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THE PRESIDENCY

No. 1844 22 December 2003

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

No. 45 of 2003: Revenue Laws Amendment Act, 2003.

DIE PRESIDENSIE

No. 1844 22 Desember 2003

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

No. 45 van 2003: Wysigingswet op Inkomstewette, 2003.

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GENERAL EXPLANATORY NOTE:

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

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

(English text signed by the President.)
(Assented to 17 December 2003.)

ACT

To amend the Transfer Duty Act, 1949, so as to further regulate the provisions relating to duty on conversion of share blocks to sectional titles and duty payable on cancellation of transactions; to provide for an exemption for conversion or renewal of certain mineral and mining rights and permits and further regulate other exemptions; to provide for additional powers to the Commissioner; to further regulate duty on sale of property to agents; to provide for additional duty for failure to perform any duties; and to provide that payment of duty is not suspended pending appeal; to amend the Estate Duty Act, 1955, so as to effect certain consequential amendments; to amend the Income Tax Act, 1962, so as to amend, insert and delete certain definitions; to further regulate the powers of the Commissioner; to further regulate the secrecy provisions; to further regulate the provisions relating to foreign tax credits; to provide relief where assets disposed of are replaced; to further regulate the provisions relating to income from foreign sources and foreign dividends; to further regulate the provisions relating to controlled foreign companies; to further regulate the exemption provisions; to amend the provisions relating to certain deductions and allowances; to provide for the ring-fencing of losses from certain trades; to further regulate the provisions relating to trading stock; to further regulate the provisions relating to the limitation of deductions; to further regulate the provisions relating to exchange items; to amend the provisions relating to insolvent estates; to further regulate the provisions relating to public benefit organisations and deductibility of donations to these organisations and government; to make provision for disposals of assets by non-resident persons; to further regulate provisions relating to payment of withholding tax on royalties; to further regulate the provisions relating to corporate restructuring; to grant a further exemption from donations tax; to further regulate the provisions relating to secondary tax on companies; to further regulate the provisions relating to submission of returns and assessment; to specifically provide for the registration of taxpayers; to provide for reporting of certain reportable arrangements; to further regulate the provisions relating to objections, appeals and dispute resolution; to provide that the Commissioner may prescribe a time on a date for payment of tax, penalties and interest; to further regulate the deduction of capital expenditure for farming; to provide that pensionable service of non-statutory force members purchased after 1 March 1998 in respect of periods of service accounted for before that date be dealt with as is the case with other public servants; to further regulate the penalties on failure to pay employees' tax and personal liability in relation thereto; to further regulate the deduction of employees' tax from directors' remuneration; to further regulate the provisions relating to capital gains tax; to delete certain obsolete provisions and to effect certain consequential amendments; to amend the Customs and Excise Act,

ALGEMENE VERDUIDELIKENDE NOTA:

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

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

(Engelse teks deur die President geteken.)
(Goedgekeur op 17 Desember 2003.)

WET

Tot wysiging van die Wet op Hereregte, 1949, ten einde die bepalings met betrekking tot reg betaalbaar by omskakeling van aandeleblokke na deeltitel en reg betaalbaar by kansellasie van transaksies verder te reël; om voorsiening te maak vir 'n vrystelling vir omskakeling of hernuwing van sekere mineraal- en mynregte en permitte en om ander vrystellings verder te reël; om voorsiening te maak vir addisionele bevoedghede vir die Kommissaris; om die reg op verkoop van eiendom aan agente verder te reël; om vir addisionele reg voorsiening te maak in die gaval van versuim om aan enige verpligting te voldoen; en om te bepaal dat betaling van reg nie opgeskort word hangende appèl nie; tot wysiging van die Boedelbelastingwet, 1955, ten einde sekere gevolglike wysigings aan te bring; tot wysiging van die Inkomstebelastingwet, 1962, ten einde sekere woordomskrywings te wysig, in te voeg en te skrap; om die bevoegdhede van die Kommissaris verder te reël; om die geheimhoudingsbepalings verder te reël; om die bepalings met betrekking tot buitelandse belastingkrediete verder te reël; om voorsiening te maak vir verligting waar bates waaroor beskik is vervang word; om die bepalings met betrekking tot inkomste van buitelandse bronne en buitelandse dividende verder te reël; om die bepalings met betrekking tot beheerde buitelandse maatskappye verder te reël; om die vrystellingsbepalings verder te reël; om die bepalings met betrekking tot sekere aftrekkings en verminderings te wysig; om voorsiening te maak vir die omheining van verliese uit sekere bedrywe; om die bepalings met betrekking tot handelsvoorraad verder te reël; om die bepalings met betrekking tot die beperking van verliese verder te reël; om die bepalings met betrekking tot valuta-items verder te reël; om die bepalings met betrekking tot insolvente boedels te wysig; om die bepalings met betrekking tot openbare weldaadsorganisasies en die aftrekbaarheid van skenkings aan hierdie organisasies en die regering verder te reël; om voorsiening te maak vir die beskikking oor bates deur persone wat nie inwoners is nie; om die bepalings met betrekking tot die betaling van weerhoudingsbelasting op tantième verder te reël; om die bepalings met betrekking tot korporatiewe herstruktuering verder te reël; om 'n verdere vrystelling van geskenkebelasting daar te stel; om die bepalings met betrekking tot sekondêre belasting op maatskappye verder te reël; om die bepalings met betrekking tot in indiening van opgawes en aanslae verder te reël; om uitdruklik voorsiening te maak vir die registrasie van belastingpligtiges; om voorsiening te maak vir die rapportering van sekere rapporteerbare reëlings; om die bepalings met betrekking tot besware, appèlle en geskilbeslegting verder te reël; om voorsiening te maak dat die Kommissaris 'n tyd op 'n dag vir betaling van belasting, boetes en rente mag voorskryf; om die aftrekking van kapitaaluitgawes vir boerdery verder te reël; om voorsiening te maak dat pensioendraende diens van "non-statutory force members" na 1 Maart 1998 aangekoop ten opsigte van tydperke van diens voor daardie datum verantwoord mee gehandel word soos ander staatsamptenare; om die boetes by versuim om werknemersbelasting te betaal en persoonlike aanspreeklikheid met betrekking daartoe, verder te reel; om die betaling van werknemersbelasting met betrekking tot direkteursvergoeding verder te reel; om die bepalings met betrekking tot kapitaalwins verder te reël; om sekere bepalings wat in onbruik verval het te skrap en om sekere gevolglike wysigings aan te bring; tot wysiging van die

1964, so as to insert certain definitions; to further regulate the powers of the Commissioner; to further regulate the provisions relating to secrecy; to insert provisions relating to degrouping; to make provision for the imposition of environmental levies; to make rules to enable the Commissioner to curtail the smuggling of cigarettes; to further regulate the provisions relating to internal appeals and alternative dispute resolution; to make provision for certain consequential changes arising from the introduction of the duty at source system; to make provision in the Act for customs controlled areas within Industrial Development Zones; to effect certain consequential amendments; to amend the Stamp Duties Act, 1968, so as to further regulate the period for record keeping; to further regulate the powers of the Commissioner; to further regulate the exemptions from duty; to effect certain consequential amendments and to delete references to obsolete provisions; to amend the Value-Added Tax Act, 1991, so as to amend and insert certain definitions; to provide for certain exemptions and zero-rating; to further regulate the circumstances where an input tax may be claimed; to prescribe further requirements for VAT invoices; to further regulate the provisions relating to assessments; to further regulate the provisions relating to objections and appeal and dispute resolution; to provide for the amendment of the Schedules in line with the Customs and Excise Act, 1964, to effect certain consequential amendments; to amend the Uncertificated Securities Tax Act, 1998, so as to amend and insert certain definitions; to further regulate the exemptions from tax; to effect consequential changes to the repeal of the Marketable Securities Tax Act, 1948; to further regulate the powers of the Commissioner; to effect certain consequential amendments; to make provision for the retention of records; to amend the Skills Development Levies Act, 1999, so as to further regulate the provisions relating to public benefit organisations; to provide for penalties for failure to pay levies; to amend the Taxation Laws Amendment Act, 2000, so as to further regulate certain exemptions of public benefit organisations and other entities; to amend the Second Revenue Laws Amendment Act, 2001, so as to insert provisions relating to Industrial Development Zones; to effect certain consequential amendments; to amend the Unemployment Insurance Contributions Act, 2002, so as to align it with the Unemployment Insurance Act, 2001; to amend the Taxation Laws Amendment Act, 2002, so as to repeal certain obsolete provisions; to amend the Revenue Laws Amendment Act, 2002, so as to insert a commencement date; and to delete obsolete provisions; to amend the Exchange Control Amnesty and Amendment of Taxation Laws Act, 2003, so as to amend certain definitions; to make provision for application by beneficiaries; to further regulate the tax relief in terms of the amnesty; and to extend the date for application; to repeal the Marketable Securities Tax Act, 1948, and certain regulations; to provide for transitional provisions relating to gold bullion and shares of companies acquired from funds transferred to the Republic; to provide for a short title and commencement date; and to provide for matters relating thereto.

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

Amendment of section 1 of Act 40 of 1949

1. (1) Section 1 of the Transfer Duty Act, 1949, is hereby amended by the substitution in the definition of "fair value" for the words following item (iii) of paragraph *(b)* of the following words:

"(without taking into account any lease agreement **[or]**, any liability in respect of any loan or any right to or an interest in the use of immovable property conferred on the owner of a share in a share block company as contemplated in section 1 of the Share Blocks Control Act, 1980 (Act No. 59 of 1980), in relation to that residential property or any residential property of any company or trust

Doeane- en Aksynswet, 1964, ten einde sekere woordomskrywings in te voeg; om die bevoegdhede van die Kommissaris verder te reël; om die bepalings met betrekking tot geheimhouding verder te reël; om bepalings met betrekking tot ontgroepering in te voeg; om voorsiening te maak vir die oplegging van 'n omgewingsheffing; om reëls daar te stel wat die Kommissaris in staat stel om smokkelary in sigarette in te perk; om die bepalings met betrekking tot interne appèlle en alternatiewe geskilbeslegting verder te reël; om voorsiening te maak vir sekere gevolglike wysigings wat voortvloei uit die instelling van die reg by bron stelsel; om in die Wet voorsiening te maak vir doeanebeheerde gebiede binne Nywerheidsontwikkelingsones; om sekere gevolglike wysigings aan te bring; tot wysiging van die Wet op Seëlregte, 1968, ten einde die tydperk vir rekordhouding verder te reël; om die bevoegdhede van die Kommissaris verder te reël; om die vrystelligs van reg verder te reël; om sekere gevolglike wysigings aan te bring en sekere verwysings na bepalings wat in onbruik verval het, te skrap; tot wysiging van die Wet op Belasting op Toegevoegde Waarde 1991, ten einde sekere woordomskrywings te wysig en in te voeg; om voorsiening te maak vir sekere vrystellings en nulkoers; om die omstandighede waar insetbelasting geëis mag word verder te reël; om verdere vereistes vir BTW fakture voor te skryf; om die bepalings met betrekking tot aanslae verder te reël; om die bepalings met betrekking tot besware en appèlle en geskilbeslegting verder te reël; om voorsiening te maak vir die wysigings van die Bylaes om dit in lyn te bring met die Doeane- en Aksynswet, 1964; en om sekere gevolglike wysigings aan te bring; tot wysiging van die Wet op Belasting op Sertifikaatlose Aandele, 1998, ten einde sekere woordomskrywings te wysig en in te voeg; ten einde die vrystellings van belasting verder te reël; om sekere gevolglike wysigings weens die herroeping van die Handelseffektebelastingswet, 1948, aan te bring; om die bevoedghede van die Kommissaris verder te reël; om sekere gevolglike wysigings aan te bring; om voorsiening te maak vir rekordhouding; tot wysiging van die "Skills Development Levies Act, 1999", ten einde die bepalings met betrekking tot openbare weldaadsorganisasies verder te reël; en om voorsiening te maak vir boetes by versuim om die heffing te betaal; tot wysiging van die Wysigingswet op Belastingwette, 2000, ten einde sekere vrystellings van openbare weldaadsorganisasies en ander entiteite verder te reël; tot wysiging van die Tweede Wysigingswet op Inkomstewette, 2001, ten einde bepalings met betrekking tot Nywerheidsontwikkelingsones in te voeg; en om sekere gevolglike wysigings aan te bring; tot wysiging van die "Unemployment Insurance Contributions Act, 2002" ten einde dit met die "Unemployment Insurance Act, 2001" in lyn te bring; tot wysiging van die Wysigingswet op Belastingwette, 2002, ten einde sekere bepalings wat in onbruik verval het, te skrap; tot wysiging van die Wysigingswet op Inkomstewette, 2002, ten einde 'n inwerkingtredingsdatum in te voeg; en om bepalings wat in onbruik verval het te skrap; tot wysiging van die Wet op Deviesebeheeramnestie en Wysiging van Belastingwette, 2003, ten einde sekere woordomskrywings te wysig; om voorsiening te maak vir aansoeke deur begustigdes; om die belastingverligting ingevolge die amnestie verder te reël; om die datum vir aansoeke te verleng; om die Handelseffektebelastingswet, 1948, en sekere regulasies te skrap; om vir oorgangsbepalings met betrekking tot ongemunte goud en aandele van maatskappye verkry uit fondse na die Republiek oorgeplaas, voorsiening te maak; om vir 'n kort titel en inwerkingtredingsdatum voorsiening te maak; en om vir aangeleenthede wat daarmee in verband staan voorsiening te maak.

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

Wysiging van artikel 1 van Wet 40 van 1949

1. (1) Artikel 1 van die Wet op Hereregte, 1949, word hierby gewysig deur in die woordomskrywing van "billike waarde" die woorde wat item (iii) van paragraph *(b)* volg deur die volgende woorde te vervang:

"uitmaak (sonder inagneming van enige huurooreenkoms, **[of]** enige aanspreeklikheid ten opsigte van enige lening of enige reg tot of 'n belang in die gebruik van onroerende eiendom aan die eienaar van 'n aandeel in 'n aandeleblokmaatskappy soos in artikel 1 van die Wet op die Beheer van Aandeleblokke, 1980 (Wet No. 59 van 1980), bedoel verleen, met betrekking tot daardie residensiële eiendom of

contemplated in subparagraph (ii) or (iii)), as is attributable to that share or member's interest; or".

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

Amendment of section 5 of Act 40 of 1949, as amended by section 6 of Act 103 of 1969, section 2 of Act 86 of 1987, section 3 of Act 136 of 1992 and section 2 of Act 20 of 1994

2. (1) Section 5 of the Transfer Duty Act, 1949, is hereby amended by the substitution in subsection (2) for paragraph *(a)* of the following paragraph:

"*(a)* If a transaction whereby property has been acquired, is, before registration of the acquisition in a deeds registry, cancelled, or dissolved by the operation of a resolutive condition, duty shall be payable only on that part of the consideration which has been or is paid to and retained by the seller and on any consideration payable by **[either party to the transaction]** the buyer for or in respect of the cancellation thereof, provided that on cancellation or dissolution of that transaction, such property completely reverts to the seller and the original buyer has relinquished all rights and has not received nor will receive any consideration arising from such cancellation or dissolution.".

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

Amendment of section 9 of Act 40 of 1949, as amended by section 3 of Act 31 of 1953, section 12 of Act 80 of 1959, section 3 of Act 70 of 1963, section 3 of Act 77 of 1964, section 1 of Act 81 of 1965, section 7 of Act 103 of 1969, section 2 of Act 89 of 1972, section 3 of Act 66 of 1973, section 5 of Act 88 of 1974, section 77 of Act 54 of 1976, section 2 of Act 95 of 1978, section 6 of Act 106 of 1980, section 2 of Act 99 of 1981, section 2 of Act 118 of 1984, section 3 of Act 81 of 1985, section 3 of Act 86 of 1987, section 4 of Act 87 of 1988, section 36 of Act 9 of 1989, section 1 of Act 69 of 1989, section 79 of Act 89 of 1991, section 6 of Act 120 of 1992, section 4 of Act 136 of 1992, section 5 of Act 97 of 1993, section 2 of Act 37 of 1995, section 3 of Act 32 of 1999, section 3 of Act 30 of 2000, section 2 of Act 5 of 2001, section 8 of Act 60 of 2001, section 3 of Act 30 of 2002 and section 4 of Act 74 of 2002

3. (1) Section 9 of the Transfer Duty Act, 1949, is hereby amended—

(a) by the substitution in subsection (1) for paragraph *(l)* of the following paragraph:

"*(l)* any company in terms of—

(i) **[any]** an amalgamation transaction contemplated in section 44 of the Income Tax Act, 1962 (Act No. 58 of 1962);

(ii) **[any]** an intra-group transaction contemplated in section 45 of that Act;

(iii) **[any]** a liquidation distribution contemplated in section 47 of that Act; or

(iv) a transaction which would have constituted a transaction or distribution contemplated in subparagraphs (i) to (iii) regardless of—

(aa) whether or not any election has been made that the provisions of the relevant section apply; or

(bb) whether that person acquired that property as a capital asset or as trading stock,

where the public officer of that company has made a sworn affidavit or solemn declaration that such **[amalgamation transaction, intra-group transaction or liquidation distribution complies with the relevant provisions contained in section 44, 45 or 47, as the case may be, of that Act]** acquisition of property complies with the provisions of this paragraph."; and

(b) by the addition of the following subsections:

"(18) No duty shall be payable where—

(a) any old order right or OP26 right as defined in Schedule II of the Mineral and Petroleum Resources Development Act, 2002 (Act No.

enige residensiële eiendom van enige maatskappy of trust bedoel in subparagraaf (ii) of (iii)), wat aan daardie aandeel of ledebelang toeskryfbaar is; of".

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

Wysiging van artikel 5 van Wet 40 van 1949, soos gewysig deur artikel 6 van Wet 103 van 1969, artikel 2 van Wet 86 van 1987, artikel 3 van Wet 136 van 1992 en artikel 2 van Wet 20 van 1994

2. (1) Artikel 5 van die Wet op Hereregte, 1949, word hierby gewysig deur in subartikel (2) paragraaf *(a)* deur die volgende paragraaf te vervang:

"*(a)* Indien 'n transaksie waarby eiendom verkry is, voor registrasie van die verkryging in 'n registrasiekantoor, gekanselleer of tengevolge van 'n ontbindende voorwaarde ontbind word, dan is hereregte betaalbaar op slegs daardie gedeelte van die vergoeding wat aan die verkoper betaal is of word en deur hom behou word en op enige vergoeding wat deur **[enigeen van die partye by die transaksie]** die koper vir of ten opsigte van die kansellering daarvan betaalbaar is, mits daardie eiendom by kansellasie of ontbinding van daardie transaksie ten volle in die verkoper hervestig en die oorspronklike koper van alle regte afstand gedoen het en nie enige vergoeding weens daardie kansellasie of ontbinding ontvang of sal ontvang nie.".

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

Wysiging van artikel 9 van Wet 40 van 1949, soos gewysig deur artikel 3 van Wet 31 van 1953, artikel 12 van Wet 80 van 1959, artikel 3 van Wet 70 van 1963, artikel 3 van Wet 77 van 1964, artikel 1 van Wet 81 van 1965, artikel 7 van Wet 103 van 1969, artikel 2 van Wet 89 van 1972, artikel 3 van Wet 66 van 1973, artikel 5 van Wet 88 van 1974, artikel 77 van Wet 54 van 1976, artikel 2 van Wet 95 van 1978, artikel 6 van Wet 106 van 1980, artikel 2 van Wet 99 van 1981, artikel 2 van Wet 118 van 1984, artikel 3 van Wet 81 van 1985, artikel 3 van Wet 86 van 1987, artikel 4 van Wet 87 van 1988, artikel 36 van Wet 9 van 1989, artikel 1 van Wet 69 van 1989, artikel 79 van Wet 89 van 1991, artikel 6 van Wet 120 van 1992, artikel 4 van Wet 136 van 1992, artikel 5 van Wet 97 van 1993, artikel 2 van Wet 37 van 1995, artikel 3 van Wet 32 van 1999, artikel 3 van Wet 30 van 2000, artikel 2 van Wet 5 van 2001, artikel 8 van Wet 60 van 2001, artikel 3 van Wet 30 van 2002 en artikel 4 van Wet 74 van 2002

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

(a) deur in subartikel (1) paragraaf *(l)* deur die volgende paragraaf te vervang:

"*(l)* enige maatskappy ingevolge—

(i) **[enige]** 'n amalgamasietransaksie, in artikel 44 van die Inkomstebelastingwet, 1962 (Wet No. 58 van 1962) bedoel;

(ii) **[enige]** 'n intragroeptransaksie in artikel 45 van daardie Wet bedoel; of

(iii) **[enige]** 'n likwidasie-uitkering bedoel in artikel 47 van daardie Wet; of

(iv) 'n transaksie wat 'n transaksie of uitkering in subparagrawe (i) tot (iii) bedoel sou uitmaak, ongeag of—

(aa) 'n keuse uitgeoefen is dat die bepalings van daardie artikel van toepassing is of nie; of

(bb) daardie persoon daardie eiendom as 'n kapitale bate of as handelsvoorraad verkry het,

waar die openbare amptenaar van daardie maatskappy onder eed of plegtige verklaring verklaar het dat daardie **[amalgamasietransaksie, intragroeptransaksie of likwidasie-uitkering voldoen aan die relevante bepalings vervat in artikel 44, 45 of 47, na gelang van die geval, van daardie Wet]** verkryging van eiendom aan die bepalings van hierdie paragraaf voldoen."; en

(b) deur die volgende subartikels by te voeg:

"(18) Geen reg is betaalbaar nie waar—

(a) enige 'old order right' of 'OP26 reg' soos in Bylae II by die 'Mineral and Petroleum Resources Development Act, 2002' (Wet No. 28 van 2002), omskryf geheel of gedeeltelik van krag bly of geheel of

28 of 2002), wholly or partially continues in force or is wholly or partially converted into a new right pursuant to that Schedule; or

(b) any prospecting right, mining right, exploration right, production right, mining permit or retention permit, as defined in section 1 of the Mineral and Petroleum Resources Development Act, 2002, is wholly or partially renewed in terms of that Act.

(19) No duty shall be payable by a natural person on the conversion in terms of Item 8 of Schedule 1 to the Share Blocks Control Act, 1980 (Act No. 59 of 1980), of any right to or interest in the use of immovable property conferred by reason of the ownership of a share held by that person in a share block company as contemplated in section 1 of that Act, to ownership in the unit in respect of which that person had the right of use, if the acquisition of that share was subject to duty in terms of this Act.".

(2) *(a)* Subsection (1)*(a)* shall be deemed to have come into operation on 6 November 2002 and shall apply in respect of any property acquired in terms of an amalgamation transaction, intra-group transaction, liquidation distribution or other transaction which takes effect on or after that date.

(b) Subsection (1)*(b)* shall—

(i) in so far as it inserts subsection (18), come into operation on the date of promulgation of the Mineral and Petroleum Resources Development Act, 2002, (Act No. 28 of 2002), and shall apply in respect of any continuation in force, conversion or renewal on or after that date; and

(ii) in so far as it inserts subsection (19) come into operation on 13 December 2002 and shall apply in respect of any property acquired on or after that date.

Amendment of section 11A of Act 40 of 1949, as inserted by section 5 of Act 46 of 1996 and amended by section 9 of Act 30 of 1998 and section 9 of Act 60 of 2001

4. Section 11A of the Transfer Duty Act, 1949, is hereby amended by the substitution in subsection (1) for the definitions of "documents" and "information" of the following definitions:

" 'documents' include any document, book, marketable security, record, account, deed, plan, instrument, trade list, stock list, brokers note, affidavit, certificate, photograph, map, drawing and any **['computer print-out' as defined in section 1 of the Computer Evidence Act, 1983 (Act No. 57 of 1983)]** printout of information generated, sent, received, stored, displayed or processed by electronic means;

'information' includes any **[data stored by means of a 'computer' as defined in section 1 of the Computer Evidence Act, 1983]** electronic representations of information in any form;".

Insertion of sections 13A, 13B and 13C in Act 40 of 1949

5. The following sections are hereby inserted in the Transfer Duty Act, 1949, after section 13:

"**Recovery of duty**

13A. (1) Any amount of duty, additional duty or penalty incurred under this Act and which is payable in terms of this Act shall, when it becomes due or is payable, be a debt due to the State by the person concerned and shall be recoverable by the Commissioner in the manner hereinafter provided.

(2) If any person fails to pay any amount of duty, additional duty or penalty incurred under this Act when it becomes due or is payable by such person, the Commissioner may file with the clerk or registrar of any competent court a statement certified by the Commissioner as correct and setting forth the amount thereof so due or payable by that person, and that

gedeeltelik omgeskakel word na 'n nuwe reg kragtens daardie Bylae; of

(b) enige 'prospecting right', 'mining right', 'exploration right' 'production right', 'mining permit' of 'retention permit', soos in artikel 1 van die 'Mineral and Petroleum Resources Development Act, 2002', omskryf, in geheel of gedeeltelik hernu word ingevolge daardie Wet.

(19) Geen reg is deur 'n natuurlike persoon betaalbaar nie waar enige reg tot of belang in die gebruik van onroerende eiedom wat verleen is op grond van eienaarskap van 'n aandeel deur daardie persoon in 'n aandeleblokmaatskappy soos in artikel 1 van daardie Wet bedoel gehou, ingevolge Item 8 van die Wet op die Beheer van Aandeleblokke, 1980 (Wet No. 59 van 1980), omgeskakel word na eienaarskap in die eenheid ten opsigte waarvan daardie persoon die reg van gebruik gehad het, indien die verkryging van daardie aandeel ingevolge hierdie Wet aan reg onderhewig was.".

(2)*(a)* Subartikel (1)*(a)* word geag op 6 November 2002 in werking te getree het en is van toepassing ten opsigte van enige eiendom verkry ingevolge 'n amalgamasie-transaksie, intragroeptransaksie, likwidasie-uitkering of ander transaksie wat op of na daardie datum in werking tree.

(b) Subartikel (1)*(b)*—

(i) vir sover dit subartikel (18) invoeg, tree in werking op die datum van afkondiging van die "Mineral and Petroleum Resources Development Act, 2002" (Wet No. 28 van 2002), en is van toepassing ten opsigte van enige voortduring, omskakeling of hernuwing op of na daardie datum; en

(ii) vir sover dit subartikel (19) invoeg, tree in werking op 13 Desember 2002 en is van toepassing ten opsigte van enige eiendom op of na daardie datum verkry.

Wysiging van artikel 11A van Wet 40 van 1949, soos ingevoeg deur artikel 5 van Wet 46 van 1996 en gewysig deur artikel 9 van Wet 30 van 1998 en artikel 9 van Wet 60 van 2001

4. Artikel 11A van die Wet op Hereregte, 1949, word hierby gewysig deur in subartikel (1) die woordomskrywings van "dokumente" en "inligting" deur die volgende woordomskrywings te vervang:

" 'dokumente' ook enige dokument, ooreenkoms, verklaring, boek, rekord, rekening, akte, plan, instrument, handelslys, voorraadlys, beëdigde verklaring, sertifikaat, foto, kaart, tekening en enige **['rekenaardrukstuk' soos omskryf in artikel 1 van die Wet op Rekenaargetuienis, 1983 (Wet 57 van 1983)]** uitdruk van inligting wat op elektroniese wyse gegenereer, gestuur, ontvang, gestoor, vertoon of geprosesseer is;

'inligting' ook enige **[data gestoor deur middel van 'n 'rekenaar' soos omskryf in artikel 1 van die Wet op Rekenaargetuienis, 1983]** elektroniese weegawe van inligting in enige vorm;".

Invoeging van artikels 13A, 13B en 13C in Wet 40 van 1949

5. Die volgende artikels word hierby in die Wet op Hereregte, 1949, ingevoeg na artikel 13:

"**Verhaling van reg**

13A. (1) Enige bedrag aan reg, addisionele reg of boete wat kragtens hierdie Wet opgelê is of ingevolge hierdie Wet betaalbaar is, is wanneer dit verskuldig word of betaalbaar is, 'n skuld aan die Staat verskuldig deur die betrokke persoon en is op die wyse hieronder bepaal, deur die Kommissaris verhaalbaar.

(2) Indien 'n persoon versuim om enige bedrag van reg, addisionele reg of boete ingevolge hierdie Wet opgelê te betaal wanneer dit deur daardie persoon verskuldig word of betaalbaar is, kan die Kommissaris by die klerk of griffier van 'n bevoegde hof 'n verklaring indien wat deur die Kommissaris as juis gesertifiseer is en waarin die bedrag daarvan aldus deur

statement shall thereupon have all the effects of, and any proceedings may be taken thereon as if it were a civil judgement lawfully given in that court in favour of the Commissioner for a liquid debt of the amount specified in the statement.

(3) The Commissioner may by notice in writing addressed to the clerk or registrar, withdraw the statement referred to in subsection (2), and that statement shall thereupon cease to have any effect: Provided that the Commissioner may institute proceedings afresh under that subsection in respect of any duty, additional duty or penalty referred to in the withdrawn statement.

(4) Notwithstanding anything contained in the Magistrates' Courts Act, 1944 (Act No. 32 of 1944), a statement for any amount whatsoever may be filed in terms of subsection (2) with the clerk of the magistrates' court having jurisdiction in respect of the person by whom the amount is payable in accordance with the provisions of this Act.

(5) Pending the conclusion of any proceedings, whether internally or in any court, regarding a dispute as to the amount of any duty, additional duty or penalty payable, the statement filed in terms of subsection (2) shall, for purposes of recovery proceedings contemplated in subsection (2), be deemed to be correct.

Power to appoint agent

13B. The Commissioner may, if he or she deems it necessary, declare any person to be the agent of any other person, and the person so declared an agent—

(a) shall for the purposes of this Act be the agent of that other person in respect of the payment of any amount of duty, additional duty or penalty payable by that other person under this Act; and

(b) may be required to make payment of that amount from any moneys which may be held by that agent for or be due by that agent to the person whose agent he or she has been declared to be:

Provided that a person so declared an agent who is unable to comply with a requirement of the notice of appointment as agent, must advise the Commissioner in writing of the reasons for not complying with that notice within the period specified in the notice.

Remedies of Commissioner against agent or trustee

13C. The Commissioner shall have the same remedies against all property of any kind vested in or under the control or management of any agent or trustee as the Commissioner would have against the property of any person liable to pay any duty and in such a full and an ample manner.".

Amendment of section 16 of Act 40 of 1949

6. (1) Section 16 of the Transfer Duty Act, 1949, is hereby amended by the substitution for subsections (1) and (2) of the following subsections:

"(1) Where property is sold to a person who is acting as an agent for some other person, the person so acting as agent shall disclose to the seller or his or her agent the name and address of the principal for whom he or she acts, and furnish the seller or his or her agent with a copy of the documents appointing him or her as agent—

(i) if the sale is by **[action, immediately upon]** auction, on the day of acceptance by the auctioneer of his or her offer; or

(ii) if the sale is otherwise than by auction, **[immediately upon]** on the day of conclusion of the agreement of sale.

daardie persoon verskuldig of betaalbaar uiteengesit word, en so 'n verklaring het daarna al die gevolge van 'n siviele vonnis en enige geding kan daarop ingestel word asof dit 'n siviele vonnis is wat regtens in daardie hof ten gunste van die Kommissaris gegee is vir 'n likwiede skuld vir die bedrag in die verklaring vermeld.

(3) Die Kommissaris kan deur skriftelike kennisgewing aan die klerk of griffier gerig, die verklaring in subartikel (2) bedoel intrek, en daardie verklaring het daarna geen uitwerking nie: Met dien verstande dat die Kommissaris geregtelike stappe ingevolge daardie subartikel opnuut kan instel met betrekking tot enige reg, addisionele reg of boete waarna in die ingetrekte verklaring verwys word.

(4) Ondanks enige bepalings van die Wet op Landdroshowe, 1944 (Wet No. 32 van 1944), kan 'n verklaring ten opsigte van enige bedrag hoegenaamd ingevolge subartikel (2) ingedien word by die klerk van die landdroshof wat regsbevoeg is ten aansien van die persoon deur wie daardie bedrag ooreenkomstig die bepalings van hierdie Wet betaalbaar is.

(5) Hangende die afhandeling van enige prosedures, hetsy intern of in enige hof, aangaande 'n dispuut oor die bedrag van enige reg, addisionele reg of boete betaalbaar, word die verklaring ingevolge subartikel (2) ingedien, vir doeleindes van die verhalings prosedures ingevolge artikel (2), geag korrek te wees.

Bevoegdheid om agent aan te stel

13B. Die Kommissaris kan, indien hy of sy dit nodig ag, 'n persoon tot agent van 'n ander persoon verklaar, en die persoon aldus tot agent verklaar—

(a) is by die toepassing van hierdie Wet die agent vir daardie ander persoon ten opsigte van die betaling van enige bedrag aan reg, addisionele reg of boete betaalbaar deur daardie ander persoon kragtens hierdie Wet; en

(b) kan vereis word om betaling van daardie bedrag te maak uit enige gelde wat deur daardie agent gehou word namens of verskuldig mag wees aan die persoon wie se agent hy of sy verklaar is:

Met dien verstande dat waar 'n persoon wat as agent verklaar is nie in staat is om 'n vereiste gestel deur die kennisgewing van aanstelling as agent na te kom nie, daardie persoon die Kommissaris skriftelik in kennis moet stel van die redes vir die nie-nakoming aan die kennisgewing binne die tydperk in die kennisgewing gespesifiseer.

Regsmiddele van Kommissaris teen agent of trustee

13C. Die Kommissaris het dieselfde regsmiddele teen alle eiendom van welke aard ook al wat gevestig is in of onder die beheer of bestuur is van 'n agent of trustee, as wat die Kommissaris sou hê teen die eiendom van 'n persoon wat aanspreeklik is om enige reg te betaal en in dieselfde mate en wyse.".

Wysiging van artikel 16 van Wet 40 van 1949

6. (1) Artikel 16 van die Wet op Hereregte, 1949, word hierby gewysig deur subartikels (1) en (2) deur die volgende subartikels te vervang:

"(1) Waar eiendom verkoop word aan iemand wat as 'n agent namens iemand anders optree, moet die persoon wat aldus as agent optree die naam en adres van die prinsipaal namens wie hy of sy optree aan die verkoper of sy of haar agent openbaar en aan die verkoper of sy of haar agent 'n afskrif van die dokumente wat hom of haar as agent aanstel, verskaf—

(i) indien die verkoping by veiling geskied, **[onmiddellik na]** op die dag van aanname deur die afslaer van sy aanbod; of

(ii) indien die verkoping op 'n ander wyse dan by veiling geskied, **[onmiddellik na]** op die dag van sluiting van die koopkontrak.

(2) Any person who **[fails to comply with the provisions of]** has been appointed as an agent and has in his or her possession the documents referred to in subsection (1), but fails to furnish these documents and the name of the person on whose behalf he or she is acting to the seller or his or her agent on the date specified in subsection (1) shall, for the purpose of the payment of the duty payable in respect of the acquisition of the property in question, be presumed, unless the contrary is proved, to have acquired the property for himself or herself.".

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

Insertion of section 17A in Act 40 of 1949

7. (1) The following section is hereby inserted in the Transfer Duty Act, 1949, after section 17:

"**Additional duty in case of evasion**

17A. (1) Where any person or any person under the control or acting on behalf of that person fails to perform any duty imposed upon him or her by this Act or does or omits to do anything with intent—

(a) to evade the payment of any amount of duty payable by him or her; or

(b) to cause a refund to him or her by the Commissioner of any amount of duty which is in excess of the amount properly refundable to him or her (hereafter referred to as 'the excess'),

that person shall be chargeable with additional duty not exceeding an amount equal to double the amount of duty referred to in paragraph *(a)* or the excess referred to in paragraph *(b)*, as the case may be.

(2) The amount of the additional duty shall be assessed by the Commissioner and shall be paid by the person within such period as the Commissioner may allow.

(3) The power conferred upon the Commissioner by this section shall be in addition to any right conferred upon him or her by this Act to institute or take other proceedings under this Act.".

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

Amendment of section 18 of Act 40 of 1949, as amended by section 3 of Act 27 of 1997 and substituted by section 10 of Act 60 of 2001

8. (1) Section 18 of the Transfer Duty Act, 1949, is hereby amended—

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

"*(b)* settlement of disputes, as provided for in **[section 107B]** Part IIIA of Chapter III of that Act,".

(b) by the addition of the following subsections:

"(4) The obligation to pay and the right to receive and recover any duty or penalty chargeable under this Act shall not, unless the Commissioner so directs, be suspended by any appeal or pending the decision of a court of law.

(5) If any assessment relating to an appeal contemplated in subsection (4) is altered on appeal or in conformity with any such decision or a decision by the Commissioner to concede the appeal to the tax board or the tax court or such court of law, a due adjustment shall be made, amounts paid in excess being refunded with interest at a rate contemplated in paragraph *(b)* of the definition of 'prescribed rate', in section 1 of the Income Tax Act, 1962, and calculated from the date proved to the satisfaction of the Commissioner to be the date on which any excess was received and amounts short-paid being recoverable with penalty calculated as provided in section 4.

(2) Iemand wat **[in gebreke bly om aan die bepalings van subartikel (1) te voldoen]** as 'n agent aangestel is en die dokumente in subartikel (1) bedoel in sy of haar besit het, maar versuim om hierdie dokumente en die naam van die persoon namens wie hy of sy optree aan die verkoper of sy of haar agent te voorsien op die datum in subartikel (1) bedoel, word vir die betaling van die hereregte wat ten opsigte van die verkryging van die betrokke eiendom betaalbaar is, vermoed die eiendom vir himself of haarself te verkry het tensy die teendeel bewys word.".

(2) Subartikel (1) tree in werking op die datum van afkondiging van hierdie Wet en is van toepassing ten opsigte van enige verkoop aan 'n agent op of na daardie datum.

Invoeging van artikel 17A in Wet 40 van 1949

7. (1) Die volgende artikel word hierby in die Wet op Hereregte, 1949, ingevoeg na artikel 17:

"**Addisionele belasting in geval van ontduiking**

17A. (1) Waar 'n persoon of enige persoon onder die beheer van of wat namens die persoon optree versuim om enige plig wat deur hierdie Wet op hom of haar geplaas word te verrig of iets doen of nalaat om dit te doen, met die opset—

(a) om die betaling van enige bedrag reg wat deur hom of haar betaalbaar is, te ontduik; of

(b) om 'n terugbetaling deur die Kommissaris van 'n bedrag aan reg aan hom of haar te veroorsaak wat die bedrag behoorlik aan hom of haar terugbetaalbaar oorskry (hierna 'die oorskot' genoem),

word addisionele reg op daardie persoon gehef wat nie meer is nie as 'n bedrag gelyk aan dubbel die bedrag van reg in paragraaf *(a)* bedoel of die oorskot in paragraaf *(b)* bedoel, na gelang van die geval.

(2) Die bedrag van die addisionele reg word deur die Kommissaris vasgestel en word deur die persoon betaal binne die tydperk wat die Kommissaris toelaat.

(3) Die bevoegdheid deur hierdie artikel aan die Kommissaris verleen geld bo en behalwe enige reg aan hom of haar deur hierdie Wet verleen om ander stappe ingevolge hierdie Wet in te stel of te doen.".

(2) Subartikel (1) tree in werking op die datum van afkondiging van hierdie Wet en is van toepassing ten opsigte van enige nalate of versuim ten opsigte van 'n bedrag van reg wat op of na daardie datum betaalbaar word.

Wysiging van artikel 18 van Wet 40 van 1949, soos gewysig deur artikel 3 van Wet 27 van 1997 en vervang deur artikel 10 van Wet 60 van 2001

8. (1) Artikel 18 van die Wet op Hereregte, 1949, word hierby gewysig—

(a) deur in subartikel (2) paragraaf *(b)* deur die volgende paragraaf te vervang:

"*(b)* die beslegting van geskille, soos in **[artikel 107B]** Deel IIIA van Hoofstuk III van daardie Wet bepaal,"; en

(b) deur die volgende subartikels by te voeg:

"(4) Die verpligting om enige reg of boete hefbaar onder hierdie Wet te betaal en die reg om dit te ontvang en te verhaal, word nie opgeskort deur enige appèl or hangende die besluit van 'n hof nie, tensy die Kommissaris so bepaal.

(5) Indien enige aanslag wat verband hou met 'n appèl soos in subartikel (4) beoog gewysig word op appèl of in ooreenstemming met enige so 'n besluit of besluit deur die Kommissaris om die appèl na die belastingraad of belastinghof toe te gee, sal sodanige aanpassing gemaak word, bedrae oorbetaal sal terugbetaal word met rente teen 'n koers in paragraaf *(b)* van die omskrywing van 'voorgeskrewe koers', in artikel 1 van die Inkomstebelastingwet, 1962, en bereken vanaf die datum wat tot die Kommissaris se bevrediging bewys word die datum te wees waarop die bedrag oorbetaal ontvang is en bedrae kort-betaal sal verhaal word met boete bereken soos voorgeskryf word in artikel 4.

(6) The payment by the Commissioner of any interest under the provisions of subsection (5) shall be deemed to be a drawback from revenue charged to the National Revenue Fund.".

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

Insertion of section 20B in Act 40 of 1949

9. (1) The following section is hereby inserted in the Transfer Duty Act, 1949, after section 20A:

"**Transactions, operations, schemes or understanding for obtaining undue tax benefits**

20B. (1) Notwithstanding anything in this Act, whenever the Commissioner is satisfied that any transaction, operation, scheme or understanding (whether enforceable or not), including all steps by which it is carried into effect—

(a) has been entered into or carried out which has the effect of granting a tax benefit to any person; and

(b) having regard to the substance of the transaction, operation, scheme or understanding—

(i) was entered into or carried out in a manner which would not normally be employed for *bona fide* business purposes, other than the obtaining of a tax benefit; or

(ii) has created rights or obligations which would not normally be created between persons dealing at arm's length; and

(c) was entered into or carried out solely or mainly for the purposes of obtaining a tax benefit,

the Commissioner shall determine the liability for any duty imposed by this Act, and the amount thereof, as if the transaction, operation, scheme or understanding had not been entered into or carried out, or in such manner as in the circumstances of the case the Commissioner deems appropriate for the prevention or diminution of such tax benefit.

(2) For the purpose of this section 'tax benefit' means—

(a) any reduction in the liability of any person to pay duty;

(b) any increase in the entitlement of any person to the refund of duty; or

(c) any other avoidance or postponement of liability for the payment of any duty imposed by this Act or any tax, duty or levy imposed by any other Act administered by the Commissioner.

(3) Any decision of the Commissioner under subsection (1) shall be subject to objection and appeal, and whenever in proceedings relating thereto it is proved that the relevant transaction, operation, scheme or understanding results or would result in a tax benefit, it shall be presumed, until the contrary is proved, that such transaction, operation, scheme or understanding was entered into or carried out solely or mainly for the purpose of obtaining a tax benefit.".

(2) Subsection (1) shall come into operation on the date of promulgation of this Act and shall apply in respect of any acquisition in terms of a transaction, operation, scheme or understanding entered into on or after that date.

Amendment of section 8A of Act 45 of 1955, as substituted by section 7 of Act 46 of 1996 and amended by section 15 of Act 30 of 1998 and section 13 of Act 60 of 2001

10. Section 8A of the Estate Duty Act, 1955, is hereby amended by the substitution in subsection (1) for the definitions of "documents" and "information" of the following definitions:

(6) Die betaling deur die Kommissaris van enige rente onder die bepalings van subartikel (5) word geag 'n trekking van inkomste ten laste van die Nasionale Inkomstefonds te wees.".

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

Invoeging van artikel 20B in Wet 40 van 1949

9. (1) Die volgende artikel word hierby in die Wet op Hereregte, 1949, ingevoeg na artikel 20A:

"Transaksies, handelinge, skemas of verstandhoudings vir verkryging van onbehoorlike belastingvoordele

20B. (1) Ondanks enige bepaling van hierdie Wet, wanneer die Kommissaris oortuig is dat enige transaksie, handeling, skema of verstandhouding (hetsy afdwingbaar of nie), waarby ingesluit enige stappe waardeur dit uitgevoer word—

(a) aangegaan of uitgevoer is wat die uitwerking het dat 'n belastingvoordeel aan enige persoon verleen word; en

(b) met inagneming van die substansie van die skema, handeling, skema of verstandhouding—

(i) aangegaan of uitgevoer was deur middele of op 'n wyse wat nie normaalweg vir bona fide- sakedoeleindes, behalwe die verkryging van 'n belastingvoordeel, gebruik sou word nie; of

(ii) regte of verpligtings geskep het wat nie normaalweg tussen persone wat onder uiterste voorwaardes beding, geskep sou word nie; en

(c) aangegaan of uitgevoer was uitsluitlik of hoofsaaklik om 'n belastingvoordeel te verkry,

stel die Kommissaris die belastingpligtigheid ten opsigte van enige reg deur hierdie Wet opgelê, asook die bedrag daarvan, vas asof die transaksie, handeling, skema of verstandhouding nie aangegaan of uitgevoer is nie, of op so 'n wyse vas as wat die Kommissaris in die omstandighede van die geval gepas ag vir die voorkoming of beperking van sodanige belastingvoordeel.

(2) By die toepassing van hierdie artikel beteken 'belastingvoordeel'—

(a) 'n vermindering van die aanspreeklikheid van enige persoon om reg te betaal; of

(b) 'n vermeerdering van die geregtigheid van enige persoon op 'n terugbetaling van reg; of

(c) enige ander vermyding of uitstel van aanspreeklikheid vir die betaling van enige belasting, reg of heffing opgelê deur hierdie Wet of enige ander Wet wat deur die Kommissaris uitgevoer word.

(3) 'n Beslissing van die Kommissaris ingevolge subartikel (1) is aan beswaar en appèl onderhewig, en wanneer by verrigtinge wat daarop betrekking het, bewys word dat die betrokke transaksie, handeling, skema of verstandhouding 'n belastingvoordeel tot gevolg het of sou hê, word vermoed, totdat die teendeel bewys word, dat bedoelde transaksie, handeling, skema of verstandhouding uitsluitlik of hoofsaaklik aangegaan of uitgevoer is ten einde 'n belastingvoordeel te verkry.".

(2) Subartikel (1) tree in werking op die datum van afkondiging van hierdie Wet en is van toepassing ten opsigte van enige verkryging van eiendom ingevolge 'n transaksie, handeling, skema of verstandhouding aangegaan op of na daardie datum.

Wysiging van artikel 8A van Wet 45 van 1955, soos vervang deur artikel 7 van Wet 46 van 1996 en gewysig deur artikel 15 van Wet 30 van 1998 en artikel 13 van Wet 60 van 2001

10. Artikel 8A van die Boedelbelastingwet, 1955, word hierby gewysig deur in subartikel (1) die woordomskrywings van "dokumente" en "inligting" deur die volgende woordomskrywings te vervang:

" 'documents' include any document, book, marketable security, record, account, deed, plan, instrument, trade list, stock list, brokers note, affidavit, certificate, photograph, map, drawing and any **['computer print-out' as defined in section 1 of the Computer Evidence Act, 1983 (Act No. 57 of 1983)]** printout of information generated, sent, received, stored, displayed or processed by electronic means;

'information' includes any **[data stored by means of a 'computer' as defined in section 1 of the Computer Evidence Act, 1983]** electronic representations of information in any form;".

Amendment of section 24 of Act 45 of 1955, as amended by section 68 of Act 30 of 2002

11. Section 24 of the Estate Duty Act, 1955, is hereby amended by the substitution in subsection (2) for paragraph *(b)* of the following paragraph:

"*(b)* settlement of disputes, as provided for in **[section 107B]** Part IIIA of Chapter III of that Act,".

Amendment of section 1 of Act 58 of 1962, as amended by section 3 of Act 90 of 1962, section 1 of Act 6 of 1963, section 4 of Act 72 of 1963, section 4 of Act 90 of 1964, section 5 of Act 88 of 1965, section 5 of Act 55 of 1966, section 5 of Act 95 of 1967, section 5 of Act 76 of 1968, section 6 of Act 89 of 1969, section 6 of Act 52 of 1970, section 4 of Act 88 of 1971, section 4 of Act 90 of 1972, section 4 of Act 65 of 1973, section 4 of Act 85 of 1974, section 4 of Act 69 of 1975, section 4 of Act 103 of 1976, section 4 of Act 113 of 1977, section 3 of Act 101 of 1978, section 3 of Act 104 of 1979, section 2 of Act 104 of 1980, section 2 of Act 96 of 1981, section 3 of Act 91 of 1982, section 2 of Act 94 of 1983, section 1 of Act 30 of 1984, section 2 of Act 121 of 1984, section 2 of Act 96 of 1985, section 2 of Act 65 of 1986, section 1 of Act 108 of 1986, section 2 of Act 85 of 1987, section 2 of Act 90 of 1988, section 1 of Act 99 of 1988, Government Notice No. R.780 of 14 April 1989, section 2 of Act 70 of 1989, section 2 of Act 101 of 1990, section 2 of Act 129 of 1991, section 2 of Act 141 of 1992, section 2 of Act 113 of 1993, section 2 of Act 21 of 1994, section 2 of Act 21 of 1995, section 2 of Act 36 of 1996, section 2 of Act 28 of 1997, section 19 of Act 30 of 1998, section 10 of Act 53 of 1999, section 13 of Act 30 of 2000, section 2 of Act 59 of 2000, section 5 of Act 5 of 2001, section 3 of Act 19 of 2001, section 17 of Act 60 of 2001, section 9 of Act 30 of 2002, section 6 of Act 74 of 2002 and section 33 of Act 12 of 2003

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

(a) by the substitution in the definition of "assessment" for the words preceding paragraph *(a)* of the following words:

" 'assessment' means the determination by the Commissioner, by way of a notice of assessment (including a notice of assessment in electronic form) served in a manner contemplated in section 106(2)—";

(b) by the insertion after the definition of "date of assessment" of the following definitions:

" 'date of sequestration' means—

(a) the date of voluntary surrender of an estate, if accepted by the Court; or

(b) the date of provisional sequestration of an estate, if a final order of sequestration is granted by the Court;

'depreciable asset' means an asset as defined in paragraph 1 of the Eighth Schedule (other than trading stock), in respect of which a capital deduction or allowance determined with reference to the cost or value of that asset is allowable in terms of this Act for purposes other than the determination of any capital gain or capital loss;";

(c) by the deletion of the definition of "designated country";

(d) by the substitution in the definition of "dividend" for the words following item *(bb)* of subparagraph (v) of the first proviso of the following words:

" 'dokumente' ook enige dokument, boek, rekord, rekening, akte, plan, instrument, handelslys, voorraadlys, beëdigde verklaring, sertifikaat, foto, kaart, tekening en enige **['rekenaardrukstuk' soos omskryf in artikel 1 van die Wet op Rekenaargetuienis, 1983 (Wet 57 van 1983)]** uitdruk van inligting wat op elektroniese wyse gegenereer, gestuur, ontvang, gestoor, vertoon of geprosesseer is;

'inligting' ook enige **data gestoor deur middel van 'n 'rekenaar' soos omskryf in artikel 1 van die Wet op Rekenaargetuienis, 1983]** elektroniese weegawe van inligting in enige vorm;".

Wysiging van artikel 24 van Wet 45 van 1955, soos gewysig deur artikel 68 van Wet 30 van 2002

11. Artikel 24 van die Boedelbelastingwet, 1955, word hierby gewysig deur in subartikel (2) paragraaf *(b)* deur die volgende paragraaf te vervang:

"(b) die beslegting van geskille, soos in **[artikel 107B]** Deel IIIA van Hoofstuk III van daardie Wet bepaal,".

Wysiging van artikel 1 van Wet 58 van 1962, soos gewysig deur artikel 3 van Wet 90 van 1962, artikel 1 van Wet 6 van 1963, artikel 4 van Wet 72 van 1963, artikel 4 van Wet 90 van 1964, artikel 5 van Wet 88 van 1965, artikel 5 van Wet 55 van 1966, artikel 5 van Wet 95 van 1967, artikel 5 van Wet 76 van 1968, artikel 6 van Wet 89 van 1969, artikel 6 van Wet 52 van 1970, artikel 4 van Wet 88 van 1971, artikel 4 van Wet 90 van 1972, artikel 4 van Wet 65 van 1973, artikel 4 van Wet 85 van 1974, artikel 4 van Wet 69 van 1975, artikel 4 van Wet 103 van 1976, artikel 4 van Wet 113 van 1977, artikel 3 van Wet 101 van 1978, artikel 3 van Wet 104 van 1979, artikel 2 van Wet 104 van 1980, artikel 2 van Wet 96 van 1981, artikel 3 van Wet 91 van 1982, artikel 2 van Wet 94 van 1983, artikel 1 van Wet 30 van 1984, artikel 2 van Wet 121 van 1984, artikel 2 van Wet 96 van 1985, artikel 2 van Wet 65 van 1986, artikel 1 van Wet 108 van 1986, artikel 2 van Wet 85 van 1987, artikel 2 van Wet 90 van 1988, artikel 1 van Wet 99 van 1988, Goewermentskennisgewing No. R.780 van 14 April 1989, artikel 2 van Wet 70 van 1989, artikel 2 van Wet 101 van 1990, artikel 2 van Wet 129 van 1991, artikel 2 van Wet 141 van 1992, artikel 2 van Wet 113 van 1993, artikel 2 van Wet 21 van 1994, artikel 2 van Wet 21 van 1995, artikel 2 van Wet 36 van 1996, artikel 2 van Wet 28 van 1997, artikel 19 van Wet 30 van 1998, artikel 10 van Wet 53 van 1999, artikel 13 van Wet 30 van 2000, artikel 2 van Wet 59 van 2000, artikel 5 van Wet 5 van 2001, artikel 3 van Wet 19 van 2001, artikel 17 van Wet 60 van 2001, artikel 9 van Wet 30 van 2002, artikel 6 van Wet 74 van 2002 en artikel 33 van Wet 12 van 2003

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

(a) deur in die woordomskrywing van "aandeelhouer" paragrawe *(a)* en *(b)* deur die volgende paragrawe te vervang: "

(a) met betrekking tot 'n maatskappy bedoel in paragraaf *(a)*, *(b)*, *(c)* of *(d)* van die omskrywing van 'maatskappy' in hierdie artikel, die geregistreerde aandeelhouer ten opsigte van 'n aandeel, behalwe dat wanneer 'n ander persoon as die geregistreerde aandeelhouer geregtig is, hetsy uit hoofde van 'n bepaling van die akte van oprigting of statute van die maatskappy of ingevolge die voorwaardes van 'n ooreenkoms of kontrak of andersins, op die voordeel of 'n deel van die voordeel van die regte om in die winste, **[of]** inkomste of kapitaal verbonde aan die aldus geregistreerde aandeel te deel, daardie ander persoon vir sover **[hy]** daardie ander persoon op bedoelde voordeel geregtig is ook geag word 'n aandeelhouer te wees; of

(b) met betrekking tot 'n maatskappy bedoel in paragraaf *(e)* van genoemde omskrywing, die geregistreerde besitter van 'n onderaandeelsertifikaat uitgereik ten opsigte van 'n onderaandeel ingesluit by die betrokke effektegroep, behalwe dat waar 'n ander persoon as die geregistreerde besitter van 'n onderaandeel geregtig is, hetsy uit hoofde van 'n bepaling in die trustakte aangegaan vir die doeleindes van die betrokke effekte-trustskema of ingevolge die voorwaardes van 'n ooreenkoms of kontrak of andersins, op die

"**[Provided further that for the purposes of this definition an asset shall be deemed to have been given to a shareholder of a company if any asset or any interest, benefit or advantage measurable in terms of money is given or transferred to such shareholder or if the shareholder is relieved of any obligation measurable in terms of money:]** Provided further that a reserve of any company which consists of or includes any amount transferred from the share premium account of the company shall, except to the extent to which such reserve consists of any other amount, be deemed for the purposes of this definition to be a share premium account of, or share premium received by, such company;";

(e) by the insertion after the definition of "financial year" of the following definition:

" 'foreign dividend' means any dividend received by or which accrued to any person from a foreign company as defined in section 9D;";

(f) by the substitution for paragraph *(k)* of the definition of "gross income" of the following paragraph:

"*(k)* any amount received or accrued by way of **[dividends including any amount which is deemed to be a dividend declared as contemplated in the definition of 'foreign dividend' in section 9E]** a dividend: Provided that where any foreign dividend declared by a foreign company—

(i) is received by or accrues to a portfolio of a collective investment scheme referred to in paragraph *(e)*(i) of the definition of 'company'; and

(ii) is distributed by that portfolio by way of a dividend, or a portion of a dividend, to any person who is entitled to that dividend by virtue of being a holder of any participatory interest in that portfolio,

that foreign dividend shall, to the extent that it is declared to that person as contemplated in subparagraph (ii), be deemed to have been declared by that foreign company directly to that person and to be a foreign dividend which is received by or accrued to that person;";

(g) by the deletion of the definition of "international headquarter company";

(h) by the deletion of the definition of "qualifying statutory rate";

(i) by the substitution in paragraph *(a)* of the definition of "resident" for the words in subparagraph (ii) preceding item *(aa)* of the following words:

"not at any time during the relevant year of assessment ordinarily resident in the Republic, if **[such]** that person was physically present in the Republic—";

(j) by the insertion in the definition of "resident" in subparagraph (ii) of paragraph *(a)* of the following words after item *(bb)* but preceding the proviso:

"in which case that person will be a resident with effect from the first day of that relevant year of assessment:";

(k) by the substitution in the definition of "resident" for item (A) of the proviso to subparagraph (ii) of paragraph *(a)* of the following item:

"(A) a day shall include a part of a day, but shall not include any day that a person is in transit through the Republic between two places outside the Republic and that person does not formally enter the Republic through a 'port of entry' as **[defined]** contemplated in section 9(1) of the Immigration Act, 2002 (Act No. 13 of 2002), or at any other place in the case of a person authorised by the Minister of Home Affairs in terms of section 31(2)*(c)* of that Act; and";

(l) by the substitution in the definition of "resident" for paragraph *(b)* of the following paragraph:

"*(b)* person (other than a natural person) which is incorporated, established or formed in the Republic or which has its place of effective management in the Republic **[(but excluding any international headquarter company)]**;"; and

voordeel of 'n deel van die voordeel van die regte om in die winste, **[of]** inkomste of kapitaal verbonde aan die onderaandeelsertifikaat te deel, daardie ander persoon vir sover **[hy]** daardie ander persoon op bedoelde voordeel geregtig is ook geag word 'n aandeelhouer te wees; of";

(b) deur na die woordomskrywing van "aandeelhouer" die volgende woordomskrywing in te voeg:

" 'aandeleleningsreëling' 'n 'leningsreëling' soos in die Wet op Belasting op Sertifikaatlose Aandele, 1998 (Wet No. 31 van 1998), omskryf;"; en

(c) deur die woordomskrywing van "aangewese land" te skrap;

(d) deur in die woordomskrywing van "aanslag" die woorde wat paragraaf *(a)* voorafgaan deur die volgende woorde te vervang:

" 'aanslag' die vasstelling deur die Kommissaris, by wyse van 'n kennisgewing van aanslag (waarby ingesluit 'n kennisgewing van aanslag in elektroniese formaat) bestel op 'n wyse beoog in artikel 106(2)—";

(e) deur in die woordomskrywing van "bruto inkomste" paragraaf *(k)* deur die volgende paragraaf te vervang:

"*(k)* 'n bedrag ontvang of toegeval by wyse van **[dividende, met inbegrip van 'n bedrag wat geag word 'n dividend verklaar te wees soos in die omskrywing van "buitelandse dividend" in artikel 9E bedoel]** 'n dividend: Met dien verstande dat waar enige buitelandse dividend deur 'n buitelandse maatskappy verklaar—

(i) ontvang is deur of toeval aan 'n portefeulje van 'n kollektiewe beleggingskema in paragraaf *(e)*(i) van die omskrywing van 'maatskappy' bedoel; en

(ii) deur daardie portefeulje by wyse van 'n dividend, of gedeelte van 'n dividend, aan 'n persoon wat op daardie dividend geregtig is uit hoofde van houerskap van enige deelnemende belang in daardie portefeulje, uitgekeer word, word daardie buitelandse dividend, in die mate wat dit aan daardie persoon uitgekeer is soos in subparagraaf (ii) bedoel, geag deur daardie buitelandse maatskappy direk aan daardie persoon verklaar te wees en om 'n buitelandse dividend te wees wat ontvang is deur of toe te geval het aan daardie persoon;";

(f) deur na die woordomskrywing van "bruto inkomste" die volgende woordomskrywing in te voeg:

" 'buitelandse dividend' 'n dividend ontvang deur of toegeval aan 'n persoon vanaf 'n buitelandse maatskappy soos in artike 9D omskryf;";

(g) deur na die woordomskrywing van "datum van diepmyn-produksie" die volgende woordomskrywing in te voeg:

" 'datum van sekwestrasie'—

(a) die datum van vrywillige boedeloorgawe, indien deur die Hof aanvaar; of

(b) die datum van voorlopige sekwestrasie van 'n boedel, indien 'n finale bevel deur die Hof toegestaan word;";

(h) deur in die woordomskrywing van "dividend" die woorde wat item *(bb)* van subparagraaf (v) van die eerste voorbehoudsbepaling volg deur die volgende woorde te vervang:

"**[Met dien verstande voorts dat by die toepassing van hierdie omskrywing 'n bate geag word aan 'n aandeelhouer van 'n maatskappy gegee te gewees het indien 'n bate of 'n belang, voordeel of bate wat in geld bepaal kan word, aan daardie aandeelhouer gegee of oorgedra word of indien die aandeelhouer onthef word van 'n verpligting wat in geld bepaal kan word:]** Met dien verstande voorts dat 'n reserwe van 'n maatskappy wat uit 'n bedrag bestaan of 'n bedrag insluit wat van die aandelepremierekening van die maatskappy oorgeplaas is, behalwe in die mate waarin bedoelde reserwe uit 'n ander bedrag bestaan, vir die doeleindes van hierdie omskrywing geag word 'n aandelepremierekening van, of 'n aandelepremie ontvang deur, bedoelde maatskappy te wees;";

(i) deur die woordomskrywing van "internasionale hoofkantoor-maatskappy" te skrap;

(m) by the deletion of the definition of "scientific research";

(n) by the insertion before the definition of "shareholder" of the following definition:

" 'securities lending arrangement' means a 'lending arrangement' as defined in the Uncertificated Securities Tax Act, 1998 (Act No. 31 of 1998);";

(o) by the substitution in the definition of "shareholder" of paragraphs *(a)* and *(b)* of the following paragraphs:

"*(a)* in relation to any company referred to in paragraph *(a)*, *(b)*, *(c)* or *(d)* of the definition of 'company' in this section, means the registered shareholder in respect of any share, except that where some person other than the registered shareholder is entitled, whether by virtue of any provision in the memorandum or articles of association of the company or under the terms of any agreement or contract, or otherwise, to all or part of the benefit of the rights of participation in the profits, **[or]** income or capital attaching to the share so registered, **[such]** that other person shall, to the extent that **[he]** such other person is entitled to such benefit, also be deemed to be a shareholder; or

(b) in relation to any company referred to in paragraph *(e)* of the said definition, the registered holder of any participatory interest included in the relevant portfolio, except that where some person other than the holder of any participatory interest is entitled, whether by virtue of any provision in the trust deed entered into for the purposes of the relevant collective investment scheme or under the terms of any agreement or contract, or otherwise, to all or part of the benefit of the rights of participation in the profits, **[or]** income or capital attaching to the participatory interest, **[such]** that other person shall, to the extent that **[he]** such other person is entitled to such benefit, also be deemed to be a shareholder; or".

(2) *(a)* Subsection (1)*(c)*, *(e)*, *(f)*, *(g)*, *(h)* and *(l)* shall come into operation on 1 June 2004 and shall apply in respect of years of assessment commencing on or after that date.

(b) Subsection 1*(n)* shall come into operation on the date of promulgation of this Act and shall apply in respect of any securities lending arrangement entered into on or after that date.

Amendment of section 3 of Act 58 of 1962, as amended by section 3 of Act 141 of 1992, section 3 of Act 21 of 1994, section 3 of Act 21 of 1995, section 20 of Act 30 of 1998, section 3 of Act 59 of 2000, section 6 of Act 5 of 2001, section 4 of Act 19 of 2001, section 18 of Act 60 of 2001 and section 7 of Act 74 of 2002

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

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

"(1) The powers conferred and the duties imposed upon the Commissioner by or under the provisions of this Act **[or any amendment thereof]** may be exercised or performed by the Commissioner personally, or by any officer or person engaged in carrying out the said provisions under the control, direction or supervision of the Commissioner.";

(b) by the substitution in subsection (2) for the words preceding the proviso of the following words:

"Any decision made and any notice or communication issued or signed by any such officer or person may be withdrawn or amended by the Commissioner or by the officer or person concerned, and shall for the purposes of the said provisions, until it has been so withdrawn, be deemed to have been made, issued or signed by the Commissioner:"; and

(c) by the substitution for subsection (4) of the following subsection:

(j) deur in die woordomskrywing van "inwoner" die woorde in subparagraaf (ii) wat item *(aa)* voorafgaan deur die volgende woorde te vervang:

"nie op enige tydstip gedurende die betrokke jaar van aanslag gewoonlik in die Republiek woonagtig is nie, indien daardie persoon fisies in die Republiek teenwoordig was—";

(k) deur in die woordomskrywing van "inwoner" die volgende woorde in subparagraaf (ii) van paragraaf *(a)* in te voeg na item *(bb)* maar voor die voorbehoudsbepaling:

"in welke geval daardie persoon 'n inwoner sal wees met ingang van die eerste dag van die betrokke jaar van aanslag:";

(l) deur in die woordomskrywing van "inwoner" item (A) van die voorbehoudsbepaling by subparagraaf (ii) van paragraaf *(a)* deur die volgende item te vervang:

"(A) 'n dag 'n gedeelte van 'n dag insluit, maar sluit nie in nie enige dag wat 'n person in transito is deur die Republiek tussen twee plekke buite die Republiek en daardie persoon nie formeel die Republiek deur 'n 'port of entry' soos in artikel 9(1) van die 'Immigration Act, 2002' (Wet 13 van 2002), **[omskryf]** bedoel, of by enige ander plek in die geval van 'n persoon deur die Minister van Binnelandse Sake ingevolge artikel 31(2)*(c)* van daardie Wet gemagtig, binnekom nie; en";

(m) deur in die woordomskrywing van "inwoner" paragraaf *(b)* deur die volgende paragraaf te vervang:

"*(b)* persoon (behalwe 'n natuurlike persoon) wat in die Republiek ingelyf, ingestel of opgerig is of wat sy plek van effektiewe bestuur in die Republiek het **[(behalwe 'n internasionale hoofkantoor-maatskappy)]**;";

(n) deur die woordomskrywing van "kwalifiserende statutêre koers" te skrap;

(o) deur na die woordomskrywing van "Republiek" die volgende woordomskrywing in te voeg:

" 'slytasiebate' 'n bate soos in paragraaf 1 van die Agtste Bylae omskryf (behalwe handelsvoorraad), ten opsigte waarvan 'n kapitaalaftrekking of -vermindering vasgestel met verwysing na die koste of waarde van daardie bate, ingevolge hierdie Wet toelaatbaar is vir doeleindes anders as die vasstelling van enige kapitaalwins of kapitaalverlies;";

(p) deur die woordomskrywing van "wetenskaplike navorsing" te skrap.

(2) *(a)* Subartikel *(b)* tree op datum van afkondiging van hierdie Wet in werking en is van toepassing op enige aandeleleningsreëling wat op of na daardie datum aangegaan word.

(b) Subartikel (1)*(c)*, *(e)*, *(f)*, *(i)*, *(m)* and *(n)* tree op 1 Junie 2004 in werking en is van toepassing ten opsigte van jare van aanslag wat op of na daardie datum 'n aanvang neem.

Wysiging van artikel 3 van Wet 58 van 1962, soos gewysig deur artikel 3 van Wet 141 van 1992, artikel 3 van Wet 21 van 1994, artikel 3 van Wet 21 van 1995, artikel 20 van Wet 30 van 1998, artikel 3 van Wet 59 van 2000, artikel 6 van Wet 5 van 2001, artikel 4 van Wet 19 van 2001, artikel 18 van Wet 60 van 2001 en artikel 7 van Wet 74 van 2002

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

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

"(1) Die bevoegdhede aan die Kommissaris verleen en die pligte hom opgelê deur of ingevolge die bepalings van hierdie Wet **[of 'n wysiging daarvan]** kan deur die Kommissaris persoonlik of deur 'n amptenaar of persoon wat bedoelde bepalings onder die beheer, leiding of toesig van die Kommissaris uitvoer, uitgeoefen of uitgevoer word.";

(b) deur in subartikel (2) die woorde wat die voorbehoudsbepaling voorafgaan deur die volgende woorde te vervang:

" 'n Beslissing deur so 'n amptenaar of persoon gegee en 'n kennisgewing of mededeling deur **[hom]** 'n amptenaar of persoon uitgereik of onderteken kan deur die Kommissaris of deur die betrokke amptenaar of persoon ingetrek of gewysig word, en word, totdat dit aldus ingetrek is, by die toepassing van bedoelde bepalings geag deur die Kommissaris gegee, uitgereik of onderteken te wees:";

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

"(4) Any decision of the Commissioner under the definitions of 'benefit fund', 'pension fund', 'provident fund', 'retirement annuity fund' and 'spouse' in section 1, section 6, section 8(4)*(b)*, *(c)*, *(d)* and *(e)*, section 9D, **[section 9E, section 9F,]** section 10(1)*(c*H), *(c*K), *(e)*, *(i*A), *(j)* and *(n*B), section 11*(e)*, *(f)*, *(g)*, *(g*A), *(j)*, *(l)*, *(t)*, *(u)* and *(w)*, section 12C, section 12E, section 12G, section 13, section 14, section 15, section 22(1), (3) and (5), section 24(2), section 24A(6), section 24C, section 24D, section 24I, section 25D, section 27, section 30, section 31, section 35(2), section 38(4), section 41(4), section 57, section 76A, paragraphs 6, 7, 9, 13, 13A, 14, 19 and 20 of the First Schedule, paragraph *(b)* of the definition of 'formula A' in paragraph 1 and paragraph 4 of the Second Schedule, paragraphs 18, 19(1), 20, 21, **[22,]** 24 and 27 of the Fourth Schedule, paragraphs 2, 3, 6, 9 and 11 of the Seventh Schedule and paragraphs 29(2A), 29(7), 31(2), 65(1)*(d)* and 66(1)*(c)* of the Eighth Schedule, shall be subject to objection and appeal.".

(2) Subsection (1)*(c)* shall in so far as it deletes the references to sections 9E and 9F come into operation on 1 June 2004 and shall apply in respect of years of assessment commencing on or after that date.

Amendment of section 4 of Act 58 of 1962, as amended by section 6 of Act 55 of 1966, section 4 of Act 104 of 1979, section 32 of Act 104 of 1980, section 3 of Act 96 of 1981, section 3 of Act 85 of 1987, section 3 of Act 70 of 1989, section 4 of Act 21 of 1994, section 3 of Act 36 of 1996, section 34 of Act 34 of 1997, section 21 of Act 30 of 1998, section 11 of Act 53 of 1999, section 14 of Act 30 of 2000, section 19 of Act 60 of 2001, section 8 of Act 74 of 2002 and section 34 of Act 12 of 2003

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

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

"(1) Every person employed or engaged by the Commissioner in carrying out the provisions of this Act shall preserve and aid in preserving secrecy with regard to all matters that may come to his or her knowledge in the performance of his or her duties in connection with those provisions, and shall not communicate any such matter to any person whatsoever other than the taxpayer concerned or his or her lawful representative nor suffer or permit any such person to have access to any records in the possession or custody of the Commissioner except in the performance of his or her duties under this Act or by order of a competent court:";

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

"*(a)* Every person **[so]** employed or engaged as contemplated in subsection (1) shall, before acting under this Act, take and subscribe before a magistrate or justice of the peace or a commissioner of oaths, such oath or solemn declaration, as the case may be, of fidelity or secrecy as may be prescribed."; and

(c) by the substitution for subsection (4) of the following subsection:

"(4) Any person employed or engaged as contemplated in subsection (1) who **[acts in the execution of his office]** carries out any provisions of the Act as contemplated in subsection (1) before he or she has taken the prescribed oath or solemn declaration shall be guilty of an offence and liable on conviction to a fine not exceeding **[R50]** R500.".

Amendment of section 5 of Act 58 of 1962, as amended by section 2 of Act 6 of 1963, section 5 of Act 90 of 1964, section 6 of Act 88 of 1965, section 7 of Act 55 of 1966, section 6 of Act 95 of 1967, section 6 of Act 76 of 1968, section 7 of Act 89 of 1969, section 7 of Act 52 of 1970, section 5 of Act 88 of 1971, section 5 of Act 90 of 1972, section 5 of Act 65 of 1973, section 5 of Act 103 of 1976, section 5 of Act 113 of 1977, section 3 of Act 104 of 1980, section 4 of Act 96 of 1981, section 4 of Act 91 of 1982, section 3 of Act 94 of 1983, section 3 of Act 121 of 1984, section 3 of Act 65 of 1986, section 3 of Act 90 of 1988, section 3 of Act 129 of 1991, section 5 of Act 21 of 1994, section 4 of Act 21 of 1995, section 7 of Act 5 of 2001, section 5 of Act 19 of 2001 and section 10 of Act 30 of 2002

15. Section 5 of the Income Tax Act, 1962, is hereby amended—

"(4) Enige beslissing van die Kommissaris kragtens die omskrywings van 'bystandsfonds', 'gade', 'pensioenfonds', 'uittredingannuïteitsfonds' en 'voorsorgfonds' in artikel 1, artikel 6, artikel 8(4)*(b)*, *(c)*, *(d)* en *(e)*, artikel 9D, **[artikel 9E, artikel 9F,]** artikel 10(1)*(c*H), *(c*K), *(e)*, *(i*A), *(j)* en *(n*B), artikel 11*(e)*, *(f)*, *(g)*, *(g*A), *(j)*, *(l)*, *(t)*, *(u)* en *(w)*, artikel 12C, artikel 12E, artikel 12G, artikel 13, artikel 14, artikel 15, artikel 22(1), (3) en (5), artikel 24(2), artikel 24A(6), artikel 24C, artikel 24D, artikel 24I, artikel 25D, artikel 27, artikel 30, artikel 31, artikel 35(2), artikel 38(4), artikel 41(4), artikel 57, artikel 76A, paragrawe 6, 7, 9, 13, 13A, 14, 19 en 20 van die Eerste Bylae, paragraaf *(b)* van die omskrywing van 'formule A' in paragraaf 1 en paragraaf 4 van die Tweede Bylae, paragrawe 18, 19(1), 20, 21, **[22,]** 24 en 27 van die Vierde Bylae, paragrawe 2, 3, 6, 9 en 11 van die Sewende Bylae en paragrawe 29(2A), 29(7), 31(2), 65(1)*(d)* en 66(1)*(c)* van die Agtste Bylae is aan beswaar en appèl onderhewig.".

(2) Subartikel (1)*(c)*, in soverre dit die verwysings na artikels 9E en 9F skrap, tree op 1 Junie 2004 in werking en is van toepassing ten opsigte van jare van aanslag wat op of na daardie datum 'n aanvang neem.

Wysiging van artikel 4 van Wet 58 van 1962, soos gewysig deur artikel 6 van Wet 55 van 1966, artikel 4 van Wet 104 van 1979, artikel 32 van Wet 104 van 1980, artikel 3 van Wet 96 van 1981, artikel 3 van Wet 85 van 1987, artikel 3 van Wet 70 van 1989, artikel 4 van Wet 21 van 1994, artikel 3 van Wet 36 van 1996, artikel 34 van Wet 34 van 1997, artikel 21 van Wet 30 van 1998, artikel 11 van Wet 53 van 1999, artikel 14 van Wet 30 van 2000, artikel 19 van Wet 60 van 2001, artikel 8 van Wet 74 van 2002 en artikel 34 van Wet 12 van 2003

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

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

"(1) Iedereen wat diens doen of deur die Kommissaris betrek by die uitvoering van die bepalings van hierdie Wet, moet ten aansien van alle sake wat by die vervulling van sy of haar pligte in verband met daardie bepalings tot sy of haar kennis kom, geheimhouding bewaar en help bewaar, en mag nie so 'n saak aan wie ook al behalwe die betrokke belastingpligtige of sy of haar wettige verteenwoordiger meedeel nie, of so iemand toelaat of veroorloof om toegang te verkry tot stukke wat in die besit of onder die bewaring van die Kommissaris is nie, behalwe by die uitvoering van sy of haar pligte ingevolge hierdie Wet of op bevel van 'n bevoegde geregshof:";

(b) deur in subartikel (2) paragraaf *(a)* deur die volgende paragraaf te vervang:

"*(a)* Iedereen wat **[aldus]** in diens geneem is of betrek word soos in subartikel (1) bedoel moet, voordat hy of sy ingevolge hierdie Wet optree, 'n eed of plegtige verklaring, na gelang van die geval, van getrouheid of geheimhouding wat voorgeskryf word, voor 'n landdros of vrederegter of 'n kommissaris van ede aflê en onderteken."; en

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

"(4) Iemand wat **[by die uitoefening van sy amp optree]** in diens of betrek soos in subartikel (1) bedoel, wat enige bepalings van die Wet uitvoer soos in subartikel (1) bedoel voordat hy of sy die voorgeskrewe eed of plegtige verklaring afgelê het, is aan 'n misdryf skuldig en by skuldigbevinding strafbaar met 'n boete van hoogstens **[R50]** R500.".

Wysiging van artikel 5 van Wet 58 van 1962, soos gewysig deur artikel 2 van Wet 6 van 1963, artikel 5 van Wet 90 van 1964, artikel 6 van Wet 88 van 1965, artikel 7 van Wet 55 van 1966, artikel 6 van Wet 95 van 1967, artikel 6 van Wet 76 van 1968, artikel 7 van Wet 89 van 1969, artikel 7 van Wet 52 van 1970, artikel 5 van Wet 88 van 1971, artikel 5 van Wet 90 van 1972, artikel 5 van Wet 65 van 1973, artikel 5 van Wet 103 van 1976, artikel 5 van Wet 113 van 1977, artikel 3 van Wet 104 van 1980, artikel 4 van Wet 96 van 1981, artikel 4 van Wet 91 van 1982, artikel 3 van Wet 94 van 1983, artikel 3 van Wet 121 van 1984, artikel 3 van Wet 65 van 1986, artikel 3 van Wet 90 van 1988, artikel 3 van Wet 129 van 1991, artikel 5 van Wet 21 van 1994, artikel 4 van Wet 21 van 1995, artikel 7 van Wet 5 van 2001, artikel 5 van Wet 19 van 2001 en artikel 10 van Wet 30 van 2002

15. Artikel 5 van die Inkomstebelastingwet, 1962, word hierby gewysig—

(a) by the deletion in subsection (1) of paragraph *(b)*; and

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

"*(c)* any person (other than **[a person in respect of whom paragraph *(b)* applies or]** a company) during the year of assessment ended the last day of February each year; and".

Amendment of section 6*quat* of Act 58 of 1962, as inserted by section 5 of Act 85 of 1987 and amended by section 5 of Act 28 of 1997, section 12 of Act 53 of 1999, section 16 of Act 30 of 2000 and substituted by section 4 of Act 59 of 2000, and amended by section 8 of Act 5 of 2001, section 20 of Act 60 of 2001 and section 9 of Act 74 of 2002

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

(a) by the substitution in subsection (1) for paragraph *(d)* of the following paragraph:

"*(d)* any foreign dividend **[contemplated in section 9E]**; or";

(b) by the substitution in subsection (1A) for the word "and" at the end of subparagraph (iii) of paragraph *(a)* of the word "or";

(c) by the substitution in subsection (1A) for paragraph *(b)* of the following paragraph:

"*(b)* any controlled foreign company, in respect of such proportional amount contemplated in subsection (1)*(b)*, subject to section 72A(3);";

(d) by the deletion in subsection (1A) of paragraphs *(c)* and *(d)*;

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

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

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

"*(a)* the rebate or rebates of any tax proved to be payable **[to the government of any other country or countries]** as contemplated in subsection (1A), shall not in aggregate exceed an amount which bears to the total normal tax payable the same ratio as the total taxable income attributable to the income, proportional amount, foreign dividend, taxable capital gain or amount, as the case may be, which is included as contemplated in subsection (1), bears to the total taxable income:";

(g) by the insertion in subsection (1B) after paragraph (i) of the proviso to paragraph *(a)* of the following paragraph:

"(iA) the taxes contemplated in subsection (1A)*(b)* that are attributable to any proportional amount which—

(aa) is taken into account in the determination of the taxable income of the resident by virtue of an election made by that resident in terms of section 9D(12) or 9D(13); or

(bb) relates to any amount contemplated in section 9D(9)*(b)*(ii) or (iii) which are not excluded from the application of section 9D(2) in terms of those subparagraphs,

shall in aggregate be limited to the amount of the normal tax which is attributable to those proportional amounts;";

(h) by the substitution in subsection (1B) for the words in paragraph (ii) of the proviso to paragraph *(a)* preceding subparagraph *(aa)* of the following words:

"(ii) where the sum of any such taxes proved to be payable **[to the government of any such other country or countries]** (excluding any taxes contemplated in paragraph (iA) of this proviso) exceeds the rebate as so determined (hereinafter referred to as the excess amount), that excess amount may—";

(i) by the deletion of paragraphs *(c)* and *(d)* of subsection (1B);

(j) by the substitution in subsection (1B) for paragraph *(e)* of the following paragraph:

(a) deur in subartikel (1) paragraaf *(b)* te skrap;

(b) deur in subartikel (1) paragraaf *(c)* deur die volgende paragraaf te vervang:

"*(c)* enige persoon (behalwe 'n **[persoon ten opsigte van wie paragraaf *(b)* van toepassing is of]** 'n maatskappy) gedurende die jaar van aanslag eindigende op die laaste dag van Februarie elke jaar; en".

Wysiging van artikel 6*quat* van Wet 58 van 1962, soos ingevoeg deur artikel 5 van Wet 85 van 1987 en gewysig deur artikel 5 van Wet 28 van 1997, artikel 12 van Wet 53 van 1999, artikel 16 van Wet 30 van 2000 en vervang deur artikel 4 van Wet 59 van 2000, en gewysig deur artikel 8 van Wet 5 van 2001, artikel 20 van Wet 60 van 2001 en artikel 9 van Wet 74 van 2002

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

(a) deur in subartikel (1) paragraaf *(d)* deur die volgende paragraaf te vervang:

"*(d)* enige buitelandse dividend **[in artikel 9E bedoel]**; of";

(b) deur in subartikel (1A) die word "en" aan die einde van subparagraaf (iii) van paragraaf *(a)* deur die word "of" te vervang;

(c) deur in subartikel (1A) paragraaf *(b)* deur die volgende paragraaf te vervang:

"*(b)* enige beheerde buitelandse maatskappy, ten opsigte van gemelde proporsionele gedeelte in subartikel (1)*(b)* bedoel, behoudens artikel 72A(3); of";

(d) deur in subartikel (1A) paragrawe *(c)* en *(d)* te skrap;

(e) deur in subartikel (1A) paragraaf *(e)* deur die volgende paragraaf te vervang:

"*(e)* enige effektegroep ten opsigte van die bedrag van enige buitelandse dividend wat geag word aan daardie inwoner verklaar te gewees het ingevolge **[artikel 9E(5)]** die voorbehoudsbepaling by paragraaf *(k)* van die omskrywing van 'bruto inkomste' en in die belasbare inkomste van daardie inwoner ingesluit is; of";

(f) deur in subartikel (1B) die woorde in paragraaf *(a)* wat die voorbehoudsbepaling voorafgaan deur die volgende woorde te vervang:

"*(a)* mag die korting of kortings van enige belasting wat bewys word **[aan die regering van enige ander land of lande]** betaalbaar **[is]** te wees soos in subartikel (1A) beoog, nie in totaal 'n bedrag wat tot die totale normale belasting betaalbaar in dieselfde verhouding staan as wat die totale belasbare inkomste toeskryfbaar aan die inkomste, proporsionele bedrag, buitelandse dividend, belasbare kapitaalwins of bedrag, na gelang van die geval, wat soos in subartikel (1) beoog ingesluit is tot die totale belasbare inkomste staan, te bowe gaan nie:";

(g) deur in subartikel (1B) die volgende paragraaf na paragraaf *(i)* van die voorbehoudsbepaling by paragraaf *(a)* in te voeg:

"*(i*A) die belastings in subartikel (1A)*(b)* bedoel wat toeskryfbaar is aan enige proporsionele bedrag wat—

(aa) in berekening gebring is by die vasstelling van die belasbare inkomste van die inwoner weens die keuse deur daardie inwoner uitgeoefen ingevolge artikel 9D(12) of 9D(13); of

(bb) verband hou met enige bedrag in artikel 9D(9)*(b)*(ii) of (iii) bedoel wat nie by die toepassing van artikel 9D(2) uitgesluit is ingevolge daardie subparagrawe nie, word in totaal beperk tot die bedrag van die normale belasting wat aan daardie proporionele bedrae toeskryfbaar is;";

(h) deur in subartikel (1B) die woorde in paragraaf (ii) van die voorbehoudsbepaling by paragraaf *(a)* wat subparagraaf *(aa)* voorafgaan deur die volgende woorde te vervang:

"(ii) waar die bedrag van enige bedoelde belastings wat bewys word betaalbaar **[aan die regering van enige bedoelde ander land of lande]** te wees (uitgesluit enige belastings in paragraaf *(i*A) van hierdie voorbehoudsbepaling bedoel) die korting aldus bepaal (hieronder die oorskotbedrag genoem), te bowe gaan daardie oorskotbedrag—";

(i) deur paragrawe *(c)* en *(d)* van subartikel (1B) te skrap;

(j) deur in subartikel (1B) paragraaf *(e)* deur die volgende paragraaf te vervang:

"*(e)* no rebate shall be allowed in respect of any tax payable on any amount contemplated in subsection (1)*(d)*, if the resident has **[made an election]** elected to deduct the amount of withholding tax as contemplated in section **[9E(6)]** 11*(r)*."; and

(k) by the deletion of the definition of "qualifying interest" in subsection (3).

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

Amendment of section 7 of Act 58 of 1962, as amended by section 5 of Act 90 of 1962, section 8 of Act 88 of 1965, section 9 of Act 55 of 1966, section 7 of Act 94 of 1983, section 2 of Act 30 of 1984, section 5 of Act 90 of 1988, section 5 of Act 70 of 1989, section 4 of Act 101 of 1990, section 7 of Act 129 of 1991, section 5 of Act 141 of 1992, section 6 of Act 21 of 1995, section 23 of Act 30 of 1998, section 13 of Act 53 of 1999, section 5 of Act 59 of 2000 and section 10 of Act 74 of 2002

17. Section 7 is hereby amended by the deletion of the proviso to subsection (8).

Amendment of section 8 of Act 58 of 1962, as amended by section 6 of Act 90 of 1962, section 6 of Act 90 of 1964, section 9 of Act 88 of 1965, section 10 of Act 55 of 1966, section 10 of Act 89 of 1969, section 6 of Act 90 of 1972, section 8 of Act 85 of 1974, section 7 of Act 69 of 1975, section 7 of Act 113 of 1977, section 8 of Act 94 of 1983, section 5 of Act 121 of 1984, section 4 of Act 96 of 1985, section 5 of Act 65 of 1986, section 6 of Act 85 of 1987, section 6 of Act 90 of 1988, section 5 of Act 101 of 1990, section 9 of Act 129 of 1991, section 6 of Act 141 of 1992, section 4 of Act 113 of 1993, section 6 of Act 21 of 1994, section 8 of Act 21 of 1995, section 6 of Act 36 of 1996, section 6 of Act 28 of 1997, section 24 of Act 30 of 1998, section 14 of Act 53 of 1999, section 17 of Act 30 of 2000, section 6 of Act 59 of 2000, section 7 of Act 19 of 2001, section 21 of Act 60 of 2001, section 12 of Act 30 of 2002 and section 11 of Act 74 of 2002

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

(a) by the substitution in subsection (4) for paragraph *(e)* of the following paragraph:

"*(e)* Notwithstanding paragraph *(a)*, but subject to paragraph *(e*B*)*, *(e*C*)*, *(e*D*)* and *(e*E*)*, there shall not be included in the income of a person any amount recovered or recouped as a result of the disposal of any asset, where that person has elected that paragraph 65 or 66 of the Eighth Schedule applies in respect of the disposal of that asset."; and

(b) by the insertion in subsection (4) after paragraph *(e)* of the following paragraphs:

"*(e*A*)* Where a person acquires more than one asset (hereinafter referred to as "the replacement asset or assets") contemplated in paragraph *(e)*, that person must, in applying paragraphs *(e*B*)*, *(e*C*)* and *(e*D*)*, apportion the amount recovered or recouped to each replacement asset in the same ratio as the receipts and accruals from that disposal respectively expended in acquiring each replacement asset bear to the total amount of those receipts and accruals expended in acquiring all those replacement assets.

*(e*B*)* Where a replacement asset in relation to an asset of a person as contemplated in paragraph *(e)* constitutes a depreciable asset, that person shall be deemed to have recovered or recouped in a year of assessment so much of the amount contemplated in paragraph *(e)* apportioned to that asset as contemplated in paragraph *(e*A*)* as bears to the total amount of the recovery or recoupment contemplated in paragraph *(e)* the same ratio as the amount of any capital deduction or allowance allowed in that year of assessment in respect of that replacement asset bears to the total amount of the capital deduction or allowance (determined with reference to the cost or value of that asset at the time of acquisition thereof) allowable for all years of assessment in respect of that replacement asset.

"*(e)* word geen korting toegelaat nie ten opsigte van enige belasting betaalbaar ten opsigte van enige bedrag in subartikel (1)*(d)* bedoel, indien die inwoner 'n keuse soos in artikel **[9E(6)]** 11*(r)* bedoel, uitgeoefen het **[nie]** om die bedrag van die weerhoudingsbelasting af te trek.";

(k) deur die woordomskrywing van "kwalifiserende belang" in subartikel (3) te skrap.

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

Wysiging van artikel 7 van Wet 58 van 1962, soos gewysig deur artikel 5 van Wet 90 van 1962, artikel 8 van Wet 88 van 1965, artikel 9 van Wet 55 van 1966, artikel 7 van Wet 94 van 1983, artikel 2 van Wet 30 van 1984, artikel 5 van Wet 90 van 1988, artikel 5 van Wet 70 van 1989, artikel 4 van Wet 101 van 1990, artikel 7 van Wet 129 van 1991, artikel 5 van Wet 141 van 1992, artikel 6 van Wet 21 van 1995, artikel 23 van Wet 30 van 1998, artikel 13 van Wet 53 van 1999, artikel 5 van Wet 59 van 2000 en artikel 10 van Wet 74 van 2002

17. Artikel 7 van die Inkomstebelastingwet, 1962, word hierby gewysig deur in subartikel (8) die voorbehoudsbepaling te skrap.

Wysiging van artikel 8 van Wet 58 van 1962, soos gewysig deur artikel 6 van Wet 90 van 1962, artikel 6 van Wet 90 van 1964, artikel 9 van Wet 88 van 1965, artikel 10 van Wet 55 van 1966, artikel 10 van Wet 89 van 1969, artikel 6 van Wet 90 van 1972, artikel 8 van Wet 85 van 1974, artikel 7 van Wet 69 van 1975, artikel 7 van Wet 113 van 1977, artikel 8 van Wet 94 van 1983, artikel 5 van Wet 121 van 1984, artikel 4 van Wet 96 van 1985, artikel 5 van Wet 65 van 1986, artikel 6 van Wet 85 van 1987, artikel 6 van Wet 90 van 1988, artikel 5 van Wet 101 van 1990, artikel 9 van Wet 129 van 1991, artikel 6 van Wet 141 van 1992, artikel 4 van Wet 113 van 1993, artikel 6 van Wet 21 van 1994, artikel 8 van Wet 21 van 1995, artikel 6 van Wet 36 van 1996, artikel 6 van Wet 28 van 1997, artikel 24 van Wet 30 van 1998, artikel 14 van Wet 53 van 1999, artikel 17 van Wet 30 van 2000, artikel 6 van Wet 59 van 2000, artikel 7 van Wet 19 van 2001, artikel 21 van Wet 60 van 2001, artikel 12 van Wet 30 van 2002 en artikel 11 van Wet 74 van 2002

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

(a) deur in subartikel (4) paragraaf *(e)* deur die volgende paragraaf te vervang:

"*(e)* Ondanks paragraaf *(a)*, maar behoudens paragrawe *(e*B*)*, *(e*C*)*, *(e*D*) en (e*E*)*, word daar nie by die inkomste van 'n persoon ingesluit nie enige bedrag vergoed of verhaal weens die beskikking oor enige bate, waar daardie persoon 'n keuse uitgeoefen het dat paragraaf 65 of 66 van die Agtste Bylae ten opsigte van daardie beskikking van toepassing is.";

(b) deur in subartikel (4) die volgende paragrawe na paragraaf *(e)* in te voeg:

"*(e*A*)* Indien 'n persoon meer as een bate verkry (hierna die 'vervangingsbate of -bates' genoem) om die bate in paragraaf *(e)* bedoel te vervang, moet daardie persoon by die toepassing van paragraaf *(e*B*)*, *(e*C*)* en *(e*D*)*, die bedrag wat vergoed of verhaal is toereken aan elke vervangingsbate in dieselfde verhouding as wat die ontvangste en toevallings van daardie beskikking onderskeidelik bestee is om elke vervangingsbate te verkry tot die totale bedrag van daardie ontvangste en toevallings bestee om al daardie vervangingsbates te verkry, staan.

