the following definition:  
“ ‘share incentive scheme’ means a scheme in terms of which not more than 10 per cent of the equity share capital of a company is—
- (a) held by the directors and full-time employees of—
- (i) such company; or
- (ii) an associated institution, as defined in paragraph 1 of the Seventh Schedule, in relation to such company,
- in terms of a share incentive scheme carried on for their own benefit;
- (b) held by a trustee for the benefit of such directors and employees under a scheme referred to in section 38(2)(b) of the Companies Act, 1973 (Act No. 61 of 1973); or
- (c) collectively held by [both] such directors and full-time employees, and such a trustee.”; and

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

“(a) If any dividend subject to the payment of secondary tax on companies has been declared by a company which derives profits from sources within and outside the Republic, the secondary tax on companies in respect of that dividend shall be calculated on an amount which bears to the net amount of that dividend the same ratio as the sum of the net annual profits of the company derived from sources within or deemed to be within the Republic in terms of section 9 or 9C bears to the total sum of its net annual profits derived from all sources.”.

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

(b) Subsection (1)(b) shall come into operation on 1 July 1997.

**Amendment of section 70 of Act 58 of 1962, as amended by section 11 of Act 6 of 1963, section 20 of Act 90 of 1964, section 43 of Act 85 of 1974 and section 24 of Act 69 of 1975**

26. Section 70 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

“(1) Where, during any period of 12 months ending on the last day of February in any year, any interest has become due by any company upon or in respect of debentures, debenture stock, loans or advances, the company shall, within 30 days after the end of such period or within such further period as the Commissioner may allow, furnish the Commissioner with a return giving—

(a) the full name and address; and

(b) in the case of—

(i) any natural person, his or her identification number: Provided that where he or she is not in possession of a South African identity document, any other form of identification; or

(ii) any person other than a natural person, the registration number, of each person to whom such interest became due and the amount of such interest.”.

**Amendment of section 74 of Act 58 of 1962, as substituted by section 14 of Act 46 of 1996**

27. Section 74 of the principal Act is hereby amended by the substitution for the definition of “judge” in subsection (1) of the following definition:

“ ‘judge’ means a judge of the [Supreme] High Court and includes a judge in chambers;”.

**Amendment of section 74C of Act 58 of 1962, as inserted by section 14 of Act 46 of 1996**

28. Section 74C of the principal Act is hereby amended by the substitution for subsection (3) of the following subsection:

“(3) A judge may, on *[ex parte]* application by the Commissioner or any officer contemplated in section 74(4), grant an order in terms of which a person contemplated in subsection (7) is designated to act as presiding officer at the inquiry contemplated in this section.”.

**Amendment of section 74D of Act 58 of 1962, as inserted by section 14 of Act 46 of 1996**

29. Section 74D of the principal Act is hereby amended by the substitution for the words preceding paragraph (a) of subsection (1) of the following words:

“For the purposes of the administration of this Act, a judge may, on *[ex parte]* application by the Commissioner or any officer contemplated in section 74(4), issue a warrant, authorising the officer named therein to, without prior notice and at any time—”.

**Amendment of section 83 of Act 58 of 1962, as amended by section 21 of Act 90 of 1964, section 22 of Act 103 of 1976, section 15 of Act 104 of 1979, section 19 of Act 96 of 1985, section 16 of Act 70 of 1989, section 36 of Act 129 of 1991 and section 36 of Act 113 of 1993**

- 30.** Section 83 of the principal Act is hereby amended— 5
- (a) by the substitution for the words “Supreme Court” in subsections (2) and (6) of the words “High Court”;
  - (b) by the substitution for the proviso to subsection (2) of the following proviso: “Provided that in all cases relating to the business of mining such third member shall, if the President of the court, the Commissioner or the appellant so desires, be a qualified mining engineer.”; and 10
  - (c) by the substitution for the words “State President”, wherever they occur in subsections (3) and (5)(a) and (b), of the words “President of the Republic”.