*(e*B*)* Waar 'n vervangingsbate met betrekking tot 'n bate van 'n persoon in paragraaf *(e)* bedoel 'n slytasiebate uitmaak, word daardie persoon gedurende 'n jaar van aanslag geag soveel van die bedrag in paragraaf *(e)* bedoel te verhaal het of daarvoor vergoed te wees, wat in dieselfde verhouding staan tot die totale bedrag van die verhaling of vergoeding in paragraaf *(e)* bedoel as wat die bedrag van enige kapitaalaftrekking of —vermindering in daardie jaar van aanslag ten opsigte van daardie vervangingsbate toegelaat tot die totale bedrag van die kapitaalaftrekking of —vermindering (vasgestel met verwysing na die koste of waarde van daardie bate op die tyd van verkryging daarvan) wat vir alle jare van aanslag ten opsigte van daardie vervangingsbate toelaatbaar is.

(eC) Where a person during any year of assessment disposes of a replacement asset in relation to an asset contemplated in paragraph *(e)* and any portion of the recovery or recoupment which is apportioned to that replacement asset has not been included in the income of that person in terms of paragraph *(eB)* or *(eD)*, that portion must be deemed to be an amount recovered or recouped by that person in respect of that replacement asset in that year of assessment.

(eD) Where during any year of assessment a person ceases to use a replacement asset in relation to an asset contemplated in paragraph *(e)*, in respect of which paragraph 66 of the Eighth Schedule applies, for the purposes of that person's trade and any portion of the amount which is apportioned to that replacement asset has not been included in the income of that person in terms of paragraph *(eB)* or *(eC)*, that portion must be deemed to be an amount recovered or recouped in that year of assessment.

(eE) Where a person contemplated in paragraph *(e)* fails to conclude a contract or fails to bring any replacement asset into use within the period prescribed in paragraphs 65 or 66 of the Eighth Schedule, as the case may be, paragraph *(e)* shall not apply and that person must—

(i) deem the amount contemplated in paragraph *(e)* to be an amount recovered or recouped for purposes of paragraph *(a)* on the date on which the relevant period ends;

(ii) determine interest at the prescribed rate on the amount recovered or recouped from the date of the disposal contemplated in paragraph *(e)* to the date contemplated in subparagraph (i); and

(iii) deem that interest to be an amount recovered or recouped for purposes of paragraph *(a)* on the date contemplated in subparagraph (i).".

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

Amendment of section 8E of Act 58 of 1962, as inserted by section 6 of Act 70 of 1989

19. (1) Section 8E of the Income Tax Act, 1962, is hereby amended by the substitution in subsection (1) for subparagraph (ii) of paragraph *(b)* of the definition of "affected instrument" of the following subparagraph:

"(ii) such share does not rank *pari passu* as regards its participation in dividends with all other ordinary shares in the capital of the relevant company or, where the ordinary shares in such company are divided into two or more classes, with the shares of at least one of such classes, or any dividend payable on such share is to be calculated directly or indirectly with reference to—

(aa) any specified rate of interest **[or is otherwise to be calculated having regard to—]**;

(bb) the amount of capital subscribed for such share; or

(cc) the amount of any loan or advance made directly or indirectly by the shareholder or by any connected person in relation to the shareholder;".

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

(eC) Indien 'n persoon gedurende enige jaar van aanslag oor 'n vervangingsbate met betrekking tot 'n bate in paragraaf *(e)* bedoel beskik en enige gedeelte van die vergoeding of verhaling wat aan daardie vervangingsbate toegedeel is was nie by die inkomste van daardie persoon ingevolge paragraaf *(eB)* of *(eD)* ingesluit nie, moet daardie gedeelte geag word 'n bedrag te wees wat deur daardie persoon verhaal is of vergoed te wees ten opsigte van daardie vervangingsbate in daardie jaar van aanslag.

(eD) Indien gedurende enige jaar van aanslag 'n persoon ophou om 'n vervangingsbate met betrekking tot 'n bate in paragraaf *(e)* bedoel ten opsigte waarvan paragraaf 66 van die Agtste Bylae van toepassing is, vir doeleindes van daardie persoon se bedryf te gebruik en enige gedeelte van die bedrag wat aan daardie vervangingsbate toegedeel was nie by die inkomste van daardie persoon ingevolge paragraaf *(eB)* of *(eC)* ingesluit was nie, moet daardie gedeelte geag word 'n bedrag te wees wat in daardie jaar van aanslag verhaal of vergoed is.

(eE) Indien 'n persoon in paraagraaf *(e)* bedoel nalaat om 'n kontrak te sluit of nalaat om enige vervangingsbate in gebruik te bring binne die tydperk in paragraaf 65 of 66 van die Agtste Bylae, na gelang van die geval, voorgeskryf, is paragraaf *(e)* nie van toepassing nie en moet daardie persoon—

(i) die bedrag in paragraaf *(e)* bedoel ag om 'n bedrag verhaal of vergoed te wees by die toepassing van paragraaf *(a)* op die datum waarop die betrokke tydperk eindig;

(ii) rente bereken teen die voorgeskrewe koers op die bedrag vergoed of verhaal vanaf die datum van die beskikking in paragraaf *(e)* bedoel tot die datum in subparagraaf (i) bedoel; en

(iii) daardie rente ag as 'n bedrag vergoed of verhaal te wees by die toepassing van paragraaf *(a)* op die datum in subparagraaf (i) bedoel.".

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

Wysiging van artikel 8E van Wet 58 van 1962, soos ingevoeg deur artikel 6 van Wet 70 van 1989

19. (1) Artikel 8E van die Inkomstebelastingwet, 1962, word hierby gewysig deur in subartikel (1) subparagraaf (ii) van paragraaf *(b)* van die woordomskrywing van "geaffekteerde stuk" deur die volgende subparagraaf te vervang:

"(ii) bedoelde aandeel nie in gelyke mate staan nie wat betref sy aandeel in dividende met alle ander gewone aandele in die kapitaal van die betrokke maatskappy of, waar die gewone aandele in bedoelde maatskappy in twee of meer klasse van aandele verdeel is, met die aandele in ten minste een van bedoelde klasse, of 'n dividend betaalbaar op bedoelde aandeel bereken moet word direk of indirek met verwysing na—

(aa) 'n gespesifiseerde rentekoers **[of andersins bereken moet word met inagneming van]**

(bb) die bedrag aan kapitaal ingeskryf op bedoelde aandeel; of

(cc) die bedrag van enige lening of voorskot direk of indirek deur die aandeelhouer of deur enige verbonde persoon met betrekking tot die aandeelhouer gemaak.".

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

Amendment of section 9 of Act 58 of 1962, as amended by section 7 of Act 90 of 1962, section 6 of Act 72 of 1963, section 7 of Act 90 of 1964, section 9 of Act 95 of 1967, section 12 of Act 89 of 1969, section 6 of Act 65 of 1973, section 9 of Act 85 of 1974, section 8 of Act 103 of 1976, section 9 of Act 121 of 1984, section 5 of Act 96 of 1985, section 6 of Act 65 of 1986, section 2 of Act 108 of 1986, section 7 of Act 85 of 1987, section 36 of Act 9 of 1989, section 10 of Act 129 of 1991, section 7 of Act 141 of 1992, section 5 of Act 113 of 1993, section 3 of Act 140 of 1993, section 7 of Act 21 of 1994, section 9 of Act 21 of 1995, section 7 of Act 28 of 1997, section 25 of Act 30 of 1998, section 15 of Act 53 of 1999, section 7 of Act 59 of 2000 and section 12 of Act 74 of 2002

20. Section 9 of the Income Tax Act, 1962, is hereby amended by the substitution in subsection (2) for paragraph *(aa)* of the proviso of the following paragraph:

"*(aa)* 80 per cent or more of the value of the net **[asset]** assets of that company or other entity, determined on the market value basis, is attributable directly or indirectly to immovable property, (other than immovable property held by that company or entity as trading stock); and".

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

21. (1) Section 9B of the Income Tax Act, 1962, is hereby amended by the substitution in subsection (1) for subparagraph (i) of paragraph *(e)* of the proviso of the following subparagraph:

"(i) any share has been lent by a lender to a borrower **[as contemplated in the definition of]** in terms of a securities lending arrangement **[in section 23 (1) of the Stamp Duties Act, 1968 (Act No. 77 of 1968)]**, such share shall for the purposes of the lender be deemed not to have been disposed of by the lender; and".

(2) Subsection (1) shall come into operation on the date of promulgation and shall apply in respect of any securities lending arrangement entered into on or after that date.

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

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

(a) by the substitution in subsection (1) for the definition of "foreign company" of the following definition:

" 'foreign company' means any association, corporation, company, arrangement or scheme contemplated in paragraph *(a)*, *(b)* or *(e)* of the definition of 'company' in section 1, which is not a resident **[or which is a resident but where that association, corporation, company, arrangement or scheme is as a result of the application of the provisions of any agreement entered into by the Republic for the avoidance of double taxation treated as not being a resident]**;";

(b) by the substitution in subsection (1) for the definition of "foreign financial instrument holding company" of the following definition:

" 'foreign financial instrument holding company means a foreign financial instrument holding company as defined in section 41: Provided that in determining whether more than half of the market value or two-thirds of actual cost of the assets of the company and all controlled group companies consist of financial instruments, the following assets must be wholly disregarded—

Wysiging van artikel 9 van Wet 58 van 1962, soos gewysig deur artikel 7 van Wet 90 van 1962, artikel 6 van Wet 72 van 1963, artikel 7 van Wet 90 van 1964, artikel 9 van Wet 95 van 1967, artikel 12 van Wet 89 van 1969, artikel 6 van Wet 65 van 1973, artikel 9 van Wet 85 van 1974, artikel 8 van Wet 103 van 1976, artikel 9 van Wet 121 van 1984, artikel 5 van Wet 96 van 1985, artikel 6 van Wet 65 van 1986, artikel 2 van Wet 108 van 1986, artikel 7 van Wet 85 van 1987, artikel 36 van Wet 9 van 1989, artikel 10 van Wet 129 van 1991, artikel 7 van Wet 141 van 1992, artikel 5 van Wet 113 van 1993, artikel 3 van Wet 140 van 1993, artikel 7 van Wet 21 van 1994, artikel 9 van Wet 21 van 1995, artikel 7 van Wet 28 van 1997, artikel 25 van Wet 30 van 1998, artikel 15 van Wet 53 van 1999, artikel 7 van Wet 59 van 2000 en artikel 12 van Wet 74 van 2002

20. Artikel 9 van die Inkomstebelastingwet, 1962, word hierby gewysig deur in subartikel (2) van die Engelse teks paragraaf *(aa)* van die voorbehoudsbepaling deur die volgende paragraaf te vervang: "

"*(aa)* 80% or more of the value of the net **[asset]** assets of that company or other entity, determined on the market value basis, is attributable directly or indirectly to immovable property, (other than immovable property held by that company or entity as trading stock); and".

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

21. (1) Artikel 9B van die Inkomstebelastingwet, 1962, word hierby gewysig deur in subartikel (1) subparagraaf (i) van paragraaf *(e)* van die voorbehoudsbepaling deur die volgende subparagraaf te vervang: "

"(i) 'n aandeel deur 'n uitlener aan 'n lener uitgeleen is **[soos beoog in die omskrywing van 'leningsreëling' in artikel 23 (1) van die Wet op Seëlregte, 1968 (Wet 77 van 1968)]** ingevolge 'n aandeleleningsreëling, word bedoelde aandeel vir die doeleindes van die uitlener geag nie vervreem te gewees het deur die uitlener nie; en".

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

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

22. Artikel 9D van die Inkomstebelastingwet, 1962, word hierby gewysig—

(a) deur in subartikel (1) die woordomskrywing van "buitelandse maatskappy" deur die volgende woordomskrywing te vervang:

" 'buitelandse maatskappy' enige vereniging, korporasie, maatskappy, reëling of skema in paragraaf *(a)*, *(b)* of *(e)* van die omskrywing van "maatskappy" in artikel 1 bedoel, wat nie 'n inwoner is nie **[of wat 'n inwoner is maar waar daardie vereniging, korporasie, maatskappy, reëling of skema weens die toepassing van die bepalings van enige ooreenkoms deur die Republiek aangegaan vir die voorkoming van dubbele belasting behandel word as nie 'n inwoner te wees nie]**;";

(b) deur in subartikel (1) die woordomskrywing van "buitelandse finansiële instrumenthouermaatskappy" deur die volgende woordomskrywing te vervang:

" 'buitelandse finansiële intrumenthouermaatskappy' 'n buitelandse finansiële instrumenthouermaatskappy soos in artikel 41 omskryf: Met dien verstande dat by die vasstelling of meer as helfte van die markwaarde of twee-derdes van die werklike koste van die bates van die maatskappy en alle beheerde groepsmaatskappye finansiële instrumente uitmaak, word die volgende bates in geheel buite rekening gelaat—

(a) any share in any other company in the same group of companies; and

(b) any financial instrument which constitutes a loan, advance or debt entered into between companies which form part of the same group of companies;";

(c) by the substitution in subsection (2) for item *(bb)* of subparagraph (ii) of paragraph *(a)* of the following item:

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

(d) by the substitution in subsection (2A) for the words preceding the proviso of the following words:

"For the purposes of this section, the 'net income' of a controlled foreign company in respect of a foreign tax year is an amount equal to the taxable income of that company determined in accordance with the provisions of this Act as if that controlled foreign company had been a taxpayer, and as if that company had been a resident for purposes of the definition of 'gross income', sections 7(8), **[9E]**, 10(1)*(h)*, 10(1)*(h*A*)*, 25B and paragraphs 2(1)*(a)*, 12, 24, 70, 71, 72 and 80 of the Eighth Schedule:";

(e) by the substitution in subsection (2A) for paragraph *(c)* of the proviso of the following paragraph:

"*(c)* no deduction shall be allowed in respect of any interest, royalties, rental or income of a similar nature paid or payable or deemed to be paid or payable by that company to any other controlled foreign company in relation to the resident (including any similar amount adjusted in terms of section 31) or any exchange difference determined in terms of section 24I in respect of any exchange item to which that controlled foreign company and other foreign company are parties, as contemplated in subsection (9)*(f*A*)*, unless that resident has elected in terms of subsection (12) that the provisions of subsection (9) shall not apply in respect of the net income of that other controlled foreign company for the relevant foreign tax year;";

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

"The provisions of **[this section]** subsection (2) shall not apply to the extent that the net income of the controlled foreign company—";

(g) by the deletion in subsection (9) of paragraph *(a)*;

(h) by the substitution in subsection (9) for the words in the proviso to paragraph *(b)* preceding subparagraph (i) of the following words:

"Provided that the provisions of this paragraph shall not apply to any net income that is attributable to **[any amounts]**—";

(i) by the substitution in subsection (9) for paragraph (i) of the proviso to paragraph *(b)* of the following paragraph:

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

(j) by the substitution in subsection (9) for the words in paragraph (ii) of the proviso to paragraph *(b)* of the following words:

(a) enige aandeel in 'n ander maatskappy in dieselfde groep van maatskappye; en

(b) enige finansiële instrument wat 'n lening, voorskot of skuld aangegaan tussen maatskappye wat deel van dieselfde groep maatskappye vorm, uitmaak;";

(c) deur in subartikel (2) van die Engelse teks item *(bb)* van subparagraaf (ii) van paragraaf *(a)* deur die volgende item te vervang:

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

(d) deur in subartikel (2A) die woorde wat die voorbehoudsbepaling voorafgaan deur die volgende woorde te vervang:

"By die toepassing van hierdie artikel is die 'netto inkomste' van 'n beheerde buitelandse maatskappy ten opsigte van 'n buitelandse belastingjaar 'n bedrag gelyk aan die belasbare inkomste van daardie maatskappy ingevolge die bepalings van hierdie Wet bepaal asof daardie beheerde buitelandse maatskappy 'n belastingpligtige was, en asof daardie maatskappy 'n inwoner was vir doeleindes van die woordomskrywing van 'bruto inkomste', artikels 7(8), **[9E]**, 10(1)*(h)*, 10(1)*(h*A), 25B en paragrawe 2(1)*(a)*, 12, 24, 70, 71, 72 en 80 van die Agtste Bylae:";

(e) deur in subartikel (2A) paragraaf *(c)* van die voorbehoudsbepaling deur die volgende paragraaf te vervang:

"*(c)* geen aftrekking toegelaat word nie ten opsigte van enige rente, tantième, huurgeld of inkomste van 'n dergelike aard betaal of betaalbaar of geag betaal of betaalbaar te wees deur daardie maatskappy aan enige ander beheerde buitelandse maatskappy met betrekking tot daardie inwoner (ingesluit enige soortgelyke bedrag wat ingevolge artikel 31 aangepas is) of enige valutaverskil ingevolge artikel 24I vasgestel ten opsigte van enige valuta-item waarby daardie beheerde buitelandse maatskappy en ander buitelandse maatskappy partye is, soos in subartikel (9)*(f*A*)* beoog, tensy daardie inwoner 'n keuse ingevolge subartikel (12) uitgeoefen het dat die bepalings van subartikel (9) nie van toepassing is nie ten opsigte van die netto inkomste van daardie ander beheerde buitelandse maatskappy vir die betrokke buitelandse belastingjaar;";

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

"Die bepalings van **[hierdie artikel]** subartikel (2) is nie van toepassing nie tot die mate wat die netto inkomste van die beheerde buitelandse maatskappy—";

(g) deur in subartikel (9) paragraaf *(a)* te skrap;

(h) deur in subartikel (9) die woorde in die voorbehoudsbepaling by paragraaf *(b)* wat subparagraaf (i) voorafgaan deur die volgende woorde te vervang:

"Met dien verstande dat die bepalings van hierdie paragraaf nie van toepassing is nie ten opsigte van enige netto inkomste wat toeskryfbaar is aan **[enige bedrae]**—";

(i) deur in subartikel (9) paragraaf (i) van die voorbehoudsbepaling by paragraaf *(b)* deur die volgende paragraaf te vervang: "

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

(j) deur in subartikel (9) die woorde in paragraaf (ii) van die voorbehoudsbepaling by paragraaf *(b)* deur die volgende woorde te vervang:

"(ii) any amounts derived from—";

(k) by the addition in subsection (9) to item *(aa)* of subparagraph (ii) of paragraph *(b)* of the following subitem:

"(D) that controlled foreign company purchases the same or similar goods mainly within the country of residence of that controlled foreign company from persons who are not connected persons in relation to that controlled foreign company;";

(l) by the addition in subsection (9) to item *(bb)* of subparagraph (ii) of paragraph *(b)* of the following subitem:

"(D) products of the same or similar nature are sold by that controlled foreign company mainly to persons who are not connected persons in relation to that controlled foreign company for delivery within the country of residence of that controlled foreign company;";

(m) by the substitution in subsection (9) for subparagraph (iii) of paragraph *(b)* of the following subparagraph:

"(iii) any amounts in the form of dividends, interest, royalties, rental, annuities, insurance premiums or income of a similar nature, or any capital gain determined in respect of the disposal of any asset from which any such **[income is]** amounts are or could be earned, or any foreign currency gain determined in respect of any foreign equity instrument or any foreign currency gain determined in terms of section 24I, except **[where those amounts]**—

(aa) to the extent that any income and capital gains attributable to those amounts (other than income or capital gains in respect of which any of the provisions contained in paragraphs *(e)* to *(f*B*)* apply) do not in total exceed **[five]** ten per cent of the **[sum of the amounts (other than those of a capital nature) and the amount of all capital gains and foreign currency gains of that controlled foreign company]** income and capital gains of the controlled foreign company attributable to that business establishment other than income or capital gains—

(A) attributable to those amounts; or

(B) in respect of which any of the provisions contained in paragraphs *(e)* to *(f*B*)* apply; or

(bb) where those amounts arise from the principal trading activities of any banking or financial services, insurance or rental business, excluding any such amounts derived—

(A) by a company which is a foreign financial instrument holding company at the time that the amounts are so derived;

(B) from any connected person (in relation to that controlled foreign company) who is a resident or any resident who directly or indirectly holds at least five per cent of the participation rights in—

(i) that controlled foreign company; or

(ii) any other company in the same group of companies which holds shares in that controlled foreign company; or

(C) **[from any resident]** to the extent that **[those amounts are produced as part of a scheme for the purpose of avoiding the liability for any tax, duty or levy imposed in terms of this Act or any other law administered by the Commissioner]** those amounts form part of any transaction, operation or scheme in terms of which any amount received by or accrued to any person is exempt from tax while any corresponding expenditure (other than expenditure for the delivery of any goods including

"(ii) enige bedrae verkry uit—";

(k) deur in subartikel (9) die volgende subitem by item *(aa)* van subparagraaf (ii) van paragraaf *(b)* te voeg:

"(D) daardie beheerde buitelandse maatskappy dieselfde of soortgelyke goed aankoop hoofsaaklik binne die land van inwoning van daardie beheerde buitelandse maatskappy van persone wat nie verbonde persone met betrekking tot daardie beheerde buitelandse maatskappy is nie;";

(l) deur in subartikel (9) die volgende subitem by item *(bb)* van subparagraaf (ii) van paragraaf *(b)* te voeg:

"(D) produkte van dieselfde of soortgelyke aard deur daardie beheerde buitelandse maatskappy verkoop word hoofsaaklik aan persone wat nie verbonde persone met betrekking tot daardie beheerde buitelandse maatskappy is nie vir lewering binne die land van inwoning van daardie beheerde buitelandse maatskappy.";

(m) deur in subartikel (9) subparagraaf (iii) van paragraaf *(b)* deur die volgende subparagraaf te vervang:

"(iii) enige bedrag in die vorm van dividende, rente, tanti me, huurgeld, jaargelde, versekeringspremies of inkomste van 'n soortgelyke aard, of enige kapitaalwins vasgestel ten opsigte van die beskikking oor enige bate, ten opsigte waarvan enige sodanige **[inkomste]** bedrag verdien word of kan word, of enige buitelandse valutawins vasgestel ten opsigte van enige buitelandse ekwiteitsinstrument of enige buitelandse valutawins vasgestel ingevolge artikel 24I, behalwe **[waar daardie bedrae]**—

(aa) in die mate wat enige inkomste en kapitaalwins wat aan daardie bedrae toeskryfbaar is (behalwe inkomste of kapitaalwins ten opsigte waarvan enige van die bepalings in paragrawe *(e)* tot *(f*B*)* van toepassing is) nie in totaal **[vyf]** tien persent van die **[som van die bedrae (behalwe dié van 'n kapitale aard) en die bedrag van alle kapitaalwinste en buitelandse valutawinste van daardie beheerde buitelandse maatskappy]** inkomste en kapitaalwins van die beheerde buitelandse maatskappy wat aan daardie besigheidsaak toeskryfbaar is, behalwe inkomste of kapitaalwins—

(A) wat aan daardie bedrae toeskryfbaar is; of

(B) ten opsigte waarvan enige van die bepalings in paragrawe *(e)* tot *(f*B*)* van toepassing is, te bowe gaan nie; of

(bb) waar daardie bedrae verkry word uit die hoofbedryfsaktiwiteite van enige bank- of finansiële dienste, versekerings- of verhuringsbesigheid, uitgesonderd enige sodanige bedrae verkry—

(A) deur 'n maatskappy wat 'n buitelandse finansiële instrumenthouermaatskappy is op die tydstip wat die bedrae aldus verkry is;

(B) vanaf enige verbonde persoon (met betrekking tot daardie beheerde buitelandse maatskappy) wat 'n inwoner is of enige inwoner wat direk of indirek minstens vyf persent van die deelnemende regte hou in—

(i) daardie beheerde buitelandse maatskappy hou; of

(ii) enige ander maatskappy in dieselfde groep van maatskappye wat aandele in daardie beheerde buitelandse maatskappy hou; of

(C) **[vanaf enige inwoner]** in die mate wat **[daardie bedrae opgelewer word as deel van 'n skema vir die doel van die vermyding van die aanspreeklikheid vir enige belasting, reg of heffing ingevolge hierdie Wet of enige ander wet deur die Kommissaris geadministreer, opgelê]** daardie bedrae deel vorm van enige transaksie, handeling of skema ingevolge waarvan enige bedrag ontvang deur of toegeval aan 'n persoon van belasting vrygestel is terwyl enige ooreenstemmende onkoste (behalwe onkoste vir die lewering van enige goed, waarby

electricity) is deductible by that person or by any connected person in relation to that person in determining the liability for tax of that person or connected person, as the case may be, in terms of this Act;";

(n) by the substitution in subsection (9) for paragraph *(f)* of the following paragraph:

"*(f)* is attributable to any foreign dividend **[contemplated in section 9E]** declared to **[or deemed to have been declared to]** that controlled foreign company, by any other controlled foreign company **[from an amount which relates to an amount of income]** in relation to the resident, to the extent that the foreign dividend does not exceed the aggregate of all amounts which **[has]** have been or will be included in the income of the resident in terms of this section in any year of assessment, which relate to the net income of—

(i) the company declaring the dividend; or

(ii) any other company which has been included in the income of that resident by virtue of that resident's participation rights in that other company held indirectly through the company declaring the dividend,

reduced by—

(aa) the amount of any foreign tax payable, in respect of the amounts so included in that resident's income; and

(bb) so much of all foreign dividends received by or accrued to that controlled foreign company as was—

(A) excluded from the application of this section in terms of this paragraph or section 10(1)*(k)*(ii)*(dd)*;

(B) previously not included in the income of that resident by virtue of any prior inclusion in terms of section 9D.";

(o) by the deletion in subsection (9) of paragraph *(h)*;

(p) by the deletion of subsection (11); and

(q) by the addition of the following subsections:

"(12) A resident who, together with any connected person in relation to that resident, holds at least 10 per cent but not more than 25 per cent of the participation rights of a controlled foreign company may elect that all the provisions of subsection (9) shall not apply in respect of the net income determined for a relevant foreign tax year of any controlled foreign company in which that resident holds any participation rights.

(13) Any resident who, together with any connected person in relation to that resident, holds at least 10 per cent but not more than 25 per cent of the participation rights of a foreign company may elect that the foreign company be deemed to be a controlled foreign company in relation to that resident in respect of any foreign tax year of that foreign company.".

(2) Subsection (1) shall come into operation on 1 June 2004 and shall apply in respect of the foreign tax year of a controlled foreign company which ends during any year of assessment commencing on or after that date.

Repeal of section 9E of Act 58 of 1962, as inserted by section 20 of Act 30 of 2000 and amended by section 11 of Act 59 of 2000, section 10 of Act 5 of 2001, section 8 of Act 19 of 2001 and section 23 of Act 60 of 2001 and substituted by section 15 of Act 74 of 2002

23. (1) Section 9E of the Income Tax Act, 1962, is hereby repealed.

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

ingesluit elektrisiteit) deur daardie persoon of deur enige verbonde persoon met betrekking tot daardie persoon aftrekbaar is by die bepaling van die aanspreeklikheid van daardie persoon of verbonde persoon, na gelang van die geval, vir belasting ingevolge hierdie Wet;";

(n) deur in subartikel (9) paragraaf *(f)* deur die volgende paragraaf te vervang:

"*(f)* toeskryfbaar is aan enige buitelandse dividend **[in artikel 9E beoog,]** verklaar **[of geag verklaar te gewees het]** aan daardie beheerde buitelandse maatskappy, deur enige ander beheerde buitelandse maatskappy **[vanuit 'n bedrag wat betrekking het op 'n bedrag van inkomste]** met betrekking tot die inwoner, in die mate wat die buitelandse dividend nie die totaal oorskry van alle bedrae wat ingevolge hierdie artikel by die inkomste van die inwoner ingesluit is of sal word, wat verband hou met die netto inkomste van—

(i) die maatskappy wat die dividend verklaar; of

(ii) enige ander maatskappy wat by die inkomste van daardie inwoner ingesluit is uit hoofde van daardie iwoner se deelnemende belange in daardie ander maatskappy wat indirek gehou word deur die maatskappy wat die dividend verklaar,

verminder deur—

(aa) die bedrag van enige buitelandse belasting betaalbaar ten opsigte van die bedrae aldus ingesluit by die inkomste van daardie inwoner; en

(bb) soveel van alle buitelandse dividende ontvang deur of toegeval aan daardie beheerde buitelandse maatskappy as wat—

(A) van die toepassing van hierdie artikel uitgesluit was ingevolge hierdie paragraaf of artikel 10(1)*(k)*(ii)*(dd)*; of

(B) voorheen nie by die inkomste van daardie inwoner ingesluit nie uit hoofde van enige vorige insluiting ingevolge artikel 9D;";

(o) deur in subartikel (9) paragraaf *(h)* te skrap;

(p) deur subartikel (11) te skrap;

(q) deur die volgende subartikels by te voeg:

"(12) 'n Inwoner wat, tesame met enige verbonde persoon met betrekking tot daardie inwoner, minstens 10 persent maar nie meer nie as 25 persent van die deelnemende belange van 'n beheerde buitelandse maatskappy hou, kan 'n keuse uitoefen dat al die bepalings van subartikel (9) nie van toepassing is nie ten opsigte van die netto inkomste vasgestel vir 'n betrokke buitelandse belastingjaar van 'n beheerde buitelandse maatskappy waarin daardie inwoner enige deelnemende belange hou.

(13) 'n Inwoner wat, tesame met enige verbonde persoon met betrekking tot daardie inwoner, minstens 10 persent maar nie meer nie as 25 persent van die deelnemende belange van 'n buitelandse maatskappy hou, kan 'n keuse uitoefen dat die buitelandse maatskappy geag word 'n beheerde buitelandse maatskappy te wees met betrekking tot daardie inwoner ten opsigte van enige buitelandse belastingjaar van daardie buitelandse maatskappy.".

(2) Subartikel (1) tree op 1 Junie 2004 in werking en is van toepassing ten opsigte van die buitelandse belastingjaar van 'n beheerde buitelandse maatskappy wat eindig gedurende enige jaar van aanslag wat op of na daardie datum 'n aanvang neem.

Herroeping van artikel 9E van Wet 58 van 1962, soos ingevoeg deur artikel 20 van Wet 30 van 2000 en gewysig deur artikel 11 van Wet 59 van 2000, artikel 10 van Wet 5 van 2001, artikel 8 van Wet 19 van 2001 en artikel 23 van Wet 60 van 2001 en vervang deur artikel 15 van Wet 74 van 2002

23. (1) Artikel 9E van die Inkomstebelastingwet, 1962, word hierby herroep.

(2) Subartikel (1) tree op 1 Junie 2004 in werking en is van toepassing ten opsigte van enige buitelandse dividend ontvang of toegeval gedurende enige jaar van aanslag wat op of na daardie datum 'n aanvang neem.

Repeal of section 9F of Act 58 of 1962, as inserted by section 12 of Act 59 of 2000 and amended by section 24 of Act 60 of 2001 and section 16 of Act 74 of 2002

24. (1) Section 9F of the Income Tax Act, 1962, is hereby repealed.

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

Amendment of section 9G of Act 58 of 1962, as inserted by section 25 of Act 60 of 2001 and amended by section 17 of Act 74 of 2002

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

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

"(1) For the purposes of this section 'foreign currency' means any currency **[which is not legal tender in]** other than currency of the Republic.

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

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

"(3) Any—

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

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

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

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

(ii) in any other case, at the average exchange rate for the year of assessment during which—

(aa) in the case of paragraph *(a)*, that expenditure was actually incurred by that person; or

(bb) in the case of paragraph *(b)*, the expenditure which relates to the amount so taken into account was actually incurred by that person.".

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

Herroeping van artikel 9F van Wet 58 van 1962, soos ingevoeg deur artikel 12 van Wet 59 van 2000 en gewysig deur artikel 24 van Wet 60 van 2001 en artikel 16 van Wet 74 van 2002

24. (1) Artikel 9F van die Inkomstebelastingwet, 1962, word hierby herroep.

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

Wysiging van artikel 9G van Wet 58 van 1962, soos ingevoeg deur artikel 25 van Wet 60 van 2001 en gewysig deur artikel 17 van Wet 74 van 2002

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

(a) deur subartikels (1) en (2) deur die volgende subartikels te vervang:

"(1) By die toepassing van hierdie artikel beteken 'buitelandse geldeenheid' enige geldeenheid **[wat nie 'n wettige betaalmiddel in]** behalwe die geldeenheid van die Republiek **[is nie]**.

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

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

"(3) Enige—

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

(b) bedrag in 'n buitelandse geldeenheid **[anders as die geldeenheid van die Republiek]** wat in berekening gebring is by die vasstelling van die belasbare inkomste van 'n persoon ten opsigte van 'n buitelandse ekwiteitsinstrument,

word**[, vir doeleindes van die vasstelling van die belasbare inkomste van daardie persoon]** vir die jaar van aanslag waarin oor daardie buitelandse ekwiteitsinstrument beskik is, na die geldeenheid van die Republiek omgereken—

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

(ii) in enige ander geval, teen die gemiddelde wisselkoers vir die jaar van aanslag waarin—

(aa) in die geval van paragraaf *(a)*, daardie onkoste werklik deur daardie persoon aangegaan is; of

(bb) in die geval van paragraaf *(b)*, die onkoste wat met die bedrag aldus in bereking gebring verband hou, werklik deur daardie persoon aangegaan is.".

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

Amendment of section 10 of Act 58 of 1962, as amended by section 8 of Act 90 of 1962, section 7 of Act 72 of 1963, section 8 of Act 90 of 1964, section 10 of Act 88 of 1965, section 11 of Act 55 of 1966, section 10 of Act 95 of 1967, section 8 of Act 76 of 1968, section 13 of Act 89 of 1969, section 9 of Act 52 of 1970, section 9 of Act 88 of 1971, section 7 of Act 90 of 1972, section 7 of Act 65 of 1973, section 10 of Act 85 of 1974, section 8 of Act 69 of 1975, section 9 of Act 103 of 1976, section 8 of Act 113 of 1977, section 4 of Act 101 of 1978, section 7 of Act 104 of 1979, section 7 of Act 104 of 1980, section 8 of Act 96 of 1981, section 6 of Act 91 of 1982, section 9 of Act 94 of 1983, section 10 of Act 121 of 1984, section 6 of Act 96 of 1985, section 7 of Act 65 of 1986, section 3 of Act 108 of 1986, section 9 of Act 85 of 1987, section 7 of Act 90 of 1988, section 36 of Act 9 of 1989, section 7 of Act 70 of 1989, section 10 of Act 101 of 1990, section 12 of Act 129 of 1991, section 10 of Act 141 of 1992, section 7 of Act 113 of 1993, section 4 of Act 140 of 1993, section 9 of Act 21 of 1994, section 10 of Act 21 of 1995, section 8 of Act 36 of 1996, section 9 of Act 46 of 1996, section 10 of Act 28 of 1997, section 29 of Act 30 of 1998, section 18 of Act 53 of 1999, section 21 of Act 30 of 2000, section 13 of Act 59 of 2000, section 9 of Act 19 of 2001, section 26 of Act 60 of 2001, section 13 of Act 30 of 2002, section 18 of Act 74 of 2002 and section 36 of Act 12 of 2003

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

(a) by the substitution in subsection (1) for paragraphs *(a)* and *(b)* of the following paragraphs:

"*(a)* the **[revenues]** receipts and accruals of the Government, any provincial administration or of any other state;

(b) the **[revenues]** receipts and accruals of local authorities;";

(b) by the substitution in subsection (1) for paragraph *(c*H*)* of the following paragraph:

"*(c*H*)* the receipts and accruals of any company, society or other association of persons or any trust, whether or not registered under any law (other than a co-operative formed and incorporated or deemed to be formed and incorporated under the Co-operatives Act, 1981 (Act No. 91 of 1981)), if—

(i) the sole object of **[such]** that company, society, association or trust in terms of—

(aa) the constitution of the company, society or association; or

(bb) the instrument establishing the trust,

which has been approved by the Commissioner, is to receive, hold and apply **[moneys]** amounts contributed by any taxpayer contemplated in section 11*(h*A*)* to **[such]** that company, society, association or trust in accordance with that section **[11*(h*A*)*]** in order to discharge, at the time of or after discontinuation of operations on a mine or part of a mine, any of the following or like obligations imposed upon any person in terms of any law which regulates mining operations (other than costs which are required in terms of any law to be incurred on an ongoing basis during the life of a mine or part of a mine), namely—

[*(aa)*](A) 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 due to mining, prospecting, quarrying or similar operations;

[*(bb)*](B) the protection of the surface of land and water sources and the making safe of undermined ground and of dangerous excavations, tailings, waste dumps and structures, of whatsoever nature, made in the course of mining, prospecting, quarrying or similar operations; and

[*(cc)*](C) the demolition or removal of any building, structure or other thing erected or constructed in connection

Wysiging van artikel 10 van Wet 58 van 1962, soos gewysig deur artikel 8 van Wet 90 van 1962, artikel 7 van Wet 72 van 1963, artikel 8 van Wet 90 van 1964, artikel 10 van Wet 88 van 1965, artikel 11 van Wet 55 van 1966, artikel 10 van Wet 95 van 1967, artikel 8 van Wet 76 van 1968, artikel 13 van Wet 89 van 1969, artikel 9 van Wet 52 van 1970, artikel 9 van Wet 88 van 1971, artikel 7 van Wet 90 van 1972, artikel 7 van Wet 65 van 1973, artikel 10 van Wet 85 van 1974, artikel 8 van Wet 69 van 1975, artikel 9 van Wet 103 van 1976, artikel 8 van Wet 113 van 1977, artikel 4 van Wet 101 van 1978, artikel 7 van Wet 104 van 1979, artikel 7 van Wet 104 van 1980, artikel 8 van Wet 96 van 1981, artikel 6 van Wet 91 van 1982, artikel 9 van Wet 94 van 1983, artikel 10 van Wet 121 van 1984, artikel 6 van Wet 96 van 1985, artikel 7 van Wet 65 van 1986, artikel 3 van Wet 108 van 1986, artikel 9 van Wet 85 van 1987, artikel 7 van Wet 90 van 1988, artikel 36 van Wet 9 van 1989, artikel 7 van Wet 70 van 1989, artikel 10 van Wet 101 van 1990, artikel 12 van Wet 129 van 1991, artikel 10 van Wet 141 van 1992, artikel 7 van Wet 113 van 1993, artikel 4 van Wet 140 van 1993, artikel 9 van Wet 21 van 1994, artikel 10 van Wet 21 van 1995, artikel 8 van Wet 36 van 1996, artikel 9 van Wet 46 van 1996, artikel 10 van Wet 28 van 1997, artikel 29 van Wet 30 van 1998, artikel 18 van Wet 53 van 1999, artikel 21 van Wet 30 van 2000, artikel 13 van Wet 59 van 2000, artikel 9 van Wet 19 van 2001, artikel 26 van Wet 60 van 2001, artikel 13 van Wet 30 van 2002, artikel 18 van Wet 74 van 2002 en artikel 36 van Wet 12 van 2003

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

(a) deur in subartikel (1) paragrawe *(a)* en *(b)* deur die volgende paragrawe te vervang:

"*(a)* die **[inkomste]** ontvangste en toevallings van die Regering, 'n provinsiale administrasie of van enige ander staat;

(b) die **[inkomste]** ontvangste en toevallings van plaaslike besture;";

(b) deur in subartikel (1) paragraaf *(c*H*)* deur die volgende paragraaf te vervang:

"*(c*H*)* die ontvangste en toevallings van 'n maatskappy, genootskap of ander vereniging van persone of 'n trust, hetsy ingevolge 'n wet geregistreer al dan nie (behalwe 'n koöperasie kragtens die Koöperasiewet, 1981 (Wet 91 van 1981), opgerig en ingelyf of geag opgerig en ingelyf te wees), indien—

(i) die enigste oogmerk van daardie maatskappy, genootskap, vereniging of trust ingevolge—

(aa) die konstitutsie van die maatskappy, genootskap of vereniging; of

(bb) die instrument wat die trust instel,

wat deur die Kommissaris goedgekeur is, is om **[gelde]** bedrae bygedra deur 'n belastingpligtige in artikel 11*(h*A*)* bedoel aan bedoelde maatskappy, genootskap, trust of vereniging ooreenkomstig daardie artikel **[11(hA)]** te ontvang, te hou en op die tydstip of na staking van werksaamhede op 'n myn of gedeelte van 'n myn, aan te wend ter vervulling van enige van die volgende of soortgelyke verpligtinge ingevolge enige wet wat mynbouwerksaamhede reguleer aan 'n persoon opgelê (behalwe onkoste wat ingevolge enige wet vereis word aangegaan te word op 'n deurlopende basis gedurende die leeftyd van 'n myn of gedeelte van 'n myn), naamlik—

[*(aa)*](A) die rehabilitasie van versteurings van die grondoppervlak en die voorkoming en bekamping van besoedeling van die lug, grond, see- of ander water waar bedoelde versteurings en besoedeling deur mynbou-, prospekteer-, steengroef- of soortgelyke werksaamhede veroorsaak is;

[*(bb)*](B) die beskerming van die grondoppervlak en waterbronne en die veiligmaking van ondermynde grond en van gevaarlike uitgrawings, uitskot, afvalhope en strukture, van watter aard ook al, wat in die loop van mynbou-, prospekteer-, steengroef- of soortgelyke werksaamhede gedoen is; en

[*(cc)*](C) die sloping en verwydering van enige gebou, struktuur of enigiets anders opgerig of aangebring in

with mining, prospecting, quarrying or similar operations, the removal of any debris or other objects and the restoration, as far as is practicable, of the surface to its natural state;

(iA) a person designated by the Minister of Minerals and Energy certifies that any distribution by that company, society, association or trust is or was made solely for its object as contemplated in subparagraph (i);

(ii) **[such]** that company, society or association is under its constitution, or **[such]** that trust is under the instrument establishing **[such trust]** it not permitted to distribute any of its profits or gains to any person and is required to utilise its funds solely for the 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 those funds are required—

(aa) with a financial institution as defined in section 1 of the Financial Services Board Act, 1990 (Act No. 97 of 1990);

(bb) in any financial instrument—

(i) of a company contemplated in paragraph *(a)* of the definition of 'listed company' in section 1 (other than shares in the taxpayer contemplated in subparagraph (i) or any connected person in relation to that taxpayer); or

(ii) issued by any sphere of government in the Republic; or

(cc) in any other investments which were made by that company, society, association or trust before 18 November 2003

[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 a similar object to that of the said company, society, association or trust]** approved by the Commissioner in terms of this paragraph; and

(iv) the Commissioner has approved such company, society, association or trust on such conditions as **[he]** the Commissioner may deem necessary to ensure that the activities of such company, society, association or trust are wholly directed to the furtherance of its sole object:

Provided that—

(a) where the Commissioner is—

(i) satisfied that such company, society, association or trust has during any year of assessment in any material respect; or

(ii) during any year of assessment satisfied that such company, society, association or trust has on a continuous or repetitive basis,

failed to comply with the provisions of this section, or the constitution or instrument under which it is established to the extent that it relates to the provisions of this section, the Commissioner shall after due notice withdraw approval of that company, society, association or trust with effect from the commencement of that year of assessment, unless corrective steps are taken by that company, society, association or trust within a period stated by the Commissioner in that notice;

verband met mynbou-, prospekteer-, steengroef- of soortgelyke werksaamhede, die verwydering van enige puin of ander voorwerpe en die herstel, sover prakties moontlik, van die oppervlak tot sy natuurlike staat;

(iA) 'n persoon deur die Minister van Minerale en Energie aangewys sertifiseer dat enige uitkering deur daardie maatskappy, gennootskap, vereniging of trust gemaak word of is uitsluitlik vir die oogmerk soos in subparagraaf (i) bedoel;

(ii) **[bedoelde]** daardie maatskappy, genootskap of vereniging nie ingevolge sy reglement, of **[bedoelde]** daardie trust nie ingevolge die stuk wat **[daardie trust]** dit instel, die bevoegdheid besit om enige van sy profyte of winste aan enige persoon uit te keer nie en hy verplig word om sy fondse uitsluitlik vir die oogmerk waarvoor hy ingestel is, te gebruik: Met dien verstande dat bedoelde maatskappy, genootskap, vereniging of trust toegelaat word om sy fondse **[in instellings deur die Kommissaris goedgekeur,]** te belê totdat die fondse benodig word—

(aa) by 'n finansiële instelling soos in artikel 1 van die Wet op die Raad op Finansiële Dienste, 1990 (Wet No. 97 van 1990), bedoel;

(bb) in 'n finansiële instrument—

(i) van 'n maatskappy in paragraaf *(a)* van die omskrywing van 'genoteerde maatskappy' in artikel 1 bedoel (behalwe aandele in die belastingpligtige in subparagraaf (i) bedoel of 'n verbonde persoon met betrekking tot daardie belastingpligtige; of

(ii) uitgereik deur enige regeringsfeer; of

(cc) in enige ander beleggings wat deur daardie maatskappy, genootskap, vereniging of trust voor 18 November 2003 gemaak is;

(iii) ingevolge die reglement van bedoelde maatskappy, genootskap of vereniging of die stuk wat bedoelde trust instel, hy by sy likwidasie of ontbinding verplig sal wees om sy bates wat oorbly, na voldoening aan sy verpligtinge, te gee of oor te maak aan 'n ander maatskappy, genootskap, vereniging of trust **[met 'n oogmerk soortgelyk aan dié van genoemde maatskappy, genootskap, vereniging of trust]** ingevolge hierdie paragraaf deur die Kommissaris goedgekeur; en

(iv) die Kommissaris bedoelde maatskappy, genootskap, vereniging of trust goedgekeur het op die voorwaardes wat **[hy]** die Kommissaris nodig ag om te verseker dat die bedrywighede van bedoelde maatskappy, genootskap, vereniging of trust geheel en al daarop gemik is om sy enigste oogmerk te bevorder:

Met dien verstande dat—

(a) waar die Kommissaris—

(i) tevrede is dat daardie maatskappy, genootskap, vereniging of trust gedurende 'n jaar van aanslag op enige wesenlike wyse; of

(ii) gedurende 'n jaar van aanslag tevrede is dat daardie maatskappy, genootskap, vereniging of trust op 'n voortdurende of herhalende basis,

nagelaat het om aan die bepalings van hierdie artikel te voldoen of aan die konstitusie of instrument waaronder dit ingestel is tot die mate wat dit met die bepalings van hierdie artikel verband hou, moet die Kommissaris na redelike kennis die goedkeuring van daardie maatskappy, genootskap, vereniging of trust intrek met ingang van die begin van daardie jaar van aanslag, tensy daardie maatskappy, genootskap, vereniging of trust regstellende stappe doen binne 'n tydperk deur die Kommissaris in daardie kennisgewing vermeld;

(b) where the Commissioner has withdrawn approval of a company, society, association or trust as contemplated in paragraph *(a)*, that company, society, association or trust must, within three months or such longer period as the Commissioner may allow after the date of such withdrawal, transfer, or take reasonable steps to transfer, its remaining assets to any other company, society, association or trust which is—

(i) approved in terms of this section; and

(ii) not a connected person in relation to such company, society, association or trust;

(c) where a company, society, association or trust during any year of assessment fails to transfer, or to take reasonable steps to transfer, any assets as contemplated in subparagraph (iii) or paragraph *(b)* of this proviso, the accumulated profits or reserves shall for the purposes of this Act be deemed to be an amount of taxable income which accrued to that company, society, association or trust during that year of assessment.";

(c) by the substitution in subsection (1) for the words in item *(aa)* of subparagraph (xv) of paragraph *(i)* preceding the proviso of the following words:

"so much of the aggregate of any foreign dividends **[contemplated in section 9E]** and interest received by or accrued to him or her from a source outside the Republic, which are not otherwise exempt from tax, as does not during the year of assessment exceed R1 000:";

(d) by the substitution in subsection (1) for the words in item *(bb)* of subparagraph (xv) of paragraph *(i)* preceding subitem (A) of the following words:

"*(bb)* so much of the aggregate of any interest received by or accrued to him or her from a source in the Republic and any dividends (other than foreign dividends **[contemplated in section 9E]**), which are not otherwise exempt from tax, as does not during the year of assessment exceed—";

(e) by the substitution in subsection (1) for words in subparagraph (i) of paragraph *(k)* preceding the proviso of the following words:

"dividends (other than foreign dividends) received by or accrued to or in favour of any person:"

(f) by the deletion in subsection (1) of the word "or" at the end of item *(cc)* of the proviso to subparagraph (i) of paragraph *(k)*;

(g) by the deletion in subsection (1) of item *(dd)* of the proviso to subparagraph (i) of paragraph *(k)*; and

(h) by the addition in subsection (1) to paragraph *(k)* of the following subparagraph:

"(ii) any foreign dividend received by or accrued to a person—

(aa) to the extent that the profits from which the foreign dividend is distributed—

(A) relate to any amount which has been or will be subject to tax in the Republic in terms of this Act, unless those profits have been or will be exempt or taxed at a reduced rate in the Republic as a result of the application of any agreement for the avoidance of double taxation; or

(B) arose directly or indirectly from any dividends declared by any company which is a resident;

(bb) to the extent that the foreign dividend relates to any amount which was declared by a listed company which complies with paragraphs *(a)* and *(b)* of the definition of 'listed company' in section 1 and more than 10 per cent of the equity share capital in that listed company is at the time of the declaration of that foreign dividend held collectively by residents;

(cc) who is a resident to the extent that the foreign dividend does not exceed the aggregate of all amounts which have been or will be included in the income of that resident in terms of

(b) waar die Kommissaris die goedkeuring van 'n maatskappy, genootskap, vereniging of trust ingetrek het soos in paragraaf *(a)* bedoel, moet daardie maatskappy, genootskap, vereniging of trust binne drie maande na die datum van intrekking of sodanige langer tydperk as wat die Kommissaris toelaat, die oorblywende bates oordra, of redelike stappe doen om oor te dra, aan 'n ander maatskappy, genootskap, vereniging of trust wat—

(i) ingevolge hierdie artikel goedgekeur is; en

(ii) nie 'n verbonde persoon met betrekking tot daardie maatskappy, genootskap, vereniging of trust is nie;

(c) waar 'n maatskappy, genootskap, vereniging of trust gedurende enige jaar van aanslag nalaat om die bates oor te dra of redelike stappe te doen om oor te dra, soos in subparagraaf (iii) of paragraaf *(b)* van hierdie voorbehoudsbepaling bedoel, word die opgehoopte winste of reserwes by die toepassing van hierdie Wet geag 'n bedrag van belasbare inkomste te wees wat toegeval het aan daardie maatskappy, genootskap, vereniging of trust gedurende daardie jaar van aanslag;";

(c) deur in subartikel (1) die woorde in item *(aa)* van subparagraaf (xv) van paragraaf (i) wat die voorbehoudsbepaling voorafgaan deur die volgende woorde te vervang:

"soveel van die totaal van enige buitelandse dividende **[in artikel 9E bedoel]** en rente ontvang deur of toegeval aan hom of haar vanuit 'n bron buite die Republiek, wat nie andersins van belasting vrygestel is nie, as wat nie gedurende die jaar van aanslag R1000 te bowe gaan nie:";

(d) deur in subartikel (1) die woorde in item *(bb)* van subparagraaf (xv) van paragraaf (i) wat subitem (A) voorafgaan deur die volgende woorde te vervang:

"*(bb)* soveel van die totaal van enige rente ontvang deur of toegeval aan hom of haar vanuit 'n bron in die Republiek en enige dividende (behalwe buitelandse dividende **[in artikel 9E bedoel]**), wat nie andersins van belasting vrygestel is nie, as wat nie gedurende die jaar van aanslag-";

(e) deur in subartikel (1) die woorde in subparagraaf (i) van paragraaf *(k)* wat die voorbehoudsbepaling voorafgaan deur die volgende woorde te vervang:

"dividende (behalwe buitelandse dividende) ontvang deur of toegeval aan of ten gunste van 'n persoon:";

(f) deur in subartikel (1) die word "of" aan die einde van item *(cc)* van die voorbehoudsbepaling by subparagraaf (i) van paragraaf *(k)* te skrap;

(g) deur in subartikel (1) item *(dd)* van die voorbehoudsbepaling by subparagraaf (i) van paragraaf *(k)* te skrap;

(h) deur in subartikel (1) die volgende subparagraaf by paragraaf *(k)* te voeg:

"(ii) 'n buitelandse dividend ontvang deur of toegeval aan 'n persoon—

(aa) in die mate wat die winste waaruit die dividende verklaar is—

(A) verband hou met enige bedrag wat aan belasting in die Republiek onderhewig was of sal wees ingevolge hierdie Wet, tensy daardie winste aan belasting in die Rep;ubliek onderhewig was of sal wees teen 'n verminderde skaal weens die toepassing van 'n ooreenkoms vir die vermyding van dubbele belasting; of

(B) ontstaan het direk of indirek uit dividende wat verklaar is deur 'n maatskappy was 'n inwoner is;

(bb) in die mate wat die buitelandse dividend verband hou met 'n bedrag wat verklaar is deur 'n genoteerde maatskappy wat voldoen aan paragrawe *(a)* en *(b)* van die omskrywing van 'genoteerde maatskappy' in artikel 1 en meer as 10 persent van die ekwiteitsaandelekapitaal in daardie genoteerde maatskappy op die tydstip wat die buitelandse dividend verklaar is gesamentlik deur inwoners gehou word;

(cc) wat 'n inwoner is in die mate wat daardie buitelandse dividend nie die total oorskry nie van alle bedrae wat by die inkomste van daardie inwoner in enige jaar van aanslag ingesluit is of sal

section 9D in any year of assessment, which relate to the net income of—

(A) the company declaring the dividend; or

(B) any other company which has been included in the income of that resident in terms of section 9D by virtue of that resident's participation rights in that other company held indirectly through the company declaring the dividend,

reduced by—

(AA) the amount of any foreign tax payable in respect of the amounts so included in that resident's income; and

(BB) so much of all foreign dividends received by or accrued to that resident at any time from any company contemplated in subitems (A) or (B), as was—

(AAA) exempt from tax in terms of this item or item *(dd)*; or

(BBB) was previously not included in the income of that resident by virtue of any prior inclusion in terms of section 9D;";

(dd) where that person (in the case of a company, together with any other company in the same group of companies as that person) holds more than 25 per cent of the total equity share capital in the company declaring the dividend: Provided that—

(A) in determining the total equity share capital of a company, there shall not be taken into account any share which would have constituted an affected instrument, as contemplated in section 8E, but for the three year period requirement contained in that section; and

(B) this exemption does not apply in respect of any foreign dividend which forms part of any transaction, operation or scheme in terms of which any amount received by or accrued to any person is exempt from tax while any corresponding expenditure (other than expenditure for the delivery of any goods, including electricity) is deductible by that person or by any connected person in relation to that person in determining the liability for tax of that person or connected person, as the case may be, in terms of this Act;

(i) by the deletion of paragraph *(kA)* of subsection (1);

(j) by the substitution in subsection (1) for paragraph (A) of the proviso to subparagraph (ii) of paragraph *(o)* of the following paragraph:

"(A) for purposes of this subparagraph, a person who is in transit through the Republic between two places outside the Republic and who does not formally enter the Republic through a port of entry as **[defined]** contemplated in section 9(1) of the Immigration Act, 2002 (Act No. 13 of 2002), or at any other place in the case of a person authorised by the Minister in terms of section 31(2)*(c)* of that Act, shall be deemed to be outside the Republic; and";

(k) by the deletion in subsection (1) of paragraph *(s)*;

(l) by the insertion in subsection (1) of the following subparagraph in paragraph *(t)* after subparagraph (ii):

"(iii) of the South African National Roads Agency Limited incorporated in terms of section 3 of the South African National Roads Agency Limited and National Roads Act, 1998 (Act No. 7 of 1998);";

(m) by the substitution in subsection (1) for the words in paragraph *(x)* preceding the proviso of the following words:

"so much of any amount (being a lump sum) referred to in paragraph *(d)* of the definition of 'gross income' in section 1 or in section 7A(4A) **[or**

word ingevolge artikel 9D, wat verband hou met die netto inkomste van—

(A) die maatskappy wat die dividend verklaar; of

(B) enige ander maatskappy wat ingesluit is in die inkomste van daardie inwoner ingevolge artikel 9D weens daardie inwoner se deelnemende belange in daardie ander maatskappy gehou indirek deur die maatskappy wat die dividend verklaar het, verminder deur—

(AA) die bedrag van enige buitelandse belasting betaalbaar ten opsigte van die bedrae aldus ingesluit in daardie inwoner se inkomste; en

(BB) soveel van alle buitelandse dividende ontvang deur of toegeval aan daardie inwoner op enige tydstip van enige maatskappy in subitems (A) of (B) bedoel, as wat—

(AAA) van belasting vrygestel is ingevolge hierdie item of item *(dd)*; of

(BBB) wat voorheen nie by die inkomste van daardie inwoner ingesluit was nie weens enige vorige insluiting ingevolge artikel 9D;

(dd) waar daardie persoon (in die geval van 'n maatskappy, tesame met enige ander maatskappy in dieselfde groep van maatskappye as daardie persoon), meer as 25 persent van die totale ekwiteitsaandelekapitaal in die maatskappy wat die dividend verklaar, hou: Met dien verstande dat—

(A) by die bepaling van die totale ekwiteitsaandelekapitaal in 'n maatskappy, word enige aandele wat 'n geaffekteerde stuk soos in artikel 8E bedoel sou uitmaak indien die drie jaar tydperk vereiste in daardie artikel bedoel nie van toepassing was nie, buite rekening gelaat; en

(B) hierdie vrystelling nie van toepassing is nie ten opsigte van enige buitelandse dividend wat deel vorm van enige transaksie, handeling of skema ingevolge waarvan enige bedrag ontvang deur of toegeval aan 'n persoon van belasting vrygestel is terwyl 'n ooreenstemmende onkoste (behalwe onkoste vir die lewering van enige goed, waarby ingesluit elektrisiteit) aftrekbaar is deur daardie persoon of deur enige verbonde persoon met betrekking tot daardie persoon by die bepaling van daardie persoon of verbonde persoon, na gelang van die geval, se aanspreeklikheid vir belasting ingevolge hierdie Wet;";

(i) deur in subartikel (1) paragraaf *(k*A*)* te skrap;

(j) deur in subartikel (1) paragraaf (A) van die voorbehoudsbepaling by subparagraaf (ii) van paragraaf *(o)* deur die volgende paragraaf te vervang:

"(A) by die toepassing van hierdie subparagraaf, word 'n persoon wat in transito deur die Republiek tussen twee plekke buite die Republiek is en wat nie formeel die Republiek deur 'n 'port of entry' soos **[omskryf]** in artikel 9(1) van die 'Immigration Act, 2002' (Wet 13 van 2002), bedoel, of by enige ander plek in die geval van 'n persoon deur die Minister ingevolge artikel 31(2)*(c)* van die Wet gemagtig, binnekom nie, geag buite die Republiek te wees; en";

(k) deur in subartikel (1) paragraaf *(s)* te skrap;

(l) deur in subartikel (1) die volgende subparagraaf by paragraaf *(t)* te voeg:

"(iii) van die Suid-Afrikaanse Nasionale Padagentskap Beperk ingelyf ingevolge artikel 3 van die Wet op die Suid-Afrikaanse Nasionale Padagentskap Beperk en op Nasionale Paaie, 1998 (Wet No. 7 van 1998);";

(m) deur in subartikel (1) die woorde in paragraaf *(x)* wat die voorbehoudsbepaling voorafgaan deur die volgende woorde te vervang:

"soveel van enige bedrag (synde 'n enkelbedrag) bedoel in paragraaf *(d)* van die omskrywing van "bruto inkomste" in artikel 1 of in artikel 7A

(5)] as does not exceed R30 000 less the sum of any other amounts which have been excluded from the taxpayer's income by virtue of the exemption conferred by this paragraph, whether in the current or any previous year of assessment:";

(n) by the addition to subsection (1) of the following paragraph:

"*(zI)* any amount received by or accrued to or in favour of any person from the Government, where—

(i) that amount is granted for the performance by that person of its obligations pursuant to a Public Private Partnership as defined in Regulation 16 of the Treasury Regulations issued in terms of section 76 of the Public Finance Management Act, 1999 (Act No. 1 of 1999), where that person performs an institutional function as defined in that Regulation;

(ii) that person is required in terms of that Public Private Partnership to expend an amount at least equal to that amount for the development of any physical infrastructure of the Republic; and

(iii) the ownership of that physical infrastructure will vest in the Government by no later than the termination of that Public Private Partnership;";

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

"(3) The exemptions from tax provided by any paragraph of subsection (1) shall not extend to—

(a) any payments out of the **[revenues]** receipts, accruals, amounts or profits mentioned in such paragraph; or

(b) any tax leviable under this Act in respect of any taxable capital gain determined in accordance with the Eighth Schedule.".

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

(b) Subsection (1)*(c)*, *(d)*, *(e)*, *(f)*, *(g)*, *(h)* and *(i)* shall come into operation on 1 June 2004 and shall apply in respect of any foreign dividend received or accrued during any year of assessment commencing on or after that date.

(c) Subsection (1)*(k)* shall come into operation on 1 January 2004 and shall apply in respect of years of assessment commencing after that date.

(d) Subsection (1)*(l)* shall come into operation on the date of incorporation of the company contemplated in section 3 of the South African National Roads Agency Limited and National Roads Act, 1998 (Act No. 7 of 1998).

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

Amendment of section 11 of Act 58 of 1962, as amended by section 9 of Act 90 of 1962, section 8 of Act 72 of 1963, section 9 of Act 90 of 1964, section 11 of Act 88 of 1965, section 12 of Act 55 of 1966, section 11 of Act 95 of 1967, section 9 of Act 76 of 1968, section 14 of Act 89 of 1969, section 10 of Act 52 of 1970, section 10 of Act 88 of 1971, section 8 of Act 90 of 1972, section 9 of Act 65 of 1973, section 12 of Act 85 of 1974, section 9 of Act 69 of 1975, section 9 of Act 113 of 1977, section 5 of Act 101 of 1978, section 8 of Act 104 of 1979, section 8 of Act 104 of 1980, section 9 of Act 96 of 1981, section 7 of Act 91 of 1982, section 10 of Act 94 of 1983, section 11 of Act 121 of 1984, section 46 of Act 97 of 1986, section 10 of Act 85 of 1987, section 8 of Act 90 of 1988, section 8 of Act 70 of 1989, section 11 of Act 101 of 1990, section 13 of Act 129 of 1991, section 11 of Act 141 of 1992, section 9 of Act 113 of 1993, section 5 of Act 140 of 1993, section 10 of Act 21 of 1994, section 12 of Act 21 of 1995, section 9 of Act 36 of 1996, section 12 of Act 28 of 1997, section 30 of Act 30 of 1998, section 20 of Act 53 of 1999, section 22 of Act 30 of 2000, section 15 of Act 59 of 2000, section 10 of Act 19 of 2001, section 27 of Act 60 of 2001, section 14 of Act 30 of 2002 and section 19 of Act 74 of 2002

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

(a) by the insertion after paragraph *(b*B*)* of the following paragraph:

(4A) **[of (5)]** as wat R30 000, min die som van enige ander bedrag [sic] wat ingevolge die vrystelling by hierdie paragraaf verleen van die belastingpligtige se inkomste uitgesluit is, hetsy in die lopende of 'n vorige jaar van aanslag, nie te bowe gaan nie:";

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

"*(zI)* 'n bedrag ontvang deur of toegeval aan of ten gunste van 'n persoon vanaf die regering, waar—

(i) daardie bedrag toegestaan is vir die uitvoering deur daardie persoon van sy verpligtinge ingevolge 'n 'Public Private Partnership' soos omskryf in Regulasie 16 van die 'Treasury Regulations' uitgereik kragtens artikel 76 van die Wet op Openbare Finansiële Bestuur, 1999 (Wet No. 1 van 1999), waar daardie persoon 'n 'institutional function' soos in daardie Regulasie omskryf, uitvoer;

(ii) daardie persoon ingevolge daardie 'Public Private Partnership' 'n bedrag minstens gelyk aan daardie bedrag moet aangaan vir die ontwikkeling van fisieke infrastruktuur van die Republiek; en

(iii) die eiendomsreg van daardie fisieke infrastruktuur in die regering sal vestig nie later nie as die beëindiging van daardie 'Public Private Partnership';";

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

"(3) Die vrystellings van belasting by enige paragraaf van subartikel (1) verleen, geld nie vir—

(a) betalings uit die **[inkomste,]** ontvangste, toevallings, bedrae of winste in so 'n paragraaf genoem nie; of

(b) enige belasting ingevolge hierdie Wet hefbaar ten opsigte van enige belasbare kapitaalwins ingevolge die Agtste Bylae bepaal.".

(2) *(a)* Subartikel (1)*(b)* tree op 1 Januarie 2004 in werking en is van toepassing ten opsigte van enige jaar van aanslag wat op of na daardie datum 'n aanvang neem.

(b) Subartikel (1)*(c)*, *(d)*, *(e)*, *(f)*, *(g)*, *(h)* en *(i)* tree op 1 Junie 2004 in werking en is van toepassing ten opsigte van enige buitelandse dividend ontvang of toegeval gedurende enige jaar van aanslag wat op of na daardie datum 'n aanvang neem.

(c) Subartikel (1)*(k)* tree op 1 Januarie 2004 in werking en is van toepassing ten opsigte van jare van aanslag wat na daardie datum 'n aanvang neem.

(d) Subartikel (1)*(l)* tree in werking op die datum van inlywing van die maatskappy in artikel 3 van die Wet op die Suid-Afrikaanse Nasionale Padagentskap Beperk en op Nasionale Paaie, 1998 (Wet No. 7 van 1998), bedoel.

(e) Subartikel (1)*(n)* tree in werking op die datum van afkondiging van hierdie Wet en is van toepassing ten opsigte van enige bedrag op of na daardie datum ontvang of toegeval.

Wysiging van artikel 11 van Wet 58 van 1962, soos gewysig deur artikel 9 van Wet 90 van 1962, artikel 8 van Wet 72 van 1963, artikel 9 van Wet 90 van 1964, artikel 11 van Wet 88 van 1965, artikel 12 van Wet 55 van 1966, artikel 11 van Wet 95 van 1967, artikel 9 van Wet 76 van 1968, artikel 14 van Wet 89 van 1969, artikel 10 van Wet 52 van 1970, artikel 10 van Wet 88 van 1971, artikel 8 van Wet 90 van 1972, artikel 9 van Wet 65 van 1973, artikel 12 van Wet 85 van 1974, artikel 9 van Wet 69 van 1975, artikel 9 van Wet 113 van 1977, artikel 5 van Wet 101 van 1978, artikel 8 van Wet 104 van 1979, artikel 8 van Wet 104 van 1980, artikel 9 van Wet 96 van 1981, artikel 7 van Wet 91 van 1982, artikel 10 van Wet 94 van 1983, artikel 11 van Wet 121 van 1984, artikel 46 van Wet 97 van 1986, artikel 10 van Wet 85 van 1987, artikel 8 van Wet 90 van 1988, artikel 8 van Wet 70 van 1989, artikel 11 van Wet 101 van 1990, artikel 13 van Wet 129 van 1991, artikel 11 van Wet 141 van 1992, artikel 9 van Wet 113 van 1993, artikel 5 van Wet 140 van 1993, artikel 10 van Wet 21 van 1994, artikel 12 van Wet 21 van 1995, artikel 9 van Wet 36 van 1996, artikel 12 van Wet 28 van 1997, artikel 30 van Wet 30 van 1998, artikel 20 van Wet 53 van 1999, artikel 22 van Wet 30 van 2000, artikel 15 van Wet 59 van 2000, artikel 10 van Wet 19 van 2001, artikel 27 van Wet 60 van 2001, artikel 14 van Wet 30 van 2002 en artikel 19 van Wet 74 van 2002

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

(a) deur na paragraaf *(b*B*)* die volgende paragraaf in te voeg:

"*(bC)* an amount of any interest actually incurred by a taxpayer in the production of the income of that taxpayer for the year of assessment in the form of foreign dividends: Provided that—

(i) this deduction shall be limited to the amount of those foreign dividends which are included in the income of that taxpayer during that year of assessment; and

(ii) any amount whereby that interest exceeds the amount of those foreign dividends as contemplated in subparagraph (i), must be reduced by the amount of any foreign dividends received by or accrued to that taxpayer during that year which are exempt from tax, and the balance shall be carried forward to the immediately succeeding year of assessment and be deemed to be an amount of interest actually incurred by that taxpayer during that succeeding year of assessment in the production of income in the form of foreign dividends;";

(b) by the addition in paragraph *(gA)* to the proviso of the following paragraph:

"*(ff)* no deduction shall be allowed under this paragraph in respect of any expenditure incurred by the taxpayer during any year of assessment commencing on or after 1 January 2004;";

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

"Provided that no deduction shall be allowed under this paragraph in respect of any expenditure incurred during any year of assessment commencing on or after 1 January 2004;";

(d) by the insertion after paragraph *(gB)* of the following paragraph:

"*(gC)* an allowance in respect of any cost actually incurred by the taxpayer during any year of assessment commencing on or after 1 January 2004 to acquire (otherwise than by way of devising, developing or creating) any—

(i) invention or patent as defined in the Patents Act, 1978 (Act No. 57 of 1978);

(ii) design as defined in the Designs Act, 1993 (Act No. 195 of 1993);

(iii) copyright as defined in the Copyright Act, 1978 (Act No. 98 of 1978);

(iv) other property which is of a similar nature (other than Trade Marks as defined in the Trade Marks Act, 1993 (Act No. 194 of 1993); or

(v) knowledge connected with the use of such patent, design, copyright or other property or the right to have such knowledge imparted,

which shall be allowed during the year of assessment in which that invention, patent, design, copyright, other property or knowledge is brought into use for the first time by the taxpayer for the purposes of the taxpayer's trade: Provided that—

(aa) where that cost actually incurred by the taxpayer exceeds R5 000, that allowance shall not exceed in any year of assessment—

(A) five per cent of the amount of the cost in respect of any invention, patent, copyright or other property of a similar nature or any knowledge connected with the use of such invention, patent, copyright or other property or the right to have such knowledge imparted; or

(B) 10 per cent of the amount of that cost of any design or other property of a similar nature or any knowledge

"*(bC)* 'n bedrag aan rente werklik deur 'n belastingpligtige aangegaan by die voortbrenging van die inkomste van daardie belastingpligtige vir die jaar van aanslag in die vorm van buitelandse dividende: Met dien verstande dat—

(i) hierdie aftrekking beperk word tot die bedrag van daardie buitelandse dividende wat by die inkomste van daardie belastingplitige ingesluit is in daardie jaar van aanslag; en

(ii) 'n bedrag waarby daardie rente die bedrag van daardie buitelandse dividende soos in subparagraaf (i) bedoel oorskry, moet verminder word deur die bedrag van enige buitelandse dividend ontvang deur of toegeval aan daardie belastingpligtige in daardie jaar wat van belasting vrygestel is, en die balans word na die onmiddellik daaropvolgende jaar van aanslag oorgedra en word geag 'n bedrag van rente te wees wat werklik deur daardie belastingpligtige in daardie daaropvolgende jaar van aanslag aangegaan is by die voortbrenging van inkomste in die vorm van buitelandse dividende;";

(b) deur in paragraaf *(g*A*)* die volgende paragraaf by die voorbehoudsbepaling te voeg:

"*(ff)* geen aftrekking toegestaan word kragtens hierdie paragraaf nie ten opsigte van enige onkoste aangegaan deur 'n belastingpligtige gedurende enige jaar van aanslag wat op of na 1 Januarie 2004 'n aanvang neem;";

(c) deur in paragraaf *(g*B*)* die volgende voorbehoudsbepaling by te voeg:

"Met dien verstande dat geen aftrekking toegestaan word kragtens hierdie paragraaf nie ten opsigte van enige onkoste aangegaan in enige jaar van aanslag wat op of na 1 Januarie 2004 'n aanvang neem;";

(d) deur na paragraaf *(g*B*)* die volgende paragraaf in te voeg:

"*(g*C*)* 'n vermindering ten opsigte van enige koste werklik aangegaan deur die belastingpligtige gedurende enige jaar van aanslag wat op of na 1 Januarie 2004 'n aanvang neem om enige—

(i) uitvinding of patent soos in die Wet op Patente, 1978 (Wet No. 57 van 1978), omskryf ;

(ii) model soos in die Wet op Modelle, 1993 (Wet No. 195 van 1993), omskryf;

(iii) outeursreg soos in die Wet op Outeursreg, 1978 (Wet No. 98 van 1978), omskryf;

(iv) ander goed van 'n soortgelyke aard (behalwe 'n handelsmerk soos in die Wet op Handelsmerke, 1993 (Wet No. 194 van 1993), omskryf); of

(v) kennis wat in verband staan met die gebruik van so 'n patent, model, outeursreg of ander goed of die reg om daardie kennis meegedeel te word,

te verkry (anders as by wyse van die uitdink, ontwikkeling of skepping daarvan), wat gedurende die jaar van aanslag toegelaat word waarin daardie uitvinding, patent, model, outeursreg of ander eiendom of kennis vir die eerste maal deur die belastingpligtige in gebruik geneem word vir doeleindes van die belastingpligtige se bedryf: Met dien verstande dat—

(aa) waar daardie koste werklik deur die belastingpligtige aangegaan R5 000 oorskry, daardie vermindering nie in enige jaar van aanslag—

(A) vyf persent van die bedrag van die koste ten opsigte van enige uitvinding, patent, outeursreg of ander eiendom van soortgelyke aard of enige kennis wat met die gebruik van so 'n uitvinding, patent, outeursreg of ander eiendom verband hou of die reg om daardie kennis meegedeel te word; of

(B) 10 persent van die bedrag van daardie koste van enige model of ander eiendom van 'n soortgelyke aard of enige

connected with the use of such design or other property or the right to have such knowledge imparted;

(bb) where any such invention, patent, design, copyright or other property or knowledge was acquired from any person who is a connected person in relation to the taxpayer, the allowance under this paragraph shall be calculated on an amount not exceeding the lesser of the cost to that connected person or the market value of that invention, patent, design, copyright or other property or knowledge as determined on the date upon which it was acquired by the taxpayer;";

(e) by the substitution for paragraph *(h*A*)* of the following paragraph:

"*(h*A*)* 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) paid in cash during any year of assessment by a taxpayer engaged in mining, prospecting, quarrying or similar operations to a company, society, association of persons or trust referred to in section 10(1)*(c*H*)* to be used **[by such company, society, association or trust]** for the purposes contemplated in **[such]** that section**[: Provided that such amount shall be]** as does not exceed an amount 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)*(c*H*)*] the formula:

$$\frac{A - B + C}{D},$$

in which formula in respect of each mine—

'A' represents the amount determined by a person designated by the Minister of Minerals and Energy of the estimated costs to be incurred at the time that or after operations on the mine or part of the mine are discontinued in order to discharge the obligations imposed in terms of any law which regulates mining operations (other than costs which were required in terms of any law to be incurred on an ongoing basis during the life of that mine or part of that mine;

'B' means the market value of the assets held by the company, society, association or trust in respect of that mine on the date of the determination of the estimated costs in symbol 'A';

'C' means the amount paid in cash by that taxpayer to such company, such association company, society or trust at any time before the date contemplated in symbol 'B' which has not been allowed as a deduction in terms of this paragraph in any year of assesment; and

'D' represents the estimated remaining life of that mine in number of years as determined by a person contemplated in symbol 'A':

Provided that so much of the amount so paid in cash by that taxpayer as exceeds the deduction allowable in terms of this paragraph shall, for the purposes of this paragraph, be deemed to be an amount paid by the taxpayer in cash to that company, society, association or trust in the immediately succeeding year of assessment to be used for the purpose contemplated in section 10(1)*(c*H*)*;";

(f) by the substitution for paragraph *(o)* of the following paragraph:

kennis wat met die gebruik van so 'n model in verband staan of die reg om daardie kennis megedeel te word,

te bowe gaan nie;

(bb) waar enige so 'n uitvinding, patent, model, outeursreg of ander eiendom of kennis verkry is van 'n persoon wat 'n verbonde persoon is met betrekking tot die belastingpligtige, word die vermindering kragtens hierdie paragraaf vasgestel met verwysing na 'n bedrag wat nie meer is nie as die minste van die koste vir daardie verbonde persoon of die markwaarde van daardie uitvinding, patent, model, outeursreg of ander eiendom of kennis soos bepaal op die datum waarop dit deur die belastingpligtige verkry is;";

(e) deur paragraaf *(h*A*)* deur die volgende paragraaf te vervang:

"*(h*A*)* soveel van 'n bedrag (behalwe 'n bedrag ten opsigte waarvan 'n aftrekking of vermindering ingevolge 'n ander bepaling van hierdie Wet toegestaan is of sal word) in kontant betaal deur 'n belastingpligtige gedurende enige jaar van aanslag wat mynbou-, prospekteer-, steengroef- of soortgelyke werksaamhede doen, aan 'n maatskappy, genootskap, vereniging van persone of trust bedoel in artikel 10 (1)*(c*H*)* wat gebruik staan te word **[deur bedoelde maatskappy, genootskap, vereniging of trust]** vir die doeleindes beoog in **[bedoelde]** daardie artikel**[: Met dien verstande dat bedoelde bedrag]** as wat nie 'n bedrag oorskry nie bereken **[word en bedoelde betaling gemaak word]** in ooreenstemming met**[—**

(i) die konstitusie van sodanige maatskappy, genootskap of vereniging van persone; of

(ii) die stuk wat daardie trust instel, soos deur die Kommissaris ingevolge artikel 10(1)*(c*H*)* goedgekeur] die formule

$$\frac{A - B + C}{D},$$

in welke formule ten opsigte van elke myn—

'A' die bedrag verteenwoordig wat vasgestel is deur 'n persoon aangewys deur die Minister van Minerale en Energie, as die geraamde koste wat aangegaan moet word op die tydstip van of na staking van verrigtinge op 'n myn of gedeelte van 'n myn ten einde enige verpligtinge ingevolge enige wet wat mynverrigtinge reguleer opgelê (behalwe koste wat volgens enige wet aangegaan moet word op 'n deurlopende basis gedurende die leeftyd van daardie myn of gedeelte van daardie myn);

'B' die markwaarde verteenwoordig van die bate wat deur die maatskappy, genootskap, vereniging of trust gehou word ten opsigte van daardie myn op die datum van die bepaling van die geraamde koste in simbool 'A';

'C' die bedrag in kontant verteenwoordig wat op enige tydstip voor die datum in simbool 'B' bedoel deur daardie belastingpligtige aan daardie maatskappy, genootskap, vereniging of trust betaal is, wat nie as 'n aftrekking ingevolge hierdie paragraaf in enige jaar van aanslag toegestaan is nie; en

'D' die geraamde oorblywende leeftyd van die myn in aantal jare verteenwoordig soos bepaal deur 'n persoon in simbool 'A' bedoel: Met dien verstande dat soveel van die bedrag aldus deur daardie belastingpligtige in kontant betaal as wat die aftrekking kragtens hierdie paragraaf toelaatbaar oorskry word by die toepassing van hierdie paragraaf geag 'n bedrag te wees wat deur die belastingpligtige in kontant betaal te wees aan daardie maatskappy, genootskap, vereniging of trust in die onmiddellik daaropvolgende jaar van aanslag om gebruik te word vir die oogmerk in artikel 10(1)*(c*H*)* bedoel;

(f) deur paragraaf *(o)* deur die volgende paragraaf te vervang:

"*(o)* by die keuse van die belastingpligtige, 'n bedrag waarby die koste vir daardie belastingpligtige van enige slytasiebate—

"*(o)* at the election of the taxpayer, an amount by which the cost to that taxpayer of any depreciable asset—

(i) which qualified for a capital allowance or deduction in terms of section 11*(e)*, 12B, 12C, 12E, 14 or 14*bis*; and

(ii) the expected useful life of which for tax purposes did not exceed ten years as determined on the date of original acquisition,

exceeds the sum of the amount received or accrued from the alienation, loss or destruction, of that asset and the amount of any such capital allowance or deduction allowed in respect of that asset in that year or any previous year of assessment: Provided that for the purposes of this paragraph—

(aa) the cost of any machinery, implements, utensils or articles shall be deemed to be the actual cost plus the amount by which the value of such machinery, implements, utensils or articles has been increased in terms of paragraph (v) of the proviso to paragraph *(e)* less the amount by which such value has been reduced in terms of paragraph (iv) of that proviso;

(bb) the actual cost of any machinery, implement, utensil or article acquired by the taxpayer on or after 15 March 1984 shall be deemed to be the cost of that machinery, implement, utensil or article as determined under paragraph (vii) of the proviso to paragraph *(e)*;

(cc) the cost of any aircraft in respect of which any allowance has been made to the taxpayer under section 14*bis* shall be deemed to be the actual cost less any amount (not being an amount which has been included in the income of the taxpayer for any year of assessment in terms of section 8(4)*(i)*) by which the cost or estimated cost price of such aircraft has in the calculation of such allowance been reduced in terms of section 14*bis*(2)*(a)*;

(dd) the cost of any ship in respect of which any allowance has been made to the taxpayer under the provisions of section 14 shall be deemed to be the actual cost less any amount (not being an amount which has been included in the income of the taxpayer for any year of assessment in terms of section 8(4)*(d)*) by which the cost or estimated cost price of such ship has in the calculation of such allowance been reduced in terms of the definition of 'adjustable cost' or 'adjustable cost price' in section 14 (2);";

(g) the addition to paragraph *(p)* of the following proviso:

"Provided that no deduction shall be allowed under this paragraph in respect of any expenditure incurred during any year of assessment commencing on or after 1 January 2004;";

(h) by the addition in paragraph *(q)* of the following paragraph to the proviso:

"(iii) no deduction shall be allowed under this paragraph in respect of any expenditure incurred during any year of assessment commencing on or after 1 January 2004;"; and

(i) by the insertion after paragraph *(q)* of the following paragraph:

"*(r)* notwithstanding section 23*(g)*, at the election of that person, the amount of withholding tax on dividends proved to be payable in respect of any foreign dividend which is included in the gross income of that person: Provided that an election made by a person in terms of this paragraph applies in respect of all foreign dividends received by or accrued to that person during the year of assessment in respect of which the election was made.".

(i) wat vir 'n kapitaalvermindering of aftrekking ingevolge artikel 11*(e)*, 12B, 12C, 12E, 14 of 14*bis* kwalifiseer; en

(ii) waarvan die verwagte bruikbare leeftyd vir belastingdoeleindes nie meer is nie as tien jaar soos bepaal op die datum van oorspronklike verkryging,

die som van die bedrag ontvang of toegeval uit die vervreemding, verlies of vernietiging van daardie bate en die bedrag van enige sodanige kapitaalvermindering of aftrekking ten opsigte van daardie bate in daardie jaar of enige vorige jaar van aanslag toegelaat, oorskry: Met dien verstande dat by die toepassing van hierdie paragraaf—

(aa) die koste van enige masjinerie, gereedskap, werktuie of artikels geag word die werklike koste te wees plus die bedrag waarmee die waarde van daardie masjinerie, gereedskap, werktuie of artikels ingevolge paragraaf (v) van die voorbehoudsbepaling by paragraaf *(e)* vermeerder is verminder deur die bedrag waarby daardie waarde ingevolge paragraaf (iv) van daardie voorbehoudsbepaling verminder is;

(bb) die werklike koste van enige masjinerie, gereedskap, werktuie of artikels deur die belastingpligtige op of na 15 Maart 1984 verkry geag word die koste van daardie masjinerie, gereedskap, werktuie of artikels te wees soos bepaal kragtens paragraaf (vii) van die voorbehoudsbepaling by paragraaf *(e)*;

(cc) die koste van 'n lugvaartuig ten opsigte waarvan 'n vermindering ingevolge die bepalings van artikel 14*bis* aan die belastingpligtige toegestaan is, geag word die werklike koste te wees min enige bedrag (behalwe 'n bedrag wat ingevolge artikel 8(4)*(i)* by die inkomste van die belastingpligtige vir enige jaar van aanslag ingereken is) waarmee die koste of geraamde kosprys van bedoelde lugvaartuig by die berekening van bedoelde vermindering ingevolge artikel 14*bis*(2)*(a)* verminder is;

(dd) die koste van 'n skip ten opsigte waarvan 'n vermindering ingevolge die bepalings van artikel 14 aan die belastingpligtige toegestaan is, geag word die werklike koste te wees min enige bedrag (behalwe 'n bedrag wat ingevolge artikel 8(4)*(d)* by die inkomste van die belastingpligtige vir enige jaar van aanslag ingereken is) waarmee die koste of geraamde kosprys van bedoelde skip by die berekening van bedoelde vermindering ingevolge die omskrywing van 'veranderbare koste' of 'veranderbare kosprys' in artikel 14(2) verminder is;";

(g) deur in paragraaf *(p)* die volgende voorbehoudsbepaling by te voeg:

"Met dien verstande dat geen aftrekking kragtens hierdie paragraaf toegestaan word nie ten opsigte van enige onkoste aangegaan in enige jaar van aanslag wat op of na 1 Januarie 2004 'n aanvang neem;";

(h) deur in paragraaf *(q)* die volgende paragraaf by die voorbehoudsbepaling te voeg:

"(iii) geen aftrekking kragtens hierdie paragraaf toegestaan word nie ten opsigte van enige onkoste aangegaan in enige jaar van aanslag wat op of na 1 Januarie 2004 'n aanvang neem; en";

(i) deur na paragraaf *(q)* die volgende paragraaf by te voeg:

"*(r)* ondanks artikel 23*(g)*, by die keuse van daardie persoon, die bedrag van weerhoudingsbelasting op dividende wat bewys word betaalbaar te wees ten opsigte van enige buitelandse dividend wat by die bruto inkomste van daardie persoon ingesluit is: Met dien verstande dat 'n keuse deur 'n persoon uitgeoefen ingevolge hierdie paragraaf van toepassing is ten opsigte van alle buitelandse dividende ontvang deur of toegeval aan daardie persoon gedurende die jaar van aanslag ten opsigte waarvan daardie keuse uitgeoefen is.".

(2) *(a)* Subsection (1)*(a)* shall come into operation on 1 June 2004 and shall apply in respect of any interest incurred during or balance of interest carried forward in terms of section 9E(5A) of the Income Tax Act, 1962, to any year of assessment commencing on or after that date.

(b) Subsection (1)*(e)* shall come into operation on 1 January 2004 and shall apply in respect of an amount paid by a taxpayer during any year of assessment commencing on or after that date.

(c) Subsection (1)*(f)* shall come into operation on the date of promulgation of this Act and shall apply in respect of any disposal on or after that date.

(d) Subsection (1)*(i)* shall come into operation on 1 June 2004 and shall apply in respect of any dividend received or accrued during any year of assessment commencing on or after that date.

Insertion of section 11A in Act 58 of 1962

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

"**Deductions in respect of expenditure and losses incurred prior to commencement of trade**

11A. (1) For purposes of determining the taxable income derived during any year of assessment by a person from carrying on any trade, there shall be allowed as a deduction from the income so derived, any expenditure and losses—

(a) actually incurred by that person prior to the commencement of and in preparation for carrying on that trade;

(b) which would have been allowed as a deduction in terms of section 11 (other than section 11*(x)*) or section 11B, had the expenditure or losses been incurred after that person commenced carrying on that trade; and

(c) which were not allowed as a deduction in that year or any previous year of assessment.

(2) So much of the expenditure and losses contemplated in subsection (1) as exceeds the income derived during the year of assessment from carrying on that trade after deduction of any amounts allowable in that year of assessment in terms of any other provision of this Act, shall not be set off against any income of that person which is derived otherwise than from carrying on that trade, notwithstanding section 20(1)*(b)*.".

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

Insertion of section 11B in Act 58 of 1962

29. The following section is hereby inserted in the Income Tax Act, 1962, after section 11A:

"**Deductions in respect of research and development**

11B. (1) For purposes of this section—

'cost' in relation to any building, machinery, plant, implement, utensil or article means the lesser of—

(a) the actual cost to the taxpayer of the erection, addition, improvement to or acquisition of any building or actual cost of that machinery, plant, implement, utensil or article; or

(b) the cost which a taxpayer would have incurred in respect of the direct cost of acquisition of that building, machinery, plant, implement, utensil or article (including the direct cost of the installation or erection thereof), if that taxpayer had acquired that building,

(2)*(a)* Subartikel (1)*(a)* tree op 1 Junie 2004 in werking en is van toepassing ten opsigte van enige rente aangegaan gedurende, of balans van rente oorgedra ingevolge artikel 9E(5A) van die Inkomstebelastingwet, 1962, na, enige jaar van aanslag wat op of na daardie datum 'n aanvang neem.

(b) Subartikel (1)*(e)* tree op 1 Januarie 2004 in werking en is van toepassing ten opsigte van enige bedrag deur 'n belastingpligtige betaal gedurende enige jaar van aanslag wat op of na daardie datum 'n aanvang neem.

(c) Subartikel (1)*(f)* tree in werking op die datum van afkondiging van hierdie Wet en is van toepassing ten opsigte van enige beskikking op of na daardie datum.

(d) Subartikel (1)*(i)* tree op 1 Junie 2004 in werking en is van toepassing ten opsigte van enige dividend ontvang of toegeval gedurende enige jaar van aanslag wat op of na daardie datum 'n aanvang neem.

Invoeging van artikel 11A in Wet 58 van 1962

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

"**Aftrekking ten opsigte van onkoste en verliese aangegaan voor bedryf aanvang neem**

11A. (1) Vir doeleindes van die vasstelling van die belasbare inkomste verkry gedurende enige jaar van aanslag deur 'n persoon uit die beoefening van enige bedryf, word daar as 'n aftrekking toegelaat van die inkomste aldus verkry, enige onkoste en verliese—

(a) werklik deur daardie persoon aangegaan voor die aanvang van en in voorbereiding vir die beoefening van daardie bedryf;

(b) wat as 'n aftrekking toelaatbaar sou wees ingevolge artikel 11 (behalwe artikel 11*(x)*) of artikel 11B, indien die onkoste of verliese deur daardie persoon aangegaan is na die beoefening van daardie bedryf 'n aanvang geneem het; en

(c) wat nie as 'n afrekking in daardie jaar of enige vorige jaar van aanslag toegelaat is nie.

(2) Soveel van die onkoste en verliese in subartikel (1) bedoel wat die inkomste gedurende die jaar van aanslag uit die beoefening van daardie bedryf verkry, na aftrekking van enige bedrae wat in daardie jaar van aanslag ingevolge enige ander bepaling van hierdie Wet toelaatbaar is, oorskry, word nie teen enige inkomste van daardie persoon wat verkry is anders as van die beoefening uit daardie bedryf verreken nie, ondanks artikel 20(1)*(b)*.".

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

Invoeging van artikel 11B in Wet 58 van 1962

29. Die volgende artikel word hierby in die Inkomstebelastingwet, 1962, ingevoeg na artikel 11A:

"**Aftrekking ten opsigte van navorsing en ontwikkeling**

11B. (1) By die toepassing van hierdie artikel beteken—

'handelsmerk' 'n handelsmerk soos in die Wet op Handelsmerke, 1993 (Wet No. 194 van 1993), omskryf;

'koste' met betrekking tot enige gebou, masjinerie, installasie, gereedskap, werktuie of artikels die minste van—

(a) die werklike koste vir die belastingpligtige van die oprigting, toevoeging tot of verbetering of verkryging van enige gebou of die werklike koste van daardie masjinerie, installasie, gereedskap, werktuig of artikel; of

(b) die koste wat die belastingpligtige sou aangaan ten opsigte van die direkte koste van verkryging van daardie gebou, masjinerie, installasie, gereedskap, werktuig of artikel (waarby ingesluit die direkte koste van die installasie of oprigting daarvan), indien daardie

machinery, plant, implement, utensil or article under a cash transaction concluded at arm's length on the date on which the transaction for the acquisition was in fact concluded;

'copyright' means copyright as defined in the Copyright Act, 1978 (Act No. 98 of 1978);

'design' means a design as defined in the Designs Act, 1993 (Act No. 195 of 1993);

'invention' means an invention as defined in the Patents Act, 1978 (Act No. 57 of 1978);

'patent' means a patent as defined in the Patents Act, 1978;

'research and development' means research and development conducted in the Republic that will result or potentially may result in an identifiable intangible asset as contemplated under generally accepted accounting practice, but does not include research and development relating to—

(a) the social sciences, arts, humanities or management; or

(b) market research, sales or marketing promotion;

'trade mark' means trade mark as defined in the Trade Marks Act, 1993 (Act No. 194 of 1993).

(2) There shall be allowed as a deduction during any year of assessment commencing on or after 1 January 2004—

(a) any expenditure actually incurred by a taxpayer in that year of assessment (other than costs contemplated in subsection (3))—

(i) in respect of research and development undertaken directly by that taxpayer; or

(ii) by way of payment to any other person for research and development undertaken by that other person on behalf of that taxpayer,

for purposes of devising, developing or creating any invention, patent, design, copyright or other property which is of a similar nature (other than any trade mark);

(b) any expenditure actually incurred by a taxpayer in that year of assessment (other than costs contemplated in subsection (3)), for purposes of—

(i) registration of any invention, patent, design, copyright or other property; and

(ii) obtaining the extension of the period of legal protection, the extension of the registration period, or the renewal of the registration of any such invention, patent, design, copyright or other property.

(3) There shall be allowed as a deduction by a taxpayer in respect of any building, machinery, plant, implement, utensil and article of a capital nature used by that taxpayer for purposes of research and development, an allowance equal to 40 per cent of the cost of that building, machinery, plant, implement, utensil and article in the year of assessment that it is brought into use for the first time by that taxpayer and 20 per cent in each of the three immediately succeeding years of assessment: Provided that where any building was used partly for research and development and partly for other purposes in the same year of assessment, the allowance for that year of assessment shall be limited to an amount which bears to the full amount of the allowance for that year, the same ratio as the use of that building for research and development bears to the total use of that building in that year of assessment.

(4) No deduction shall be allowed under subsection (2)*(a)*(ii) in respect of any expenditure, unless—

(a) that expenditure relates to the devising, developing or creating of any such invention, patent, design, copyright or other property;

(b) the payments are for discovery of new information; and

(c) full ownership and control by the taxpayer exists over the results of such research and development including any such invention, patent, design, copyright or other property.

belastingpligtige daardie gebou, masjinerie, installasie, gereedskap, werktuig of artikel ingevolge 'n kontanttransaksie verkry het wat op uiterste voorwaardes beding is op die datum waarop die transaksie vir die verkryging werklik aangegaan is;

'model' 'n model soos in die Wet op Modelle, 1993 (Wet No. 195 van 1993), omskryf;

'navorsing en ontwikkeling' navorsing en ontwikkeling in die Republiek onderneem wat tot 'n identifiseerbare ontasbare bate, soos ingevolge algemene aanvaarde rekenkundige praktyk bedoel, sal lei of potensieel kan lei, maar sluit nie in nie navorsing en ontwikkeling wat betrekking het op—

(a) die sosiale wetenskappe, kunste, geesteswetenskappe of bestuurswese; of

(b) marknavorsing, verkope of bemarkingsbevordering;

'outeursreg' outeursreg soos in die Wet op Outeursreg, 1978 (Wet No. 98 van 1978), omskryf;

patent' 'n patent soos in die Wet op Patente, 1978 (Wet No. 57 van 1978), omskryf;

'uitvinding' 'n uitvinding soos in die Wet op Patente, 1978, omskryf.

(2) Daar word toegelaat as 'n aftrekking gedurende enige jaar van aanslag wat op of na 1 Januarie 2004 'n aanvang neem—

(a) enige koste werklik deur 'n belastingpligtige aangegaan in daardie jaar van aanslag (behalwe koste in subartikel (3) bedoel)—

(i) ten opsigte van navorsing en ontwikkeling direk deur daardie belastingpligtige onderneem; of

(ii) by wyse van betaling aan 'n ander persoon vir navorsing en ontwikkeling deur daardie ander persoon onderneem namens daardie belastingpligtige, vir doeleindes van die uitdink, ontwikkeling of skepping van enige uitvinding, patent, model, outeursreg of ander eiendom wat van 'n soortgelyke aard is (behalwe 'n handelsmerk);

(b) enige onkoste werklik deur 'n belastingpligtige aangegaan in daardie jaar van aanslag (behalwe koste in subartikel (3) bedoel), vir doeleindes van—

(i) registrasie van enige uitvinding, patent, model, outeursreg of ander eiendom; en

(ii) verkryging van verlenging van die tydperk van wettige beskerming, verlenging van die registrasietydperk, of die hernuwing van die registrasie van enige sodanige uitvinding, patent, model, outeursreg of ander eiendom.

(3) Daar word toegelaat as 'n aftrekking deur 'n belastingpligtige ten opsigte van enige gebou, masjinerie, installasie, gereedskap, werktuig of artikel van 'n kapitale aard deur daardie belastingpligtige gebruik vir doeleides van navorsing en ontwikkeling, 'n vermindering gelyk aan 40 persent van die koste van daardie gebou, masjinerie, installasie, gereedskap, werktuig of artikel in die jaar van aanslag waarin dit vir die eerste maal deur daardie belastingpligtige in gebruik geneem is en in elk van die drie onmiddellik daaropvolgende jare van aanslag: Met dien verstande dat waar 'n gebou gebruik was gedeeltelik vir navorsing en ontwikkeling en gedeeltelik vir ander doeleindes in dieselfde jaar van aanslag, word die vermindering vir daardie jaar van aanslag beperk tot 'n bedrag wat tot die volle bedrag van die vermindering vir daardie jaar in dieselfde verhouding staan as wat die gebruik van daardie gebou vir navorsing en ontwikkeling staan tot die totale gebruik van daardie gebou in daardie jaar van aanslag.

(4) Geen aftrekking word toegelaat kragtens subartikel (2)*(a)*(ii) nie ten opsigte van enige onkoste, tensy—

(a) daardie onkoste verband hou met die uitdink, ontwikkeling of skepping van enige sodanige uitvinding, patent, model, outeursreg of ander eiendom;

(b) die betaling gemaak word vir die ontdekking van nuwe inligting; en

(c) volle eienaarskap en beheer deur die belastingpligtige bestaan oor die eindproduk van daardie navorsing en ontwikkeling ingesluit enige sodanige uitvinding, patent, model, outeursreg of ander eiendom.

(5) No allowance shall be allowed in terms of this section in respect of any machinery, plant, implement, utensil and article of a person which was used during the year of assessment for purposes other than research and development.

(6) The allowance contemplated in this section shall apply in lieu of any other deduction or allowance granted under any other provision of this Act, unless the taxpayer elects in the year of assessment that the building, machinery, plant, implement, utensil or article is brought into use for the first time by that taxpayer that the deduction or allowance granted under that other provision shall apply, in which case subsection (3) shall not apply in respect of that building, machinery, plant, implement, utensil or article, as the case may be.".

Amendment of section 12C of Act 58 of 1962, as inserted by section 14 of Act 101 of 1990 and amended by section 11 of Act 113 of 1993, section 7 of Act 140 of 1993, section 11 of Act 21 of 1994, section 13 of Act 21 of 1995, section 18 of Act 59 of 2000, section 11 of Act 19 of 2001 and section 15 of Act 30 of 2002

30. Section 12C of the Income Tax Act, 1962, is hereby amended by the substitution in subsection (1) for subparagraphs (i) and (ii) of paragraph *(c)* of the proviso of the following subparagraphs:

"(i) acquired by the taxpayer under an agreement formally and finally signed by every party to the agreement **[during the period commencing]** on or after 1 March 2002 **[and ending on 28 February 2005]**; and

(ii) brought into use by the taxpayer **[during that period]** on or after that date in a process of manufacture or process which in the opinion of the Commissioner is of a similar nature, carried on by that taxpayer in the course of its business (other than banking, financial services, insurance or rental business),".

Amendment of section 12E of Act 58 of 1962, as inserted by section 12 of Act 19 of 2001 and amended by section 17 of Act 30 of 2002, section 21 of Act 74 of 2002 and section 37 of Act 12 of 2003

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

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

"**Deductions in respect of [certain plant and machinery of] small business corporations.**";

(b) by the substitution in subsection (4) for subparagraph (ii) of paragraph *(a)* of the following subparagraph:

"(ii) none of the shareholders or members at any time during the year of assessment of the company or close corporation holds any shares or has any interest in the equity of any other company as defined in section 1, other than—

(aa) a company contemplated in paragraph *(a)* of the definition of 'listed company'; **[or]**

(bb) any portfolio in a collective investment scheme contemplated in paragraph *(e)* of the definition of 'company'); or

(cc) a company contemplated in section 10(1)*(e)*(i), (ii) or (iii); and

(c) by the substitution in subsection (4) for subparagraph (iii) of paragraph *(a)* of the following subparagraph:

"(iii) not more than 20 per cent of the **[gross income]** total of all receipts and accruals (other than those of a capital nature) and all the capital gains of the company or close corporation consists collectively of investment income and income from the rendering of a personal service; and

(5) Geen vermindering word toegelaat nie ingevolge hierdie artikel ten opsigte van enige masjinerie, installasie, gereedskap, werktuig of artikel van 'n persoon wat gedurende die jaar van aanslag vir doeleindes anders as navorsing en ontwikkeling gebruik is.

(6) Die vermindering in hierdie artikel bedoel geld in plek van enige ander aftrekking of vermindering wat kragtens enige ander bepaling van hierdie Wet toegestaan word, tensy die belastingpligtige 'n keuse uitoefen in die jaar van aanslag waarin die gebou, masjinerie, installasie, gereedskap, werktuig of artikel vir die eerste keer deur daardie belastingpligtige in gebruik geneem word, dat die aftrekking of vermindering toegestaan kragtens daardie ander bepaling moet geld, in welke geval subartikel (3) nie van toepassing is nie ten opsigte van daardie gebou, masjinerie, installasie, gereedskap, werktuig of artikel, na gelang van die geval.".

Wysiging van artikel 12C van Wet 58 van 1962, soos ingevoeg deur artikel 14 van Wet 101 van 1990 en gewysig deur artikel 11 van Wet 113 van 1993, artikel 7 van Wet 140 van 1993, artikel 11 van Wet 21 van 1994, artikel 13 van Wet 21 van 1995, artikel 18 van Wet 59 van 2000, artikel 11 van Wet 19 van 2001 en artikel 15 van Wet 30 van 2002

30. Artikel 12C van die Inkomstebelastingwet, 1962, word hierby gewysig deur in subartikel (1) subparagrawe (i) en (ii) van paragraaf *(c)* van die voorbehoudsbepaling deur die volgende subparagrawe te vervang:

"(i) deur die belastingpligtige verkry is ingevolge 'n ooreenkoms wat formeel en finaal deur elke party tot die ooreenkoms onderteken is **[gedurende die tydperk wat]** op of na 1 Maart 2002 **['n aanvang neem en op 28 Februarie 2005 eindig]**; en

(ii) deur die belastingpligtige in gebruik geneem word **[gedurende daardie tydperk]** op of na daardie datum in 'n proses van vervaardiging of 'n proses wat na die oordeel van die Kommissaris van 'n soortgelyke aard is, wat deur daardie belastingpligtige aangegaan is in die loop van sy besigheid (behalwe bankbesigheid, finansiële dienste, versekerings- of verhuringsbesigheid),".

Wysiging van artikel 12E van Wet 58 van 1962, soos ingevoeg deur artikel 12 van Wet 19 van 2001 en gewysig deur artikel 17 van Wet 30 van 2002, artikel 21 van Wet 74 van 2002 en artikel 37 van Wet 12 van 2003

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

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

"Aftrekkings ten opsigte van [sekere installasie en masjinerie van] kleinsakekorporasies.";

(b) deur in subartikel (4) subparagraaf (ii) van paragraaf *(a)* deur die volgende subparagraaf te vervang:

"(ii) nie een van die aandeelhouers of lede te eniger tyd gedurende die jaar van aanslag van die maatskappy of beslote korporasie enige aandele of belang in die ekwiteit van enige ander maatskappy soos in artikel 1 omskryf gehou het nie behalwe—

(aa) 'n maatskappy in paragraaf *(a)* van die omskrywing van 'genoteerde maatskappy' bedoel; **[of]**

(bb) enige portefeulje in 'n kollektiewe beleggingskema in paragraaf *(e)* van die omskrywing van 'maatskappy'; of

(cc) 'n maatskappy in artikel 10(1)*(e)*(i), (ii) of (iii) bedoel, **[gehou het nie]**;";

(c) deur in subartikel (4) subparagraaf (iii) van paragraaf *(a)* deur die volgende subparagraaf te vervang: "

(iii) nie meer as 20 persent van die **[bruto inkomste]** totaal van alle ontvangste en toevallings (behalwe dié van 'n kapitale aard) en alle kapitaalwinste van die maatskappy of beslote korporasie gesamentlik uit beleggingsinkomste en inkomste verkry uit die lewering van 'n persoonlike diens bestaan nie; en";

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

"(3A) Any expenditure and losses actually incurred by a small business corporation in the year of assessment during which that small business corporation commences trading shall be increased by an amount equal to such expenditure and losses, but limited to R20 000.".

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

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

Amendment of section 12H of Act 58 of 1962, as inserted by section 18 of Act 30 of 2002

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

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

"Notwithstanding section 23B, but subject to subsection (3), there shall be allowed to be deducted from the income derived by any employer during any year of assessment, an allowance determined in accordance with subsection (2), where—"; and

(b) by the addition in subsection (2) of the word "and" at the end of subparagraph (ii) of paragraph *(a)*.

(2) Subsection (1) shall be deemed to have come into operation on 1 October 2001 and shall apply in respect of any registered learnership entered into or completed on or after that date.

Insertion of section 13*quat* in Act 58 of 1962

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

"**Deductions in respect of erection or improvement of buildings in urban development zones**

13*quat*. (1) For the purposes of this section—

'certificate of occupancy' means a certificate contemplated in section 14(1) of the National Building Regulations and Building Standards Act, 1977 (Act No. 103 of 1977);

'cost' means the costs (other than borrowing or finance costs) actually incurred in erecting or extending, adding to or improving a building and includes any costs incurred—

(a) in demolishing any existing building or part thereof;

(b) in excavating the land for purposes of that erection, extension, addition or improvement; and

(c) in respect of structures or works directly adjoining the building so erected, extended, added to or improved, for purposes of providing—

(i) water, power or parking with respect to that building;

(ii) drainage or security for that building;

(iii) means of waste disposal for that building; or

(iv) access to that building, including the frontage thereof;

'urban development zone' means an area demarcated by a municipality in terms of subsection (6), the particulars of which were published in the *Gazette* in terms of subsection (8);

(2) There shall be allowed to be deducted from the income of the taxpayer an allowance determined in terms of subsection (3), in respect of the cost of the erection, extension, addition or improvement of any

(d) deur na subartikel (3) die volgende subartikel by te voeg:

"(3A) Enige onkoste of verliese werklik deur 'n kleinsakekorporasie aangegaan in die jaar van aanslag waarin daardie kleinsakekorporasie 'n bedryf begin beoefen, word vermeerder met 'n bedrag gelykstaande aan daardie onkoste en verliese, maar beperk tot R20 000.".

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

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

Wysiging van artikel 12H van Wet 58 van 1962, soos ingevoeg deur artikel 18 van Wet 30 van 2002

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

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

"Ondanks artikel 23B, maar behoudens subartikel (3) word daar 'n toelae, vasgestel ingevolge subartikel (2), as 'n aftrekking van die inkomste deur 'n werkgewer gedurende enige jaar van aanslag verkry, toegestaan waar-";

(b) deur in subartikel (2) die woord "en" aan die einde van subparagraaf (ii) van paragraaf *(a)* by te voeg.

(2) Subartikel (1) word geag op 1 Oktober 2001 in werking te getree het en is van toepassing ten opsigte van enige geregistreerde leerlingooreenkoms op of na daardie datum aangegaan of voltooi.

Invoeging van artikel 13*quat* in Wet 58 van 1962

33. Die volgende artikel word hierby in die Inkomstebelastingwet, 1962, ingevoeg na artikel 13*ter*:

"Aftrekking ten opsigte van oprigting of verbetering van geboue in stedelike ontwikkelingsones

13*quat*. (1) By die toepassing van hierdie artikel beteken—

'koste' die koste (behalwe leen- of finansieringskoste) werklik aangegaan in die oprigting of uitbreiding, toevoeging tot of verbetering van 'n gebou en sluit in enige koste aangegaan—

(a) om enige bestaande gebou of gedeelte daarvan te sloop;

(b) om die grond uit te grawe vir doeleindes van die oprigting, uitbreiding, toevoeging tot of verbetering van 'n gebou; en

(c) ten opsigte van strukture of werke direk aangrensend aan die gebou aldus opgerig, uitgebrei, toegevoeg of verbeter, ten einde—

(i) water, krag of parkering ten opsigte van daardie gebou te voorsien;

(ii) dreinering of sekuriteit vir daardie gebou te voorsien;

(iii) voorsiening vir afval verwydering vir daardie gebou daar te stel; of

(iv) toegang tot daardie gebou te voorsien, ingesluit die vooraansig daarvan;

'stedelike ontwikkelingsone' 'n area deur 'n munisipaliteit aangedui ingevolge subartikel (6), die besonderhede waarvan in die *Staatskoerant* gepubliseer is ingevolge subartikel (8);

'okkupasiesertifikaat' 'n sertifikaat in artikel 14(1) van die Wet op Nasionale Bouregulasies en Boustandaarde, 1977 (Wet No. 103 van 1977), bedoel.

(2) Daar word toegelaat om afgetrek te word van die inkomste van 'n belastingpligtige 'n vermindering vasgestel ingevolge subartikel (3), ten opsigte van die koste van oprigting, uitbreiding, toevoeging tot of verbetering van enige kommersiële of residensiële gebou binne 'n stedelike

commercial or residential building within an urban development zone to be used solely for purposes of that taxpayer's trade—

(a) which was commenced by the taxpayer on or after the date of publication of the notice contemplated in subsection (8) in respect of that urban development zone, in terms of a contract formally and finally signed by all parties thereto on or after that date; and

(b) in respect of which a certificate of occupancy has been granted.

(3) The amount of the allowance contemplated in subsection (2)—

(a) in the case of the erection of any new building or the extension of or addition to any building (other than a building in respect of which paragraph *(b)* applies), is equal to—

(i) 20 per cent of the cost to the taxpayer of the erection or extension of or addition to that building, which is deductible in the year of assessment during which that building is brought into use by that taxpayer solely for the purposes of that taxpayer's trade; and

(ii) five per cent of that cost in each of the 16 succeeding years of assessment; or

(b) in the case of the improvement of any existing building or part of a building (including any extension or addition which is incidental to that improvement) where the existing structural or exterior framework thereof is preserved, is equal to—

(i) 20 percent of the cost to the taxpayer of the improvement, extension or addition which is deductible in the year of assessment during which the part of the building so improved, extended or added is brought into use by the taxpayer solely for the purposes of that taxpayer's trade; and

(ii) 20 per cent of that cost in each of the four succeeding years of assessment.

(4) No deduction shall be allowed under this section, unless the taxpayer has together with the tax return for the year of assessment in which the deduction is claimed under subsection (3)*(a)*(i) or *(b)*(i), provided to the Commissioner—

(a) a certificate from the municipality confirming that the building is located within an urban development zone within that municipality;

(b) the total amount of the costs to the taxpayer of the erection, extension, addition or improvement and the extent that those costs relate to any portion of the building in respect of which a certificate of occupancy has been granted; and

(c) particulars as to whether the costs were incurred in respect of the erection of a building as contemplated in subsection (3)*(a)* or the extension, addition or improvement of a building as contemplated in subsection (3)*(b)*.

(5) No deduction shall be allowed under this section in respect of any building—

(a) where that taxpayer ceased to use that building solely for purposes of that taxpayer's trade during any previous year of assessment; or

(b) which has been disposed of by the taxpayer during any previous year of assessment.

(6) For the purposes of this section, one area may be demarcated by a municipality where—

(a) that area is a developed urban location with the municipality of Buffalo City, Cape Town, Ekurhuleni, Emalahleni, Emfuleni, eThekwini, Johannesburg, Mafikeng, Mangaung, Matjhabeng, Mbombela, Msunduzi, Nelson Mandela, Polokwane, Sol Plaatje or Tshwane;

(b) that area is demarcated through formal resolution by the relevant municipal council no later than 30 June 2004 or such later date as the Minister may approve on good cause shown;

ontwikkelingsone wat gebruik staan te word uitsluitlik vir doeleindes van daardie belastingpligtige se bedryf—

(a) wat deur die belastingpligtige 'n aanvang neem op of na die datum van publikasie van die kennisgewing in subartikel (8) bedoel ten opsigte van daardie stedelike ontwikkelingsone, ingevolge 'n kontrak formeel en finaal deur alle partye daarby onderteken op of na daardie datum; en

(b) ten opsigte waarvan 'n okkupasiesertifikaat toegestaan is.

(3) Die bedrag van die vermindering in subartikel (2) bedoel—

(a) in die geval van die oprigting van 'n nuwe gebou of die uitbreiding van of toevoeging tot enige gebou (behalwe 'n gebou ten opsigte waarvan paragraaf *(b)* van toepassing is), is gelyk aan—

(i) 20 persent van die koste vir die belastingpligtige van die oprigting, uitbreiding van of toevoeging tot daardie gebou, wat aftrekbaar is in die jaar van aanslag waarin daardie gebou deur daardie belastingpligtige in gebruik geneem word uitsluitlik vir doeleindes van daardie belastingpligtige se bedryf; en

(ii) vyf persent van daardie koste in elk van die 16 daaropvolgende jare van aanslag; of

(b) in die geval van die verbetering van enige bestaande gebou of deel van 'n gebou (waarby ingesluit enige uitbreiding of toevoeging wat toevallig is tot die verbetering), waar die bestaande strukturele of buite raamwerk daarvan behoue bly, is gelyk aan—

(i) 20 persent van die koste vir die belastigpligtige van die verbetering, uitbreiding of toevoeging wat aftrekbaar is in die jaar van aanslag waarin die deel van die gebou aldus verbeter, uitgebrei of toegevoeg deur die belastingpligtige in gebruik geneem word uitsluitlik vir doeleindes van daardie belastingpligtige se bedryf; en

(ii) 20 persent van daardie koste in elk van die vier daaropvolgende jare van aanslag.

(4) Geen aftrekking word ingevolge hierdie artikel toegestaan nie, tensy die belastingpligtige tesame met die belastingopgawe vir die jaar van aanslag waarin die aftrekking ingevolge subartikel (3)*(a)*(i) of *(b)*(i) geëis word, die Kommissaris voorsien van—

(a) 'n sertifikaat van die munisipaliteit wat bevestig dat die gebou binne 'n stedelike ontwikkelingsone van daardie munisipaliteit geleë is;

(b) die totale bedrag van die koste vir die belastingpligtige van die oprigting, uitbreiding, toevoeging of verbetering en die mate wat daardie koste verband hou met enige gedeelte van die gebou ten opsigte waarvan 'n okkupasiesertifikaat toegestaan is; en

(c) besonderhede of die koste aangegaan is ten opsigte van die oprigting van 'n gebou soos in subartikel (3)*(a)* bedoel of die uitbreiding, toevoeging tot of verbetering van 'n gebou soos in subartikel (3)*(b)* bedoel.

(5) Geen aftrekking word toegestaan ingevolge hierdie artikel nie ten opsigte van 'n gebou—

(a) waar daardie belastingpligtige gedurende enige vorige jaar van aanslag ophou om daardie gebou uitsluitlik vir doeleindes van daardie belastingpligtige se bedryf te gebruik; of

(b) waaroor in enige vorige jaar van aanslag deur die belastingpligtige beskik is.

(6) By die toepassing van hierdie artikel, mag een area deur 'n munisipaliteit aangedui word waar—

(a) daardie area 'n ontwikkelde stedelike gebied binne die munisipaliteit van Buffalo City, Kaapstad, Ekurhuleni, Emalahleni, Emfuleni, eThekwini, Johannesburg, Mafikeng, Mangaung, Matjhabeng, Mbombela, Msunduzi, Nelson Mandela, Polokwane, Sol Plaatje of Tshwane, daarstel;

(b) daardie area by wyse van 'n formele besluit deur die betrokke munisipale raad aangedui is nie later nie as 30 Junie 2004 of so 'n later datum as wat die Minister mag goedkeur;

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

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

(i) in the form of property rates; or

(ii) assessed property values used to determine those rates,

and where the contribution from that area is undergoing a sustained decline;

(e) significant fiscal measures have been implemented by that municipality to support the regeneration of that area, including—

(i) the appropriation of significant funds for developing the area in the annual budget of the municipality;

(ii) special tariffs for categories of residential, commercial or industrial users; or

(iii) partnership arrangements with the business community for the promotion of urban development within that area; and

(f) that municipality commits to the objective of processing all planning approval applications for that area within 90 days of submission and to report those applications that are processed in a longer period, together with reasons for the delay, to the National Treasury on a quarterly basis within 30 days of the end of each quarter.

(7) *(a)* Subject to paragraph (d), the area demarcated in terms of subsection (6) may not exceed—

(i) where that municipality has a population of not more than 500 000 persons, a total area of 150 hectares; or

(ii) where that municipality has a population of more than 500 000 persons, 150 hectares plus 20 hectares for each additional 100 000 persons included in that population.

(b) Where that municipality has a population of 2 million persons or more, the municipal council may demarcate two areas in lieu of the one area demarcated in terms of subsection (6) provided that—

(i) the two areas do not in total exceed the one area contemplated in paragraph *(a)*(ii); and

(ii) each area otherwise satisfies the requirements of subsection (6).

(c) For purposes of this subsection, the population of a municipality shall be the population figures as determined by Statistics South Africa in the Census for 2001 and the total population of that municipality must be rounded to the nearest multiple of 100 000.

(d) The area demarcated in terms of subsection (6) may exceed the limits contemplated in paragraph *(a)* where—

(i) the municipality proves to the Minister that the excess area is integrally related to the area within the limitation contemplated in paragraph *(a)*;

(ii) the municipality can prove to the Minister that sound economic reasons exist for demarcating a larger area;

(iii) the municipality has not demarcated two areas as contemplated in subparagraph *(b)*; and

(iv) the Minister is satisfied that the demarcation of the excess area would fall within Government's affordability constraints.

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

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

(i) in die vorm van eiendomsbelastings; of

(ii) vasgestelde eiendomswaardes gebruik om daardie belastings te bepaal, en waar die bydrae van daardie area 'n volgehoue vermindering ondergaan;

(e) beduidende fiskale maatreëls deur daardie munisipaliteit geïmplementeer is ten einde the vernuwing van daardie area te ondersteun, waarby ingesluit—

(i) die toekenning van beduidende fondse in die jaarlikse begroting van die munisipaliteit vir ontwikkeling van die area;

(ii) spesiale tariewe vir klasse inwoner-, kommersiële of nywerheidsgebruikers; of

(iii) vennootskapsreëlings met die besigheidsgemeenskap vir die bevordering van stedelike ontwikkeling binne daardie gebied; en

(f) daardie munispaliteit verbind is tot die oogmerk om alle aansoeke om beplanningsgoedkeuring vir daardie gebied te verwerk binne 90 dae vanaf indiening en om kwartaalliks binne 30 dae na die einde van elke kwartaal aan die Nasionale Tesourie verslag te doen oor daardie aansoeke wat oor 'n langer tydperk verwerk is, tesame met redes vir die vertraging.

(7) *(a)* Behoudens paragraaf *(d)*, mag die gebied aangedui ingevolge subartikel (6) nie—

(i) waar daardie munisipaliteit 'n populasie van nie meer nie as 500 000 persone het, 'n totale gebied van 150 hektaar; of

(ii) waar daardie munisipaliteit 'n populasie van meer as 500 000 persone het, 150 hektaar plus 20 hektaar vir elke addisionele 100 000 persone in daardie populasie ingesluit,

oorskry nie.

(b) Waar die munisipaliteit 'n populasiesyfer van 2 miljoen of meer persone het, kan die munisipale raad twee gebiede in plek van een gebied aandui ingevolge subartikel (6), mits—

(i) die twee gebiede nie in totaal die een gebied in paragraaf *(a)*(ii) bedoel oorskry nie; en

(ii) elke gebied andersins aan die vereistes van subartikel (6) voldoen.

(c) By die toepassing van hierdie artikel, is die populasie vir 'n munisipaliteit die populasiesyfers soos bepaal deur Statistiek Suid-Afrika in die Sensus vir 2001 en die totale populasie vir daardie munisipaliteit moet gerond word na die naaste meervoud van 100 000.

(d) Die gebied ingevolge subartikel (6) aangedui kan die beperking in paragraaf *(a)* oorskry waar—

(i) die munisipaliteit aan die Minister kan bewys dat die oorskot gebied integraal met die gebied binne die beperking in paragraaf *(a)* bedoel verband hou;

(ii) die munisipaliteit aan die Minister kan bewys dat gesonde ekonomiese redes bestaan vir die aanduiding van 'n groter gebied;

(iii) die munisipaliteit nie twee gebiede aangedui het nie soos in subparagraaf *(b)* bedoel; en

(iv) die Minister tevrede is dat die aanduiding van die oorskot gebied binne die Staat se kostebeperkings val.

(8) The Minister must publish by notice in the *Gazette* particulars of an area demarcated by a municipality after that municipality has proved to the Minister that the area so demarcated complies with the provisions of subsection (6).

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

(a) each taxpayer to which a certificate contemplated in subsection 4*(a)* has been issued;

(b) the location of each building for which that certificate was issued;

(c) the costs incurred by the taxpayer in respect of each building;

(d) the total jobs created as a result of this section;

(e) the additional property rates collected as a result of this section; and

(f) the total applications for a certificate contemplated in subsection 4*(a)*.

(10) Where—

(a) a municipality does not provide an annual report as contemplated in subsection (9) or a quarterly report as contemplated in subsection 6*(f)* or the Commissioner reports to the Minister that the municipality has issued a certificate contemplated in subsection (4)*(a)* in respect of a building that is located outside an urban development zone; and

(b) corrective steps are not taken by that municipality within a period specified by the Minister,

the Minister may withdraw the notice contemplated in subsection (8) for that municipality in respect of contracts formally and finally signed by all parties thereto on or after the date of withdrawal.

(11) The Commissioner must on an annual basis submit a report to the Minister containing information relating to—

(a) the number of taxpayers which have during the relevant year claimed an allowance in terms of this section;

(b) the total amount of the deductions by taxpayers allowed in that year in terms of this section; and

(c) the total amount of the costs to those taxpayers which are or will be allowable as a deduction in terms of this section.

Amendment of section 18A of Act 58 of 1962, as inserted by section 15 of Act 52 of 1970 and substituted by section 16 of Act 96 of 1981 and amended by section 14 of Act 91 of 1982, section 16 of Act 94 of 1983, section 16 of Act 121 of 1984, section 15 of Act 90 of 1988, section 17 of Act 101 of 1990, section 20 of Act 129 of 1991, section 11 of Act 36 of 1996 and substituted by section 24 of Act 30 of 2000 and amended by section 20 of Act 30 of 2002

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

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

"Notwithstanding the provisions of section 23, there shall be allowed to be deducted from the taxable income of any taxpayer so much of the sum of any *bona fide* donations by that taxpayer in cash or of property made in kind **[made by such taxpayer and]**, which was actually paid or transferred during the year of assessment to—";

(b) by the insertion in subsection (1) after paragraph *(b)* of the following paragraph:

"*(c)* the Government, any provincial administration or local authority as contemplated in section 10(1)*(a)* or *(b)* to be used for purposes of any activity contemplated in Part II of the Ninth Schedule;";

(c) by the substitution in subsection (1) for subitem *(bb)* of paragraph *(a)* of the following subitem:

"*(bb)* complies with the requirements contemplated in subsection (1C), if applicable, and any additional requirements prescribed by the Minister in terms of subsection (1A);"; and

(8) Die Minister moet by kennisgewing in die *Staatskoerant* besonderhede van 'n gebied deur 'n munisipaliteit aangedui publiseer nadat daardie munisipaliteit aan die Minister bewys gelewer het dat die gebied aldus aangedui aan die bepalings van subartikel (6) voldoen.

(9) Elke munisipaliteit moet, binne die tydperk deur die Minister voorgeskryf, 'n jaarlikse verslag aan die Kommissaris en die Minister voorsien vir elke stedelike ontwikkelingsone binne daardie munisipaliteit geleë, wat uiteensit—

(a) elke belastingpligtige aan wie 'n sertifikaat in subartikel (4)*(a)* bedoel uitgereik is;

(b) die ligging van elke gebou waarvoor 'n sertifikaat uitgereik is;

(c) die koste deur die belastingpligtige aangegaan ten opsigte van elke gebou;

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

(e) die addisionele eiendomsbelasting ingevorder weens hierdie artikel; en

(f) die totale aantal aansoeke om 'n sertifikaat in subartikel (4)*(a)* bedoel.

(10) Waar—

(a) 'n munisipaliteit nie 'n jaarlikse verslag soos in subartikel (9) bedoel of 'n kwartaallikse verslag in subartikel (6)*(f)* bedoel voorsien nie of die Kommissaris aan die Minister verslag doen dat die munisipaliteit 'n sertifikaat in subartikel (4)*(a)* bedoel uitgereik het ten opsigte van 'n gebou wat buite 'n stedelike ontwikkelingsone geleë is; en

(b) regstellende stappe nie deur die munisipaliteit gedoen word binne 'n tydperk deur die Minister gespesifiseer nie,

kan die Minister die kennisgewing in subartikel (8) bedoel vir daardie stedelike ontwikkelingsone intrek ten opsigte van enige kontrakte wat op of na die datum van intrekking formeel en finaal deur alle partye onderteken is.

(11) Die Kommissaris moet op 'n jaarlikse basis 'n verslag aan die Minister voorsien waarin uiteengesit word inligting met betrekking tot—

(a) die aantal belastingpligtiges wat gedurende die betrokke jaar 'n vermindering ingevolge hierdie artikel geëis het;

(b) die totale bedrag van die aftrekkings deur belastingpligtiges wat in daardie jaar ingevolge hierdie artikel toegestaan is; en

(c) die totale bedrag van die koste vir daardie belastingpligtiges wat ingevolge hierdie artikel toegestaan is of sal word.".

Wysiging van artikel 18A van Wet 58 van 1962, soos ingevoeg deur artikel 15 van Wet 52 van 1970 en vervang deur artikel 16 van Wet 96 van 1981 en gewysig deur artikel 14 van Wet 91 van 1982, artikel 16 van Wet 94 van 1983, artikel 16 van Wet 121 van 1984, artikel 15 van Wet 90 van 1988, artikel 17 van Wet 101 van 1990, artikel 20 van Wet 129 van 1991, artikel 11 van Wet 36 van 1996 en vervang deur artikel 24 van Wet 30 van 2000 en gewysig deur artikel 20 van Wet 30 van 2002

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

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

"Ondanks die bepalings van artikel 23, word daar as 'n aftrekking van die belasbare inkomste van 'n belastingpligtige toegelaat soveel van die som van enige bona fide-skenkings in kontant of eiendom in natura deur die belastingpligtige gedurende die jaar van aanslag gemaak **[en]** wat werklik gedurende die jaar van aanslag betaal of oorgedra is aan—";

(b) deur in subartikel (1) die volgende paragraaf na paragraaf *(b)* by te voeg:

"*(c)* die regering, 'n provinsiale administrasie of plaaslike bestuur in artikel 10(1)*(b)* of *(c)* bedoel, wat gebruik staan te word vir doeleindes van enige aktiwiteit in Deel II van die Negende Bylae bedoel; ";

(c) deur in subartikel (1) subitem *(bb)* van paragraaf *(a)* deur die volgende subitem te vervang:

"*(bb)* aan die vereistes in subartikel (1C) bedoel, indien van toepassing, en enige addisionele vereistes wat die Minister ingevolge subartikel (1A) voorskryf, voldoen;";

(d) by the substitution in subsection (1) for subparagraph (i) of paragraph *(b)* of the following subparagraph:

"(i) provides funds or assets **[solely]** to any public benefit organisation, institution, board or body contemplated in paragraph *(a)*; and";

(e) by the substitution in subsection (1) for subparagraph (ii) of paragraph *(b)* and the words following subparagraph (ii) of the following subparagraph and words:

"(ii) during the year of assessment preceding the year of assessment of such public benefit organisation during which the donation is received, distributed or incurred the obligation to so distribute at least 75 per cent of the funds received by such organisation by way of donations which qualified for a deduction in terms of this section: Provided that the Commissioner may, upon good cause shown and subject to such conditions as he or she may determine, either generally or in a particular instance, waive, defer or reduce the obligation to distribute any funds, having regard to the public interest and the purpose for which the relevant organisation wishes to accumulate those funds,

as does not exceed **[the greater of—**

(aa)] five per cent of the taxable income of the taxpayer as calculated before allowing any deduction under this section or section 18 **[or**

(bb) **R1 000**:

Provided that the Commissioner may, upon good cause shown and subject to such conditions as he or she may determine, either generally or in a particular instance, waive, defer or reduce the obligation to distribute any funds as contemplated in paragraph *(b)*(ii), having regard to the public interest and the purpose for which the relevant organisation wishes to accumulate those funds].";

(f) by the substitution for subsection (1A) of the following subsection:

"(1A) The Minister may, by regulation, prescribe additional requirements with which a public benefit organisation, institution, board or body or the government, provincial administration or local authority carrying on any specific public benefit activity identified by the Minister in the regulations, must comply before any donation made to that public benefit organisation, institution, board or body or the government, provincial administration or local authority shall be allowed as a deduction under subsection (1).";

(g) by the insertion after subsection (1B) of the following subsection:

"(1C) The constitution or founding document of a public benefit organisation carrying on the activity contemplated in paragraph 4 of Part II of the Ninth Schedule, must expressly provide that the organisation—

(a) may not issue any receipt contemplated in subsection (2) in respect of any donation made by a person to that public benefit organisation, unless—

(i) that donation is made by that person on or after 1 August 2002, but before 1 August 2005; and

(ii) that person (in the case of a company, together with any other company in the same group of companies as that company) has during the relevant year of assessment of that person donated an amount of at least R1 million to that organisation;

(b) must ensure that every donation contemplated in paragraph *(a)*, in respect of which such a receipt has been issued, will be matched by a donation to that organisation of the same amount made by a person who is not a resident and which is made from funds generated and held outside the Republic; and

(c) must utilise the amount of—

(d) deur in subartikel (1) subparagraaf *(i)* van paragraaf *(b)* deur die volgende subparagraaf te vervang:

"(i) **[alleenlik]** fondse of bates voorsien aan enige openbare weldaadsorganisasie, instelling, raad of liggaam in paragraaf *(a)* bedoel; en";

(e) deur in subartikel (1) subparagraaf (ii) van paragraaf *(b)* en die woorde wat subparagraaf (ii) volg deur die volgende subparagraaf en woorde te vervang:

"(ii) gedurende die jaar van aanslag wat die jaar van aanslag van die openbare weldaadsorganisasie waarin die skenking ontvang is, voorafgaan minstens 75 persent van die fondse wat ontvang is deur bedoelde organisasie by wyse van skenkings wat ingevolge hierdie artikel as 'n aftrekking gekwalifiseer het, uitgekeer het of die verpligting aangegaan het om aldus uit te keer: Met dien verstande dat die Kommissaris, op goeie gronde aangetoon en behoudens die voorwaardes wat hy of sy bepaal, die verpligting om enige fondse uit te keer, hetsy in die algemeen of in 'n spesifieke geval, kan kwytskeld, uitstel of verminder, na inagneming van die openbare belang en die doel waarvoor die betrokke organisasie daardie fondse wil akkumuleer,

as wat nie **[die grootste van—**

(aa)] vyf persent van die belasbare inkomste van die belastingpligtige soos bereken voordat 'n aftrekking ingevolge hierdie artikel en artikel 18 toegelaat word**[; of***

***(bb)* R1 000,]**

te bowe gaan nie**[: Met dien verstande dat die Kommissaris, op goeie gronde aangetoon en behoudens die voorwaardes wat hy of sy bepaal, die verpligting om enige fondse uit te keer, soos in paragraaf *(b)*(ii) bedoel, hetsy in die algemeen of in 'n spesifieke geval, kan kwytskeld, uitstel of verminder, na inagneming van die openbare belang en die doel waarvoor die betrokke organisasie daardie fondse wil akkumuleer]**.";

(f) deur subartikel (1A) deur die volgende subartikel te vervang:

"(1A) Die Minister kan by regulasie addisionele vereistes voorskryf waaraan 'n openbare weldaadsorganisasie, instelling, raad of liggaam of die regering, provinsiale administrasie of plaaslike bestuur wat 'n spesifieke openbare weldaadsaktiwiteit deur die Minister in die regulasies geïdentifiseer beoefen, moet voldoen alvorens enige skenking aan daardie openbare weldaadsorganisasie, instelling, raad of liggaam of die regering, provinsiale administrasie of plaaslike bestuur as 'n aftrekking ingevolge subartikel (1) toegestaan sal word.";

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

"(1C) Die konstitusie van of dokument wat 'n openbare weldaadsorganisasie wat 'n aktiwiteit in paragraaf 4 van Deel II van die Negende Bylae bedoel beoefen, instel, moet uitdruklik bepaal dat die organisasie—

(a) nie enige kwitansie in subartikel (2) bedoel ten opsigte van enige skenking deur 'n persoon aan daardie openbare weldaadsorganisasie gemaak, mag uitreik nie tensy—

(i) daardie skenking op of na 1 Augustus 2002, maar voor 1 Augustus 2005 deur daardie persoon gemaak is; en

(ii) daardie persoon (in die geval van 'n maatskappy, tesame met enige ander maatskappy in dieselfde groep van maatskappy as daardie maatskappy) gedurende die betrokke jaar van aanslag van daardie persoon 'n bedrag van minstens R1 miljoen aan daardie organisasie geskenk het;

(b) moet toesien dat elke skenking in paragraaf *(a)* bedoel, ten opsigte waarvan 'n kwitansie uitgereik is, deur 'n skenking van dieselfde bedrag aan daardie organisasie gemaak deur 'n persoon wat nie 'n inwoner is nie en wat uit fondse buite die Republiek gegenereer en gehou, geëwenaar sal word; en

(c) die bedrag van—

(i) all donations contemplated in paragraph *(a)*, in respect of which such a receipt has been issued, and all income derived therefrom, in the Republic in carrying on that activity; and

(ii) all donations contemplated in paragraph *(b)*, either in the Republic in carrying on that activity, or in respect of a transfrontier conservation area of which the Republic forms part.";

(h) by the substitution in subsection (2) for the words preceding paragraph *(a)* of the following words:

"(2) Any claim for a deduction in respect of any donation under subsection (1) shall not be allowed unless supported by a receipt issued by the public benefit organisation, institution, board or body or the government, provincial administration or local authority concerned, on which the following details are given, namely—";

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

"*(c)* the name of the public benefit organisation, institution, board or body or the government, provincial administration or local authority which received the donation, together with an address to which enquiries may be directed in connection therewith;";

(j) by the substitution in subsection (2) for paragraph *(f)* of the following paragraph:

"*(f)* a certification to the effect that the receipt is issued for the purposes of section 18A of the Income Tax Act, 1962, and that the donation has been or will be used exclusively for the object of the public benefit organisation, institution, board or body concerned or, in the case of the government, provincial administration or local authority in carrying on the relevant public benefit activity.";

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

"(2A) A public benefit organisation, institution, board, body, government, provincial administration or local authority may only issue a receipt contemplated in subsection (2) in respect of any donation to the extent that—

(a) in the case of a public benefit organisation, institution, board or body contemplated in subsection (1)*(a)* which carries on activities contemplated in Part I of the Ninth Schedule, that donation will be utilised solely in carrying on activities contemplated in Part II of the Ninth Schedule;

(b) in the case of a public benefit organisation contemplated in subsection (1)*(b)* which provides funds to public benefit organisations, institutions, boards or bodies that carry on public benefit activities contemplated in Part II of the Ninth Schedule and to other entities, that donation will be utilised solely to provide funds to a public benefit organisation, institution, board or body contemplated in subsection (1)*(a)*, which will utilise those funds solely in carrying on activities contemplated in Part II of the Ninth Schedule; or

(c) in the case of the government, provincial administration or local authority, that donation will be utilised solely in carrying on activities contemplated in Part II of the Ninth Schedule.

(2B) A public benefit organisation, institution, board or body contemplated in subsection (2A), must together with its annual return for a year of assessment submit to the Commissioner an audit certificate confirming that all donations received or accrued in that year in respect of which receipts were issued in terms of subsection (2), were utilised in the manner contemplated in subsection (2A).

(2C) The Accounting Authority contemplated in the Public Finance Management Act, 1997 (Act No. 1 of 1999) for the government, provincial administration or local authority which issued any receipts in terms of subsection (2), must on an annual basis submit an audit certificate to the Commissioner confirming that all donations received or accrued in the year in respect of which receipts were so issued were utilised in the manner contemplated in subsection (2A).".

(i) alle skenkings in paragraaf *(a)* bedoel ten opsigte waarvan so 'n kwitansie uitgereik is en alle inkomste daaruit verkry, in die Republiek moet gebruik; en

(ii) alle skenkings in paragraaf *(b)* bedoel óf in die Republiek óf ten opsigte van 'n oorgrensbewaringsgebied waarvan die Republiek deel vorm, moet gebruik;";

(h) deur in subartikel (2) die woorde wat paragraag *(a)* voorafgaan deur die volgende woorde te vervang:

"(2) 'n Aanspraak op 'n aftrekking ten opsigte van 'n skenking ingevolge subartikel (1) word nie toegelaat nie tensy dit gestaaf word deur 'n kwitansie uitgereik deur die betrokke openbare weldaadsorganisasie, instelling, raad of liggaam, of die regering, provinsiale administrasie of plaaslike bestuur waarop die volgende besonderhede verstrek word, naamlik-";

(i) deur in subartikel (2) paragraaf *(c)* deur die volgende paragraaf te vervang:

"*(c)* die naam van die openbare weldaadsorganisasie, instelling, raad of liggaam of die regering, provinsiale administrasie of plaaslike bestuur wat die skenking ontvang het tesame met 'n adres waartoe navrae in verband daarmee gerig kan word;";

(j) deur in subartikel (2) paragraaf *(f)* deur die volgende paragraaf te vervang:

"*(f)* 'n sertifisering ten effekte dat die kwitansie uitgereik word vir die doeleindes van artikel 18A van die Inkomstebelastingwet, 1962, en dat die skenking uitsluitlik vir die doeleindes van die betrokke openbare weldaadsorganisasie, instelling, raad of liggaam, of in die geval van die regering, provinsiale administrasie of plaaslike bestuur in die beoefenig van die betrokke openbare weldaadsaktiwiteit gebruik is of sal word.";

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

"(2A) 'n Openbare weldaadsorganisasie, instelling, raad, liggaam, regering, provinsiale administrasie of plaaslike bestuur kan 'n kwitansie in subartikel (2) bedoel uitreik slegs in die mate wat—

(a) in die geval van 'n openbare weldaadsorganisasie, instelling, raad of liggaam in subartikel (1)*(a)* bedoel wat 'n aktiwiteit in Deel I van die Negende Bylae bedoel, beoefen dat daardie skenking gebruik sal word uitsluitlik in die beoefening van aktiwiteite in Deel II van die Negende Bylae bedoel;

(b) in die geval van 'n openbare weldaadsorganisasie in subartikel (1)*(b)* bedoel wat fondse voorsien aan openbare weldaadsorganisasies, instellings, rade of liggame wat openbare weldaadsaktiwiteite in Deel II van die Negende Bylae bedoel beoefen en aan ander entiteite, dat daardie skenking gebruik sal word uitsluitlik om fondse aan openbare weldaadsorganisasies, instellings, rade of liggaame in subartikel (1)*(a)* bedoel te voorsien, wat daardie fondse sal gebruik uitsluitlik by die beoefening van aktiwiteite in Deel II van die Negende Bylae bedoel; of

(c) in die geval van die regering, provinsiale administrasie of plaaslike bestuur, dat daardie skenking gebruik sal word uitsluitlik by die beoefening van aktiwiteite in Deel II van die Negende Bylae bedoel.

(2B) 'n Openbare weldaadsorganisasie, instelling, raad of liggaam in subartikel (2A) bedoel, moet tesame met die jaarlikse opgawe vir 'n jaar van aanslag aan die Kommissaris 'n ouditsertifikaat voorsien wat bevestig dat alle skenkings ontvang of toegeval in daardie jaar ten opsigte waarvan kwitansies ingevolge subartikel (2) uitgereik is, gebruik is op die wyse in subartikel (2A) bedoel.

(2C) Die Rekenpligtige Gesag in die Wet op Openbare Finasiële Bestuur, 1999 (Wet No. 1 van 1999), bedoel, vir die regering, provinsiale administrasie of plaaslike bestuur wat enige kwitansies ingevolge subartikel (2) uitgereik het, moet op 'n jaarlikse basis 'n ouditsertifikaat aan die Kommissaris voorsien wat bevestig dat alle skenkings ontvang of toegeval in die jaar ten opsigte waarvan kwitansies aldus uitgereik is, gebruik is op die wyse in subartikel (2A) bedoel.";

(l) by the substitution in subsection (3) for paragraphs *(a)*, *(b)*, *(c)* and *(d)* of the following paragraphs:

"*(a)* where such property constitutes—

(i) a financial instrument which is trading stock of the taxpayer, the lower of fair market value of that financial instrument on the date of that donation or the amount which has been taken into account for the purposes of section 22(8); or

(ii) any other trading stock of the taxpayer (including any livestock or produce in respect of which the provisions of paragraph 11 of the First Schedule are applicable), the amount which has been taken into account for the purposes of section 22(8) or, in the case of such livestock or produce, the said paragraph 11, in relation to the donation of such property; or

(b) where such property (other than trading stock) constitutes an asset used by the taxpayer for the purposes of his trade, the lower of—

(i) the fair market value of that property on the date of that donation; or

(ii) the cost to the taxpayer of such property less any allowance (other than any investment allowance) allowed to be deducted from the income of the taxpayer under the provisions of this Act in respect of that asset; or

(c) where such property does not constitute trading stock of the taxpayer or an asset used by him for the purposes of his trade, the lower of —

(i) the fair market value of that property on the date of that donation; or

(ii) the cost to the taxpayer of such asset, less, in the case of a movable asset which has deteriorated in condition by reason of use or other causes, a depreciation allowance calculated in the manner contemplated in section 8(5)*(b*B)(i); or

(d) where such property is purchased, manufactured, erected, assembled, installed or constructed by or on behalf of the taxpayer in order to form the subject of the said donation, the lower of—

(i) the fair market value of that property on the date of that donation; or

(ii) the cost to the taxpayer of such property."; and

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

"(3A) No deduction shall be allowed under this section in respect of the donation of any property in kind which constitutes, or is subject to any fiduciary right, usufruct or other similar right, or which constitutes an intangible asset or financial instrument, unless that financial instrument is—

(a) a share in a listed company; or

(b) issued by a financial institution as defined in section 1 of the Financial Services Board Act, 1990 (Act No. 97 of 1990).

(2) Subsection (1)*(a)*, *(b)*, *(c)*, *(d)*, *(f)*, *(h)*, *(i)*, *(j)*, *(k)*, *(l)* and *(m)* shall come into operation on the date of promulgation of this Act and shall apply in respect of any donation which takes effect on or after that date.

(l) deur in subartikel (3) paragrawe *(a)*, *(b)*, *(c)* en *(d)* deur die volgende paragrawe te vervang:

"*(a)* waar bedoelde eiendom—

(i) 'n finansiële instrument uitmaak wat handelsvoorraad van die belastingpligtige **[uitmaak]** is, die laagste van die billike markwaarde van daardie finansiële instrument op die datum van daardie skenking of die bedrag wat by die toepassing van artikel 22(8) in berekenig gebring is; of

(ii) enige ander handelsvoorraad van die belastingpligtige (met inbegrip van enige lewende hawe of produkte ten opsigte waarvan die bepalings van paragraaf 11 van die Eerste Bylae van toepassing is), die bedrag wat by die toepassing van artikel 22 (8) of, in die geval van bedoelde lewende hawe of produkte, genoemde paragraaf 11, in berekening gebring is met betrekking tot die skenking van bedoelde eiendom; of

(b) waar bedoelde eiendom (behalwe handelsvoorraad) 'n bate uitmaak wat deur die belastingpligtige vir die doeleindes van sy bedryf gebruik word, die laagste van—

(i) die billike markwaarde van daardie eiendom op die datum van daardie skenking; of

(ii) die koste vir die belastingpligtige van bedoelde eiendom min enige vermindering (behalwe 'n beleggingsvermindering) wat ingevolge die bepalings van hierdie Wet toegelaat is om van die belastingpligtige se inkomste afgetrek te word ten opsigte van daardie bate; of

(c) waar bedoelde eiendom nie handelsvoorraad van die belastingpligtige of 'n bate wat vir die doeleindes van sy bedryf deur hom gebruik word, uitmaak nie, die laagste van—

(i) die billike markwaarde van daardie eiendom op die datum van daardie skenking; of

(ii) die koste vir die belastingpligtige van bedoelde bate min, in die geval van 'n roerende bate waarvan die toestand weens gebruik of ander oorsake versleg het, 'n waardeverminderingstoelae bereken op die wyse in artikel 8(5)*(b*B*)(i)* bedoel; of

(d) waar bedoelde eiendom deur of ten behoewe van die belastingpligtige gekoop, vervaardig, opgerig, gemonteer, geïnstalleer of gebou word ten einde die onderwerp van genoemde skenking te wees, die laagste van—

(i) die billike markwaarde van daardie eiendom op die datum van daardie skenking; of

(ii) die koste vir die belastingpligtige van bedoelde eiendom.";

(m) deur na subartikel (3) die volgende subartikel in te voeg:

"(3A) Geen aftrekking word kragtens hierdie artikel toegestaan nie ten opsigte van die skenking van enige eiendom in natura, wat 'n fidusiêre reg, vruggebruik of ander soortgelyke reg uitmaak of daaraan onderhewig is, of wat 'n ontasbare bate of finansiële instrument uitmaak, tensy daardie finansiële instrument—

(a) 'n aandeel in 'n genoteerde maatskappy uitmaak; of

(b) uitgereik is deur 'n finansiële instelling soos in artikel 1 van die Wet op die Raad op Finansiële Dienste, 1990 (Wet No. 97 van 1990), bedoel, uitmaak.".

(2) Subartikel (1)*(a)*, *(b)*, *(c)*, *(d)*, *(f)*, *(h)*, *(i)*, *(j)*, *(k)*, *(l)* en *(m)* tree in werking op die datum van afkondiging van hierdie Wet en is van toepassing ten opsigte van enige skenking wat op of na daardie datum in werking tree.

Amendment of section 20 of Act 58 of 1962, as amended by section 13 of Act 90 of 1964, section 18 of Act 88 of 1965, section 13 of Act 76 of 1968, section 18 of Act 89 of 1969, section 15 of Act 65 of 1973, section 8 of Act 101 of 1978, section 18 of Act 94 of 1983, section 19 of Act 191 of 1990, section 16 of Act 113 of 1993, section 17 of Act 21 of 1995, section 15 of Act 28 of 1997, section 20 of Act 30 of 2000, section 27 of Act 59 of 2000 and section 23 of Act 74 of 2002

35. (1) Section 20 of the Income Tax Act, 1962, is hereby amended—

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

"For the purpose of determining the taxable income derived by any person from carrying on any trade, there shall, subject to section 20A, be set off against the income so derived by such person—"; and

(b) by the substitution in subsection (1) for paragraph *(b)* of the proviso and the words following paragraph *(b)* of the following paragraph:

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

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

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

in carrying on any trade outside the Republic.".

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

(b) Subsection (1)*(b)* shall be deemed to have come into operation on 6 December 2000.

Insertion of section 20A in Act 58 of 1962

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

"**Ring-fencing of assessed losses of certain trades**

20A. (1) Subject to subsection (3), where the circumstances in subsection (2) apply during any year of assessment in respect of any trade carried on by a natural person, any assessed loss incurred during that year in carrying on that trade may not be set off against any income of that person derived during that year otherwise than from carrying on that trade, notwithstanding section 20(1)*(b)*.

(2) Subsection (1) applies where the taxable income of a person for a year of assessment (before taking into account the set-off of any assessed losses incurred in carrying on any trade during that year and the balance of assessed loss carried forward from the preceding year) equals or exceeds the amount at which the maximum marginal rate of tax chargeable in respect of the taxable income of individuals becomes applicable, and where—

(a) that person has, during the five year period ending on the last day of that year of assessment, incurred an assessed loss in at least three years of assessment in carrying on the trade contemplated in subsection (1) (before taking into account any balance of assessed loss carried forward); or

(b) the trade contemplated in subsection (1), in respect of which the assessed loss was incurred constitutes—

(i) any sport practised by that person or any relative;

(ii) any dealing in collectibles by that person or any relative;

(iii) the rental of residential accommodation, unless at least 80 per cent of the residential accommodation is used by persons who

Wysiging van artikel 20 van Wet 58 van 1962, soos gewysig deur artikel 13 van Wet 90 van 1964, artikel 18 van Wet 88 van 1965, artikel 13 van Wet 76 van 1968, artikel 18 van Wet 89 van 1969, artikel 15 van Wet 65 van 1973, artikel 8 van Wet 101 van 1978, artikel 18 van Wet 94 van 1983, artikel 19 van Wet 191 van 1990, artikel 16 van Wet 113 van 1993, artikel 17 van Wet 21 van 1995, artikel 15 van Wet 28 van 1997, artikel 20 van Wet 30 van 2000, artikel 27 van Wet 59 van 2000 en artikel 23 van Wet 74 van 2002

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

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

"Ten einde die belasbare inkomste deur 'n persoon verkry uit die beoefening van 'n bedryf vas te stel, word behoudens artikel 20A teen die aldus verkreë inkomste van dié persoon in die vergelyking gebring-";

(b) deur in subartikel (1) paragraaf *(b)* van die voorbehoudsbepaling en die woorde wat paragraaf *(b)* volg deur die volgende paragraaf en woorde te vervang:

"*(b)* deur enige persoon verkry uit die beoefening van 'n bedryf binne die Republiek, enige—

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

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

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

(2)*(a)* Subartikel (1)*(a)* tree op 1 Maart 2004 in werking en is van toepassing ten opsigte van enige jaar van aanslag wat op of na daardie datum 'n aanvang neem.

(b) Subartikel (1)*(b)* word geag op 6 Desember 2000 in werking te getree het.

Invoeging van artikel 20A in Wet 58 van 1962

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

"Omheining van vasgestelde verliese van sekere bedrywe

20A. (1) Behoudens subartikel (3), waar die omstandighede in subartikel (2) gedurende enige jaar van aanslag van toepassing is ten opsigte van die bedryf deur 'n natuurlike persoon beoefen, word enige vasgestelde verlies gedurende daardie jaar van aanslag uit die beoefening van daardie bedryf gely nie verreken teen enige inkomste van daardie persoon verkry gedurende daardie jaar andersins as uit die beoefening van daardie bedryf nie, ondanks artikel 20(1)*(b)*.

(2) Subartikel (1) is van toepassing waar die belasbare inkomste van 'n persoon vir 'n jaar van aanslag (voor die verrekening van enige vasgestelde verlies uit die beoefening van enige bedryf gedurende daardie jaar gely en die balans van vasgestelde verlies wat van die voorafgaande jaar vorentoe gedra is) gelyk is aan of meer is as die bedrag waarop die maksimum marginale skaal van belasting hefbaar ten opsigte van die belabare inkomste van individue van toepassing word, en waar—

(a) daardie persoon, gedurende die vyf jaar tydperk wat eindig op die laaste dag van daardie jaar van aanslag, 'n vasgestelde verlies gely het in minstens drie jare van aanslag in die beoefening van die bedryf in subartikel (1) bedoel (voor enige balans van vasgestelde verlies wat vorentoe gedra is in berekening gebring is); of

(b) die bedryf in subartikel (1) bedoel, ten opsigte waarvan die vasgestelde verlies gely is—

(i) 'n sport wat deur daardie persoon of enige familielid beoefen word, daarstel;

(ii) enige handel in versamelstukke deur daardie persoon of enige familielid, daarstel;

(iii) die verhuring van residensiële verblyf daarstel, tensy minstens 80 persent van die residensiële verblyf deur persone wat nie

(5) Notwithstanding section 20(1)*(a)*, any balance of assessed loss carried forward from the preceding year of assessment, which is attributable to an assessed loss in respect of which subsection (1) applied in that preceding year or any prior year of assessment, may not be set off against any income derived by that person otherwise than from carrying on the trade contemplated in subsection (1).

(6) For the purposes of this section and section 20, the income derived from any trade referred to in subsections (1) or (5), includes any amount—

(a) which is included in the income of that person in terms of section 8(4) in respect of an amount deducted in any year of assessment in carrying on that trade; or

(b) derived from the disposal after cessation of that trade of any assets used in carrying on that trade.

(7) Notwithstanding anything to the contrary contained in this Act, all farming activities carried on by a person shall be deemed to constitute a single trade carried on by that person for the purposes of this section.

(8) Where the provisions of subsection (2) apply during any year of assessment in respect of any trade carried on by a person, that person must indicate the nature of the business in his or her return contemplated in section 66 for that year of assessment.

(9) For the purposes of subsections (2)*(a)* and (4), any assessed loss incurred in any year of assessment ending on or before 29 February 2004 shall not be taken into account.

(10) For the purposes of this section—

(a) 'assessed loss' means 'assessed loss' as defined in section 20(2); and

(b) 'relative' in relation to a person means a spouse, parent, child, stepchild, brother, sister, grandchild or grandparent of that person.".

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

Amendment of section 22 of Act 58 of 1962, as amended by section 8 of Act 6 of 1963, section 14 of Act 90 of 1964, section 21 of Act 89 of 1969, section 23 of Act 85 of 1974, section 20 of Act 69 of 1975, section 15 of Act 103 of 1976, section 20 of Act 94 of 1983, section 19 of Act 121 of 1984, section 14 of Act 65 of 1986, section 5 of Act 108 of 1986, section 21 of Act 101 of 1990 section 22 of Act 129 of 1991, section 17 of Act 113 of 1993, section 1 of Act 168 of 1993, section 19 of Act 21 of 1995, section 12 of Act 36 of 1996, section 25 of Act 53 of 1999, section 27 of Act 30 of 2000, section 12 of Act 5 of 2001 and section 24 of Act 74 of 2002

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

(a) by the substitution in subsection (4A) for paragraphs *(a)* and *(b)* of the following paragraphs:

"*(a)* any **[marketable]** security has been lent by a lender to a borrower in terms of a securities lending arrangement **[as defined in section 23(1) of the Stamp Duties Act, 1968 (Act No. 77 of 1968)]**, such **[marketable]** security shall be deemed not have been acquired by such borrower; or

(b) another **[marketable]** security of the same kind and of the same or equivalent quantity or quality has been returned by such borrower to such lender, such other **[marketable]** security shall be deemed not to have been acquired by such lender."

(b) by the substitution in subsection (8) for item (B) of paragraph *(b)* of the following item:

"(B) where such trading stock has been applied, disposed of or distributed in a manner contemplated in paragraph *(b)* (otherwise than in the manner contemplated in item (C)) or ceases to be held as trading stock, an amount equal to the market value of such trading stock;";

(5) Ondanks artikel 20(1)*(a)*, word 'n balans van vasgestelde verlies van die voorafgaande jaar van aanslag, wat toeskryfbaar is aan enige vasgestelde verlies ten opsigte waarvan subartikel (1) van toepassing was in daardie voorafgaande jaar of enige vorige jaar van aanslag, nie verreken nie teen enige inkomste wat deur daardie persoon verkry word anders as uit die beoefening van die bedryf in subartikel (1) bedoel.

(6) By die toepassing van hierdie artikel en artikel 20, sluit die inkomste uit enige bedryf in subartikel (1) en (5) bedoel, verkry, 'n bedrag in—

(a) wat by die inkomste van daardie persoon ingesluit word ingevolge artikel 8(4) ten opsigte van enige bedrag wat afgetrek is in enige jaar van aanslag by die beoefening van daardie bedryf; of

(b) wat verkry word uit die beskikking oor enige bates na beëindiging van daardie bedryf wat gebruik is in die beoefening van daardie bedryf.

(7) Ondanks enigiets tot die teendeel in hierdie Wet vervat, word alle boerdery aktiwiteite deur 'n persoon beoefen geag 'n enkele bedryf daar te stel wat deur daardie persoon beoefen word by die toepassing van hierdie artikel.

(8) Waar die bepalings van subartikel (2) van toepassing is gedurende enige jaar van aanslag ten opsigte van enige bedryf deur 'n persoon beoefen, moet daardie persoon die aard van die besigheid in sy of haar opgawe in artikel 66 bedoel vir daardie jaar van aanslag aandui.

(9) By die toepassing van subartikels (2)*(a)* en (4), word enige vasgestelde verlies in enige jaar van aanslag wat voor of op 29 Februarie 2004 eindig, gely, buite rekening gelaat.

(10) By die toepassing van hierdie artikel beteken—

(a) 'familielid' met betrekking tot 'n persoon, 'n gade, ouer, kind, stiefkind, broer, suster, kleinkind of grootouer van daardie persoon; en

(b) 'vasgestelde verlies' 'n 'vasgestelde verlies' soos in artikel 20(2) omskryf.".

(2) Subartikel (1) tree op 1 Maart 2004 in werking en is van toepassing ten opsigte van enige jaar van aanslag wat op of na daardie datum 'n aanvang neem.

Wysiging van artikel 22 van Wet 58 van 1962, soos gewysig deur artikel 8 van Wet 6 van 1963, artikel 14 van Wet 90 van 1964, artikel 21 van Wet 89 van 1969, artikel 23 van Wet 85 van 1974, artikel 20 van Wet 69 van 1975, artikel 15 van Wet 103 van 1976, artikel 20 van Wet 94 van 1983, artikel 19 van Wet 121 van 1984, artikel 14 van Wet 65 van 1986, artikel 5 van Wet 108 van 1986, artikel 21 van Wet 101 van 1990 artikel 22 van Wet 129 van 1991, artikel 17 van Wet 113 van 1993, artikel 1 van Wet 168 van 1993, artikel 19 van Wet 21 van 1995, artikel 12 van Wet 36 van 1996, artikel 25 van Wet 53 van 1999, artikel 27 van Wet 30 van 2000, artikel 12 van Wet 5 van 2001 en artikel 24 van Wet 74 van 2002

37. (1) Artikel 22 van die Inkomstebelastingwet, 1962, word hierby gewysig—

(a) deur in subartikel (4A) paragrawe *(a)* en *(b)* deur die volgende paragraaf te vervang: "

"*(a)* 'n **[handelseffek]** aandeel deur 'n uitlener aan 'n lener ingevolge 'n aandeleleningsreëling **[soos omskryf in artikel 23(1) van die Wet op Seëlregte, 1968 (Wet 77 van 1968),]** uitgeleen is, word bedoelde **[handelseffek]** aandeel geag nie deur bedoelde lener verkry te gewees het nie; of

(b) 'n ander **[handelseffek]** aandeel van dieselfde soort en van dieselfde of gelyke hoeveelheid en gehalte deur bedoelde lener aan bedoelde uitlener teruggegee is, word bedoelde ander **[handelseffek]** aandeel geag nie deur bedoelde uitlener verkry te gewees het nie.";

(b) deur in subartikel (8) item (B) van paragraaf *(b)* deur die volgende item te vervang:

"(B) waar bedoelde handelsvoorraad aangewend, oor beskik of uitgekeer is op 'n wyse beoog in paragraaf *(b)* (behalwe op 'n wyse in item (C) bedoel) of ophou om as handelsvoorraad gehou te word, 'n bedrag gelyk aan die markwaarde van bedoelde handelsvoorraad,";

(c) by the addition in subsection (8) after item (B) of paragraph *(b)* of the following item:

"(C) where such trading stock has been applied for the purpose of making a donation in respect of which the provisions of section 18A apply, an amount equal to the amount which was taken into account for that year of assessment in respect of the value of that trading stock."; and

(d) the substitution for subsection (9) of the following section:

"(9) Where—

(a) (i) the trading stock of any person during any year of assessment includes any **[marketable]** security;

(ii) such person has, during such year of assessment, lent such **[marketable]** security to a borrower in terms of a securities lending arrangement **[as defined in section in section 23(1) of the Stamp Duties Act, 1968 (Act No. 77 of 1968)]**; and

(iii) a **[marketable]** security of the same kind and of the same or equivalent quantity and quality has not been returned by the borrower to such person at the end of such year of assessment,

such **[marketable]** security shall, for the purposes of this section, be deemed to be trading stock held and not disposed of by such person at the end of such year of assessment; or

(b) (i) the trading stock of any other person during any year of assessment includes any **[marketable]** security;

(ii) such other person has during such year of assessment, borrowed such **[marketable]** security from a lender in terms of a securities lending arrangement **[as defined in section in section 23(1) of the Stamp Duties Act, 1968 (Act No. 77 of 1968)]**; and

(iii) a **[marketable]** security of the same kind and of the same or equivalent quantity and quality has not been returned by such other person to such lender at the end of such year of assessment,

such **[marketable]** security shall, for the purposes of this section, be deemed not to be trading stock held and not disposed of, by such other person at the end of such year of assessment.".

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

(b) Subsection (1)*(b)* and *(c)* shall come into operation on the date of promulgation of this Act and shall apply in respect of any trading stock applied on or after that date.

Amendment of section 23 of Act 58 of 1962, as amended by section 18 of Act 65 of 1973, section 20 of Act 121 of 1984, section 23 of Act 129 of 1991, section 20 of Act 141 of 1992, section 18 of Act 113 of 1993, section 15 of Act 21 of 1994, section 28 of Act 30 of 2000 and section 21 of Act 30 of 2002

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

(a) by the substitution in paragraph *(m)* for item *(aa)* of subparagraph (iii) of the following item:

"*(aa)* **[which]** to the extent that it covers that person **[solely]** against the loss of income as a result of illness, injury, disability or unemployment; and"; and

(b) by the addition of the following paragraph:

"*(n)* any deduction or allowance in respect of any asset to the extent that an amount is granted to the taxpayer by the Government, which—

(i) is exempt from tax; and

(ii) is granted for purposes of the acquisition of that asset;".

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

(c) deur in subartikel (8) die volgende item na item (B) van paragraaf *(b)* te voeg:

"(C) waar daardie handelsvoorraad aangewend is vir doeleindes van die maak van 'n skenking ten opsigte waarvan die bepalings van artikel 18A van toepassing is, 'n bedrag gelyk aan die bedrag wat in berekening gebring is vir daardie jaar van aanslag ten opsigte van die waarde van daardie handelsvoorraad;";

(d) deur subartikel (9) deur die volgende subartikel te vervang:

"(9) Waar—

(a) (i) die handelsvoorraad van 'n persoon gedurende 'n jaar van aanslag 'n **[handelseffek]** aandeel insluit;

(ii) bedoelde persoon, gedurende bedoelde jaar van aanslag, bedoelde **[handelseffek]** aandeel aan 'n lener ingevolge 'n **['leningsreëling' soos omskryf in artikel 23 (1) van die Wet op Seëlregte, 1968 (Wet 77 van 1968),]** aandeleleningsreëling uitgeleen het; en

(iii) 'n **[handelseffek]** aandeel van dieselfde soort en van dieselfde of gelyke hoeveelheid en gehalte nie deur die lener aan bedoelde persoon aan die einde van bedoelde jaar van aanslag teruggegee is nie,

word bedoelde **[handelseffek]** aandeel vir die doeleindes van hierdie artikel geag handelsvoorraad te wees wat bedoelde persoon aan die einde van bedoelde jaar van aanslag besit het en nie van die hand gesit het nie; of

(b) (i) die handelsvoorraad van 'n ander persoon gedurende 'n jaar van aanslag 'n **[handelseffek]** aandeel insluit;

(ii) bedoelde ander persoon, gedurende bedoelde jaar van aanslag, bedoelde **[handelseffek]** aandeel van 'n uitlener ingevolge 'n **['leningsreëling' soos omskryf in artikel 23 (1) van die Wet op Seëlregte, 1968 (Wet 77 van 1968),]** aandeleleningsreëling geleen het; en

(iii) 'n **[handelseffek]** aandeel van dieselfde soort en van dieselfde of gelyke hoeveelheid en gehalte nie deur bedoelde ander persoon aan bedoelde uitlener aan die einde van bedoelde jaar van aanslag teruggegee is nie,

word bedoelde **[handelseffek]** aandeel by die toepassing van hierdie artikel geag nie handelsvoorraad van bedoelde ander persoon te wees nie wat deur hom aan die einde van bedoelde jaar van aanslag besit en nie van die hand gesit is nie.".

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

(b) Subartikel (1)*(b)* en *(c)* tree in werking op die datum van afkondiging van hierdie Wet en is van toepassing ten opsigte van enige handelsvoorraad aangewend op of na daardie datum.

Wysiging van artikel 23 van Wet 58 van 1962, soos gewysig deur artikel 18 van Wet 65 van 1973, artikel 20 van Wet 121 van 1984, artikel 23 van Wet 129 van 1991, artikel 20 van Wet 141 van 1992, artikel 18 van Wet 113 van 1993, artikel 15 van Wet 21 van 1994, artikel 28 van Wet 30 van 2000 en artikel 21 van Wet 30 van 2002

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

(a) deur in paragraaf *(m)* item *(aa)* van subparagraaf *(iii)* deur die volgende item te vervang:

"*(aa)* in die mate wat dit daardie persoon dek **[alleenlik]** teen die verlies aan inkomste as gevolg van siekte, besering, ongeskiktheid of werkloosheid; en";

(b) deur die volgende paragraaf by te voeg:

"*(n)* 'n aftrekking of vermindering ten opsigte van 'n bate in die mate wat 'n bedrag toegestaan is aan die belastingpligtige deur die regering, wat—

(i) van belasting vrygestel is; en

(ii) toegestaan is vir doeleindes van die verkryging van daardie bate.".

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

Amendment of section 23B of Act 58 of 1962, as inserted by section 25 of Act 129 of 1991, amended by section 16 of Act 21 of 1994 and section 29 of Act 30 of 2000

39. Section 23B of the Income Tax Act, 1962, is hereby amended by the substitution for subsection (3) of the following subsection:

"(3) No deduction shall be allowed under section 11*(a)* **[or *(b)*]** in respect of any expenditure or loss of a type for which a deduction or allowance may be granted under any other provision of this Act, notwithstanding that such other provision may impose any limitation on the amount of such deduction or allowance.".

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

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

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

"Where any taxpayer has during any year of assessment incurred expenditure for the acquisition of trading stock which was neither disposed of by him during such year nor held by him at the end of such year, any deduction which may be allowed to him under the provisions of section 11*(a)* **[or *(b)*]** in respect of such expenditure shall not be allowed in such year, but such expenditure shall for the purposes of such provisions be deemed to have been incurred by him in the first subsequent year of assessment in which—";

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

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

(c) by the substitution in subsection (3) for paragraph *(b)* of the following paragraph:

"*(b)* any expenditure incurred in respect of the acquisition of such asset was allowed as a deduction under the provisions of section 11*(a)* **[or *(b)*]** or was otherwise taken into account during such year or any previous year of assessment,".

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

41. Section 24G of the Income Tax Act, 1962, is hereby amended by the substitution in subsection (2) for paragraph *(c)* of the following paragraph:

"*(c)* any interest (other than interest which is deductible under section 11*(a)* **[or *(b)*]**) incurred by the taxpayer during the year of assessment in respect of any loan utilized for the purpose of financing any expenditure contemplated in paragraph *(a)* or *(b)*; and".

Wysiging van artikel 23B van Wet 58 van 1962, soos ingevoeg deur artikel 25 van Wet 129 van 1991, en gewysig deur artikel 16 van Wet 21 van 1994 en artikel 29 van Wet 30 van 2000

39. Artikel 23B van die Inkomstebelastingwet, 1962, word hierby gewysig deur subartikel (3) deur die volgende subartikel te vervang:

"(3) Geen aftrekking word ingevolge artikel 11*(a)* **[of *(b)*]** toegestaan nie ten opsigte van enige onkoste of verlies van 'n soort ten opsigte waarvan 'n aftrekking of vermindering ingevolge 'n ander bepaling van hierdie Wet toegestaan mag word, ondanks dat bedoelde ander bepaling 'n beperking op die bedrag van bedoelde aftrekking of vermindering plaas.".

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

40. Artikel 23F van die Inkomstebelastingwet, 1962, word heirby gewysig—

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

"Waar 'n belastingpligtige gedurende 'n jaar van aanslag onkoste aangegaan het vir die verkryging van handelsvoorraad wat nóg gedurende bedoelde jaar deur hom van die hand gesit is nóg aan die einde van bedoelde jaar deur hom besit word, word enige aftrekking wat kragtens die bepalings van artikel 11*(a)* **[of *(b)*]** ten opsigte van bedoelde onkoste aan hom toegestaan mag word nie in bedoelde jaar toegestaan nie, maar word bedoelde onkoste by die toepassing van bedoelde bepalings geag deur hom aangegaan te gewees het in die eerste daaropvolgende jaar van aanslag waarin-";

(b) deur in subartikel (2) die woorde wat paragraaf *(a)* voorafgaan deur die volgende woorde te vervang:

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

(c) deur in subartikel (3) paragraaf *(b)* deur die volgende paragraaf te vervang:

"*(b)* enige onkoste aangegaan ten opsigte van die verkryging van bedoelde bate gedurende bedoelde jaar of enige vorige jaar van aanslag ingevolge die bepalings van artikel 11*(a)* **[of *(b)*]** as 'n aftrekking toegestaan is of andersins in berekening gebring is,".

Wysiging van artikel 24G van Wet 58 van 1962, soos ingevoeg deur artikel 20 van Wet 90 van 1988

41. Artikel 24G van die Inkomstebelastingwet, 1962, word hierby gewysig deur in subartikel (2) paragraaf *(c)* deur die volgende paragraaf te vervang:

"*(c)* enige rente (behalwe rente wat ingevolge die bepalings van artikel 11*(a)* **[of *(b)*]** aftrekbaar is) gedurende die jaar van aanslag deur die belastingpligtige aangegaan ten opsigte van 'n lening wat aangewend is om enige in paragraaf *(a)* of *(b)* beoogde onkoste te finansier; en".

Amendment of section 24I of Act 58 of 1962, as inserted by section 21 of Act 113 of 1993 and amended by section 11 of Act 140 of 1993, section 18 of Act 21 of 1994, section 13 of Act 36 of 1996, section 18 of Act 28 of 1997, section 35 of Act 30 of 1998, section 26 of Act 53 of 1999, section 31 of Act 59 of 2000, section 36 of Act 60 of 2001 and section 27 of Act 74 of 2002

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

(a) by the substitution in subsection (1) for paragraphs *(b)* and *(c)* of the definition of "local currency" of the following paragraphs:

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

(c) any person that is not a resident in respect of any exchange item which is attributable to a permanent establishment in the Republic, **[any]** the currency **[which is legal tender in]** of the Republic;";

(b) by the substitution for subsection (9) of the following subsection:

"(9) For the purposes of this section, any exchange item of or in relation to—

(a) a person contemplated in subsection (2), held or owed by that person on 1 October 2001, other than in the course of trade of such person, shall be deemed to have been received, incurred, acquired or entered into, as the case may be, by that person on that date at the ruling exchange rate on that date; and

(b) a foreign company which becomes a controlled foreign company shall be deemed to have been received, incurred, acquired or entered into, as the case may be, by that controlled foreign company on the later of—

(i) the first day of the year of assessment commencing on or after 1 January 2000; or

(ii) the date that the foreign company becomes a controlled foreign company.";

(c) by the substitution in subsection (10) for paragraph *(b)* of the following paragraph:

"*(b)* any controlled foreign company in relation to any exchange item contemplated in paragraph *(a)*:"; and

(d) by the substitution in subsection (11) for subparagraph (iii) of paragraph *(a)* of the following subparagraph:

"(iii) in respect of which the provisions of section 9G or paragraph 43(4) of the Eighth Schedule **[applies]** would apply had that asset been disposed of, regardless of whether or not that asset constitutes trading stock; and".

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

(b) Subsection (1)*(d)* shall come into operation on 13 December 2002 and shall apply in respect of years of assessment commencing on or after that date.

Substitution of section 25C of Act 58 of 1962, as inserted by section 21 of Act 28 of 1997 and substituted by section 13 of Act 5 of 2001

43. The following section hereby substitutes section 25C of the Income Tax Act, 1962:

"**Income of insolvent estates**

25C. For the purposes of this Act, and subject to any such adjustments as may be necessary**[**—

(a)] the estate of a person prior to sequestration and that person's insolvent estate**[; and**

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

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

(a) deur in subartikel (1) paragrawe *(b)* en *(c)* van die omskrywing van "plaaslike geldeenheid" deur die volgende paragrawe te vervang:

"*(b)* enige inwoner met betrekking tot 'n valuta-item wat nie aan 'n permanente saak buite die Republiek toeskryfbaar is nie, **[enige]** die geldeenheid **[wat 'n wettige betaalmiddel in]** van die Republiek **[is]**;

(c) enige persoon wat nie 'n inwoner is nie ten opsigte van enige valuta-item wat aan 'n permanente saak in die Republiek toeskryfbaar is, **[enige]** die geldeenheid **[wat 'n wettige betaalmiddel is in]** van die Republiek;";

(b) deur subartikel (9) deur die volgende subartikel te vervang:

"(9) By die toepassing van hierdie artikel, word enige valuta-item van of met betrekking tot—

(a) 'n persoon in subartikel (2) bedoel, op 1 Oktober 2001 gehou of verskuldig deur daardie persoon anders as in die loop van die bedryf van daardie person, **[word]** geag deur daardie persoon ontvang, aangegaan of verkry te gewees het, na gelang van die geval, op daardie datum teen die heersende wisselkoers op daardie datum; en

(b) 'n buitelandse maatskappy wat 'n beheerde buitelandse maatskappy word geag ontvang, aangegaan of verkry te gewees het, na gelang van die geval, deur daardie beheerde buitelandse maatskappy op die laatste van—

(i) die eerste dag van die jaar van aanslag wat op of na 1 Januarie 2000 begin het; of

(ii) die datum wat die buitelandse maatskappy 'n beheerde buitelandse maatskappy geword het.";

(c) deur in subartikel (10) paragraaf *(b)* deur die volgende paragraaf te vervang:

"*(b)* enige beheerde buitelandse maatskappy met betrekking tot 'n valuta-item in paragraaf *(a)* bedoel:";

(d) deur in subartikel (11) subparagraaf (iii) van paragraaf *(a)* deur die volgende subparagraaf te vervang: "

"(iii) ten opsigte waarvan die bepalings van artikel 9G of paragraaf 43 (4) van die Agtste Bylae van toepassing **[is]** sou wees indien oor daardie bate beskik is, ongeag of daardie bate handelsvoorraad uitmaak of nie; en".

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

(b) Subartikel (1)*(d)* word geag op 13 December 2002 in werking te getree het en is van toepassing ten opsigte van jare van aanslag wat op of na daardie datum 'n aanvang neem.

Vervanging van artikel 25C van Wet 58 van 1962, soos ingevoeg deur artikel 21 van Wet 28 van 1997 en vervang deur artikel 13 van Wet 5 van 2001

43. Die volgende artikel vervang hiermee artikel 25C van die Inkosmtebelastingwet, 1962:

"Inkomste van insolvente boedels

25C. By die toepassing van hierdie Wet en behoudens enige sodanige aanpassings as wat nodig mag wees, word**[—**

(a)] die boedel van 'n persoon voor sekwestrasie en daardie persoon se insolvente boedel**[; en**

(b) **where the order of sequestration has been set aside, that person's insolvent estate and that person's estate after that order has been set aside,]**

shall be deemed to be one and the same person for purposes of determining—

(a) the amount of any allowance, deduction or set off to which that insolvent estate may be entitled;

(b) any amount which is recovered or recouped by or otherwise required to be included in the income of that insolvent estate; and

(c) any taxable capital gain or assessed capital loss of that insolvent estate.".

Substitution of section 25D of Act 58 of 1962, as inserted by section 33 of Act 59 of 2000 and substituted by section 37 of Act 60 of 2001 and section 28 of Act 74 of 2002

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

"**Determination of taxable income in foreign currency**

25D. (1) Unless expressly otherwise provided in this Act, **[the]** any amount **[of any taxable income]** derived by a person during any year of assessment from amounts received by or accrued to, or in respect of expenditure incurred by, that person **[which are denominated]** in any currency other than the currency of the Republic, shall be determined—

[*(a)* in that currency; or]

[*(b)*]*(a)*** where **[that income is]** the amounts so received, accrued or incurred are attributable to a permanent establishment of that person outside the Republic, in the currency used by that permanent establishment for purposes of financial reporting (other than the currency of any country in the common monetary area); or **[and the amount so determined shall be translated to the currency of the Republic by applying the average exchange rate for that year of assessment;]**

(b) in any other case, in the currency in which the amounts so received or accrued or the expenditure so incurred is denominated.

(2) Unless expressly otherwise provided in this Act, the amount determined in terms of this Act in any currency other than the currency of the Republic, must be translated to the currency of the Republic by applying the average exchange rate for the relevant year of assessment.".

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

Amendment of section 30 of Act 58 of 1962, as inserted by section 35 of Act 30 of 2000 and amended by section 16 of Act 19 of 2001, section 22 of Act 30 of 2002 and section 31 of Act 74 of 2002

45. (1) Section 30 of the Income Tax Act, 1962, is hereby amended by the substitution in subsection (1) for subparagraph (iii) of paragraph *(b)* of the definition of "public benefit organisation" of the following subparagraph:

"(iii) at least 85 per cent of such activities, measured as either the cost related to the activities or the time expended in respect thereof, are carried out for the benefit of persons in the Republic, unless the Minister, having regard to the circumstances of the case, directs otherwise: Provided that cost incurred for the benefit of persons outside the Republic shall be disregarded to the extent of donations received by that organisation from persons who are not resident and receipts and accruals derived directly or indirectly therefrom which donations, receipts and accruals have not previously been taken into account for purposes of this proviso; and".

(b) **waar die sekwestrasiebevel tersyde gestel is, daardie persoon se insolvente boedel en daardie persoon se boedel nadat die sekwestrasiebevel tersyde gestel is,]**

geag een en dieselfde persoon te wees vir doeleindes van die vasstelling van—

(a) die bedrag van enige vermindering, aftrekking of verrrekening waarop daardie insolvente boedel geregtig mag wees;

(b) 'n bedrag wat verhaal of vergoed is of andersins by die inkomste van die insolvente boedel ingesluit moet word; en

(c) enige belasbare kapitaalwins of vasgestelde kapitaalverlies van daardie insolvente boedel.".

Vervanging van artikel 25D van Wet 58 van 1962, soos ingevoeg deur artikel 33 van Wet 59 van 2000 en vervang deur artikel 37 van Wet 60 van 2001 en artikel 28 van Wet 74 van 2002

44.(1) Die volgende artikel vervang hiermee artikel 25D van die Inkomstebelastingwet, 1962:

"Vasstelling van belasbare inkomste of verlies in buitelandse geldeenheid

25D. (1) **[Die]** Tensy uitdruklik andersins bepaal in hierdie Wet, word enige bedrag **[van enige belasbare inkomste]** deur 'n persoon gedurende 'n jaar van aanslag uit 'n bron buite die Republiek verkry uit bedrae ontvang deur of toegeval aan, of ten opsigte van onkoste aangegaan deur, daardie persoon **[wat]** in 'n geldeenheid anders as die geldeenheid van die Republiek **[aangedui is, word]** vasgestel—

[*(a)* in daardie geldeenheid; of]

[(b)](a) waar **[daardie inkomste]** die bedrae aldus ontvang, toegeval of aangegaan aan 'n permanente saak van daardie persoon buite die Republiek toeskryfbaar is, in die geldeenheid wat deur daardie permanente saak gebruik word vir doeleindes van finansiële verslagdoening (behalwe die geldeenheid van 'n land in die gemeenskaplike monetêre gebied); of

(b) in enige ander geval, in die geldeenheid waarin die bedrae aldus ontvang of toegeval of die onkoste aldus aangegaan aangedui is

[en die bedrag aldus vasgestel word na die geldeenheid van die Republiek omgereken deur die gemiddelde wisselkoers vir daardie jaar van aanslag toe te pas].

(2) Tensy uitdruklik andersins bepaal in hierdie Wet, word die bedrag vasgestel ingevolge hierdie Wet in enige geldeenheid anders as die geldeenheid van die Republiek, na die geldeenheid van die Republiek omgereken teen die gemiddelde wisselkoers vir die betrokke jaar van aanslag.".

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

Wysiging van artikel 30 van Wet 58 van 1962, soos ingevoeg deur artikel 35 van Wet 30 van 2000 en gewysig deur artikel 16 van Wet 19 van 2001, artikel 22 van Wet 30 van 2002 en artikel 31 van Wet 74 van 2002

45. (1) Artikel 30 van die Inkomstebelastingwet, 1962, word hierby gewysig deur in subartikel (1) subparagraaf (iii) van paragraaf *(b)* van die omskrywing van "openbare weldaadsorganisasie" deur die volgende subparagraaf te vervang:

"(ii) minstens 85 persent van daardie aktiwiteite, gemeet aan óf die koste met betrekking tot die aktiwiteite óf die tyd daaraan bestee, vir die voordeel van persone in die Republiek beoefen word, tensy die Minister, na inagneming van die omstandighede van die geval, anders aandui: Met dien verstande dat koste aangegaan vir die voordeel van persone buite die Republiek buite rekening gelaat word tot die mate van skenkings ontvang deur daardie organisasie van persone wat nie inwoner is nie en ontvangste en toevallings direk of indirek daaruit verkry, welke skenkings, ontvangste en toevallings nie voorheen ingevolge hierdie voorbehoudsbepaling in berekening gebring is nie; en".

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

Amendment of section 31 of Act 58 of 1962, as substituted by section 23 of Act 21 of 1995 and amended by section 37 of Act 30 of 1998, section 31 of Act 53 of 1999, section 37 of Act 59 of 2000 and section 16 of Act 5 of 2001

46. Section 31 of the Income Tax Act, 1962, is hereby amended by the deletion in subsection (1) of paragraph *(d)* of the definition of "international agreement".

Insertion of section 31A in Act 58 of 1962

47. (1) The following section is hereby inserted in the Income Tax Act, 1962, after section 31:

"Disposals of assets by non-resident persons

31A. (1) For purposes of this section—

"asset" means an asset as defined in paragraph 1 of the Eighth Schedule other than an asset contemplated in paragraph 2(1)*(b)* of that Schedule; and

"disposal" means a disposal as defined in paragraph 1 of the Eighth Schedule.

(2) Where a person who is not a resident (other than a controlled foreign company as defined in section 9D) disposes of any asset to a person who is a resident, that asset shall be deemed to have been disposed of by that person and to have been acquired by that resident for an amount equal to—

(a) the consideration in respect of that disposal; or

(b) where that person and that resident are connected persons in relation to each other, the market value of that asset on the date of that disposal.

(3) The amount contemplated in subsection (2) must, where that asset is acquired by that resident—

(a) as a capital asset, be treated as an expenditure actually incurred and paid by that resident in respect of that asset for purposes of paragraph 20 of the Eighth Schedule; and

(b) as trading stock, be treated as the amount to be taken into account by that resident in respect of that asset for purposes of section 11*(a)* or 22(1) or (2).

(4) The provisions of this section shall apply notwithstanding any provision to the contrary contained in this Act, other than section 103.".

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

Amendment of section 35 of Act 58 of 1962, as amended by section 20 of Act 90 of 1962, section 20 of Act 65 of 1973, section 27 of Act 85 of 1974, section 24 of Act 94 of 1983, section 21 of Act 21 of 1994, section 39 of Act 59 of 2000 and section 32 of Act 74 of 2002

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

(a) by the deletion in subsection (2) of paragraph *(c)*; and

(b) by the addition of the following subsection:

"(3) The general provisions contained in Parts I to VI of Chapter III of this Act shall *mutatis mutandis* apply in respect of any withholding tax on royalties payable in terms of this section.".

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

Wysiging van artikel 31 van Wet 58 van 1962, soos vervang deur artikel 23 van Wet 21 van 1995 en gewysig deur artikel 37 van Wet 30 van 1998, artikel 31 van Wet 53 van 1999, artikel 37 van Wet 59 van 2000 en artikel 16 van Wet 5 van 2001

46. Artikel 31 van die Inkomstebelastingwet, 1962, word hierby gewysig deur in subartikel (1) paragraaf *(d)* van die omskrywing van "internasionale ooreenkoms" te skrap.