**Amendment of section 86A of Act 58 of 1962, as inserted by section 24 of Act 103 of 1976 and amended by section 39 of Act 113 of 1993** 15

- 31.** Section 86A of the principal Act is hereby amended—
- (a) by the substitution for the words “Supreme Court” in paragraph (a) of subsection (2) of the words “High Court”;
  - (b) by the substitution for the words “Appellate Division of the Supreme Court” in paragraph (b) of subsection (2) of the words “Supreme Court of Appeal”; 20
  - (c) by the substitution for the words “Supreme Court” in paragraph (a) of subsection (4) of the words “High Court”;
  - (d) by the substitution for the words “Appellate Division of the Supreme Court” in paragraph (b) of subsection (4) of the words “Supreme Court of Appeal”;
  - (e) by the substitution for the words “Appellate Division of the Supreme Court” and “said Division” in subsection (5) of the words “Supreme Court of Appeal” and “said Court”, respectively; 25
  - (f) by the substitution for the words “Supreme Court” in subsection (6) of the words “High Court”;
  - (g) by the substitution for the words “Appellate Division of the Supreme Court” and “said Division” in paragraph (a) of subsection (7) of the words “Supreme Court of Appeal” and “said Court”, respectively; 30
  - (h) by the substitution for the words “Supreme Court” in paragraph (b) of subsection (7) of the words “High Court”; and
  - (i) by the substitution for the words “Supreme Court” in subsection (19) of the words “High Court”. 35

**Amendment of section 87 of Act 58 of 1962**

**32.** Section 87 of the principal Act is hereby amended by the substitution for the words “Supreme Court” of the words “High Court”.

**Insertion of section 89~~sex~~ in Act 58 of 1962** 40

**33.** The following section is hereby inserted in the principal Act after section 89~~sex~~*quin*:

**“Determination of day for payment of tax, interest or penalties**

**89~~sex~~.** Where any day specified for any payment to be made under the provisions of this Act, or the last day of any period within which payment under any provision of this Act shall be made, falls on a Saturday, Sunday or a public holiday, such payment shall be made not later than the last business day falling prior to such Saturday, Sunday or public holiday.” 45

**Amendment of section 93 of Act 58 of 1962**

- 34.**(1) Section 93 of the principal Act is hereby amended—
- (a) by the substitution for subsection (1) of the following subsection: 50  
“(1) If the Commissioner has, in accordance with any arrangements made

with the government of any other country [or territory] by an agreement entered into [under] in accordance with section 108 or the corresponding provisions of any previous Income Tax Act with a view to rendering reciprocal assistance in the collection of taxes, received a request for the collection from any person in the Republic of an amount alleged to be due by him under the income tax laws of such other country [or territory], the Commissioner may, by notice in writing, call upon such person to state, within a period specified in the notice, whether or not he admits liability for the said amount or for any lesser amount.”;

(b) by the substitution for paragraph (b) of subsection (2) and the words following upon that paragraph of the following paragraph and words:

“(b) if such person fails to comply with the notice or in answer to the notice denies his liability for the said amount or for any part thereof, and the President of the special court has certified that he has afforded the person concerned an opportunity of presenting his case, and that on the information submitted to him by the Commissioner and by such person (if any), the amount specified in the certificate appears to be payable by such person in terms of a final determination under the income tax laws of such other country [or territory],

by notice in writing require such person to pay the amount for which he has admitted liability or the amount so specified, as the case may be, on a date, at a place and to a person specified in the notice, for transmission to the proper authority in such other country [or territory].”;

(c) by the substitution for subsections (3) and (4) of the following subsections, respectively:

“(3) If such person fails to comply with the notice under subsection (2) the amount in question may, subject, in the case of any amount to which any such certificate relates, to the outcome of any proceedings which such person may institute in such other country [or territory] for determining his liability for the said amount, be recovered for transmission to the said authority as if it were a tax payable by such person under this Act.

(4) No steps taken in any other country [or territory] under any arrangements referred to in subsection (1), for the collection of an amount alleged to be due by any person under the income tax laws of the Republic, and no judgment given against any such person in pursuance of such arrangements in such other country [or territory] for any such amount, shall affect his right to have his liability for any such amount determined in the Republic in accordance with the provisions of the relevant law.”.

(2) Subsection (1) shall be deemed to have come into operation on 1 May 1997.