Invoeging van artikel 31A in Wet 58 van 1962

47. Die volgende artikel word hierby in Inkomstebelastingwet, 1962, gevoeg na artikel 31:

"**Beskikkings oor bates deur persone wat nie inwoners is nie**

31A. (1) By die toepassing van hierdie artikel beteken—

'bate' 'n bate soos in paragraaf 1 van die Agste Bylae omskryf, behalwe 'n bate soos in paragraaf 2(1)*(b)* van daardie Bylae beoog; en

'beskikking' 'n beskikking soos in in paragraaf 1 van die Agste Bylae omskryf.

(2) Waar 'n persoon wat nie 'n inwoner is nie (behalwe 'n beheerde buitelandse maatskappy soos in artikel 9D omskryf) oor 'n bate beskik aan 'n persoon wat 'n inwoner is, word daar geag dat daardie persoon oor daardie bate beskik het en dat daardie inwoner daardie bate verkry het vir 'n bedrag gelykstaande aan—

(a) die teenwaarde ten aansien van daardie beskikking; of

(b) waar daardie persoon en daardie inwoner verbonde persone met betrekking tot mekaar is, die markwaarde van daardie bate op die datum van daardie beskikking.

(3) Die bedrag in subartikel (2) beoog moet, waar daardie bate deur daardie inwoner verkry is as—

(a) 'n kapitaalbate, hanteer word as uitgawes wat werklik deur daardie inwoner aangegaan en betaal is ten opsigte van daardie bate vir die doeleindes van paragraaf 20 van die Agtste Bylae; en

(b) handelsvoorraad, hanteer word as die bedrag wat deur daardie inwoner in ag geneem moet word ten opsigte van daardie bate vir die doeleindes van artikel 11*(a)* of 22(1) of (2).

(4) Die bepalings van hierdie artikel is van toepassing ondanks enige andersluidende bepaling, behalwe artikel 103, in die Wet vervat.".

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

Wysiging van artikel 35 van Wet 58 van 1962, soos gewysig deur artikel 20 van Wet 90 van 1962, artikel 20 van Wet 65 van 1973, artikel 27 van Wet 85 van 1974, artikel 24 van Wet 94 van 1983, artikel 21 van Wet 21 van 1994, artikel 39 van Wet 59 van 2000 en artikel 32 van Wet 74 van 2002

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

(a) deur in subparagraaf (2) paragraaf *(c)* te skrap;

(b) deur die volgende subparagraaf by te voeg:

"(3) Die algemene bepalings in Dele I tot VI van Hoofstuk III van hierdie Wet is *mutatis mutandis* van toepassing ten opsigte van enige weerhoudingsbelasting op tantième ingevolge hierdie artikel betaalbaar.".

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

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

(a) by the substitution in subsection (1) for the definition of "allowance asset" of the following definition:

" 'allowance asset' means a capital asset **[qualifying for]** in respect of which a deduction or allowance **[under the provisions of the]** is allowable in terms of this Act for purposes other than the determination of any capital gain or capital loss.";

(b) by the substitution in subsection (1) for the words in the definition of "domestic financial instrument holding company" preceding subparagraph (i) of paragraph *(b)* of the following words:

" 'domestic financial instrument holding company' means any company which is a resident, where more than **[50 per cent]** half of the market value or two-thirds of the actual cost of all the assets of that company, together with the assets of all controlled group companies in relation to that company, consist of financial instruments, other than—

(a) any financial instrument that constitutes a debt due to that company [(]or to any controlled group company in relation to that company[)] in respect of goods sold or services rendered by that company or controlled group company, as the case may be, where—

(i) the amount of that debt is or was included in the income of that company [(] or **[of any]** controlled group company, as the case may be; **[in relation to that company)]** and

(ii) that debt is an integral part of a business conducted as a going concern by that company **[as a going concern]** or controlled group company, as the case may be; **[or]**

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

(c) by the insertion at the end of paragraph *(b)* of the definition of "domestic financial instrument holding company" of the word "or";

(d) by the addition of the following paragraph after paragraph *(b)* of the definition of "domestic financial instrument holding company":

"(c) any financial instrument held by any controlled group company in relation to that company if that controlled group company is a foreign company as contemplated in paragraph *(b)* of the definition of "foreign financial instrument holding company." ";

(e) by the substitution in subsection (1) for the proviso to "domestic financial instrument holding company" of the following proviso:

"Provided that in determining **[the]** whether **[50 per cent ratio]** more than half of the market value or two-thirds of the actual cost of the assets of the company and controlled group companies **[consists]** consist of financial instruments, the following **[will]** assets must be wholly disregarded—

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

(ii) any financial instrument which constitutes a loan, advance or debt **[if both the debtor and creditor companies are members within the same group of companies]** entered into between—

(aa) that company and any controlled group company in relation to that company; or

(bb) controlled group companies in relation to that company;";

(f) by the substitution in subsection (1) for the definition of "foreign financial instrument holding company" of the following definition:

" 'foreign financial instrument holding company' means **[a foreign financial instrument holding company as defined in section 9D]** any foreign company as defined in section 9D, where more than half of the market value or two-thirds of the actual cost of all the assets of that company, together with the assets of all controlled group companies in

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

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

(a) deur die woordomskrywing van "aandeelhouer" in subartikel (1) deur die volgende woordomskrywing te vervang:

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

(b) deur die woordomskrywing van "afskryfbare bate" in subartikel (1) deur die volgende woordomskrywing te vervang:

" 'afskryfbare bate' 'n kapitaalbate ten opsigte waarvan 'n aftrekking kragtens **[die bepalings van]** die Wet toelaatbaar is vir alle doeleindes behalwe die vasstelling van 'n kapitaalwins of kapitaalverlies";

(c) deur die woordomskrywing van "buitelandse finansiële instrumenthouermaatskappy" in subartikel (1) deur die volgende woordomskrywing te vervang:

" 'buitelandse finansiële instrumenthouermaatskappy' **['n]** enige buitelandse **[finansiële instrumenthouer]** maatskappy soos in artikel 9D omskryf, waar meer as helfte van die markwaarde of twee-derdes van die werklike koste van alle bates van daardie maatskappy, tesame met die bates van alle beheerde groepsmaatskappye met betrekking tot daardie buitelandse maatskappy, bestaan uit finansiële instrumente anders as—

(a) 'n finansiële instrument wat bestaan uit 'n skuld betaalbaar aan daardie buitelandse maatskappy of aan enige beheerde groepsmaatskappy met betrekking tot daardie buitelandse maatskappy ten opsigte van goedere verkoop of dienste gelewer deur daardie buitelanse maatskappy of beheerde groepsmaatskappy, na gelang van die geval, waar—

(i) die bedrag van daardie skuld in die inkomste van daardie buitelandse maatskappy of beheerde groepsmaatskappy, na gelang van die geval, ingesluit is of was; en

(ii) daardie skuld 'n integrale deel van 'n besigheid deur daardie buitelandse maatskappy of beheerde groepsmaatskappy, na gelang van die geval, as 'n lopende saak bedryf, vorm;

(b) enige enige finansiële instrument wat ontstaan uit die hoofbedryfsaktiwiteite van daardie buitelandse maatskappy of van enige beheerde groepsmaatskappy met betrekking tot daardie buitelandse maatskappy wat 'n bank, versekeraar, handelaar of makelaar met 'n lisensie of registrasie daarstel wat daardie buitelandse maatskappy of beheerde groepsmaatskappy toelaat om op dieselfde wyse besigheid te bedryf as 'n maatskappy wat hoofsaaklik besigheid dryf met kliënte wat inwoners is in dieselfde land as dié waarvan daardie maatskappy 'n inwoner is, en daardie buitelandse maatskappy of beheerde groepsmaatskappy met betrekking tot daardie buitelandse maatskappy óf—

(i) gereeld deposito's of premies aanvaar of transaksies vir die rekening van kliënte van die algemene publiek aangaan; of

(ii) meer as 50 persent van sy inkomste of winste verkry uit hoofbedryfsaktiwiteite met betrekking tot persone wat nie verbonde persone met betrekking tot daardie buitelandse maatskappy is nie; of

(c) enige finansiële instrument gehou deur enige beheerde groepsmaatskappy met betrekking tot daardie buitelandse maatskappy indien daardie beheerde groepsmaatskappy 'n beheerde groepsmaatskappy is soos bedoel in paragraaf *(b)* van die omskrywing van 'plaaslike finansiële instrumenthouermaatskappy':

Met dien verstande dat by die berekening of meer as helfte van die markwaarde of twee-derdes van die werklike koste van die bates van die

relation to that foreign company, consist of financial instruments, other than—

(a) any financial instrument that constitutes a debt due to that foreign company, or to any controlled group company in relation to that foreign company, in respect of goods sold or services rendered by that foreign company or controlled group company, as the case may be, where—

(i) the amount of that debt is or was included in the income of that foreign company or controlled group company, as the case may be; and

(ii) that debt is an integral part of a business conducted as a going concern by that foreign company or controlled group company, as the case may be;

(b) any financial instrument arising from the principal trading activities of that foreign company or of any controlled group company in relation to that foreign company which is a bank, insurer, dealer or broker with a licence or registration that allows that foreign company or controlled group company to operate in the same manner as a company that mainly conducts business with clients who are residents in the same country of residence as that company and that foreign company or controlled group company in relation to that foreign company either—

(i) regularly accepts deposits or premiums or effects transactions for the account of clients from the general public; or

(ii) derives more than 50 per cent of its income or gains from principal trading activities with respect to persons who are not connected persons in relation to that foreign company; or

(c) any financial instrument held by any controlled group company in relation to that foreign company if that controlled group company is a controlled group company as contemplated in paragraph *(b)* of the definition of 'domestic financial instrument holding company':

Provided that in determining whether more than half of the market value or two-thirds of the actual cost of the assets of the company and all controlled group companies consist of financial instruments, the following assets must be wholly disregarded—

(i) any share in any other company in the same group of companies;

(ii) any financial instrument which constitutes a loan, advance or debt entered into between—

(aa) that company and any controlled group company in relation to that company; or

(bb) controlled group companies in relation to that company;";

(g) by the substitution for the definition of "shareholder" of the following definition:

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

maatskappy en alle beheerde groepsmaatskappye uit finansiële instrumente bestaan, die volgende bates ten volle buite rekening gelaat moet word—

(i) enige aandeel in 'n ander maatskappy binne dieselfde groep van maatskappye; en

(ii) enige finansiële instrument wat 'n lening, voorskot of skuld verteenwoordig wat aangegaan is tussen—

(aa) daardie maatskappy en enige beheerde groepsmaatskappy met betrekking tot daardie maatskappy; of

(bb) beheerde groepsmaatskappye met betrekking tot daardie maatskappy;";

(d) deur in subartikel (1) na die woordomskrywing van "genoteerde maatskappy" die volgende woordomskrywing in te voeg:

" 'handelsvoorraad'—

(a) sluit vir doeleindes van artikels 42, 44, 45 en 47 in enige lewende hawe of produkte soos bedoel in die Eerste Bylae en enige verwysing in artikel 11*(a)* of 22(1) of (2) na 'n bedrag in ag geneem ten aansien van 'n bate moet in die geval van sodanige lewende hawe of produkte uitgelê word as 'n verwysing na die bedrag ten aansien daarvan in ag geneem kragtens paragraaf 5(1) of 9 van die Eerste Bylae, na gelang van die geval; en

(b) beteken vir doeleindes van artikels 42(7)*(b)(i)*, 43(6)*(b)*, 44(5)*(b)(i)*, 45(5)*(b)(i)* en 47(4)*(b)(i)* handelsvoorraad wat nie van dieselfde aard of van dieselfde of gelyke kwaliteit is as handelsvoorraad waaroor daardie persoon gereeld en voortdurend beskik nie;";

(e) deur die vervanging in subartikel (1) van die woorde wat subparagraaf *(i)* van paragraaf *(b)* van die woordomskrywing van "plaaslike finansiële instrumenthouermaatskappy" voorafgaan deur die volgende woorde:

" 'plaaslike finansiële instrumenthouermaatskappy' 'n maatskappy wat 'n inwoner is, waar meer as **[50 persent]** helfte van die markwaarde of twee-derdes van die werklike koste van al die bates van daardie maatskappy, tesame met die bates van al die beheerde groepsmaatskappye met betrekking tot daardie maatskappy uit finansiële instrumente bestaan, anders as—

(a) **['n]** enige finansiële instrument wat 'n skuld betaalbaar aan daardie maatskappy [(]of aan enige beheerde groepsmaatskappy met betrekking tot daardie maatskappy[)] verteenwoordig ten opsigte van goedere verkoop of dienste deur daardie maatskappy of beheerde groepsmaatskappy, na gelang van die geval, gelewer waar—

(i) die bedrag van daardie skuld by die inkomste van daardie maatskappy **[(]**of **[van enige]** beheerde groepsmaatskappy, na gelang van die geval, **[met betrekking tot daardie maatskappy)]** ingesluit is of was; en

(ii) daardie skuld 'n integrale deel van 'n besigheid deur daardie maatskappy of beheerde groepsmaatskappy, na gelang van die geval, as 'n lopende saak bedryf, vorm;

(b) **['n]** enige finansiële instrument **[van enige]** gehou deur daardie maatskappy of beheerde groepsmaatskappy met betrekking tot daardie maatskappy, waar daardie maatskappy of beheerde groepsmaatskappy, na gelang van die geval, **[wat]** gereguleer word deur—";

(f) deur die invoeging van die woord "of" na paragraaf *(b)* van die omskrywing van "plaaslike finansiële instrumenthouermaatskappy" in subartikel (1);

(g) deur die invoeging van die volgende paragraaf na paragraaf *(b)* van die omskrywing van "plaaslike finansiële instrumenthouermaatskappy" in subartikel (1):

"*(c)* enige finansiële instrument gehou deur 'n beheerde groepsmaatskappy met betrekking tot daardie maatskappy indien daardie beheerde groepsmaatskappy 'n buitelandse maatskappy is soos bedoel in paragraaf *(b)* van die omskrywing van 'buitelandse finansiële instrumenthouermaatskappy':"

(h) by the insertion of the following definition after the definition of "shareholder":

" 'trading stock'—

(a) for purposes of sections 42, 44, 45 and 47, includes any livestock or produce contemplated in the First Schedule and any reference in section 11*(a)* or 22(1) or (2) to an amount taken into account in respect of an asset shall, in the case of such livestock or produce, be construed as a reference to the amount taken into account in respect thereof in terms of paragraph 5(1) or 9 of the First Schedule, as the case may be"; and

(b) for purposes of sections 42(7)*(b)*(i), 43(6)*(b)*, 44(5)*(b)*(i), 45(5)*(b)*(i) and 47(4)*(b)*(i), means trading stock that is neither of the same kind nor of the same or equivalent quality as trading stock regularly and continuously disposed of by that person;";

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

"(2) The provisions of this Part must, subject to subsection (5), apply in respect of a company formation transaction, a share-for-share transaction, an amalgamation transaction, an intra-group transaction, an unbundling transaction and a liquidation distribution as contemplated in sections 42, 43, 44, 45, 46 and 47, respectively, notwithstanding any provision to the contrary contained in the Act, other than sections 31A and 103"; and

(j) by the substitution in subsection (4) for subparagraph (ii) of paragraph *(a)* of the following subparagraph:

"(ii) that company has disposed of all assets and has settled all liabilities (other than assets required to satisfy any reasonably anticipated liabilities **[to the Commissioner]** to any sphere of government of any country and costs of administration relating to the liquidation or winding-up), unless the Commissioner otherwise allows for a period which the Commissioner deems reasonable to enable that company to take adequate steps to wind down the business of the company; and".

(2) *(a)* Subsection (1)*(a)*, *(h)* and *(j)* shall be deemed to have come into operation on 6 November 2002 and shall apply in respect of any company formation transaction, share-for-share transaction, amalgamation transaction, intra-group transaction, unbundling transaction or liquidation distribution which takes effect on or after that date.

(b) Subsection (1)*(b)*, *(c)*, *(d)*, *(e)* *(f)* and *(i)* shall come into operation on the date of promulgation of this Act and shall apply in respect of any disposal effected on or after that date.

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

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

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

"(a) in terms of which a person (other than a trust which is not a special trust) disposes of an asset, the market value of which is equal to or exceeds—";

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

"(ii) acquired the equity shares in that company on the date that such person acquired that asset and for a cost equal to—

(h) deur die voorbehoudsbepaling tot die omskrywing van "plaaslike finansiële instrumenthouermaatskappy" deur die volgende voorbehoudsbepaling te vervang:

"Met dien verstande dat by die **[vasstelling van die 50 persent verhouding]** berekening of meer as helfte van die markwaarde of twee-derdes van die werklike koste van die bates van die maatskappy en alle beheerde groepsmaatskappye uit finansiële instrumente bestaan, die volgende bates in geheel buite rekening gelaat moet word—

(i) enige aandeel van 'n beheerde groepsmaatskappy met betrekking tot daardie maatskappy; en

(ii) enige finansiële instrument wat 'n lening, voorskot of skuld **[verteenwoordig indien beide die debiteur en die krediteur maatskappye lede van dieselfde groep van maatskappye is]** verteenwoordig wat aangegaan is tussen—

(aa) daardie maatskappy en enige beheerde groepsmaatskappy met betrekking tot daardie maatskappy; of

(bb) beheerde groepsmaatskappye met betrekking tot daardie maatskappy;";

(i) deur die vervanging van subartikel (2) deur die volgende subartikel:

"(2) Die bepalings van hierdie Deel moet, behoudens die bepalings van subartikel (5), toegepas word ten opsigte van 'n maatskappyformasie-transaksie, 'n aandeel-vir-aandeeltransaksie, 'n amalgamasietransaksie, 'n intragroeptransaksie, 'n ontbondelingstransaksie en 'n likwidasie-uitkering soos in artikels 42, 43, 44, 45, 46 en 47, respektiewelik beoog, ondanks enige andersluidende bepaling, behalwe artikels 31A en 103, in die Wet vervat."; en

(j) deur die vervanging in subparagraaf (ii) van paragraaf *(a)* van subartikel (4) deur die volgende subparagraaf:

"(ii) daardie maatskappy oor alle bates beskik het en alle verpligtinge vereffen het (behalwe bates benodig om enige redelike verwagte verpligting **[aan die Kommissaris]** teenoor enige vlak van regering van enige land en koste van administrasie wat met die likwidasie verband hou, te delg), tensy die Kommissaris 'n ander tydperk wat die Kommissaris redelik ag om daardie maatskappy in staat te stel om die nodige stappe te neem om die besigheid van die maatskappy te beëindig, toelaat; en".

(2) *(a)* Subartikel (1)*(b)*, *(d)* en *(j)* word geag op 6 November 2002 in werking te getree het en is van toepassing ten opsigte van enige maatskappyformasietransaksie, aandeel-vir-aandeeltransaksie, amalgamasietransaksie, intra-groeptransaksie, ontbondelingstransaksie of likwidasie-uitkering wat op of na daardie datum in werking tree.

(b) Subartikel (1)*(c)*, *(e)*, *(f)*, *(g)*, *(h)* en *(i)* tree in werking op die datum van afkondiging van hierdie Wet en is van toepassing ten opsigte van enige beskikking op of na daardie datum.

Wysiging van artikel 42 van Wet 58 van 1962, soos ingevoeg deur artikel 44 van Wet 60 van 2001 en vervang deur artikel 34 van Wet 74 van 2002

50. (1) Artikel 42 van die Inkomstebelastingwet, 1962, word hierby gewysig—

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

"*(a)* ingevolge waarvan 'n persoon (behalwe 'n trust wat nie 'n spesiale trust is nie) oor 'n bate beskik, waarvan die markwaarde gelyk is aan of meer is as—";

(b) deur in subartikel (2) subparagraaf (ii) van paragraaf *(a)* deur die volgende subparagraaf te vervang:

"(ii) die ekwiteitsaandele in daardie maatskappy te verkry het op die datum waarop daardie persoon daardie bate verkry het en vir 'n koste gelykstaande aan—

(aa) where that asset is so disposed of as a capital asset, any expenditure in respect of that asset incurred by that person that is allowable in terms of paragraph 20 of the Eighth Schedule and to have incurred such cost at the date of incurral by that person of such expenditure; or

(bb) where that asset is so disposed of as trading stock, the amount taken into account in respect of that asset in terms of section 11*(a)* or 22(1) or (2),

which **[amount]** cost must, where those equity shares are acquired as—

(A) capital assets, be treated as an expenditure actually incurred and paid by that person in respect of those equity shares for the purposes of paragraph 20 of the Eighth Schedule; and

(B) trading stock, be treated as the amount to be taken into account by that person in respect of those equity shares for the purposes of section 11*(a)* or 22(1) or (2); **[and]**";

(c) by the insertion in subsection (2) of the word "and" at the end of paragraph *(b)*;

(d) by the addition in subsection (2) of the following paragraph after paragraph *(b)*:

"*(c)* any valuation of that asset effected by that person within the period contemplated in paragraph 29(4) of the Eighth Schedule must be deemed to have been effected in respect of the equity shares in that company acquired in terms of that company formation transaction.";

(e) by the substitution in subsection (4) for the words preceding paragraph *(a)* and paragraphs *(a)* and *(b)* of the following words and paragraphs:

"(4) **[Subject to subsection (8),]** Where—

(a) a person disposes of an asset to a company in terms of a company formation transaction; and

(b) that person becomes entitled, in exchange for that asset, **[becomes entitled]** to any consideration in addition to any equity shares issued by the company to that person, other than any debt assumed by that company as contemplated in subsection (8),";

(f) by the deletion in subsection (4) of the word "or" after subparagraph (i);

(g) by the substitution for the words in subsection (4) following subparagraph (iii) of the following words:

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

(h) by the substitution in subsection (6) for paragraphs *(a)* and *(b)* and the proviso of the following paragraphs and proviso:

"*(a)* disposed of all the equity shares acquired in terms of that company formation transaction **[which were not disposed of]** that are still held immediately **[before]** after that person ceased to hold such a qualifying interest, for an amount equal to the market value of those equity shares as at the beginning of that period of 18 months; and

(b) immediately reacquired all the equity shares **[not disposed of immediately after that person ceased to hold a qualifying interest]** contemplated in paragraph (a) at a cost equal to the amount contemplated in that paragraph **[*(a)*]**:

(aa) waar daar oor daardie bate beskik is as 'n kapitaalbate, enige onkoste wat ten opsigte van daardie bate aangegaan is wat ingevolge paragraaf 20 van die Agtste Bylae toelaatbaar is en sodanige onkoste op die datum waarop die onkoste aangegaan is, aan te gegaan het; of

(bb) waar daar oor daardie bate beskik is as handelsvoorraad, die bedrag wat ten opsigte van daardie bate ingevolge artikel 11*(a)* of 22(1) of (2) in ag geneem is,

welke**[bedrag]** koste, waar daardie ekwiteitsaandele verkry is as—

(A) kapitaalbates, geag word onkoste te wees wat werklik deur daardie persoon aangegaan en betaal is ten opsigte van daardie ekwiteitsaandele by die toepassing van paragraaf 20 van die Agtste Bylae; en

(B) handelsvoorraad, geag word die bedrag te wees wat deur die persoon in ag geneem moet word ten opsigte van daardie ekwiteitsaandele by die toepassing van artikel 11*(a)* of 22(1) of (2); **[en]**";

(c) deur in subartikel (2) die woord "en" aan die einde van paragraaf *(b)* in te voeg;

(d) deur in subartikel (2) die volgende paragraaf na paragraaf *(b)* te voeg:

"*(c)* moet enige waardasie van daardie bate deur daardie persoon bewerkstellig binne die tydperk in paragraaf 29(4) van die Agtste Bylae beoog, geag word bewerkstellig te gewees het ten aansien van die ekwiteitsaandele in daardie maatskappy kragtens daardie maatskappyformasietransaksie verkry.";

(e) deur die vervanging in subartikel (4) van die woorde wat paragraaf *(a)* voorafgaan asook van paragrawe *(a)* en *(b)* deur die volgende woorde en paragrawe:

"(4) **[Behoudens die bepalings van subartikel (8),]** Waar—

(a) 'n persoon oor 'n bate aan 'n maatskappy ingevolge 'n maatskappyformasietransaksie beskik; en

(b) daardie persoon in ruil vir daardie bate, geregtig word op enige vergoeding bykomend tot die ekwiteitsaandele wat deur die maatskappy aan daardie persoon uitgereik is, buiten vergoeding in die vorm van die oorname van 'n skuld deur daardie maatskappy soos beoog in subartikel (8),";

(f) deur die skrapping in subartikel (4) van die woord "of" na subparagraaf (i);

(g) deur die vervanging van die woorde in subartikel (4) wat volg op subparagraaf (iii) deur die volgende woorde:

"wat aan die gedeelte van die bate waaroor geag word beskik te gewees het anders as ingevolge 'n maatskappytransformasietransaksie toegedeel moet word, moet in dieselfde verhouding tot die **[totale bedrag]** tersaaklike bedrae waarna in subparagrawe (i) tot (iii) verwys word, staan as wat die markwaarde van die vergoeding wat nie uit ekwiteitsaandele bestaan nie wat deur daardie maatskappy uitgereik is tot die markwaarde van die totale vergoeding ten opsigte van daardie bate staan.";

(h) deur die vervanging in subartikel (6) van paragrawe *(a)* en *(b)* en die voorbehoudsbepaling deur die volgende paragrawe en voorbehoudsbepaling:

"*(a)* oor al die ekwiteitsaandele wat ingevolge 'n maatskappy-formasietransaksie verkry is **[waaroor nie onmiddellik voordat]** en wat nog gehou word onmiddellik na daardie persoon opgehou het om sodanige kwalifiserende aandeel te hou **[beskik is nie]**, te beskik het vir 'n bedrag gelykstaande aan die markwaarde van daardie ekwiteitsaandele soos aan die begin van die tydperk van 18 maande; en

(b) al die ekwiteitsaandele **[waaroor nie beskik is nie, onmiddellik nadat daardie persoon opgehou het om 'n kwalifiserende belang te hou,]** in paragraaf *(a)* beoog onmiddellik weer te verkry het teen 'n koste gelykstaande aan die bedrag soos in daardie paragraaf **[*(a)*]** beoog:

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

(i) by the substitution in subsection (8) for the words following paragraph *(b)* of the following words:

"that person must, upon the disposal of any equity share acquired in terms of that company formation transaction and notwithstanding the fact that that person may be liable as surety for the payment of the debt referred to in subparagraph *(a)* or *(b)*, treat so much of the face value of that debt as relates to that equity share, as a capital distribution of cash in respect of that equity share, for the purposes of paragraph 76 of the Eighth Schedule, where that equity share is held as a capital asset or, where that equity share is held as trading stock, as income to be included in that person's income **[when that person disposes of that equity share]**."; and

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

"(9) No election may be made in terms of paragraph *(c)* of the definition of 'company formation transaction' in subsection (1) in respect of the disposal of any asset by a person, where that asset constitutes a financial instrument **[as defined in paragraph 1 of the Eighth Schedule]**, unless—".

(2) Subsection (1) shall be deemed to have come into operation on 6 November 2002 and shall apply in respect of any company formation transaction which takes effect on or after that date.

Amendment of section 43 of Act 58 of 1962, as inserted by section 44 of Act 60 of 2001 and substituted by section 34 of Act 74 of 2002

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

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

"*(a)* in terms of which a person (other than a trust which is not a special trust) disposes of an equity share, the market value of which is equal to or exceeds—";

(b) by the insertion in subsection (1) of the following proviso at the end of the definition of "share-for-share transaction":

"Provided that this section will not apply to a disposal by a person of target shares to an acquiring company where that person and that target company form part of the same group of companies immediately before and after that disposal, if that person and that acquiring company jointly so elect.";

(c) by the insertion in subsection (2) of the word "and" at the end of paragraph *(c)*;

Met dien verstande dat die bepalings van hierdie subartikel nie van toepassing is nie waar daardie persoon ingevolge 'n intragroep transaksie soos in artikel 45 beoog, 'n ontbondelingstransaksie soos in artikel 46 beoog of 'n likwidasie-uitkering soos in artikel 47 beoog, 'n onvrywillige beskikking soos in paragraaf 65 van die Agtste Bylae beoog of 'n beskikking wat 'n onvrywillige beskikking sou gewees het soos beoog in daardie paragraaf indien daardie bate nie 'n finansiële instrument was nie, of as gevolg van die afsterwe van daardie persoon opgehou het om 'n kwalifiserende belang in daardie maatskappy te hou.";

(i) deur die vervanging in subartikel (8) van die woorde wat volg op paragraaf *(b)* deur die volgende woorde:

"moet daardie persoon, indien daardie persoon beskik oor enige ekwiteitsaandeel ingevolge daardie maatskappyformasietransaksie verkry, ondanks die feit dat daardie persoon as borg vir die betaling van die skuld waarna in subparagraaf *(a)* of *(b)* verwys word, verantwoordelik is, die deel van die sigwaarde van daardie skuld wat betrekking het op daardie ekwiteitsaandeel as 'n kapitaaluitkering van kontant ten opsigte van die ekwiteitsaandeel hanteer, vir die doeleindes van paragraaf 76 van die Agtste Bylae, indien daardie ekwiteitsaandeel as 'n kapitaalbate gehou word of, indien daardie ekwiteitsaandeel as handelsvoorraad gehou word, as inkomste wat in daardie persoon se inkomste ingesluit moet word **[wanneer daardie person oor daardie ekwiteitsaandeel beskik]**.".

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

Wysiging van artikel 43 van Wet 58 van 1962, soos ingevoeg deur artikel 44 van Wet 60 van 2001 en vervang deur artikel 34 van Wet 74 van 2002

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

(a) deur die vervanging in subartikel (1) van paragraaf *(a)* deur die volgende paragraaf:

"*(a)* ingevolge waarvan enige persoon (behalwe 'n trust wat nie 'n spesiale trust is nie) oor enige ekwiteitsaandele beskik waarvan die markwaarde—

(i) in die geval waar 'n aandeel as 'n kapitaalbate gehou word, gelykstaande is aan of die basiskoste van daardie aandeel op die datum van daardie beskikking oorskry; of

(ii) in die geval van 'n aandeel wat as handelsvoorraad gehou word, gelykstaande is aan of die bedrag wat ingevolge artikel 11(*a*) of 22(1) of (2) ten opsigte van daardie aandeel in ag geneem is, oorskry

(hierna die 'teikenaandeel' genoem) in 'n maatskappy (hierna die 'teikenmaatskappy' genoem) aan 'n ander maatskappy (hierna die 'verkrygende maatskappy' genoem), wat 'n inwoner is, in ruil vir enige ekwiteitsaandeel of aandele wat deur die verkrygende maatskappy aan daardie persoon uitgereik is; en" ;

(b) deur die invoeging in subartikel (1) van die volgende voorbehoudsbepaling aan die einde van die omskrywing van "aandeel-vir-aandeel transaksie":

"Met dien verstande dat hierdie artikel nie van toepassing is nie ten aansien van 'n beskikking deur 'n persoon oor teikenaandele aan 'n verkrygende maatskappy indien daardie persoon en daardie teikenmaatskappy onmiddellik voor en na daardie beskikking deel van dieselfde groep van maatskappye vorm en daardie persoon en daardie verkrygende maatskappy gesamentlik so 'n keuse uitoefen.";

(c) deur die invoeging in subartikel (2) van die woord "en" aan die einde van paragraaf *(c)*;

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

"*(d)* any valuation of that target share effected by that person within the period contemplated in paragraph 29(4) of the Eighth Schedule must be deemed to have been effected in respect of those equity shares in the acquiring company.";

(e) by the substitution in subsection (3) for the words following subparagraph (ii) of the following words:

"that must be attributed to the part of the share deemed to have been disposed of other than in terms of a share-for-share transaction, must bear the same ratio to the **[total amount]** respective amounts contemplated in subparagraph (i) or (ii) as the market value of the consideration not consisting of equity shares issued by the acquiring company bears to the market value of the total consideration in respect of that share.";

(f) by the substitution for subsection (4) of the following subsection:

"(4) Where a person disposed of a target share in terms of a share-for-share transaction and that person ceases to hold a qualifying interest in the acquiring company within a period of 18 months after the date of the disposal of that share (whether or not by way of the disposal of any shares in the acquiring company), that person must for purposes of section 22 or the Eighth Schedule be deemed to have—

(a) disposed of all the **[target]** shares acquired in terms of that share-for-share transaction **[which were not disposed of]** that are still held immediately **[before]** after that person ceased to hold such a qualifying interest, for an amount equal to the market value of those equity shares as at the beginning of that period of 18 months; and

(b) immediately reacquired all the **[target]** shares **[not disposed of immediately after that person ceased to hold a qualifying interest]** contemplated in paragraph (a) at a cost equal to the amount contemplated in that paragraph **[*(a)*]**:

Provided that the provisions of this subsection do not apply where that person ceases to hold a qualifying interest in the acquiring company in terms of an intra-group transaction contemplated in section 45, an unbundling transaction contemplated in section 46, an involuntary disposal as contemplated in paragraph 65 of the Eighth Schedule or a disposal that would have constituted an involuntary disposal as contemplated in that paragraph had that asset not been a financial instrument, or as the result of the death of that person.";

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

"(5) Where an acquiring company acquired any target share in terms of a share-for-share transaction and that acquiring company ceases to hold an interest in the target company, as contemplated in paragraph *(c)* of the definition of 'share-for-share transaction' in subsection (1), within a period of 18 months after so acquiring that share (whether or not by way of the disposal of any target shares **[in that target company]**), that acquiring company must for purposes of section 22 or the Eighth Schedule be deemed to have—

(a) disposed of all the **[equity]** target shares **[in the target company]** acquired in terms of that share-for-share transaction **[which were not disposed of]** that are still held immediately **[before]** after that acquiring company ceased to hold such an interest, for an amount equal to the market value of those **[equity]** target shares as at the beginning of that period of 18 months; and

(d) deur die invoeging in subartikel (2) van die volgende paragraaf:

"*(d)* moet enige waardasie van daardie teikenaandeel deur daardie persoon bewerkstellig binne die tydperk beoog in paragraaf 29(4) van die Agtste Bylae, geag word bewerkstellig te gewees het ten aansien van daardie ekwiteitsaandele in die verkrygende maatskappy.";

(e) deur die vervanging in subartikel (3) van die woorde wat op subparagraaf (ii) volg deur die volgende woorde:

"wat toegeskryf moet word aan die gedeelte van die aandeel waaroor geag word beskik te gewees het anders as ingevolge 'n aandeel-vir-aandeel transaksie, moet in dieselfde verhouding tot die **[totale bedrag]** tersaaklike bedrae waarna in subparagrawe (i) of (ii) verwys word, staan as wat die markwaarde van die vergoeding wat nie uit ekwiteitsaandele bestaan nie wat deur daardie verkrygende maatskappy uitgereik is tot die markwaarde van die totale vergoeding ten opsigte van daardie aandeel staan.";

(f) deur die vervanging van subartikel (4) deur die volgende subartikel:

"(4) Waar 'n persoon ingevolge 'n aandeel-vir-aandeel transaksie oor 'n teikenaandeel beskik het en daardie persoon binne 'n tydperk van 18 maande na die datum van die beskikking oor daardie aandeel (hetsy by wyse van die beskikking oor enige aandele in die verkrygende maatskappy of nie) ophou om 'n kwalifiserende belang in die verkrygende maatskappy te hou, word daardie persoon by die toepassing van artikel 22 of die Agtste Bylae geag —

(a) oor al die **[teiken]**aandele wat ingevolge 'n aandeel-vir-aandeeltransaksie verkry is**[, waaroor nie]** wat nog gehou word onmiddellik **[voordat]** nadat daardie persoon opgehou het om sodanige belang te hou **[beskik is nie]**, te beskik het vir 'n bedrag gelykstaande aan die markwaarde van daardie ekwiteitsaandele soos aan die begin van die tydperk van 18 maande; en

(b) al die **[teiken]**aandele **[waaroor nie onmiddellik nadat daardie persoon opgehou het om sodanige belang te hou beskik is nie,]** beoog in paragraaf *(a)* onmiddellik weer te verkry het teen 'n koste gelykstaande aan die bedrag soos in daardie paragraaf **[*(a)*]** beoog:

Met dien verstande dat die bepalings van hierdie subartikel nie van toepassing is nie waar daardie persoon ingevolge 'n intra-groep transaksie soos in artikel 45 beoog, 'n ontbondelingstransaksie soos in artikel 46 beoog of 'n likwidasie-uitkering soos in artikel 47 beoog, 'n onvrywillige beskikking soos in paragraaf 65 van die Agtste Bylae beoog of 'n beskikking wat 'n onvrywillige beskikking sou gewees het soos beoog in daardie paragraaf indien daardie bate nie 'n finansiële instrument was nie, of as gevolg van die afsterwe van daardie persoon ophou om 'n kwalifiserende belang in die verkrygende maatskappy te hou."; en

(g) deur die vervanging van subartikel (5) deur die volgende subartikel:

"(5) Waar 'n verkrygende maatskappy enige teikenaandeel ingevolge 'n aandeel-vir-aandeel transaksie verkry en daardie verkrygende maatskappy binne 'n tydperk van 18 maande na die datum van die verkryging van die aandeel (hetsy by wyse van die beskikking oor enige teikenaandele **[in daardie verkrygende maatskappy]** of nie) ophou om 'n belang in die teikenmaatskappy soos in paragraaf *(c)* van die omskrywing van 'aandeel-vir-aandeeltransaksie' in subartikel (1) beoog, te hou, word daardie verkrygende maatskappy by die toepasing van artikel 22 of van die Agtste Bylae geag —

(a) oor al die **[ekwiteits]**teikenaandele wat ingevolge daardie aandeel-vir-aandeeltransaksie **[in die teikenmaatskappy]** verkry is, **[, waaroor nie]** wat nog gehou word onmiddellik **[voordat]** nadat daardie verkrygende maatskappy opgehou het om sodanige belang te hou **[beskik is nie]**, te beskik het vir 'n bedrag gelykstaande aan die markwaarde van daardie **[ekwiteits]**teikenaandele soos aan die begin van die tydperk van 18 maande; en

(b) immediately reacquired all the **[equity]** target shares **[not disposed of immediately after that person ceased to hold a qualifying interest]** contemplated in paragraph (a) at a cost equal to the amount contemplated in that paragraph **[*(a)*]**:

Provided that the provisions of this subsection do not apply where that acquiring company ceases to hold such an interest in the target company, in terms of an intra-group transaction contemplated in section 45, an unbundling transaction contemplated in section 46, a liquidation distribution contemplated in section 47 or an involuntary disposal as contemplated in paragraph 65 of the Eighth Schedule or a disposal that would have constituted an involuntary disposal as contemplated in that paragraph had that asset not been a financial instrument.".

(2) Subsection (1)*(a)*, *(c)*, *(d)*, *(e)*, *(f)* and *(g)* shall be deemed to have come into operation on 6 November 2002 and shall apply in respect of any share-for-share transaction which takes effect on or after that date.

Amendment of section 44 of Act 58 of 1962, as inserted by section 44 of Act 60 of 2001 and substituted by section 34 of Act 74 of 2002

52. (1) Section 44 of the Income Tax Act, 1962, is hereby amended—

(a) by the substitution in subsection (1) for paragraph *(a)* of the definition of "amalgamation transaction" of the following paragraph:

"*(a)* in terms of which any company (hereinafter referred to as the "amalgamated company") disposes of all of its assets (other than assets it elects to use to settle any debts incurred by it in the ordinary course of its trade) to another company (hereinafter referred to as the "resultant company") which is a resident, by means of an amalgamation, conversion or merger; and";

(b) by the insertion in subsection (1) of the following proviso to the definition of "amalgamation transaction":

"Provided that the provisions of this section will not apply to a disposal of an asset by an amalgamated company to a resultant company where that resultant company and the person contemplated in subsection (6) form part of the same group of companies immediately before and after that disposal, if that amalgamated company, resultant company and person jointly so elect.";

(c) by the substitution for subsection (4) of the following subsection:

"(4) The provisions of subsections (2) and (3) will apply to a disposal of an asset by an amalgamated company to a resultant company as part of an amalgamation transaction only to the extent that such asset is so disposed of in exchange for—

(a) an equity share or shares in that resultant company; or

(b) the assumption by that resultant company of a debt of that amalgamated company.";

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

"(6) Subject to subsection (7), where a person (other than a trust which is not a special trust) disposes of any equity share in an amalgamated company, the market value of which share exceeds—

(a) in the case of a share held as a capital asset, the base cost of that share on the date of that disposal; or

(b) in the case of a share held as trading stock, the amount taken into account in respect of that share in terms of section 11*(a)* or 22(1) or (2),

in return for an equity share or equity shares in the resultant company and that person—

(i) acquires that share or those shares in the resultant company as part of an amalgamation transaction that was subject to subsection (2) or (3)—

(b) al die **[teiken]**aandele **[waaroor nie onmiddellik nadat daardie persoon opgehou het om sodanige belang te hou beskik is nie,]** beoog in paragraaf *(a)* onmiddellik weer te verkry het teen 'n koste gelykstaande aan die bedrag soos in daardie paragraaf **[*(a)*]** beoog:

Met dien verstande dat die bepalings van hierdie subartikel nie van toepassing is waar daardie verkrygende maatskappy ingevolge 'n intra-groep transaksie soos in artikel 45 beoog, 'n ontbondelings-transaksie soos in artikel 46 beoog of 'n likwidasie-uitkering soos in artikel 47 beoog, 'n onvrywillige beskikking soos in paragraaf 65 van die Agtste Bylae beoog of 'n beskikking wat 'n onvrywillige beskikking sou gewees het soos beoog in daardie paragraaf indien daardie bate nie 'n finansiële instrument was nie, ophou om sodanige belang in die teikenmaatskappy te hou."

(2) Subartikel (1)*(a)*, *(c)*, *(d)*, *(e)*, *(f)* en *(g)* word geag op 6 November 2002 in werking te getree het en is van toepassing ten opsigte van enige aandeel-vir-aandeeltransaksie wat op of na daardie datum in werking tree.

Wysiging van artikel 44 van Wet 58 van 1962, soos ingevoeg deur artikel 44 van Wet 60 van 2001 en vervang deur artikel 34 van Wet 74 van 2002

52. (1) Artikel 44 van die Inkomstebelastingwet, 1962, word hierby gewysig—

(a) deur die vervanging in subartikel (1) van paragraaf *(a)* van die omskrywing van "amalgamasietransaksie" deur die volgende paragraaf:

"*(a)* ingevolge waarvan enige maatskappy (hierna die 'geamalgameerde maatskappy' genoem) oor al sy bates (behalwe bates wat dit na keuse wil aanwend ter delging van skulde in die gewone loop van besigheid aangegaan) aan 'n ander maatskappy (hierna die 'gevolglike maatskappy' genoem) wat 'n inwoner is, by wyse van 'n amalgamasie, omskepping of samesmelting beskik; en";

(b) deur die invoeging in subartikel (1) van die volgende voorbehoudsbepaling tot die omskrywing van "amalgamasietransaksie":

"Met dien verstande dat hierdie artikel nie van toepassing is nie ten aansien van 'n beskikking oor 'n bate deur 'n geamalgameerde maatskappy aan 'n gevolglike maatskappy indien daardie gevolglike maatskappy en die persoon in subartikel (6) beoog onmiddelik voor en na daardie beskikking deel vorm van dieselfde groep van maatskappye en daardie geamalgameerde maatskappy, gevolglike maatskappy en persoon gesamentlik so 'n keuse uitoefen.";

(c) deur die vervanging van subartikel (4) deur die volgende subartikel:

"(4) Die bepalings van subartikels (2) en (3) is van toepassing ten opsigte van 'n beskikking oor 'n bate deur 'n geamalgameerde maatskappy aan 'n gevolglike maatskappy as deel van 'n amalgamasie-transaksie slegs tot die mate waarin daar oor daardie bate beskik is in ruil vir—

(a) 'n ekwiteitsaandeel of aandele in daardie gevolglike maatskappy; of

(b) die oorname deur daardie gevolglike maatskappy van 'n skuld van daardie geamalgameerde maatskappy.";

(d) deur die vervanging van subartikel (6) deur die volgende subartikel:

"(6) Behoudens die bepalings van subartikel (7), waar 'n persoon (behalwe 'n trust wat nie 'n spesiale trust is nie) oor enige ekwiteitsaandeel in 'n geamalgameerde maatskappy beskik, waarvan die markwaarde van die aandeel—

(a) in die geval van 'n aandeel wat as 'n kapitaalbate gehou is, die basiskoste van daardie aandeel op die datum van die beskikking oorskry; of

(b) in die geval waar die aandele as handelsvoorraad gehou is, die bedrag wat ten opsigte van daardie aandeel ingevolge artikel 11*(a)* of 22(1) of (2) in ag geneem is, oorskry,

in ruil vir enige ekwiteitsaandeel of ekwiteitsaandele in die gevolglike maatskappy en daardie persoon—

(i) daardie aandeel of aandele in die gevolglike maatskappy as deel van 'n algamasietransaksie wat onderhewig aan subartikel (2) of (3) was, verkry—

(aa) where that share in the amalgamated company is disposed of as a capital asset, as a capital asset or as trading stock; or

(bb) where that share in the amalgamated company is disposed of as trading stock, as trading stock; and

(ii) at the end of the day during which that disposal is effected, holds a qualifying interest in that resultant company,

that person must be deemed to have—

(aa) disposed of the equity share in that amalgamated company for an amount equal to the amount contemplated in subparagraphs *(a)* or *(b)*, as the case may be; **[and]**

(bb) acquired the equity share or shares in that resultant company on the date that such person acquired that equity share in the amalgamated company and for a cost equal to any expenditure in respect of that equity share in the amalgamated company incurred by that person that is allowable in terms of paragraph 20 of the Eighth Schedule or taken into account in terms of section 11*(a)* or 22(1) or (2), as the case may be, and to have incurred such cost at the date of incurral by that person of such expenditure, which cost must, where those equity shares are acquired as—

(A) capital assets, be treated as an expenditure actually incurred and paid by that person in respect of those equity shares for the purposes of paragraph 20 of the Eighth Schedule; and

(B) trading stock, be treated as the amount to be taken into account by that person in respect of those equity shares for the purposes of section 11*(a)* or 22(1) or (2); and

(cc) effected any valuation of that equity share in the amalgamated company that was done within the period contemplated in paragraph 29(4) of the Eighth Schedule, in respect of the equity share or shares in that resultant company.";

(e) by the substitution for the words in subsection (7) following paragraph (ii) of the following words:

"that must be attributed to the part of the share deemed to have been disposed of in terms of the non-qualifying transaction, must bear the same ratio to the **[total amount]** respective amounts contemplated in subparagraphs (i) or (ii) as the market value of the total consideration not consisting of equity shares in that resultant company bears to the amount of the full consideration in respect of that share.";

(f) by the substitution for paragraph *(b)* of subsection (9) of the following paragraph:

"*(b)* any shares acquired by a company in terms of that disposal must be deemed**[—**

(i)] not to be a dividend which accrued to that company for the purposes of section 64B(3)**[; and**

(ii) to be profits which are not of a capital nature for the purposes of section 64B(5)*(c)*].";

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

"(10) So much of the amount of any other consideration to which a person becomes entitled as contemplated in subsection (7)*(b)* as does not exceed the amalgamated company's profits and reserves which are available for distribution as contemplated in section 64C(4)*(c)* must, for purposes of section 64B, be deemed to be a dividend declared and distributed out of profits of that amalgamated company to that person and to have accrued as a dividend to that person on the date on which that person became entitled thereto.";

(aa) waar daar oor daardie aandeel in die geamalgameerde maatskappy as 'n kapitaalbate beskik word, as 'n kapitaalbate of as handelsvoorraad; of

(bb) waar daar oor daardie aandeel in die geamalgameerde maatskappy as handelsvoorraad beskik is, as handelsvoorraad; en

(ii) aan die einde van die dag waarop daardie beskikking plaasgevind het, 'n kwalifiserende belang in daardie gevolglike maatskappy hou,

word daardie persoon geag—

(aa) oor die ekwiteitsaandele in daardie geamalgameerde maatskappy te beskik het vir 'n bedrag gelykstaande aan die bedrag soos in subparagraaf *(a)* of *(b)* beoog, na gelang van die geval; **[en]**

(bb) die ekwiteitsaandeel of aandele in daardie gevolglike maatskappy te verkry het op die datum waarop daardie persoon daardie ekwiteitsaandele in die geamalgameerde maatskappy verkry het en teen 'n koste gelykstaande aan enige onkoste wat met betrekking tot daardie ekwiteitsaandeel in die geamalgameerde maatskappy deur daardie persoon aangegaan is en wat ingevolge paragraaf 20 van die Agtste Bylae toelaatbaar is of ingevolge artikel 11*(a)* of 22(1) of (2) in berekening gebring was, na gelang van die geval, en daardie koste aan te gegaan het op die datum waarop daardie persoon daardie onkoste aangegaan het, welke koste, waar daardie ekwiteitsaandele verkry is as—

(A) kapitaalbates, geag word word onkoste te wees wat werklik deur daardie persoon aangegaan en betaal is ten opsigte van daardie ekwiteitsaandele vir die doeleindes van paragraaf 20 van die Agtste Bylae; en

(B) handelsvoorraad, geag word die bedrag wat deur daardie persoon ten opsigte van daardie ekwiteitsaandele vir die doeleindes van artikel 11*(a)* of 22(1) of (2) in ag geneem moet word; en

(cc) enige waardasie van daardie ekwiteitsaandeel in die geamalgameerde maatskappy wat bewerkstellig is binne die tydperk beoog in paragraaf 29(4) van die Agste Bylae, te bewerkstellig het ten aansien van die ekwiteitsaandeel of aandele in daardie gevolglike maatskappy.";

(e) deur die vervanging van die woorde in subartikel (7) wat volg op paragraaf (ii) deur die volgende woorde:

"wat toegeskryf moet word aan die gedeelte van die aandeel waaroor geag word beskik te gewees het ingevolge 'n nie-kwalifiserende transaksie, in dieselfde verhouding tot die **[totale bedrag]** tersaaklike bedrae waarna in subparagraaf (i) of (ii) verwys word staan as wat die markwaarde van die totale vergoeding wat nie uit ekwiteitsaandele in daardie gevolglike maatskappy bestaan nie tot die bedrag van die volle vergoeding ten opsigte van daardie aandeel staan.";

(f) deur die vervanging van paragraaf *(b)* of subartikel (9) deur die volgende paragraaf:

"(b) word enige aandele wat deur 'n maatskappy ingevolge daardie beskikking verkry is, geag**[—**

(i)] nie 'n dividend wat aan daardie maatskappy vir die doeleindes van artikel 64B(3) toe te geval het, te wees nie.**[; en**

(ii) om winste nie van 'n kapitale aard te wees nie by die toepassing van artikel 64B(5)*(c)*.]";

(g) deur die vervanging van subartikel (10) deur die volgende subartikel:

"(10) Sodanige gedeelte van die bedrag van enige vergoeding waarop 'n persoon geregtig word soos in subartikel (7)*(b)* beoog wat nie die geamalgameerde maatskappy se winste en reserwes wat vir uitkering beskikbaar is soos in artikel 64C(4)*(c)* beoog, oorskry nie, word by die toepassing van artikel 64B geag 'n dividend te wees wat verklaar en uitgekeer is aan daardie persoon uit die winste van die geamalgameerde maatskappy en wat aan daardie persoon as 'n dividend toegeval het op die datum waarop daardie persoon daarop geregtig geword het." ;

(h) by the substitution in subsection (11) for paragraphs *(a)* and *(b)* and the proviso of the following paragraphs and proviso:

"*(a)* disposed of all the equity shares in the resultant company acquired in terms of that qualifying transaction **[which were not disposed of]** that are still held immediately **[before]** after that person ceased to hold such an interest, for an amount equal to the market value of those equity shares as at the beginning of that period of 18 months; and

(b) immediately reacquired all the equity shares **[not disposed of immediately after that person ceased to hold a qualifying interest]** contemplated in paragraph (a) at a cost equal to the amount contemplated in that paragraph **[*(a)*]**:

Provided that the provisions of this subsection do not apply where that person ceases to hold a qualifying interest in that resultant company, as contemplated in the definition of 'qualifying interest' in subsection (1), in terms of an intra-group transaction contemplated in section 45, an unbundling transaction contemplated in section 46, an involuntary disposal as contemplated in paragraph 65 of the Eighth Schedule or a disposal that would have constituted an involuntary disposal as contemplated in that paragraph had that asset not been a financial instrument, or as the result of the death of that person.";

(i) by the substitution for subsection (12) of the following subsection:

"(12) The provisions of this section do not apply in respect of the disposal of the assets of an amalgamated company where that amalgamated company immediately prior to that disposal constitutes a domestic financial instrument holding company or a foreign financial instrument holding company."; and

(j) by the substitution for subsection (13) of the following subsection:

"(13) The provisions of **[subsections (2) and (3)]** this section do not apply where the amalgamated company—

(a) has not, within a period of six months after the date of the amalgamation transaction, taken the steps contemplated in section 41(4) to liquidate, wind up or deregister; or

(b) has at any stage withdrawn any step taken to liquidate, wind up or deregister that company, as contemplated in paragraph *(a)*, or does anything to invalidate any step so taken, with the result that the company will not be liquidated, wound up or deregistered.".

(2) Subsection (1)*(a)*, *(c)*, *(d)*, *(e)*, *(f)*, *(g)*, *(h)*, *(i)* and *(j)* shall be deemed to have come into operation on 6 November 2002 and shall apply in respect of any amalgamation transaction which takes effect on or after that date.

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

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

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

"*(a)* in terms of which any asset is disposed of by one company (hereinafter referred to as the 'transferor company') to another company which is a resident (hereinafter referred to as the 'transferee company') and both companies form part of the same group of companies **[on the date]** as at the end of the day of that transaction;";

(b) by the substitution in subsection (4) for the words preceding the proviso of the following words:

"(4) Where an asset is disposed of by a transferor company to a transferee company in terms of an intra-group transaction and the transferor company and the transferee company at any time before the disposal by the transferee company of that asset, cease to form part of

(h) deur die vervanging in subartikel (11) van paragrawe *(a)* en *(b)* en die voorbehoudsbepaling deur die volgende paragrawe en voorbehoudsbepaling:

"*(a)* oor al die ekwiteitsaandele wat ingevolge daardie kwalifiserende transaksie in die gevolglike maatskappy verkry is **[en waaroor nie]** wat nog gehou word onmiddellik **[voordat]** nadat daardie persoon opgehou het om sodanige belang te hou **[beskik is nie]**, te beskik het vir 'n bedrag gelykstaande aan die markwaarde van daardie ekwiteitsaandele soos aan die begin van die tydperk van 18 maande; en

(b) al die ekwiteitsaandele **[waaroor nie onmiddellik nadat daardie persoon opgehou het om sodanige belang te hou, beskik is nie,]** beoog in paragraaf *(a)* onmiddellik weer te verkry het teen 'n koste gelykstaande aan die bedrag soos in daardie paragraaf **[*(a)*]** beoog:

Met dien verstande dat die bepalings van hierdie subartikel nie van toepassing is nie waar daardie persoon ingevolge 'n intra-groep-transaksie soos in artikel 45 **[bedoel]** beoog, 'n ontbondelingstransaksie soos in artikel 46 **[bedoel]** beoog, 'n **[nie-vrywillige]** onvrywillige beskikking soos in paragraaf 65 van die Agtste Bylae beoog of 'n beskikking wat 'n onvrywillige beskikking sou gewees het soos beoog in daardie paragraaf indien daardie bate nie 'n finansiële instrument was nie of as gevolg van die dood van daardie persoon, ophou om 'n belang in die gevolglike maatskappy soos in die omskrywing van 'kwalifiserende belang' in subartikel (1) te hou.";

(i) deur die vervanging van subartikel (12) deur die volgende subartikel:

"(12) Die bepalings van hierdie artikel is nie van toepassing ten aansien van 'n beskikking oor die bates van 'n geamalgameerde maatskappy nie indien daardie geamalgameerde maatskappy onmiddellik voor daardie beskikking 'n plaaslike finansiële instrumenthouermaatskappy of 'n buitelandse finansiële instrumenthouermaatskappy is."; en

(j) deur die vervanging van subartikel (13) deur die volgende subartikel:

"(13) Die bepalings van **[subartikels (2) en (3)]** hierdie artikel is nie van toepassing waar die geamalgameerde maatskappy —

(a) nie binne 'n periode van 6 maande na die datum van die amalgamasietransaksie stappe bedoel in artikel 41(4) om te likwideer of te deregistreer gedoen het nie; of

(b) op enige tydstip enige stap wat gedoen is om daardie maatskappy te likwideer of deregistreer, soos in paragraaf *(a)* bedoel, intrek of enigiets doen om enige sodanige stap aldus gedoen ongeldig te maak, wat tot gevolg het of sal hê dat die maatskappy nie gelikwideer of gederegistreer sal word nie.".

(2) Subartikel (1)*(a)*, *(c)*, *(d)*, *(e)*, *(f)*, *(g)*, *(h)*, *(i)* en *(j)* word geag op 6 November 2002 in werking te getree het en is van toepassing ten opsigte van enige amalgamasietransaksie wat op of na daardie datum in werking tree.

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

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

(a) deur die vervanging in subartikel (1) van paragraaf *(a)* deur die volgende paragraaf:

"*(a)* ingevolge waarvan daar oor enige bate deur een maatskappy (hierna die 'oordraggewende maatskappy' genoem)aan 'n ander maatskappy wat 'n inwoner is (hierna die 'oordragnemende maatskappy' genoem) beskik word en beide maatskappye **[op die datum]** teen die einde van die dag van daardie transaksie deel van dieselfde groep van maatskappye vorm;";

(b) deur die vervanging in subartikel (4) van die woorde wat die voorbehoudsbepaling voorafgaan deur die volgende woorde:

"(4) Waar daar oor 'n bate deur 'n oordraggewende maatskappy aan 'n oordragnemende maatskappy ingevolge 'n intragroeptransaksie beskik word en daardie oordraggewende maatskappy en die oordragnemende maatskappy op enige tydstip voor die beskikking deur die oordrag-

any group of companies in relation to each other, that transferee company must, for purposes other than for determining the amount of any capital deduction or allowance in respect of that asset to which that transferee company may be entitled in terms of section 11*(e)*, 12B, 12C, or 12E, be deemed to have disposed of that asset for an amount equal to the market value of that asset on the date on which the disposal in terms of that intra-group transaction was effected and as having immediately reacquired that asset for a cost equal to that market value:";

(c) by the substitution in subsection (5) for the words preceding paragraph *(a)* of the following words:

"(5) Where a transferee company disposes of an asset, other than in terms of an involuntary disposal as contemplated in paragraph 65 of the Eighth Schedule or a disposal that would have constituted an involuntary disposal as contemplated in that paragraph had that asset not been a financial instrument, within a period of 18 months after acquiring that asset in terms of an intra-group transaction and—"; and

(d) by the substitution in subsection (6) for subparagraph (ii) of paragraph *(a)* of the following subparagraph:

"(ii) the total market value, immediately prior to that disposal, of all financial instruments so transferred (other than financial instruments contemplated in paragraph (i) or (iv)), does not exceed five per cent of the total market value of all assets of any business which is transferred as a going concern;"; and

(e) by the addition in subsection (6) to subparagraph (iv) of paragraph *(a)* of the following proviso:

"Provided that for purposes of determining whether that controlled group company is a domestic financial instrument holding company or a foreign financial instrument holding company, no regard shall be had to any financial instrument the market value of which is equal to its base cost; or".

(2) Subsection (1) shall be deemed to have come into operation on 6 November 2002 and shall apply in respect of any intra-group transaction which takes effect on or after that date.

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

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

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

"(1) For purposes of this section 'unbundling transaction' means any transaction in terms of which all the equity shares of a company which is a resident (hereinafter referred to as the 'unbundled company') that are held by a company (hereinafter referred to as the 'unbundling company') which, if listed, is a resident, are disposed of by that unbundling company to the shareholder or shareholders of that unbundling company in accordance with the effective interest of that shareholder or those shareholders, as the case may be, in the shares of that unbundling company, but only to the extent to which those shares are so disposed of—

nemende maatskappy oor daardie bate ophou om deel van enige groep van maatskappye met betrekking tot mekaar te vorm, word daardie oordragnemende maatskappy, behalwe vir doeleindes van die bepaling van die bedrag van enige kapitaalaftrekking of vermindering ten aansien van daardie bate waarop daardie oordragnemende maatskappy kragtens artikel 11*(e)*, 12B, 12C of 12E geregtig mag wees, geag oor daardie bate te beskik het vir 'n bedrag gelykstaande aan die markwaarde van daardie bate op die datum waarop die beskikking ingevolge daardie intragroeptransaksie uitgevoer is en daardie bate onmiddellik weer te verkry het teen 'n koste gelykstaande aan daardie markwaarde:";

(c) deur die vervanging in subartikel (5) van die woorde wat paragraaf *(a)* voorafgaan deur die volgende woorde:

"(5) Waar die oordragnemende maatskappy oor enige bate **[wat]** binne 'n tydperk van 18 maande sedert daardie bate ingevolge 'n intragroeptransaksie verkry is, beskik, behalwe ingevolge 'n onvrywillige beskikking soos in paragraaf 65 van die Agtste Bylae beoog of 'n beskikking wat 'n onvrywillige beskikking sou gewees het soos beoog in daardie paragraaf indien daardie bate nie 'n finansiële instrument was nie, en—";

(d) deur die vervanging in subartikel (6) van subparagraaf (ii) van paragraaf *(a)* deur die volgende subparagraaf:

"(ii) die totale markwaarde onmiddellik voor daardie beskikking van alle finansiële instrumente waaroor aldus beskik is (behalwe finansiële instrumente soos in paragraaf (i) of (iv) bedoel), nie vyf persent van die totale markwaarde van alle bates van enige besigheid wat as 'n lopende saak oorgedra is, oorskry nie; of";

(e) deur die skrapping in subartikel (6) van item *(gg)* van subparagraaf (iii) van paragraaf *(a)*;

(f) deur die invoeging in subartikel (6) van die volgende subparagraaf na subparagraaf (iii) van paragraaf *(a)*:

"(iv) daardie finansiële instrument 'n ekwiteitsaandeel in 'n beheerde groepsmaatskappy met betrekking tot daardie oordraggewende maatskappy uitmaak en daardie beheerde groepsmaatskappy onmiddellik voor daardie beskikking nie 'n plaaslike finansiële instrumenthouermaatskappy of 'n buitelandse finansiële instrumenthouermaatskappy was nie: Met dien verstande dat by die vasstelling of daardie beheerde groepsmaatskappy 'n plaaslike finansiële instrumenthouermaatskappy of 'n buitelandse finansiële instrumenthouermaatskappy is, enige finansiële instrument waarvan die markwaarde gelyk is aan die basiskoste daarvan in geheel buite rekening gelaat moet word; of".

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

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

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

(a) deur die vervanging van subartikel (1) deur die volgende subartikel:

"(1) By die toepassing van hierdie artikel beteken 'ontbondelingstransaksie' 'n transaksie ingevolge waarvan al die ekwiteitsaandele van 'n maatskappy wat 'n inwoner is (hierna die 'ontbondelde maatskappy' genoem) wat gehou word deur 'n maatskappy (hierna die 'ontbondelingsmaatskappy' genoem) en wat in die geval van 'n genoteerde maatskappy 'n inwoner is, oor beskik word deur daardie ontbondelingsmaatskappy aan die aandeelhouer of aandeelhouers van daardie ontbondelingsmaatskappy ooreenkomstig die effektiewe belang van daardie aandeelhouer of aandeelhouers, na gelang van die geval, in die aandele van daardie ontbondelingsmaatskappy, maar slegs tot die mate waarin daar oor daardie aandele so beskik word—

(a) where that unbundling company is a listed company and the shares of the unbundled company are listed within 12 months after that disposal, to the shareholders of that unbundling company;

(b) where that unbundling company is an unlisted company, to any shareholder of that unbundling company that forms part of the same group of companies as that unbundling company; or

(c) pursuant to an order in terms of the Competition Act, 1998 (Act No. 89 of 1998) made by the Competition Tribunal or the Competition Appeal Court, to the shareholders of that unbundling company:

Provided that the shares contemplated in paragraph *(a)* or *(b)* constitute—

(i) where that unbundled company is a listed company immediately before that disposal—

(aa) more than 25 per cent of the equity shares of that unbundled company in the case where no other shareholder holds an equal or greater amount of equity shares in that unbundled company; or

(bb) in any other case, at least 35 per cent of the equity shares of that unbundled company; or

(ii) where that unbundled company is an unlisted company immediately before that disposal, more than 50 per cent of the equity shares of that unbundled company.";

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

"(2) Where an unbundling company disposes of shares to a shareholder in terms of an unbundling transaction, that unbundling company must disregard that disposal for purposes of determining its taxable income or assessed loss.";

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

"(3) Where a shareholder acquires **[distributable]** shares in terms of an unbundling transaction—

(a) that shareholder must be deemed to have acquired the equity shares held in the unbundling company (hereinafter referred to as the 'previously held shares') and those **[distributable]** shares at a cost equal to—";

(d) by the substitution in subsection (3) for paragraph *(b)* of the following paragraph:

"*(b)* that shareholder must determine the portion of the cost contemplated in paragraph *(a)* that must be attributed to those **[distributable]** shares, by determining an amount which bears to that cost the same ratio that the market value of those **[distributable]** shares, as at the end of the day after the date of that disposal, bears to the sum of the market values, as at the end of that day, of the previously held shares and of those **[distributable]** shares, which **[amount]** portion of the cost must, where the shareholder held the previously held shares as—

(i) capital assets and acquired those **[distributable]** shares as capital assets, be treated as an expenditure actually incurred and paid by that shareholder in respect of those **[distributable]** shares for the purposes of paragraph 20 of the Eighth Schedule; or

(ii) trading stock and acquired those **[distributable]** shares as trading stock, be treated as the amount to be taken into account by that shareholder in respect of those **[distributable]** shares for the purposes of section 11*(a)* or 22(1) or (2); and";

(a) waar daardie ontbondelingsmaatskappy 'n genoteerde maatskappy is, aan die aandeelhouers van daardie ontbondelingsmaatskappy op voorwaarde dat die aandele van die ontbondelde maatskappy binne 12 maande na daardie beskikking genoteer word; of;

(b) waar daardie ontbondelingsmaatskappy 'n ongenoteerde maatskappy is, aan enige aandeelhouer van daardie ontbondelingsmaatskappy wat deel van dieselfde groep van maatskappye as daardie ontbondelingsmaatskappy vorm; of

(c) aan die aandeelhouers van daardie ontbondelingsmaatskappy ter nakoming van 'n bevel uitgereik deur die Mededingingstribunaal of die Appèlhof vir Mededinging ingevolge die Wet op Mededinging, 1998 (Wet No. 89 van 1998):

Met dien verstande dat die aandele in paragraaf *(a)* of *(b)* beoog—

(i) waar daardie ontbondelde maatskappy onmiddellik voor daardie beskikking 'n genoteerde maatskappy is—

(aa) meer as 25 persent van die ekwiteitsaandele van daardie ontbondelde maatskappy uitmaak in die geval waar geen ander aandeelhouer 'n gelyke of groter bedrag van die ekwiteitsaandele in daardie ontbondelde maatskappy hou nie; of

(bb) in enige ander geval, minstens 35 persent van die ekwiteitsaandele van daardie ontbondelde maatskappy uitmaak; of

(ii) waar daardie ontbondelde maatskappy onmiddellik voor daardie beskikking 'n ongenoteerde maatskappy is, meer as 50 persent van die ekwiteitsaandele van daardie ontbondelde maatskappy daarstel.";

(b) deur die vervanging van subartikel (2) deur die volgende subartikel:

"(2) Waar 'n ontbondelingsmaatskappy oor aandele aan 'n aandeelhouer ingevolge 'n ontbondelingstransaksie beskik, moet daardie ontbondelingsmaatskappy daardie beskikking buite rekening laat vir doeleindes van die vasstelling van sy belasbare inkomste of vasgestelde verlies.";

(c) deur die vervanging in subartikel (3) van die woorde wat paragraaf *(a)* voorafgaan asook van paragraaf *(a)* deur die volgende woorde en paragraaf:

"(3) Waar 'n aandeelhouer **[uitkeerbare]** aandele ingevolge 'n ontbondelingstransaksie verkry —

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

(d) deur die vervanging in subartikel (3) van paragraaf *(b)* deur die volgende paragraaf:

"*(b)* moet daardie aandeelhouer die gedeelte van die koste in paragraaf *(a)* bedoel wat toegeskryf moet word aan daardie **[uitkeerbare]** aandele bepaal, deur 'n bedrag vas te stel wat tot daardie koste in dieselfde verhouding staan as wat die markwaarde van daardie **[uitkeerbare]** aandele aan die einde van die dag na die datum van daardie beskikking, tot die som van die markwaardes van die aandele voorheen gehou en die **[uitkeerbare]** aandele aan die einde van daardie dag staan, welke **[bedrag]** gedeelte van die koste, waar die aandeelhouer die aandele voorheen as—

(i) kapitaalbates gehou het en daardie **[uitkeerbare]** aandele as kapitale bates verkry het, geag word onkoste te wees wat werklik deur daardie aandeelhouer aangegaan en betaal is ten opsigte van daardie **[uitkeerbare]** aandele by die toepassing van paragraaf 20 van die Agtste Bylae; of

(ii) handelsvoorraad gehou het en daardie **[uitkeerbare]** aandele as handelsvoorraad verkry is, geag word die bedrag te wees wat deur daardie aandeelhouer in berekening gebring moet word ten opsigte van daardie **[uitkeerbare]** aandele by die toepassing van artikel 11*(a)*, 22(1) of (2); en";

(e) by the substitution in subsection (3) for paragraph *(d)* of the following paragraph:

"*(d)* that shareholder's previously held shares and those **[distributable]** shares must be deemed to be the same shares in respect of the date of acquisition of those shares and the date of incurral of any expenditure in respect of those previously held shares.";

(f) by the substitution in subsection (4) for the words preceding paragraph *(a)* and paragraph *(a)* of the following words and paragraph:

"(4) Where those **[distributable]** shares are disposed of by an unbundling company to a shareholder in terms of an unbundling transaction and that shareholder held the previously held shares in that unbundling company as a result of the exercise, by that shareholder, of a right contemplated in section 8A, a portion of any gain made by that shareholder in the exercise of that right to acquire those previously held shares must be included in the income of that shareholder—

(a) in the year of assessment during which that shareholder becomes entitled to dispose of those **[distributable]** shares, which portion shall be an amount which bears to such gain the same ratio as that contemplated in **[paragraph]** subsection (3)*(b)*; and";

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

"(5) Where **[distributable]** shares are disposed of by an unbundling company to a shareholder in terms of an unbundling transaction—

(a) the disposal by that unbundling company of the **[distributable]** shares must be deemed not to be a dividend with respect to that unbundling company for the purposes of section 64B(3); and

(b) any **[distributable]** shares acquired by a company in terms of that disposal must be deemed**[—**

(i)] not to be a dividend which accrued to that company for the purposes of section 64B(3)**[; and**

(ii) to be profits which are not of a capital nature for the purposes of section 64B(5)*(c)*].";

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

"(6) Any **[distributable]** shares disposed of by an unbundling company in terms of an unbundling transaction, must be deemed to have been disposed of first from the share premium account of that unbundling company.";

(i) by the substitution in subsection (7) for paragraph *(b)* of the following paragraph:

"*(b)* in respect of any disposal of **[distributable]** shares in terms of an unbundling transaction to a shareholder who is not a resident, where that shareholder acquires more than five per cent of those **[distributable]** shares."; and

(j) by the addition of the following subsection after subsection (7):

"(8) Where an unlisted unbundling company disposes of shares in an unlisted unbundled company in terms of an unbundling transaction to a shareholder and that unbundled company is a controlled group company in relation to that shareholder immediately before and after that disposal, the provisions of this section will not apply to that disposal if that shareholder and that unbundling company jointly so elect.".

(2) Subsection (1)*(a)*, *(b)*, *(c)*, *(d)*, *(e)*, *(f)*, *(g)*, *(h)* and *(i)* shall be deemed to have come into operation on 6 November 2002 and shall apply in respect of any unbundling transaction which takes effect on or after that date.

(e) deur die vervanging in subartikel (3) van paragraaf *(d)* deur die volgende paragraaf:

"*(d)* moet daardie aandeelhouer se aandele voorheen gehou en daardie **[uitkeerbare]** aandele geag word dieselfde aandele te wees met betrekking tot die datum van verkryging van daardie aandele en die datum waarop enige onkoste ten opsigte van daardie aandele voorheen gehou aangegaan is.";

(f) deur die vervanging in subartikel (4) van die woorde wat paragraaf *(a)* voorafgaan asook van paragraaf *(a)* deur die volgende woorde en paragraaf:

"(4) Waar 'n ontbondelingsmaatskappy oor **[uitkeerbare]** aandele aan 'n aandeelhouer ingevolge 'n ontbondelingstransaksie beskik en daardie aandeelhouer die aandele voorheen gehou in daardie ontbondelingsmaatskappy gehou het **[as]** weens die uitoefening deur daardie aandeelhouer van 'n reg in artikel 8A bedoel, word 'n gedeelte van enige wins wat deur daardie aandeelhouer gemaak word by die uitoefening van daardie reg om daardie aandele voorheen gehou te verkry, by die inkomste van daardie aandeelhouer ingesluit—

(a) in die jaar van aanslag waarin daardie aandeelhouer geregtig word om oor daardie **[uitkeerbare]** aandele te beskik, welke gedeelte 'n bedrag uitmaak wat tot die wins in dieselfde verhouding staan as dié in **[paragraaf]** subartikel (3)*(b)* bedoel; en";

(g) deur die vervanging van subartikel (5) deur die volgende subartikel:

"(5) Waar 'n ontbondelingsmaatskappy oor **[uitkeerbare]** aandele aan 'n aandeelhouer ingevolge 'n ontbondelingstransaksie beskik —

(a) word die beskikking deur daardie ontbondelingsmaatskappy van die **[uitkeerbare]** aandele by die toepassing van artikel 64B(3) geag nie 'n dividend te wees nie ten opsigte van daardie ontbondelingsmaatskappy; en

(b) word enige **[uitkeerbare]** aandele deur 'n maatskappy ingevolge daardie beskikking verkry, geag **[—**

(i)] by die toepassing van artikel 64B(3) nie 'n dividend te wees nie wat aan daardie maatskappy toegeval het**[; en**

(ii) wins te wees wat nie van 'n kapitale aard is nie by die toepassing van artikel 64B(5)*(c)*].";

(h) deur die vervanging van subartikel (6) deur die volgende subartikel:

"(6) Enige **[uitkeerbare]** aandele deur 'n ontbondelingsmaatskappy oor beskik ingevolge 'n ontbondelingstransaksie, word geag beskik te gewees het eerste uit die aandelepremierekening van daardie ontbondelingsmaatskappy.";

(i) deur die vervanging in subartikel (7) van paragraaf *(b)* deur die volgende paragraaf:

"*(b)* ten opsigte van enige beskikking van **[uitkeerbare]** aandele ingevolge 'n ontbondelingstransaksie aan 'n aandeelhouer wat nie 'n inwoner is nie, waar daardie aandeelhouer meer as vyf persent van daardie **[uitkeerbare]** aandele **[hou]** verkry."; en

(j) deur die invoeging van die volgende subartikel na subartikel (7):

"(8) Waar 'n ongenoteerde ontbondelingsmaatskappy oor aandele in 'n ongenoteerde ontbondelde maatskappy aan 'n aandeelhouer ingevolge 'n ontbondelingstransaksie beskik en daardie ontbondelde maatskappy onmiddellik voor en na daardie transaksie 'n beheerde groepsmaatskappy met betrekking tot daardie aandeelhouer is, is die bepalings van hierdie artikel nie van toepassing ten opsigte van daardie beskikking nie indien daardie aandeelhouer en daardie ontbondelingsmaatskappy gesamentlik so 'n keuse uitoefen.".

(2) Subartikel (1)*(a)*, *(b)*, *(c)*, *(d)*, *(e)*, *(f)*, *(g)*, *(h)* en *(i)* word geag op 6 November 2002 in werking te getree het en is van toepassing ten opsigte van enige ontbondelingstransaksie wat op of na daardie datum in werking tree.

Amendment of section 47 of Act 58 of 1962, as repealed by section 25 of Act 21 of 1995 and inserted by section 34 of Act 74 of 2002

55. (1) Section 47 of the Income Tax Act, 1962, is hereby amended—

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

"(1) For the purposes of this section 'liquidation distribution' means any transaction—

(a) in terms of which any company (hereinafter referred to as the 'liquidating company') **[disposes of]** distributes all its assets (other than assets it elects to use to settle any debts incurred by it in the ordinary course of its trade) to its shareholders in anticipation of or in the course of the liquidation, winding up or deregistration of that company, but only to the extent to which those assets are so disposed of to another company (hereinafter referred to as the 'holding company') which is a resident and which holds, on the date of that disposal, at least 75 per cent of the equity shares of that liquidating company; and

(b) in respect of which that liquidating company and that holding company have jointly elected that this section applies in respect of all the assets so disposed of by that liquidating company to that holding company.";

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

"(5) Where a holding company disposes of any equity share in a liquidating company as a result of the liquidation, winding up or deregistration of that liquidating company, that holding company must **[be treated to have disposed of that share for an amount equal to—**

***(a)* in the case of that share held as a capital asset, the base cost of that share on the date of that disposal; or**

***(b)* in the case of a share held as trading stock, the amount taken into account in respect of that share in terms of section 11*(a)* or 22(1) or (2)]**

disregard that disposal for purposes of determining its taxable income or assessed loss.";

(c) by the addition in subsection (6) to paragraph *(b)* of the following proviso:

"Provided that for purposes of determining whether that liquidating company is a domestic financial instrument holding company or a foreign financial instrument holding company, no regard shall be had to any financial instrument the market value of which is equal to its base cost."; and

(d) by the substitution in subsection (6) for the words in paragraph *(c)* preceding the proviso of the following words:

"*(c)* the liquidating company—

(i) has not, within a period of six months after the date of the liquidation distribution, taken **[such]** the steps contemplated in section 41(4) to liquidate, wind up or deregister **[that company]**; or

(ii) has at any stage withdrawn any step taken to liquidate, wind up or deregister that company, as contemplated in paragraph (i), or does anything to invalidate any step so taken, with the result that the company will not be liquidated, wound up or deregistered:".

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

Wysiging van artikel 47 van Wet 58 van 1962, soos herroep deur artikel 25 van Wet 21 van 1995 en ingevoeg deur artikel 34 van Wet 74 van 2002

55. (1) Artikel 47 van die Inkomstebelastingwet, 1962, word hierby gewysig—

(a) deur die vervanging van subartikel (1) deur die volgende subartikel:

"(1) By die toepassing van hierdie artikel beteken 'likwidasie-uitkering' 'n transaksie —

(a) ingevolge waarvan 'n maatskappy (hierna die 'likwiderende maatskappy' genoem) **[oor]** al sy bates (behalwe bates wat dit na keuse wil aanwend ter delging van skulde in die gewone loop van besigheid aangegaan) **[beskik]** aan sy aandeelhouers uitkeer in afwagting van of in die loop van die likwidasie of deregistrasie van daardie maatskappy, maar slegs tot die mate waarin daar oor daardie bates so beskik word aan 'n ander maatskappy (hierna die 'houermaatskappy' genoem) wat 'n inwoner is en wat op die datum van daardie beskikking minstens 75 persent van die ekwiteits-aandele van daardie likwiderende maatskappy hou; en

(b) ten opsigte waarvan daardie likwiderende maatskappy en daardie houermaatskappy gesamentlik die keuse uitgeoefen het dat hierdie artikel van toepassing is ten opsigte van al die bates aldus deur daardie likwiderende maatskappy aan daardie houermaatskappy beskik.";

(b) deur die vervanging van subartikel (5) deur die volgende subartikel:

"(5) Waar 'n houermaatskappy oor 'n ekwiteitsaandeel in 'n likwiderende maatskappy beskik as gevolg van die likwidasie van daardie likwiderende maatskappy, **[word]** moet daardie houer-maatskappy **[geag oor daardie aandeel te beskik het vir 'n bedrag gelykstaande aan—**

***(a)* in die geval waar daardie aandeel as 'n kapitaalbate gehou is, die basiskoste van daardie aandeel op die datum van daardie beskikking; of**

***(b)* in die geval waar daardie aandeel as handelsvoorraag gehou is, die bedrag wat ingevolge artikel 11*(a)* of 22(1) of (2) ten opsigte van daardie aandeel in berekening gebring is]** daardie beskikking buite rekening laat vir doeleindes van die vasstelling van sy belasbare inkomste of vasgestelde verlies.";

(c) deur die invoeging in subartikel (6) van die volgende voorbehoudsbepaling tot paragraaf *(b)*:

"Met dien verstande dat by die vasstelling of daardie likwiderende maatskappy 'n plaaslike finansiële instrumenthouermaatskappy of 'n buitelandse finansiële instrumenthouermaatskappy is, enige finansiële instrument waarvan die markwaarde gelyk is aan die basiskoste daarvan in geheel buite rekening gelaat moet word;"; en

(d) deur die vervanging in subartikel (6) van die woorde in paragraaf *(c)* wat die voorbehoudsbepaling voorafgaan deur die volgende woorde:

"*(c)* die likwiderende maatskappy—

(i) nie binne 'n tydperk van ses maande na die datum van die likwidasie-uikering, die stappe in artikel 41(4) bedoel gedoen het om **[daardie maatskappy]** te likwideer of deregistreer nie; of

(ii) op enige tydstip enige stap wat gedoen is om daardie maatskappy te likwideer of deregistreer, soos in paragraaf *(i)* bedoel, intrek of enigiets doen om enige sodanige stap aldus gedoen ongeldig te maak, wat tot gevolg het of sal hê dat die maatskappy nie gelikwideer of gederegistreer sal word nie:".

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

Amendment of section 56 of Act 58 of 1962, as amended by section 18 of Act 90 of 1964, section 25 of Act 55 of 1966, section 33 of Act 89 of 1969, section 38 of Act 85 of 1974, section 21 of Act 113 of 1977, section 13 of Act 101 of 1978, section 23 of Act 96 of 1981, section 31 of Act 94 of 1983, section 4 of Act 30 of 1984, section 28 of Act 121 of 1984, section 18 of Act 96 of 1985, section 21 of Act 85 of 1987, section 26 of Act 90 of 1988, section 28 of Act 141 of 1992, section 32 of Act 113 of 1993, section 18 of Act 36 of 1996, section 39 of Act 30 of 1998, section 38 of Act 30 of 2000, section 41 of Act 59 of 2000, section 45 of Act

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

"*(r)* by a company to any other company that is a member of the same group of companies as the company making that donation.".

(2) Subsection (1) shall be deemed to have come into operation on 1 October 2001 and shall apply in respect of any donation that takes effect on or after that date.

Amendment of section 61 of Act 58 of 1962, as amended by section 25 of Act 90 of 1988

57. Section 61 of the Income Tax Act, 1962, is hereby amended by the addition of the following paragraph:

"*(h)* any reference in section 76 to taxable income of a taxpayer is deemed to include a reference to the value of any property disposed of by that taxpayer under a donation.".

Amendment of section 64B of Act 58 of 1962, as inserted by section 34 of Act 113 of 1993 and amended by section 12 of Act 140 of 1993, section 24 of Act 21 of 1994, section 29 of Act 21 of 1995, section 21 of Act 36 of 1996, section 13 of Act 46 of 1996, section 25 of Act 28 of 1997, section 35 of Act 53 of 1999, section 39 of Act 30 of 2000, section 42 of Act 59 of 2000, section 18 of Act 5 of 2001, section 48 of Act 60 of 2001, section 25 of Act 30 of 2002 and section 36 of Act 74 of 2002

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

(a) by the deletion in subsection (1) of the word "and" at the end of subparagraph (i) of paragraph *(a)* of the definition of "dividend cycle";

(b) by the insertion in subsection (1) after subparagraph (ii) of paragraph *(a)* of the definition of "dividend cycle" of the following subparagraphs:

"(iii) the date on which that company was incorporated, formed or otherwise established; and

(iv) the date on which that company becomes a resident,";

(c) by the substitution in subsection (1) for the words following subparagraph (ii) of paragraph *(a)* of the definition of "dividend cycle" of the following words:

"and ending on the date on which such first dividend accrues to the shareholder concerned or on which the amount is deemed to have been distributed as contemplated in section 64C(2)";

(d) by the substitution in subsection (1) for the words following subparagraph (ii) of paragraph *(a*A*)* of the definition of "dividend cycle" of the following words:

"and ending on the date on which such first dividend accrues to the shareholder concerned or on which the amount is deemed to have been distributed as contemplated in section 64C(2); and";

(e) by the substitution in subsection (1) for paragraph *(b)* of the definition of "dividend cycle" of the following paragraph:

"*(b)* in relation to any subsequent dividend declared by that company, the period commencing immediately after the previous dividend cycle of the company and ending on the date on which such dividend accrues to the shareholder concerned or on which the amount is deemed to have been distributed as contemplated in section 64C(2).";

Wysiging van artikel 56 van Wet 58 van 1962, soos gewysig deur artikel 18 van Wet 90 van 1964, artikel 25 van Wet 55 van 1966, artikel 33 van Wet 89 van 1969, artikel 38 van Wet 85 van 1974, artikel 21 van Wet 113 van 1977, artikel 13 van Wet 101 van 1978, artikel 23 van Wet 96 van 1981, artikel 31 van Wet 94 van 1983, artikel 4 van Wet 30 van 1984, artikel 28 van Wet 121 van 1984, artikel 18 van Wet 96 van 1985, artikel 21 van Wet 85 van 1987, artikel 26 van Wet 90 van 1988, artikel 28 van Wet 141 van 1992, artikel 32 van Wet 113 van 1993, artikel 18 van Wet 36 van 1996, artikel 39 van Wet 30 van 1998, artikel 38 van Wet 30 van 2000, artikel 41 van Wet 59 van 2000, artikel 45 van Wet 60 van 2001 en artikel 35 van Wet 74 van 2002

56. (1) Artikel 56 van die Inkomstebelastingwet, 1962, word hierby gewysig deur die vervanging in subartikel (1) van paragraaf *(r)* deur die volgende paragraaf:

"*(r)* deur 'n maatskappy aan enige ander maatskappy wat 'n lid is van dieselfde groep van maatskappye as die maatskappy wat daardie skenking maak.".

(2) Subartikel (1) word geag op 1 Oktober 2001 in werking te getree het en is van toepassing ten opsigte van enige skenking wat op of na daardie datum in werking tree.

Wysiging van artikel 61 van Wet 58 van 1962, soos gewysig deur artikel 25 van Wet 90 van 1988

57. Artikel 61 van die Inkomstebelastingwet, 1962, word hierby gewysig deur die volgende paragraaf by te voeg:

"*(h)* enige verwysing in artikel 76 na belasbare inkomste van 'n belastingpligtige word geag 'n verwysing na die waarde van enige eiendom ingevolge 'n skenking deur daardie belastingpligtige oor beskik, in te sluit.".

Wysiging van artikel 64B van Wet 58 van 1962, soos ingevoeg deur artikel 34 van Wet 113 van 1993 en gewysig deur artikel 12 van Wet 140 van 1993, artikel 24 van Wet 21 van 1994, artikel 29 van Wet 21 van 1995, artikel 21 van Wet 36 van 1996, artikel 13 van Wet 46 van 1996, artikel 25 van Wet 28 van 1997, artikel 35 van Wet 53 van 1999, artikel 39 van Wet 30 van 2000, artikel 42 van Wet 59 van 2000, artikel 18 van Wet 5 van 2001, artikel 48 van Wet 60 van 2001, artikel 25 van Wet 30 van 2002 en artikel 36 van Wet 74 van 2002

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

(a) deur in subartikel (1) die woord "en" aan die enide van subparagraaf (i) van paragraaf *(a)* van die omskrywing van "dividendsiklus" te skrap;

(b) deur in subartikel (1) na subparagraaf (ii) van paragraaf *(a)* van die omskrywing van "dividendsiklus" die volgende subparagrawe by te voeg: "

"(iii) die datum waarop daardie maatskappy ingelyf, gevorm of andersins ingestel is; en

(iv) die datum waarop daardie maatskappy 'n inwoner word.";

(c) deur in subartikel (1) die woorde in die omskrywing van "dividendsiklus" wat subparagraaf (ii) van paragraaf *(a)* volg deur die volgende woorde te vervang:

"en eindigende op die datum waarop bedoelde eerste dividend aan die betrokke aandeelhouer toeval of waarop die bedrag geag word uitgekeer te gewees het soos in artikel 64C(2) bedoel;";

(d) deur in subartikel (1) die woorde in die omskrywing van "dividendsiklus" wat subparagraaf *(ii)* van paragraaf *(a*A*)* volg deur die volgende woorde te vervang:

"en eindigende op die datum waarop bedoelde eerste dividend aan die betrokke aandeelhouer toeval of waarop die bedrag geag word uitgekeer te gewees het soos in artikel 64C(2) bedoel; en";

(e) deur in subartikel (1) paragraaf *(b)* van die omskrywing van "dividendsiklus" deur die volgende paragraaf te vervang:

"*(b)* met betrekking tot 'n daaropvolgende dividend deur daardie maatskappy verklaar, die tydperk beginnende onmiddellik na die vorige dividendsiklus van die maatskappy en eindigende op die datum waarop bedoelde dividend aan die betrokke aandeelhouer toeval of waarop die bedrag geag word uitgekeer te gewees het soos in artikel 64C(2) bedoel;";

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

"The net amount of any dividend referred to in subsection (2) shall be the amount by which such dividend declared by a company exceeds the sum of any dividends (other than—

(a) any dividends contemplated in subsection (5)*(b)*, *(c)*, *(d)*, and *(f)*; **[or]**

(b) any foreign dividends **[as defined in section 9E]**; or

(c) any dividend which accrued to a borrower as contemplated in the definition of 'securities lending arrangement' in respect of a share which was borrowed in terms of such arrangement,

but including foreign dividends **[which]** to the extent that those foreign dividends are exempt in terms of **[section 9E(7)*(c)*, *(d)*, *(e)*(ii), (iii) or (iv) or *(f)*), or section 9E (8A)]** section 10(1)*(k)*(ii)*(aa)*), which have during the dividend cycle in relation to such firstmentioned dividend accrued to the company:";

(g) by the substitution in subsection (4) for the words in paragraph *(c)* preceding subparagraph (i) of the following words:

"Where any cash or assets is or are **[given]** transferred or distributed—";

(h) by the substitution in subsection (5) for paragraph *(a)* of the following paragraph:

"*(a)* dividends declared by any company the entire receipts and accruals of which, or so much of the receipts and accruals of which as are derived otherwise than from investments, are exempt from tax under the provisions of section 10: Provided that the provisions of this paragraph shall not apply to a company **[(other than a company referred to in section 10(1)*(s)*)]** which is exempt from tax under the said provisions solely because it derives gross income of a particular nature;";

(i) by the substitution in subsection (5) for subparagraph (ii) of paragraph *(c)* of the following subparagraph:

"(ii) distribution of profits of a capital nature (other than capital profits attributable to the disposal of any asset on or after 1 October 2001 which capital profits must, in the case of an asset acquired before that date, be limited to the amount of profit determined as if that asset had been acquired on 1 October 2001 for a cost equal to the market value of that asset on that date **[as]** determined in the manner contemplated in paragraph 29 of the Eighth Schedule): Provided that where that company became a resident after 1 October 2001, the capital profits in respect of an asset acquired before becoming a resident, must be limited to the amount of profit determined as if that asset had been acquired on the date of so becoming a resident for a cost equal to the market value of that asset on that date; or";

(j) by the addition in subsection (5) to paragraph *(c)* of the following subparagraph:

"(iii) distribution of profits derived by that company before that company became a resident:";

(k) by the substitution in subsection (5) for the words preceding subparagraph (i) of paragraph *(f)* of the following words:

"*(f)* any dividend declared by a company which accrues to a shareholder (as defined in Part III) of that company if—";

(l) by the substitution in subsection (5) for subparagraph (ii) of paragraph *(f)* of the following subparagraph:

" (ii) to the extent that the dividend is derived out of profits earned by **[the company declaring the dividend]** that company during any period when that company formed part of the same group of companies as the shareholder to whom the dividend **[was declared]** accrued";

(m) by the addition to subsection (5) of the word "and" at the end of subparagraph (iii) of paragraph *(f)*;

(n) by the deletion in subsection (5) of subparagraph (iv) of paragraph *(f)*;

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

"Die netto bedrag van 'n dividend bedoel in subartikel (2) is die bedrag waarmee daardie dividend deur 'n maatskappy verklaar die som van enige dividende, (behalwe—

(a) enige dividende beoog in subartikel (5)*(b)*, *(c)*, *(d)* en *(f)*; **[of]**

(b) enige buitelandse dividende **[in artikel 9E omskryf]**, of

(c) enige dividend wat aan 'n lener soos bedoel in die omskrywing van 'aandeleleningsreëling' toeval ten opsigte van 'n aandeel wat ingevolge so 'n reëling geleen is,

maar met inbegrip van buitelandse dividende **[wat]** in die mate wat daardie buitelandse dividende ingevolge artikel **[9E (7)** *(c)*, *(d)*, *(e)*(ii), (iii) of (iv) of *(f)*, of artikel 9E (8A)] 10(1)*(k)*(ii)*(aa)* vrygestel is), wat gedurende die dividendsiklus met betrekking tot bedoelde eersgenoemde dividend aan die maatskappy toeval, oorskry: Met dien verstande dat-";

(g) deur in subartikel (4) die woorde in paragraaf *(c)* wat subparagraaf (i) voorafgaan deur die volgende woorde te vervang:

"Waar enige kontant of bates **[gegee]** oorgedra of uitgekeer is—";

(h) deur in subartikel (5) paragraaf *(a)* deur die volgende paragraaf te vervang:

"(a) dividende uitgekeer deur 'n maatskappy waarvan die ontvangstes en toevallings geheel en al, of soveel van die ontvangstes en toevallings wat anders as wat by wyse van beleggings verkry is, ingevolge die bepalings van artikel 10 van belasting vrygestel is: Met dien verstande dat die bepalings van hierdie paragraaf nie van toepassing is nie op 'n maatskappy **[(behalwe 'n maatskappy bedoel in artikel 10(1)*(s)*)]** wat van belasting vrygestel is kragtens bedoelde bepalings bloot omrede hy bruto inkomste van 'n spesifieke aard verkry het;";

(i) deur in subartikel (5) subparagraaf *(ii)* van paragraaf *(c)* deur die volgende subparagraaf te vervang:

"(ii) uitkering van winste van 'n kapitale aard te wees (behalwe kapitale winste wat aan die beskikking oor 'n bate op of na 1 Oktober 2001 toeskryfbaar is, welke kapitale winste in die geval van 'n bate wat voor daardie datum verkry is, beperk word tot die bedrag van wins vasgestel asof daardie bate op 1 Oktober 2001 verkry is vir 'n koste gelykstaande aan die markwaarde van daardie bate op daardie datum, **[soos]** vasgestel op die wyse in paragraaf 29 van die Agtste Bylae bedoel): Met dien verstande dat waar 'n maatskappy na 1 Oktober 2001 'n inwoner geword het, word die kapitaalwinste ten opsigte van 'n bate wat verkry is voor die maatskappy 'n inwoner geword het, beperk tot die bedrag van wins vasgestel asof daardie bate verkry is op die datum waarop die maatskappy 'n inwoner geword het vir 'n koste gelyk aan die markwaarde van daardie bate op daardie datum; of";

(j) deur in subartikel (5) die volgende subparagraaf by paragraaf *(c)* te voeg:

"(iii) uitkering van winste deur daardie maatskappy verkry voor daardie maatskappy 'n inwoner geword het;";

(k) deur in subartikel (5) die woorde in paragraaf *(f)* wat subparagraaf (i) voorafgaan deur die volgende woorde te vervang:

"*(f)* 'n dividend deur 'n maatskappy wat toeval aan 'n aandeelhouer (soos in Deel III omskryf) van daardie maatskappy verklaar—";

(l) deur in subartikel (5) subparagraaf (ii) van paragraaf *(f)* deur die volgende subparagraaf te vervang:

"(ii) tot die mate wat die dividend verkry is uit winste wat deur daardie maatskappy **[wat die divdend verklaar]** verdien is gedurende enige tydperk wat daardie maatskappy deel gevorm het van dieselfde groep van maatskappye as die aandeelhouer aan wie die dividend **[verklaar is]** toegeval het;";

(m) deur in subartikel (5) die woord "en" aan die einde van subparagraaf *(iii)* van paragraaf *(f)* te voeg;

(n) deur in subartikel (5) subparagraaf *(iv)* van paragraaf *(f)* te skrap;

(o) by the addition in subsection (5) to paragraph *(f)* of the following proviso:

"Provided that for purposes of this paragraph, where that shareholder was formed solely by one or more companies within that group of companies, that shareholder must be deemed to have been in existence and to have been the controlling company in relation to that company declaring the dividend from the date on which the controlling company in relation to that shareholder was formed;";

(p) by the deletion of subsection (6);

(q) by the substitution in subsection (7) for the words preceding the proviso of the following words:

"(7) The secondary tax on companies shall be paid to the Commissioner by the company liable therefore**[—**

***(a)* where such tax is payable in respect of any dividend declared on or before 30 June 1993—**

(i) if a year of assessment of the company ended during the period from 1 December 1992 to 31 March 1993, by not later than 31 December 1993; and

(ii) in any other case, by not later than 31 July 1993; and

***(b)* where such tax is payable in respect of any dividend declared after 30 June 1993,]** by not later than the last day of the month following the month in which the dividend cycle relevant to such dividend ends and each payment of such tax shall be accompanied by a return in such form as the Commissioner may require:"; and

(r) by the deletion of subsection (10).

(2) *(a)* Subsection (1)*(f)* shall—

(i) to the extent that it inserts the provisions contained in paragraph *(c)* in subsection (3) come into operation on the date of promulgation of this Act and shall apply in respect of any dividend accrued in terms of any securities lending arrangement on or after that date; and

(ii) to the extent that it amends the rest of subsection (3), come into operation on 1 June 2004 and shall apply in respect of any dividends accrued during any year of assessment commencing on or after that date.

(b) Subsection (1)*(h)* shall come into operation on 1 January 2004 and shall apply in respect of any dividend declared by any company during any year of assessment commencing after that date.

(c) Subsection (1)*(j)* shall come into operation on 26 February 2003 and shall apply in respect of any dividend declared on or after that date.

(d) Subsection (1)*(l)*, *(m)*, *(n)* and *(o)* shall come into operation on the date of promulgation of this Act and shall apply in respect of any dividend declared on or after that date.

(e) Subsection (1)*(p)* shall come into operation on 1 June 2004 and shall apply in respect of any dividend declared on or after that date.

Amendment of section 64C of Act 58 of 1962, as inserted by section 34 of Act 113 of 1993 and amended by section 13 of Act 140 of 1993, section 25 of Act 21 of 1994, section 30 of Act 21 of 1995, section 22 of Act 36 of 1996, section 40 of Act 30 of 1998, section 36 of Act 53 of 1999, section 40 of Act 30 of 2000, section 43 of Act 59 of 2000, section 37 of Act 74 of 2002 and section 38 of Act 12 of 2003

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

(a) by the deletion in subsection (1) of the definition of "recipient";

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

"(2) For the purposes of section 64B, **[any]** an amount **[which is in terms of subsection (3) deemed to have been distributed by a company]** shall, subject to the provisions of subsection (4), be deemed to be a dividend declared by **[such]** a company **[out of that company's profits (determined in respect of the most recent year of assessment**

(o) deur in subartikel (5) die volgende voorbehoudsbepaling by paragraaf *(f)* te voeg:

"Met dien verstande dat by die toepassing van hierdie paragraaf, waar daardie aandeelhouer gevorm is uitsluitlik deur een of meer maatskappye binne daardie groep van maatskappye, word daardie aandeelhouer geag te bestaan het en om die beherende maatskappy met betrekking tot daardie maatskappy wat die dividend verklaar te gewees het vanaf die datum waarop die beherende maatskappy met betrekking tot daardie aandeelhouer gevorm is;";

(p) deur subartikel (6) te skrap;

(q) deur in subartikel (7) die woorde wat die voorbehoudsbepaling voorafgaan deur die volgende woorde te vervang:

"(7) Die sekondêre belasting op maatskappye word aan die Kommissaris betaal deur die maatskappy wat daarvoor aanspreeklik is[—

(a) **waar bedoelde belasting betaalbaar is ten opsigte van 'n dividend op of voor 30 Junie 1993 verklaar—**

(i) **indien 'n jaar van aanslag van die maatskappy geëindig het gedurende die tydperk vanaf 1 Desember 1992 tot 31 Maart 1993, teen nie later nie as 31 Desember 1993; en**

(ii) **in enige ander geval, teen nie later nie as 31 Julie 1993; en**

(b) **waar bedoelde belasting betaalbaar is ten opsigte van 'n dividend na 30 Junie 1993 verklaar,]** teen nie later nie as die laaste dag van die maand wat op die maand volg waarin die dividendsiklus toepaslik op bedoelde dividend eindig,

en elke betaling van bedoelde belasting gaan vergesel van 'n opgawe in die vorm wat die Kommissaris vereis:";

(r) deur subartikel (10) te skrap.

(2) *(a)* Subartikel (1)*(f)* tree in werking—

(i) in die mate wat dit die bepalings in paragraaf *(c)* van subartikel (3) invoeg, op die datum van afkondiging van hierdie Wet en is van toepassing ten opsigte van enige dividend toegeval ingevolge 'n aandeleleningsreëling op of na daardie datum; en

(ii) in die mate wat dit die res van subartikel (3) wysig, op 1 Junie 2004 en is van toepassing ten opsigte van enige dividend wat gedurende enige jaar van aanslag wat op of na daardie datum 'n aanvang neem, toeval.

(b) Subartikel (1)*(h)* tree in werking op 1 Januarie 2004 en is van toepassing ten opsigte van enige dividend deur 'n maatskappy verklaar gedurende 'n jaar van aanslag wat na daardie datum 'n aanvang neem.

(c) Subartikel (1)*(j)* tree op 26 February 2003 in werking en is van toepassing en is van toepassing ten opsigte van enige dividend op of na daardie datum verklaar.

(d) Subartikel (1)*(l)*, *(m)*, *(n)* en *(o)* tree in werking op die datum van afkondiging van hierdie Wet en is van toepassing ten opsigte van enige dividend op of na daardie datum verklaar.

(e) Subartikel (1)*(p)* tree op 1 Junie 2004 in werking en is van toepassing ten opsigte van enige dividend op of na daardie datum verklaar.

Wysiging van artikel 64C van Wet 58 van 1962, soos ingevoeg deur artikel 34 van Wet 113 van 1993 en gewysig deur artikel 13 van Wet 140 van 1993, artikel 25 van Wet 21 van 1994, artikel 30 van Wet 21 van 1995, artikel 22 van Wet 36 van 1996, artikel 40 van Wet 30 van 1998, artikel 36 van Wet 53 van 1999, artikel 40 van Wet 30 van 2000, artikel 43 van Wet 59 van 2000, artikel 37 van Wet 74 van 2002 en artikel 38 van Wet 12 van 2003

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

(a) deur in subartikel (1) die omskrywing van "ontvanger" te skrap;

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

"(2) By die toepassing van artikel 64B word **[enige]** 'n bedrag **[wat ingevolge subartikel (3) geag word deur 'n maatskappy uitgekeer te gewees het,]** behoudens die bepalings van subartikel (4) geag 'n dividend te wees deur **[bedoelde]** 'n maatskappy verklaar **[uit daardie maatskappy se winste (vasgestel ten opsigte van die mees onlangse**

and which are available for distribution), to a shareholder, where that shareholder] to a shareholder, where—

(a) **[receives a deemed distribution as contemplated in subsection (3); or]** any cash or asset is distributed or transferred by that company to or for the benefit of that shareholder or any connected person in relation to that shareholder;

(b) **[is a connected person in relation to any person who receives a deemed distribution as contemplated in subsection (3),]** the shareholder or any connected person in relation to that shareholder is released or relieved from any obligation measurable in money which is owed to that company by that shareholder or connected person;

(c) any debt owed by the shareholder or any connected person in relation to that shareholder to any third party is paid or settled by that company;

(d) any amount is used or applied by that company in any other manner for the benefit of the shareholder or any connected person in relation to that shareholder;

(e) that amount represents additional taxable income or reduced assessed loss of that company by virtue of any transaction with the shareholder or connected person in relation to such a shareholder, the consideration of which is adjusted in accordance with the provisions of section 31;

(f) the company ceases to be a resident to the extent profits and reserves of that company are available for distribution immediately before so ceasing to be a resident (including any amount deemed in terms of the definition of 'dividend' in section 1 to be a profit available for distribution): Provided that any prohibition or limitation on any distribution contained in the company's memorandum and articles of association or founding statement or any agreement must be disregarded; or

(g) any loan or advance is granted and made available to that shareholder or connected person in relation to that shareholder

[notwithstanding the fact that such amount may have been so distributed by way of a loan or credit to the recipient or that the recipient may in consequence of such distribution have assumed any other form of obligation to make a future payment to the company].";

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

(d) by the substitution in subsection (4) for the words preceding paragraph *(a)* of the following words:

"(4) The provisions of subsection **[(3)]** (2) shall not apply—";

(e) by the substitution in subsection (4) for paragraphs *(a)* and *(b)* of the following paragraphs:

"*(a)* where the **[distribution of such]** amount constitutes a dividend or would have constituted a dividend but for the provisions of paragraphs *(e)* to *(i)*, inclusive, of the definition of 'dividend' in section 1;

(b) where **[such]** the amount **[distributed]** constitutes remuneration in the hands of the **[recipient]** shareholder or any connected person in relation to that shareholder or the settlement of any debt owed by the company to the **[recipient]** shareholder or connected person;";

(f) by the substitution in subsection (4) for the words in paragraph *(c)* preceding the proviso of the following words:

"*(c)* to so much of any **[such]** amount **[distributed]** (other than an amount contemplated in subsection **[(3)]**(2)*(e)*) as exceeds the company's profits and reserves which are available for distribution,

jaar van aanslag en wat vir verdeling beskikbaar is)] aan 'n aandeelhouer, waar **[daardie aandeelhouer]**—

(a) **['n geagte uitkering in subartikel (3) bedoel ontvang]** enige kontant of bates uitgekeer is of oorgeplaas is deur daardie maatskappy aan of vir die voordeel van daardie aandeelhouer of enige verbonde persoon met betrekking tot daardie aandeelhouer; **[of]**

(b) **['n verbonde persoon is met betrekking tot enige persoon wat 'n geagte uitkering soos in subartikel (3) bedoel, ontvang,]** die aandeelhouer of verbonde persoon met betrekking tot die aandeelhouer onthef word van enige verpligting meetbaar in geld wat deur die aandeelhouer of verbonde persoon aan die maatskappy verskuldig is;

[ondanks die feit dat bedoelde bedrag aldus by wyse van 'n lening of krediet aan die ontvanger uitgekeer mag gewees het of dat die ontvanger ten gevolge van bedoelde uitkering enige ander vorm van verpligting mag aanvaar het om 'n toekomstige betaling aan die maatskappy te doen.]

(c) enige skuld deur die aandeelhouer of verbonde persoon met betrekking tot die aandeelhouer aan 'n derde party verskuldig deur die maatskappy betaal of vereffen word;

(d) 'n bedrag deur die maatskappy op enige ander wyse tot voordeel van die aandeelhouer of verbonde persoon met betrekking tot die aandeelhouer gebruik of aangewend is;

(e) daardie bedrag addisionele belasbare inkomste of verminderde vasgestelde verlies van daardie maatskappy verteenwoordig uit hoofde van enige transaksie met die aandeelhouer of verbonde persoon met betrekking tot die aandeelhouer, waarvan die vergoedig in ooreenstemming met die bepalings van artikel 31 aangepas is;

(f) die maatskappy ophou om 'n inwoner te wees in die mate wat winste en reserwes van daardie maatskappy beskikbaar is vir uitkering onmiddellik voor dit aldus opgehou het om 'n inwoner te wees (waarby ingesluit word enige bedrag wat ingevolge die omskrywing van 'dividend' in artikel 1 geag word 'n wins beskikbaar vir uitkering te wees): Met dien verstande dat enige verbod of beperking op enige uitkering in die maatskappy se akte van oprigting en statute of stigtingsverklaring of in enige ooreenkoms vervat, verontagsaam word; of

(g) enige lening of voorskot toegestaan en beskikbaar gemaak word aan daardie aandeelhouer of verbonde persoon met betrekking tot daardie aandeelhouer.";

(c) deur subartikel (3) te skrap;

(d) deur in subartikel (4) die woorde wat paragraaf *(a)* voorafgaan deur die volgende woorde te vervang:

"(4) Die bepalings van subartikel **[(3)]** (2) is nie van toepassing nie—";

(e) deur in subartikel (4) paragrawe *(a)* en *(b)* deur die volgende paragrawe te vervang:

"(a) waar die **[uitkering van bedoelde]** bedrag 'n dividend uitmaak, of 'n dividend sou uitgemaak het indien dit nie vir die bepalings van paragrawe *(e)* tot en met *(i)* van die omskrywing van 'dividend' in artikel 1 was nie;

(b) waar **[bedoelde]** die bedrag **[uitgekeer]** besoldiging in die hande van die **[ontvanger]** aandeelhouer of verbonde persoon met betrekking tot daardie aandeelhouer uitmaak of die vereffening van 'n skuld deur die maatskappy aan die **[ontvanger]** aandeelhouer of verbonde persoon verskuldig, uitmaak;";

(f) deur in subartikel (4) die woorde in paragraaf *(c)* wat die voorbehoudsbepaling voorafgaan deur die volgende woorde te vervang:

"(c) op soveel van enige **[bedoelde]** bedrag **[uitgekeer]** (behalwe 'n bedrag in subartikel **[(3)]**(2)*(e)* beoog) as wat die maatskappy se winste en reserwes wat vir uitkering beskikbaar is, oorskry, met

including any amount deemed in terms of the definition of 'dividend' in section 1 to be a profit available for distribution:";

(g) by the substitution in subsection (4) for paragraphs *(d)* and *(e)* of the following paragraphs:

"*(d)* to any loan granted in respect of which a rate of interest not less than the 'official rate of interest', as defined in paragraph 1 of the Seventh Schedule is payable by the **[recipient]** shareholder or any connected person in relation to the shareholder;

(e) to any loan granted to the **[recipient]** shareholder or any connected person in relation to the shareholder if the **[recipient]** shareholder or connected person is an employee of the company or an associated institution contemplated in paragraph 1 of the Seventh Schedule in relation to the company and such loan is granted under, and in compliance with the normal terms and conditions of, a loan scheme generally available to employees of the company or of the associated institution who are not shareholders;";

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

"*(f)* to any loan or credit granted to a **[recipient]** shareholder of the company or any connected person in relation to the shareholder during any year of assessment, if—";

(i) by the substitution in subsection (4) for subparagraph (ii) of paragraph *(f)* of the following subparagraph:

"(ii) the amount thereof is not included in any subsequent loan or credit granted to the **[recipient]** shareholder or any connected person in relation to the shareholder; and";

(j) by the deletion in subsection (4) of paragraph *(h)*;

(k) by the deletion in subsection (4) of the word "and" at the end of paragraph *(i)*;

(l) by the substitution in subsection (4) for paragraph *(j)* of the following paragraph:

"*(j)* to any loan granted to any **[recipient]** shareholder or connected person in relation to the shareholder, which is a company by any other company which holds for its own benefit, whether directly or indirectly, any of the equity share capital of such **[recipient company]** shareholder or connected person: Provided that the provisions of this paragraph shall not apply where such **[recipient company]** shareholder or connected person holds any of the equity share capital in such other company;";

(m) by the addition to subsection (4) of the following paragraphs:

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

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

(ii) to the extent that the amount of the profits and reserves available for distribution that was taken into account in terms of section 64C(4)*(c)* were derived during the period that the shareholder was a member of the same group of companies as the company which is deemed to have declared that dividend; and

(l) to any amount contemplated in subsection (2)*(a)*, *(b)*, *(c)*, *(d)* or *(g)* distributed, transferred, released, relieved, paid, settled, used, applied, granted or made available by a company for the benefit of any controlled group company in relation to that company.";

inbegrip van enige bedrag wat ingevolge die omskrywing van "dividend" in artikel 1 geag word 'n wins beskikbaar vir uitkering te wees:";

(g) deur in subartikel (4) paragrawe *(d)* en *(e)* deur die volgende paragrawe te vervang:

"*(d)* op enige lening toegestaan ten opsigte waarvan 'n rentekoers van minstens die "amptelike rentekoers" in paragraaf 1 van die Sewende Bylae omskryf deur die **[ontvanger]** aandeelhouer of verbonde persoon met betrekking tot die aandeelhouer betaalbaar is;

(e) op enige lening aan die **[ontvanger]** aandeelhouer of verbonde persoon met betrekking tot die aandeelhouer toegestaan indien die **[ontvanger]** aandeelhouer of verbonde persoon 'n werknemer van die maatskappy of 'n verwante inrigting beoog in paragraaf 1 van die Sewende Bylae met betrekking tot die maatskappy is en bedoelde lening toegestaan is kragtens en ooreenkomstig die normale bedinge en voorwaardes van 'n leningskema wat algemeen beskikbaar is aan die werknemers van die maatskappy of van die verwante inrigting wat nie aandeelhouers is nie;";

(h) deur in subartikel (4) die woorde in paragraaf *(f)* wat subparagraaf *(i)* voorafgaan deur die volgende woorde te vervang:

"*(f)* op enige lening of krediet aan 'n **[ontvanger]** aandeelhouer van die maatskappy of verbonde persoon met betrekking tot die aandeelhouer toegestaan gedurende 'n jaar van aanslag, indien-";

(i) deur in subartikel (4) subparagraaf *(ii)* van paragraaf *(f)* deur die volgende subparagraaf te vervang:

"(ii) die bedrag daarvan nie ingesluit word in enige daaropvolgende lening of krediet aan die **[ontvanger]** aandeelhouer of verbonde persoon met betrekking tot die aandeelhouer toegestaan nie; en";

(j) deur in subartikel (4) paragraaf *(h)* te skrap;

(k) deur in subartikel (4) die woord "en" aan die einde van paragraaf (i) te skrap;

(l) deur in subartikel (4) paragraaf *(j)* deur die volgende paragraaf te vervang:

"*(j)* op enige lening aan 'n **[ontvanger]** aandeelhouer of verbonde persoon met betrekking tot die aandeelhouer wat 'n maatskappy is, toegestaan deur enige ander maatskappy wat vir sy eie belang, hetsy direk of indirek, enige van die ekwiteitsaandelekapitaal van bedoelde **[ontvanger-maatskappy]** aandeelhouer of verbonde persoon hou: Met dien verstande dat die bepalings van hierdie paragraaf nie van toepassing is nie waar bedoelde **[ontvanger-maatskappy]** aandeelhouer of verbonde persoon enige van die ekwiteits-aandelekapitaal in bedoelde ander maatskappy hou nie;";

(m) deur in subartikel (4) die volgende paragrawe by te voeg:

"*(k)* op enige bedrag in subartikel (2)*(a)*, *(b)*, *(c)*, *(d)* of *(g)* bedoel uitgekeer, oorgeplaas, onthef, opgehef, betaal, vereffen, gebruik, aangewend, toegestaan of beskikbaar gemaak vir die voordeel van enige aandeelhouer wat 'n inwoner is of enige verbonde persoon met betrekking tot die aandeelhouer, wat 'n inwoner is—

(i) indien daardie aandeelhouer 'n maatskappy is wat 'n lid is van dieselfde groep van maatskappye as die maatskappy wat geag word daardie dividend te verklaar het; en

(ii) in die mate wat die bedrag van die winste en reserwes beskikbaar is vir uitkeuring wat in berekening gebring is ingevolge artikel 64C(4)*(c)* verkry is gedurende die tydperk wat die aandeelhouer 'n lid was van dieslefde groep van maatskappye as die maatskappy wat geag word die dividend te verklaar het; en

(l) op enige bedrag in subartikel (2)*(a)*, *(b)*, *(c)*, *(d)* of *(g)* bedoel uitgekeer, oorgeplaas, onthef, opgehef, betaal, vereffen, gebruik, aangewend, toegestaan of beskikbaar gemaak vir die voordeel van enige beheerde groepsmaatskappy met betrekking tot daardie maatskappy.";

(n) by the substitution in subsection (5) for the words preceding paragraph *(a)* of the following words:

"(5) Where any loan granted by a company to a **[recipient]** shareholder or any connected person in relation to the shareholder—";

(o) by the substitution in subsection (5) for paragraph *(b)* of the following paragraph:

"*(b)* is thereafter wholly or partly repaid by the **[recipient]** shareholder or connected person,"; and

(p) by the addition of the following subsection:

"(6) For purposes of this section and section 64B, the dividend contemplated in subsection (2)*(a)*, *(b)*, *(c)*, *(d)* and *(f)* shall respectively be deemed to have been declared by the company on the date that the cash or asset is distributed or transferred, the obligation is released or relieved, the debt is paid or settled, the amount is used or applied or the loan or advance is made available, as the case may be.".

(2) Subsection (1) shall come into operation on the date of promulgation of this Act and shall apply in respect of any cash or asset distributed, any obligation relieved, any debt settled, any amount applied, any adjustment or any loan or advance granted on or after that date.

Substitution of section 65 of Act 58 of 1962

60. The following section hereby substitutes section 65 of the Income Tax Act, 1962:

"Returns to be in form and submitted at place prescribed by Commissioner

65. All forms of returns and other forms required for the administration of this Act shall be in such form and be submitted at such place as may be prescribed by the Commissioner from time to time.".

Amendment of section 66 of Act 58 of 1962, as amended by section 10 of Act 6 of 1963, section 19 of Act 90 of 1964, section 27 of Act 88 of 1971, section 22 of Act 91 of 1982, section 19 of Act 65 of 1986, section 23 of Act 85 of 1987, section 37 of Act 101 of 1990, section 26 of Act 21 of 1994, section 41 of Act 30 of 2000, section 19 of Act 5 of 2001, section 17 of Act

61. Section 66 of the Income Tax Act, 1962, is hereby amended—

(a) by the addition in subsection (13) to paragraph *(a)* of the following proviso:

"Provided that where—

(a) a person dies, a return shall be made for the period commencing on the first day of that year of assessment and ending on the date of death;

(b) the estate of a person is sequestrated, separate returns must be made for the periods—

(i) commencing on the first day of that year of assessment and ending on the date preceding the date of sequestration; and

(ii) commencing on the date of sequestration and ending on the last day of that year of assessment."; and

(b) by the substitution in the Afrikaans text for paragraph *(b)* of subsection (13) of the following paragraph:

"*(b)* in die geval van 'n maatskappy, vir die hele tydperk van die betrokke **[finansiële jaar]** boekjaar van daardie maatskappy wat die jaar van aanslag uitmaak.".

(n) deur in subartikel (5) die woorde wat paragraaf *(a)* voorafgaan deur die volgende woorde te vervang:

"(5) Waar 'n lening wat deur 'n maatskappy aan 'n **[ontvanger]** aandeelhouer of verbonde persoon met betrekking tot die aandeelhouer toegestaan is—";

(o) deur in subartikel (5) paragraaf *(b)* deur die volgende paragraaf te vervang:

"*(b)* daarna geheel of gedeeltelik deur die **[ontvanger]** aandeelhouer of verbonde persoon terugbetaal word,";

(p) deur die volgende subartikel by te voeg:

"(6) By die toepassing van hierdie artikel en artikel 64B, word die dividend in subartikel (2)*(a)*, *(b)*, *(c)*, *(d)* en *(f)* bedoel onderskeidelik geag deur die maatskappy verklaar te gewees het op die datum wat die kontant of bate uitgekeer of oorgeplaas is, die verpligting onthef of opgehef is, die skuld betaal of vereffen is, die bedrag gebruik of aangewend is of die lening of voorskot beskikbaar gemaak is, na gelang van die geval.".

(2) Subartikel (1) tree in werking op die datum van afkondiging van hierdie Wet en is van toepassing ten opsigte van enige kontant of bate uitgekeer, enige verpligting opgehef, enige skuld betaal, enige bedrag aangewend, enige aanpassing of enige lening of voorskot toegestaan op of na daardie datum.

Vervanging van artikel 65 van Wet 58 van 1962

60. Die volgende artikel vervang hierby artikel 65 van die Inkomstebelastingwet, 1962:

"Opgawes in vorm te wees en ingedien te word by plek deur Kommissaris voorgeskryf [te wees]

65. Alle vorms van opgawes en ander vorms wat by die uitvoering van hierdie Wet nodig is, is in die vorm en word ingedien by die plek wat die Kommissaris van tyd tot tyd voorskryf.".

Wysiging van artikel 66 van Wet 58 van 1962, soos gewysig deur artikel 10 van Wet 6 van 1963, artikel 19 van Wet 90 van 1964, artikel 27 van Wet 88 van 1971, artikel 22 van Wet 91 van 1982, artikel 19 van Wet 65 van 1986, artikel 23 van Wet 85 van 1987, artikel 37 van Wet 101 van 1990, artikel 26 van Wet 21 van 1994, artikel 41 van Wet 30 van 2000, artikel 19 van Wet 5 van 2001, artikel 17 van Wet

61. Artikel 66 van die Inkomstebelastingwet, 1962, word hierby gewysig—

(a) deur in subartikel (13) die volgende voorbehoudsbepaling by paragraaf *(a)* te voeg:

"Met dien verstande dat waar—

(a) 'n persoon te sterwe kom, 'n opgawe ingedien moet word vir die tydperk wat begin op die eerste dag van daardie jaar van aanslag en eindig op die datum van dood;

(b) die boedel van 'n persoon gesekwestreer is, aparte opgawes ingedien moet word vir die tydperke—

(i) wat begin op die eerste dag van daardie jaar van aanslag en eindig op die datum wat die datum van sekwestrasie voorafgaan; en

(ii) wat begin op die datum van sekwestrasie en eindig op die laaste dag van daardie jaar van aanslag;"; en

(b) deur in subartikel (13) paragraaf *(b)* deur die volgende paragraaf te vervang:

"*(b)* in die geval van 'n maatskappy, vir die hele tydperk van die betrokke **[finansiële jaar]** boekjaar van daardie maatskappy wat die jaar van aanslag uitmaak.".

Insertion of section 67 in Act 58 of 1962

62. The following section is hereby inserted in the Income Tax Act, 1962, after section 66:

"Registration as taxpayer

67. (1) Every person who at any time becomes liable for any normal tax or who becomes liable to submit any return contemplated in section 66 must, within 60 days after so becoming a taxpayer, apply to the Commissioner to be registered as a taxpayer.

(2) Subsection (1) does not apply in respect of any person whose income is derived solely from net remuneration, as defined in paragraph 11B of the Fourth Schedule, and the employees' tax required to be deducted or withheld from that net remuneration under the Fourth Schedule consists solely of Standard Income Tax on Employees.".

Amendment of section 70 of Act 58 of 1962, as amended by section 11 of Act 6 of 1963, section 20 of Act 90 of 1964, section 43 of Act 85 of 1974, section 24 of Act 69 of 1975, section 26 of Act 28 of 1997, section 37 of Act 53 of 1999, section 42 of Act 30 of 2000, section 44 of Act 59 of 2000 and section 49 of Act 60 of 2001

63. Section 70 of the Income Tax Act, 1962, is hereby amended by the deletion in subsection (2) of paragraph *(b)*.

Amendment of section 70B of Act 58 of 1962, as inserted by section 21 of Act 5 of 2001 and amended by section 50 of Act 60 of 2001

64. Section 70B of the Income Tax Act, 1962, is hereby amended by the substitution for subsection (1) of the following subsection:

"(1) Every person who administers a portfolio of financial instruments, **[as defined in the Eighth Schedule]**, on behalf of any other person and has the mandate of that other person to buy and sell any such financial instruments on such other person's behalf, shall furnish to the Commissioner an annual return in such form and within such time and containing such information as the Commissioner may prescribe.".

Substitution of section 72A of Act 58 of 1962, as inserted by section 46 of Act 59 of 2000 and amended by section 42 of Act 74 of 2002

65. (1) The following section hereby substitutes section 72A of the Income Tax Act, 1962:

"Return [as to participation right in] relating to controlled foreign company

72A. (1) Every resident who on the last day of the foreign tax year of a controlled foreign company or immediately before a foreign company ceases to be a controlled foreign company directly or indirectly, together with any connected person in relation to that resident, holds at least 10 per cent of the participation rights in any controlled foreign company (otherwise than indirectly through a company which is a resident), must submit to the Commissioner together with the return contemplated in section 66 in respect of that year of assessment a return containing—

(a) the name, address and country of residence of the controlled foreign company;

(b) a description of the various classes of participation rights in that controlled foreign company;

Invoeging van artikel 67 in Wet 58 van 1962

62. Die volgende artikel word hierby in die Inkomstebelastingwet, 1962, ingevoeg na artikel 66:

"**Registrasie as belastingpligtige**

67. (1) Elke persoon wat op enige tydstip aanspreeklik word vir enige normale belasting of wie verplig word om 'n opgawe in artikel 66 bedoel in te dien, moet binne 60 dae na daardie persoon aldus 'n belastingpligtige word, by die Kommissaris registreer as belastingpligtige.

(2) Subartikel (1) is nie van toepassing nie ten opsigte van 'n persoon wie se inkomste uitsluitlik van netto besoldiging, soos in paragraaf 11B van die Vierde Bylae omskryf, verkry word, en die werknemersbelasting wat vereis word afgetrek of teruggehou te word van daardie netto besolding kragtens die Vierde Bylae slegs uit Standaard Inkomstebelasting op Werknemers bestaan.".

Wysiging van artikel 70 van Wet 58 van 1962, soos gewysig deur artikel 11 van Wet 6 van 1963, artikel 20 van Wet 90 van 1964, artikel 43 van Wet 85 van 1974, artikel 24 van Wet 69 van 1975, artikel 26 van Wet 28 van 1997, artikel 37 van Wet 53 van 1999, artikel 42 van Wet 30 van 2000, artikel 44 van Wet 59 van 2000 en artikel 49 van Wet 60 van 2001

63. Artikel 70 van die Inkomstebelastingwet, 1962, word hierby gewysig deur in subartikel (2) paragraaf *(b)* te skrap.

Wysiging van artikel 70B van Wet 58 van 1962, soos ingevoeg deur artikel 21 van Wet 5 van 2001 en gewysig deur artikel 50 van Wet 60 van 2001

64. Artikel 70B van die Inkomstebelastingwet, 1962, word hierby gewysis deur subartikel (1) deur die volgende subartikel te vervang:

"(1) Elke persoon wat 'n portefeulje van finansiële instrumente**[, soos in die Agtste Bylae omskryf,]** namens enige ander persoon bestuur en wat die mandaat van daardie ander persoon het om enige sodanige finansiële instrumente namens daardie ander persoon te koop of te verkoop, moet aan die Kommissaris 'n jaarlikse opgawe verstrek, in daardie vorm en binne daardie tydperk en wat daardie inligting vervat as wat die Kommissaris mag voorskryf.".

Vervanging van artikel 72A van Wet 58 van 1962, soos ingevoeg deur artikel 46 van Wet 59 van 2000 en gewysig deur artikel 42 van Wet 74 van 2002

65. Artikel 72A van die Inkomstebelastingwet, 1962, word hierby deur die volgende artikel vervang:

"**Opgawe rakende [deelnemende reg in] beheerde buitelandse maatskappy**

72A. (1) Elke inwoner wie op die laaste dag van die buitelandse belastingjaar van 'n beheerde buitelandse maatskappy of onmiddellik voor 'n buitelandse maatskappy ophou om 'n beheerde buitelandse maatskappy te wees direk of indirek, tesame met enige verbonde persoon met betrekking tot daardie inwoner, minstens 10 persent van die deelnemende regte in enige beheerde buitelandse maatskappy hou (andersins as indirek deur 'n maatskappy wat 'n inwoner is), moet aan die Kommissaris tesame met die opgawe in artikel 66 bedoel ten opsigte van daardie jaar van aanslag, 'n opgawe indien wat uiteensit—

(a) die naam, adres en land van inwoning van die beheerde buitelandse maatskappy;

(b) 'n beskrywing van die verskillende klasse van deelnemende regte in daardie beheerde buitelandse maatskappy;

(c) the percentage and class of participation rights held by the resident, whether directly, indirectly or together with connected persons and any such rights held by all connected persons;

(d) the rights of that person to participate in—

(i) any dividends of that controlled foreign company; and

(ii) any distribution upon the liquidation of that controlled foreign company,

and any such rights of all connected persons;

(e) the determination of the net income of the controlled foreign company and the calculation of the proportional amount relating thereto;

(f) a description of any amount of tax proved to be payable by that controlled foreign company to the government of any other country in respect of any income contemplated in paragraph *(e)*, including particulars relating to the country in which that tax was payable and the underlying profits to which that foreign tax relates.

(2) A resident must together with the return contemplated in subsection (1), submit a copy of the financial statements of the controlled foreign company (prepared in accordance with generally accepted accounting practice) for the relevant foreign tax year, as defined in section 9D, of that controlled foreign company in respect of which there is an inclusion in the income of that resident in terms of section 9D.

(3) Where a person in respect of any year of assessment fails to comply with the provisions of—

(a) subsection (1)*(c)* in respect of the participation rights held in any controlled foreign company and no reasonable grounds exist for that person to believe that such person was not subject to that requirement—

(i) that person shall be deemed to hold all the participation rights in that controlled foreign company for purposes of section 9D, unless that person proves otherwise;

(ii) the exclusions contemplated in section 9D(9) shall not apply in determining the proportional amount of the net income of that controlled foreign company which must be included in the income of that person in terms of section 9D; and

(iii) the provisions of section 6*quat* shall not apply in respect of any tax proved to be payable to the government of any other country with respect to the proportional amount of the net income of that controlled foreign company which is included in the income of that person in terms of section 9D; or

(b) subsection (2) and no reasonable grounds exist either for that failure which is outside the control of the person or for that person to believe that such person was not subject to that requirement—

(i) the proportional amount which must be included in the income of that person in terms of section 9D for that year shall be determined with reference only to the receipts and accruals of the controlled foreign company; and

(ii) the provisions of section 6*quat* shall not apply in respect of any tax proved to be payable to the government of any other country with respect to the proportional amount of the net income of that controlled foreign company which is included in the income of that person in terms of section 9D.".

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

(c) die persentasie en klas van deelnemende regte deur die inwoner gehou, hetsy direk, indirek of tesame met verbonde persone en enige sodanige regte deur alle verbonde persone gehou;

(d) die regte van daardie persoon om te deel in—

(i) enige dividende van daardie beheerde buitelandse maatskappy; en

(ii) enige uitkering by likwidasie van daardie beheerde buitelandse maatskappy,

en enige sodanige regte van alle verbonde persone;

(e) die vasstelling van die netto inkomste van die beheerde buitelandse maatskappy en die berekening van die proporsionele bedrag wat daarmee verband hou;

(f) 'n omskrywing van enige bedrag aan belasting wat bewys word betaalbaar te wees deur daardie beheerde buitelandse maatskappy aan die regering van enige ander land ten opsigte van enige inkomste in paragraaf *(e)* bedoel, waarby ingesluit besonderhede met betrekking tot die land waarin die belasting betaalbaar was en die onderliggende winste waarmee daardie buitelandse belasting verband hou.

(2) 'n Inwoner moet, tesame met die opgawe in subartikel (1) bedoel, 'n afskrif indien van die finansiële state van die beheerde buitelandse maatskappy (voorberei ooreenkomstig algemeen aanvaarde rekenkundige praktyk) vir die betrokke buitelandse belastingjaar, soos in artikel 9D omskryf, van daardie beheerde buitelandse maatskappy ten opsigte waarvan daar 'n insluiting by die inkomste van daardie inwoner is kragtens artikel 9D.

(3) Waar 'n persoon ten opsigte van enige jaar van aanslag nalaat om te voldoen aan die bepalings van—

(a) subartikel (1)*(c)*, ten opsigte van die deelnemende regte gehou in enige beheerde buitelandse maatskappy en geen redelike gronde bestaan vir daardie persoon om te glo dat daardie persoon nie aan daardie vereiste onderhewig wat nie—

(i) word daardie persoon geag al die deelnemende regte in daardie beheerde buitelandse maatskappy te hou by die toepassing van artikel 9D, tensy daardie persoon anders bewys;

(ii) is die uitsluitings in artikel 9D(9) bedoel nie van toepassing nie ten opsigte van die proposionele bedrag van die netto inkomste van daardie beheerde buitelandse maatskappy wat by die inkomste van daardie persoon ingevolge artikel 9D ingesluit moet word; en

(iii) is die bepalings van artikel 6*quat* nie van toepassing nie ten opsigte van enige belasting wat bewys word betaalbaar te wees aan die regering van enige ander land ten opsigte van die proposionele bedrag van die netto inkomste van daardie beheerde buitelandse maatskappy wat by die inkomste van daardie persoon ingevolge artikel 9D ingesluit is; of

(b) subartikel (2) en geen redelike gronde bestaan nie óf vir daardie nalate wat buite die beheer van die persoon is óf vir daardie persoon om te glo dat daardie persoon nie aan daardie vereise onderhewig was nie—

(i) word die proportionele bedrag wat by die inkomste van daardie persoon ingevolge artikel 9D ingesluit moet word vir daardie jaar, vasgestel met verwysing slegs na die ontvangste en toevallings van die beheerde buitelandse maatskappy; en

(ii) is die bepalings van artikel 6*quat* nie van toepassing nie ten opsigte van enige belasting wat bewys word betaalbaar te wees aan die regering van enige ander land met betrekking tot die proporsionele bedrag van die netto inkomste van daardie beheerde buitelandse maatskappy wat by die inkomste van daardie persoon ingevolge artikel 9D ingesluit word.".

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

Amendment of section 73A of Act 58 of 1962, as inserted by section 22 of Act 5 of 2001 and amended by section 43 of Act 74 of 2002

66. Section 73A of the Income Tax Act, 1962, is hereby amended—

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

"**Record keeping by persons [deriving income other than remuneration] who render returns**"; and

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

"*(b)* any **[data created by means of a "computer" as defined in section 1 of the Computer Evidence Act, 1983 (Act No. 57 of 1983) including data in the electronic form in which it was originally created or in which it is stored for the purposes of backing up such data]** electronic representations of information in any form,".

Amendment of section 74 of Act 58 of 1962, as substituted by section 14 of Act 46 of 1996 and amended by section 27 of Act 28 of 1997 and section 51 of Act 60 of 2001

67. Section 74 of the Income Tax Act, 1962, is hereby amended by the substitution in subsection (1) for the definitions of "documents" and "information" of the following definitions:

" 'documents' include any document, book, marketable security, record, account, deed, plan, instrument, trade list, stock list, brokers note, affidavit, certificate, photograph, map, drawing and any **['computer print-out' as defined in section 1 of the Computer Evidence Act, 1983 (Act No. 57 of 1983)]** printout of information generated, sent, received, stored, displayed or processed by electronic means;

'information' includes any **[data stored by means of a 'computer' as defined in section 1 of the Computer Evidence Act, 1983]** electronic representations of information in any form;".

Amendment of section 75 of Act 58 of 1962, as amended by section 40 of Act 101 of 1990, section 34 of Act 129 of 1991, section 30 of Act 141 of 1992, section 35 of Act 113 of 1993, section 27 of Act 21 of 1994, section 15 of Act 46 of 1996, section 39 of Act 53 of 1999, section 44 of Act 30 of 2000, section 23 of Act 5 of 2001, section 18 of Act 19 of 2001, section 52 of Act 60 of 2001 and section 45 of Act 74 of 2002

68. (1) Section 75 of the Income Tax Act, 1962, is hereby amended by the insertion in subsection (1) after paragraph *(a)* of the following paragraph:

*(a*A*)* any person who fails to register as a taxpayer as contemplated in section 67;".

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

Insertion of section 76A in Act 58 of 1962

69. (1) The following section is hereby inserted in the Income Tax Act, 1962, after section 76:

"Reportable Arrangements

76A. (1) For purposes of this section—

'arrangement' means any transaction, operation or scheme;

'reportable arrangement' means—

(a) any arrangement in terms of which—

(i) the calculation of interest as defined in section 24J, finance

Wysiging van artikel 73A van Wet 58 van 1962, soos ingevoeg deur artikel 22 van Wet 5 van 2001 en gewysig deur artikel 43 van Wet 74 van 2002

66. Artikel 73A van die Inkomstebelastingwet, 1962, word hierby gewysig—

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

"**Rekordhouding deur persone wat [inkomste anders as besoldiging verkry] opgawes indien**";

(b) deur in subartikel (2) paragraaf *(b)* deur die volgende paragraaf te vervang: "

(b) enige **[data deur 'n "rekenaar" soos omskryf in artikel 1 van die Wet op Rekenaargetuienis, 1983 (Wet 57 van 1983), geskep insluitende data in die elektroniese formaat waarin dit oorspronklik geskep is of waarin dit bewaar word vir doeleindes van die rugsteun van sodanige data,]** elektroniese voorstelling van inligting in enige vorm.".

Wysiging van artikel 74 van Wet 58 van 1962, soos vervang deur artikel 14 van Wet 46 van 1996 en gewysig deur artikel 27 van Wet 28 van 1997 en artikel 51 van Wet 60 van 2001

67. Artikel 74 van die Inkomstebelastingwet, 1962, word hierby gewysig deur in subartikel (1) die omskrywings van "dokumente" en "inligting" deur die volgende omskrywings te vervan:

" 'dokumente' ook enige dokument, boek, rekord, rekening, akte, plan, instrument, handelslys, voorraadlys, beëdigde verklaring, sertifikaat, foto, kaart, tekening en enige **["rekenaardrukstuk" soos omskryf in artikel 1 van die Wet op Rekenaargetuienis, 1983 (Wet 57 van 1983)]** uitdruk van inligting wat op elektroniese wyse gegenereer, gestuur, ontvang, gestoor, vertoon of geprosesseer is;

"inligting" ook enige **[data gestoor deur middel van 'n "rekenaar" soos omskryf in artikel 1 van die Wet op Rekenaargetuienis, 1983]** elektroniese voorstelling van inligting in enige vorm;".

Wysiging van artikel 75 van Wet 58 van 1962, soos gewysig deur artikel 40 van Wet 101 van 1990, artikel 34 van Wet 129 van 1991, artikel 30 van Wet 141 van 1992, artikel 35 van Wet 113 van 1993, artikel 27 van Wet 21 van 1994, artikel 15 van Wet 46 van 1996, artikel 39 van Wet 53 van 1999, artikel 44 van Wet 30 van 2000, artikel 23 van Wet 5 van 2001, artikel 18 van Wet 19 van 2001, artikel 52 van Wet 60 van 2001 en artikel 45 van Wet 74 van 2002

68. (1) Artikel 75 van die Inkomstebelastingwet, 1962, word hierby gewysig deur in subartikel (1) die volgende paragraaf na paragraaf *(a)* in te voeg:

"*(a*A) 'n persoon wat nalaat om as 'n belastingpligtige te registreer soos in artikel 67 bedoel;".

(2) Subartikel (1) tree inwerking op die datum van afkondiging van hierdie Wet en is van toepassing ten opsigte van enige nalate om te registreer op of na daardie datum.

Invoeging van artikel 76A in Wet 58 van 1962

69. (1) Die volgende artikel word hierby in die Inkomstebelastingwet, 1962, ingevoeg na artikel 76:

"**Rapporteerbare reëlings**

76A. (1) By die toepassing van hierdie artikel beteken—

'belastingvoordeel' enige vermindering in of uitstel van die aanspreeklikheid van 'n persoon vir enige belasting, reg, heffing, tarief of ander bedrag ingevolge enige Wet deur die Kommissaris geadministreer gebaseer op die verwagte belastinghantering van die reëling;

'rapporteerbare reëling'—

(a) enige reëling ingevolge waarvan—

(i) die berekening van rente soos in artikel 24J omskryf, finansieringskoste, fooie of enige ander heffings in geheel of

costs, fees or any other charges is wholly or partly dependent on the tax treatment of that arrangement;

(ii) provision is made for the variation of that interest, finance costs, fees or any other charges should the actual tax treatment differ from the anticipated tax treatment (otherwise than by reason of any change in the provisions of the Act) or should the anticipated tax treatment be challenged by the Commissioner; and

(iii) the potential amount of the variation contemplated in subparagraph (ii) exceeds R5 million,

but does not include any arrangement identified by the Minister by notice in the *Gazette*, which is not likely to lead to any undue tax benefit;

(b) any arrangement which has certain characteristics identified by the Minister by notice in the *Gazette* which are likely to lead to an undue tax benefit;

'tax benefit' means any reduction in or postponement of the liability of a person for any tax, duty, levy, charge or other amount in terms of any Act administered by the Commissioner based on the anticipated tax treatment of the arrangement.

(2) Every company or trust which derives or will derive any tax benefit in terms of a reportable arrangement must report that arrangement to the Commissioner at such place as the Commissioner may determine within 60 days after the date that any amount is first received by or accrues to any person or is paid or actually incurred by any person in terms of that arrangement: Provided that the Commissioner may extend the period of 60 days by no more than 60 days where he or she is satisfied that reasonable grounds exist for the delay in reporting that arrangement.

(3) The company or trust must in so reporting provide to the Commissioner—

(a) a description of all the steps and key features of the reportable arrangement;

(b) a list of all the parties to that arrangement;

(c) copies of all the signed documents relating to that arrangement; and

(d) any financial model of that arrangement, including any spreadsheet or computer model of the implementation thereof:

Provided that the company or trust may in so reporting, where another company or trust has reported that arrangement to the Commissioner, provide to the Commissioner only the name and address of that other company or trust and the date on which that arrangement was reported.

(4)*(a)* Where a company or trust fails to report a reportable arrangement as contemplated in subsections (2) and (3), that company or trust shall be deemed to have entered into that arrangement in a manner or by means as contemplated in section 103(1)*(b)*(i) or to have created rights or obligations as contemplated in section 103(1)*(b)*(ii).

(b) Where a company or trust willfully or recklessly fails to report a reportable arrangement as contemplated in subsections (2) and (3), that company or trust shall also be required to pay, in addition to the tax chargeable in respect of its taxable income, an amount equal to the tax benefits in terms of that arrangement to which that company or trust is entitled. Provided that the Commissioner may remit the additional charge or any part thereof where he or she is satisfied that there were extenuating circumstances.

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

(3) Any arrangement identified by the Minister in terms of section 76A of the Income Tax Act, 1962, must be tabled in Parliament within 12 months from the date of publication of the notice for incorporation into that Act.

Amendment of section 79B of Act 58 of 1962, as inserted by section 48 of Act 74 of 2002

70. Section 79B of the Income Tax Act, 1962, is hereby amended by the insertion after subsection (1) of the following subsection:

gedeeltelik van die belastinghantering van daardie reëling afhanklik is;

(ii) voorsiening gemaak word vir die variasie van daardie rente, finansieringskoste, fooie of enige ander heffings indien die werklike belastinghantering van die verwagte belasting-hantering verskil (andersins as weens enige verandering in die bepalings van die Wet) of indien die verwagte belasting-hantering deur die Kommissaris betwis word; en

(iii) die potensiële bedrag van die variasie in subparagraaf (ii) bedoel R5 miljoen te bowe gaan,

maar sluit nie in nie enige reëling deur die Minister by kennisgewing in die *Staatskoerant* geïdentifiseer, wat nie waarskynlik tot enige onbehoorlike belastingvoordeel sal lei nie;

(b) enige reëling wat sekere eienskappe het deur die Minister by kennisgewing in die *Staatskoerant* geïdentifiseer wat waarskynlik tot 'n onbehoorlike belastingvoordeel sal lei;

'reëling' enige transaksie, handeling of skema.

(2) Elke maatskappy of trust wat enige belastingvoordeel ingevolge 'n rapporteerbare reëling verkry, moet daardie reëling aan die Kommissaris rapporteer op so 'n plek as wat die Kommissaris mag bepaal, binne 60 dae na die datum wat enige bedrag vir die eerste maal ontvang word deur of toeval aan 'n persoon of betaal of werklik aangegaan word deur enige persoon ingevolge daardie reëling: Met dien verstande dat die Kommissaris die tydperk van 60 dae kan verleng met nie meer as 60 dae nie, waar hy of sy tevrede is dat redelike gronde bestaan vir die vertraging in die rapportering van daardie reëling.

(3) Die maatskappy of trust moet deur aldus te rapporteer, die Kommissaris voorsien van—

(a) 'n beskrywing van al die stappe en sleuteleienskappe van die rapporteerbare reëling;

(b) 'n lys van al die partye tot daardie reëling;

(c) afskrifte van alle ondertekende dokumente wat met daardie reëling verband hou; en

(d) enige finansiële model van daardie reëling, waarby ingesluit enige sigblad of rekenaarmodel van die implementering daarvan:

Met dien verstande dat die maatskappy of trust wat aldus rapporteer, waar 'n ander maatskappy of trust daardie reëling aan die Kommissaris gerapporteer het, slegs die naam en adres van daardie ander maatskappy of trust en die datum waarop daardie reëling gerapporteer is, aan die Kommissaris moet voorsien.

(4) *(a)* Waar 'n maatskappy of trust nalaat op 'n rapporteerbare reëling te rapporteer soos in subartikels (2) en (3) bedoel, word daardie maatskappy of trust geag daardie reëling aan te gegaan het op 'n wyse of deur middele soos in artikel 103(1)*(b)*(i) bedoel of om regte of verpligtinge te geskep het soos in artikel 103(2)*(b)*(ii) bedoel.

(b) Waar 'n maatskappy of trust opsetlik of op roekelose wyse nalaat om 'n rapporteerbare reëling soos in subartikel (2) of (3) bedoel te rapporteer, moet daardie maatskappy of trust, addisioneel tot die belasting hefbaar ten opsigte van sy belasbare inkomste, 'n bedrag betaal gelyk aan die belasbare voordele waarop daardie maatskappy of trust ingevolge daardie reëling geregtig is: Met dien verstande dat die Kommissasris die addisionele heffing of enige gedeelte daarvan kan kwytskeld waar hy of sy tevrede is dat versagtende omstandighede bestaan.".

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

(3) Enige reëling deur die Minister geïdentifiseer ingevolge artikel 76A van die Inkomstebelastingwet, 1962, moet binne 12 maande vanaf die datum van publikasie van die kennisgewing by Parlement ingedien word vir insluiting in daardie Wet.

Wysiging van artikel 79B van Wet 58 van 1962, soos ingevoeg deur artikel 48 van Wet 74 van 2002

70. Artikel 79B van die Inkomstebelastingwet, 1962, word hierby gewysig deur na subartikel (1) die volgende subartikel in te voeg:

"(1A) The Commissioner must withdraw any assessment issued in respect of—

(a) the estate of a person for the period prior to the date of sequestration; and

(b) the insolvent estate of that person,

where the sequestration order is set aside.".

Amendment of section 81 of Act 58 of 1962, as amended by section 27 of Act 69 of 1975, section 15 of Act 70 of 1989 and section 53 of Act 60 of 2001

71. (1) Section 81 of the Income Tax Act, 1962, is hereby amended—

(a) by the addition to subsection (2) of the following proviso:

"Provided that the period for objection may not be so extended—

(a) for a period exceeding 30 days, unless exceptional circumstances exist which gave rise to the delay in lodging the objection;

(b) where more than three years have lapsed from the date of the assessment; or

(c) where the grounds for objection are based wholly or mainly on any change in practice generally prevailing which applied on the date of that assessment."; and

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

"(6) Where any dispute between the Commissioner and the person aggrieved by an assessment has been **[settled]** resolved in accordance with the alternative dispute resolution procedures prescribed in the **[regulations, as]** rules contemplated in section **[107B]** 107A(2), the Commissioner **[may]** must alter that assessment for purposes of giving effect to that **[settlement]** resolution.".

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

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, section 36 of Act 113 of 1993, section 30 of Act 28 of 1997, section 45 of Act 30 of 2000, section 54 of Act 60 of 2001 and section 29 of Act 30 of 2002

72. Section 83 of the Income Tax Act, 1962, is hereby amended—

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

"(4C) If at any stage during the hearing of an appeal, or after hearing of the appeal but before judgment has been handed down—

(a) one of the judges dies, retires or becomes otherwise incapable of acting in that capacity, the hearing of an appeal shall be heard *de novo*, unless the court consists of three judges, as contemplated in subsection (4B), and the remaining judges constitute the majority of judges before whom the hearing was commenced, in which case the hearing shall proceed before the remaining judges and members; or

(b) one of the members dies, retires or becomes otherwise incapable of acting in that capacity, the hearing of an appeal shall proceed before the President and remaining members.

(4D) The judgement of the remaining judges and members contemplated in subsection (4C), shall be the judgement of the court.";

(b) by the addition in subsection (13) of the word "and" at the end of paragraph *(c)*;

(c) by the addition to subsection (13) of the following paragraph:

"*(d)* hear any interlocutory application and decide on procedural matters as provided for in the rules of the tax court contemplated in section 107A.".

"(1A) Die Kommissaris moet enige aanslag uitgereik ten opsigte van—

(a) die boedel van 'n persoon vir die tydperk voor die datum van sekwestrasie; en

(b) die insolvente boedel van daardie persoon,

terugtrek waar die sekwestrasiebevel tersydegestel word.".

Wysiging van artikel 81 van Wet 58 van 1962, soos gewysig deur artikel 27 van Wet 69 van 1975, artikel 15 van Wet 70 van 1989 en artikel 53 van Wet 60 van 2001

71. (1) Artikel 81 van die Inkomstebelastingwet, 1962, word hierby gewysig—

(a) deur in subartikel (2) die volgende voorbehoudsbepaling by te voeg:

"Met dien verstande dat die tydperk vir beswaar nie aldus verleng mag word nie—

(a) vir 'n tydperk wat 30 dae oorskry, tensy buitengewone omstandighede bestaan wat aanleiding gegee het tot die laat indiening van die beswaar;

(b) waar meer as drie jaar verloop het vanaf die datum van die aanslag; of

(c) waar die gronde vir die beswaar gebaseer is in geheel of hoofsaaklik op enige verandering in die algemeen geldende praktyk wat op die datum van daardie aanslag van toepassing was;";

(b) deur subartikel (6) deur die volgende subartikel te vervang:

"Waar enige geskil tussen die Kommissaris en die persoon veronreg deur 'n aanslag ingevolge die alternatiewe geskilbeslegtingsprosedures in die reëls, soos in artikel **[107B]** 107A(2) bedoel, voorgeskryf, **[geskik]** besleg is, **[kan]** moet die Kommissaris daardie aanslag wysig ten einde effek aan daardie **[skikking]** beslegting te gee.".

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

Wysiging van artikel 83 van Wet 58 van 1962, soos gewysig deur artikel 21 van Wet 90 van 1964, artikel 22 van Wet 103 van 1976, artikel 15 van Wet 104 van 1979, artikel 19 van Wet 96 van 1985, artikel 16 van Wet 70 van 1989, artikel 36 van Wet 129 van 1991, artikel 36 van Wet 113 van 1993, artikel 30 van Wet 28 van 1997, artikel 45 van Wet 30 van 2000, artikel 54 van Wet 60 van 2001 en artikel 29 van Wet 30 van 2002

72. Artikel 83 van die Inkomstebelastingwet, 1962, word hierby gewysig—

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

"(4C) Indien op enige stadium gedurende die verhoor van 'n appèl, of na die verhoor van die appèl maar voor uitspraak gelewer is—

(a) een van die regters te sterwe kom, aftree of andersins ongeskik raak om in daardie hoedanigheid op te tree, word die verhoor van 'n appèl *de novo* aangehoor, tensy die hof bestaan uit drie regters, soos in subartikel (4B) bedoel, en die oorblywende regters die meerderheid van die regters voor wie die verhoor 'n aanvang geneem het daarstel, in welke geval die verhoor voor die oorblywende regters en lede voortgesit word; of

(b) een van die lede te sterwe kom, aftree of andersins ongeskik raak om in daardie hoedanigheid op te tree, word die verhoor voortgesit voor die Voorsitter en die oorblywende lede.

(4D) Die uitspraak van die oorblywende regters en lede in subartikel (4C) bedoel, is die uitspraak van die hof.";

(b) deur in subartikel (13) die woord "en" aan die einde van paragraaf *(c)* by te voeg;

(c) deur in subartikel (13) die volgende paragraaf by te voeg:

"*(d)* hoor enige tussentydse aansoek en beslis oor prosedurele aangeleenthede soos voorsiening gemaak in die reëls van die belastinghof in artikel 107A bedoel.".

Amendment of section 83A of Act 58 of 1962, as inserted by section 37 of Act 129 of 1991 and amended by section 37 of Act 113 of 1993, Government Notice R.1245 of 26 September 1997, section 47 of Act 59 of 2000, section 28 of Act 5 of 2001 and section 55 of Act 60 of 2001

73. Section 83A of the Income Tax Act, 1962, is hereby amended by the substitution in subsection (7) for the words of paragraph *(b)* preceding subparagraph (i) of the following words:

"within **[30 days before the date of the hearing of the appeal]** the period prescribed in the rules contemplated in section 107A, furnish the members of the board and the appellant with a written notice of the time and place of the hearing of the appeal and a dossier containing copies of—".

Insertion of Part IIIA in Chapter III of Act 58 of 1962

74. The following Part is hereby inserted in Chapter III of the Income Tax Act, 1962, after Part III:

"PART IIIA

Settlement of Dispute

Definitions

88A. For the purposes of this Part—

'dispute' means a disagreement on the interpretation of either the relevant facts involved or the law applicable thereto, or of both the facts and the law;

'settle' means to resolve a dispute by compromising any disputed liability, otherwise than by way of either the Commissioner or the person concerned accepting the other party's interpretation of the facts or the law applicable to those facts, or of both the facts and the law, and 'settlement' shall be construed accordingly.

Purpose of Part

88B. (1) The basic principle in law is that it is the duty of the Commissioner to assess and collect taxes, duties, levies, charges and other amounts according to the laws enacted by Parliament and not to forgo any such taxes, duties, levies, charges or other amounts properly chargeable and payable.

(2) Circumstances may, however, require that the strictness and rigidity of this basic principle be tempered where it would be to the best advantage of the state.

(3) The purpose of this Part is to prescribe the circumstances whereunder it would be inappropriate and whereunder it would be appropriate that the basic rule be tempered and for a decision to be taken to settle a dispute.

Circumstances where inappropriate to settle

88C. It will be inappropriate and not to the best advantage of the state to settle a dispute, where, in the opinion of the Commissioner,—

(a) the action on the part of the person concerned which relates to the dispute, constitutes intentional tax evasion or fraud and no circumstances contemplated in section 88D exist;

Wysiging van artikel 83A van Wet 58 van 1962, soos ingevoeg deur artikel 37 van Wet 129 van 1991 en gewysig deur artikel 37 van Wet 113 van 1993, Goewermentskennisgewing R.1245 van 26 September 1997, artikel 47 van Wet 59 van 2000, artikel 28 van Wet 5 van 2001 en artikel 55 van Wet 60 van 2001

73. Artikel 83A van die Inkomstebelastingwet, 1962, word hierby gewysig deur in subartikel (7) die woorde in paragraaf *(b)* wat subparagraaf (i) voorafgaan deur die volgende woorde te vervang:

"verstrek binne **[30 dae voor die verhoordatum van die appèl,]** die tydperk in die reëls in artikel 107A bedoel, voorgeskryf, aan die lede van die Raad en die appellant 'n skriftelike kennisgewing van die tyd en plek vir die verhoor van die appèl en 'n dossier bevattende afdrukke van—".

Invoeging van Deel IIIA in Hoofstuk III van Wet 58 van 1962

74. Die volgende Deel word hierby in Hoofstuk III van die Inkomstebelastingwet, 1962, ingevoeg, na Deel III:

"**Deel IIIA**

Skikking van geskil

Woordomskrywings

88A. By die toepassing van hierdie Deel beteken—

'geskil' 'n verskil oor die uitleg van óf die relevante feite wat betrokke is óf die reg wat daarop van toepassing is, of van beide die feite en die reg;

'skik' om 'n geskil op te los deur 'n aanspreeklikheid wat betwis word te besleg, anders as waar óf die Kommissaris óf die betrokke persoon die ander party se uitleg van die feite of die reg van toepassing op daardie feite, of beide die feite en die reg, aanvaar, en 'skikking' word dienooreenkomstig uitgelê.

Doel van Deel

88B. (1) Die basiese beginsel in die reg is dat dit die plig van die Kommissaris is om belastings, regte, heffings, tariewe en ander bedrae ingevolge die wette deur die Parlement ingestel aan te slaan en te vorder en om nie daardie belastings, regte, heffings, tariewe of ander bedrae behoorlik hefbaar en betaalbaar, op te sê nie.

(2) Omstandighede mag egter vereis dat die strengheid en onbuigsaamheid van die basiese beginsel getemper word waar dit tot die beste voordeel van die staat sal wees.

(3) Die doel van hierdie Deel is derhalwe om die omstandighede voor te skryf waaronder dit ongepas is en waaronder dit gepas sal wees dat die basiese reël getemper word en dat 'n besluit geneem word om 'n geskil te skik.

Omstandighede waar die Kommissaris nie 'n geskil kan skik nie

88C. Dit is nie gepas en tot die beste voordeel van die staat om 'n geskil te skik nie waar, na die mening van die Kommissaris,—

(a) die handeling aan die kant van die betrokke persoon wat met die geskil verband hou, opsetlike belastingontduiking of bedrog daarstel en geen van die omstandighede in artikel 88D bedoel, teenwoordig is nie;

(b) the settlement would be contrary to the law or a clearly established practice of the Commissioner on the matter, and no exceptional circumstances exist to justify a departure from the law or practice;

(c) it is in the public interest to have judicial clarification of the issue and the case is appropriate for this purpose;

(d) the pursuit of the matter through the courts will significantly promote compliance of the tax laws and the case is suitable for this purpose; or

(e) the person concerned has not complied with the provisions of any Act administered by the Commissioner and the Commissioner is of the opinion that the non-compliance is of a serious nature.

Circumstances where appropriate to settle

88D. The Commissioner may, where it will be to the best advantage of the state, settle a dispute, in whole or in part, on a basis that is fair and equitable to both the person concerned and the Commissioner, having regard to *inter alia*—

(a) whether that settlement would be in the interest of good management of the tax system, overall fairness and the best use of the Commissioner's resources;

(b) the cost of litigation in comparison to the possible benefits with reference to—

(i) the prospects of success in a court;

(ii) the prospects of the collection of the amounts due; and

(iii) the costs associated with collection;

(c) whether there are any—

(i) complex factual or quantum issues in contention; or

(ii) evidentiary difficulties,

which are sufficient to make the case problematic in outcome or unsuitable for resolution through the alternative dispute resolution procedures or the courts;

(d) a situation where a participant or a group of participants in a tax avoidance arrangement has accepted the Commissioner's position in the dispute, in which case the settlement may be negotiated in an appropriate manner required to unwind existing structures and arrangements; or

(e) whether the settlement of the dispute will promote compliance of the tax laws by the person concerned or a group of taxpayers or a section of the public in a cost-effective way.

Power to settle and disclosure

88E. (1) A dispute may be settled, as contemplated in section 88D, by the Commissioner personally or any official delegated by the Commissioner for that purpose.

(2) The Commissioner or the relevant delegated official must ensure that he or she does not have, or did not at any stage have, a personal, family, social, business, professional, employment or financial relationship with the person concerned.

Procedure for settlement

88F. (1) The person concerned should at all times disclose all relevant facts in discussions during the process of settling a dispute.

(2) Any settlement will be conditional upon full disclosure of material facts known to the person concerned at the time of settlement.

(3) All disputes settled in whole or in part, as contemplated in section 88D, must be evidenced by a written agreement between the parties in the format as may be prescribed by the Commissioner and must include details on—

(b) die skikking in stryd sal wees met die reg of 'n duidelik gevestigde praktyk van die Kommissaris op die aangeleentheid, en geen uitsonderlike omstandighede bestaan om 'n afwyking van die reg of praktyk te regverdig nie;

(c) dit in die openbare belang is om 'n geregtelike opklaring van die geskilpunt te verkry en die saak vir die doel gepas is;

(d) die voortsetting van die aangeleentheid deur die howe nakoming van die belastingwette wesenlik sal bevorder en die saak vir die doel gepas is; of

(e) die betrokke persoon nie aan die bepalings van enige Wet wat deur die Kommissaris geadministreer word, voldoen het nie en die Kommissaris van mening is dat die nie-nakoming van 'n ernstige aard is.

Omstandighede waaronder die Kommissaris 'n geskil kan skik

88D. Die Kommissaris kan, waar dit tot die beste voordeel van die staat sal wees, 'n geskil in geheel of gedeeltelik skik, op 'n basis wat regverdig en billik vir beide die betrokke persoon en die Kommissaris is, na in agneming van *inter alia*—

(a) of daardie beslegting in die belang van goeie bestuur van die belastingstelsel, algemene billikheid en die beste gebruik van die Kommissaris se hulpbronne sal wees;

(b) die koste van litigasie in verhouding tot die moontlike voordele met verwysing na—

(i) die kanse op sukses in 'n hof;

(ii) die kanse op invordering van die bedrae verskuldig; en

(iii) die koste wat met invordering verband hou;

(c) of daar enige—

(i) komplekse feitelike of *quantum* kwessies in geskil is; of

(ii) bewysregtelike probleme bestaan,

wat voldoende is om die saak problematies in uitkoms te maak of ongeskik is vir beslissing deur middel van die alternatiewe geskilbeslegtingsprodedures of die howe;

(d) 'n geval waar 'n deelnemer of 'n groep deelnemers in 'n belastingontduikingsreëling die posisie van die Kommissaris in die geskil aanvaar het, in welke geval die skikking onderhandel kan word op 'n gepaste wyse om bestaande strukture en reëlings te ontbind; of

(e) of die skikking van die geskil nakoming van die belastingwette deur die betrokke persoon of 'n groep belastingpligtiges of 'n gedeelte van die publiek op 'n koste effektiewe wyse sal bevorder.

Bevoegdheid om te skik en openbaarmaking

88E. (1) 'n Geskil kan geskik word, soos in artikel 88D bedoel, deur die Kommissaris persoonlik of deur 'n beampte wat deur die Kommissaris vir daardie doel aangewys is.

(2) Die Kommissaris of die betrokke aangewese beampte moet toesien dat hy of sy nie 'n persoonlike, gesins-, sosiale, besigheids-, professionele, diens- of finansiële verhouding met die betrokke persoon het of op enige stadium gehad het nie.

Prosedure vir skikking

88F. (1) Die betrokke persoon moet ten alle tye alle relevante feite gedurende gesprekke tydens die proses om 'n geskil te skik, openbaar.

(2) Enige skikking is voorwaardelik daarop dat alle wesenlike feite wat op die tyd van die beslegting aan die betrokke persoon bekend is, ten volle geopenbaar word.

(3) Alle geskille in geheel of gedeeltelik geskik, soos in artikel 88D bedoel, moet deur 'n skriftelike ooreenkoms tussen die partye, in die vorm as wat die Kommissaris mag voorskryf, bevestig word en moet besonderhede insluit oor—

(a) how each particular issue was settled;
(b) relevant undertakings by the parties;
(c) treatment of that issue in future years;
(d) withdrawal of objections and appeals; and
(e) arrangements for payment.

(4) The written agreement will represent the final agreed position between the parties and will be in full and final settlement of all or the specified aspects of the dispute in question between the parties.

(5) The Commissioner must, where the dispute is not ultimately settled, explain the further rights of objection and appeal to the person concerned.

(6) Subject to section 88G, the Commissioner and delegated official must adhere to the secrecy provisions with regard to the information relating to the person concerned and may not disclose the terms of any agreement to third parties unless authorised by law or by the person concerned.

(7) The Commissioner must adhere to the terms of the agreement, unless it emerges that material facts were not disclosed to it or there was fraud or misrepresentation of the facts.

(8) The Commissioner has the right to recover any outstanding amounts involved in the settlement in full where the person concerned fails to adhere to any agreed payment arrangement.

Register of settlements and reporting

88G. (1) The Commissioner must—
(a) maintain a register of all disputes settled in the circumstances contained in these regulations; and
(b) fully document the process in terms of which each dispute was settled, which document must be signed on behalf of the Commissioner and the person concerned.

(2) The Commissioner must on an annual basis provide to the Auditor-General and to the Minister of Finance a summary of all disputes which were settled in whole or in part during the period of 12 months covered by that summary, which must—
(a) be in such format which, subject to section 4(1)*(b)*, does not disclose the identity of the person concerned, and be submitted at such time as may be agreed between the Commissioner and the Auditor-General or Minister of Finance, as the case may be; and
(b) contain details of the number of disputes settled or part settled, the amount of revenue forgone and estimated amount of savings in costs of litigation, which must be reflected in respect of main classes of taxpayers or sections of the public.

Alteration of assessment on settlement

88H. (1) Where any dispute between the Commissioner and the person aggrieved by an assessment has been settled in terms of this Part, the Commissioner may, notwithstanding anything to the contrary contained in this Act, alter that assessment for purposes of giving effect to that settlement.

(2) Any altered assessment contemplated in subsection (1) shall not be subject to objection and appeal.".

Substitution of section 89*sex* of Act 58 of 1962

75. The following section hereby substitutes section 89*sex* of the Income Tax Act, 1962:

"Determination of day and time for payment of tax, interest or penalties

89*sex*. (1) 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

(a) hoe elke spesifieke geskilspunt geskik is;
(b) relevante ondernemings deur die partye;
(c) hantering van daardie punte in toekomstige jare;
(d) terugtrekking van besware en appèlle; en
(e) reëlings vir betaling.

(4) Die skriftelike ooreenkoms verteenwoordig die finale ooreengekome posisie tussen die partye en is in volle en finale skikkig van al of die betrokke aspekte van die geskil ter sprake tussen die partye.

(5) Die Kommissaris moet, waar die geskil uiteindelik nie besleg word nie, die verdere regte van beswaar en appèl aan die betrokke persoon verduidelik.

(6) Behoudens artikel 88G, moet die Kommissaris aan die geheimhoudingsbepaling voldoen met betrekking tot inligting wat met die betrokke persoon verband hou en die Kommissaris mag nie die terme van enige ooreenkoms aan derde partye bekendmaak nie, tensy deur die wet of die betrokke persoon daartoe gemagtig.

(7) Die Kommissaris moet aan die terme van die ooreenkoms voldoen, tensy dit aan die lig kom dat wesenlike feite nie geopenbaar is nie of waar daar bedrog of wanvoorstelling van die feite was.

(8) Die Kommissaris is geregtig om enige uitstaande bedrae ten volle te verhaal waar die betrokke persoon nalaat om aan enige betalingsreëling te voldoen.

Register van skikkings en verslagdoening

88G. (1) Die Kommissaris moet—
(a) 'n register hou van alle geskille wat in die omstandighede in hierdie regulasies vervat, geskik is; en
(b) die proses ingevolge waarvan elke geskil geskik is ten volle dokumenteer, welke dokument namens die Kommissaris en die betrokke persoon onderteken moet word.

(2) Die Kommissaris moet op 'n jaarlikse grondslag 'n opsomming aan die Ouditeur-generaal en die Minister van Finansies voorsien van alle geskille wat in geheel of gedeeltelik gedurende die 12 maande tydperk wat deur daardie opsomming gedek word, geskik is, wat—
(a) in so 'n formaat is wat, behoudens artikel 4(1)*(b)*, nie die identiteit van die betrokke persoon openbaarmaak nie, en gelewer moet word op 'n tyd wat die Kommissaris en die Ouditeur-generaal of Minister van Finansies, na gelang van die geval, kan ooreenkom; en
(b) besonderhede vervat van die aantal geskille wat geskik of gedeeltelik geskik is, die bedrag van inkomste verbeur en geraamde bedrag van besparing in koste van litigasie, wat aangedui moet word ten opsigte van hoofklasse van belastingpligtiges of gedeeltes van die publiek.

Wysiging van aanslag by skikking

88H. (1) Waar enige geskil tussen die Kommissaris en die persoon deur 'n aanslag gegrief geskik is ingevolge hierdie Deel, kan die Kommissaris, ondanks enigiets tot die teendeel in hierdie Wet vervat, daardie aanslag wysig ten einde gevolg te gee aan daardie skikking.

(2) 'n Gewysigde aanslag in subartikel (1) bedoel is nie aan beswaar en appèl onderhewig nie.".

Vervanging van artikel 89*sex* van Wet 58 van 1962

75. Die volgende artikel vervang hierby artikel 89*sex* van die Inkomstebelastingwet, 1962:

"Bepaling van dag en tyd vir betaling van belasting, rente of boetes

89*sex*. (1) Waar enige dag gespesifiseer vir enige betaling wat gemaak staan te word kragtens die bepalings van hierdie Wet, of die laaste dag van enige tydperk waarbinne betaling kragtens 'n bepaling van hierdie Wet

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.

(2) The Commissioner may prescribe the time by which any payment made on any business day must be received by the Commissioner and any payment received after that time shall be deemed to have been made on the first business day following that day.".

Amendment of section 106 of Act 58 of 1962, as substituted by section 29 of Act 69 of 1975, amended by section 26 of Act 103 of 1976, section 51 of Act 30 of 2000 and section 53 of Act 74 of 2002

76. Section 106 of the Income Tax Act, 1962, is hereby amended—

(a) by the substitution in subsection (2) for the word "and" at the end of paragraph *(c)* of the word "or";

(b) by the insertion in subsection (2) after paragraph *(c)* of the following paragraph:

"*(c*A*)* if transmitted to that person by electronic means to that person's last known electronic address;";

(c) by the addition in subsection (2) of the word "or" at the end of subparagraph (iii) of paragraph *(d)*; and

(d) by the addition in subsection (2) to paragraph *(d)* of the following subparagraph:

"(iv) if transmitted to the company or its public officer by electronic means to that company's or public officer's last known electronic address;".

Repeal of section 107B of Act 58 of 1962

77. Section 107B of the Income Tax Act, 1962, is hereby repealed.

Amendment of paragraph 1 of First Schedule to Act 58 of 1962, as substituted by section 15 of Act 72 of 1963

78. Paragraph 1 of the First Schedule to the Income Tax Act, 1962, is hereby amended by the substitution for item *(a)* of the following item:

"*(a)* a reference to a year of assessment shall in the case of any taxpayer who has under the provisions of **[subsection (13) or (13)*ter* of section sixty-six]** section 66(13A) of this Act been permitted to furnish accounts in respect of the income derived by him from pastoral, agricultural or other farming operations made up to a date other than the last day of the relevant year of assessment, be construed as a reference to the period covered by such accounts; and".

Amendment of paragraph 8 of First Schedule to Act 58 of 1962, as deleted by section 19 of Act 72 of 1963 and inserted by section 38 of Act 90 of 1988

79. Paragraph 8 of the First Schedule to the Income Tax Act, 1962, is hereby amended by the substitution for subparagraph (1) of the following subparagraph:

"(1) Where any farmer has during any year of assessment incurred expenditure in respect of the acquisition of livestock, the deduction which may be allowed to him under section 11*(a)* **[or *(b)*]** of this Act in respect of the cost price of such livestock shall be limited to an amount which, together with the value of livestock held and not disposed of by him at the beginning of such year, does not exceed the income received by or accrued to him from farming during such year and the value of livestock held and not disposed of by him at the end of such year.".

Amendment of paragraph 12 of First Schedule to Act 58 of 1962

80. Paragraph 12 of the First Schedule to the Income Tax Act, 1962, is hereby amended by the insertion after subparagraph (3B) of the following subparagraph:

gemaak moet word, op 'n Saterdag, Sondag of openbare vakansiedag val, moet bedoelde betaling gemaak word nie later nie as die laaste besigheidsdag wat voor bedoelde Saterdag, Sondag of openbare vakansiedag val.

(2) Die Kommissaris kan die tyd voorskryf waarteen enige betaling op 'n besigheidsdag gemaak deur die Kommissaris ontvang moet wees en enige betaling na daardie tyd ontvang, word geag op die volgende besigheidsdag wat daardie dag volg gemaak te wees.".

Wysiging van artikel 106 van Wet 58 van 1962, soos vervang deur artikel 29 van Wet 69 van 1975, gewysig deur artikel 26 van Wet 103 van 1976, artikel 51 van Wet 30 van 2000 en artikel 53 van Wet 74 van 2002

76. Artikel 106 van die Inkomstebelastingwet, 1962, word hierby gewysig—

(a) deur in subartikel (2) die woord "en" aan die einde van paragraaf *(c)* deur die woord "of" te vervang;

(b) deur in subartikel (2) die volgende paragraaf na paragraaf *(c)* in te voeg:

"*(c*A) indien op elektroniese wyse aan daardie persoon versend na daardie persoon se laaste bekende elektroniese adres;";

(c) deur in subartikel (2) die woord "of" aan die einde van subparagraaf (iii) van paragraaf *(d)* te voeg;

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

"(iv) indien op elektroniese wyse aan die maatskappy of openbare amptenaar versend is na daardie maatskappy of openbare amptenaar se laaste bekende elektroniese adres;".

Herroeping van artikel 107B van Wet 58 van 1962

77. Artikel 107B van die Inkomstebelastingwet, 1962, word hierby herroep.

Wysiging van paragraaf 1 van Eerste Bylae by Wet 58 van 1962, soos vervang deur artikel 15 van Wet 72 van 1963

78. Paragraaf 1 van die Eerste Bylae by die Inkomstebelastingwet, 1962, word hierby gewysig deur item *(a)* deur die volgende item te vervang:

"*(a)* word 'n verwysing na 'n jaar van aanslag, in die geval van 'n belastingpligtige wat ingevolge die bepalings van **[subartikel (13) of (13)*ter* van artikel ses-en-sestig]** artikel 66(13A) van hierdie Wet toegelaat is om ten opsigte van die inkomste deur hom uit veeboerdery, landbou of ander boerdery verkry, rekenings te verstrek wat tot 'n ander datum as die laaste dag van die betrokke jaar van aanslag opgemaak is, uitgelê as 'n verwysing na die tydperk deur bedoelde rekenings gedek; en".

Wysiging van paragraaf 8 van Eerste Bylae by Wet 58 van 1962, soos vervang deur artikel 19 van Wet 72 van 1963 en ingevoeg deur artikel 38 van Wet 90 van 1988

79. Paragraaf 8 van die Eerste Bylae by die Inkomstebelastingwet, 1962, word hierby gewysig deur subparagraaf (1) deur die volgende subparagraaf te vervang:

"(1) Waar 'n boer gedurende 'n jaar van aanslag onkoste aangegaan het ten opsigte van die verkryging van lewende hawe, word die aftrekking wat ingevolge artikel 11*(a)* **[of *(b)*]** ten opsigte van die koopprys van bedoelde lewende hawe aan hom toegestaan mag word, beperk tot 'n bedrag wat, tesame met die waarde van lewende hawe aan die begin van bedoelde jaar deur hom besit en nie van die hand gesit nie, nie die som van die inkoste wat gedurende bedoelde jaar uit boerdery deur hom ontvang is of aan hom toegeval het en die waarde van lewende hawe aan die einde van bedoelde jaar deur hom besit en nie van die hand gesit nie, te bowe gaan nie.".

Wysiging van paragraaf 12 van Eerste Bylae by Wet 58 van 1962

80. Paragraaf 12 van die Eerste Bylae by die Inkomstebelastingwet, 1962, word hierby gewysig deur na subparagraaf (3B) die volgende subparagraaf in te voeg:

"(3C) The amount of any expenditure carried forward and deemed to be incurred by a person in the next succeeding year in terms of subparagraph (3) must be reduced by any amount of expenditure in respect of which an election has been made in terms of paragraph 20A(1) of the Eighth Schedule.".

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, section 34 of Act 21 of 1995 and section 40 of Act 28 of 1997

81. Paragraph 19 of the First Schedule to the Income Tax Act, 1962, is hereby amended by the substitution for subparagraph (4) of the following subparagraph:

"(4) In determining under this paragraph any amount of normal tax which is or would be chargeable no regard shall be had to the deductions provided for in section 6 **[or 6*bis*]** of this Act, and nothing in this paragraph contained shall be construed as relieving any person from liability for taxation under this Act upon any portion of **[his]** that person's taxable income.".

Amendment of paragraph 1 of Second Schedule to Act 58 of 1962

82. Paragraph 1 of the Second Schedule to the Income Tax Act, 1962, is hereby amended by the substitution in "formula C" for item (i) of symbol "B" in subparagraph *(b)* of the following item:

"(i) where the number of completed years of employment are in terms of the rules of the fund in question taken into account for the purpose of determining the amount of the benefit payable to him by the fund, 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, other than completed years of employment representing—

(aa) any benefit of a member of any fund referred to in paragraph *(a)* or *(b)* of the definition of 'pension fund' in section 1, hereinafter referred to as a 'public sector fund', which is after 1 March 1998 paid for the benefit of such member into another public sector fund in respect of any previous or other periods of service or membership accounted for prior to 1 March 1998 in terms of the rules of any public sector fund; or

(bb) years of pensionable service purchased after 1 March 1998 by 'non-statutory force members' as defined in the Government Employees' Pension Law, 1996 (Proclamation No. 21 of 1996), in respect of any previous or other periods of service accounted for prior to 1 March 1998; or".

Amendment of paragraph 6 of Fourth Schedule to Act 58 of 1962

83. (1) Paragraph 6 of the Fourth Schedule to the Income Tax Act, 1962, is hereby amended—

(a) by the substitution for subparagraph (2) of the following subparagraphs:

"(2) The Commissioner may **[if he is satisfied that the employer's failure to pay the amount of employees' tax was not due to an intent to postpone payment of such tax or otherwise evade his obligations under this Act and was not designed to enable the employee concerned to evade such employee's obligations under this Act]** having regard to the circumstances of the case remit the whole or any part of the penalty imposed under subparagraph (1).";

"(3C) Die bedrag van enige onkoste vorentoe gedra en geag deur 'n persoon aangegaan te wees in die daaropvolgende jaar ingevolge subparagraaf (3) moet verminder word deur enige bedrag van onkoste ten opsigte waarvan 'n keuse ingevolge paragraaf 20A(1) van die Agtste Bylae uitgeoefen is.".

Wysiging van paragraaf 19 van Eerste Bylae by Wet 58 van 1962, soos ingevoeg deur artikel 28 van Wet 95 van 1967 en gewysig deur artikel 43 van Wet 89 van 1969, artikel 33 van Wet 88 van 1971, artikel 22 van Wet 90 van 1972, artikel 32 van Wet 69 van 1975, artikel 30 van Wet 103 van 1976, artikel 16 van Wet 104 van 1979, artikel 25 van Wet 104 van 1980, artikel 29 van Wet 91 van 1982, artikel 45 van Wet 94 van 1983, artikel 42 van Wet 129 van 1991, artikel 34 van Wet 21 van 1995 en artikel 40 van Wet 28 van 1997

81. Paragraaf 19 van die Eerste Bylae by die Inkomstebelastingwet, 1962, word hierby gewysig deur subparagraaf (4) deur die volgende subparagraaf te vervang:

"(4) By die vasstelling ingevolge hierdie paragraaf van 'n bedrag van normale belasting wat hefbaar is of sou wees, word die kortings waarvoor in artikel 6 **[of *6bis*]** van hierdie Wet voorsiening gemaak word, buite rekening gelaat, en die bepalings van hierdie paragraaf word nie so uitgelê dat iemand van aanspreeklikheid vir belasting ingevolge hierdie Wet op enige gedeelte van **[sy]** daardie persoon se belasbare inkomste onthef word nie.".

Wysiging van paragraaf 1 van Tweede Bylae by Wet 58 van 1962

82. Paragraaf 1 van die Tweede Bylae by die Inkomstebelastingwet, 1962, word hierby gewysig deur in "formule C" item (i) van simbool "B" in subparagraaf *(b)* deur die volgende item te vervang:

"(i) waar die aantal voltooide diensjare ingevolge die reglement van die betrokke fonds in aanmerking geneem word vir die doeleindes van die vasstelling van die bedrag van die voordeel deur die fonds aan hom betaalbaar, die aantal voltooide diensjare van die belastingpligtige na 1 Maart 1998 voorstel, met inbegrip van vorige of ander tydperke van diens goedgekeur as pensioendraende diens ingevolge die reglement van 'n fonds na 1 Maart 1998, behalwe voltooide diensjare wat—

(aa) 'n voordeel van 'n lid van 'n fonds in paragraaf *(a)* of *(b)* van die omskrywing van 'pensioenfonds': in artikel 1 bedoel, hieronder 'openbare sektor fonds' genoem, verteenwoordig, wat na 1 Maart 1998 vir die voordeel van daardie lid in 'n ander openbare sektor fonds inbetaal is ten opsigte van enige vorige of ander dienstydperke of lidmaatskap wat voor 1 Maart 1998 ingevolge die reglement van enige openbare sektor fonds verantwoord is); of

(bb) jare van pensioendraende diens verteenwoordig wat na 1 Maart 1998 inbetaal is deur 'n 'non-statutoty force member' soos omskryf in die 'Government Employees Pension Law', 1996 (Proklamasie 21 van 1996), ten opsigte van enige vorige of ander tydperk van diens wat voor 1 Maart 1998 verantwoord is; of".

Wysiging van paragraaf 6 van Vierde Bylae by Wet 58 van 1962

83. (1) Paragraaf 6 van die Vierde Bylae by die Inkomstebelastingwet, 1962, word hierby gewysig—

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

"(2) Die Kommissaris kan **[indien hy oortuig is dat die werkgewer se versuim om die bedrag aan werknemersbelasting te betaal nie te wyte is aan 'n bedoeling om betaling van die belasting uit te stel of sy verpligtinge ingevolge hierdie Wet andersins te ontduik nie, en nie bedoel is om die betrokke werknemer in staat te stel om sodanige werknemer se verpligtinge ingevolge hierdie Wet te ontduik nie,]** met inagneming van die omstandighede van die geval die boete by sub-paragraaf (1) opgelê geheel of ten dele kwytskeld.";

(b) by the insertion after subparagraph (2) of the following paragraphs:

"(2A) If an employer fails to pay an amount of employees' tax with intent to evade that employer's or any employee's obligations under this Act, the employer may be liable to pay a penalty not exceeding an amount equal to twice the amount of employees' tax which that employer so failed to pay.

(2B) Any penalty contemplated in subparagraph (2A)—

(a) must be determined by the Commissioner and must be paid within such period as the Commissioner may determine; and

(b) shall be deemed to be a tax for purposes of—

(i) the determination of any interest payable in terms of section 89; and

(ii) the application of the provisions relating to the allocation of payments by the employer in terms of section 89*ter* (1A).".

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

Substitution of paragraph 11 of Fourth Schedule to Act 58 of 1962, as substituted by section 39 of Act 21 of 1995

84. The following paragraph hereby substitutes paragraph 11 of the Fourth Schedule to the Income Tax Act, 1962:

"11. The Commissioner may, having regard to the circumstances of the case, issue a directive—

(a) to an employer authorising that employer—

(i) to refrain from deducting or withholding any amount under paragraph 2 by way of employees' tax from any remuneration due to any employee of that employer; or

(ii) to deduct or withhold by way of employees' tax from any remuneration in terms of paragraph 2, a specified amount or an amount to be determined in accordance with a specified rate or scale,

in order to alleviate hardship to that employee due to circumstances outside the control of the employee or where the remuneration constitutes commission or to correct any error in regard to the calculation of employees' tax and the employer must comply with that directive; or

(b) to an employer which is a private company, authorising that employer—

(i) to refrain from paying any amount under paragraph 11C(2); or

(ii) to pay under that paragraph a specified amount or an amount to be determined in accordance with a specified rate or scale,

in order to alleviate hardship to an employer which is a private company and the employer must comply with that directive.".

Amendment of paragraph 11C of Fourth Schedule to Act 58 of 1962, as inserted by section 22 of Act 19 of 2001

85. (1) Paragraph 11C of the Fourth Schedule to the Income Tax Act, 1962, is hereby amended—

(a) by the substitution in subparagraph (1) for subitem (A) of item *(aa)* of paragraph (ii) of the proviso of the following subitem:

"(A) 'T' shall be determined based on the balance of remuneration paid or payable by that company to that director in respect of the year of assessment preceding that last year of assessment, increased by an amount equal to 20 per cent (or such other percentage as the Minister may from time to time determine by notice in the *Gazette*) of that remuneration; and";

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

"(2A) Indien 'n werkgewer nalaat om 'n bedrag aan werknemersbelasting te betaal met die bedoeling om daardie werkgewer of enige werknemer se verpligtinge kragtens hierdie Wet te vermy, kan die werkgewer aanspreeklik wees vir 'n boete wat nie 'n bedrag gelyk aan twee maal die bedrag van die werknemersbelasting wat daardie werkgewer aldus nagelaat het om te betaal, oorskry nie.

(2B) Enige boete in subparagraaf (2A) bedoel—

(a) moet vasgestel word deur die Kommissaris en moet betaal word binne die tydperk as wat die Kommissaris mag bepaal; en

(b) word geag 'n belasting te wees vir doeleindes van—

(i) die berekening van rente wat ingevolge artikel 89 betaalbaar is; en

(ii) die toepassing van die bepalings met betrekking tot die toewysing van betalings deur die werkgewer ingevolge artikel 89*ter*(1A).".