**Amendment of section 95 of Act 58 of 1962, as amended by section 27 of Act 90 of 1962**

35. Section 95 of the principal Act is hereby amended by the substitution for subsection (1)*bis* of the following subsection:

“(1)*bis* Every representative taxpayer referred to in [paragraph] paragraphs (e) and (f) of the definition of ‘representative taxpayer’ in section 1 shall as regards the income received by or accrued to any—

(a) deceased person during his lifetime; or

(b) insolvent person prior to the date of sequestration of his estate,

be subject in all respects to the same duties, responsibilities and liabilities as if the income were income received by or accrued to or in favour of him beneficially and shall be liable to assessment in his own name in respect of that income, but any such assessment shall be deemed to be made upon him in his representative capacity only.”.

**Amendment of section 96 of Act 58 of 1962, as amended by section 28 of Act 90 of 1962**

36. Section 96 of the principal Act is hereby amended by the substitution for subsection (2) of the following subsection:

“(2) Every representative taxpayer referred to in **[paragraph]** paragraphs (e) and (f) of the definition of ‘representative taxpayer’ in section 1 who, as such, pays any tax in respect of the taxable income of any—  
 (a) deceased person; or  
 (b) insolvent person prior to the date of sequestration of his estate,  
 shall be entitled to recover the amount so paid from the estate of such deceased or insolvent person or to retain out of any moneys of the estate of such deceased or insolvent person that may be in his possession or that may come to him as executor or trustee of such estate, an amount equal to the amount so paid.”

**Amendment of section 107 of Act 58 of 1962, as amended by section 26 of Act 65 of 1973, section 46 of Act 97 of 1986 and section 29 of Act 21 of 1994**

37. Section 107 of the principal Act is hereby amended by the substitution for the expression “fifty rand” in subsection (2) of the expression “R1 000”.

**Amendment of section 108 of Act 58 of 1962, as amended by section 15 of Act 101 of 1978 and section 25 of Act 96 of 1981**

38.(1) Section 108 of the principal Act is hereby amended—

(a) by the substitution for subsections (1) and (2) of the following subsections, respectively:

“(1) The **[State President]** National Executive may enter into an agreement with the government of any other country **[or territory]**, whereby arrangements are made with such government with a view to the prevention, mitigation or discontinuance of the levying, under the laws of the Republic and of such other country, **[or territory]** of tax in respect of the same income, profits or gains, or tax imposed in respect of the same donation, or to the rendering of reciprocal assistance in the administration of and the collection of taxes under the said laws of the Republic and of such other country **[or territory]**.”

(2) As soon as may be after the **[conclusion]** approval by Parliament of any such agreement, as contemplated in section 231 of the Constitution, the arrangements thereby made shall be notified by **[proclamation by the State President]** publication in the *Gazette* **[whereupon until such proclamation is revoked by the State President]** and the arrangements so notified **[therein shall so far as they relate to immunity, exemption or relief in respect of such tax in the Republic]** shall thereupon have effect as if enacted in this Act **[but only if and for so long as such arrangements, in so far as they relate to immunity, exemption or relief in respect of such tax levied or leviable in such other country or territory, have the effect of law in such country or territory]**.”;

(b) by the deletion of subsections (3) and (4); and

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

“(5) The duty imposed by any law to preserve secrecy with regard to such tax shall not prevent the disclosure to any authorized officer of the country **[or territory mentioned in any proclamation issued in terms of subsection (2)]** contemplated in subsection (1), of the facts, knowledge of which is necessary to enable it to be determined whether immunity, exemption or relief ought to be given or which it is necessary to disclose in order to render or receive assistance in accordance with the arrangements notified in **[such proclamation]** terms of subsection (2).”.

(2) Subsection (1) shall be deemed to have come into operation on 1 May 1997.