(2) Subartikel (1) tree in werking op die datum van afkondiging van hierdie Wet en is van toepassing ten opsigte van enige nalate om 'n bedrag wat op of na daardie datum betaalbaar word, te betaal.

Vervanging van paragraaf 11 van Vierde Bylae by Wet 58 van 1962, soos vervang deur artikel 39 van Wet 21 van 1995

84. Die volgende paragraaf vervang hierby paragraaf 11 van die Vierde Bylae by die Inkomstebelastingwet, 1962:

"11. Die Kommissaris kan, met inagneming van die omstandighede van die geval, 'n opdrag—

(a) aan 'n werkgewer uitreik wat daardie werkgewer magtig—

(i) om geen bedrag by wyse van werknemersbelasting ingevolge paragraaf 2 van enige besoldiging verskuldig aan die werknemer af te trek of terug te hou nie; of

(ii) om by wyse van werknemersbelasting 'n bepaalde bedrag of 'n bedrag bereken volgens 'n aangegewe maatstaf of skaal af te trek of terug te hou,

ten einde ontbering vir enige werknemer as gevolg van omstandighede buite die beheer van die werknemer te verlig of waar die besoldiging kommissie daarstel of om enige fout met betrekking tot die berekening van werknemersbelasting te herstel en die betrokke werkgewer moet aan so 'n opdrag voldoen; of

(b) aan 'n werkgewer wat 'n privaatmaatskappy is uitreik wat daardie werkgewer magtig—

(i) om geen bedrag kragtens paragraaf 11C(2) te betaal nie; of

(ii) om 'n bepaalde bedrag of 'n bedrag bereken volgens 'n aangegewe maatstaf of skaal kragtens daardie paragraaf te betaal,

ten einde ontbering vir 'n werkgewer wat 'n privaatmaatskappy is te herstel en die betrokke werkgewer moet aan so 'n opdrag voldoen.".

Wysiging van paragraaf 11C van Vierde Bylae by Wet 58 van 1962, soos ingevoeg deur artikel 22 van Wet 19 van 2001

85. Paragraaf 11C van die Vierde Bylae by die Inkomstebelastingwet, 1962, word hierby gewysig—

(a) deur in subparagraaf (1) subitem (A) van item *(aa)* van paragraaf *(ii)* deur die volgende subitem te vervang:

"(A) word "T" vasgestel gebaseer op die balans van besoldiging aan daardie direkteur betaal of betaalbaar deur daardie maatskappy ten opsigte van die jaar van aanslag wat daardie laaste jaar van aanslag voorafgaan, vermeerder met 'n bedrag gelyk aan 20 persent (of sodanige ander persentasie as wat die Minister van tyd tot tyd by kennisgewing in die *Staatskoerant* kan bepaal) van daardie besoldiging; en";

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

"(2) Subject to subparagraph (6), every private company shall on a monthly basis, in respect of every director of that company, pay to the Commissioner an amount determined in accordance with subparagraph (3), which shall for the purposes of sections 79, 89*bis*, 89*ter*, 89*quat*, 90, 102 and 102A of the Act and paragraphs 1, 4, 6, 11, 12, 13 and 14 and Parts III and IV of this Schedule, be deemed to be an amount of employees' tax which was required to be deducted or withheld by the company as an employer in terms of paragraph 2 of this Schedule.";

(c) by the substitution for subparagraph (4) of the following subparagraph:

"(4) A company shall have a right of recovery against a director in respect of any amount paid by that company in terms of subparagraph **[(1)]**(2), in respect of that director and that amount may, in addition to any other right of recovery, be deducted from **[future remuneration]** any amount which is or may become payable by that company to that director."; and

(d) by the addition of the following subparagraph:

"(6) Subparagraph (2) does not apply to a private company in respect of a director where more than 75 per cent of the amount contemplated in 'T' in subparagraph (1)*(b)* in respect of the last year of assessment of that director as contemplated in 'T', represents fixed monthly payments of remuneration paid by that company to that director during that year of assessment.".

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

Amendment of paragraph 16 of Fourth Schedule to Act 58 of 1962

86. Paragraph 16 of the Fourth Schedule to the Income Tax Act, 1962, is hereby amended—

(a) by the substitution for subparagraphs (1) and (2) of the following subparagraphs:

"(1) Every representative employer shall, as regards the remuneration which **[he]** the employer whom he or she represents pays or is liable to pay to any employee or which is paid or payable by the representative employer in his or her representative capacity, be subject in all respects to the same duties, responsibilities and liabilities under this Schedule as if that remuneration were remuneration paid or liable to be paid by him or her in his or her personal capacity.

(2) Any liability for employees' tax or interest on employees' tax or any penalty imposed under this Part **[shall be recovered from the]** of any person who in terms of the definition of 'employer' in paragraph 1 is an employer by virtue of his having paid or become liable to pay remuneration in a fiduciary capacity or in his capacity as a trustee in an insolvent estate, an executor, or an administrator of a benefit fund, pension fund, provident fund, retirement annuity fund or any other fund, or from the representative employer, **[but]** shall be limited to the extent only of any assets belonging to the person, body, trust, estate or fund represented or administered by him which may be in his possession or under his management, disposal or control**[, and the provisions of sections ninety-six and ninety-seven of this Act shall *mutatis mutandis* apply in the case of such first-mentioned person or representative employer as if he were a representative taxpayer]**.";

(b) by the insertion after subparagraph (2) of the following subparagraphs:

"(2A) Every representative employer or other person who is personally liable as contemplated in subparagraphs (2), (2B) or (2C), who, as such, pays any employees' tax, additional tax, penalty or interest due under this Act shall be entitled to recover the amount so paid from

(b) deur subparagraaf (2) deur die volgende subparagraaf te vervang:

"(2) Behoudens subparagraaf (6), moet elke privaatmaatskappy **[moet]** op 'n maandelikse basis, ten opsigte van elke direkteur van daardie maatskappy 'n bedrag vasgestel ingevolge subparagraaf (3) aan die Kommissaris betaal, wat by die toepassing van artikels 79, 89bis, 89ter, 89quat, 90, 102 en 102A van die Wet en paragrawe 1, 4, 6, 11, 12, 13 en 14 en Dele III en IV van hierdie Bylae geag word 'n bedrag van werknemersbelasting te wees wat deur die maatskappy as werkgewer ingevolge paragraaf 2 van hierdie Bylae afgetrek of teruggehou moes word.";

(c) deur subparagraaf (4) deur die volgende subparagraaf te vervang:

"(4) 'n Maatskappy het 'n reg van verhaal teen 'n direkteur ten opsigte van enige bedrag deur daardie maatskappy ingevolge subparagraaf **[(1)]** (2) ten opsigte van daardie direkteur betaal, en daardie bedrag kan, addisioneel tot enige ander reg van verhaal **[word]** van **[toekomstige besoldiging]** enige bedrag wat deur daardie maatskappy aan daardie direkteur betaalbaar is of mag **[wees]** word, verhaal word.";

(d) deur die volgende subparagraaf by te voeg:

"(6) Subparagraaf (2) is nie van toepassing nie ten opsigte van 'n privaatmaatskappy met betrekking tot 'n dirkekteur waar meer as 75 persent van die bedrag in 'T' in subparagraaf (1)*(b)* bedoel ten opsigte van die laaste jaar van aanslag van daardie direkteur soos in 'T' bedoel vaste maandelikse betalings van besoldiging uitmaak wat deur daardie maatskappy aan daardie direkteur gedurende daardie jaar van aanslag betaal is.".

(2) Subartikel (1)*(d)* tree op 1 Maart 2004 in werking en is van toepassing ten opsigte van enige jaar van aanslag wat op of na daardie datum 'n aanvang neem.

Wysiging van paragraaf 16 van Vierde Bylae by Wet 58 van 1962

86. Paragraaf 16 van die Vierde Bylae by die Inkomstebelastingwet, 1962, word hierby gewysig—

(a) deur subparagrawe (1) en (2) deur die volgende subparagrawe te vervang:

"(1) Elke verteenwoordigende werkgewer is, met betrekking tot die besoldiging wat **[hy in sy verteenwoordigende hoedanigheid]** die werkgewer wat deur hom of haar verteenwoordig word aan 'n werknemer betaal of verplig is om te betaal, of wat deur die verteenwoordigende werkgewer in sy of haar verteenwoordigende hoedanigheid metaal word of betaalbaar is, in alle opsigte onderhewig aan dieselfde pligte, verantwoordelikhede en verpligtings ingevolge hierdie bylae asof hy of sy in sy of haar persoonlike hoedanigheid daardie besoldiging betaal of verplig is om dit te betaal.

(2) Enige aanspreeklikheid vir werknemersbelasting of rente op werknemersbelasting of enige boete wat ingevolge hierdie Deel opgelê **[word, is verhaalbaar op die]** van 'n persoon wat ingevolge die omskrywing van "werkgewer" in paragraaf 1 'n werkgewer is uit hoofde van die feit dat hy in 'n fidusiêre hoedanigheid of in die hoedanigheid van trustee van 'n insolvente boedel, eksekuteur of administrateur van 'n bystandsfonds, pensioenfonds, voorsorgsfonds, uittredingannuïteitsfonds of ander fonds besoldiging betaal het of aanspreeklik geword het vir die betaling van besoldiging, of op die verteenwoordigende werkgewer, **[maar]** is beperk slegs vir sover bates behorende aan die persoon, liggaam, trust, boedel of fonds deur hom verteenwoordig of geadministreer in sy besit of onder sy bestuur, beskikking of beheer is **[en die bepalings van artikels ses-en-negentig en sewe-en-negentig van hierdie Wet is mutatis mutandis van toepassing in die geval van eersbedoelde persoon of die verteenwoordigende werkgewer asof hy 'n verteenwoordigende belastingpligtige was]**.";

(b) deur na subparagraaf (2) die volgende subparagrawe in te voeg:

"(2A) Elke verteenwoordigende werkgewer of ander persoon wat persoonlik aanspreeklik is soos in subparagraaf (2), (2B) of (2C) bedoel, wie sodanig enige werknemersbelasting, addisionele belasting, boete of rente kragtens hierdie Wet verskuldig betaal, is geregtig om die bedrag

the person on whose behalf it is paid, or to retain out of any moneys that may be in his or her possession or may come to the representative employer in his or her representative capacity, an amount equal to the amount so paid.

(2B) Every representative employer and person contemplated in subparagraph (2) shall be personally liable for the payment of any employees' tax, additional tax, penalty or interest payable by that representative employer in his or her representative capacity to the extent that the representative employer or person, while it remains unpaid,—

(a) alienates, charges or disposes of any money received or accrued in respect of which the tax is chargeable; or

(b) disposes of or parts with any fund or money belonging to the employer whom he or she represents which is in his or her possession or comes to him or her after the employees' tax, additional tax, penalty or interest has become payable, if such employees' tax, additional tax, penalty or interest could legally have been paid from or out of such fund or money.

(2C) Where an employer is a company, every shareholder and director who controls or is regularly involved in the management of the company's overall financial affairs shall be personally liable for the employees' tax, additional tax, penalty or interest for which the company is liable.

(2D) Notwithstanding subparagraph (2), the employees' tax, additional tax, penalty or interest for which any representative employer or other person is liable in terms of subparagraph (2B) or (2C) shall be fully recoverable by the Commissioner from that representative employer or other person to the extent that it remains unpaid by the employer.

Amendment of paragraph 19 of Fourth Schedule to Act 58 of 1962, as added by section 19 of Act 6 of 1963 and amended by section 28 of Act 88 of 1965, section 46 of Act 89 of 1969, section 43 of Act 88 of 1971, section 50 of Act 85 of 1974, section 49 of Act 94 of 1983, section 52 of Act 101 of 1990, section 44 of Act 21 of 1995 and section 37 of Act 5 of 2001

87. Paragraph 19 of the Fourth Schedule to the Income Tax Act, 1962, is hereby amended by the substitution in subparagraph (1) for the words in subitem (ii) of item *(e)* preceding the proviso of the following words:

"(ii) in respect of which a notice of assessment relevant to the estimate has been issued by the Commissioner not less than **[fourteen]** 60 days before the date on which the estimate is submitted to the Commissioner:".

Amendment of paragraph 20A of Fourth Schedule to Act 58 of 1962, as inserted by section 25 of Act 52 of 1970 and amended by section 45 of Act 88 of 1971, section 52 of Act 85 of 1974 and section 40 of Act 121 of 1984

88. Paragraph 20A of the Fourth Schedule to the Income Tax Act, 1962, is hereby amended by the substitution for subparagraph (1) of the following subparagraph:

"(1) Subject to the provisions of subparagraphs (2) and (3), where any provisional taxpayer is liable for the payment of normal tax in respect of any amount of taxable income derived by **[him]** that provisional taxpayer during any year of assessment and the estimate of his or her taxable income for that year required to be submitted by him or her under paragraph 19(1) during the period contemplated in paragraph 21(1)*(b)*, 22(1) or 23*(b)*, as the case may be, was not submitted by him or her on or before the last day of that year or, if the period for the payment of provisional tax due by him or her in respect of such period has under paragraph 25(2) been extended to a date later than the end of such year, on or before such date, the taxpayer shall, unless the Commissioner has estimated the said

aldus betaal te verhaal van die persoon namens wie dit betaal is, of om 'n bedrag terug te hou uit gelde wat in sy of haar besit is of na die verteenwoordiginde werkgewer in sy of haar verteenwoordigende hoedanigheid ter hand kom, gelyk aan die bedrag aldus betaal.

(2B) Elke verteenwoordige werknemer en persoon in subparagraaf (2) bedoel is persoonlik aanspreeklik vir die betaling van enige werknemersbelasting, addisionele belasting, boete of rente betaalbaar deur daardie verteenwoordigende werkgewer in sy of haar verteenwoordigende hoedanigheid, in die mate wat die verteenwoordigende werkgewer of persoon, terwyl dit onbetaal bly—

(a) enige gelde ontvang of toegeval ten opsigte waarvan die belasting hefbaar is, vervreem, beswaar of daaroor beskik; of

(b) beskik oor of afstand doen van enige fondse of gelde wat aan die werkgewer wie hy of sy verteenwoordig behoort en wat in sy of haar besit is of hom of haar ter hand kom na die werknemersbelasting, addisionele belasting, boete of rente betaalbaar geword het, indien daardie werknemersbelasting, addisionele belasting, boete of rente wettiglik uit daardie fondse of gelde betaal kon word.

(2C) Waar 'n werkgewer 'n maatskappy is, is elke aandeelhouer en direkteur wat die bestuur van die maatskappy se oorhoofse finansiële sake beheer of gereeld daarby betrokke is, persoonlik aanspreeklik vir die werknemersbelasting, addisionele belasting, boete of rente waarvoor die maatskappy aanspreeklik is.

(2D) Ondanks subparagraaf (2), is die werknemersbelasting, addisionele belasting, boete of rente waarvoor 'n verteenwoordigende werkgewer of ander persoon aanspreeklik is ingevolge subparagraaf (2B) of (2C) ten volle verhaalbaar deur die Kommissaris van daardie verteenwoordigende werkgewer of ander persoon in die mate wat die deur die werkgewer onbetaald bly.".

Wysiging van paragraaf 19 van Vierde Bylae by Wet 58 van 1962, soos ingevoeg deur artikel 19 van Wet 6 van 1963 en gewysig deur artikel 28 van Wet 88 van 1965, artikel 46 van Wet 89 van 1969, artikel 43 van Wet 88 van 1971, artikel 50 van Wet 85 van 1974, artikel 49 van Wet 94 van 1983, artikel 52 van Wet 101 van 1990, artikel 44 van Wet 21 van 1995 en artikel 37 van Wet 5 van 2001

87. Paragraaf 19 van die Vierde Bylae by die Inkomstebelastingwet, 1962, word hierby gewysig deur in subparagraaf (1) die woorde in subitem *(ii)* van item *(e)* wat die voorbehoudsbepaling voorafgaan deur die volgende woorde te vervang: "

"(ii) ten opsigte waarvan 'n aanslagkennisgewing, wat op die skatting ter sake dienend is, deur die Kommissaris uitgereik is nie minder nie as **[veertien]** 60 dae voor die datum waarop die skatting aan die Kommissaris verstrek word:".

Wysiging van paragraaf 20A van Vierde Bylae by Wet 58 van 1962, soos ingevoeg deur artikel 25 van Wet 52 van 1970 en gewysig deur artikel 45 van Wet 88 van 1971, artikel 52 van Wet 85 van 1974 en artikel 40 van Wet 121 van 1984

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

"(1) Behoudens die bepalings van subparagrawe (2) en (3), waar 'n voorlopige belastingpligtige aanspreeklik is vir die betaling van normale belasting ten opsigte van 'n bedrag van belasbare inkomste wat **[hy]** daardie voorlopige belastingpligtige gedurende 'n jaar van aanslag verkry het en die skatting van sy of haar belasbare inkomste vir daardie jaar wat volgens voorskrif van paragraaf 19(1) gedurende die in paragraaf 21(1)*(b)*, 22(1) of 23*(b)* beoogde tydperk, na gelang van die geval, verstrek moes gewees het, nie op of voor die laaste dag van daardie jaar of, waar die tydperk vir die betaling van voorlopige belasting ten opsigte van bedoelde tydperk deur hom verskuldig, ingevolge paragraaf 25(2) tot 'n datum na die end van bedoelde jaar verleng is, op of voor dié datum, deur hom of haar verstrek is nie, moet die belastingpligtige, tensy die Kommissaris bedoelde

taxable income under paragraph 19(2) or has increased the amount thereof under paragraph 19(3), be required to pay to the Commissioner, in addition to the normal tax chargeable in respect of such taxable income, an amount by way of additional tax equal to 20 per cent of the amount by which the normal tax payable by him or her in respect of such taxable income exceeds the sum of any amounts of provisional tax paid by him or her in respect of such taxable income within any period allowed for the payment of such provisional tax under this Part or within any extension of such period under paragraph 25(2) and any amounts of employees' tax deducted or withheld from his or her remuneration by his or her employer during such year.".

Amendment of paragraph 21 of Fourth Schedule to Act 58 of 1962, as substituted by section 30 of Act 88 of 1965 and amended by section 46 of Act 88 of 1971 and amended by section 59 of Act 74 of 2002

89. Paragraph 21 of the Fourth Schedule to the Income Tax Act, 1962, is hereby amended by the substitution in subparagraph (1) for items *(a)* and *(b)* of the following items:

"*(a)* within the period of six months reckoned from the commencement of the year of assessment in question, one half of an amount equal to the total estimated liability of such taxpayer (as determined in accordance with paragraph 17) for normal tax in respect of that year, less the total amount of—

(i) any employees' tax deducted by the taxpayer's employer from the taxpayer's remuneration during such period; and

(ii) any tax proved to be payable to the government of any other country which will qualify as a rebate under section 6*quat*; and

(b) not later than the last day of the year of assessment in question, an amount equal to the total estimated liability of such taxpayer (as finally determined in accordance with paragraph 17) for normal tax in respect of that year, less the **[sum of the amounts]** total amount of—

(i) any employees' tax deducted by the taxpayer's employer from the taxpayer's remuneration during such year and the amount paid in terms of item *(a)*; and

(ii) any tax proved to be payable to the government of any other country which will qualify as a rebate under section 6*quat*.".

Amendment of paragraph 1 of Eighth Schedule to Act 58 of 1962, as inserted by section 38 of Act 5 of 2001 and amended by section 65 of Act 60 of 2001 and section 63 of Act 74 of 2002

90. Paragraph 1 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended by the substitution for the definition of "valuation date" of the following definition:

" 'valuation date' means—

(a) in the case of any person contemplated in section 10(1)*(c*A*)* which after 1 October 2001 ceases to be an exempt person for purposes of that section and paragraph 63, the date on which that person so ceases to be an exempt person; or

(b) in any other case, 1 October 2001;".

Amendment of paragraph 2 of the Eighth Schedule to Act 58 of 1962, as inserted by section 38 of Act 5 of 2001 and amended by section 25 of Act 19 of 2001, section 66 of Act 60 of 2001 and section 64 of Act 74 of 2002

91. Paragraph 2 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended by the substitution in subparagraph (1) for the words preceding item *(a)* of the following words:

belasbare inkomste ingevolge paragraaf 19(2) geskat het of die bedrag daarvan ingevolge paragraaf 19(3) verhoog het, by wyse van addisionele belasting bo en behalwe die normale belasting wat ten opsigte van bedoelde belasbare inkomste hefbaar is, 'n bedrag aan die Kommissaris betaal gelyk aan 20 persent van die bedrag waarmee die normale belasting wat deur hom of haar betaalbaar is ten opsigte van bedoelde belasbare inkomste deur hom of haar betaal binne 'n tydperk wat vir die betaling van daardie voorlopige belasting ingevolge hierdie Deel toegelaat word of binne 'n verlenging van daardie tydperk ingevolge paragraaf 25(2) en enige bedrae aan werknemersbelasting wat deur sy of haar werkgewer gedurende bedoelde jaar van sy of haar besoldiging afgetrek of teruggehou is, te bowe gaan.".

Wysiging van paragraaf 21 van Vierde Bylae by Wet 58 van 1962, soos vervang deur artikel 30 van Wet 88 van 1965 en gewysig deur artikel 46 van Wet 88 van 1971 en gewysig deur artikel 59 van Wet 74 van 2002

89. Paragraaf 21 van die Vierde Bylae by die Inkomstebelastingwet, 1962, word hierby gewysig deur in subparagraaf (1) items *(a)* en *(b)* deur die volgende items te vervang:

"*(a)* binne die tydperk van ses maande bereken vanaf die begin van die onderhawige jaar van aanslag, een-helfde van 'n bedrag gelyk aan die totale geskatte aanspreeklikheid van die belastingpligtige (soos volgens voorskrif van paragraaf 17 vasgestel) vir normale belasting ten opsigte van daardie jaar, min die totale bedrag—

(i) aan werknemersbelasting deur die belastingpligtige se werkgewer afgetrek van die belastingpligtige se besoldiging gedurende bedoelde tydperk; en

(ii) van enige belasting wat bewys word betaalbaar te wees aan die regering van enige ander land wat as 'n korting kragtens artikel 6*quat* sal kwalifiseer; en

(b) nie later nie as die laaste dag van die onderhawige jaar van aanslag, 'n bedrag gelyk aan die totale geskatte aanspreeklikheid van die belastingpligtige (soos volgens voorskrif van paragraaf 17 finaal vasgestel) vir normale belasting ten opsigte van daardie jaar, min die **[som van die bedrae]** totale bedrag—

(i) aan werknemersbelasting deur die belastingpligtige se werkgewer van die belastingpligtige se besoldiging gedurende daardie jaar afgetrek en die bedrag ingevolge item *(a)* betaal; en

(ii) van enige belasting wat bewys word betaalbaar te wees aan die regering van enige ander land wat as 'n korting kragtens artikel 6*quat* sal kwalifiseer.".

Wysiging van paragraaf 1 van Agtste Bylae by Wet 58 van 1962, soos ingevoeg deur artikel 38 van Wet 5 van 2001 en gewysig deur artikel 65 van Wet 60 van 2001 en artikel 63 van Wet 74 van 2002

90. Paragraaf 1 van die Agtste Bylae by die Inkomstebelastingwet, 1962, word hierby gewysig deur die omskrywing van "waardasiedatum" deur die volgende omskrywing te vervang:

" 'waardasiedatum'

(a) in die geval van enige persoon in artikel 10(1)*(cA)* beoog wat na 1 Oktober 2001 ophou om 'n vrygestelde persoon vir doeleinde van daardie artikel en paragraaf 63 te wees, die datum waarop daardie persoon so opgehou het om 'n vrygestelde persoon te wees; of

(b) in enige ander geval, 1 October 2001.".

Wysiging van paragraaf 2 van die Agtste Bylae by Wet 58 van 1962, soos ingevoeg deur artikel 38 van Wet 5 van 2001 en gewysig deur artikel 25 van Wet 19 van 2001, artikel 66 van Wet 60 van 2001 en artikel 64 van Wet 74 van 2002

91. Paragraaf 2 van die Agtste Bylae by die Inkomstebelastingwet, 1962, word hierby gewysig deur in subparagraaf (1) die woorde wat item *(a)* voorafgaan deur die volgende woorde te vervang:

"(1) Subject to paragraph **[86]** 97, this Schedule applies to the disposal on or after valuation date-".

Amendment of paragraph 11 of the Eighth Schedule of Act 58 of 1962, as inserted by section 38 of Act 5 of 2001 and amended by section 71 of Act 60 of 2001 and section 67 of Act 74 of 2002

92. (1) Paragraph 11 of the Eighth Schedule of the Income Tax Act, 1962, is hereby amended by the substitution in subparagraph (2) for item *(h)* of following item:

"*(h)* by a lender to a borrower or by a borrower to a lender where any **[marketable]** security has been lent by a lender to a borrower in terms of a securities lending arrangement **[as defined in section 23(1) of the Stamp Duties Act, 1968 (Act No. 77 of 1968), and another marketable security of the same kind and of the same or equivalent quantity and quality has been or will be returned by the borrower to that lender before the end of the 12 month period contemplated in that definition;]** or".

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

Amendment of paragraph 12 of Eighth Schedule to Act 58 of 1962, as inserted by section 38 of Act 5 of 2001 and amended by section 72 of Act 60 of 2001 and section 68 of Act 74 of 2002

93. (1) Paragraph 12 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended—

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

"(1) Where an event described in subparagraph (2) occurs, a person will be treated for the purposes of this Schedule as having disposed of an asset described in that subparagraph for **[proceeds]** an amount received or accrued equal to the market value of the asset at the time of the event and to have immediately reacquired the asset at an expenditure equal to that market value, which expenditure must be treated as an amount of expenditure actually incurred and paid for the purposes of paragraph 20(1)*(a)*.";

(b) by the substitution in subparagraph (2) for item *(a)* of the following item:

"*(a)* a person who ceases to be a resident, **[or a resident who is as a result of the application of any agreement entered into by the Republic for the avoidance of double taxation treated as not being a resident]**, in respect of all assets of that person other than assets in the Republic listed in paragraph 2(1)*(b)*(i) and (ii);"; and

(c) by the substitution in subparagraph (5) for the words following subitem (ii) of item *(a)* of the following:

"but does not apply where—

(aa) the amount of that reduction or discharge—

(A) constituted a capital gain in terms of paragraph 3*(b)*(ii); or

(B) has been taken into account in terms of section 8(4)*(m)* or 20(1)*(a)*(ii) or paragraph 20(3): or

(bb) that person and that creditor are members of the same group of companies unless—

(A) that debt (or any substituted debt) was acquired directly or indirectly from a person who is not a member of that group of companies; or

(B) that person or another person became members of that group of companies after that debt (or any substituted debt) arose,

and these transactions were part of a scheme to avoid any tax otherwise imposed by virtue of this subparagraph.".

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

(b) Subsection (1)*(c)* shall come into operation on the date of promulgation of this Act and shall apply in respect of any reduction or discharge on or after that date.

"(1) Behoudens paragraaf **[86]** 97 is hierdie Bylae van toepassing op die beskikking op of na die waardasiedatum van-".

Wysiging van paragraaf 11 van die Agtste Bylae van Wet 58 van 1962, soos ingevoeg deur artikel 38 van Wet 5 van 2001 en gewysig deur artikel 71 van Wet 60 van 2001 en artikel 67 van Wet 74 van 2002

92. Paragraaf 11 van die Agtste Bylae by die Inkomstebelastingwet, 1962, word hierby gewysig deur in subparagraaf (2) item *(h)* deur die volgende item te vervang:

"*(h)* deur 'n uitlener aan 'n lener of deur 'n lener aan 'n uitlener, waar enige **[handelseffekte]** effekte geleen is deur 'n uitlener aan 'n lener kragtens 'n **["leningsreëling"]** effekteleningsreëling **[soos omskryf in artikel 23 (1) van die Wet op Seëlregte, 1968 (Wet 77 van 1968) en 'n ander handelseffek van dieselfde soort en van dieselfde of gelyke hoeveelheid en gehalte terugbesorg is of sal word deur daardie lener aan daardie uitlener voor die einde van die 12 maande-periode in daardie omskrywing beoog;]** of".

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

Wysiging van paragraaf 12 van Agtste Bylae by Wet 58 van 1962, soos ingevoeg deur artikel 38 van Wet 5 van 2001 en gewysig deur artikel 72 van Wet 60 van 2001 en artikel 68 van Wet 74 van 2002

93. Paragraaf 12 van die Agtste Bylae by die Inkomstebelastingwet, 1962, word hierby gewysig—

(a) deur subparagraaf (1) deur die volgende subparagraaf te vervang:

"(1) Waar 'n gebeurtenis beskryf in subparagraaf (2) plaasvind, word 'n persoon by die toepassing van hierdie Bylae geag te beskik het oor 'n bate in daardie subparagraaf beskryf vir **[vergoeding]** 'n bedrag ontvang of toegeval gelyk aan die markwaarde van die bate op die tydstip van die gebeurtenis en onmiddellik die bate teen 'n koste gelyk aan daardie markwaarde herverkry het, welke koste by die toepassing van paragraaf 20 (1) *(a)* geag word 'n bedrag van koste werklik aangegaan en betaal te wees.";

(b) deur in subparagraaf (2) item *(a)* deur die volgende item te vervang:

"*(a)* 'n persoon wat ophou om 'n inwoner te wees, **[of 'n inwoner wat as gevolg van die toepassing van enige ooreenkoms deur die Republiek aangegaan vir die vermyding van dubbele belasting nie 'n inwoner geag word te wees nie,]** ten opsigte van alle bates van daardie persoon behalwe bates in die Republiek in paragraaf 2 (1)*(b)*(i) en (ii) gelys;";

(c) deur in subparagraaf (5) die woorde in item *(a)* wat subitem *(ii)* volg deur die volgende woorde te vervang:

"maar is nie van toepassing nie waar—

(aa) die bedrag van daardie vermindering of aflossing—

(A) 'n kapitaalwins ingevolge paragraaf 3*(b)*(ii) daargestel het; of

(B) ingevolge **[paragraaf]** artikel 8(4)*(m)* of 20(1)*(a)*(ii) of paragraaf 20(3) in berekening gebring is; of

(bb) daardie persoon en daardie krediteur lede van dieselfde groep van maatskappye is, tensy—

(A) daardie skuld (of enige vervangende skuld) direk of indirek vekry was van 'n persoon wat nie 'n lid van daardie groep van maatskappye is nie; of

(B) daardie persoon of ander persoon lede van daardie groep van maatskappye geword het nadat daardie skuld (of enige vervangende skuld) ontstaan het,

en daardie transaksies deel gevorm het van 'n skema om enige belasting wat andersins as gevolg van hierdie paragraaf opgelê sou word, te vermy.".

(2) *(a)* Subartikel (1)*(a)* word geag op 1 Oktober 2001 in werking te getree het.

(b) Subartikel (1)*(c)* tree in werking op die datum van afkondiging van hierdie Wet en is van toepassing ten opsigte van enige vermindering of kwytskelding op of na daardie datum.

Amendment of paragraph 19 of Eighth Schedule to Act 58 of 1962, as inserted by section 38 of Act 5 of 2001

94. Paragraph 19 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended—

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

"(2) The provisions of subparagraph (1) shall not apply to the extent that dividends **[were received by or accrued to a holding company or an intermediate company with respect to the company distributing the dividends]** were declared by a company to a shareholder (as defined in Part III of the Act) which forms part of the same group of companies as the company declaring the dividend, where the controlling company and the company declaring the dividend are residents.";

(b) by the substitution in subparagraph (3) for subitem (i) of item *(b)* of the following subitem:

"(i) any foreign dividend **[as defined in section 9E,]** that has been included in the income of the person disposing of the share and any foreign dividend which is exempt from tax in terms of section **[9E(7)*(e)*(i)]** 10(1)*(k)*(ii)*(cc)*;"; and

(c) by the deletion of paragraph *(d)* of subparagraph (3).

Amendment of paragraph 20 of Eighth Schedule to Act 58 of 1962, as inserted by section 38 of Act 5 of 2001 and amended by section 26 of Act 19 of 2001, section 75 of Act 60 of 2001 and section 71 of Act 74 of 2002

95. (1) Paragraph 20 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended—

(a) by the substitution in subparagraph (1) for the words in item *(g)* preceding subitem (i) of the following words:

"*(g)* the following amounts actually incurred as expenditure directly related to the cost of ownership of the asset, which is used wholly and exclusively for business purposes or which constitutes a share listed on a recognised **[stock]** exchange or a participatory interest in a portfolio of a collective investment scheme—"; and

(b) by the substitution in subparagraph (1) for subitem (iii) of item *(h)* of the following subitem:

"(iii) a share in a controlled foreign company, an amount equal to the proportional amount of the net income of that company (or any other controlled foreign company in relation to that resident in which that controlled foreign company directly or indirectly has an interest) which was included in the income of that person in terms of section 9D during any year of assessment (other than such portion of that proportional amount which relates to the amount of any taxable capital gain included in that proportional amount) plus the proportional amount of the net capital gains of that controlled foreign company, less the amount of any foreign dividend distributed by that company to that person during any year of assessment which was exempt from tax in terms of section **[9E(7)*(e)*(i)]** 10(1)*(k)*(ii)*(cc)*; or".

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

Insertion of paragraph 20A of Eighth Schedule to Act 58 of 1962

96. (1) The following paragraph is hereby inserted in the Eighth Schedule to the Income Tax Act, 1962, after paragraph 20:

Wysiging van paragraaf 19 van Agtste Bylae by Wet 58 van 1962, soos ingevoeg deur artikel 38 van Wet 5 van 2001

94. Paragraaf 19 van die Agtste Bylae by die Inkomstebelastingwet, 1962, word hierby gewysig—

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

"(2) Die bepalings van subparagraaf (1) is nie van toepassing nie tot die mate wat dividende **[ontvang is deur of toegeval het aan 'n houermaatskappy of tussenmaatskappy met betrekking tot die maatskappy wat die dividende uitkeer]** verklaar is deur 'n maatskappy aan 'n aandeelhouer (soos omskryf in Deel III van hierdie Wet) wat deel vorm van dieselfde groep maatskappye as die maatskappy wat die dividende verklaar, indien die beherende maatskappy en die maatskappy wat die dividende verklaar inwoners is.";

(b) deur in subparagraaf (3) subitem (i) van item *(b)* deur die volgende subitem te vervang:

"(i) enige buitelandse dividend **[soos in artikel 9E omskryf,]** wat in die belasbare inkomste van die persoon wat oor die aandeel beskik ingesluit is en enige buitelandse dividend wat van belasting vrygestel is kragtens artikel **[9E(7)*(e)*(i)]** 10(1)*(k)*(ii)*(cc)*;";

(c) deur in subparagraaf (3) paragraaf *(d)* te skrap.

Wysiging van paragraaf 20 van Agtste Bylae by Wet 58 van 1962, soos ingevoeg deur artikel 38 van Wet 5 van 2001 en gewysig deur artikel 26 van Wet 19 van 2001, artikel 75 van Wet 60 van 2001 en artikel 71 van Wet 74 van 2002

95. Paragraaf 20 van die Agtste Bylae by die Inkomstebelastingwet, 1962, word hierby gewysig—

(a) deur in subparagraaf (1) die woorde in item *(g)* wat subitem (i) voorafgaan deur die volgende woorde te vervang: "

"*(g)* die volgende bedrae werklik aangegaan as onkoste wat direk verband hou met die koste van eienaarskap van daardie bate, wat geheel en uitsluitlik vir besigheidsdoeleindes gebruik word of wat 'n aandeel genoteer op 'n erkende **[aandele]**beurs of 'n belang in 'n effektegroep (behalwe 'n effektegroep bevat in 'n effektetrustskema in eiendomsaandele) daarstel—";

(b) deur in subparagraaf (i) subitem (iii) van item *(h)* deur die volgende subitem te vervang: "

"(iii) 'n aandeel in 'n beheerde buitelandse maatskappy, 'n bedrag gelyk aan die proporsionele bedrag van die netto inkomste van daardie maatskappy (of enige ander beheerde buitelandse maatskappy met betrekking tot daardie inwoner waarin daardie beheerde buitelandse maatskappy direk of indirek 'n belang het) wat kragtens artikel 9D gedurende enige jaar van aanslag in die inkomste van daardie persoon ingesluit was (behalwe daardie gedeelte van daardie proporsionele bedrag wat verband hou met die bedrag van enige belasbare kapitaalwins wat by daardie proporsionele bedrag ingesluit is) plus die proporsionele bedrag maatskappy, verminder met die bedrag van enige buitelandse van die netto kapitaalwinste van daardie beheerde buitelandse dividend deur daardie maatskappy aan daardie persoon gedurende enige jaar van aanslag uitgekeer wat kragtens artikel **[9E(7)*(e)*(i)]** 10(1)*(k)*(ii)*(cc)* van belasting vrygestel was; of".

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

Invoeging van paragraaf 20A in Agtste Bylae by Wet 58 van 1962

96. (1) Die volgende paragraaf word hierby in die Agtste Bylae by die Inkomstebelastingwet, 1962, ingevoeg na paragraaf 20:

"Provisions relating to farming development expenditure

20A. (1) Despite the provisions of paragraph 20(3)*(a)*, where a person carrying on pastoral, agricultural or other farming operations as contemplated in section 26, incurred expenditure in respect of the matters referred to in items *(c)* to *(i)* of paragraph 12(1) of the First Schedule (referred to in this paragraph as 'capital development expenditure') and that person—

(a) ceased to carry on such pastoral, agricultural or other farming operations during any year of assessment; and

(b) at any time thereafter disposes of immovable property on which those operations were carried on,

that person may elect that the amount of the capital development expenditure, or part thereof, which is carried forward and deemed in terms of paragraph 12(3) of the First Schedule to be expenditure which has been incurred in the next succeeding year of assessment for purposes of paragraph 12(1) of the First Schedule (as reduced in terms of paragraph 12(3B) of the First Schedule, if applicable), must be treated as expenditure incurred and paid in respect of that immovable property for the purposes of this Part.

(2) The amount of the capital development expenditure in respect of which the election may be made in terms of subparagraph (1) may not exceed the proceeds from the disposal of that immovable property contemplated in subparagraph (1), reduced by—

(a) in the case of a pre-valuation date asset, any other amount allowable in terms of paragraph 25; or

(b) in any other case, paragraph 20.

(3) Where a person adopts or determines the market value of immovable property on which pastoral, agricultural or other farming operations were carried on as the valuation date value of that asset in terms of paragraph 29(4), only capital development expenditure incurred by that person on or after 1 October 2001 must be taken into account for the purpose of calculating the amount in respect of which an election can be made in terms of subparagraph (1).".

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

Amendment of paragraph 27 of Eighth Schedule to Act 58 of 1962, as inserted by section 38 of Act 5 of 2001 and substituted by section 79 of Act 60 of 2001 and amended by section 75 of Act 74 of 2002

97. Paragraph 27 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended by the substitution for subparagraph (4) of the following subparagraph:

"(4) Where the provisions of subparagraph (3) do not apply, the valuation date value of that asset, contemplated in subparagraph (1), is the time-apportionment base cost of that asset, as contemplated in paragraph 30.".

Amendment of paragraph 30 of Eighth Schedule to Act 58 of 1962, as inserted by section 38 of Act 5 of 2001 and amended by section 82 of Act 60 of 2001 and section 77 of Act 74 of 2002

98. (1) Paragraph 30 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended by the substitution for the first formula in subparagraph (4) of the following formula:

$$\text{"}Y = B + \frac{[(P_1 - B_1) \times N]}{T + N,\text{"}}.$$

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

"**Bepalings ten aansien van boerdery-ontwikkelingsuitgawes**

20A. (1) Ondanks die bepalings van paragraaf 20(3)*(a)*, waar 'n persoon wat veeboerdery, landbou of ander boerdery beoefen soos in artikel 26 bedoel onkoste aangegaan het ten opsigte van die aangeleenthede na verwys in items *(c)* tot en met *(i)* van paragraaf 12(1) van die Eerste Bylae (hierna in hierdie paragraaf na verwys as 'kapitaalontwikkelingsonkoste') en daardie persoon—

(a) daardie veeboerdery, landbou of ander boerdery gedurende enige jaar van aanslag staak; en

(b) te eniger tyd daarna beskik oor die onroerende eiendom waarop daardie bedrywighede beoefen is,

mag daardie persoon 'n keuse uitoefen dat die bedrag van die kapitaalontwikkelingsonkoste of die deel daarvan wat oorgedra is en ingevolge paragraaf 12(3) van die Eerste Bylae geag word, by die toepassing van paragraaf 12(1) van die Eerste Bylae, onkoste te wees wat gedurende die eersvolgende jaar van aanslag aangegaan is (soos verminder, waar toepaslik, ingevolge paragraaf 12(3B) van die Eerste Bylae), vir doeleindes van hierdie Deel hanteer moet word as onkoste aangegaan en betaal ten aansien van daardie onroerende eiendom.

(2) Die bedrag van die kapitaalontwikkelingsonkoste ten aansien waarvan die keuse ingevolge subparagraaf (1) uitgeoefen mag word, mag nie die opbrengs van die beskikking oor daardie onroerende eiendom in subparagraaf (1) bedoel, soos verminder met—

(a) in die geval van 'n voor-waardasiedatumbate, enige bedrag ingevolge paragraaf 25 toelaatbaar; of

(b) in enige ander geval, paragraaf 20, oorskry nie.

(3) Waar 'n persoon die markwaarde van die onroerende eiendom waarop veeboerdery, landbou of ander boerdery beoefen is aangeneem of bepaal het as die waardasiedatumwaarde van daardie bate ingevolge paragraaf 29(4), mag slegs kapitaalontwikkelingsonkoste deur daardie persoon op of na 1 Oktober 2001 aangegaan in ag geneem word vir doeleindes van die berekening van die bedrag ten aansien waarvan 'n keuse ingevolge subparagraaf (1) uitgeoefen mag word.".

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

Wysiging van paragraaf 27 van Agtste Bylae by Wet 58 van 1962, soos ingevoeg deur artikel 38 van Wet 5 van 2001 en vervang deur artikel 79 van Wet 60 van 2001 en gewysig deur artikel 75 van Wet 74 van 2002

97. Paragraaf 27 van die Agtste Bylae by die Inkomstebelastingwet, 1962, word hierby gewysig deur subparagraaf (4) deur die volgende subparagraaf te vervang:

"(4) Waar die bepalings van subparagraaf (3) nie van toepassing is nie, is die waardasiedatumwaarde van daardie bate, soos in subparagraaf (1) bedoel, die tydtoedelingsbasiskoste van daardie bate, soos in paragraaf 30 bedoel.".

Wysiging van paragraaf 30 van Agtste Bylae by Wet 58 van 1962, soos ingevoeg deur artikel 38 van Wet 5 van 2001 en gewysig deur artikel 82 van Wet 60 van 2001 en artikel 77 van Wet 74 van 2002

98. Paragraaf 30 van die Agtste Bylae by die Inkomstebelastingwet, 1962, word hierby gewysig deur in subparagraaf (4) die eerste formule deur die volgend formule te vervang:

$$\text{"}Y = B + \frac{[(P_1 - B_1) \times N]}{T + N},\text{"}.$$

(2) Subartikel (1) word geag op 1 Oktober 2001 in werking te getree het.

Substitution of paragraph 33 of the Eighth Schedule to Act 58 of 1962, as inserted by section 38 of Act 5 of 2001 and amended by section 80 of Act 74 of 2002

99. The following paragraph hereby substitutes paragraph 33 of the Eighth Schedule to the Income Tax Act, 1962:

"Part-disposals

33. (1) Subject to subparagraphs (2), (3), **[and]** (4) and (5), where part of an asset is disposed of—

(a) the proportion of the **[base cost]** expenditure attributable to the part disposed of is an amount which bears to the **[base cost]** expenditure allowable in terms of paragraph 20 in respect of the entire asset the same proportion as the market value of the part disposed of bears to the market value of the entire asset immediately prior to that disposal; and

(b) the market value on valuation date attributable to the part disposed of is an amount which bears to the market value adopted or determined in terms of paragraph 29(4) in respect of the entire asset the same proportion as the market value of the part disposed of bears to the market value of the entire asset immediately prior to that disposal.

(2) Subject to subparagraph (4), where a part of the **[base cost]** expenditure allowable in terms of paragraph 20 or the market value adopted or determined in terms of paragraph 29(4) in respect of an asset can be directly attributed to the part of the asset that is disposed of or retained then the apportionment contemplated in subparagraph (1) does not apply in respect of that part of that **[the base cost]** expenditure or market value as the case may be.

(3) For the purposes of subparagraph (1) and (2) there is no part-disposal of an asset by a person in respect of—

(a) the granting of an option by that person in respect of an asset; **[and]**

(b) the granting, variation or cession of a right of use or occupation of that asset by that person in respect of which no proceeds are received by or accrue to that person;

(c) the improving or enhancing of that asset which is leased to that person; or

(d) the replacement of part of that asset in repairing that asset.

(4) Where proceeds are received by or accrue to a person in respect of the granting, variation or cession of a right of use or occupation of an asset by that person, the portion of the **[base cost]** expenditure allowable in terms of paragraph 20 or market value adopted or determined in terms of paragraph 29(4) attributable to the part of the asset in respect of which those proceeds were received or accrued is an amount which bears to **[the base cost]** that expenditure or market value as the case may be of the entire asset the same proportion as those proceeds bear to the market value of the entire asset immediately prior to that disposal.

(5) Where a person has adopted the 20 percent of proceeds method contemplated in paragraph 26(1)*(b)* in determining the valuation date value of a part of an asset that has been disposed of, that person must adopt that method in determining the valuation date value of any remaining part of that asset.".

Vervanging van paragraaf 33 van die Agtste Bylae by Wet 58 van 1962, soos ingevoeg deur artikel 38 van Wet 5 van 2001 en gewysig deur artikel 80 van Wet 74 van 2002

99. Die volgende paragraaf vervang hierby paragraaf 33 van die Agtste Bylae by die Inkomstebelastingwet, 1962:

"**Gedeeltelike beskikkings**

33. (1) Behoudens subparagrawe (2), (3), **[en]** (4) en (5), waar oor 'n gedeelte van 'n bate beskik word—

(a) is die gedeelte van die **[basiskoste]** onkoste toeskryfbaar aan die gedeelte waaroor beskik is 'n bedrag wat in dieselfde verhouding tot die **[basiskoste]** onkoste toelaatbaar ingevolge paragraaf 20 ten aansien van die totale bate staan as wat die markwaarde van die gedeelte waaroor beskik is in **[die]** verhouding tot die markwaarde van die totale bate onmiddellik voor daardie beskikking staan; en

(b) is die markwaarde op die waardasiedatum toeskryfbaar aan die gedeelte waaroor beskik is 'n bedrag wat in dieselfde verhouding tot die markwaarde aangeneem of bepaal ingevolge paragraaf 29(4) ten aansien van die totale bate staan as wat die markwaarde van die gedeelte waaroor beskik is in verhouding tot die markwaarde van die totale bate onmiddellik voor daardie beskikking staan.

(2) Behoudens subparagraaf (4), waar 'n gedeelte van die **[basiskoste]** onkoste toelaatbaar ingevolge paragraaf 20 of die markwaarde aangeneem of bepaal ingevolge paragraaf 29(4) ten aansien van 'n bate direk toegeskryf kan word aan die gedeelte van die bate waaroor beskik is of wat behou is, dan is die toedeling in subparagraaf (1) beoog nie van toepassing nie ten opsigte van daardie gedeelte van die **[basiskoste]** onkoste of markwaarde, na gelang van die geval.

(3) By die toepassing van subparagrawe (1) en (2) moet daar nie geag word 'n gedeeltelike beskikking deur 'n persoon oor daardie bate te wees nie ten opsigte van—

(a) die verlening van 'n opsie deur daardie persoon ten opsigte van 'n bate; **[en]**

(b) die verlening, wysiging of sessie van 'n reg van gebruik of okkupasie van daardie bate deur daardie persoon ten opsigte waarvan geen opbrengs ontvang is of toegeval het aan daardie persoon nie;

(c) die verbetering of verhoging in die waarde van daardie bate wat aan daardie persoon verhuur word; en

(d) die vervanging van 'n gedeelte van daardie bate by die herstel van daardie bate.

(4) Waar opbrengs ontvang is deur of toegeval het aan 'n persoon ten opsigte van die verlening, wysiging of sessie van 'n reg van gebruik of okkupasie van 'n bate deur daardie persoon, is die gedeelte van die **[basiskoste]** onkoste toelaatbaar ingevolge paragraaf 20 of die markwaarde aangeneem of bepaal ingevolge paragraaf 29(4) wat toeskryfbaar is aan die gedeelte van die bate ten opsigte waarvan daardie opbrengs ontvang is of toegeval het 'n bedrag wat tot die **[basiskoste]** onkoste of markwaarde, na gelang van die geval, van die totale bate staan in dieselfde verhouding as daardie opbrengs tot die markwaarde van die totale bate onmiddellik voor daardie beskikking staan.

(5) Waar 'n persoon die 20 per sent van opbrengs metode in paragraaf 26(1)*(b)* aangeneem het by die bepaling van die waardasiedatumwaarde van 'n gedeelte van 'n bate waaroor beskik is, moet daardie persoon dieselfde metode aanwend by die bepaling vandie waardasiedatumwaarde van enige ooblywende gedeelte van daardie bate.".

Amendment of paragraph 39 of Eighth Schedule to Act 58 of 1962, as inserted by section 38 of Act 5 of 2001 and amended by section 88 of Act 60 of 2001

100. Paragraph 39 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended by the substitution for subparagraph (1) of the following subparagraph:

"(1) A person must, when determining the aggregate capital gain or aggregate capital loss of that person, disregard any capital loss determined in respect of the disposal of an asset to any person—

(a) who was a connected person in relation to that person immediately before that disposal; or

(b) which is—

(i) a member of the same group of companies as that person; or

(ii) a trust with a beneficiary which is a member of the same group of companies as that person,

immediately after that disposal, subject to subparagraph (3).".

Amendment of paragraph 43 of Eighth Schedule to Act 58 of 1962, as inserted by section 38 of Act 5 of 2001 and amended by section 91 of Act 60 of 2001 and substituted by section 84 of Act 74 of 2002

101. (1) Paragraph 43 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended—

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

"(1) Subject to subparagraph (4), where a person during any year of assessment disposes of an asset for proceeds **[denominated]** in a **[foreign]** currency other than currency of the Republic after having incurred expenditure in respect of that asset in the same currency, that person must determine the capital gain or capital loss on the disposal in that **[foreign]** currency and that capital gain or capital loss must be translated **[into the local currency]** in accordance with the provisions of section 25D(2).";

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

"(2) **[Despite section 25D,]** Where a person disposes of an asset, (other than an asset contemplated in **[subsection]** subparagraph (4)), for proceeds which are either received or accrued or denominated for purposes of financial reporting of a permanent establishment of that person in any currency (hereinafter referred to as the 'currency of disposal') after having incurred expenditure in respect of that asset which is either actually incurred or denominated for purposes of financial reporting in another currency (hereinafter referred to as the 'currency of expenditure'), that person must for purposes of determining the capital gain or capital loss on the disposal of that asset—

(a) where the currency of expenditure is actually incurred or denominated in the local currency, translate the proceeds into the local currency at the average exchange rate for that year of assessment during which that asset was disposed of;

(b) where the currency of disposal is received or accrued or denominated in the local currency, translate the expenditure which is allowable in terms of paragraph 20, into the local currency at the average exchange rate for the year of assessment during which that expenditure was incurred or treated as being incurred (or if the local currency did not exist at the time of expenditure, the first available exchange rate for that local currency); and

(c) where neither the currency of disposal nor the currency of expenditure constitutes local currency—

(i) translate the amount of the expenditure, which is allowable in terms of paragraph 20, to the currency of disposal at the average exchange rate for the year of assessment during which that expenditure was incurred or treated as being incurred (or if

Wysiging van paragraaf 39 van Agtste Bylae by Wet 58 van 1962, soos ingevoeg deur artikel 38 van Wet 5 van 2001 en gewysig deur artikel 88 van Wet 60 van 2001

100. Paragraaf 39 van die Agtste Bylae by die Inkomstebelastingwet, 1962, word hierby gewysig deur subparagraaf (1) deur die volgende subparagraaf te vervang:

"(1) 'n Persoon moet, by die vasstelling van daardie persoon se totale kapitaalwins of totale kapitaalverlies, enige kapitaalverlies vasgestel ten opsigte van die beskikking oor 'n bate aan enige persoon—

(a) wat 'n verbonde persoon met betrekking tot daardie persoon, behoudens subparagraaf (3), was onmiddellik voor daardie beskikking; of

(b) wat onmiddellik na daardie beskikking

(i) 'n lid is van dieselfde groep maatskappye as daardie persoon; of

(ii) 'n trust is met 'n begunstigde wat 'n lid is van dieselfde groep maatskappye as daardie persoon

verontagsaam.".

Wysiging van paragraaf 43 van Agtste Bylae by Wet 58 van 1962, soos ingevoeg deur artikel 38 van Wet 5 van 2001 en gewysig deur artikel 91 van Wet 60 van 2001 en vervang deur artikel 84 van Wet 74 van 2002

101. Paragraaf 43 van die Agtste Bylae by die Inkomstebelastingwet, 1962, word hierby gewysig—

(a) deur subparagraaf (1) deur die volgende subparagraaf te vervang:

"(1) Behoudens subparagraaf (4), waar 'n persoon gedurende 'n jaar van aanslag oor 'n bate beskik vir 'n opbrengs **[wat]** in 'n **[buitelandse]** geldeenheid anders as die geldeenheid van die Republiek aangetoon word nadat 'n onkoste ten opsigte van daardie bate in dieselfde geldeenheid aangegaan is, moet daardie persoon die kapitaalwins of kapitaalverlies by die beskikking vasstel in daardie **[buitelandse]** geldeenheid en daardie kapitaalwins of kapitaalverlies moet ingevolge die bepalings van artikel 25D **[na die plaaslike geldeenheid]** omgeskakel word.";

(b) deur subparagraaf (2) deur die volgende subparagraaf te vervang:

"(2) **[Ondanks artikel 25D,]** Waar 'n persoon oor 'n bate, behalwe 'n bate in **[subartikel]** subparagraaf (4) bedoel, beskik vir 'n opbrengs wat in enige geldeenheid ontvang word, toeval of vir doeleindes van finansiële verslagdoening ten aansien van 'n permanente saak van daardie persoon aangetoon word (hierna die "geldeenheid van beskikking" genoem) nadat onkoste ten opsigte van daardie bate wat of werklik aangegaan word of vir doeleindes van finansiële verslagdoening aangetoon word in 'n ander geldeenheid (hierna die "geldeenheid van onkoste" genoem) **[aangegaan is]**, moet daardie persoon ten einde die kapitaalwins of kapitaalverlies by die beskikking van daardie bate te bepaal,—

(a) waar die geldeenheid van onkoste werklik aangegaan of aangedui is in die plaaslike geldeenheid **[aangedui is]**, deur die opbrengs na die plaaslike geldeenheid om te skakel teen die gemiddelde wisselkoers vir die jaar van aanslag waarin oor daardie bate beskik is;

(b) waar die geldeenheid van beskikking in die plaaslike geldeenheid ontvang word, toeval of aangedui is, deur die onkoste wat ingevolge paragraaf 20 toelaatbaar is, om te skakel na die plaaslike geldeenheid teen die gemiddelde wisselkoers vir die jaar van aanslag waarin daardie onkoste aangegaan is of geag aangegaan te gewees het (of indien die plaaslike geldeenheid nie op die tydstip wat die onkoste aangegaan is bestaan het nie, die eerste beskikbare wisselkoers vir daardie plaaslike geldeenheid); en

(c) waar nóg die geldeenheid van beskikking nóg die geldeenheid van onkoste die plaaslike geldeenheid daarstel—

(i) die bedrag van die onkoste wat ingevolge paragraaf 20 toelaatbaar is, om te skakel na die geldeenheid van beskikking teen die gemiddelde wisselkoers vir die jaar van aanslag waarin daardie onkoste aangegaan is of geag aangegaan te gewees het) of indien die geldeenheid van beskikking nie op

the currency of disposal did not exist at the time of expenditure, the first available exchange rate for that currency of disposal); and

(ii) translate the amount of the capital gain or capital loss determined in foreign currency to the local currency at the average exchange rate for the year of assessment during which the asset was disposed of, and must translate the amount of the capital gain or loss in accordance with the provisions of section 25D.";

(c) by the substitution in subparagraph (4) for the words preceding item *(a)* of the following words:

"**[Despite section 25D,]** Where a person during any year of assessment disposes of any-";

(d) by the substitution in subparagraph (4) for item *(b)* of the following item:

"*(b)* asset the capital gain or capital loss from the disposal of which is derived or deemed to have been derived from a source in the Republic, as contemplated in section 9(2) (other than **[an asset contemplated in section 9(2)***(b)(i)* or] an asset contemplated in paragraph *(b)* of the definition of 'foreign currency asset' in paragraph 84),";

(e) by the substitution in subparagraph (4) for item (ii) of the following item:

"(ii) the expenditure incurred in respect of that foreign equity instrument or that asset, as the case may be, into the currency of the Republic at the average exchange rate for the year of assessment during which that expenditure was incurred:";

(f) by the substitution in subparagraph (5) for item *(b)* of the following item:

"*(b)* the base cost of the person acquiring that asset must for purposes of paragraphs 12, 38 and 40**[, 42 and 67]** be treated as being denominated in that currency.";

(g) by the insertion after subparagraph (5) of the following subparagraph:

"(5A) Where paragraph 12(5) applies in respect of any debt owed by a person in any foreign currency, the base cost of the claim which is treated as having been acquired by that person in terms of paragraph 12(5)*(b)*(i) must be treated as being denominated in that foreign currency."; and

(h) by the substitution in subparagraph (7) for item *(a)* of the definition of "local currency" of the following item:

"*(a)* in relation to a permanent establishment of a person, the currency used by that permanent establishment for purposes of financial reporting (other than the currency of any country in the common monetary area);".

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

Amendment of paragraph 55 of the Eighth Schedule to Act 58 of 1962, as inserted by section 38 of Act 5 of 2001 and amended by section 32 of Act 19 of 2001, section 98 of Act 60 of 2001 and section 87 of Act 74 of 2002

102. Paragraph 55 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended—

(a) by the substitution in subparagraph (1) for item *(b)* of the following item:

"*(b)* in respect of any policy, where that person is or was an employee or director whose life was insured in terms of that policy and any premiums paid by that person's employer were deducted in terms of section 11*(w)*;"; and

(b) by the substitution in subparagraph (1) for the words in item *(c)* preceding subitem (i) of the following words:

"*(c)* in respect of a policy that was taken out to insure against the death, disability or severe illness of that person by any other person who was a partner of that person, or held any shares or similar interest in a company in which that person held any share or similar interest, for the purpose of enabling that person to acquire, upon the death, disability or severe illness of that person, the whole or part of—".

die tydstip wat die onkoste aangegaan is bestaan het nie, die eerste beskikbare wisselkoers vir daardie geldeenheid van beskikking); en

(ii) die bedrag van die kapitaalwins of kapitaalverlies in daardie buitelandse geldeenheid bepaal, om te skakel na die plaaslike geldeenheid teen die gemiddelde wisselkoers vir die jaar van aanslag waarin oor die bate beskik is.";

(c) deur in subparagraaf (4) die woorde wat item *(a)* voorafgaan deur die volgende woorde te vervang:

"(4) **[Ondanks artikel 25D,]** Waar 'n persoon gedurende 'n jaar van aanslag beskik oor enige—";

(d) deur in subparagraaf (4) item *(b)* deur die volgende item te vervang:

"*(b)* bate waarvan die kapitaalwins of kapitaalverlies uit die beskikking verkry is of geag verkry te gewees het van 'n bron in die Republiek, soos in artikel 9 (2) bedoel (behalwe **['n bate in artikel 9 (2)** *(b) (i)* bedoel of] 'n bate in paragraaf *(b)* van die omskrywing van "buitelandse valutabate" in paragraaf 84 bedoel),";

(e) deur in subparagraaf (4) item (ii) deur die volgende item te vervang:

"(ii) die onkoste ten opsigte van daardie buitelandse ekwiteits-instrument of daardie bate, na gelang van die geval, omreken na die geldeenheid van die Republiek teen die gemiddelde wisselkoers vir die jaar van aanslag waarin daardie onkoste aangegaan is:";

(f) deur in subparagraaf (5) item *(b)* deur die volgende item te vervang: "

"*(b)* word die basiskoste van die persoon wat daardie bate verkry, by die toepassing van paragrawe 12, 38 en 40**[, 42 en 67]** geag in daardie geldeenheid aangedui te wees.";

(g) deur na subparagraaf (5) die volgende subparagraaf in te voeg:

"(5A) Waar paragraaf 12(5) van toepassing is ten aansien van enige skuld deur 'n persoon in enige buitelandse geldeenheid verskuldig, moet die basiskoste van die eis wat daardie persoon ingevolge paragraaf 12(5)*(b)*(i) geag word te verkry het hanteer word as aangedui te wees in daardie buitelandse geldeenheid";

(h) deur in subparagraaf (7) paragraaf *(a)* van die omskrywing van "plaaslike geldeenheid" deur die volgende paragraaf te vervang:

"*(a)* met betrekking tot 'n permanente saak van 'n persoon, die geldeenheid deur daardie permanente saak gebruik vir doeleindes van finansiële verslagdoening (behalwe die geldeenheid van enige land in die gemeenskaplike monetêre gebied);".

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

Wysiging van paragraaf 55 van die Agtste Bylae by Wet 58 van 1962, soos ingevoeg deur artikel 38 van Wet 5 van 2001 en gewysig deur artikel 32 van Wet 19 van 2001, artikel 98 van Wet 60 van 2001 en artikel 87 van Wet 74 van 2002

102. Paragraaf 55 van die Agtste Bylae van die Inkomstebelastingwet, 1962, word hierby gewysig—

(a) deur in subparagraaf (1) item *(b)* deur die volgende item te vervang:

"*(b)* ten opsigte van enige polis, waar daardie persoon 'n werknemer of direkteur is of was wie se lewe ingevolge daardie polis verseker was en enige premies deur daardie persoon se werkgewer betaal in gevolge artikel 11 *(w)* as 'n aftrekking toegestaan was;";

(b) deur in subparagraaf (1) die woorde in item *(c)* wat subitem *(i)* voorafgaan deur die volgende woorde te vervang:

"*(c)* ten opsigte van 'n polis wat verseker teen die dood, ongeskiktheid of ernstige siekte van daardie persoon, wat uitgeneem is deur 'n ander persoon wat die vennoot van daardie persoon was, of wat enige aandeel of soortgelyke belang gehou het in 'n maatskappy waarin daardie persoon enige aandeel of soortgelyke belang gehou het, met die doel om daardie ander persoon in staat te stel om, na die afsterwe of weens die ongeskiktheid of ernstige siekte van daardie persoon, die geheel of 'n gedeelte te verkry van—".

Substitution of paragraph 62 of Eighth Schedule to Act 58 of 1962, as inserted by section 38 of Act 5 of 2001

103. (1) The following paragraph is hereby substituted for paragraph 62 of the Eighth Schedule to the Income Tax Act, 1962:

"**Donations and bequests to public benefit organisations and exempt persons**

62. A person must disregard a capital gain or capital loss determined in respect of the donation or bequest of an asset by that person to—

(a) the Government or any provincial administration;

(b) a public benefit organisation exempt from tax in terms of section 10(1)*(c*N*)*;

(c) a person approved by the Commissioner in terms of section 10(1)*(c*A*)* or *(d)*; or

(d) a person referred to in section 10(1)*(b)*, *(c*E*)* or *(e)*.".

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

Substitution of paragraph 63 of Eighth Schedule to Act 58 of 1962, as inserted by section 38 of Act 5 of 2001 and substituted by section 91 of Act 74 of 2002

104. The following paragraph is hereby substituted for paragraph 63 of the Eighth Schedule to the Income Tax Act, 1962:

"**Exempt persons**

63. A person must disregard any capital gain or capital loss in respect of the disposal of an asset where **[all the receipts and accruals of that person would have been]** any amount constituting gross income of whatever nature would be exempt from tax in terms of section 10**[, if those receipts and accruals had been received by or accrued to that person]** were it to be received by or to accrue to that person.".

Insertion of paragraph 64B in Eighth Schedule to Act 58 of 1962

105. (1) The following paragraph is hereby inserted in the Eighth Schedule to the Income Tax Act, 1962, after paragraph 64A:

"**Disposal of interest in equity share capital of foreign company**

64B. (1) For purposes of this paragraph—

'foreign company' means a foreign company as defined in section 9D;

'foreign financial instrument holding company' means a foreign financial instrument holding company as defined in section 41.

(2) A person must disregard any capital gain or capital loss determined in respect of the disposal of any interest in the equity share capital of any foreign company (other than a foreign financial instrument holding company), if—

(á) that person (in the case of a company, together with any other company in the same group of companies as that company) immediately before that disposal—

(i) held more than 25 per cent of the equity share capital in that foreign company; and

(ii) held the interest contemplated in subitem (i) for a period of at least 18 months prior to that disposal, unless that person is a company and that interest was acquired by that company from any other company which forms part of the same group of

Vervanging van paragraaf 62 van Agtste Bylae by Wet 58 van 1962, soos ingevoeg deur artikel 38 van Wet 5 van 2001

103. (1) Die volgende paragraaf vervang hierby paragraaf 62 van die Agtste Bylae by die Inkomstebelastingwet, 1962:

"**Skenkings en bemakings aan openbare weldaadsorganisasies**

62. 'n Persoon moet enige kapitaalwins of kapitaalverlies vasgestel ten opsigte van die skenking of bemaking van 'n bate deur daardie persoon aan—

(a) die Regering of enige provinsiale administrasie;

(b) 'n openbare weldaadsorganisasie vrygestel van belasting ingevolge artikel 10(1)*(cN)*;

(c) 'n persoon deur die Kommissaris kragtens artikel 10(1)*(cA) of (d)* goedgekeur; of

(d) 'n persoon waarna verwys word in artikel 10(1)*(b)*, *(cE)* of *(e)*, verontagsaam.".

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

Vervanging van paragraaf 63 van Agtste Bylae by Wet 58 van 1962, soos ingevoeg deur artikel 38 van Wet 5 van 2001 en vervang deur artikel 91 van Wet 74 van 2002

104. Die volgende paragraaf vervang hierby paragraaf 63 van die Agtste Bylae by die Inkomstebelastingwet, 1962:

"**Vrygestelde persone**

63. 'n Persoon moet enige kapitaalwins of kapitaalverlies ten opsigte van die beskikking oor 'n bate waar **[al die ontvangstes en toevallings van daardie persoon]** enige bedrag wat bruto inkomste van enige aard daarstel kragtens artikel 10 van belasting vrygestel sou wees**[,]** indien **[daardie ontvangste en toevallings deur]** dit ontvang sou word deur of aan daardie persoon **[ontvang was of toegeval het]** sou toeval, verontagsaam.".

Invoeging van paragraaf 64B in Agtste Bylae by Wet 58 van 1962

105. Die volgende paragraaf word hierby in die Agtste Bylae by die Inkomstebelastingwet, 1962, ingevoeg na paragraaf 64A:

"**Beskikking oor 'n belang in die ekwiteitsaandelekapitaal van 'n buitelandse maatskappy**

64B. (1) Vir doeleindes van hierdie paragraaf beteken— 'buitelandse maatskappy' 'n buitelandse matskappy soos in artikel 9D omskryf; en 'buitelandse finansiële instrumenthouermaatskappy' 'n buitelandse finansiële instrumenthouermaatskappy soos in artikel 41 omskryf.

(2) 'n Persoon moet enige kapitaalwins of kapitaalverlies vasgestel ten opsigte van 'n beskikking oor 'n belang in die ekwiteitsaandelekapitaal van enige buitelandse maatskappy (behalwe 'n buitelandse finansiële instrumenthouermaatskappy) verontagsaam indien—

(a) daardie persoon (in die geval van 'n maatskappy, tesame met enige ander maatskappy in dieselfde groep maatskappye as daardie maatskappy) onmiddellik voor daardie beskikking—

(i) meer as 25 per sent van die ekwiteitsaandelekapitaal in daardie maatskappy gehou het; en

(ii) die belang in subitem *(i)* beoog gehou het vir 'n tydperk van minstens 18 maande voor daardie beskikking, tensy daardie persoon 'n maatskappy is wat daardie belang verkry het van 'n ander maatskappy wat 'n lid is van dieselfde groep

companies and that company and other company in aggregate held that interest for more than 18 months: Provided that in determining the total equity share capital in a foreign company, there shall not be taken into account any share which would have constituted an affected instrument, as contemplated in section 8E, but for the three year period requirement contained in that section; and

(b) in the case where that person is a resident, that interest is disposed of to a person who is not a resident.".

(2) Subsection (1) shall come into operation on 1 June 2004 and shall apply in respect of the disposal of any interest in the equity share capital of any foreign company on or after that date.

Substitution for paragraph 65 of Eighth Schedule to Act 58 of 1962, as inserted by section 38 of Act 5 of 2001 and amended by section 103 of Act 60 of 2001

106. (1) The following paragraph hereby substitutes paragraph 65 of the Eighth Schedule to the Income Tax Act, 1962:

"Involuntary disposal

65. (1) A person may elect that this paragraph applies in respect of the disposal of an asset (other than a financial instrument), where—

(a) that asset is disposed of by way of operation of law, theft or destruction;

(b) proceeds accrue to that person by way of compensation in respect of that disposal;

(c) those proceeds are equal to or exceed the base cost of that asset;

(d) (i) an amount at least equal to the receipts and accruals from that disposal has been or will be expended to acquire one or more asset (hereinafter referred to as the 'replacement asset or assets');

(ii) all the replacement assets constitute assets contemplated in section 9(2);

(iii) the contracts for the acquisition of the replacement asset or assets have all been or will be concluded within 12 months after the date of the disposal of that asset; and

(iv) the replacement asset or assets will all be brought into use within three years of the disposal of that asset:

Provided that the Commissioner may extend the period within which the contract must be concluded or asset brought into use by no more than six months if all reasonable steps were taken to conclude those contracts or bring those assets into use; and

(e) that asset is not deemed to have been disposed of and to have been reacquired by that person.

(2) Where a person has elected in terms of subparagraph (1) that this paragraph must apply in respect of the disposal of an asset, any capital gain determined in respect of that disposal must, subject to subparagraphs (4), (5) and (6) be disregarded when determining that person's aggregate capital gain or aggregate capital loss.

(3) Where a person acquires more than one replacement asset as contemplated in subparagraph (1), that person must, in applying subparagraphs (4) and (5), apportion the capital gain derived from the disposal of that asset to each replacement asset in the same ratio as the receipts and accruals from that disposal respectively expended in acquiring each of those replacement assets bear to the total amount of those receipts and accruals expended in acquiring all those replacement assets.

maatskappye as daardie persoon en daardie maatskappy en ander maatskappy daardie belang vir 'n gesamentlike tydperk van minstens 18 maande gehou het: Met dien verstande dat geen aandeel in aanmerking geneem sal word by die bepaling van die totale ekwiteitsaandelekapitaal in 'n buitelandse maatskappy nie indien daardie aandeel 'n geaffekteerde stuk, soos in artikel 8E beoog, sou uitgemaak het was dit nie vir die tydperk van drie jaar as vereiste in daardie artikel gestel nie; en

(b) indien dardie persoon 'n inwoner is, daardie belang oor beskik word aan 'n persoon wat nie 'n inwoner is nie.".

(2) Subartikel (1) tree in werking op 1 Junie 2004 en is van toepassing ten opsigte van 'n beskikking op of na daardie datum oor enige belang in die ekwiteitsaandelekapitaal van 'n buitelandse maatskappy.

Vervanging van paragraaf 65 van Agtste Bylae by Wet 58 van 1962, soos ingevoeg deur artikel 38 van Wet 5 van 2001 en gewysig deur artikel 103 van Wet 60 van 2001

106. Die volgende paragraaf vervang hierby paragraaf 65 van die Agtste Bylae by die Inkomstebelastingwet, 1962:

"Onvrywillige beskikking

65. (1) 'n Persoon mag 'n keuse uitoefen dat hierdie paragraaf van toepassing sal wees ten aansien van 'n beskikking oor 'n bate (behalwe 'n finansiële instrument) waar—

(a) daar oor daardie bate beskik is by wyse van regswerking, diefstal of vernietiging;

(b) opbrengs aan daardie persoon toeval as vergoeding ten aansien van daardie beskikking;

(c) daardie opbrengs gelyk is aan of die basiskoste van daardie bate oorskry;

(d) (i) 'n bedrag wat minstens gelyk is aan die ontvangste of toevallings ten aansien van daardie beskikking bestee is of sal word ter verkryging van 'n bate of bates (hierna na verwys as die 'vervangende bate of bates');

(ii) al die vervangende bates bates is soos beoog in artikel 9(2);

(iii) die kontrakte vir die verkryging van die vervangende bate of bates gesluit is of sal word binne 12 maande na die datum van die beskikking oor daardie bate; en

(iv) die vervangende bate of bates almal in gebruik gemeen sal word binne drie jaar vanaf die beskikking oor daardie bate:

Met dien verstande dat die Kommissaris die tydperk waarbinne die kontrak gesluit moet word of die bate in gebruik geneem moet word met nie meer as ses maande nie mag verleng indien alle redelike stappe gedoen is om daardie kontrakte te sluit of daardie bates in gebruik te neem; en

(e) daardie persoon nie geag word oor daardie bate te beskik het en dit weer te verkry het nie.

(2) Waar 'n persoon 'n keuse ingevolge subparagraaf (1) uitgeoefen het dat hierdie paragraaf van toepassing moet wees ten aansien van 'n beskikking oor 'n bate, moet enige kapitaalwins vasgestel ten opsigte van daardie beskikking, behoudens subparagrawe (4), (5) en (6), verontagsaam word by die vasstelling van daardie persoon se totale kapitaalwins of totale kapitaalverlies.

(3) Waar 'n persoon meer as een vervangende bate verkry soos in subparagraaf (1) beoog, moet daardie persoon by die toepassing van subparagrawe (4) en (5) die kapitaalwins verkry weens die beskikking oor daardie bate aan elke vervangende bate toedeel volgens die verhouding waarin die ontvangste en toevallings vanwe_ daardie beskikking wat bestee is ter verkryging van elk van daardie vervangende bates, staan tot die totale bedrag van sodanige ontvangste en toevallings bestee ter verkryging van al daardie vervangende bates.

(4) Where a replacement asset contemplated in subsection (1) constitutes a depreciable asset, the person must treat as a capital gain for a year of assessment, so much of the disregarded capital gain contemplated in subparagraph (3), as bears to the total amount of that disregarded gain apportioned to that replacement asset as contemplated in subsection (3) the same ratio as the amount of any capital deduction or allowance allowed in that year in respect of the replacement asset bears to the total amount of the capital deduction or allowance (determined with reference to the cost or value of that asset at the time of acquisition thereof) which is allowable for all years of assessment in respect of that replacement asset.

(5) Where a person during any year of assessment disposes of a replacement asset contemplated in subparagraph (4) and any portion of the disregarded capital gain which is apportioned to that asset as contemplated in subparagraph (3), has not been treated as a capital gain in terms of subparagraph (4), that person must treat that portion of disregarded gain as a capital gain from the disposal of that replacement asset in that year of assessment.

(6) Where a person fails to conclude a contract or fails to bring any replacement asset into use within the period prescribed in subsection (1)*(d)*(iii) or (iv), subparagraph (2) shall not apply and that person must—

(a) treat the capital gain contemplated in subparagraph (2) as a capital gain on the date on which the relevant period ends;

(b) determine interest at the prescribed rate on that capital gain from the date of that disposal to the date contemplated in item *(a)*; and

(c) treat that interest as a capital gain on the date contemplated in item *(a)* when determining that person's aggregate capital gain or aggregate capital loss.

(7) Where a replacement asset or assets constitute personal use assets, the provisions of this paragraph shall not apply, unless the asset disposed of as contemplated in subparagraph (1)*(a)* constitutes a personal use asset.".

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

Substitution for paragraph 66 of Eighth Schedule to Act 58 of 1962, as inserted by section 38 of Act 5 of 2001 and amended by section 33 of Act 19 of 2001

107. (1) The following paragraph hereby substitutes paragraph 66 of the Eighth Schedule to the Income Tax Act, 1962:

"Reinvestment in replacement assets

66. (1) A person may elect that this paragraph applies in respect of the disposal of an asset, where—

(a) that asset qualified for a capital deduction or allowance in terms of section 11*(e)*, 12B, 12C, 12E, 14 or 14*bis*;

(b) the proceeds received or accrued from that disposal are equal to or exceed the base cost of that asset;

(c) an amount at least equal to the receipts and accruals from that disposal has been or will be expended to acquire one or more assets (hereinafter referred to as the 'replacement asset or assets'), all of which will qualify for a capital deduction or allowance in terms of section 11*(e)*, 12B, 12C or 12E;

(d) all the replacement assets constitute assets contemplated in section 9(2)*(b)*;

(e) the contracts for the acquisition of a replacement asset or assets are or will be concluded within 12 months after the asset contemplated in item *(a)* is disposed of and are all brought into use within three years after that disposal: Provided that the Commissioner may extend the period by which the contracts must be concluded or assets brought into

(4) Waar 'n vervangende bate soos beoog in subparagraaf (1) 'n slytasiebate uitmaak, moet die persoon soveel van die kapitaalwins ingevolge subparagraaf (3) verontagsaam as 'n kapitaalwins vir 'n jaar van aanslag ag as wat in dieselfde verhouding tot daardie verontagsaamde kapitaalwins aan daardie bate toegedeel soos beoog in subparagraaf (3) staan as wat die bedrag van enige kapitaalaftrekking of toelae ten aansien van daardie vervangende bate in daardie jaar toegelaat staan tot die totale bedrag van die kapitaalaftrekking of toelae (vasgestel met verwysing na die koste of waarde van daardie bate ten tyde van die verkryging daarvan) in alle jare van aanslag ten aansien van daardie vervangende bate toelaatbaar.

(5) Waar 'n persoon gedurende enige jaar van aanslag beskik oor 'n vervangende bate in subparagraaf (4) beoog en enige gedeelte van die verontagsaamde kapitaalwins aan daardie bate toegedeel soos in subparagraaf (3) beoog nie as 'n kapitaalwins ingevolge subparagraaf (4) geag is nie, moet daardie persoon daardie gedeelte verontagsaamde wins as 'n kapitaalwins vanwe_ die beskikking oor daardie vervangende bate in daardie jaar van aanslag hanteer.

(6) Waar 'n persoon versuim om 'n kontrak aan te gaan of versuim om 'n vervangingsbate in gebruik te neem binne die tydperk voorgeskryf in subparagraaf (1)*(d)*(iii) of (iv), sal subparagraaf (2) nie van toepassing wees nie en moet daardie persoon—

(a) die kapitaalwins in subparagraaf (2) beoog, ag 'n kapitaalwins te wees op die datum waarop daardie voorgeskrewe tydperk verstryk;

(b) rente bereken teen die voorgeskrewe koers op daardie kapitaalwins vanaf die datum van daardie beskikking tot op die datum in item *(a)* beoog; en

(c) daardie rente ag 'n kapitaalwins te wees op die datum in item *(a)* beoog by die vasstelling van daardie persoon se totale kapitaalwins of totale kapitaalverlies.

(7) Waar 'n vervangende bate of bates persoonlike gebruiksbates daarstel, sal die bepalings van hierdie paragraaf nie van toepassing wees nie tensy die bate waaroor beskik is soos in subparagraaf (1)*(a)* beoog 'n persoonlike gebruiksbate daarstel.".

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

Vervanging van paragraaf 66 van Agtste Bylae by Wet 58 van 1962, soos ingevoeg deur artikel 38 van Wet 5 van 2001 en gewysig deur artikel 33 van Wet 19 van 2001

107. Die volgende paragraaf vervang hierby paragraaf 66 van die Agste Bylae by die Inkomstebelastingwet, 1962:

"**Herbelegging in vervangingsbates**

66. (1) 'n Persoon mag 'n keuse uitoefen dat hierdie paragraaf van toepassing sal wees ten aansien van 'n beskikking oor 'n bate waar—

(a) daardie bate gekwalifiseer het vir 'n kapitaalaftrekking of toelae ingevolge artikel 11*(e)*, 12B, 12C, 12E, 14 of 14*bis*;

(b) die opbrengs ontvang of toegeval vanweë daardie beskikking gelyk is aan of die basiskoste van daardie bate oorskry;

(c) 'n bedrag wat minstens gelyk is aan die ontvangste of toevallings vanwe_ daardie beskikking bestee is of sal word ter verkryging van 'n bate of bates (hierna na verwys as die 'vervangende bate of bates') wat almal sal kwalifiseer vir 'n kapitaalaftrekking of toelae ingevolge artikel 11*(e)*, 12B, 12C of 12E;

(d) al die vervangende bates bates is soos beoog in artikel 9(2)*(b)*;

(e) die kontrakte vir die verkryging van die vervangende bate of bates gesluit is of sal word binne 12 maande na die datum van die beskikking oor die bate in item *(a)* beoog en al daardie bates in gebruik geneem word bine drie jaar na daardie beskikking: Met dien verstande dat die Kommissaris die tydperk waarbinne die kontrak gesluit moet word of die bates in gebruik geneem moet word met nie meer as ses

use by no more than six months if all reasonable steps were taken to conclude those contracts or bring those assets into use; and

(f) that asset is not deemed to have been disposed of and to have been reacquired by that person.

(2) Where a person has elected in terms of subparagraph (1) that this paragraph must apply in respect of the disposal of an asset, any capital gain determined in respect of that disposal must, subject to subparagraphs (4), (5), (6) and (7), be disregarded when determining that person's aggregate capital gain or aggregate capital loss.

(3) Where a person acquires more than one replacement asset as contemplated in subparagraph (1), that person must, in applying subparagraphs (4), (5) and (6), apportion the capital gain derived from the disposal of that asset to each replacement asset in the same ratio as the receipts and accruals from that disposal respectively expended in acquiring each of those replacement assets bear to the total amount of those receipts and accruals expended in acquiring all those replacement assets.

(4) A person must treat as a capital gain for a year of assessment, so much of the disregarded capital gain contemplated in subparagraph (2), as bears to the total amount of that disregarded capital gain apportioned to that replacement asset as contemplated in subparagraph (3) the same ratio as the amount of any deduction or allowance allowed in that year in terms of section 11*(e)*, 12B, 12C or 12E in respect of the replacement asset bears to the total amount of the deduction or allowance in terms of that section (determined with reference to the cost or value of that asset at the time of acquisition thereof) which is allowable for all years of assessment in respect of that replacement asset.

(5) Where a person during any year of assessment disposes of a replacement asset and any portion of the disregarded capital gain which is apportioned to that asset as contemplated in subparagraph (3), has not been treated as a capital gain in terms of subparagraph (4) or (6), that person must treat that portion of disregarded capital gain as a capital gain from the disposal of that replacement asset in that year of assessment.

(6) Where during any year of assessment a person ceases to use a replacement asset for the purposes of that person's trade and any portion of the disregarded capital gain which is apportioned to that asset as contemplated in subparagraph (3), has not been treated as a capital gain in terms of subparagraph (4) or (5), that person must treat that portion of disregarded capital gain as a capital gain for that year of assessment.

(7) Where a person fails to conclude a contract or to bring any replacement asset into use within the period prescribed in subparagraph (1)*(e)*, subparagraph (2) shall not apply and that person must—

(a) treat the capital gain contemplated in subparagraph (2) as a capital gain on the date that the relevant period ends;

(b) determine interest at the prescribed rate on that capital gain from the date of that disposal to the date contemplated in item *(a)*; and

(c) treat that interest as a capital gain on the date contemplated in item *(a)* when determining that person's aggregate capital gain or aggregate capital loss.".

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

maande nie mag verleng indien alle redelike stappe gedoen is om daardie kontrakte te sluit of daardie bates in gebruik te neem; en

(f) daardie persoon nie geag word oor daardie bate te beskik het en dit weer te verkry het nie.

(2) Waar 'n persoon 'n keuse ingevolge subparagraaf (1) uitgeoefen het dat hierdie paragraaf van toepassing moet wees ten aansien van 'n beskikking oor 'n bate, moet enige kapitaalwins vasgestel ten opsigte van daardie beskikking, behoudens subparagrawe (4), (5), (6) en (7), verontagsaam word by die vasstelling van daardie persoon se totale kapitaalwins of totale kapitaalverlies.

(3) Waar 'n persoon meer as een vervangende bate verkry soos in subparagraaf (1) beoog, moet daardie persoon by die toepassing van subparagrawe (4), (5) en (6) die kapitaalwins verkry weens die beskikking oor daardie bate aan elke vervangende bate toedeel volgens die verhouding waarin die ontvangste en toevallings vanweë daardie beskikking wat bestee is ter verkryging van elk van daardie vervangende bates, staan tot die totale bedrag van sodanige ontvangste en toevallings bestee ter verkryging van al daardie vervangende bates.

(4) 'n Persoon moet soveel van die kapitaalwins ingevolge subparagraaf (2) verontagsaam as 'n kapitaalwins vir 'n jaar van aanslag ag as wat in dieselfde verhouding tot daardie verontagsaamde kapitaalwins aan daardie bate toegedeel soos beoog in subparagraaf (3) staan as wat die bedrag van enige kapitaalaftrekking of toelae ingevolge artikel 11*(e)*, 12B, 12C of 12E ten aansien van daardie vervangende bate in daardie jaar toegelaat staan tot die totale bedrag van die kapitaalaftrekking of toelae ingevolge daardie artikel (vasgestel met verwysing na die koste of waarde van daardie bate ten tyde van die verkryging daarvan) in alle jare van aanslag ten aansien van daardie vervangende bate toelaatbaar.

(5) Waar 'n persoon gedurende enige jaar van aanslag beskik oor 'n vervangende bate en enige gedeelte van die verontagsaamde kapitaalwins aan daardie bate toegedeel soos in subparagraaf (3) beoog nie as 'n kapitaalwins ingevolge subparagraaf (4) of (6) geag is nie, moet daardie persoon daardie gedeelte verontagsaamde wins as 'n kapitaalwins vanwe_ die beskikking oor daardie vervangende bate in daardie jaar van aanslag hanteer.

(6) Waar 'n persoon gedurende enige jaar van aanslag ophou om 'n vervangende bate vir die doeleindes van daardie persoon se bedryf te gebruik en enige gedeelte van die kapitaalwins aan daardie bate toegedeel soos in subparagraaf (3) beoog nie as 'n kapitaalwins ingevolge subparagraaf (4) of (5) geag is nie, moet daardie persoon daardie gedeelte verontagsaamde wins as 'n kapitaalwins in daardie jaar van aanslag hanteer.

(7) Waar 'n persoon versuim om 'n kontrak aan te gaan of versuim om 'n vervangingsbate in gebruik te neem binne die tydperk voorgeskryf in subparagraaf (1)*(e)*, sal subparagraaf (2) nie van toepassing wees nie en moet daardie persoon—

(a) die kapitaalwins in subparagraaf (2) beoog, ag 'n kapitaalwins te wees op die datum waarop daardie voorgeskrewe tydperk verstryk;

(b) rente bereken teen die voorgeskrewe koers op daardie kapitaalwins vanaf die datum van daardie beskikking tot op die datum in item *(a)* beoog; en

(c) daardie rente ag 'n kapitaalwins te wees op die datum in item *(a)* beoog by die vasstelling van daardie persoon se totale kapitaalwins of totale kapitaalverlies.".

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

Amendment of paragraph 67 of Eighth Schedule to Act 58 of 1962, as inserted by section 38 of Act 5 of 2001 and amended by section 104 of Act 60 of 2001

108. Paragraph 67 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended—

(a) by the substitution in subparagraph (1) for item *(a)* of the following item:

"(1) *(a)* Subject to subparagraph **[3]** (3), a person (hereinafter referred to as the 'transferor') must disregard any capital gain or capital loss determined in respect of the disposal of an asset to his or her spouse (hereinafter referred to as the 'transferee');"; and

(b) by the substitution in subparagraph (1) for subitem (iii) of item *(b)* of the following subitem:

"(iii) incurred that expenditure on the same date and in the same currency that it was incurred by the transferor; and".

Amendment of paragraph 67A of Eighth Schedule to Act 58 of 1962

109. (1) Paragraph 67A of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended by the addition of the following subparagraph:

"(3) For the purposes of subparagraph (2) proceeds include the amount of any cash received and the market value on the date of acquisition of any assets acquired by a holder of a participatory interest from the collective investment scheme prior to the disposal of his or her participatory interest to the extent that that amount and that market value do not constitute gross income in the hands of that holder.

(4) Any asset acquired by a holder of a participatory interest as contemplated in subparagraph (3) must be treated as having been acquired for expenditure equal to the market value of that asset on the date of acquisition, which expenditure must be treated as an amount of expenditure actually incurred and paid for the purposes of paragraph 20(1)*(a)*.".

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

Insertion of paragraph 67B of Eighth Schedule to Act 58 of 1962

110. (1) The following paragraph is hereby inserted in the Eighth Schedule to the Income Tax Act, 1962, after paragraph 67A:

"Transfer of a unit by a share block company to its member

67B. (1) Where any company which operates a share block scheme as contemplated in section 1 of the Share Blocks Control Act, 1980 (Act No. 59 of 1980), transfers a unit in immovable property in terms of Item 8 of Schedule 1 to that Act to a person who holds a share in that company,—

(a) that company must disregard any capital gain or capital loss determined in respect of that disposal of that unit to that person; and

(b) that person must disregard any capital gain or capital loss determined in respect of the disposal of that share.

(2) Where a person who held a share in a share block company acquires a unit in the circumstances contemplated in subparagraph (1), that person must be treated as having—

(a) acquired that unit for an amount equal to the expenditure contemplated in paragraph 20 incurred by that person in acquiring that share;

(b) effected improvements to that unit for an amount equal to the expenditure contemplated in paragraph 20 incurred by that person in effecting improvements to the immovable property in respect of which that person had a right of use as a result of the ownership of that share;

(c) acquired that unit on the date that that share was acquired;

(d) incurred the amount of expenditure contemplated in paragraph 20 on the same date that it was incurred by that person to acquire that share and improve that immovable property;

Wysiging van paragraaf 67 van Agtste Bylae by Wet 58 van 1962, soos ingevoeg deur artikel 38 van Wet 5 van 2001 en gewysig deur artikel 104 van Wet 60 van 2001

108. Paragraaf 67 van die Agtste Bylae by die Inkomstebelastingwet, 1962, word hierby gewysig deur in subparagraaf (1) subitem (iii) van item *(b)* deur die volgende subitem te vervang:

"(iii) daardie onkoste aan te gegaan het op dieselfde datum en in dieselfde geldeenheid wat dit deur die oordraggewer aangegaan is; en".

Wysiging van paragraaf 67A van Agtste Bylae by Wet 58 van 1962

109. (1) Paragraaf 67A van die Agtste Bylae by die Inkomstebelastingwet, 1962, word hierby gewysig deur die volgende subparagrawe by te voeg:

"(3) Opbrengs sluit vir doeleindes van subparagraaf (2) in die bedrag van enige kontant ontvang en die markwaarde op die datum van verkryging van enige bates ontvang deur 'n houer van 'n deelnemende belang van die kollektiewe beleggingskema voor die beskikking oor sy of haar deelnemende belang, tot die mate waarin sodanige bedrag en markwaarde nie bruto inkomste in die hande van daardie houer daarstel nie.

(4) Enige bate verkry deur 'n houer van 'n deelnemende belang soos in subparagraaf (3) beoog moet geag word verkry te gewees het vir onkoste gelyk aan die markwaarde van daardie bate op die datum van verkryging, welke onkoste vir doeleindes van paragraaf 20(1)*(a)* geag moet word 'n bedrag onkoste werklik aangegaan en betaal te wees.".

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

Invoeging van paragraaf 67B van Agtste Bylae by Wet 58 van 1962

110. (1) Die volgende paragraaf word hierby in die Agtste Bylae by die Inkomstebelastingwet, 1962, gevoeg na paragraaf 67A:

"**Oordrag van eenheid deur aandeleblokmaatskappy aan lede**

67B. (1) Waar 'n maatskappy wat 'n aandeleblokskema, soos in artikel 1 van die Wet op die Beheer van Aandeleblokke, 1980 (Wet No. 59 van 1980), bedoel, bedryf, 'n eenheid in onroerende eiendom ingevolge Item 8 van Bylae 1 by daardie Wet oordra aan 'n persoon wat 'n aandeel in daardie maatskappy hou,—

(a) moet daardie maatskappy enige kapitaalwins of kapitaalverlies vasgestel ten opsigte van daardie beskikking van daardie eenheid aan daardie persoon verontagsaam; en

(b) moet daardie persoon enige kapitaalwins of kapitaalverlies vasgestel ten opsigte van die beskikking oor daardie aandeel verontagsaam.

(2) Waar 'n persoon wat 'n aandeel in 'n aandeleblokmaatskappy gehou het 'n eenheid in die omstandighede in subparagraaf (1) bedoel verkry, moet daardie persoon geag word—

(a) daardie eenheid te verkry het vir 'n bedrag gelyk aan die onkoste in paragraaf 20 bedoel wat deur daardie persoon aangegaan is om daardie aandeel te verkry;

(b) verbeteringe aan daardie eenheid aan te gebring het vir 'n bedrag gelyk aan die onkoste in paragraaf 20 bedoel wat deur daardie persoon aangegaan is om verbeteringe aan die onroerende eiendom, ten opsigte waarvan daardie persoon 'n reg van gebruik gehad het uit hoofde van die eienaarskap van daardie aandeel, aan te bring;

(c) daardie eenheid te verkry het op die datum wat daardie aandeel verkry is;

(d) 'n bedrag van onkoste in paragraaf 20 bedoel aan te gegaan het op dieselfde datum as wat dit deur daardie persoon aangegaan is om daardie aandele te verkry en om daardie onroerende eiendom te verbeter;

(e) used that unit in the same manner as that person used the immovable property in respect of which that person had a right of use as a result of the ownership of that share; and

(f) adopted or determined the market value as contemplated in paragraph 29(4) as the valuation date value of that unit, for an amount equal to the market value adopted or determined by that person in terms of that paragraph for that share.".

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

Insertion of paragraph 67C of Eighth Schedule to Act 58 of 1962

111. (1) The following paragraph is hereby inserted in the Eighth Schedule to the Income Tax Act, 1962, after paragraph 67B:

"Mineral rights conversions and renewals

67C. Notwithstanding paragraph 11, there is no disposal where—

(a) any old order right or OP26 right as defined in Schedule II of the Mineral and Petroleum Resources Development Act (Act No. 28 of 2002), wholly or partially continues in force or is wholly or partially converted into a new right pursuant to the same Schedule; or

(b) any prospecting right, mining right, exploration right or production right, mining permit or retention permit, as defined in section 1 of the Mineral and Petroleum Resources Development Act (Act No. 28 of 2002), is wholly or partially renewed in terms of that Act,

and the continued, converted or renewed right or permit will be treated as one and the same asset as the right before continuation, conversion or renewal for purposes of this Act.".

(2) Subsection (1) shall come into operation on the date that the Mineral and Petroleum Resources Development Act, 2002 (Act No. 28 of 2002), comes into operation.

Amendment of paragraph 72 of the Eighth Schedule to Act 58 of 1962, as inserted by section 38 of Act 5 of 2001 and amended by section 94 of Act 74 of 2002

112. Paragraph 72 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended by substitution for subparagraph *(a)* of the following subparagraph:

"*(a)* a resident has made a donation, settlement or other disposition to any person (other than **[a public benefit organisation contemplated in section 30 or a foreign]** an entity, **[as defined in section 9D,]** which is not resident and which is **[of a]** similar **[nature]** to a public benefit organisation contemplated in section 30); and".

Amendment of paragraph 74 of Eighth Schedule to Act 58 of 1962, as inserted by section 38 of Act 5 of 2001 and amended by section 106 of Act 60 of 2001 and section 95 of Act 74 of 2002

113. (1) Paragraph 74 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended—

(a) by the deletion in subparagraph (1) of the definition of "company";

(b) by the insertion after the definition of "capital distribution" of the following definition:

"'date of distribution' in relation to any distribution, means the date of approval of the distribution by the directors or by some other person or body of persons with comparable authority conferred under the memorandum and articles of association of the company making the distribution or under a law, regulation or rule to which that company is subject, except where the distribution is made—

(a) by a company subject to the condition that it be payable to a shareholder of the company registered in that company's share register on a specified date, in which case it must be that date;

(e) daardie eenheid op dieselfde wyse te gebruik het as wat daardie persoon die onroerende eiendom ten opsigte waarvan daardie persoon 'n reg van gebruik gehad het uit hoofde van die eienaarskap van daardie aandele, gebruik het; en

(f) die markwaardie soos in paragraaf 29(4) bedoel aan te geneem of vas te gestel het as die waardasiedatum waarde van daardie eenheid, vir 'n bedrag gelyk aan die markwaarde aangeneem of vasgestel deur daardie persoon ingevolge daardie paragraaf vir daardie aandele.".

(2) Subartikel (1) word geag op 1 Oktober 2001 in werking te getree het.

Invoeging van paragraaf 67C in Agtste Bylae by Wet 58 van 1962

111. (1) Die volgende paragraaf word hierby in die Agtste Bylae by die Inkomstebelastingwet, 1962, ingevoeg na paragraaf 67B:

"**Mineraalregomskakelings en hernuwings**

67C. Ondanks paragraaf 11, is daar geen beskikking nie waar—

(a) 'n 'old order right' of 'OP26 right' soos omskryf in Bylae II by die 'Mineral and Petroleum Resources Development Act, 2002 (Wet No. 28 van 2002), in geheel of gedeeltelik van krag bly of in geheel of gedeeltelik omgeskakel word na 'n nuwe reg kragtens daardie Bylae; of

(b) enige 'prospecting right', 'mining right', 'exploration right' of 'production right', 'mining permit' of 'retention permit', soos omskryf in artikel 1 van die 'Mineral and Petroleum Resources Development Act, 2002 (Wet No. 28 van 2002)', in geheel of gedeeltelik ingevolge daardie Wet hernu word nie,

en die reg of permit wat van krag bly, omgeskakel of hernu word, word by die toepassing van hierdie Wet geag een en dieselfde bate te wees as die reg voor dit van krag gebly het, omgeskakel of hernu is.".

(2) Subartikel (1) tree in werking op die datum wat die 'Mineral and Petroleum Resources Development Act, 2002 (Wet No. 28 van 2002)' in werking tree.

Wysiging van paragraaf 72 van die Agtste Bylae by Wet 58 van 1962, soos ingevoeg deur artikel 38 van Wet 5 van 2001 en gewysig deur artikel 94 van Wet 74 van 2002

112. Paragraaf 72 van die Agtste Bylae by die Inkomstebelastingwet, 1962, word hierby gewysig deur subparagraaf *(a)* deur die volgende subparagraaf te vervang:

"*(a)* 'n inwoner 'n skenking, oormaking of ander beskikking aan 'n persoon gemaak het (behalwe 'n **[openbare weldaadsorganisasie in artikel 30 beoog of 'n buitelandse]** entiteit, **[soos in artikel 9D omskryf, van 'n dergelike aard]** wat nie 'n inwoner is nie en wat soortgelyk is aan 'n openbare weldaadsorganisasie in artikel 30 bedoel); en".

Wysiging van paragraaf 74 van Agtste Bylae by Wet 58 van 1962, soos ingevoeg deur artikel 38 van Wet 5 van 2001 en gewysig deur artikel 106 van Wet 60 van 2001 en artikel 95 van Wet 74 van 2002

113. Paragraaf 74 van die Agtste Bylae by die Inkomstebelastingwet, 1962, word hierby gewysig—

(a) deur in subparagraaf (1) die omskrywing van "aandeel" deur die volgende omskrywing te vervang:

"'aandeel' met betrekking tot 'n maatskappy—

(a) enige aandelekapitaal van, of ledebelang in, daardie maatskappy en enige reg of belang in of tot daardie aandelekapitaal of ledebelang, hetsy daardie aandelekapitaal of ledebelang die reg bevat om aan dividende of 'n kapitaaluitkering deel te neem of nie, al dan nie; of

(b) 'n deelnemende belang in 'n portefeulje van 'n kollektiewe beleggingskema in paragraaf *(e)* van die omskrywing van 'maatskappy' bedoel.";

(b) by a company to a shareholder of that company otherwise than by way of a formal declaration of a dividend, in which case it must be the date on which the shareholder became entitled to that distribution; or

(c) by the liquidator of a company to a shareholder of that company in the course of the winding up or liquidation of that company, in which case it must be the date on which the shareholder became entitled to that distribution.''; and

(c) by the substitution in subparagraph (1) for the definition of "share" of the following definition:

"'share' in relation to a company means—

(a) any share capital of, or member's interest in, that company and any right or interest in or to such share capital or member's interest, whether or not that share capital or member's interest carries a right to participate in dividends or a capital distribution; or

(b) a participatory interest in a portfolio of a collective investment scheme referred to in paragraph *(e)* of the definition of 'company'.''.

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

Amendment of paragraph 75 of Eighth Schedule to Act 58 of 1962, as inserted by section 38 of Act 5 of 2001

114. (1) Paragraph 75 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended—

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

"Where a company makes a distribution of an asset *in specie* to a shareholder (including an interim dividend), that company must be treated as having disposed of that asset to that shareholder for **[proceeds]** an amount received or accrued equal to the market value of that asset on the date of distribution.''; and

(b) by the deletion of subparagraph (2).

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

Amendment of paragraph 76 of Eighth Schedule to Act 58 of 1962

115. (1) Paragraph 76 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended by the substitution for subparagraph (1) of the following subparagraph:

"(1) Subject to subparagraph (2), where a capital distribution of cash or an asset *in specie* is received by or accrues to a shareholder in respect of a share, that shareholder must where the date of distribution of that capital distribution occurs—

(a) **[where that capital distribution is received or accrues]** before valuation date, reduce the expenditure contemplated in paragraph 20 actually incurred before valuation date in respect of that share by the amount of that cash or the market value of that asset *in specie*; and

(b) **[where that capital distribution is received or accrues]** on or after valuation date, treat the amount of that cash or the market value of that asset *in specie* as proceeds when that share is disposed of.''.

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

(b) deur na die omskrywing van "aandeel" die volgende omskrywing in te voeg:

" 'datum van uitkering' met betrekking tot enige uitkering, die datum van goedkeuring van die uitkeuring deur die direkteure of deur 'n ander persoon of liggaam van persone met vergelykbare gesag wat kragtens die akte van oprigting en statute van die maatskappy wat die uitkering maak verleen is of kragtens 'n wet, regulasie of reël waaraan daardie maatskappy onderhewig is, behalwe waar die uitkering gemaak word—

(a) deur 'n maatskappy onderhewig aan die voorwaarde dat dit betaalbaar is aan 'n aandeelhouer van die maatskappy wat op 'n gespesifiseerde datum in daardie maatskappy se aandeleregister geregistreer is, in welke geval dit daardie datum is;

(b) deur 'n maatskappy aan 'n aandeelhouer van daardie maatskappy andersins as by wyse van 'n formele verklaring van 'n dividend, in welke geval dit die datum is waarop die aandeelhouer op daardie uitkering geregtig word; of

(c) deur die likwidateur van 'n maatskappy aan 'n aandeelhouer van daardie maatskappy in die loop van die likwidasie van daardie maatskappy, in welke geval dit die datum is waarop die aandeelhouer op daardie uitkering geregtig word."; en

(c) deur in subparagraaf (1) die omskrywing van "maatskappy" te skrap.

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

Wysiging van paragraaf 75 van Agtste Bylae by Wet 58 van 1962, soos ingevoeg deur artikel 38 van Wet 5 van 2001

114. (1) Paragraaf 75 van die Agtste Bylae by die Inkomstebelastingwet, 1962, word hierby gewysig—

(a) deur subparagraaf (1) deur die volgende subparagraaf te vervang:

"Waar 'n maatskappy 'n uitkering van 'n bate in specie aan 'n aandeelhouer maak (waarby ingesluit 'n tussentydse dividend), moet daardie maatskappy geag word oor daardie bate te beskik het aan daardie aandeelhouer vir 'n **[opbrengs]** bedrag ontvang of toegeval gelyk aan die markwaarde van daardie bate op die datum van uitkering.";

(b) deur subparagraaf (2) te skrap.

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

Wysiging van paragraaf 76 van Agtste Bylae by Wet 58 van 1962

115. (1) Paragraaf 76 van die Agtste Bylae by die Inkomstebelastingwet, 1962, word hierby gewysig deur subparagraaf (1) deur die volgende subparagraaf te vervang:

"(1) Behoudens subparagraaf (2), waar 'n kapitaaluitkering van kontant of 'n bate in specie ontvang word deur of toeval aan 'n aandeelhouer ten opsigte van 'n aandeel, moet daardie aandeelhouer waar die datum van uitkering van daardie kapitaaluitkering plaasvind—

(a) **[waar daardie kapitaaluitkering ontvang is of toegeval het]** voor waardasiedatum, die onkoste in paragraaf 20 bedoel wat werklik voor waardasiedatum ten opsigte van daardie aandeel aangegaan is, deur die bedrag van daardie kontant of markwaarde van daardie bate in specie, verminder; en

(b) **[waar daardie kapitaaluitkering ontvang word of toeval]** op of na waardasiedatum, die bedrag van daardie kontant of die markwaarde van daardie bate in specie as opbrengs hanteer wanneer oor daardie aandeel beskik word.".

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

Amendment of paragraph 78 of the Eighth Schedule to Act 58 of 1962, as inserted by section 38 of Act 5 of 2001 and amended by section 97 of Act 74 of 2002

116. (1) Paragraph 78 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended—

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

"(1) Where a company issues capitalisation shares, those capitalisation shares must be treated as having been acquired for expenditure incurred and paid of nil, except to the extent that the issue of those shares constitutes a dividend, in which case they must be treated as having been acquired on the date of distribution for expenditure incurred and paid equal to the amount of that dividend.";

(b) by the substitution in subparagraph (2) for item *(b)* of the following item:

"*(b)* those newly issued shares must be treated as—

(i) having **[an aggregate base cost]** been acquired for an amount of expenditure equal to the aggregate **[base cost]** expenditure allowable in terms of paragraph 20 incurred in respect of **[the]** those previously held shares which expenditure must be treated as having been incurred on the same date as the expenditure incurred in respect of those previously held shares **[with the aggregate base cost allocated among all those newly issued shares in proportion to their relative market values; and]**;

(ii) having been acquired on the same date as those previously held shares; and

(iii) having a market value equal to any market value adopted or determined in respect of those previously held shares in terms of paragraph 29(4),

with the aggregate expenditure or market value as the case may be allocated among all those newly issued shares in proportion to their relative market values."; and

(c) by the substitution in subparagraph (3) for item *(b)* of the following item:

"*(b)* both the substitution and that capital distribution must be treated as separate transactions with the **[base cost]** expenditure allowable in terms of paragraph 20 and any market value adopted or determined in terms of paragraph 29(4) in respect of those previously held shares allocated between both transactions based on the relative market values of the newly issued shares on the date of distribution and that capital distribution received in exchange therefor.".

(2) Subsection (1)*(b)* and *(c)* shall to the extent it replaces the words "base cost" with "expenditure allowable in terms of paragraph 20 in respect of" be deemed to have come into operation on 1 October 2001.

Amendment of paragraph 84 of Eighth Schedule to Act 58 of 1962, as inserted by section 38 of Act 5 of 2001 and amended by section 34 of Act 19 of 2001, section 110 of Act 60 of 2001 and section 40 of Act 30 of 2002 and substituted by section 100 of Act 74 of 2002

117. Paragraph 84 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended by the substitution for the definition of "foreign currency" of the following definition:

" 'foreign currency' means any currency **[which is not legal tender in]** other than the currency of the Republic;".

Amendment of paragraph 86 of Eighth Schedule to Act 58 of 1962, as inserted by section 38 of Act 5 of 2001 and amended by section 35 of Act 19 of 2001 and section 112 of Act 60 of 2001 and substituted by section 100 of Act 74 of 2002

118. (1) Paragraph 86 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended—

(a) by the substitution in subparagraph (1) of the item *(a)* of the following item:

Wysiging van paragraaf 78 van die Agtste Bylae by Wet 58 van 1962, soos ingevoeg deur artikel 38 van Wet 5 van 2001 en gewysig deur artikel 97 van Wet 74 van 2002

116. Paragraaf 78 van die Agtste Bylae by die Inkomstebelastingwet, 1962, word hierby gewysig—

(a) deur subparagraaf (1) deur die volgende subparagraaf te vervang:

"(1) Waar 'n maatskappy kapitalisasie-aandele uitreik, word daardie kapitalisasie-aandele geag verkry te gewees het vir onkoste aangegaan en betaal van nul, behalwe tot die mate wat die uitreiking van daardie aandele 'n dividend uitmaak, in welke geval hulle geag moet word verkry te gewees het op die datum van uitkering vir onkoste aangegaan en betaal wat gelyk is aan die bedrag van daardie dividend.";

(b) deur in subparagraaf (2) item *(b)* deur die volgende item te vervang:

"*(b)* moet daardie nuut-uitgereikte aandele geag word—

(i) **['n totale basiskoste hê]** verkry te gewees het vir 'n bedrag van die onkoste wat gelyk is aan die totale **[basiskoste]** onkoste ingevolge paragraaf 20 toelaatbaar wat aangegaan is ten opsigte van **[die]** daardie aandele voorheen gehou welke onkoste geag moet word aangegaan te gewees het op dieselfde dag as wat die onkoste ten opsigte van daardie aandele voorheen gehou aangegaan is **[met die totale basiskoste toegedeel tussen al daardie nuut-uitgereikte aandele in die verhouding tot hulle relatiewe markwaardes]**; en

(ii) verkry te gewees het op dieselfde datum as daardie aandele voorheen gehou; en

(iii) 'n markwaarde te hê wat gelyk is aan die markwaarde aangeneem of vasgestel ingevolge paragraaf 29(4) ten opsigte van daardie aandele voorheen gehou,

met die totale onkoste of markwaarde, na gelang van die geval, toegedeel tussen al daardie nuut-uitgereikte aandele in verhouding tot hulle relatiewe markwaardes.";

(c) deur in subparagraaf (3) item *(b)* deur die volgende item te vervang:

"*(b)* moet beide die vervanging en daardie kapitaaluitkering geag word aparte transaksies te wees met die **[basiskoste]** onkoste ingevolge paragraaf 20 toelaatbaar en enige markwaarde aangeneem of vasgestel ingevolge paragraaf 29(4) ten opsigte van daardie aandele voorheen gehou toegedeel tussen beide transaksies gebaseer op die relatiewe markwaardes van die nuut-uitgereikte aandele op die datum van uitkering en daardie kapitaaluitkering in ruil daarvoor ontvang.".

(2) Subartikel (1)*(b)* en *(c)* word in die mate wat dit die woorde "basiskoste" met "onkoste ingevolge paragraaf 20" vervang, geag op 1 Oktober 2001 in werking te getree het.

Wysiging van paragraaf 84 van Agtste Bylae by Wet 58 van 1962, soos ingevoeg deur artikel 38 van Wet 5 van 2001 en gewysig deur artikel 34 van Wet 19 van 2001, artikel 110 van Wet 60 van 2001 en artikel 40 van Wet 30 van 2002 en vervang deur artikel 100 van Wet 74 van 2002

117. Paragraaf 84 van die Agtste Bylae by die Inkomstebelastingwet, 1962, word hierby gewysig deur die omskrywing van "buitelandse geldeenheid" deur die volgende omskrywing te vervang:

" 'buitelandse geldeenheid' enige geldeenheid **[wat nie 'n wettige betaalmiddel in]** behalwe die geldeenheid van die Republiek **[is nie]**;".

Wysiging van paragraaf 86 van Agtste Bylae by Wet 58 van 1962, soos ingevoeg deur artikel 38 van Wet 5 van 2001 en gewysig deur artikel 35 van Wet 19 van 2001 en artikel 112 van Wet 60 van 2001 en vervang deur artikel 100 van Wet 74 van 2002

118. Paragraaf 86 van die Agtste Bylae by die Inkomstebelastingwet, 1962, word hierby gewysig—

(a) deur in subparagraaf (1) item *(a)* deur die volgende item te vervang:

"*(a)* the disposal of a foreign currency asset (other than a personal foreign currency asset), is so much of the amount by which the foreign currency proceeds exceed the foreign currency base cost, as has not otherwise been taken into account in determining the taxable income of that person (or of that person's spouse in the case of an asset transferred to that person as contemplated in paragraph 95) in respect of that foreign currency asset; or";

(b) by the substitution in subparagraph (2) of the item *(a)* of the following item:

"*(a)* the disposal of a foreign currency asset (other than a personal foreign currency asset), is so much of the amount by which the foreign currency base cost exceed the foreign currency proceeds, as has not otherwise been taken into account in determining the taxable income of that person (or of that person's spouse in the case of an asset transferred to that person as contemplated in paragraph 95) in respect of that foreign currency asset.".

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

Amendment of paragraph 88 of Eighth Schedule to Act 58 of 1962, as substituted by section 100 of Act 74 of 2002

119. Paragraph 88 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended—

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

"(1) A person must for purposes of this Part be treated as having acquired on valuation date all foreign currency assets (other than personal foreign currency assets) of that person which **[have not been]** were held and not disposed of by that person **[before]** on that date.";

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

"(2) Where a person**[**—

(a)] ceases to be a resident **[or]**

[*(b)* who is a resident, is as a result of the application of any agreement entered into by the Republic with any other country for the avoidance of double taxation, treated as not being a resident,]

that person must be treated as having disposed of all foreign currency assets (other than personal foreign currency assets) acquired and not disposed of by that person immediately before so ceasing to be **[or treated as not being]** a resident."; and

(c) by the substitution of subparagraph (6) for the following subparagraph:

"(6) Where a person ceases to hold a foreign currency asset as a personal foreign currency asset, that person must be treated as having acquired that foreign currency asset on the date that the person so ceases to hold that foreign currency asset as a personal foreign currency asset.".

Amendment of paragraph 92 of Eighth Schedule to Act 58 of 1962, as substituted by section 100 of Act 74 of 2002

120. (1) Paragraph 92 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended by the substitution for subparagraph *(a)* of the following subparagraph:

"*(a)* reducing that amount by**[**—

(i)] any capital gain determined in terms of this Schedule in respect of the disposal of that foreign currency asset (otherwise than in terms of the application of this Part), which was included in that amount; or

[(ii) any other amount included therein, which is or was during any year of assessment included in the taxable income of that person (or of that person's spouse in the case of an asset transferred to that person as contemplated in paragraph 95) in respect of that foreign currency asset; or]".

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

"*(a)* die beskikking oor 'n buitelandse valutabate (behalwe 'n persoonlike buitelandse valutabate), soveel van die bedrag waarmee die buitelandse valuta-opbrengs die buitelandse valutabasiskoste te bowe gaan, as wat nie andersins in berekening gebring is by die vasstelling van die belasbare inkomste van daardie persoon (of van daardie persoon se gade in die geval van 'n bate oorgedra aan daardie persoon soos in paragraaf 95 bedoel) nie ten opsigte van daardie buitelandse valutabate; of";

(b) deur in subparagraaf (2) item *(a)* deur die volgende item te vervang:

"*(a)* die beskikking oor 'n buitelandse valutabate (behalwe 'n persoonlike buitelandse valutabate) soveel van die bedrag waarmee die buitelandse valuta basiskoste ten opsigte van daardie bate die buitelandse valuta-opbrengs te bowe gaan, as wat nie andersins in berekening gebring is by die vasstelling van die belasbare inkomste van daardie persoon (of van daardie persoon se gade in die geval van 'n bate oorgedra aan daardie persoon soos in paragraaf 95 bedoel) nie ten opsigte van daardie buitelandse valutabate.; of".

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

Wysiging van paragraaf 88 van Agtste Bylae by Wet 58 van 1962, soos vervang deur artikel 100 van Wet 74 van 2002

119. Paragraaf 88 van die Agtste Bylae by die Inkomstebelastingwet, 1962, word hierby gewysig—

(a) deur subparagraaf (1) deur die volgende subparagraaf te vervang:

"(1) 'n Persoon moet by die toepassing van hierdie Deel geag word alle buitelandse valutabates (behalwe persoonlike buitelandse valutabates) van daardie persoon op waardasiedatum te verkry het, wat **[nie voor]** op daardie datum deur daardie persoon gehou is en nie oor beskik is nie.";

(b) deur subparagraaf (2) deur die volgende subparagraaf te vervang:

"(2) Waar 'n persoon**[—**

(a)] ophou om 'n inwoner te wees **[of**

(b) **wat 'n inwoner is, as gevolg van die toepassing van 'n ooreenkoms deur die Republiek met enige ander land vir die vermyding van dubbel belasting aangegaan, geag word nie 'n inwoner te wees nie,]**

moet daardie persoon geag word oor alle buitelandse valutabates (behalwe persoonlike buitelandse valutabates) wat verkry is en nie deur daardie persoon oor beskik is onmiddellik voor daardie persoon aldus **[geag word nie]** ophou om 'n inwoner te wees **[nie]**, te beskik het.";

(c) deur in die Engelse teks subparagraaf (6) deur die volgende subparagraaf te vervang:

"(6) Where a person ceases to hold a foreign currency asset as a personal foreign currency asset, that person must be treated as having acquired that foreign currency asset on the date that the person so ceases to hold that foreign currency asset as a personal foreign currency asset.".

Wysiging van paragraaf 92 van Agtste Bylae by Wet 58 van 1962, soos vervang deur artikel 100 van Wet 74 van 2002

120. (1) Paragraaf 92 van die Agtste Bylae by die Inkomstebelastingwet, 1962, word hierby gewysig deur subparagraaf *(a)* deur die volgende subparagraaf te vervang:

"*(a)* daardie bedrag te verminder deur**[—**

(i)] enige kapitaalwins ingevolge hierdie Bylae vasgestel ten opsigte van die beskikking oor daardie buitelandse valutabate (andersins as ingevolge die toepassing van hierdie Deel), wat by daardie bedrag ingesluit is; of

[(ii) **enige ander bedrag daarby ingesluit, wat gedurende enige jaar van aanslag in die belasbare inkomste van daardie persoon ingesluit is of was (of van daardie persoon se gade in die geval van 'n bate aan daardie persoon oorgedra soos in paragraaf 95 bedoel) ten opsigte van daardie buitelandse valutabate; of]**".

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

Amendment of paragraph 93 of Eighth Schedule to Act 58 of 1962, as substituted by section 100 of Act 74 of 2002

121. Paragraph 93 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended—

(a) by the substitution in subparagraph (3) for item *(c)* of the following item:

"*(c)* acquire any foreign equity instrument or any asset in local currency as contemplated in paragraph 43(4); or"; and

(b) by the addition of the following subparagraph:

"(4) Where a person incurred any foreign currency liability before the valuation date, that person must, for purposes of this paragraph be treated as having incurred that foreign currency liability on the valuation date.".

Substitution of paragraph 94 of Eighth Schedule to Act 58 of 1962, as substituted by section 100 of Act 74 of 2002

122. The following paragraph hereby substitutes paragraph 94 of the Eighth Schedule to the Income Tax Act, 1962:

"Involuntary disposal of foreign currency asset

94. A person must disregard any foreign currency capital gain or foreign currency capital loss determined in respect of an involuntary disposal of any foreign currency asset by way of expropriation, theft or physical loss.".

Amendment of paragraph 96 of Eighth Schedule to Act 58 of 1962, as substituted by section 100 of Act 74 of 2002

123. Paragraph 96 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended—

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

"(1) The provisions of paragraphs 11(2)*(a)*, *(e)* and *(i)*, 12(1), 12(2)*(a)*, 13, 14, 36, 38, 39, 40, 56, 62, 63, 68, 69, 70, 71, 72, 73, 80, **[and]** 82 and 83 of the Eighth Schedule to the Act, shall apply *mutatis mutandis* in respect of the determination of any foreign currency capital gain or foreign currency capital loss resulting from the disposal of any foreign currency asset."; and

(b) by the substitution in subparagraph (2) for item *(a)* of the following item:

"*(a)* the market value shall be treated as a reference to the relevant value in foreign currency translated to the currency of the Republic at the average exchange rate for the relevant year of assessment; and".

Amendment of paragraph 1 of Part I of Ninth Schedule to Act 58 of 1962

124. Paragraph 1 of Part I of the Ninth Schedule to the Income Tax Act, 1962, is hereby amended by the addition of the following item:

"*(q)* The promotion of access to media and a free press.".

Amendment of paragraph 3 of Part I of Ninth Schedule to Act 58 of 1962, as inserted by section 41 of Act 30 of 2002

125. (1) Paragraph 3 of Part I of the Ninth Schedule to the Income Tax Act, 1962, is hereby amended—

(a) by the substitution for subparagraph *(a)* of the following subparagraph:

"*(a)* The development, construction, upgrading, conversion or procurement of housing units for the benefit of **[poor and needy]** persons whose monthly household income falls within the housing subsidy

Wysiging van paragraaf 93 van Agtste Bylae by Wet 58 van 1962, soos vervang deur artikel 100 van Wet 74 van 2002

121. Paragraaf 93 van die Agtste Bylae by die Inkomstebelastingwet, 1962, word hierby gewysig—

(a) deur in subparagraaf (3) item *(c)* deur die volgende item te vervang:

"*(c)* 'n buitelandse ekwiteitsinstrument of bate in plaaslike geldeenheid, soos in paragraaf 43(4) bedoel, te verkry; of";

(b) deur die volgende subparagraaf by te voeg:

"(4) Waar 'n persoon 'n buitelandse valutaverpligting voor die waardasiedatum aangegaan het, moet daardie persoon, by die toepassing van hierdie paragraaf, geag word daardie buitelandse valutaverpligting op die waardasiedatum aan te gegaan het.".

Vervanging van paragraaf 94 van Agtste Bylae by Wet 58 van 1962, soos vervang deur artikel 100 van Wet 74 van 2002

122. Die volgende paragraaf vervang hierby paragraaf 94 van die Agtste Bylae by die Inkomstebelastingwet, 1962:

"Onvrywillige beskikking van buitelandse valutabate

94. 'n Persoon moet 'n buitelandse **[valutawins]** valutakapitaalwins of buitelandse **[valutaverlies]** valutakapitaalverlies, vasgestel ten opsigte van enige onvrywillige beskikking oor 'n buitelandse valutabate by wyse van onteiening, diefstal of fisiese verlies, verontagsaam.".

Wysiging van paragraaf 96 van Agtste Bylae by Wet 58 van 1962, soos vervang deur artikel 100 van Wet 74 van 2002

123. Paragraaf 96 van die Agtste Bylae by die Inkomstebelastingwet, 1962, word hierby gewysig—

(a) deur in die Engelse teks subparagraaf (1) deur die volgende subparagraaf te vervang:

"(1) The provisions of paragraphs 11(2)*(a)*, *(e)* and *(i)*, 12(1), 12(2)*(a)*, 13, 14, 36, 38, 39, 40, 56, 62, 63, 68, 69, 70, 71, 72, 73, 80 **[and]** 82 and 83 of the Eighth Schedule to the Act, shall apply *mutatis mutandis* in respect of the determination of any foreign currency capital gain of foreign currency capital loss resulting from the disposal of any foreign currency asset.";

(b) deur in die Engelse teks in subparagraaf (2) item *(a)* deur die volgende item te vervang:

"*(a)* the market value shall be treated as a reference to the relevant value in foreign currency translated to the currency of the Republic at the average exchange rate for the relevant year of assessment; and".

Wysiging van paragraaf 1 van Deel I van Negende Bylae by Wet 58 van 1962

124. Paragraaf 1 van Deel I van die Negende Bylae by die Inkomstebelastingwet, 1962, word hierby gewysig deur die volgende item by te voeg:

"*(q)* Die bevordering van toegang tot media en 'n vrye pers.".

Wysiging van paragraaf 3 van Deel I van Negende Bylae by Wet 58 van 1962, soos ingevoeg deur artikel 41 van Wet 30 van 2002

125. (1) Paragraaf 3 van Deel I van die Negende Bylae by die Inkomstebelastingwet, 1962, word hierby gewysig—

(a) deur subparagraaf *(a)* deur die volgende subparagraaf te vervang:

"*(a)* Die ontwikkeling, oprigting, opgradering, omskakeling of verskaffing van behuisingseenhede vir die voordeel van **[arm en behoeftige]** persone wie se maandelike huishoudelike inkomste binne die behuisingsubsidie kwalifiserende vereistes van die

eligibility requirements of the National Housing Code published pursuant to section 4 of the Housing Act, 1997 (Act No. 107 of 1997).";

(b) by the substitution for subparagraph *(c)* of the following subparagraph:

"*(c)* The provision of residential care for retired persons, where—

(i) more than 90 per cent of the persons to whom the residential care is provided are over the age of 60 and **[regular meals and]** nursing services are provided by the organisation carrying on such activity; and

(ii) residential care for retired persons who are poor and needy is actively provided by that organisation without full recovery of cost."; and

(c) by the substitution for subparagraph *(d)* of the following subparagraph:

"*(d)* Building and equipping of—

(i) **[community centres,]** clinics **[sport facilities]** or crèches; or

(ii) community centres, sport facilities or other facilities of a similar nature,

for the benefit of the poor and needy.".

(2) Subsection (1)*(b)* shall come into operation on 1 January 2005 and shall apply in respect of years of assessment commencing on or after that date.

Amendment of paragraph 11 of Part I of Ninth Schedule to Act 58 of 1962, as inserted by section 41 of Act 30 of 2002

126. Paragraph 11 of Part I of the Ninth Schedule to the Income Tax Act, 1962, is hereby amended by the substitution in subparagraph *(b)* for the words preceding item (i) of the following words:

"The bid to host or hosting of any international event approved by the Minister for purposes of **[these regulations]** this paragraph, having regard to—".

Amendment of paragraph 1 of Part II of Ninth Schedule to act 58 of 1962, as inserted by section 41 of Act 30 of 2002

127. Paragraph 1 of Part II of the Ninth Schedule to the Income Tax Act, 1962, is hereby amended by the addition of the following subparagraphs:

"*(c)* The care or counseling of, or the provision of education programmes relating to, physically or mentally abused and traumatised persons.

(d) The provision of disaster relief.

(e) The rescue or care of persons in distress.

(f) The provision of poverty relief.

(g) Rehabilitative care or counseling or education of prisoners, former prisoners and convicted offenders and persons awaiting trial.

(h) The rehabilitation, care or counseling of persons addicted to a dependence-forming substance or the provision of preventative and education programmes regarding addiction to dependence-forming substances.

(i) Conflict resolution, the promotion of reconciliation, mutual respect and tolerance between the various peoples of South Africa.

(j) The promotion or advocacy of human rights and democracy.

(k) The protection of the safety of the general public.

(l) The promotion or protection of family stability.

(m) The provision of legal services for poor and needy persons.

(n) The provision of facilities for the protection and care of children under school-going age of poor and needy parents.

(o) The promotion or protection of the rights and interests of, and the care of, asylum seekers and refugees.

(p) Community development for poor and needy persons and anti-poverty initiatives, including—

(i) the promotion of community-based projects relating to self-help, empowerment, capacity building, skills development or anti-poverty;

(ii) the provision of training, support or assistance to community-based projects contemplated in item (i); or

Nasionale Behuisingskode kragtens artikel 4 van die Behuisingswet, 1997 (Wet No. 107 van 1997), gepubliseer, val.";

(b) deur subparagraaf *(c)* deur die volgende subparagraaf te vervang:

"*(c)* Die voorsiening van verblyfsorg vir afgetrede persone, waar—

(i) meer as 90 persent van die persone aan wie die verblyfsorg voorsien word bo die ouderdom van 60 is en **[gereelde maaltye en]** verpleegdienste deur die organisasie wat daardie aktiwiteit beoefen, voorsien word; en

(ii) verblyfsorg vir afgetrede persone wat arm en behoeftig is aktief deur daardie organisasie voorsien word sonder volle verhaal van koste."; en

(c) deur subparagraaf *(d)* deur die volgende subparagraaf te vervang:

"*(d)* Die bou en toerus van—

(i) **[gemeenskapsentrums,]** klinieke **[sportgeriewe]** of kleuterskole; of

(ii) gemeenskapsentrums, sportgeriewe of ander fasiliteite van 'n soortgelyke aard vir die voordeel van arm en behoeftige persone.".

(2) Subartikel (1)*(b)* word geag op 1 Januarie 2005 in werking te tree en is van toepassing ten opsigte van jar van aanslag wat op of na daardie datum 'n aanvang neem.

Wysiging van paragraaf 11 van Deel I van Negende Bylae by Wet 58 van 1962, soos ingevoeg deur artikel 41 van Wet 30 van 2002

126. Paragraaf 11 van Deel I van die Negende Bylae by die Inkomstebelastingwet, 1962, word hierby gewysig deur in subparagraaf *(b)* die woorde wat item *(i)* voorafgaan deur die volgende woorde te vervang:

" 'n Bod maak om aan te bied of die aanbieding van enige internasionale gebeurtenisse wat deur die Minister vir doeleindes van hierdie **[regulasies]** paragraaf goedgekeur word, met inagneming van—".

Wysiging van paragraaf 1 van Deel II van Negende Bylae by Wet 58 van 1962, soos ingevoeg deur artikel 41 van Wet 30 van 2002

127. Paragraaf 1 van Deel II van die Negende Bylae by die Inkomstebelastingwet, 1962, word hierby gewysig deur die volgende subparagrawe by te voeg:

"*(c)* Die sorg of berading van, of die voorsiening van opvoedingsprogramme met betrekking tot, fisies of geestelik mishandelde en getraumatiseerde persone.

(d) Die voorsiening van rampverligting.

(e) Die redding van of sorg aan persone in nood.

(f) Die voorsiening van armoedeverligting.

(g) Rehabilitatiewe sorg of berading of onderrig van gevangenes, voormalige gevangenes en veroordeelde misdadigers en verhoorafwagtende persone.

(h) Die rehabilitasie, sorg of berading van persone verslaaf aan 'n gewoontevormende middel of die voorsiening van voorkomende en opvoedingsprogramme met betrekking tot verslawing aan gewoonte-vormende middels.

(i) Konflikbeslegting, die bevordering van versoening, wedersydse respek en verdraagsaamheid tussen die verskillende mense van Suid-Afrika.

(j) Die bevordering van of voorspraak vir menseregte en demokrasie.

(k) Die beskerming van die veiligheid van die algemene publiek.

(l) Die bevordering of beskerming van gesinstabiliteit.

(m) Die voorsiening van regshulp aan arm en behoeftige persone.

(n) Die voorsiening van fasiliteite vir die beskerming en sorg van kinders onder skoolgaande ouderdom van arm en behoeftige ouers.

(o) Die bevordering of beskerming van die regte en belange van, en die sorg van, asielsoekers en vlugtelinge.

(p) Gemeenskapsontwikkeling vir arm en behoeftige persone en teen-armoede inisiatiewe, waarby ingesluit—

(i) die bevordering van gemeenskapsgebaseerde projekte met betrekking tot selfhelp, bemagtiging, uitbreiding van vermoëns, vaardigheidsontwikkeling of teen-armoede;

(ii) die voorsiening van opleiding, ondersteuning of bystand aan gemeenskapsgebaseerde projekte in item (i) bedoel; of

(iii) the provision of training, support or assistance to emerging micro enterprises to improve capacity to start and manage businesses, which may include the granting of loans on such conditions as may be prescribed by the Minister by way of regulation.

(q) The promotion of access to media and a free press.".

Amendment of paragraph 2 of Part II of Ninth Schedule to Act 58 of 1962, as inserted by section 41 of Act 30 of 2002

128. Paragraph 2 of Part II of the Ninth Schedule to the Income Tax Act, 1962, is hereby amended by the addition of the following subparagraphs:

"*(e)* The provision of blood transfusion, organ donor or similar services.

(f) The provision of primary health care education, sex education or family planning.".

Amendment of paragraph 3 of Part II of Ninth Schedule to Act 58 of 1962, as inserted by section 41 of Act 30 of 2002

129. Paragraph 3 of Part II of the Ninth Schedule to the Income Tax Act, 1962, is hereby amended by the addition of the following subparagraphs:

"*(l)* Training of persons employed in the national, provincial and local spheres of government, for purposes of capacity building in those spheres of government.

(m) Career guidance and counseling services provided to persons for purposes of attending any school or higher education institution as envisaged in subparagraphs *(a)* and *(b)*.

(n) The provision of hostel accommodation to students of a public benefit organisation contemplated in section 30 or an institution, board or body contemplated in section 10(1)*(cA)*(i), carrying on activities envisaged in subparagraphs *(a)* to *(g)*.

(o) The provision of scholarships, bursaries and awards for study, research and teaching on such conditions as may be prescribed by the Minister by way of regulation in the *Gazette*.".

Addition of paragraph 5 to Part II of Ninth Schedule to Act 58 of 1962, as inserted by section 41 of Act 30 of 2002

130. The following paragraph is hereby added to Part II of the Ninth Schedule to the Income Tax Act, 1962:

"**LAND AND HOUSING**

5. *(a)* The development, construction, upgrading, conversion or procurement of housing units for the benefit of persons whose monthly household income falls within the housing subsidy eligibility requirements of the National Housing Code published pursuant to section 4 of the Housing Act, 1997 (Act No. 107 of 1997).

(b) The development, servicing, upgrading or procurement of stands, or the provision of building materials, for purposes of the activities contemplated in subparagraph *(a)*.

(c) Building and equipping of clinics or crèches for the benefit of the poor and needy.

(d) The protection, enforcement or improvement of the rights of poor and needy tenants, labour tenants or occupiers, to use or occupy land or housing.

(e) The promotion, facilitation and support of access to land and use of land, housing and infrastructural development for promoting official land reform programmes.".

(iii) die voorsiening van opleiding, ondersteuning of bystand aan opkomende mikro-ondernemings om kapasiteit te verbeter ten einde besighede tot stand te bring en te bestuur, wat kan insluit die voorsiening van lenings op die voorwaardes wat die Minister by wyse van regulasie voorskryf.

(q) Die bevordering van toegang tot media en 'n vrye pers.".

Wysiging van paragraaf 2 van Deel II van Negende Bylae by Wet 58 van 1962, soos ingevoeg deur artikel 41 van Wet 30 van 2002

128. Paragraaf 2 van Deel II van die Negende Bylae by die Inkomstebelastingwet, 1962, word hierby gewysig deur die volgende subparagrawe by te voeg:

"*(e)* Die voorsiening van bloedoortappings-, orgaanskenkings- of soortgelyke dienste.

(f) Die voorsiening van primêre gesondheidsorgopvoeding, geslagsvoorligting of gesinsbeplanning.".

Wysiging van paragraaf 3 van Deel II van Negende Bylae by Wet 58 van 1962, soos ingevoeg deur artikel 41 van Wet 30 van 2002

129. Paragraaf 3 van Deel II van die Negende Bylae by die Inkomstebelastingwet, 1962, word hierby gewysig deur die volgende subparagrawe by te voeg:

"*(l)* Opleiding van persone in die nasionale, provinsiale en plaaslike regeringsfere, vir doeleindes van kapasiteitsbou in daardie regeringsfere.

(m) Beroepsvoorligting en beradingsdienste voorsien aan persone vir doeleindes van die bywoon van skole of inrigtings vir hoër onderwys in subparagrawe *(a)* en *(b)* beoog.

(n) Die voorsiening van koshuisverblyf aan studente van 'n openbare weldaadsorganisasie in artikel 30 bedoel of 'n instelling, raad of liggaam in artikel 10 (1)*(c*A)(i) bedoel, wat aktiwiteite in subparagrawe *(a)* tot *(g)* beoog, beoefen.

(o) Die voorsiening van studiebeurse en toekennings vir studie, navorsing en onderrig onderhewig aan daardie voorwaardes wat die Minister by regulasie in die *Staatskoerant* mag voorskryf.".

Invoeging van paragraaf 5 by Deel II van Negende Bylae by Wet 58 van 1962, soos ingevoeg deur artikel 41 van Wet 30 van 2002

130. Die volgende paragraaf word hierby by Deel II van die Negende Bylae by die Inkomstebelastingwet, 1962, gevoeg:

"**GROND EN BEHUISING**

5. *(a)* Die ontwikkeling, oprigting, opgradering, omskakeling of verskaffing van behuisingseenhede vir die voordeel van persone wie se maandelike huishoudelike inkomste binne die behuisingsubsidie kwalifiserende vereistes van die Nasionale Behuisingskode kragtens artikel 4 van die Behuisingswet, 1997 (Wet No. 107 van 1997), gepubliseer, val.

(b) Die ontwikkeling, diensverskaffing, opgradering of verskaffing van erwe, of die voorsiening van boumateriale, vir doeleindes van die aktiwiteite in subparagraaf *(a)* bedoel.

(c) Die bou en toerus van klinieke of kleuterskole vir die voordeel van arm en behoeftige persone.

(d) Die beskerming, afdwinging of bevordering van die regte van arm en behoeftige huurders, arbeidshuurders of bewoners, om grond of behuising te gebruik of te bewoon.

(e) Die bevordering, fasilitering en ondersteuning van toegang tot grond en gebruik van grond, behuising en infrastrukturele ontwikkeling vir bevordering van amptelike grondhervormingsprogramme.".

Amendment of section 1 of Act 91 of 1964, as amended by section 1 of Act 95 of 1965, section 1 of Act 57 of 1996, section 1 of Act 105 of 1969, section 1 of Act 98 of 1970, section 1 of Act 71 of 1975, section 1 of Act 112 of 1977, section 1 of Act 110 of 1979, sections 1 and 15 of Act 98 of 1980, section 1 of Act 89 of 1984, section 1 of Act 84 of 1987, section 1 of Act 68 of 1989, section 1 of Act 59 of 1990, section 1 of Act 19 of 1994, section 57 of Act 30 of 1998, section 46 of Act 53 of 1999, section 58 of Act 30 of 2000, section 60 of Act 59 of 2000 and section 113 of Act 60 of 2001

131. (1) Section 1 of the Customs and Excise Act, 1964, is hereby amended—

(a) by the insertion after the definition of "customs duty" of the following definitions:

" 'degrouping depot' means any degrouping depot for air cargo contemplated in section 6(1)*(hC)* and licensed under the provisions of this Act"; and

'degrouping operator' means the licensee of a degrouping depot;";

(b) by the substitution for the definition of "duty" of the following definition:

"'duty' means any duty leviable under this Act and subject to—

(a) section 47B, any air passenger tax leviable under that section; and

(b) Chapter VA, any environmental levy leviable under that Chapter.";

(c) by the insertion after the definition of "entry for home consumption" of the following definitions:

" 'environmental levy' means any duty leviable under Part 3 of Schedule No. 1 on any goods which have been manufactured in or imported into the Republic; and

'environmental levy goods' means any goods specified in Part 3 of Schedule No. 1 which have been manufactured in or imported into the Republic.";

(d) by the insertion after the definition of "importer" of the following definition:

" 'International Trade Administration Commission' means the International Trade Administration Commission established by section 7 of the International Trade Administration Act, 2002 (Act No. 71 of 2002);".

(2) Subsection (1)*(b)* and *(c)* shall come into operation on the date Chapter VA comes into operation.

Amendment of section 3 of Act 91 of 1964, as amended by section 114 of Act 60 of 2001 and section 42 of Act 30 of 2002

132. Section 3 of the Customs and Excise Act, 1964, is hereby amended—

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

"(1) Any duty imposed or power conferred on the Commissioner may be performed or exercised by the Commissioner personally or by an officer or any other person under a delegation from or under the control or direction of the Commissioner.

(2) *(a)* Any decision made and any notice or communication signed or issued by any such officer or person may be withdrawn or amended by the Commissioner or by the officer or person concerned (with effect from the date of making such decision or signing or issuing such notice or communication or the date of withdrawal or amendment thereof) and shall, until it has been so withdrawn, be deemed, except for the purposes of this subsection, to have been made, signed or issued by the Commissioner.

(b) The Commissioner may make rules regarding any matter which the Commissioner considers reasonably necessary and useful for the purposes of administering the provisions of this section."; and

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

Wysiging van artikel 1 van Wet 91 van 1964, soos gewysig deur artikel 1 van Wet 95 van 1965, artikel 1 van Wet 57 van 1996, artikel 1 van Wet 105 van 1969, artikel 1 van Wet 98 van 1970, artikel 1 van Wet 71 van 1975, artikel 1 van Wet 112 van 1977, artikel 1 van Wet 110 van 1979, artikels 1 en 15 van Wet 98 van 1980, artikel 1 van Wet 89 van 1984, artikel 1 van Wet 84 van 1987, artikel 1 van Wet 68 van 1989, artikel 1 van Wet 59 van 1990, artikel 1 van Wet 19 van 1994, artikel 57 van Wet 30 van 1998, artikel 46 van Wet 53 van 1999, artikel 58 van Wet 30 van 2000, artikel 60 van Wet 59 van 2000 en artikel 113 van Wet 60 van 2001

131. (1) Artikel 1 van die Doeane- en Aksynswet, 1964, word hierby gewysig—

(a) deur na die omskrywing van 'installasies' die volgende omskrywing in te voeg:

" 'Internasionale Handelsadministrasiekommissie' die Internasionale Handelsadministrasiekommissie by artikel 7 van die Wet op Internasionale Handelsadministrasie, 2002 (Wet No. 71 van 2002) ingestel;";

(b) deur na die omskrywing van 'Minister' die volgende omskrywings in te voeg:

" 'omgewingsheffing' enige reg hefbaar ingevolge Deel 3 van Bylae No. 1 op enige goedere wat in die Republiek vervaardig of ingevoer is;"; en 'omgewingsheffinggoedere' enige goedere vermeld in Deel 3 van Bylae No. 1 wat in die Republiek vervaardig of ingevoer is;";

(c) deur na die omskrywing van "omgewingsheffinggoedere" die volgende omskrywings in te voeg:

"'ontgroeperingbediener' die gelisensieerde van 'n ontgroeperingdepot;";

'ontgroeperingdepot' enige ontgroeperingdepot vir lugvrag in artikel 6(1)*(hC)* beoog en ingevolge die bepalings van hierdie Wet gelisensieer;

(d) deur die omskrywing van "reg" deur die volgende omskrywing te vervang:

"'reg' enige reg hefbaar ingevolge hierdie Wet en behoudens—

(a) artikel 47B, enige lugpassasiersbelasting hefbaar ingevolge daardie artikel; en

(b) Hoofstuk VA, enige omgewingsheffing hefbaar ingevolge daardie Hoofstuk.";

(2) Subartikel (1)*(b)* en *(d)* tree in werking op die datum waarop Hoofstuk VA in werking tree.

Wysiging van artikel 3 van Wet 91 van 1964, soos gewysig deur artikel 114 van Wet 60 van 2001 en artikel 42 van Wet 30 van 2002

132. Artikel 3 van die Doeane- en Aksynswet, 1964, word hierby gewysig—

(a) deur subartikels (1) en (2) deur die volgende subartikels te vervang:

"(1) Enige plig die Kommissaris opgelê of bevoegdheid die Kommissaris verleen kan deur die Kommissaris self, of deur 'n beampte of 'n ander persoon ingevolge 'n delegasie of onder beheer of toesig van die Kommissaris, verrig of uitgeoefen word.

(2) *(a)* Enige beslissing gegee deur en enige kennisgewing of mededeling onderteken of uitgereik deur enige sodanige beampte of persoon, kan deur die Kommissaris of deur die betrokke beampte of persoon ingetrek of gewysig word (met ingang van die datum waarop sodanige beslissing gegee of kennisgewing of mededeling onderteken of uitgereik is, of van die datum van intrekking of wysiging daarvan) en word, totdat dit aldus ingetrek, behalwe vir die doeleindes van hierdie subartikel, geag deur die Kommissaris gegee, onderteken of uitgereik te gewees het.

(b) Die Kommissaris kan reëls uitvaardig betreffende enige aangeleentheid wat die Kommissaris redelik noodsaaklik en nuttig ag vir die doeleindes om die bepalings van hierdie artikel te administreer."; en

(b) deur subartikels (3) en (4) te skrap.

(b) the substitution in subsection (1) for paragraph *(h*C*)* of the following paragraph:

"*(h*C*)* places where degrouping depots may be established to which air cargo may be removed from a transit shed before due entry thereof for—

(a) the storage, detention, unpacking or examination of consolidated packing or its contents;

(b) the removal to another such degrouping depot or the delivery to importers of such contents after due entry thereof;

(c) such other purposes or activities as may be specified by rule.".

Amendment of section 35A of Act 91 of 1964, as inserted by section 5 of Act 112 of 1977 and amended by section 24 of Act 45 of 1995

135. Section 35A of the Customs and Excise Act, 1964 is hereby amended by the substitution for subsections (1) and (2) of the following subsections:

"(1) The Commissioner may prescribe by rule—

(a) the sizes and types of containers which may be used by a manufacturer for the packing of cigarettes and cigarette tobacco;

(b) distinguishing marks or numbers in addition to the stamp impression referred to in subsection (2) which must or must not appear on containers of cigarettes and cigarette tobacco removed from a customs and excise warehouse for home consumption or for export;

(c) any other matter which is necessary to prescribe and useful to achieve the efficient and effective administration of this section.

(2) No licensee may remove any cigarettes or allow any cigarettes to be removed from a customs and excise warehouse unless—

(a) if removed for home consumption, a stamp impression determined by the Commissioner has been made on their containers; or

(b) if removed for export, such stamp impression does not appear on the containers; and

(c) the cigarettes otherwise comply in every respect with the requirements prescribed by rule.".

Amendment of section 44 of Act 91 of 1964, as amended by section 10 of Act 95 of 1965, section 5 of Act 57 of 1966, section 16 of Act 105 of 1969, section 7 of Act 71 of 1975, section 8 of Act 112 of 1977, section 5 of Act 110 of 1979, section 3 of Act 89 of 1984, section 13 of Act 84 of 1987, section 21 of Act 59 of 1990, section 3 of Act 98 of 1993, section 33 of Act 45 of 1995, section 51 of Act 53 of 1999, section 43 of Act 19 of 2001 and section 125 of Act 60 of 2001

136. Section 44 of the Customs and Excise Act, 1964 is hereby amended—

(a) by the substitution in subsection (5) for paragraph *(b)* of the following paragraph:

"*(b)* if due entry of the goods has not been made—

(i) upon delivery thereof to the State Warehouse or other place indicated for the purposes of this section by the Controller; or

(ii) in the case of air cargo, upon receipt thereof by a degrouping operator;";

(b) by the deletion of paragraph *(d)*."; and

(c) by the insertion after subsection (5B) of the following subsection:

"(5C) *(a)* The degrouping operator shall be liable for the duty on all goods received by the—

(i) degrouping operator at the degrouping depot;

(ii) degrouping operator from the transit shed operator (as defined by rule) where the degrouping operator takes delivery from the transit shed operator at the transit shed;

(iii) degrouping operator from another degrouping operator.

(b) The liability for duty of the degrouping operator shall cease—

(b) deur in subartikel (1) paragraaf (*h*C) met die volgende paragraaf te vervang:

"*(hC)* plekke waar ontgroeperingdepots opgerig mag word waarheen lugvrag vanaf 'n deurvoerloods voor behoorlike klaring daarvan verwyder kan word vir—

(a) die opslag, aanhouding, uitpak of ondersoek van gekonsolideerde verpakking of die inhoud daarvan;

(b) die verwydering na 'n ander ontgroeperingdepot of aflewering aan invoerders van sodanige inhoud na behoorlike klaring daarvan;

(c) sodanige ander doeleindes of aktiwiteite wat by reël vermeld word.".

Wysiging van artikel 35A van Wet 91 van 1964, soos ingevoeg deur artikel 5 van Wet 112 van 1977 en gewysig deur artikel 24 van Wet 45 van 1995

135. Artikel 35A van die Doeane- en Aksynswet, 1964 word hierby gewysig deur subartikels (1) en (2) deur die volgende subartikels te vervang:

"(1) Die Kommissaris kan by reël voorskryf—

(a) die groottes en tipes houers wat deur 'n vervaardiger vir die verpakking van sigarette en sigarettabak gebruik mag word;

(b) onderskeidende merke en nommers wat benewens die stempelafdruk in subartikel (2) bedoel op die houers van sigarette en sigarettabak wat uit 'n doeane- en aksynspakhuis vir binnelandse verbruik of vir uitvoer verwyder word, moet of nie moet verskyn nie;

(c) enige ander aangeleentheid wat vir die doeltreffende en effektiewe administrasie van hierdie artikel noodsaaklik is om voor te skryf of nuttig kan wees.

(2) Geen lisensiehouer mag sigarette vanuit 'n doeane- en aksynspakhuis verwyder of toelaat dat dit daaruit verwyder word nie, tensy—

(a) indien verwyder vir binnelandse verbruik, 'n stempelafdruk deur die Kommissaris bepaal op die houers daarvan aangebring is nie; of

(b) indien verwyder vir uitvoer, sodanige stempelafdruk nie op die houers verskyn nie; en

(c) die sigarette andersins in alle opsigte voldoen aan die vereistes wat by reël voorgeskryf word."

Wysiging van artikel 44 van Wet 91 van 1964, soos gewysig deur artikel 10 van Wet 95 van 1965, artikel 5 van Wet 57 van 1966, artikel 16 van Wet 105 van 1969, artikel 7 van Wet 71 van 1975, artikel 8 van Wet 112 van 1977, artikel 5 van Wet 110 van 1979, artikel 3 van Wet 89 van 1984, artikel 13 van Wet 84 van 1987, artikel 21 van Wet 59 van 1990, artikel 3 van Wet 98 van 1993, artikel 33 van Wet 45 van 1995, artikel 51 van Wet 53 van 1999, artikel 43 van Wet 19 van 2001 en artikel 125 van Wet 60 van 2001

136. Artikel 44 van die Doeane- en Aksynswet, 1964 word hierby gewysig—

(a) deur in subartikel (5) paragraaf *(b)* deur die volgende paragraaf te vervang:

"*(b)* indien die goedere nie behoorlik geklaar is nie—

(i) by aflewering daarvan by die Staatspakhuis of ander plek wat deur die Kontroleur vir doeleindes van hierdie artikel aangewys is; of

(ii) in die geval van lugvrag, by ontvangs daarvan deur 'n ontgroeperingbediener;";

(b) deur paragraaf *(d)* te skrap; en

(c) deur na subartikel (5B) die volgende artikel in te voeg:

"(5C) *(a)* Die ontgroeperingbediener is aanspreeklik vir reg op alle goedere ontvang deur die—

(i) ontgroeperingbediener by die ontgroeperingdepot;

(ii) ontgroeperingbediener van die deurvoerloodsbediener (soos by reël omskryf) waar die ontgroeperingbediener by die deurvoerloods van die ceurvoerloodsbediener aflewering neem;

(iii) ontgroeperingbediener van 'n ander ontgroeperingbediener.

(b) Die aanspreeklikheid van die ontgroeperingbediener verval—

(i) upon receipt of such goods by any other degrouping operator in accordance with the procedures prescribed by rule in terms of section 64G;

(ii) upon lawful delivery after due entry thereof to the importer or the importer's agent;

(iii) in respect of any goods of which due entry has not been made upon delivery thereof to the state warehouse or other place indicated for the purposes of this section by the Controller;

(iv) on complying with any condition or procedure prescribed by rule in terms of section 64G.".

Amendment of section 46 of Act 91 of 1964, as amended by section 10 of Act 95 of 1965, section 5 of Act 57 of 1966, section 16 of Act 105 of 1969, section 7 of Act 71 of 1975, section 8 of Act 112 of 1977, section 5 of Act 110 of 1979, section 3 of Act 89 of 1984, section 13 of Act 84 of 1987, section 21 of Act 59 of 1990, section 3 of Act 98 of 1993, section 33 of Act 45 of 1995 and section 52 of Act 53 of 1999

137. Section 46 of the Customs and Excise Act, 1964 is hereby amended—

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

"*(c)* such other processes as the Commissioner may, at the request of the International Trade Administration Commission, by rule prescribe in respect of any class or kind of goods, have taken place in the production or manufacture of goods of such class or kind in that territory."; and

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

"(2) The Commissioner may from time to time, at the request of the International Trade Administration Commission, by rule increase the percentage prescribed in subsection (1), in regard to any class or kind of imported goods, or in regard to any class or kind of such goods from a particular territory, to which that subsection applies;".

Amendment of section 47 of Act 91 of 1964

138. (1) Section 47 of the Customs and Excise Act, 1964, is hereby amended—

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

"(1) Subject to the provisions of this Act, duty shall be paid for the benefit of the National Revenue Fund on all imported goods, all excisable goods, all surcharge goods, all environmental levy goods and all fuel levy goods in accordance with the provisions of Schedule No. 1 at the time of entry for home consumption of such goods: Provided that the Commissioner may condone any underpayment of such duty where the amount of such underpayment in the case of—

(a) goods imported by post is less than fifty cents;

(b) goods imported in any other manner is less than five rand; or

(c) excisable goods is less than two rand."

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

"(7) To the extent that any goods, classifiable under any tariff heading or subheading of Part 1 of Schedule No. 1 that is expressly quoted in any tariff item, environmental levy item or fuel levy item or item of Part 2, 3, 5 or 6 of the said Schedule or in any item in Schedule No. 2, are specified in any such tariff item, environmental levy item or fuel levy item or item, the item concerned shall be deemed to include only such goods classifiable under such tariff heading or subheading.";

(i) by ontvangs van sodanige goedere deur 'n ander ontgroeperingbediener ooreenkomstig die prosedures ingevolge artikel 64G voorgeskryf;

(ii) by wettige aflewering van die goedere nadat dit behoorlik geklaar is aan die invoerder of die invoerder se agent;

(iii) ten opsigte van enige goedere wat nie behoorlik geklaar is nie, by aflewering daarvan by die Staatspakhuis of ander plek wat die Kontroleur vir die doeleindes van hierdie artikel aangewys het;

(iv) by voldoening aan enige voorwaarde of prosedure wat by reël ingevolge artikel 64G voorgeskryf word.".

Wysiging van artikel 46 van Wet 91 van 1964, soos gewysig deur artikel 10 van Wet 95 van 1965, artikel 5 van Wet 57 van 1966, artikel 16 van Wet 105 van 1969, artikel 7 van Wet 71 van 1975, artikel 8 van Wet 112 van 1977, artikel 5 van Wet 110 van 1979, artikel 3 van Wet 89 van 1984, artikel 13 van Wet 84 van 1987, artikel 21 van Wet 59 van 1990, artikel 3 van Wet 98 van 1993, artikel 33 van Wet 45 van 1995 en artikel 52 van Wet 53 van 1999

137. Artikel 46 van die Doeane- en Aksynswet, 1964 word hierby gewysig—

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

"*(c)* sodanige ander prosesse wat die Kommissaris op versoek van die Internasionale Handelsadministrasiekomissie by reël ten opsigte van enige klas of soort goedere voorskryf, by die produksie of vervaardiging van goedere van daardie klas of soort in daardie gebied plaasgevind het."; en

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

"(2) Die Kommissaris kan van tyd tot tyd, op versoek van die Internasionale Handelsadministrasiekommissie by reël die in subartikel (1) voorgeskrewe persentasie verhoog ten opsigte van enige klas of soort ingevoerde goedere, of ten opsigte van enige klas of soort sodanige goedere vanaf 'n besondere gebied, waarop daardie subartikel van toepassing is;".

Wysiging van artikel 47 van Wet 91 van 1964

138. (1) Artikel 47 van die Doeane- en Aksynswet, 1964, word hierby gewysig—

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

"(1) Behoudens die bepalings van hierdie Wet, word reg ten bate van die Nasionale Inkomstefonds betaal op alle ingevoerde goedere, alle synsbare goedere, alle bobelastinggoedere, alle omgewingsheffinggoedere en alle brandstofheffinggoedere ooreenkomstig die bepalings van Bylae No. 1 ten tyde van klaring van sodanige goedere vir binnelandse verbruik: Met dien verstande dat die Kommissaris enige onderbetaling van sodanige reg kan kondoneer waar die bedrag van die onderbetaling in die geval van—

(a) goedere per pos ingevoer minder as vyftig sent is;

(b) goedere op enige ander wyse ingevoer minder as vyf rand is; of

(c) synsbare goedere minder as twee rand is.";

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

"(7) In die mate waarin enige goedere onder enige tariefpos of subpos van Deel 1 van Bylae No. 1 indeelbaar is, wat uitdruklik aangehaal is in enige tariefitem, omgewingsheffingsitem of brandstofheffingitem of item van Deel 2, 3, 5 of 6 van genoemde Bylae of in enige item in Bylae No. 2, in enige sodanige tariefitem, omgewingsheffingitem of brandstofheffingitem of item vermeld word, word die betrokke item geag slegs sodanige goedere in te sluit wat onder sodanige tariefpos of subpos indeelbaar is.";

(c) by the substitution in subsection (9) for subparagraph *(i)* of paragraph *(b)* of the following paragraph:

"(i) Whenever any determination is made under paragraph *(a)* or any determination is amended or withdrawn and a new determination is made under paragraph *(d)*, any amount due in terms thereof shall, notwithstanding that **[an internal administrative appeal has been filed as contemplated in section 95A or]** any proceedings have been instituted in any court in connection therewith, remain payable as long as such determination or amended or new determination remains in force: Provided that the Commissioner may on good cause shown, suspend such payment until the date of any final judgment by the High Court or a judgment by the Supreme Court of Appeal.";

(d) by the substitution in subsection (9) for subparagraph *(cc)* of paragraph *(b)*(ii) of the following subparagraph:

"*(cc)* any amendment of a determination or new determination is made effective under paragraph *(d)*.**[or section 95A]**";

(e) by the substitution in subsection (9) for paragraph *(c)* of the following paragraph:

"*(c)* Whenever a court amends or orders the Commissioner to amend any determination made under subsection (9) *(a)* or *(d)* or any determination is amended or a new determination is made under paragraph *(d)* **[or section 95A]** the Commissioner shall not be liable to pay interest on any amount refundable which remained payable in terms of the provisions of paragraph *(b)*(i) for any period during which such determination remained in force.";

(f) by the substitution in subsection (9) for subparagraph *(bb)* of paragraph *(d) (i)* of the following subparagraph:

"*(bb)* **[except when an internal appeal has been filed in terms of the provisions of section 95A, or if filed, before it has been considered,]** amend any determination or withdraw it and make a new determination if it was made in error or any condition or obligation on which it was issued is no longer fulfilled or on any other good cause shown including any relevant ground for review contemplated in section 6 of the Promotion of Administrative Justice Act, 2000 (Act No. 3 of 2000).";

(g) by the substitution in subsection (9) for subparagraph (i) of paragraph *(b)* of the following subparagraph:

"(i) Whenever any determination is made under paragraph *(a)* or any determination is amended or withdrawn and a new determination is made under paragraph *(d)*, any amount due in terms thereof shall, notwithstanding that an internal administrative appeal has been lodged as contemplated in Part A of Chapter XA or any proceedings have been instituted in any court in connection therewith, remain payable as long as such determination or amended or new determination remains in force: Provided that the Commissioner may on good cause shown, suspend such payment until the date the appeal is decided or the date of any final judgment by the High Court or a judgment by the Supreme Court of Appeal;";

(h) by the substitution in subsection (9) for subparagraph *(cc)* of paragraph *(b)*(ii) of the following subparagraph:

"*(cc)* any amendment of a determination or new determination is made effective under paragraph *(d)* or as contemplated in section 77F.";

(i) by the substitution in subsection (9) for paragraph *(c)* of the following paragraph:

"*(c)* Whenever a court amends or orders the Commissioner to amend any determination made under subsection (9)*(a)* or *(d)* or any determination is amended or a new determination is made under paragraph *(d)* or section 77E or 77F, the Commissioner shall not be liable to pay interest on any amount refundable which remained payable in terms of the

(c) deur in subartikel (9) subparagraaf (i) van paragraaf *(b)* deur die volgende paragraaf te vervang:

"(i) Wanneer enige bepaling kragtens paragraaf *(a)* gemaak word of enige bepaling gewysig of ingetrek word en 'n nuwe bepaling ingevolge paragraaf *(d)* gemaak word, bly enige bedrag ingevolge daarvan verskuldig, betaalbaar so lank as so 'n bepaling of gewysigde bepaling of nuwe bepaling van krag bly in weerwil daarvan dat **['n interne administratiewe appèl, soos bedoel in artikel 95A ingedien is of**] enige verrigtinge in enige hof in verband daarmee ingestel is: Met dien verstande dat die Kommissaris op goeie gronde aangetoon sodanige betaling tot die datum van enige finale uitspraak deur die Hoë Hof of 'n uitspraak van die Hoogste Hof van Appèl kan opskort.";

(d) deur in subartikel (9) subparagraaf *(cc)* van paragraaf *(b)*(ii) deur die volgende subparagraaf te vervang:

"*(cc)* waarop enige wysiging van 'n bepaling of nuwe bepaling ingevolge paragraaf *(d)* **[of artikel 95A]** van krag gemaak word.";

(e) deur in subartikel (9) paragraaf *(c)* deur die volgende paragraaf te vervang:

"*(c)* Wanneer 'n hof enige bepaling kragtens subartikel (9) *(a)* or *(d)* gemaak, wysig of die Kommissaris beveel om sodanige bepaling te wysig of enige bepaling gewysig word of 'n nuwe bepaling gemaak word kragtens paragraaf *(d)* **[of artikel 95A]** is die Kommissaris nie aanspreeklik vir die betaling van rente op enige terugbetaalbare bedrag wat betaalbaar gebly het ingevolge die bepalings van paragraaf *(b) (i)* vir enige tydperk wat sodanige bepaling van krag gebly het nie.";

(f) deur in subartikel (9) subparagraaf *(bb)* van paragraaf *(d) (i)* deur die volgende subparagraaf te vervang:

"*(bb)* **[behalwe waar 'n interne appèl ingedien is ingevolge die bepalings van artikel 95A of indien dit ingedien is voordat dit oorweeg is,]** enige bepaling wysig of enige bepaling intrek en 'n nuwe bepaling maak indien dit foutiewelik gemaak is of indien enige voorwaarde of verpligting waarop dit uitgereik is nie meer aan voldoen word nie of op enige ander goeie gronde aangetoon met inbegrip van enige relevante hersieningsgrond in artikel 6 van die "Promotion of Administrative Justice Act", 2000 (Wet No. 3 van 2000) beoog.";

(g) deur in subartikel (9) subparagraaf (i) van paragraaf *(b)* deur die volgende subparagraaf te vervang:

"(i) Wanneer enige bepaling kragtens paragraaf *(a)* gemaak word of enige bepaling gewysig of ingetrek word en 'n nuwe bepaling ingevolge paragraaf *(d)* gemaak word, bly enige bedrag ingevolge daarvan verskuldig, betaalbaar so lank as so 'n bepaling of gewysigde bepaling of nuwe bepaling van krag bly in weerwil daarvan dat 'n interne administratiewe appèl, soos bedoel in Deel A van Hoofstuk XA ingedien is, of enige verrigtinge in enige hof in verband daarmee ingestel is: Met dien verstande dat die Kommissaris op goeie gronde aangetoon sodanige betaling tot die datum waarop die appèl beslis word of die datum van enige finale uitspraak deur die Hoë Hof of 'n uitspraak van die Hoogste Hof van Appèl kan opskort.";

(h) deur in subartikel (9) subparagraaf *(cc)* van paragraaf *(b)*(ii) deur die volgende subparagraaf te vervang:

"*(cc)* waarop enige wysiging van 'n bepaling of nuwe bepaling ingevolge paragraaf *(d)* of soos beoog in artikel 77F van krag gemaak word.";

(i) deur in subartikel (9) paragraaf *(c)* deur die volgende paragraaf te vervang:

"*(c)* Wanneer 'n hof enige bepaling kragtens subartikel (9)*(a)* of *(d)* gemaak, wysig of die Kommissaris beveel om sodanige bepaling te wysig of enige bepaling gewysig word of 'n nuwe bepaling gemaak word kragtens paragraaf *(d)* of artikel 77E of 77F, is die Kommissaris nie aanspreeklik vir die betaling van rente op enige terugbetaalbare bedrag wat betaalbaar gebly het ingevolge die

Rebates, Refunds and Drawbacks

47F. The Minister may, notwithstanding anything to the contrary contained in this Act, provide under section 75 (15) for a rebate, refund or drawback of any environmental levy in an item of a separate Part of Schedule No. 3, 4, 5 or 6, which shall be deemed to be an amendment of such Schedule, in the circumstances and for the purposes and on compliance with any conditions that may be specified in such Part or item.

Licensing

47G. (1) From the date this Chapter comes into operation, no environmental levy goods may be manufactured in the Republic except in a customs and excise manufacturing warehouse licensed in terms of this Act.

(2) The applicant for such a license must apply on the form prescribed by rule and must comply with all the provisions of this Act and any requirements the Commissioner may prescribe in each case.

(3) The application must be supported by the agreement and other documents as may be prescribed by rule.

(4) Before such warehouse is licensed the applicant for a license must—

(a) furnish such security as contemplated in section 60(c)(i); and

(b) pay the licence fee prescribed in Schedule No. 8.

(5) The provisions of section 60 (2) shall apply *mutatis mutandis* in respect of any application for a licence or the suspension or cancellation of a licence.

Rules

47H. The Commissioner may prescribe by rule—

(a) any procedure in addition to or in substitution of any existing rule regulating procedures in respect of the importation of goods and imported goods or excisable goods in order to provide for any necessary exception or adaptation in administering the provisions of this Chapter;

(b) *mutatis mutandis* for the purposes of this Chapter, any procedure to which section 19 A and its rules relate;

(c) the form of agreement to be entered into between the applicant and the Commissioner;

(d) the accounts and other documents to be kept and to be submitted when payment is made;

(e) all matters which are required or permitted in terms of this Chapter to be prescribed by rule;

(f) any other matter which is necessary to prescribe and useful to achieve the efficient and effective administration of this Chapter.".

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

Amendment of section 48 of Act 91 of 1964, as amended by section 6 of Act 57 of 1966, section 18 of Act 105 of 1969, section 3 of Act 98 of 1970, section 1 of Act 68 of 1973, section 8 of Act 105 of 1976, section 11 Act 112 of 1977, sections 10 and 15 of Act 98 of 1980, section 9 of Act 86 of 1982, section 18 of Act 84 of 1987, section 7 of 68 of 1989, section 23 of Act 59 of 1990, section 4 of Act 61 of 1992, section 3 of Act 19 of 1994, section 39 of Act 45 of 1995, section 64 of Act 30 of 1998 and section 54 of Act 53 of 1999

140. Section 48 of the Customs and Excise Act, 1964 is hereby amended—

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

"(2) The Minister may from time to time by like notice amend or withdraw or, if so withdrawn, insert Part 2, Part 3, Part 4 or Part 5 of Schedule No. 1, whenever he deems it expedient in the public interest to

Kortings, Terugbetalings en Teruggawes

47F. Die Minister kan, ondanks andersluidende bepalings van hierdie Wet, ingevolge artikel 75 (15) voorsiening maak vir 'n korting, terugbetaling of teruggawe van enige omgewingsheffing in enige item van 'n afsonderlike Deel van Bylae No. 3, 4, 5 of 6, wat geag word 'n wysiging van sodanige Bylae te wees, in die omstandighede en vir die doeleindes en by nakoming van enige voorwaardes wat in sodanige Deel of item vermeld word.

Lisensiëring

47G. (1) Vanaf die datum waarop hierdie Hoofstuk in werking tree mag geen omgewingsheffinggoedere in die Republiek vervaardig word nie, behalwe in 'n doeane- en aksynsvervaardigingspakhuis wat ingevolge hierdie Wet gelisensieer is.

(2) Die aansoeker om sodanige lisensie moet op die vorm wat by reël voorgeskryf is, aansoek doen en moet voldoen aan al die bepalings van hierdie Wet en enige vereistes wat die Kommissaris in elke geval voorskryf.

(3) Die aansoek moet vergesel wees deur die ooreenkoms en ander dokumente wat by reël voorgeskryf word.

(4) Voordat so 'n pakhuis gelisensieer word, moet die aansoeker om 'n lisensie —

(a) sodanige sekerheid verskaf soos in artikel 60(c)(i) beoog; en

(b) die lisensiegeld betaal wat in Bylae No. 8 voorgeskryf word.

(5) Die bepalings van artikel 60 (2) is *mutatis mutandis* van toepassing ten opsigte van enige aansoek om 'n lisensie of die opskorting of kansellasie van 'n lisensie.

Reëls

47H. Die Kommissaris kan by reël voorskryf—

(a) enige prosedure benewens of ter vervanging van enige bestaande reël wat prosedures ten opsigte van die invoer van goedere en ingevoerde goedere of synsbare goedere reguleer ten einde voorsiening te maak vir enige noodsaaklike uitsondering of aanpassing om die bepalings van hierdie Hoofstuk te administreer;

(b) *mutatis mutandis* by die toepassing van hierdie Hoofstuk, enige prosedure waarop artikel 19 A en die reëls daarna betrekking het;

(c) die vorm van ooreenkoms wat tussen die aansoeker en die Kommissaris aangegaan moet word;

(d) die rekeninge en ander dokumente wat gehou en ingedien moet word wanneer betaling gemaak word;

(e) alle aangeleenthede wat ingevolge hierdie artikel by reël voorgeskryf moet of kan word;

(f) enige ander aangeleentheid wat vir die doeltreffende en effektiewe administrasie van hierdie Hoofstuk noodsaaklik is om voor te skryf of nuttig kan wees.".

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

Wysiging van artikel 48 van Wet 91 van 1964, soos gewysig deur artikel 6 van Wet 57 van 1966, artikel 18 van Wet 105 van 1969, artikel 3 van Wet 98 van 1970, artikel 1 van Wet 68 van 1973, artikel 8 van Wet 105 van 1976, artikel 11 van Wet 112 van 1977, artikels 10 en 15 van Wet 98 van 1980, artikel 9 van Wet 86 van 1982, artikel 18 van Wet 84 van 1987, artikel 7 van Wet 68 van 1989, artikel 23 van Wet 59 van 1990, artikel 4 van Wet 61 van 1992, artikel 3 van Wet 19 van 1994, artikel 39 van Wet 45 van 1995, artikel 64 van Wet 30 van 1998 en artikel 54 van Wet 53 van 1999

140. Artikel 48 van die Doeane- en Aksynswet, 1964 word hierby gewysig—

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

"(2) Die Minister kan van tyd tot tyd by dergelike kennisgewing, wanneer hy dit in die openbare belang dienstig ag om dit te doen, Deel 2, Deel 3, Deel 4 of Deel 5 van Bylae No. 1 wysig of intrek of, indien aldus

do so: Provided that the Minister may, whenever he deems it expedient in the public interest to do so, reduce any duty specified in the said Parts with retrospective effect from such date and to such extent as may be determined by him in such notice."; and

(b) by the substitution in subsection (2A) for paragraphs *(a)* and *(b)* of the following paragraphs:

"(2A) *(a)* (i) The Minister may from time to time by like notice, whenever he deems it expedient in the public interest to do so, authorize the International Trade Administration Commission or the Commissioner to withdraw, with or without retrospective effect, and subject to such conditions as the said Commission or Commissioner may determine, any duty specified in Part 2 or Part 4 of Schedule No. 1.

(ii) The International Trade Administration Commission or the Commissioner may at any time cancel, amend or suspend any withdrawal referred to in subparagraph (i).

(b) Any application for such withdrawal, with retrospective effect, shall be submitted to the said International Trade Administration Commission or Commissioner, as the case may be, not later than six months from the date of entry for home consumption as provided in section 45 (2).".

Substitution of section 54 of Act 91 of 1964, as amended by section 3 of Act 85 of 1968 and substituted by section 13 of Act 112 of 1977 and amended by section 43 of Act 45 of 1995

141. Section 54 of the Customs and Excise Act, 1964 is hereby amended by the substitution for subsections (1) and (2) of the following subsections:

"(1) The Commissioner may prescribe by rule—

(a) the sizes and types of containers in which cigarettes may be imported into the Republic;

(b) distinguishing marks or numbers in addition to the stamp impression referred to in subsection (2) which must or must not appear on containers of imported cigarettes;

(c) any other matter which is necessary to prescribe and useful to achieve the efficient and effective administration of this section.

(2) No person may import any cigarettes unless—

(a) if entered for home consumption, a stamp impression determined by the Commissioner has been made on their containers; or

(b) if entered for storage in a customs and excise warehouse for export such stamp impression does not appear on the containers; and

(c) the cigarettes otherwise comply with the requirements prescribed by rule.".

Substitution of section 57A of Act 91 of 1964, as substituted by section 17 of Act 112 of 1977, section 11 of Act 61 of 1992 and amended by section 8 of Act 19 of 1994

142. Section 57A of the Customs and Excise Act, 1964 is hereby amended by the substitution for subsections (1) and (2) of the following subsections:

"(1) Whenever the International Trade Administration Commission publishes a notice in the *Gazette* to the effect that it is investigating the imposition of an anti-dumping, countervailing or safeguard duty on goods imported from a supplier or originating in a territory specified in that notice, the Commissioner shall, in accordance with any request by the said Commission, by notice in the *Gazette* impose a provisional payment in respect of those goods for such period and for such amount as the Commission may specify in such request.

(2) The Commissioner shall, in accordance with any request by the said Commission, by further notice in the *Gazette* extend the period for which the provisional payment mentioned in subsection (1) is imposed or withdraw or reduce it with or without retrospective effect and to such extent as may be specified in the request.".

ingetrek, invoeg: Met dien verstande dat die Minister, wanneer hy dit in die openbare belang dienstig ag om dit te doen, enige reg in bedoelde Dele vermeld met terugwerkende krag kan verminder vanaf 'n datum en in die mate deur hom in sodanige kennisgewing bepaal."; en

(b) deur in subartikel (2A) paragrawe *(a)* en *(b)* deur die volgende paragrawe te vervang:

"(2A) *(a)* (i) Die Minister kan van tyd tot tyd by dergelike kennisgewing, wanneer hy dit in die openbare belang dienstig ag om dit te doen, die Internasionale Handelsadministrasiekommissie of die Kommissaris magtig om met of sonder terugwerkende krag en onderhewig aan die voorwaardes wat genoemde Handelsadministrasiekommissie of Kommissaris bepaal, enige reg vermeld in Deel 2 of Deel 4 van Bylae No. 1 in te trek.

(ii) Die Internasionale Handelsadministrasiekommissie of die Kommissaris kan te eniger tyd enige in subparagraaf *(i)* bedoelde intrekking kanselleer, wysig of opskort.

(b) 'n Aansoek om sodanige intrekking met terugwerkende krag moet aan genoemde Handelsadministrasie-kommissie of Kommissaris, na gelang van die geval, voorgelê word nie later nie as ses maande vanaf die datum van klaring vir binnelandse verbruik volgens voorskrif van artikel 45 (2).".

Vervanging van artikel 54 van Wet 91 van 1964, soos gewysig deur artikel 3 van Wet 85 van 1968 en vervang deur artikel 13 van Wet 112 van 1977 en gewysig deur artikel 43 van Wet 45 van 1995

141. Artikel 54 van die Doeane- en Aksynswet, 1964 word hierby gewysig deur subartikels (1) en (2) deur die volgende subartikels te vervang:

"(1) Die Kommissaris kan by reël voorskryf—

(a) die groottes en tipes houers waarin sigarette in die Republiek ingevoer mag word;

(b) onderskeidende merke en nommers benewens die stempelafdruk in subartikel (2) bedoel wat op die houers van ingevoerde sigarette moet of nie moet verskyn nie;

(c) enige ander aangeleentheid wat vir die doeltreffende en effektiewe administrasie van hierdie artikel noodsaaklik is om voor te skryf of nuttig kan wees.

(2) Niemand mag sigarette invoer nie tensy—

(a) indien geklaar vir binnelandse verbruik, 'n stempelafdruk deur die Kommissaris bepaal op die houers daarvan aangebring is nie; of

(b) indien geklaar vir opslag in 'n doeane- en aksynspakhuis vir uitvoer sodanige stempelafdruk nie op die houers verskyn nie; en

(c) die sigarette andersins voldoen aan die vereistes wat by reël voorgeskryf word.".

Vervanging van artikel 57A van Wet 91 van 1964, soos vervang deur artikel 17 van Wet 112 van 1977, artikel 11 van Wet 61 van 1992 en gewysig deur artikel 8 van Wet 19 van 1994

142. Artikel 57A van die Doeane- en Aksynswet, 1964 word hierby gewysig deur subartikels (1) en (2) deur die volgende subartikels te vervang:

"(1) Wanneer die Internasionale Handelsadministrasiekommissie 'n kennisgewing in die *Staatskoerant* publiseer met die strekking dat hy besig is met 'n ondersoek na die oplegging van 'n anti-dumping, 'n kontra- of 'n beveiligingsreg op goedere wat ingevoer word vanaf 'n verskaffer of hul herkoms het in 'n gebied vermeld in daardie kennisgewing, moet die Kommissaris, ooreenkomstig enige versoek deur genoemde Kommissie by kennisgewing in die *Staatskoerant*, 'n voorlopige betaling ten opsigte van daardie goedere vir die tydperk en vir die bedrag wat die Kommissie in sodanige versoek vermeld, oplê.

(2) Die Kommissaris moet, ooreenkomstig enige versoek deur genoemde Kommissie, by verdere kennisgewing in die Staatskoerant die tydperk waarvoor die voorlopige betaling vermeld in subartikel (1) opgelê is, verleng of dit intrek of verminder, met of sonder terugwerkende krag en in die mate wat in die versoek vermeld word.".

Insertion of section 64G in Act 91 of 1964

143. The following section is hereby inserted in the Customs and Excise Act, 1964 after section 64F:

"**Licensing of degrouping depot**

64G. (1) *(a)* Any reference in this section to a—

'degrouping depot' shall mean a licensed degrouping depot for air cargo defined in section 1 for the purposes and activities contemplated in section 6(1)*(hC)*;

'degrouping operator' shall mean the licensee of a degrouping depot.

(b) No person shall from a date prescribed by the Commissioner by rule perform any act in connection with, or be in possession of, any air cargo for the purposes and activities contemplated in paragraph *(a)* unless such person has obtained the appropriate licence for a degrouping depot in accordance with the requirements of section 60, this section, any note to Schedule No. 8, any relevant rule, the application form and any conditions the Commissioner may impose in each case.

(2) *(a)* (i) Application for such a licence shall be made on the form prescribed by the Commissioner by rule and the applicant shall furnish such information and supporting documents as may be specified in such form and comply with all requirements contemplated in subparagraph (1)*(b)*.

(ii) The Commissioner may require the degrouping operator to enter into an agreement with the Commissioner and may prescribe such agreement by rule.

(b) Before any licence is issued, the applicant must furnish security; and such security may be altered, as contemplated in section 60(1)*(c)*.

(3) The degrouping operator shall be liable for duty on goods received and such liability shall cease as contemplated in section 44(5C).

(4) *(a)* Goods in a degrouping depot shall be deemed to be under customs control and the degrouping operator shall comply with all requirements in respect thereof specified in this section, and any other relevant provision of this Act including any rule made in terms of this section or any agreement entered into between the degrouping operator and the Commissioner or any condition specified by or directive issued by the Commissioner.

(b) Any goods received by the degrouping operator which are in excess of manifested quantities or excess goods unmanifested or any shortages, of whatever nature, shall be reported and dealt with as prescribed by rule.

(c) Subject to any adaptation or other special requirement prescribed by rule, the provisions of section 18 shall apply *mutatis mutandis* to the movement of goods to a degrouping depot or from a degrouping depot to another degrouping depot.

(5) The Controller may require any consolidated or other package to be detained in the degrouping depot for examination of the package or its contents.

(6) *(a)* The Commissioner may refuse any application for a degrouping depot licence or cancel or suspend such licence.

(b) The provisions of section 60(2) shall apply *mutatis mutandis* for the purposes of paragraph *(a)*.

(7) The Commissioner may prescribe by rule—

(a) the application form and any other form required for the purposes of any customs procedure;

(b) the documents to be furnished in support of the application form or to be submitted, completed and kept in respect of any activity relating to the operation of the degrouping depot;

Invoeging van artikel 64G in Wet 91 van 1964

143. Die volgende artikel word hierby in die Doeane- en Aksynswet, 1964 na artikel 64F ingevoeg:

"Lisensiëring van 'n ontgroeperingdepot

64G. (1) *(a)* Enige verwysing in hierdie artikel na—

'ontgroeperingdepot' beteken 'n gelisensieerde ontgroeperingdepot vir lugvrag wat omskryf is in artikel 1 vir die doeleindes en aktiwiteite in artikel 6(1)(*h*C) beoog;

'ontgroeperingbediener' beteken die lisensiehouer van 'n ontgroeperingdepot.

(b) Niemand mag vanaf 'n datum wat die Kommissaris by reël voorskryf enige handeling verrig in verband met, of in besit wees van enige lugvrag vir die doeleindes en aktiwiteite in paragraaf *(a)* beoog, tensy sodanige persoon die toepaslike lisensie vir 'n ontgroeperingdepot ooreenkomstig die vereiste van artikel 60, hierdie artikel, enige opmerking by Bylae No. 8, enige relevante reël, die aansoekvorm en enige voorwaardes wat die Kommissaris in elke geval voorskryf, verkry het nie.

(2) *(a)* (i) Aansoek om sodanige lisensie moet op die vorm wees wat deur die Kommissaris by reël voorgeskryf word en die aansoeker moet sodanige inligting en ondersteunende dokumente verskaf wat in die vorm vermeld word en moet voldoen aan al die vereistes wat in subparagraaf (1) *(b)* beoog word.

(ii) Die Kommissaris kan vereis dat die ontgroeperingbediener 'n ooreenkoms met die Kommissaris moet aangaan en kan sodanige ooreenkoms by reël voorskryf.

(b) Voor 'n lisensie uitgereik word, moet die aansoeker sekerheid verskaf en sodanige sekerheid kan gewysig word soos in artikel 60(1)*(c)* beoog word.

(3) Die ontgroeperingbediener is aanspreeklik vir reg op goedere ontvang en sodanige aanspreeklikheid verval soos in artikel 44(5C) beoog word.

(4) *(a)* Goedere in 'n ontgroeperingdepot word geag onder doeanebeheer te wees en die ontgroeperingbediener moet voldoen aan alle vereistes ten opsigte daarvan wat in hierdie artikel voorgeskryf word en enige ander relevante bepaling van hierdie Wet met inbegrip van enige reël wat ingevolge hierdie artikel uitgevaardig is of enige ooreenkoms wat tussen die ontgroeperingbediener en die Kommissaris aangegaan is of enige voorwaarde of opdrag wat deur die Kommissaris uitgereik word.

(b) Enige goedere ontvang deur die ontgroeperingbediener wat meer is as die hoeveelhede op die manifes of surplusgoedere is wat nie op die manifes is nie of enige tekorte van watter aard ookal moet gerapporteer word en mee gehandel word soos by reël voorgeskryf word.

(c) Behoudens enige aanpassing of ander spesiale vereiste by reël voorgeskryf, is die bepalings van artikel 18 *mutatis mutandis* van toepassing op die beweging van goedere na 'n ontgroeperingdepot of vanaf 'n ontgroeperingdepot na 'n ander ontgroeperingdepot.

(5) Die Kontroleur kan gelas dat enige gekonsolideerde of ander pak aangehou word in die ontgroeperingdepot vir ondersoek van die pak of die inhoud daarvan.

(6) *(a)* Die Kommissaris kan die aansoek om 'n ontgroeperinglisensie weier of sodanige lisensie kanselleer of opskort.

(b) Die bepalings van artikel 60(2) is *mutatis mutandis* van toepassing by die toepassing van paragraaf (a).

(7) Die Kommissaris kan by reël voorskryf—

(a) die aansoekvorm en enige ander vorm wat vir die doeleindes van engie doeaneprosedure vereis word;

(b) die dokumente wat verskaf moet word ter ondersteuning van die aansoekvorm of wat voorgelê, voltooi en gehou moet word ten opsigte van enige aktiwiteit met betrekking tot die werking van die ontgroeperingdepot;

(c) activities allowed in a degrouping depot;
(d) any procedure or obligation or standards of conduct to be observed in the operation of the degrouping depot;
(e) any condition and procedure relating to liability for duty;
(f) all matters that are required or permitted in terms of this section to be prescribed by rule;
(g) any other matter which is necessary to prescribe and useful to achieve the efficient and effective administration of the air cargo and a degrouping depot as contemplated in this section; and
(h) subject to section 3(2), any delegation of powers or duties as contemplated in that section.".