**Repeal of section 110bis of Act 58 of 1962**

39. Section 110bis of the principal Act is hereby repealed.

**Amendment of paragraph 19 of First Schedule to Act 58 of 1962, as added by section 28 of Act 95 of 1967 and amended by section 43 of Act 89 of 1969, section 33 of Act 88 of 1971, section 22 of Act 90 of 1972, section 32 of Act 69 of 1975, section 30 of Act 103 of 1976, section 16 of Act 104 of 1979, section 25 of Act 104 of 1980, section 29 of Act 91 of 1982, section 45 of Act 94 of 1983, section 42 of Act 129 of 1991 and section 34 of Act 21 of 1995** 5

40. Paragraph 19 of the First Schedule to the principal Act is hereby amended by the substitution for the expressions “three thousand rand” and “four thousand five hundred rand” in item (b) of subparagraph (2), wherever they occur, of the expressions “R5 000” and “R7 500”, respectively. 10

**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 and section 35 of Act 21 of 1995** 15

41.(1) Paragraph 1 of the Second Schedule to the principal Act is hereby amended—  
(a) by the insertion after the definition of “formula B” of the following definition: 20  
“ ‘formula C’, in relation to any fund referred to in paragraphs (a) and (b) of the definition of ‘pension fund’ in section 1 of this Act, means the formula—

$$A = \frac{B}{C} \times D$$
 25

in which formula—

- (a) ‘A’ represents the amount which has to be determined;
  - (b) ‘B’ represents the number of completed years of employment of the taxpayer after 1 March 1998, including previous or other periods of service approved as pensionable service in terms of the rules of any fund after 1 March 1998, which is, in terms of the rules of the fund in question, taken into account for the purpose of determining the amount of the benefits payable to him by the fund or, if the number of completed years of employment is not taken into account for that purpose, the number of completed years after 1 March 1998 during which the taxpayer had, until the date of accrual of any benefit, been a member of the fund; 30
  - (c) ‘C’ represents the total number of completed years taken into account for the purpose of determining the amount of the benefits payable to the taxpayer by the fund or, if the number of completed years of employment is not taken into account for that purpose, the number of completed years during which the taxpayer had, until the date of accrual of any benefit, been a member of the fund; 35
  - (d) ‘D’ represents the lump sum benefit payable to the taxpayer;”;
- (b) by the substitution for the definition of “pension fund” of the following definition: 40

“ ‘pension fund’, in relation to any taxpayer, means—

- (a) a fund [**other than a fund referred to in paragraph (a) or (b) of the definition of ‘pension fund’ in section 1 of this Act**] which has in respect of the year of assessment in question or any previous year of assessment been approved by the Commissioner as a pension fund under 45 50



**[the said definition]** paragraph (c) of the definition of ‘pension fund’ in section 1 or a corresponding definition in any previous Income Tax Act;

or

(b) a fund referred to in paragraph (a) or (b) of the definition of ‘pension fund’ in section 1 of this Act (other than a fund referred to in paragraph (b) of the definition of ‘provident fund’), the rules of which wholly or mainly provide for annuities on retirement to its members,

if during any such year the taxpayer was a member of such fund;” and

(c) by the substitution for the definition of ‘provident fund’ of the following definition:

“ ‘provident fund’, in relation to any taxpayer, means—

(a) a fund which has in respect of the year of assessment in question or any previous year of assessment been approved by the Commissioner as a provident fund as defined in section 1 of this Act or the corresponding provisions of any previous Income Tax Act; or

(b) a fund referred to in paragraph (a) or (b) of the definition of ‘pension fund’ in section 1, the rules of which provide for benefits in a lump sum exceeding one-third of the capitalised value of all benefits (including lump sum payments and annuities) to its members on retirement,

if during any such year the taxpayer was a member of such fund;”.

(2) Subsection (1) shall come into operation on 1 March 1998.

#### **Amendment of paragraph 2 of Second Schedule to Act 58 of 1962**

42. The following paragraph is hereby substituted for paragraph 2 of the Second Schedule to the principal Act:

“2. Subject to the provisions of paragraph 2A, the amount to be included in the gross income of any person in terms of paragraph (e) of the definition of ‘gross income’ in section 1 of this Act shall be the aggregate of the amounts received by or accrued to such person by way of lump sum benefits during any year of assessment from any pension funds, provident funds or retirement annuity funds, less the deductions permitted under the provisions of this Schedule.”.

#### **Insertion of paragraph 2A in Second Schedule to Act 58 of 1962**

43.(1) The following paragraph is hereby inserted after paragraph 2 of the Second Schedule to the principal Act:

“2A. For the purposes of paragraph 2, where any lump sum benefit is received 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.”.

(2) Subsection (1) shall come into operation on 1 March 1998.

**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 and section 34 of Act 36 of 1996**

44.(1) Paragraph 1 of the Fourth Schedule to the principal Act is hereby amended—

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

“(a) any amount referred to in paragraph (a), (c), (d), (e), (eA) or (f) of the

definition of 'gross income' in section 1 of this Act;"; and

(b) by the substitution for the expression "35 per cent" in paragraph (c) of the definition of "remuneration" of the expression "40 per cent".

(2)(a) Subsection (1)(a) shall be deemed to have come into operation on 12 March 1997 and shall apply in respect of all amounts transferred or amounts representing amounts converted for the benefit of any person on or after that date. 5

(b) Subsection (1)(b) shall be deemed to have come into operation on 1 July 1997.

**Amendment of paragraph 2 of Fourth Schedule to Act 58 of 1962, as added by section 19 of Act 6 of 1963 and amended by section 23 of Act 72 of 1963, section 29 of Act 55 of 1966, section 38 of Act 88 of 1971, section 48 of Act 85 of 1974, section 28 of Act 113 of 1977, section 40 of Act 90 of 1988, section 21 of Act 70 of 1989, section 45 of Act 101 of 1990, section 45 of Act 129 of 1991 and section 38 of Act 21 of 1995** 10

45.(1) Paragraph 2 of the Fourth Schedule to the principal Act is hereby amended by the addition of the following subparagraph: 15

“(6) Any amount included in gross income in terms of paragraph (eA) of the definition of 'gross income' shall for the purposes of this Schedule be deemed to be an amount which an employer pays or becomes liable to pay by way of remuneration to an employee.”

(2) Subsection (1) shall be deemed to have come into operation on 12 March 1997 and shall apply in respect of all amounts transferred or amounts representing amounts converted for the benefit of any person on or after that date. 20

**Amendment of paragraph 9 of Fourth Schedule to Act 58 of 1962, as added by section 19 of Act 6 of 1963 and amended by section 39 of Act 88 of 1971, section 32 of Act 103 of 1976, section 29 of Act 104 of 1980 and section 46 of Act 101 of 1990** 25

46.(1) Paragraph 9 of the Fourth Schedule to the principal Act is hereby amended by the insertion after subparagraph (3) of the following subparagraph:

“(4) The amount to be deducted or withheld in respect of any amount contemplated in paragraph (eA) of the definition of 'gross income' in section 1 of this Act, shall be ascertained by the employer on inquiry from the Commissioner before the date of transfer or conversion of any amount for the benefit or ultimate benefit of any member as contemplated in such paragraph and the Commissioner's determination of the amount to be so deducted or withheld shall be final.” 30

(2) Subsection (1) shall be deemed to have come into operation on 12 March 1997 and shall apply in respect of all amounts transferred or amounts representing amounts converted for the benefit of any person on or after that date. 35

**Amendment of paragraph 11A of Fourth Schedule to Act 58 of 1962, as inserted by section 45 of Act 89 of 1969**

47. Paragraph 11A of the Fourth Schedule to the principal Act is hereby amended by the substitution for the expression "two hundred rand" in subparagraph (7) of the expression "R2 000". 40

**Amendment of paragraph 11B of Fourth Schedule to Act 58 of 1962, as inserted by section 41 of Act 90 of 1988 and amended by section 22 of Act 70 of 1989, section 47 of Act 101 of 1990, section 46 of Act 129 of 1991, section 34 of Act 141 of 1992, section 3 of Act 168 of 1993, section 40 of Act 21 of 1995 and section 35 of Act 36 of 1996** 45

48. Paragraph 11B of the Fourth Schedule to the principal Act is hereby amended by the substitution for the expression "R50 000" in subparagraphs (2) and (3), wherever it occurs, of the expression "R60 000".

**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 and section 56 of Act 101 of 1990**

49. Paragraph 2 of the Seventh Schedule to the principal Act is hereby amended by the substitution for subparagraph (d) of the following subparagraph: 5

“(d) the employee has been provided with residential accommodation (whether furnished or unfurnished and with or without board, meals, fuel, power or water) either free of charge or for a rental consideration payable by the employee which is less than the rental value of such accommodation as determined under the applicable provisions of paragraph 9[(3), (4) or (5)]; 10 or”.

**Amendment of paragraph 7 of Seventh Schedule to Act 58 of 1962, as added by section 46 of Act 121 of 1984 and amended by section 30 of Act 96 of 1985, section 10 of Act 108 of 1986, Government Notice No. 956 of 11 May 1988, section 44 of Act 90 of 1988, Government Notice No. R.715 of 14 April 1989, section 25 of Act 70 of 1989, Government Notice No. R.764 of 29 March 1990, section 58 of Act 101 of 1990, section 50 of Act 129 of 1991, section 36 of Act 141 of 1992, section 32 of Act 21 of 1994 and section 47 of Act 21 of 1995** 15

50.(1) Paragraph 7 of the Seventh Schedule to the principal Act is hereby amended by the substitution in subparagraph (4) for the words preceding the second proviso to item 20 (a) of the following words:

“as respects each such month, be an amount equal to [1,2] 1,8 per cent of the determined value of such motor vehicle: Provided that—

- (i) where more than one motor vehicle is made available by an employer to a particular employee at the same time and the provisions of subparagraph (6) are not applicable in the case of such vehicles, the said value shall be an amount equal to [1,2] 1,8 per cent of the determined value of the motor vehicle having the highest determined value and [2] 4 per cent of the determined value of every other such motor vehicle; and 25
- (ii) where the employee has in addition to the right to use a vehicle also been granted an allowance in respect of transport expenses in respect of another vehicle for the same period (excluding any allowance or advance contemplated in section 8(1)(b)(iii)), such vehicle shall be deemed to be a vehicle in respect of which the rate of 4 per cent shall apply for the purposes of subitem (i):” 30 35

(2) Subsection (1) shall be deemed to have come into operation on 1 July 1997.

**Amendment of paragraph 9 of Seventh Schedule to Act 58 of 1962, as added by section 46 of Act 121 of 1984 and amended by section 31 of Act 96 of 1985, section 34 of Act 65 of 1986, section 29 of Act 85 of 1987, section 59 of Act 101 of 1990, section 53 of Act 113 of 1993 and section 33 of Act 21 of 1994** 40

51.(1) Paragraph 9 of the Seventh Schedule to the principal Act is hereby amended—

- (a) by the substitution for the expressions “15”, “16” and “17” in item (c) of subparagraph (3) of the expressions “16”, “17” and “18”, respectively;
- (b) by the substitution for the expression “R35” in item (b) of subparagraph (4) of the expression “R100”; 45
- (c) by the substitution for subparagraph (6) of the following subparagraph:

“(6) Where any employee has been provided by his employer with residential accommodation consisting of two or more residential units situated at different places which the employee is entitled to occupy from time to time while performing his duties [such units shall for the purposes of this Schedule be deemed to be one residential unit and] the cash equivalent of the value of the benefit of such units which shall be included in the gross income of the employee shall be the value of the unit with the highest rental value determined under subparagraph (2) [as for one residential unit] over 50

the full period during which the employee was entitled to occupy more than one unit.”; and

- (d) by the substitution for subparagraphs (9) and (10) of the following subparagraphs, respectively:

“(9) Notwithstanding the provisions of subparagraph (3), where the employee has an interest in the accommodation in question, as contemplated in subparagraph (10) and the accommodation has been let to the employer or to any associated institution in relation to the employer, the rental value of the accommodation shall be deemed to be the [sum of the rental] greater of—

(i) the total amount of the rentals payable therefor by the employer or associated institution in relation to the employer and any other expenditure defrayed by the employer or associated institution in respect of such accommodation; or

(ii) the rental value determined in accordance with subparagraph (3), and in such case the said rental shall for the purposes of this Act (excluding this subparagraph) be deemed not to have been received by or to have accrued to the [lessor of such accommodation] employee or any connected person in relation to the employee.

(10) For the purposes of subparagraph (9), an employee shall be deemed to have an interest in accommodation if—

(a) such accommodation is owned by the employee [his spouse or his child, or by a company in which the employee, his spouse or his child has a substantial shareholding, or by a trust in which the employee, his spouse or his child is a beneficiary] or a connected person in relation to such employee;

(b) any increase in the value of the accommodation in any manner whatsoever, whether directly or indirectly, accrues for the benefit of the employee [his spouse or his child] or a connected person in relation to such employee; or

(c) such employee or a connected person in relation to such employee, has a right to acquire the accommodation from his employer.”.

(2)(a) Subsection (1)(a) shall come into operation on 1 March 1998.

(b) Subsection (1)(b), (c) and (d) shall be deemed to have come into operation on 1 March 1997.

#### **Amendment of section 8 of Act 36 of 1996**

52. Section 8 of the Income Tax Act, 1996, is hereby amended by the substitution for paragraph (b) of subsection (2) of the following paragraph:

“(b) Subsection (1)(j) shall come into operation on the date on which section [12] 13 of the Compensation for Occupational Injuries and Diseases Amendment Act, [1996] 1997, comes into operation.”.

#### **Commencement of certain amendments**

53. Save in so far as is otherwise provided therein or the context otherwise indicates, the amendments effected to the principal Act by this Act, shall for the purposes of assessments in respect of normal tax under the principal Act, be deemed to have come into operation as from the commencement of years of assessment ending on or after 1 January 1998.

#### **Short title**

54. This Act shall be called the Income Tax Act, 1997.

## SCHEDULE

**RATES OF NORMAL TAX PAYABLE BY PERSONS OTHER THAN COMPANIES IN RESPECT OF THE YEARS OF ASSESSMENT ENDING 28 FEBRUARY 1998 AND 30 JUNE 1998, AND BY COMPANIES IN RESPECT OF YEARS OF ASSESSMENT ENDING DURING THE PERIOD OF 12 MONTHS ENDING 31 MARCH 1998**

## (Section 1)

1. The rates of normal tax referred to in section 1 of this Act in respect of persons other than companies are as follows:—

(a) In respect of the taxable income of any natural person, an amount of tax calculated in accordance with the table below:

Taxable Income	Rates of Tax in respect of Natural Persons
Where the taxable income— does not exceed R30 000 .....	19 per cent of each R1 of the taxable income;
exceeds R30 000 but does not exceed R35 000	R5 700 plus 30 per cent of the amount by which the taxable income exceeds R30 000;
“ R35 000   “   “   “   “   R45 000	R7 200 plus 32 per cent of the amount by which the taxable income exceeds R35 000;
“ R45 000   “   “   “   “   R60 000	R10 400 plus 41 per cent of the amount by which the taxable income exceeds R45 000;
“ R60 000   “   “   “   “   R70 000	R16 550 plus 43 per cent of the amount by which the taxable income exceeds R60 000;
“ R70 000   “   “   “   “   R100 000	R20 850 plus 44 per cent of the amount by which the taxable income exceeds R70 000;
exceeds R100 000 .....	R34 050 plus 45 per cent of the amount by which the taxable income exceeds R100 000;

(b) in respect of the taxable income of any person other than a natural person, an amount of tax calculated in accordance with the table below:

Taxable Income	Rates of Tax in respect of Persons other than Natural Persons
Where the taxable income— does not exceed R5 000 .....	17 per cent of each R1 of the taxable income;
exceeds R5 000 but does not exceed R10 000	R850 plus 19 per cent of the amount by which the taxable income exceeds R5 000;
“ R10 000   “   “   “   “   R15 000	R1 800 plus 21 per cent of the amount by which the taxable income exceeds R10 000;
“ R15 000   “   “   “   “   R20 000	R2 850 plus 24 per cent of the amount by which the taxable income exceeds R15 000;
“ R20 000   “   “   “   “   R30 000	R4 050 plus 28 per cent of the amount by which the taxable income exceeds R20 000;
“ R30 000   “   “   “   “   R40 000	R6 850 plus 36 per cent of the amount by which the taxable income exceeds R30 000;
“ R40 000   “   “   “   “   R50 000	R10 450 plus 41 per cent of the amount by which the taxable income exceeds R40 000;
“ R50 000   “   “   “   “   R60 000	R14 550 plus 42 per cent of the amount by which the taxable income exceeds R50 000;

Taxable Income	Rates of Tax in respect of Persons other than Natural Persons
“ R60 000    “    “    “    “    R70 000	R18 750 plus 43 per cent of the amount by which the taxable income exceeds R60 000;
“ R70 000    “    “    “    “    R100 000	R23 050 plus 44 per cent of the amount by which the taxable income exceeds R70 000;
exceeds R100 000 .....	R36 250 plus 45 per cent of the amount by which the taxable income exceeds R100 000.

2. The rates of normal tax referred to in section 1 of this Act in respect of companies are, subject to the provisions of paragraph 4, as follows:—

- (a) On each rand of the taxable income of any company (excluding taxable income referred to in subparagraphs (b), (c), (d), (e) and (f)), 35 cents, or, in the case of a company which 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, 42 cents;
- (b) on each rand of the taxable income derived by any company from mining for gold on any gold mine (with the exclusion of so much of the taxable income as the Commissioner determines to be attributable to the inclusion in the gross income of any amount referred to in paragraph (j) of the definition of “gross income” in section 1 of the principal Act, but after the set-off of any assessed loss in terms of section 20(1) of the principal Act), a percentage determined in accordance with the formula:

$$y = 43 - \frac{215}{x}$$

or, in the case of a company which is in terms of an option exercised by it exempt from the payment of secondary tax on companies, in accordance with the formula:

$$y = 51 - \frac{255}{x}$$

in which formulae y represents such percentage and x the ratio expressed as a percentage which the taxable income so derived (with the said exclusion, but before the set-off of any assessed loss or deduction which is not attributable to the mining for gold from the said mine) bears to the income so derived (with the said exclusion);

- (c) on each rand of the taxable income of any company, the sole or principal business of which in the Republic is, or has been, mining for gold and the determination of the taxable income of which for the period assessed does not result in an assessed loss, which the Commissioner determines to be attributable to the inclusion in its gross income of any amount referred to in paragraph (j) of the definition of “gross income” in section 1 of the principal Act, a rate equal to the average rate of normal tax or 35 cents, whichever is higher: Provided that for the purposes of this subparagraph, the average rate of normal tax shall be determined by dividing the total normal tax (excluding the tax determined in accordance with this subparagraph for the period assessed) paid by the company in respect of its aggregate taxable income from gold mining for the period from 1 July 1916 to the end of the period assessed, by the number of rands contained in the said aggregate taxable income;
- (d) on each rand of the taxable income derived by any company from carrying on long-term insurance business—
- (i) where such taxable income has been determined in terms of the provisions of section 28 of the principal Act, 45 cents; or

- (ii) where such taxable income has been determined in terms of the provisions of section 29 of the principal Act—
  - (aa) in respect of its individual policyholder fund, 30 cents; and
  - (bb) in respect of its company policyholder fund and corporate fund, 35 cents;
- (e) on each rand of the taxable income (excluding taxable income referred to in subparagraphs (b), (c), (d) and (f)) derived by a company which has its place of effective management outside the Republic and which carries on a trade through a branch or agency within the Republic, 40 cents;
- (f) on each rand of the taxable income derived by a qualifying company contemplated in section 37H of the principal Act, subject to the provisions of that section, zero cents;

Provided that the tax determined in accordance with any of subparagraphs (a) to (f), inclusive, shall be payable in addition to the tax determined in accordance with any other of the said subparagraphs.

3. That the rates set forth in paragraphs 1 and 2 shall be the rates required to be fixed by Parliament in accordance with the provisions of section 5(2) of the principal Act, in respect of taxable incomes derived from sources within or deemed to be within the Republic.

4. Any company which qualifies for exemption under the provisions of section 2 of the Company Tax Amendment Decree, 1994 (Decree No. 2 of 1994 of Ciskei), shall be exempt from normal tax on so much of its taxable income as is derived from a source within the territory of the former Republic of Ciskei.

5. For the purposes of paragraph 2 income derived from mining for gold shall include any income derived from silver, osmiridium, uranium, pyrites or other minerals which may be won in the course of mining for gold, and any other income which results directly from mining for gold.

6. In this Schedule, unless the context otherwise indicates, any word or expression to which a meaning has been assigned in the principal Act, bears the meaning so assigned.