Amendment of section 65 of Act 91 of 1964

144. (1) Section 65 of the Customs and Excise Act, 1964, is hereby amended—

(a) by the substitution in subsection (4) for subparagraph (i) of paragraph *(c)* of the following subparagraph:

"(i) Whenever any determination is made under paragraph *(a)* or any determination is amended or withdrawn and a new determination is made under subsection (5), any amount due in terms thereof shall, notwithstanding **[an internal administrative appeal has been filed as contemplated in section 95A or]** that any proceedings have been instituted in any court in connection therewith, remain payable as long as such determination or amended or new determination remains in force: Provided that the Commissioner on good cause shown may suspend such payment until the date of any final judgment by the High Court or a judgment by the Supreme Court of Appeal.";

(b) by the substitution in subsection (4) for subparagraph *(cc)* of paragraph *(c)*(ii) of the following subparagraph:

"*(cc)* any amendment of a determination or new determination is made effective under subsection (5). **[or section 95A]**;";

(c) by the substitution in subsection (4) for subparagraph (iii) of paragraph *(c)* of the following subparagraph:

"(iii) Whenever a court amends or orders the Commissioner to amend any determination made under this subsection or subsection (5) or any determination is amended or a new determination is made under subsection (5) **[or section 95A]** the Commissioner shall not be liable to pay interest on any amount refundable which remained payable in terms of the provisions of paragraph *(c)* (i) for any period during which such determination remained in force.";

(d) by the substitution in subsection (5) for subparagraph (ii) of paragraph *(a)* of the following subparagraph:

"(ii) **[except when an internal appeal has been filed in terms of the provisions of section 95A, or if filed before it has been considered,]** amend any determination or withdraw it and make a new determination if it was made in error or any condition or obligation on which it was issued is no longer fulfilled or on any other good cause shown including any relevant ground for review contemplated in section 6 of the Promotion of Administrative Justice Act, 2000 (Act No. 3 of 2000).";

(e) by the substitution in subsection (4) for subparagraph (i) of paragraph *(c)* of the following subparagraph:

"(i) Whenever any determination is made under paragraph *(a)* or any determination is amended or withdrawn and a new determination is made under subsection (5), any amount due in terms thereof shall, notwithstanding that an internal administrative appeal has been lodged as contemplated in Part A of Chapter XA or any proceedings have been instituted in any court in connection therewith, remain payable as long as

(c) aktiwiteite wat in die ontgroeperingdepot toegelaat word;
(d) enige prosedure of verpligting of standaarde van optrede wat in die werking van die ontgroeperingdepot nagekom moet word;
(e) enige voorwaarde of prosedure ten opsigte van die aanspreeklikheid vir reg;
(f) alle aangeleenthede wat ingevolge hierdie artikel by reël voorgeskryf moet of kan word;
(g) enige ander aangeleentheid wat vir die doeltreffende en effektiewe administrasie van die lugvrag en ontgroeperingdepot noodsaaklik is om voor te skryf of nuttig te kan wees; en
(h) behoudens subartikel 3 (2), enige delegasie van bevoegdhede of pligte soos in daardie artikel beoog word.".

Wysiging van artikel 65 van Wet 91 van 1964

144. (1) Artikel 65 van die Doeane- en Aksynswet, 1964, word hierby gewysig—

(a) deur in subartikel (4) subparagraaf *(i)* van paragraaf *(c)* met die volgende subparagraaf te vervang:

"(i) Wanneer enige bepaling ingevolge paragraaf *(a)* gemaak word of enige bepaling gewysig of ingetrek word en 'n nuwe bepaling kragtens subartikel (5) gemaak word, bly enige bedrag ingevolge daarvan verskuldig, betaalbaar so lank as wat so 'n bepaling of gewysigde bepaling of nuwe bepaling van krag bly in weerwil daarvan dat **['n interne administratiewe appèl, soos bedoel in artikel 95A ingedien is, of]** enige verrigtinge in enige hof in verband daarmee ingestel is: Met dien verstande dat die Kommissaris op goeie gronde aangetoon sodanige betaling tot die datum van enige finale uitspraak deur die Hoë Hof of 'n uitspraak van die Hoogste Hof van Appèl kan opskort.";

(b) deur in subartikel (4) subparagraaf *(cc)* van paragraaf *(c)(ii)* deur die volgende subparagraaf te vervang:

"*(cc)* waarop enige wysiging van 'n bepaling of nuwe bepaling **[of artikel 95A]** ingevolge subartikel (5) van krag gemaak word. ;";

(c) deur in subartikel (4) subparagraaf (iii) van paragraaf *(c)* deur die volgende subparagraaf te vervang:

"(iii) Wanneer 'n hof enige bepaling kragtens hierdie subartikel of subartikel (5) gemaak, wysig of die Kommissaris beveel om sodanige bepaling te wysig of enige bepaling gewysig word of 'n nuwe bepaling gemaak word kragtens subartikel (5) **[of artikel 95A]** is die Kommissaris nie aanspreeklik vir die betaling van rente op enige terugbetaalbare bedrag wat betaalbaar gebly het ingevolge die bepalings van paragraaf *(c) (i)* vir enige tydperk waartydens sodanige bepaling van krag gebly het nie.";

(d) deur in subartikel (5) subparagraaf *(ii)* van paragraaf *(a)* deur die volgende subparagraaf te vervang:

"(ii) **[behalwe waar 'n interne appèl ingedien is ingevolge die bepalings van artikel 95A, of indien dit ingedien is, voordat dit oorweeg is]** enige bepaling wysig of enige bepaling intrek en 'n nuwe bepaling maak indien dit foutiewelik gemaak is of indien enige voorwaarde of verpligting op grond waarvan dit uitgereik is nie meer aan voldoen word nie of enige ander goeie gronde aangetoon, met inbegrip van enige relevante hersieningsgrond, soos in artikel 6 van die "Promotion of Administrative Justice Act", 2000 (Wet No. 3 van 2000), beoog.";

(e) deur in subartikel (4) subparagraaf (i) van paragraaf *(c)* deur die volgende subparagraaf te vervang:

"(i) Wanneer enige bepaling ingevolge paragraaf *(a)* gemaak word of enige bepaling gewysig of ingetrek word en 'n nuwe bepaling kragtens subartikel (5) gemaak word, bly enige bedrag ingevolge daarvan verskuldig, betaalbaar so lank as wat so 'n bepaling of gewysigde bepaling of nuwe bepaling van krag bly in weerwil daarvan dat 'n interne administratiewe appèl, soos bedoel in Deel A van Hoofstuk XA ingedien is, of enige verrigtinge in enige hof in

such determination or amended or new determination remains in force: Provided that the Commissioner may on good cause shown suspend such payment until the date the administrative appeal is decided or the date of any final judgment by the High Court or a judgment by the Supreme Court of Appeal;";

(f) by the substitution in subsection (4) for subparagraph *(cc)* of paragraph *(c)*(ii) of the following subparagraph:

"*(cc)* any amendment of a determination or new determination is made effective under subsection (5) or as contemplated in section 77F.";

(g) by the substitution in subsection (4) for subparagraph (iii) of paragraph *(c)* of the following subparagraph:

"(iii) Whenever a court amends or orders the Commissioner to amend any determination made under this subsection or subsection (5) or any determination is amended or a new determination is made under subsection (5) or sections 77E or 77F, the Commissioner shall not be liable to pay interest on any amount which remained payable in terms of the provisions of paragraph *(c)*(i) refundable for any period during which such determination remained in force;"; and

(h) by the substitution in subsection (5) for subparagraph (ii) of paragraph *(a)* of the following subparagraph:

"(ii) except when an internal administrative appeal has been lodged in terms of the provisions of Part A of Chapter XA, or if lodged before it has been considered, amend any determination or withdraw it and make a new determination if it was made in error or any condition or obligation on which it was issued is no longer fulfilled or on any other good cause shown including any relevant ground for review contemplated in section 6 of the Promotion of Administrative Justice Act, 2000 (Act No. 3 of 2000).".

(2) *(a)* Subsection (1)*(a)*, *(b)*, *(c)* and *(d)* shall come into operation on the date of promulgation of this Act.

(b) Subsection (1)*(e)*, *(f)*, *(g)* and *(h)* shall come into operation on the date Parts A and B of Chapter XA comes into operation.

Amendment of section 69 of Act 91 of 1964, as amended by section 22 of Act 105 of 1969, section 6 of Act 93 of 1978, section 9 of Act 101 of 1985, section 7 of Act 69 of 1988, as substituted by section 12 of Act 68 of 1989, section 1 of Act 111 of 1991, as amended and deleted by section 3 of Act 105 of 1992, section 6 of Act 98 of 1993, and as amended by section 6 of Act 44 of 1996, section 61 of Act 53 of 1999, section 49 of Act 19 of 2001 and section 129 of Act 60 of 2001

145. (1) Section 69 of the Customs and Excise Act, 1964 is hereby amended—

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

"*(d)* For the purposes of assessing the excise duty on any goods manufactured in the Republic and specified in any items of Section B of Part 2 of Schedule No. 1 other than those specified in paragraph *(a)* and contemplated in paragraph *(d*A*)*, the value thereof shall be the 'invoice price' which shall mean—";

(b) by the insertion of the following paragraph:

"*(d*A*)* (i) The provisions of this paragraph apply to digital video discs (DVD's), recorded compact discs, audio tapes and video tapes dutiable in terms of item 124.65 of Section B of Part 2 of Schedule No. 1.

(ii) Subject to such definitions, descriptions, limitations, adaptations and requirements as the Commissioner may prescribe by rule, the value for assessing the excise duty on such goods shall be in the case of—

(aa) recorded compact discs and audio tapes, the contract price of the

verband daarmee ingestel is: Met dien verstande dat die Kommissaris op goeie gronde aangetoon sodanige betaling tot die datum waarop die administratiewe appèl beslis word of die datum van enige finale uitspraak deur die Hoë Hof of 'n uitspraak van die Hoogste Hof van Appèl kan opskort;";

(f) deur in subartikel (4) subparagraaf *(cc)* van paragraaf *(c)(ii)* deur die volgende subparagraaf te vervang:

"*(cc)* waarop enige wysiging van 'n bepaling of nuwe bepaling ingevolge subartikel (5) of soos in artikel 77F beoog van krag gemaak word.";

(g) deur in subartikel (4) subparagraaf (iii) van paragraaf *(c)* deur die volgende subparagraaf te vervang:

"(iii) Wanneer 'n hof enige bepaling kragtens hierdie subartikel wysig of die Kommissaris beveel om sodanige bepaling te wysig of enige bepaling gewysig word of 'n nuwe bepaling gemaak word kragtens subartikel (5) of artikel 77E of 77F, is die Kommissaris nie aanspreeklik vir die betaling van rente op enige terugbetaalbare bedrag wat betaalbaar gebly het ingevolge die bepalings van paragraaf *(c)*(i) vir enige tydperk waartydens sodanige bepaling van krag gebly het nie;"; en

(h) deur in subartikel (5) subparagraaf (ii) van paragraaf *(a)* deur die volgende subparagraaf te vervang:

"(ii) behalwe waar 'n interne appèl ingedien is ingevolge die bepalings van Deel A van Hoofstuk XA, of indien dit ingedien is, voordat dit oorweeg is, enige bepaling wysig of enige bepaling intrek en 'n nuwe bepaling maak indien dit foutiewelik gemaak is of indienenige voorwaarde of verpligting op grond waarvan dit uitgereik is nie meer aan voldoen word nie of enige ander goeie gronde aangetoon, met inbegrip van enige relevante hersieningsgrond, soos in artikel 6 van die "Promotion of Administrative Justice Act", 2000 (Wet No. 3 van 2000), beoog.".

(2) *(a)* Subartikel (1)*(a)*, *(b)*, *(c)* en *(d)* tree in werking op die datum van promulgasie van hierdie Wet.

(b) Subartikel (1)*(e)*, *(f)*, *(g)* en *(h)* tree in werking op die datum waarop Dele A en B van Hoofstuk XA in werking tree.

Wysiging van artikel 69 van Wet 91 van 1964, soos gewysig deur artikel 22 van Wet 105 van 1969, artikel 6 van Wet 93 van 1978, artikel 9 van Wet 101 van 1985, artikel 7 van Wet 69 van 1988, soos vervang deur artikel 12 van Wet 68 van 1989, artikel 1 van Wet 111 van 1991, soos gewysig en vervang deur artikel 3 van Wet 105 van 1992, artikel 6 van Wet 98 van 1993, en soos gewysig deur artikel 6 van Wet 44 van 1996, artikel 61 van Wet 53 van 1999, artikel 49 van Wet 19 van 2001 en artikel 129 van Wet 60 van 2001

145. (1) Artikel 69 van die Doeane en Aksynswet, 1964 word hierby gewysig—

(a) deur in subartikel (1) die woorde in paragraaf *(d)* wat subparagraaf *(i)* voorafgaan met die volgende woorde te vervang:

"*(d)* Vir die doel van die berekening van die aksynsreg op enige goedere in die Republiek vervaardig en vermeld in enige items in Afdeling B van Deel 2 van Bylae No. 1, uitgesonderd daardie in paragraaf *(a)* en in paragraaf *(d*A*)* beoog, is die waarde daarvan die 'faktuurprys', wat beteken—";

(b) deur die volgende paragraaf in te voeg:

"*(d*A*)* (i) Die bepalings van hierdie paragraaf is van toepassing op digitale videoskywe (DVS), klankskyfopnames, oudiobande en videobande wat ingevolge item 124.65 van Afdeling B van Deel 2 van Bylae No. 1 belasbaar is.

(ii) Behoudens sodanige omskrywings, beskrywings, beperkings, aanpassings en vereistes wat die Kommissaris by reël voorskryf, is die waarde vir die berekening van aksynsreg op sodanige goedere in die geval van—

(aa) klankskyfopnames en oudiobande, die kontrakprys van die vervaardiger daarvan aan die kleinhandelaar, plus, in die mate

manufacturer thereof to the retailer, plus, to the extent that may be prescribed in such rule, a maximum of 15 per cent of such price;

(bb) recorded video tapes and digital video discs (DVD's), the manufacturer's duplicating costs in respect of the duplication of such tapes and discs for a video distributor, plus, to the extent that may be prescribed in such rule, a maximum of 10 per cent of such costs;

(iii) The provisions of paragraph *(d)*(ii) shall, subject to the rules, apply *mutatis mutandis* in respect of any relationship as contemplated in that paragraph between the manufacturer and retailer referred to in subparagraph (ii)*(aa)* or the manufacturer and distributor referred to in subparagraph (ii)*(bb)*.";

(c) by the substitution in subsection (3) for paragraph *(c)* of the following paragraph:

"*(c)* Whenever any determination is made under paragraph *(a)* or any determination is amended or withdrawn and a new determination is made under subsection (4), any amount due in terms thereof shall, notwithstanding that **[an administrative appeal has been filed as contemplated in section 95A or]** any proceedings have been instituted in any court in connection therewith, remain payable as long as such determination or amended or new determination remains in force: Provided that the Commissioner may suspend such payment until the date of any final judgment by the High Court or a judgment by the Supreme Court of Appeal.";

(d) by the substitution in subsection (3) for subparagraph (iii) of paragraph *(d)* of the following subparagraph:

"(iii) any amendment of a determination or new determination is made effective under subsection (4) **[or section 95A].";**

(e) by the substitution in subsection (3) for paragraph *(e)* of the following paragraph:

"(e) Whenever a court amends or orders the Commissioner to amend any determination made under this subsection or subsection (4) or any determination is amended or a new determination is made under subsection (4) **[or section 95A]** the Commissioner shall not be liable to pay interest on any amount refundable which remained payable in terms of the provisions of paragraph *(c)* for any period during which such determination remained in force.";

(f) by the substitution in subsection (4) for subparagraph (ii) of paragraph *(a)* of the following subparagraph:

"(ii) **[except when an internal appeal has been filed in terms of the provisions of section 95A, or if filed before it has been considered,]** amend any determination or withdraw it and make a new determination if it was made in error or any condition or obligation on which it was issued is no longer fulfilled or on any other good cause shown including any relevant ground for review contemplated in section 6 of the Promotion of Administrative Justice Act, 2000 (Act No. 3 of 2000).";

(g) by the substitution in subsection (3) for paragraph *(c)* of the following paragraph:

"*(c)* Whenever any determination is made under paragraph *(a)* or any determination is amended or withdrawn and a new determination is made under subsection (4), any amount due in terms thereof shall, notwithstanding that an internal administrative appeal has been lodged as contemplated in Part A of Chapter XA or any proceedings have been instituted in any court in connection therewith, remain payable as long as such determination or amended or new determination remains in force: Provided that the Commissioner may suspend such payment until the date the administrative appeal is decided or any final judgment by the High Court or a judgment by the Supreme Court of Appeal;";

wat in sodanige reël voorgeskryf word, 'n maksimum van 15 persent van sodanige prys;

(bb) videobandopnames en digitale videoskywe (DVS), die dupliseringskoste ten opsigte van die duplikasie van sodanige bande en skywe vir 'n videoverspreider, plus, in die mate in sodanige reël voorgeskryf, 'n maksimum van 10 persent van sodanige koste;

(iii) Die bepalings van paragraaf *(d)*(ii) is, behoudens die reëls, *mutatis mutandis* van toepassing ten opsigte van enige verhouding soos in daardie paragraaf beoog tussen die vervaardiger en kleinhandelaar in subparagraaf (ii)*(aa)* bedoel of die vervaardiger en verspreider in subparagraaf (ii)*(bb)* bedoel.";

(c) deur in subartikel (3) paragraaf *(c)* deur die volgende paragraaf te vervang:

"*(c)* Wanneer enige bepaling ingevolge paragraaf *(a)* gemaak word of enige bepaling gewysig of ingetrek word en 'n nuwe bepaling kragtens subartikel (4) gemaak word, bly enige bedrag ingevolge daarvan verskuldig, betaalbaar so lank as wat so 'n bepaling of gewysigde bepaling of nuwe bepaling van krag bly in weerwil daarvan dat **['n interne administratiewe appèl, soos bedoel in artikel 95A ingedien is, of]** enige verrigtinge in enige hof in verband daarmee ingestel is: Met dien verstande dat die Kommissaris op goeie gronde aangetoon sodanige betaling tot die datum van enige finale uitspraak deur die Hoë Hof of 'n uitspraak van die Hoogste Hof van Appèl kan opskort.";

(d) deur in subartikel (3) subparagraaf *(iii)* van paragraaf *(d)* deur die volgende subparagraaf te vervang:

"(iii) waarop enige wysiging van 'n bepaling of nuwe bepaling ingevolge subartikel (4) **[van artikel 95A]** van krag gemaak word.";

(e) deur in subartikel (3) paragraaf *(e)* deur die volgende paragraaf te vervang:

"*(e)* Wanneer 'n hof enige bepaling kragtens hierdie subartikel of subartikel (4) gemaak, wysig of die Kommissaris beveel om sodanige bepaling te wysig of enige bepaling gewysig word of 'n nuwe bepaling gemaak word kragtens subartikel (4) **[of artikel 95A]** is die Kommissaris nie aanspreeklik vir die betaling van rente op enige terugbetaalbare bedrag wat betaalbaar gebly het ingevolge die bepalings van paragraaf *(c)* vir enige tydperk wat sodanige bepaling van krag gebly het nie.";

(f) deur in subartikel (4) subparagraaf (ii) van paragraaf *(a)* deur die volgende subparagraaf te vervang:

"(ii) **[behalwe waar 'n interne appèl ingedien is ingevolge die bepalings van artikel 95A, of indien dit ingedien is, voordat dit oorweeg is]** enige bepaling wysig of enige bepaling intrek en 'n nuwe bepaling maak indien dit foutiewelik gemaak is of indien enige voorwaarde of verpligting waarop dit uitgereik is nie meer aan voldoen word nie of enige ander goeie gronde aangetoon, met inbegrip van enige relevante hersieningsgrond, soos in artikel 6 van die "Promotion of Administrative Justice Act", 2000 (Wet No. 3 van 2000) beoog.";

(g) deur in subartikel (3) paragraaf *(c)* deur die volgende paragraaf te vervang:

"*(c)* Wanneer enige bepaling ingevolge paragraaf *(a)* gemaak word of enige bepaling gewysig of ingetrek word en 'n nuwe bepaling kragtens subartikel (4) gemaak word, bly enige bedrag ingevolge daarvan verskuldig, betaalbaar so lank as wat so 'n bepaling of gewysigde bepaling of nuwe bepaling van krag bly in weerwil daarvan dat 'n interne administratiewe appèl, soos bedoel in Deel A van Hoofstuk XA ingedien is, of enige verrigtinge in enige hof in verband daarmee ingestel is: Met dien verstande dat die Kommissaris op goeie gronde aangetoon sodanige betaling tot die datum waarop die administratiewe appèl beslis word of die datum van enige finale uitspraak deur die Hoë Hof of 'n uitspraak van die Hoogste Hof van Appèl kan opskort;";

Insertion of Chapter XA in Act 91 of 1964

147. (1) The following Chapter is hereby inserted in the Customs and Excise Act, 1964 after Chapter X:

"**CHAPTER XA**

Internal Administrative Appeal; Alternative Dispute Resolution; Dispute Settlement

Part A: Internal Administrative Appeal

Definitions

77A. (1) For the purposes of this Chapter—

'Commissioner' includes, depending on the context, the delegated officer who made the decision in dispute against which an appeal is lodged;

'day' means any day other than a Saturday, Sunday or a public holiday: Provided that the days between 16 December of a year and 15 January of the following year, both inclusive, shall not be taken into account in determining days or the period allowed for complying with any provision in this Part or the rules;

'decision' includes—

(a) any determination or other act of an administrative nature for the purposes of this Act;

(b) any amendment or withdrawal or withdrawal and making of a decision; and

(c) any refusal to take a decision;

'dispute' means a disagreement on the interpretation of either the relevant facts involved or the law applicable thereto, or both the facts and the law;

'officer' includes, depending on the context, an officer who is delegated by the Commissioner and acts on behalf of the Commissioner as contemplated in section 3(2);

'SARS' means the South African Revenue Service;

'tax' or 'taxation' includes any duty leviable under this Act.

(b) Any decision made by the Commissioner or an officer under the provisions of this Act, including any amendment or withdrawal thereof, shall be deemed to be effective from the date any notice or communication in respect of such decision is issued in writing or the date specified in such notice or communication.

Persons who may appeal

77B. (1) Any person who may institute judicial proceedings in respect of any decision by an officer may, before or as an alternative to instituting such proceedings, lodge an appeal—

(a) to the Commissioner against a decision of an officer; or

(b) to the appeal committee contemplated in this Part in respect of those matters and decisions of officers that the appeal committee is authorised by rule to consider and decide upon or make recommendations to the Commissioner.

(2) If dissatisfied with a final decision as contemplated in *(a)* or *(b)* and the Commissioner is of the opinion that the matter is appropriate, such a person may make use of the alternative dispute procedure contemplated in section 77I.

Submission of appeal

77C. (1) Any person who intends submitting an appeal as provided for in this Part must do so—

(a) within 90 days from the date such person was notified of such decision;

Invoeging van Hoofstuk XA in Wet 91 van 1964

147. (1) Die volgende Hoofstuk word hierby na Hoofstuk X in die Doeane- en Aksysnswet, 1964 ingevoeg:

"**HOOFSTUK XA**

Interne Administratiewe Appèl; Alternatiewe Geskilbeslegting; Geskilbeslegting

Deel A: Interne Administratiewe Appèl

Woordomskrywings

77A. (1) By die toepassing van hierdie Hoofstuk beteken—

'beampte' ook, afhangende van die samehang, enige beampte wat deur die Kommissaris gedelegeer is en namens die Kommissaris optree soos in artikel 3 (2) bedoel;

'belasting' ook enige reg hefbaar ingevolge hierdie Wet;

'beslissing' ook—

(a) enige bepaling of ander handeling van 'n administratiewe aard vir doeleindes van hierdie Wet;

(b) enige wysiging of intrekking en die maak van 'n beslissing; en

(c) enige weiering om te beslis;

'dag' enige dag anders as 'n Saterdag, Sondag of 'n openbare vakansiedag: Met dien verstande dat die dae tussen 16 Desember van 'n jaar en 15 Januarie van die volgende jaar, albei ingesluit, nie in aanmerking geneem word om dae te bereken nie of die tydperk toegelaat om aan enige bepaling van hierdie Deel of die reëls te voldoen nie;

'geskil' 'n verskil oor 'n uitleg van die relevante feite wat betrokke is of die reg wat daarop van toepassing is, of van beide die feite en die reg;

'Kommissaris' ook, afhangende van die samehang, die gedelegeerde beampte wat die beslissing in geskil gemaak het waarteen die appèl ingedien word;

'SAID' die Suid-Afrikaanse Inkomstediens.

(b) Enige beslissing deur die Kommissaris of 'n beampte ingevolge die bepalings van hierdie Wet gemaak, met inbegrip van enige wysiging of intrekking daarvan, word geag om van krag te wees vanaf die datum waarop enige kennisgewing of mededeling ten opsigte van sodanige beslissing skriftelik uitgereik is of die datum wat in sodanige kennisgewing of mededeling vermeld word.

Persone wat kan appelleer

77B. (1) Enige persoon wat 'n regsgeding ten opsigte van enige beslissing van 'n beampte kan instel kan, voor of as 'n alternatief om sodanige prosesse in te stel 'n appèl indien—

(a) na die Kommisssaris teen 'n beslissing van 'n beampte; of

(b) na die appèlkomitee in hierdie Deel beoog ten opsigte van daardie aangeleenthede en beslissings van beamptes wat die appèlkomitee by reël gemagtig is om te oorweeg en oor te beslis of om aanbevelings aan die Kommisssaris te doen.

(2) Indien ontevrede met 'n finale beslissing soos beoog in *(a)* of *(b)* en die Kommissaris is van mening dat die aangeleentheid gepas is, kan so 'n persoon gebruik maak van die alternatiewe geskilprosedure wat in artikel 77I beoog word.

Indiening van appèl

77C. (1) Enige persoon wat 'n appèl soos bepaal in hierdie Deel wil voorlê moet dit doen—

(a) binne 90 dae vanaf die datum waarop sodanige persoon van sodanige beslissing in kennis gestel is;

(b) within 90 days after the date any such person became aware or the date such person might reasonably be expected to have become aware of such decision; or

(c) where the Commissioner on good cause shown is satisfied that such person was prevented from submitting an appeal as required in paragraphs *(a)* and *(b)*, within a further period of 90 days.

(2) The appeal may be brought by the person concerned or a duly authorized representative.

(3) Such appeal must be in writing and must set forth the particulars and be supported by the documents prescribed by rule.

Time within which appeal must be considered

77D. (1) An appeal shall subject to subsection (2) be considered within a period of 90 days after the date of the lodging of a notice of appeal and the Commissioner shall notify the person who lodged the appeal of the final determination or decision in writing within that period.

(2) *(a)* No appeal shall be considered later than 180 days after the date of the decision, unless the period is on good cause shown extended by the Commissioner.

(b) Where the Commissioner refuses to extend the said period it may be extended on application by the person concerned by the High Court.

Appointment and function of appeal committee

77E. (1) The Commissioner may appoint a committee of officers or a committee of officers and other persons to consider and decide appeals or make recommendations in relation to such appeals to the Commissioner.

(2) An appeal committee may—

(a) consider and decide; or

(b) make recommendations to the Commissioner on matters prescribed by rule

(3) Any decision signed by the chairperson of the appeal committee shall be regarded as a decision of the committee and to have been made by an officer.

(4) The chairperson of the appeal committee must maintain a record of the proceedings prescribed by rule.

Decision of Commissioner and Committee

77F. (1) The Commissioner may—

(a) refer the matter back to the committee for further consideration;

(b) reject or accept or accept and vary the recommendation of the committee;

(c) confirm or amend the decision or withdraw it and make a new decision.

(2) Whenever an appeal has been considered in terms of this section any period within which any person may prosecute an appeal against or institute any other judicial proceedings in connection with such decision, shall commence on the date on which the Commissioner or the chairperson of the committee in writing advises the person concerned of the final decision of the appeal.

Obligation to pay amount demanded

77G. Notwithstanding anything to the contrary contained in this Act, the obligation to pay to the Commissioner and right of the Commissioner to receive and recover any amount demanded in terms of any provision of this Act, shall not, unless the Commissioner so directs, be suspended by an appeal in terms of this section or pending a decision by court.

(b) binne 90 na die datum waarop enige sodanige persoon bewus geword het of die datum waarop van sodanige persoon redelikerwys verwag kon word om van sodanige beslissing bewus te geword het; of

(c) binne 'n verdere tydperk van 90 dae, waar die Kommissaris op goeie gronde aangetoon oortuig is dat sodanige persoon verhoed is om 'n appèl soos vereis in paragrawe *(a)* en (b) in te dien.

(2) Die appèl kan deur die betrokke persoon self of 'n behoorlik gemagtigde verteenwoordiger ingestel word.

(3) Sodanige appèl moet skriftelik wees en moet die besonderhede uiteensit en ondersteun word deur die dokumente wat by reël voorgeskryf word.

Termyn waarbinne appèl oorweeg moet word

77D. (1) 'n Appèl moet, behoudens subartikel (2), binne 'n tydperk van 90 dae na die datum van indiening van 'n kennisgewing van appèl oorweeg word en die Kommissaris moet die persoon wat die appèl ingedien het van die finale bepaling of beslissing skriftelik binne daardie tydperk in kennis stel.

(2) *(a)* Geen appèl word later as 180 dae na die datum van die beslissing oorweeg nie, tensy die tydperk op goeie gronde aangetoon deur die Kommissaris verleng word.

(b) Waar die Kommissaris weier om die genoemde tydperk te verleng kan dit by aansoek deur die betrokke persoon deur die Hoë Hof verleng word.

Aanstelling en funksie van appèlkomitee

77E. (1) Die Kommissaris kan 'n komitee van beamptes of 'n komitee van beamptes en ander persone aanstel om appèlle te oorweeg en oor te beslis of om aanbevelings in verband met sodanige appèlle aan die Kommissaris te doen.

(2) 'n Appèlkomitee kan aangeleenthede wat by reël voorgeskryf word—

(a) oorweeg en beslis; of

(b) daaroor aanbevelings aan die Kommissaris doen.

(3) Enige beslissing geteken deur die voorsittende persoon van die appèlkomitee word as 'n beslissing van die komitee beskou en dat dit deur 'n beampte geneem is.

(4) Die voorsittende persoon van 'n appèlkomitee moet 'n rekord by reël voorgeskryf van die verrigtinge in stand hou.

Beslissing van Kommissaris en Komitee

77F. (1) Die Kommissaris kan—

(a) die aangeleentheid na die komitee vir verdere oorweging terugverwys;

(b) die aanbeveling van die komitee verwerp, of aanvaar of dit aanvaar en wysig;

(c) die beslissing bevestig of wysig of intrek en 'n nuwe beslissing neem.

(2) Wanneer 'n appèl ingevolge hierdie artikel oorweeg is begin enige tydperk waarbinne enige persoon 'n appèl kan voortsit teen, of enige ander regsgeding kan instel in verband met sodanige beslissing, op die datum waarop die Kommissaris of die voorsittende persoon van die komitee, die betrokke persoon van die finale beslissing van die appèl skriftelik in kennis stel.

Verpligting om bedrag aangevra te betaal

77G. Ondanks andersluidende bepalings in hierdie Wet, word die verpligting om aan die Kommissaris te betaal en die reg van die Kommissaris om enige bedrag aangevra ingevolge enige bepaling van hierdie Wet te ontvang en in te vorder nie, tensy die Kommisssaris aldus gelas, deur 'n appèl ingevolge hierdie artikel of in afwagting van 'n beslissing van die hof opgeskort nie.

Rules

77H. The Commissioner may make rules—

(a) to prescribe at which office any appeal committee shall be constituted, and the composition of such committee;

(b) to prescribe which decisions or categories of decisions of officers may be appealed against to the appeal committee;

(c) to prescribe appeal procedures, conduct of meetings of committees and such forms as may be required for the purpose of this Part;

(d) in respect of all matters which are required or permitted in terms of this Part to be prescribed by rule;

(e) in respect of any matter relating to the appointment of persons other than officers to an appeal committee which may include requirements relating to qualifications, conduct, resignation, removal from office and remuneration;

(f) to delegate, subject to subsection 3(2), any of the powers that may be exercised or assign any of the duties that shall be performed by the Commissioner in accordance with the provisions of this Part or any other relevant provision of this Act;

(g) in respect of any other matter which the Commissioner may consider reasonably necessary and useful for the purposes of administering the provisions of this Part.

Part B

Alternative Dispute Resolution

77I. (1) The Minister may, after consultation with the Minister of Justice, promulgate rules to provide for—

(a) alternative dispute resolution procedures in terms of which the Commissioner and the person aggrieved by a decision may resolve a dispute; and

(b) categories of decisions which are or are not suitable for alternative dispute resolution.

(2) The rules so published shall be part of this Act.

Part C: Settlement of dispute

Definitions

77J. For the purposes of this Part 'settle' means to resolve a dispute by compromising any disputed liability, otherwise than by way of either the Commissioner or the person concerned accepting the other party's interpretation of the facts or the law applicable to those facts, or of both the facts and the law, and 'settlement' shall be construed accordingly.

Purpose of this Part

77K. (1) The basic principle in law is that it is the duty of the Commissioner to assess and collect taxes, duties, levies, charges and other amounts according to the laws enacted by Parliament and not to forgo any such taxes, duties, levies, charges or other amounts properly chargeable and payable.

(2) Circumstances may, however, require that the strictness and rigidity of this basic principle be tempered where it would be to the best advantage of the state.

(3) The purpose of this Part is to prescribe the circumstances whereunder it would be inappropriate and whereunder it would be appropriate that the basic rule be tempered and for a decision to be taken to settle a dispute.

Reëls

77H. Die Kommissaris kan reëls uitvaardig—

(a) om voor te skryf by welke kantoor enige appèlkomitee saamgestel word en die samestelling van sodanige komitee;

(b) om voor te skryf teen watter beslissings of kategorië van beslissings van beamptes na die appèlkomitee geappelleer kan word;

(c) om appèlprosedures, werkswyse van vergaderings van komitees en sodanige vorms wat nodig is vir die doeleindes van hierdie Deel, voor te skryf;

(d) ten opsigte van alle aangeleenthede wat ingevolge hierdie Deel voorgeskryf moet of kan word;

(e) ten opsigte van enige aangeleentheid aangaande die aanstelling van persone wat nie beamptes is nie op 'n appèlkomitee wat vereistes aangaande kwalifikasies, gedrag, bedanking, afsit en besoldiging kan insluit;

(f) om behoudens subartikel 3 (2), enige bevoegdhede wat deur die Kommissaris uitgeoefen kan word of enige van die pligte wat verrig moet word ooreenkomstig die bepalings van hierdie Deel of enige ander relevante bepaling van hierdie Wet, te delegeer of toe te wys;

(g) ten opsigte van enige ander aangeleentheid wat die Kommissaris redelik noodsaaklik en nuttig beskou vir die doeleindes om die bepalings van hierdie Deel te administreer.

Deel B

Alternatiewe Geskilbeslegting

77I. (1) Die Minister kan, na oorlegpleging met die Minister van Justisie, reëls promulgeer om voorsiening te maak vir—

(a) alternatiewe geskilbeslegtingprosedures ingevolge waarvan die Kommissaris en die persoon wat gegrief is deur 'n beslissing, die geskil kan besleg; en

(b) kategoriëe van beslissings wat wel of nie vir alternatiewe geskilbeslegting geskik is nie.

(2) Die reëls aldus gepubliseer is deel van hierdie Wet.

Deel C: Beslegting van Geskil

Woordomskrywings

77J. By die toepassing van hierdie Deel beteken 'besleg' om 'n geskil op te los deur 'n aanspreeklikheid wat betwis word te skik, anders as waar óf die Kommissaris óf die betrokke persoon die ander party se uitleg van die feite of die reg van toepassing op daardie feite, of van beide die feite en die reg, aanvaar, en 'beslegting' word dienooreenkomstig uitgelê.

Doel van hierdie Deel

77K. (1) Die basiese beginsel in die reg is dat dit die plig van die Kommissaris is om belastings, regte, heffings, tariewe en ander bedrae ingevolge die wette deur die Parlement ingestel aan te slaan en te vorder en om nie daardie belastings, regte, heffings, tariewe of ander bedrae behoorlik hefbaar en betaalbaar, op te sê nie.

(2) Omstandighede mag egter vereis dat die strengheid en onbuigsaamheid van die basiese beginsel getemper word waar dit tot die beste voordeel van die staat sal wees.

(3) Die doel van hierdie Deel is derhalwe om die omstandighede voor te skryf waaronder dit ongepas is en waaronder dit gepas sal wees dat die basiese reël getemper word en dat 'n besluit geneem word om 'n geskil te besleg.

Circumstances where inappropriate to settle

77L. It will be inappropriate and not to the best advantage of the state to settle a dispute, where, in the opinion of the Commissioner—

(a) the action on the part of the person concerned which relates to the dispute, constitutes intentional tax evasion or fraud and no circumstances contemplated in section 77M exist;

(b) the settlement would be contrary to the law or a clearly established practice of the Commissioner on the matter, and no exceptional circumstances exist to justify a departure from the law or practice;

(c) it is in the public interest to have judicial clarification of the issue and the case is appropriate for this purpose;

(d) the pursuit of the matter through the courts will significantly promote compliance of the tax laws and the case is suitable for this purpose; or

(e) the person concerned has not complied with the provisions of any Act administered by the Commissioner and the Commissioner is of the opinion that the non-compliance is of a serious nature.

Circumstances where appropriate to settle

77M. The Commissioner may, where it will be to the best advantage of the state, settle a dispute, in whole or in part, on a basis that is fair and equitable to both the person concerned and SARS, having regard to *inter alia*—

(a) whether that settlement would be in the interest of good management of the tax system, overall fairness and the best use of the Commissioner's resources;

(b) the cost of litigation in comparison to the possible benefits with reference to—

(i) the prospects of success in a court;

(ii) the prospects of collection of the amounts due; and

(iii) the costs associated with collection;

(c) whether there are any—

(i) complex factual or quantum issues in contention; or

(ii) evidentiary difficulties,

which are sufficient to make the case problematic in outcome or unsuitable for resolution through the alternative dispute resolution procedures or the courts;

(d) a situation where a participant or a group of participants in a tax avoidance arrangement has accepted the Commissioner's position in the dispute, in which case the settlement may be negotiated in an appropriate manner required to unwind existing structures and arrangements; or

(e) whether the settlement of the dispute will promote compliance of the tax laws by the person concerned or a group of taxpayers or a section of the public in a cost-effective way.

Power to settle and conduct of officials

77N. (1) A dispute may be settled, as contemplated in this Part, by the Commissioner personally or any official delegated by the Commissioner for that purpose.

(2) The Commissioner or the relevant delegated official must ensure that he or she does not have, or did not at any stage have, a personal, family, social, business, professional, employment or financial relationship with the person concerned.

Omstandighede waar dit nie gepas is om te besleg nie

77L. Dit is nie gepas en tot die beste voordeel van die staat om 'n geskil te besleg nie waar, na die mening van die Kommissaris—

(a) die handeling aan die kant van die betrokke persoon wat met die geskil verband hou, opsetlike belastingontduiking of bedrog daarstel en geen van die omstandighede in artikel 77M bedoel, teenwoordig is nie;

(b) die beslegting in stryd sal wees met die reg of 'n duidelik gevestigde praktyk van die Kommissaris oor die aangeleentheid, en geen uitsonderlike omstandighede bestaan om 'n afwyking van die reg of praktyk te regverdig nie;

(c) dit in die openbare belang is om 'n geregtelike opklaring van die geskilpunt te verkry en die saak vir die doel gepas is;

(d) die voortsetting van die aangeleentheid deur die howe nakoming van die belastingwette wesenlik sal bevorder en die saak vir die doel gepas is; of

(e) die betrokke persoon nie aan die bepalings van enige Wet wat deur die Kommissaris geadministreer word, voldoen het nie en die Kommissaris van mening is dat die nie-nakoming van 'n ernstige aard is.

Omstandighede waar dit gepas is om te besleg

77M. Die Kommissaris kan, waar dit tot die beste voordeel van die staat sal wees, 'n geskil in die geheel of gedeeltelik besleg, op 'n basis wat regverdig en billik vir beide die betrokke persoon en SAID is, na in agneming van onder andere—

(a) of daardie beslegting in die belang van goeie bestuur van die belastingstelsel, algemene billikheid en die beste gebruik van SAID se hulpbronne sal wees;

(b) die koste van litigasie in verhouding tot die moontlike voordele met verwysing na—

(i) die kanse op sukses in 'n hof;

(ii) die kanse op invordering van die bedrae verskuldig; en

(iii) die koste wat met invordering verband hou;

(c) of daar enige—

(i) komplekse feitelike of quantum kwessies in geskil is; of

(ii) bewysregtelike probleme bestaan,

wat voldoende is om die saak problematies in uitkoms te maak of ongeskik vir beslissing deur middel van die alternatiewe geskil-beslegtingsprosedures of die howe;

(d) 'n geval waar 'n deelnemer of 'n groep deelnemers in 'n belasting-ontduikingsreëling die posisie van die Kommissaris in die geskil aanvaar het, in welke geval die beslegting onderhandel kan word op 'n gepaste wyse om bestaande strukture en reëlings te ontbind; of

(e) of die beslegting van die geskil nakoming van die belastingwette deur die betrokke persoon of 'n groep belastingpligtiges of 'n gedeelte van die publiek op 'n koste effektiewe wyse sal bevorder.

Bevoegdheid om te besleg en optrede van beamptes

77N.(1) 'n Geskil kan besleg word, soos in hierdie Deel bedoel, deur die Kommissaris persoonlik of deur 'n gedelegeerde beampte wat deur die Kommissaris vir daardie doel aangewys is.

(2) Die Kommissaris of die betrokke gedelegeerde beampte moet toesien dat hy of sy nie 'n persoonlike, gesins-, sosiale, besigheids-, professionele, diens- of finansiële verhouding met die betrokke persoon het of op enige stadium gehad het nie.

Procedure for settlement

77O. (1) The person concerned should at all times disclose all relevant facts in discussions during the process of settling a dispute.

(2) Any settlement will be conditional upon full disclosure of material facts known to the person concerned at the time of settlement.

(3) All disputes settled in whole or in part, as contemplated in this Part, must be evidenced by a written agreement between the parties in the format as may be prescribed by the Commissioner and must include details on—

(a) how each particular issue was settled;

(b) relevant undertakings by the parties;

(c) treatment of that issue in future years;

(d) withdrawal of appeals; and

(e) arrangements for payment.

(4) The written agreement will represent the final agreed position between the parties and will be in full and final settlement of all the specified aspects of the dispute in question between the parties.

(5) The Commissioner must, where the dispute is not ultimately settled, explain the further rights regarding the institution of judicial proceedings to the person concerned.

(6) Subject to section 77P, the Commissioner and delegated official must adhere to the secrecy provisions with regard to the information relating to the person concerned and may not disclose the terms of any agreement to third parties unless authorised by law or by the person concerned.

(7) The Commissioner must adhere to the terms of the agreement, unless it emerges that material facts were not disclosed to it or there was fraud or misrepresentation of the facts.

(8) The Commissioner has the right to recover any outstanding amounts in full where the person concerned fails to adhere to any agreed payment arrangement.

Register of settlements and reporting

77P. (1) The Commissioner must—

(a) maintain a register of all disputes settled in the circumstances contained in this Part; and

(b) fully document the process in terms of which each dispute was settled, which document must be signed on behalf of the Commissioner and the person concerned.

(2) The Commissioner must on an annual basis provide to the Auditor-General and to the Minister of Finance a summary of all disputes which were settled in whole or in part during the period of 12 months covered by that summary, which must—

(a) be in such format which, subject to section 3E, does not disclose the identity of the person concerned, and be submitted at such time as may be agreed between the Commissioner and the Auditor-General or Minister of Finance, as the case may be; and

(b) contain details of the number of disputes settled or part settled, the amount of revenue forgone and estimated amount of savings in costs of litigation, which must be reflected in respect of main classes of persons or sections of the public.".

(2) Subsection (1) shall, to the extent that it inserts—

(a) Parts A and B shall come into operation on the date fixed by the President by proclamation in the *Gazette*;

(b) Part C shall come into operation on the date of Promulgation of this Act.

Prosedure vir beslegting

77O. (1) Die betrokke persoon moet ten alle tye alle relevante feite gedurende gesprekke tydens die proses om 'n geskil te besleg, openbaar.

(2) Enige beslegting is voorwaardelik daarop dat alle wesenlike feite wat op die tyd van die beslegting aan die betrokke persoon bekend is, ten volle geopenbaar word.

(3) Alle geskille in geheel of gedeeltelik besleg, soos in hierdie Deel bedoel, moet deur 'n skriftelike ooreenkoms tussen die partye, in die vorm as wat die Kommissaris voorskryf, bevestig word en moet die besonderhede insluit oor—

(a) hoe elke spesifieke geskilpunt besleg is;
(b) relevante ondernemings deur die partye;
(c) hantering van daardie punte in toekomstige jare;
(d) terugtrekking van appèlle; en
(e) reëlings vir betaling.

(4) Die skriftelike ooreenkoms verteenwoordig die finale ooreengekome posisie tussen die partye en is in volle en finale beslegting van al of die betrokke aspekte van die geskil ter sprake tussen die partye.

(5) Die Kommissaris moet, waar die geskil uiteindelik nie besleg word nie, die verdere regte van die instelling van 'n hofgeding aan die betrokke persoon verduidelik.

(6) Behoudens artikel 77P, moet die Kommissaris en gedelegeerde beampte aan die geheimhoudingsbepalings voldoen met betrekking tot inligting wat met die betrokke persoon verband hou en mag nie die terme van enige ooreenkoms aan derde partye bekendmaak nie, tensy deur die wet of die betrokke persoon daartoe gemagtig.

(7) Die Kommissaris moet aan die terme van die ooreenkoms voldoen, tensy dit aan die lig kom dat die wesentlike feite nie geopenbaar is nie of waar daar bedrog of wanvoorstelling van die feite was.

(8) Die Kommissaris is geregtig om enige uitstaande bedrae ten volle te verhaal waar die betrokke persoon nalaat om aan enige betalingsreëling te voldoen.

Register van beslegtings en verslaggewing

77P. (1) Die Kommissaris moet—

(a) 'n register hou van alle geskille wat in die omstandighede in hierdie Deel vervat, besleg is; en
(b) die proses ingevolge waarvan elke geskil besleg is ten volle dokumenteer, welke dokument namens die Kommissaris en die betrokke persoon onderteken moet word.

(2) Die Kommissaris moet op 'n jaarlikse grondslag 'n opsomming aan die Ouditeur-generaal en die Minister van Finansies voorsien van alle geskille wat in geheel of gedeeltelik gedurende die 12 maande tydperk wat deur daardie opsomming gedek word, besleg is, wat—

(a) in so 'n formaat is wat, behoudens artikel 3E, nie die identiteit van die betrokke persoon openbaarmaak nie, en gelewer moet word op 'n tyd wat die Kommissaris en die Ouditeur-generaal of Minister van Finansies, na gelang van die geval, ooreenkom; en
(b) besonderhede vervat van die aantal geskille wat besleg of gedeeltelik besleg is, die bedrag van inkomste verbeur en geraamde bedrag van besparing in koste van litigasie, wat aangedui moet word ten opsigte van hoofklasse van belastingpligtiges of gedeeltes van die publiek.".

(2) Subartikel (1) in die mate dat dit—

(a) Dele A en B invoeg, tree in werking op die datum deur die President by proklamasie in die *Staatskoerant* bepaal;
(b) Deel C invoeg, tree in werking op die datum van promulgasie van hierdie Wet.

Amendment of section 80 of Act 91 of 1964, as amended by section 10 of Act 85 of 1968, section 27 of Act 105 of 1969, section 28 of Act 112 of 1977, section 22 of Act 86 of 1982, section 7 of Act 89 of 1984, section 12 of Act 52 of 1986, section 27 of Act 84 of 1987, section 32 of act 59 of 1990, section 8 of Act 105 of 1992, section 8 of Act 98 of 1993, section 68 of Act 30 of 1998, section 63 of Act 53 of 1999 and section 62 of Act 59 of 2000

148. Section 80 of the Customs and Excise Act, 1964, is hereby amended by the insertion of the following paragraph:

"*(r)* without lawful cause fails to comply with a notice of appointment as agent in terms of section 114A within the period specified in such notice.".

Amendment of section 89 of Act 91 of 1964

149. (1) Section 89 of the Customs and Excise Act, 1964, is hereby amended—

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

"(2) *(a)* Any litigant must give notice to the Commissioner in writing before serving any process for instituting any proceedings as contemplated in section 96(1)*(a)* within 90 days after the date of seizure.";

(b) by the substitution for subsection (4) of the following subsection:

"(4) Whenever goods are seized and in consequence of the seizure—

(a) delivery thereof under section 93 is refused or the terms of delivery thereunder are not accepted; or

(b) **[no internal administrative appeal under section 95A is filed or is filed and is not successful; *(c)*]** no proceedings are instituted as contemplated in this section or have been instituted and have been dismissed in a final judgment of the High Court or a judgment by the Supreme Court of Appeal,

the goods concerned shall, subject to the provisions of section 90, be deemed to be condemned and forfeited."

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

"(2) Any litigant must give notice to the Commissioner in writing before serving any process for instituting any proceedings as contemplated in section 96(1)*(a)*—

(a) within 90 days after the date of seizure;

(b) in the case of an internal administrative appeal, where such appeal is unsuccessful, within 90 days from the date contemplated in **[subsection 95A (7)]** section 77F.";

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

"(4) Whenever goods are seized and in consequence of the seizure—

(a) delivery thereof under section 93 is refused or the terms of delivery thereunder are not accepted;

(b) no internal administrative appeal contemplated in Part A of Chapter XA is lodged or is lodged and is not successful;

(c) any dispute is not resolved as contemplated in Part B of Chapter XA or not settled as contemplated in Part C of that Chapter;

(d) no proceedings are instituted as contemplated in this section or have been instituted and have been dismissed in a final judgment of the High Court or a judgment by the Supreme Court of Appeal,

the goods concerned shall, subject to the provisions of section 90, be deemed to be condemned and forfeited.".

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

(b) Subsection (1)*(c)* and *(d)* shall come into operation when Parts A and B of Chapter XA comes into operation.

Wysiging van artikel 80 van Wet 91 van 1964, soos gewysig deur artikel 10 van Wet 85 van 1968, artikel 27 van Wet 105 van 1969, artikel 28 van Wet 112 van 1977, artikel 22 van Wet 86 van 1982, artikel 7 van Wet 89 van 1984, artikel 12 van Wet 52 van 1986, artikel 27 van Wet 84 van 1987, artikel 32 van Wet 59 van 1990, artikel 8 van Wet 105 van 1992, artikel 8 van Wet 98 van 1993, artikel 68 van Wet 30 van 1998, artikel 63 van Wet 53 van 1999 en artikel 62 van Wet 59 van 2000

148. Artikel 80 van die Doeane- en Aksynswet, 1964, word hierby gewysig deur die volgende paragraaf in te voeg:

"*(r)* sonder wettige oorsaak versuim om aan 'n kennisgewing van aanstelling as agent ingevolge artikel 114A binne die tydperk van sodanige kennisgewing vermeld, te voldoen.".

Wysiging van artikel 89 van Wet 91 van 1964

149. (1) Artikel 89 van die Doeane- en Aksynswet, 1964, word hierby gewysig—

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

"(2) *(a)* Enige litigant moet voordat enige proses gedien word om enige geding in te stel soos in artikel 96(1)*(a)* beoog word, binne 90 dae na die datum van beslaglegging die Kommissaris skriftelik kennis gee.";

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

"(4) Wanneer goedere op beslag gelê word en ten gevolge van die beslaglegging—

(a) aflewering daarvan kragtens artikel 93 geweier is of die terme van aflewering daarkragtens nie aanvaar is nie; of

(b) **[(b)geen interne administratiewe appèl kragtens artikel 95A ingedien is nie of is ingedien en is onsuksesvol;]** geen geding is ingestel soos in hierdie artikel beoog nie of is ingestel en is afgewys in 'n finale uitspraak van die Hoë Hof of 'n uitspraak van die Hoogste Hof van Appèl,

word die betrokke goedere, behoudens die bepalings van artikel 90, geag prysverklaar en verbeur te wees."

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

"(2) Enige litigant moet voordat enige proses gedien word om enige geding in te stel, soos in artikel 96 (1) *(a)* beoog word, die Kommissaris skriftelik kennis gee—

(a) binne 90 dae na die datum van beslaglegging; of

(b) in die geval van 'n administratiewe appèl, waar sodanige appèl onsuksesvol was, binne 90 dae vanaf die datum wat in **[subartikel 95A (7)]** artikel 77F beoog word.";

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

"(4) Wanneer goedere op beslag gelê word en ten gevolge van die beslaglegging—

(a) aflewering daarvan kragtens artikel 93 geweier is of die terme van aflewering daarkragtens nie aanvaar is nie;

(b) geen interne administratiewe appèl in Deel A van Hoofstuk XA beoog ingedien is nie of is ingedien en is onsuksesvol;

(c) enige geskil is nie bygelê soos beoog in Deel B van Hoofstuk XA nie of nie besleg soos beoog in Deel C van daardie Hoofstuk nie;

(d) geen geding is ingestel soos in hierdie artikel beoog nie of is ingestel en is afgewys in 'n finale uitspraak van die Hoë Hof of 'n uitspraak van die Hoogste Hof van Appèl, word die betrokke goedere, behoudens die bepalings van artikel 90, geag prysverklaar en verbeur te wees.".

(2) *(a)* Subartikel (1) *(a)* en *(b)* tree in werking op die datum van promulgasie van hierdie Wet.

(b) Subartikel (1) *(c)* en *(d)* tree in werking wanneer Dele A en B van Hoofstuk XA in werking tree.

Substitution of section 93 of Act 91 of 1964, as substituted by section 67 of Act 53 of 1999

150. The following section is substituted for section 93 of the Customs and Excise Act, 1964:

"**Remission or mitigation of penalties and forfeiture**

93. (1) The Commissioner may, on good cause shown by the owner thereof, direct that any ship, vehicle container or other transport equipment, plant, material or other goods detained or seized or forfeited under this Act be delivered to such owner, subject to—

(a) payment of any duty that may be payable in respect thereof;

(b) payment of any charges that may have been incurred in connection with the detention or seizure or forfeiture thereof; and

(c) such conditions as the Commissioner may determine, including conditions providing for the payment of an amount not exceeding the value for duty purposes of such ship, vehicle container or other transport equipment, plant, material or goods plus any unpaid duty thereon.

(2) The Commissioner may, on good cause shown mitigate or remit any penalty incurred under this Act on such conditions as the Commissioner may determine.

(3) *(a)* Any person who, for the purposes contemplated in this section alleges ownership of any ship, vehicle, container or other transport equipment, plant material or other goods shall have the burden of proving such ownership to the satisfaction of the Commissioner; and

(b) Where two or more persons claim ownership of the same ship, vehicle, container or other transport equipment, plant, material or other goods, ownership must be decided by a competent court and the Commissioner shall only grant release thereof to the person or persons as ordered by such court.".

Repeal of section 93A of Act 91 of 1964

151. Section 93A of the Customs and Excise Act, 1964, is hereby repealed.

Amendment of section 101 of Act 91 of 1964, as substituted by section 18 of Act 85 of 1968, and amended by section 12 of Act 98 of 1980, section 63 of Act 45 of 1995 and section 70 of Act 53 of 1999

152. Section 101 of the Customs and Excise Act, 1964, is hereby amended by the substitution for subsection (2B) of the following subsection:

"(2B) Any person referred to in subsection (1) shall keep and produce on demand any **[data created by means of a 'computer' as defined in section 1 of the Computer Evidence Act, 1983 (Act No. 57 of 1983), including data in the electronic form in which it was originally created or in which it is stored for the purposes of backing up such data]** electronic representations of information in any form.".

Amendment of section 101A of Act 91 of 1964, as inserted by section 51 of Act 19 of 2001

153. Section 101A of the Customs and Excise Act, 1964 is hereby amended by the insertion in subsection (10) of the following paragraph:

"*(d)* (i) The Commissioner may, notwithstanding anything to the contrary contained in this section, permit, as prescribed by rule, any person who is registered as a user and has entered into a user agreement as contemplated in subsection (3), to submit electronically any report referred to in paragraph *(a)*, by using the Internet.

(ii) Subject to such exceptions, adaptations or additional requirements as the Commissioner may prescribe by rule, the provisions of this section shall apply to the submission of such report.

(iii) 'Internet' shall have the meaning assigned thereto in the Electronic Communications and Transactions Act, 2002 (Act. No. 25 of 2002).".

Vervanging van artikel 93 van Wet 91 van 1964, soos vervang deur artikel 67 van Wet 53 van 1999

150. Artikel 93 van die Doeane- en Aksynswet, 1964 word hierby deur die volgende artikel vervang:

"**Kwytskelding of vermindering van penes en verbeuring**

93. (1) Die Kommissaris kan, op goeie gronde aangetoon, gelas dat enige skip, voertuig, houer of ander vervoertoerusting, installasie, stof of ander goedere kragtens hierdie Wet aangehou of beslag op gelê of verbeur aan die eienaar daarvan afgelewer word onderworpe aan—

(a) betaling van enige reg wat ten opsigte daarvan betaalbaar is;

(b) betaling van enige koste wat in verband met die aanhouding of beslaglegging of verbeuring daarvan aangegaan is; en

(c) sodanige voorwaardes as die Kommissaris bepaal, met inbegrip van voorwaardes wat voorsiening maak vir die betaling van 'n bedrag van hoogstens die waarde vir belastingdoeleindes van sodanige skip, voertuig, houer of ander vervoertoerusting, installasie, stof of goedere plus enige onbetaalde reg daarop.

(2) Die Kommissaris kan op goeie gronde aangetoon enige pene wat ingevolge hierdie Wet opgeloop is, op voorwaardes wat die Kommissaris bepaal verminder of kwytgeskeld.

(3) *(a)* Iemand wat, vir die doeleindes beoog in hierdie artikel, eienaarskap van enige skip, voertuig, houer of ander vervoertoerusting, installasie, stof of ander goedere, beweer, dra die bewyslas om sodanige eienaarskap tot oortuiging van die Kommissaris te bewys; en

(b) Waar twee of meer persone op eienaarskap van dieselfde skip, voertuig, houer of ander vervoertoerusting, installasie, stof of ander goedere, aanspraak maak, moet eiendomsreg deur 'n bevoegde hof beslis word en die Kommissaris gee slegs lossing daarvan aan die persoon of persone soos sodanige hof beveel.".

Herroeping van artikel 93A van Wet 91 of 1964

151. Artikel 93A van die Doeane- en Aksynswet, 1964, word hierby herroep.

Wysiging van artikel 101 van Wet 91 van 1964, soos vervang deur artikel 18 van Wet 85 van 1968, en gewysig deur artikel 12 van Wet 98 van 1980, artikel 63 van Wet 45 van 1995 en artikel 70 van Wet 53 van 1999

152. Artikel 101 van die Doeane- en Aksynswet, 1964, word hierby gewysig deur subartikel (2B) deur die volgende subartikel te vervang:

"(2B) In subartikel (1) bedoelde persoon moet enige **[data wat op 'n 'rekenaar' soos in artikel 1 van die Wet op Rekenaargetuienis, 1983 (Wet No. 57 van 1983) omskryf, geskep is, met inbegrip van data in die elektroniewe vorm waarin dit oorspronklik geskep is of waarin dit gestoor word vir die doeleindes om sodanige data te rugsteun]** elektroniese voorstellings van inligting in enige formaat hou en op versoek voorlê.".

Wysiging van artikel 101A van Wet 91 van 1964

153. Artikel 101A van die Doeane- en Aksynswet, 1964 word hierby gewysig deur in subartikel (10) die volgende paragraaf in te voeg:

"*(d)* (i) Die Kommissaris kan, ondanks andersluidende bepalings van hierdie artikel, soos by reël voorgeskryf, enige persoon wat as 'n gebruiker geregistreer is en 'n gebruikersooreenkoms soos beoog in subartikel (3), aangegaan het, toelaat om enige verslag in paragraaf *(a)* bedoel, elektronies voor te lê deur van die Internet gebruik te maak.

(ii) Behoudens sodanige uitsonderings, aanpassings of bykomende vereistes wat die Kommissaris by reël voorskryf, is die bepalings in hierdie artikel van toepassing op die voorlegging van sodanige verslag.

(iii) 'Internet' dra die betekenis wat in die Wet op Elektroniese Kommunikasie en Transaksies, 2002 (Wet. No. 25 van 2002) daaraan toegeskryf is.".

Insertion of sections 114A and 114B in Act 91 of 1964

154. The following sections are hereby inserted in the Customs and Excise Act, 1964, after section 114:

"**Power to appoint agent**

114A. The Commissioner may, if he thinks it necessary, declare any person to be the agent of any other person, and the person so declared an agent—

(a) shall for the purposes of this Act be the agent of such other person in respect of the payment of any amount of duty, interest, fine, penalty or forfeiture payable by such other person under this Act, and

(b) may be required to make payment of such amount from any moneys which may be held by him or her for or be due by him or her to the person whose agent he or she has been declared to be:

Provided that a person so declared an agent who, is unable to comply with a requirement of the notice of appointment as agent, must advise the Commissioner in writing of the reasons for not complying with that notice within the period specified in the notice.

Remedies of Commissioner against agent or trustee

114B. The Commissioner shall have the same remedies against all property of any kind vested in or under the control or management of any agent or person acting in a fiduciary capacity as the Commissioner would have against the property of any person liable to pay any duty, interest, fine, penalty or forfeiture payable under this Act and in as full and ample a manner.".

Substitution of Part 3 of Schedule No. 1 to Act 91 of 1964

155. Part 3 of Schedule No. 1 of the Customs and Excise Act, 1964 is hereby substituted by the following Part:

"**PART 3**

ENVIRONMENTAL LEVY

NOTES:

1. Any rate of environmental levy specified in this Part in respect of any goods shall apply to any such goods which are manufactured in the Republic or imported into the Republic.
2. Any environmental levy payable in terms of this Part in respect of any goods specified therein shall be additional to any customs or excise duty payable in terms of Part 1 or 2 in respect of goods of the same class or kind.
3. Imported goods shall not be declared on separate bills of entry for the purpose of Parts 1, 2, 3 and 5 of this Schedule.
4. Whenever the tariff heading or subheading under which any goods are classified in Part 1 of this Schedule is expressly quoted in any environmental levy item of this Part in which such goods are specified, the goods so specified in such environmental levy item shall be deemed to include only goods which are classifiable under the said tariff heading or subheading.
5. Appropriation for own use for any purpose by the manufacturer or owner of any goods specified in this Part shall render such goods liable to entry for home consumption and payment of any environmental levy.

Invoeging van artikels 114A en 114B in Wet 91 van 1964

154. Die volgende artikels word hierby in die Doeane- en Aksynswet, 1964, na artikel 114 ingevoeg:

"**Bevoegdheid om agent aan te stel**

114A. Die Kommissaris kan, indien hy dit nodig ag, 'n persoon tot agent van 'n ander persoon verklaar en die persoon aldus tot agent verklaar—

(a) is vir doeleindes van hierdie Wet die agent van daardie ander persoon ten opsigte van die betaling van enige bedrag reg, rente, boete, pene of verbeuring wat deur sodanige persoon ingevolge die Wet betaalbaar is, en

(b) kan verplig word om betaling van daardie bedrag te doen uit gelde wat deur hom of haar gehou mag word vir of deur hom of haar verskuldig mag wees aan die persoon tot wie se agent hy of sy verklaar is:

Met dien verstande dat die persoon aldus 'n agent verklaar wat nie in staat is om aan 'n vereiste van die kennisgewing van aanstelling as agent te voldoen nie, die Kommissaris binne die tydperk in die kennisgewing vermeld skriftelik in kennis moet stel van die redes waarom nie aan daardie kennisgewing voldoen is nie.

Regsmiddele van Kommissaris teen agent of trustee

114B. Die Kommissaris het in dieselfde mate en op dieselfde wyse al die regsmiddele teen alle eiendom van welke soort ook al wat berus by of onder beheer of bestuur is van 'n agent of persoon wat in 'n fidusiêre hoedanigheid optree, as wat die Kommissaris sou hê teen die eiendom van 'n persoon wat aanspreeklik is om enige reg, rente, boete, pene of verbeuring betaalbaar ingevolge hierdie Wet, te betaal.".

Vervanging van Deel 3 van Bylae No. 1 by Wet 91 van 1964

155. (1) Deel 3 van Bylae No. 1 van die Doeane- en Aksynswet, 1964 word deur die volgende Deel vervang:

"**DEEL 3**

OMGEWINGSHEFFING

OPMERKINGS:

1. Enige skaal van omgewingsheffing in hierdie Deel ten opsigte van enige goedere vermeld, is op enige sodanige goedere wat in die Republiek vervaardig of in die Republiek ingevoer word van toepassing.
2. Enige omgewingsheffing kragtens hierdie Deel betaalbaar ten opsigte van enige goedere daarin vermeld, is bykomend by enige kragtens Deel 1 of 2 betaalbare doeane- of aksynsreg ten opsigte van goedere van dieselfde klas of soort.
3. Ingevoerde goedere word nie vir doeleindes van Dele 1, 2, 3 en 5 van hierdie Bylae op afsonderlike klaringsbriewe geklaar nie.
4. Waar die tariefpos of subpos waaronder enige goedere in Deel 1 van hierdie Bylae ingedeel word, uitdruklik aangehaal word in enige omgewingsheffingitem van hierdie Deel waarin sodanige goedere vermeld word, word die goedere wat in sodanige omgewingsheffingitem van hierdie Deel vemeld word, geag slegs goedere in te sluit wat onder bedoelde tariefpos of subpos ingedeel word.
5. Aanwending deur die vervaardiger of eienaar van enige in hierdie Deel vermelde goedere vir eie gebruik vir enige doel maak sodanige goedere onderhewig aan klaring vir binnelandse verbruik en betaling van enige omgewingsheffing.

Environmental Levy Item	Tariff Heading	Description	Environmental Levy	Annotations
147.00		**PLASTICS AND ARTICLES THEREOF; RUBBER AND ARTICLES THEREOF**		
	3923.2	Carrier and flat bags, of polymers of ethylene or propylene, of a thickness exceeding 24µ, unprinted or printed with a single resin system ink based on a co-solvent polyamide with a mass of dry solid content not exceeding 2,25 per cent of the mass of the unprinted bag or printed with other inks with a mass of the solid content exceeding 1,125 per cent of the mass of the unprinted bag (excluding bags for use as immediate packing, refuse bags and refuse bin liners)	1 000c/kg	

Amendment of section 7 of Act 77 of 1968, as amended by section 18 of Act 103 of 1969, section 10 of Act 89 of 1972, section 8 of Act 66 of 1973, section 3 of Act 70 of 1975, section 5 of Act 87 of 1982, section 7 of Act 118 of 1984, section 5 of Act 69 of 1989, section 55 of Act 19 of 2001 and section 43 of Act 12 of 2003

156. Section 7 of the Stamp Duties Act, 1968, is hereby amended—

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

"*(g)* in the case of the original issue of a marketable security or of a negotiable certificate of deposit, the company or corporate body issuing the marketable security or negotiable certificate of deposit;"; and

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

"*(h)* in the case of the registration of transfer of a marketable security or of a negotiable certificate of deposit, the transferee;".

Amendment of section 23 of Act 77 of 1968, as amended by section 20 of Act 103 of 1969, section 13 of Act 92 of 1971, section 11 of Act 89 of 1972, section 10 of Act 66 of 1973, section 10 of Act 88 of 1974, section 20 of Act 106 of 1980, section 6 of Act 87 of 1982, section 5 of Act 92 of 1983, section 25 of Act 87 of 1988, section 8 of Act 69 of 1989, section 7 of Act 136 of 1991, section 80 of Act 30 of 1998 and section 76 of Act 53 of 1999

157. Section 23 of the Stamp Duties Act 1968 is hereby amended—

(a) by the deletion in subsection (1) of the definition of "lending arrangement";

(b) by the deletion in subsection (4) of subparagraphs (ii) and (viiB) of paragraph *(b)*; and

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

"(6) Any instrument of transfer referred to in subsection (4) shall at all reasonable times during a period of **[three]** five years after the date of registration of the relevant transfer be open for inspection by any person acting under the authority of the Commissioner.".

Insertion of section 30A in Act 77 of 1968

158. (1) The following sections are hereby inserted in the Stamp Duties Act, 1968, after section 30:

Omgewings-heffingitem	Tariefpos	Beskrywing	Omgewings-heffing	Annotasies
147.00		**PLASTIEKE EN ARTIKELS DAARVAN; RUBBER EN ARTIKELS DAARVAN**		
	3923.2	Dra- en plastieksakke, van polimere van etileen of propileen, met 'n dikte van meer as 24µ, onbedruk of bedruk met 'n enkelhars sisteem ink gebaseer op 'n ko-oplosmiddel poliamied, met 'n massa van die droë vastestofinhoud van nie meer as 2,25 persent van die massa van die onbedrukte sak of bedruk met ander ink met 'n massa van die droë vastestofinhoud van meer as 1,125 persent van die massa van die onbedrukte sak (uitgesonderd sakkies vir gebruik as onmiddellike houers, vullissakke en vullishouervoerings)	1 000c/kg	

Wysiging van artikel 7 van Wet 77 van 1968, soos gewysig deur artikel 18 van Wet 103 van 1969, artikel 10 van Wet 89 van 1972, artikel 8 van Wet 66 van 1973, artikel 3 van Wet 70 van 1975, artikel 5 van Wet 87 van 1982, artikel 7 van Wet 118 van 1984, artikel 5 van Wet 69 van 1989, section 55 van Wet 19 van 2001 en artikel 43 van Wet 12 van 2003

156. Artikel 7 van die Wet op Seëlregte, 1968, word hierby gewysig—

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

"*(g)* in die geval van die oorspronklike uitreiking van handelseffekte of 'n verhandelbare sertifikaat ten opsigte van 'n deposito, die maatskappy of regspersoon wat die handelseffekte of verhandelbare sertifikaat ten opsigte van 'n deposito uitreik; " en

(b) deur subartikel (1) van paragraaf *(h)* deur die volgende paragraaf te vervang:

"*(h)* in die geval van die registrasie van oordrag van handelseffekte of 'n verhandelbare sertifikaat ten opsigte van 'n deposito, die oordragnemer".

Wysiging van artikel 23 van Wet 77 van 1968, soos gewysig deur artikel 20 van Wet 103 van 1969, artikel 13 van Wet 92 van 1971, artikel 11 van Wet 89 van 1972, artikel 10 van Wet 66 van 1973, artikel 10 van Wet 88 van 1974, artikel 20 van Wet 106 van 1980, artikel 6 van Wet 87 van 1982, artikel 5 van Wet 92 van 1983, artikel 25 van Wet 87 van 1988, artikel 8 van Wet 69 van 1989, artikel 7 van Wet 136 van 1991, artikel 80 van Wet 30 van 1998 en artikel 76 van Wet 53 van 1999

157. Arikel 23 van die Wet op Seëlregte, 1968 word hierby gewysig—

(a) deur die omskrywing van "leningsreëling" in subartikel (1) te skrap;

(b) deur in subartikel (4) subparagrawe (ii) en (viiB) van paragraaf *(b)* te skrap; en

(c) deur subartikel (6) deur die volgende subartikel te vervang:

"(6) 'n In subartikel (4) bedoelde oordragstuk moet te alle redelike tye gedurende 'n tydperk van **[drie]** vyf jaar na die datum van die registrasie van die betrokke oordrag beskikbaar wees vir insae deur iemand wat op gesag van die Kommissaris handel".

Invoeging van artikel 30A in Wet 77 van 1968

158. (1) Die volgende artikels word hierby na artikel 30 van die Wet op Seëlregte, 1968, ingevoeg:

"**Schemes for obtaining undue tax benefits**

30A. (1) Notwithstanding anything in this Act, whenever the Commissioner is satisfied that any transaction, operation, scheme or understanding (whether enforceable or not), including all steps by which it is carried into effect—

(a) has been entered into or carried out which has the effect of any person obtaining a tax benefit;

(b) having regard to the substance of the transaction, operation, scheme or understanding—

(i) was entered into or carried out in a manner which would not normally be employed for *bona fide* business purposes other than the obtaining of a tax benefit; or

(ii) has created rights or obligations which would not normally be created between persons dealing at arm's length; and

(c) was entered into or carried out solely or mainly for the purposes of obtaining a tax benefit,

the Commissioner shall determine the liability for any duty imposed by this Act and the amount thereof, as if the transaction, operation, scheme or understanding had not been entered into or carried out, or in such manner as in the circumstances of the case the Commissioner deems appropriate for the prevention or diminution of such tax benefit.

(2) For the purpose of this section 'tax benefit' means—

(a) any reduction in the liability of any person to pay duty;

(b) any increase in the entitlement of any person to the refund of duty; or

(c) any other avoidance or postponement of liability for the payment of any duty imposed by this Act or any tax, duty or levy imposed by any other Act administered by the Commissioner.

(3) Any decision of the Commissioner under subsection (1) shall be subject to objection and appeal, and whenever in proceedings relating thereto it is proved that the relevant transaction, operation, scheme or understanding results or would result in a tax benefit, it shall be presumed, until the contrary is proved, that such scheme was entered into or carried out solely or mainly for the purpose of obtaining a tax benefit.

Power to appoint agent

30B. The Commissioner may, if he or she deems it necessary, declare any person to be the agent of any other person, and the person so declared an agent—

(a) shall for the purposes of this Act be the agent of that other person in respect of the payment of any amount of duty, additional duty, penalty or interest payable by that other person under this Act; and

(b) may be required to make payment of such amount from any moneys which may be held by that agent for or be due by that agent to the person whose agent he or she has been declared to be:

Provided that a person so declared an agent who is unable to comply with a requirement of the notice of appointment as agent, must advise the Commissioner in writing of the reasons for not complying with that notice within the period specified in the notice.

"Skemas vir verkryging van onbehoorlike belastingvoordele

30A. (1) Ondanks enige bepaling van hierdie Wet, wanneer die Kommissaris oortuig is dat 'n skema (ongeag of dit voor of na die inwerkingtreding van hierdie Wet aangegaan of uitgevoer is, en met inbegrip van 'n skema waarby die vervreemding van eiendom betrokke is)—

(a) aangegaan of uitgevoer is wat die uitwerking het dat 'n belastingvoordeel aan enige persoon verleen word; en

(b) met inagneming van die substansie van die skema—

(i) aangegaan of uitgevoer was deur middele of op 'n wyse wat nie normaalweg vir bona fide- sakedoeleindes, behalwe die verkryging van 'n belastingvoordeel, gebruik sou word nie; of

(ii) regte of verpligtings geskep het wat nie normaalweg tussen persone wat die uiterste voorwaardes beding, geskep sou word nie; en

(c) aangegaan of uitgevoer was uitsluitlik of hoofsaaklik om 'n belastingvoordeel te verkry,

stel die Kommissaris die belastingpligtigheid ten opsigte van enige belasting deur hierdie Wet opgelê, asook die bedrag daarvan, vas asof die skema nie aangegaan of uitgevoer is nie, of op so 'n wyse vas as wat hy in die omstandighede van die geval gepas ag vir die voorkoming of beperking van sodanige belastingvoordeel.

(2) By die toepassing van hierdie artikel beteken 'belastingvoordeel' ook—

(a) 'n vermindering van die aanspreeklikheid van enige persoon om 'n reg te betaal;

(b) 'n vermeerdering van die geregtigheid van enige persoon op die terugbetaling van 'n reg;

(c) enige ander vermyding of uitstel van aanspreeklikheid vir die betaling van enige reg opgelê deur hierdie Wet of enige belasting, reg of heffing opgelê deur enige ander Wet wat deur die Kommissaris geadministreer word.

(3) 'n Beslissing van die Kommissaris ingevolge hierdie artikel is aan beswaar en appèl onderworpe, en wanneer by verrigtings wat daarop betrekking het, bewys word dat die betrokke skema 'n belastingvoordeel tot gevolg het of sou hê, word vermoed, totdat die teendeel bewys word, dat bedoelde skema uitsluitlik of hoofsaaklik aangegaan of uitgevoer is ten einde 'n belastingvoordeel te verkry.

Bevoegdheid om agent aan te stel

30B. Die Kommissaris kan, indien hy dit nodig ag, 'n persoon tot agent van 'n ander persoon verklaar, en die persoon aldus tot agent verklaar—

(a) is die agent by die toepassing van hierdie Wet ten opsigte van die betaling van enige bedrag aan reg, addisionele reg, boete of rente deur daardie ander persoon kragtens hierdie Wet betaalbaar; en

(b) kan vereis word om betaling te maak van daardie bedrag uit gelde wat deur daardie agent gehou mag word of deur daardie agent verskuldig mag wees aan die persoon van wie hy of sy tot agent verklaar is: Met dien verstande dat 'n persoon aldus as agent verklaar wat nie instaat is om aan 'n vereiste in die kennisgewing van aanstelling as agent te voldoen nie, die Kommissaris skriftelik van die redes moet voorsien vir die nie-nakoming van daardie kennisgewing binne die tydperk in die kennisgewing gespesifiseer.

Remedies of Commissioner against agent or trustee

30C. The Commissioner shall have the same remedies against all property of any kind vested in or under the control or management of any agent or trustee as the Commissioner would have against the property of any person liable to pay any duty and in as full and ample a manner.".

(2) Subsection (1) shall in so far as it inserts section 30A in the Income Tax Act, 1962, come into operation on the date of promulgation of this Act and shall apply in respect of the purchase of any marketable security in terms of a transaction, operation, scheme or understanding entered into on or after that date.

Amendment of section 31 of Act 77 of 1968, as substituted by section 18 of Act 46 of 1996 and amended by section 81 of Act 30 of 1998 and section 144 of Act 60 of 2001

159. Section 31 of the Stamp Duties Act, 1968, is hereby amended by the substitution in subsection (1) for the definitions of "documents" and "information" of the following definitions:

" 'documents' include any document, book, marketable security, record, account, deed, plan, instrument, trade list, stock list, brokers note, affidavit, certificate, photograph, map, drawing and any **['computer print-out' as defined in section 1 of the Computer Evidence Act, 1983 (Act No. 57 of 1983)]** printout of information generated, sent, received, stored, displayed or processed by electronic means;

'information' includes any **[data stored by means of a 'computer' as defined in section 1 of the Computer Evidence Act, 1983]** electronic representations of information in any form;".

Amendment of section 32B of Act 77 of 1968

160. Section 32B of the Stamp Duties Act, 1968, is hereby amended by the substitution in subsection (2) for paragraph *(b)* of the following paragraph:

"*(b)* settlement of disputes, as provided for in **[section 107B]** Part IIIA of Chapter III of that Act,".

Amendment of Item 7 of Schedule 1 to Act 77 of 1968, as amended by section 18 of Act 88 of 1974, section 12 of Act 66 of 1973, section 15 of Act 114 of 1977, section 41 of Act 5 of 2001 and section 55 of Act 30 of 2002

161. Item 7 of Schedule 1 to the Stamp Duties Act, 1968, is hereby amended—

(a) by the deletion of subitem (5);

(b) by the substitution for paragraph *(c)* of *"Exemptions"* of the following paragraph:

"*(c)* any cession or substitution of debtors in respect of any bond."; and

(d) by the deletion of paragraph *(d)* of *"Exemptions"*.

Amendment of item 13 of Schedule 1 to Act 77 of 1968, as amended by section 12 of Act 92 of 1983, section 12 of Act 108 of 1986 and section 85 of Act 30 of 1998

162. Item 13 of Schedule 1 to the Stamp Duties Act, 1968, is hereby amended—

(a) by the substitution in the introductory paragraph of Item 13 for the expression "*Fixed deposit receipt*" of the following paragraph:

"*Fixed deposit receipt*, **[including any certificate or other instrument whereby any fixed deposit is acknowledged or is expressed to have been received, deposited or paid:]**";

(b) by the substitution after the introductory paragraph for "*Fixed deposit receipt*" of the following paragraph:

"In respect of the original issue or transfer of any fixed deposit made with any bank, company or association, whether corporate or unincorporated: for every R200 (or part thereof) of the amount of the fixed deposit and for every period of twelve months (or part thereof) for which the deposit is made .....0 10;";

Regsmiddele van Kommissaris teen agente en trustee

30C. Die Kommissaris het in dieselfde mate en op dieselfde wyse al die regsmiddele teen alle eiendom van welke aard ook al wat gevestig is in of onder die beheer of bestuur is van 'n agent of trustee, as wat hy sou hê teen die eiendom van 'n persoon wat verplig is om 'n belasting te betaal.".

(2) Subartikel (1) tree vir sover dit artikel 30A in die Inkomstebelastingwet, 1962, invoeg, in werking op die datum van afkondiging van hierdie Wet en is van toepassing ten opsigte van die aankoop van enige handelseffek ingevolge 'n transaksie, handeling, skema of verstandhouding op of na daardie datum aangegaan.

Wysiging van artikel 31 van Wet 77 van 1968, soos vervang deur artikel 18 van Wet 46 van 1996 en gewysig deur artikel 81 van Wet 30 van 1998 en artikel 144 van Wet 60 van 2001

159. Artikel 31 van die Wet op Seëlregte, 1968, word hierby gewysig deur subartikel (1) van die omskrywing van "dokumente" en "inligting" deur die volgende omskrywing te vervang:

" 'dokumente' ook enige dokument, boek, handelseffek, rekord, rekening, akte, plan, instrument, handeslys, voorraadlys, beëdigde verklaring, sertifikaat, foto, kaart, tekening en enige **["rekenaardrukstuk" soos omskryf in artikel 1 van die Wet op Rekenaargetuienis, 1983 (Wet No. 57 van 1983), seël en instrument beoog in Bylae 1]** uitdruk van inligting wat op elektroniese wyse gegenereer, gestuur, ontvang, gestoor, vertoon of geprosesseer is;

'inligting' ook enige **[data gestoor deur middle van 'n "rekenaar" soos omskryf in artikel 1 van die Wet op Rekenaargetuienis, 1983]** elektroniese weegawe van inligting in enige vorm;".

Wysiging van artikel 32B van Wet 77 van 1968

160. Artikel 32B van die Wet op Seëlregte, 1968, word hierby gewysig deur die vervanging van subartikel (2) van paragraaf *(b)* deur die volgende paragraaf:

"(b) die beslegting van geskillle, soos in **[artikel 107B]** Deel IIIA van Hoofstuk III van daardie Wet, bepaal;".

Wysiging van Item 7 van Bylae 1 by Wet 77 van 1968, soos gewysig deur artikel 18 van Wet 88 van 1974, artikel 12 van Wet 66 van 1973, artikel 15 van Wet 114 van 1977, artikel 41 van Wet 5 van 2001 en artikel 55 van Wet 30 van 2002

161. Item 7 van Bylae 1 van die Wet op Seëlregte, 1968, is hierby gewysig—

(a) deur subitem (5) te skrap;

(b) deur paragraaf *(c)* van *"Vrystellings"* deur die volgende paragraaf te vervang:

"(c) enige sessie of vervanging van 'n skuldenaar ten opsigte van enige verband; en

(d) deur paragraaf *(d)* van *"Vrystellings"* te skrap.

Wysiging van Item 13 van Bylae 1 by Wet 77 van 1968, soos gewysig deur artikel 12 van Wet 92 van 1983, artikel 12 van Wet 108 van 1986 en artikel 85 van Wet 30 van 1998

162. Item 13 van Bylae 1 van die Wet op Seëlregte, 1968, word hierby gewysig—

(a) deur die inleidende paragraaf van Item 13 te vervang deur die volgende paragraaf:

"Vaste deposito kwitansie, **[met inbegrip van 'n sertifikaat of ander stuk waarby 'n vaste deposito erken word of waarby te kenne gegee word dat dit ontvang, gestort of betaal is:]**";

(b) deur na die inleidende paragraaf "Vaste deposito kwitansie" deur die volgende paragraaf te vervang:

"Ten opsigte van die oorspronlike uitreiking of oordrag van enige vaste deposito gestort by 'n bank, maatskappy of genootskap, hetsy met regspersoonlikheid beklee al dan nie: vir elke R200 (of deel daarvan) van die bedrag van die vaste deposito en vir elke tydperk van twaalf maande (of deel daarvan) waarvoor die deposito gestort word .....0 10;";

(i) by the addition in *Exemptions from the duty under paragraph (3)* at the end of item *(ee)* of subparagraph (ii) of paragraph *(v)* of the word "or";

(j) by the addition in *Exemptions from the duty under paragraph (3)* of the following item to paragraph *(v)*:

"(iii) which in terms of the Transfer Duty Act, 1949 (Act No. 40 of 1949), constitutes a transaction for the acquisition of property and in terms of that Act the acquisition of that property is subject to transfer duty.";

(k) by the substitution in *Exemptions from the duty under paragraph (3)* for subparagraph (v) of paragraph *(x)* of the following subparagraph:

"(v) in **[pursuance]** terms of **[a distribution *in specie* in the course of]** an unbundling transaction contemplated in section 46 of that Act;";

(l) by the substitution in the *Exemptions from the duty under paragraph (3)* for subparagraph (vii) of paragraph *(x)* of the following subparagraph:

"(vii) in terms of any transaction **[contemplated in subparagraph (v) or transaction]** which would have constituted a transaction or distribution contemplated—

(aa) in subparagraphs (i) **[(iv) or]** to (vi) regardless of whether or not **[had]** an election has been made for the provisions of that section to apply;

(bb) in subparagraph (i), (ii) or (iii) **[had]** regardless of the market value of the asset **[transferred]** disposed of in exchange for **[those]** that marketable **[securities]** security **[exceeded the base cost or the amount taken into account in respect thereof, as contemplated in section 42(1)*(a)*, 43(1)*(a)* or 44(6) of that Act,]**; or

(cc) in subparagraphs (i) to (vi) regardless of whether or not that person acquired that marketable security as a capital asset or as trading stock,

where the public officer of the relevant company has made a sworn affidavit or solemn declaration that the transfer of that marketable security complies with the provisions of this paragraph.";

(m) by the addition to the *Exemption from duty under paragraph (3)* of the following paragraph:

"*(z)* where the securities are interest-bearing debentures, including debenture stock, debenture bonds and similar securities of a juristic person, whether constituting a charge on the assets of the juristic person or not, unless convertible into shares or similar equity interest or eligible to participate in dividends;";

(n) by the substitution in paragraph (5) for the words preceding subparagraph *(a)* of the following words:

"(5) In respect of the acquisition **[(other than an acquisition by way of a purchase in respect of which the tax referred to in section 2 of the Marketable Securities Tax Act, 1948 (Act 32 of 1948), has become payable)]** by any person (hereinafter referred to as the transferee) from any other person (hereinafter referred to as the transferor) of any marketable security on or after 1st August, 1972, if—".

(o) by the deletion of items (i) to (vi) of *Paragraph (5)*.

(2) *(a)* Subsection (1)*(c)* shall in so far as it deletes paragraph *(c)* come into operation on the date of promulgation of this Act.

(b) Subsection (1)*(d)*, *(k)* and *(l)* shall be deemed to have come into operation on 6 November 2002 and shall apply in respect of transfers of marketable securities in terms of any transaction which takes effect on or after that date.

(i) deur aan die einde van subitem *(ee)* van item (ii) van paragraaf *(v)* van die *Vrystellings van die seëlreg ingevolge paragraaf (3)* die woord "of" by te voeg;

(j) deur die volgende item by paragraaf *(v)* van die *Vrystellings van die seëlreg ingevolge paragraaf (3)* te voeg:

"(iii) wat ingevolge die Wet op Hereregte, 1949 (Wet No. 40 van 1949), 'n transaksie vir die verkryging van eiendom uitmaak en die verkryging van daardie eiendom kragtens daardie Wet aan hereregte onderhewig is.";

(k) deur subparagraaf (v) van paragraaf *(x)* van die *Vrystellings van die seëlreg ingevolge paragraaf (3)* te vervang:

"(v) **[ten gevolge]** in terme van **['n uitreiking in specie in die loop van]** 'n ontbondelingstransaksie in artikel 46 van daardie Wet bedoel;";

(l) deur subparagraaf (vii) van paragraaf (x) van die *Vrystellings van die seëlreg ingevolge paragraaf (3)* te vervang:

"(vii) ingevolge enige transaksie **[in subparagraaf (v) bedoel of 'n transaksie]** wat 'n transaksie uitmaak of uitkering beoog—

(aa) in subparagraaf (i) **[(iv) of]** tot (vi) ongeag of **[indien]** 'n keuse uitgeoefen is of nie dat die bepalings van daardie artikel moet geld;

(bb) in subparagraaf (i), (ii) of (iii) **[sou uitmaak]** ongeag die markwaarde van die bate **[oorgedra]** oor beskik in ruil vir daardie handelseffek **[die basiskoste of die bedrag ten opsigte daarvan in ag geneem, oorskry het, soos bedoel in artikel 42(1)***(a)*, 43(1)*(a)* of 44(6) van daardie Wet] ; of

(cc) ingevolge subparagrawe (i) tot (vi) ongeag of daardie persoon daardie handelseffek as 'n kapitaalbate of as handelsvoorraad verkry het,

waar die openbare amptenaar van die betrokke maatskappy onder eed of plegtige verklaring verklaar het dat daardie oordrag van handelseffekte aan die bepalings van hierdie paragraaf voldoen.";

(m) deur ingevolge die *Vrystellings van die seëlreg ingevolge paragraaf (3)* die volgende paragraaf te voeg:

"*(z)* waar die effekte rentedraende skuldbriewe, met inbegrip van skuldbriefeffekte, skuldbriefverbande of soortgelyke effekte van 'n regspersoon uitmaak, ongeag of dit 'n beswaring op die bates van die regspersoon uitmaak of nie, tensy dit in aandele of soortgelyk ekwiteitsbelang omgeskakel kan word of geregtig is om in te deel in dividende;";

(n) deur subparagraaf (5) se voorafgaande woorde van item *(a)* te vervang:

"(5) Ten opsigte van die verkryging van handelseffekte **(uitgesonderd 'n verkryging by wyse van 'n koop ten opsigte waarvan die belasting bedoel in artikel 2 van die Handelseffektebelastingwet, 1948 (Wet No 32 van 1948), betaalbaar geword het)** deur iemand (hieronder die oordragnemer genoem) van 'n ander persoon (hieronder die oordraggewer genoem) op of na 1 Augustus 1972, indien—".

(o) deur items (i) tot (vi) van *Paragraaf (5)* te skrap.

(2)*(a)*Subartikel (1)*(c)* vir sover dit paragraaf *(c)* skrap tree in werking op die datum van afkondiging van hierdie Wet

(b) Subartikel (1)*(d)*, *(k)* en *(l)* word geag op 6 November 2002 in werking te getree het en is van toepassing ten opsigte van die oordrag van handelseffekte ingevolge enige transaksie wat op of na daardie datum in werking tree.

Amendment of section 1 of Act 89 of 1991, as amended by section 21 of Act 136 of 1991, paragraph 1 of Government Notice 2695 of 8 November 1991, section 12 of Act 136 of 1992, section 22 of Act 97 of 1993, section 9 of Act 20 of 1994, section 18 of Act 37 of 1996, section 23 of Act 27 of 1997, section 81 of Act 53 of 1999, section 76 of Act 30 of 2000, section 64 of Act 59 of 2000, section 65 of Act 19 of 2001, section 148 of Act 60 of 2001, section 114 of Act 74 of 2002 and section 47 of Act 12 of 2003

164. Section 1 of the Value Added Tax Act, 1991, is hereby amended—

(a) by the insertion before the definition of "ancillary transport expenses" of the following definition:

" 'adjusted cost', means the cost of any goods or services where tax has been charged or would have been charged if section 7 of this Act had been applicable prior to the commencement date, in respect of the supply of goods and services or if the vendor was or would have been entitled to an input tax deduction in terms of paragraph *(b)* of the definition of 'input tax';";

(b) the substitution in the definition of "consideration" for the words preceding the proviso of the following words:

" 'consideration', in relation to the supply of goods or services to any person, includes any payment made or to be made (including any deposit on any returnable container and tax), whether in money or otherwise, or any act or forbearance, whether or not voluntary, in respect of, in response to, or for the inducement of, the supply of any goods or services, whether by that person or by any other person, but does not include—

(a) any payment made by any person as an unconditional gift to any association not for gain;

(b) any grant;";

(c) by the insertion after the definition of "Customs and Excise Act" of the following definitions:

" 'customs controlled area' has the meaning assigned thereto in section 21A of the Customs and Excise Act;

'customs controlled area enterprise' has the meaning assigned thereto in section 21A of the Customs and Excise Act, 1964;

'designated entity' means a vendor—

(i) to the extent that its supplies of goods and services of an activity carried on by that vendor are in terms of *(b)*(i) of the definition of 'enterprise' treated as supplies made in the course or furtherance of an enterprise;

(ii) which is a major public entity, national government business enterprise or provincial government business enterprise listed in Schedule 2 or Part B or D of Schedule 3 of the Public Finance Management Act, 1999 (Act No.1 of 1999), respectively; or

(iii) which is a 'Public Private Partnership' as defined in Regulation 16 of the Treasury Regulations issued in terms of section 76 of the Public Finance Management Act, 1999 (Act No. 1 of 1999): or;

(iv) which is a welfare organisation;";

(d) by the deletion of the definition of "customs secured area";

(e) by the substitution in the definition of "enterprise" for item (i) of paragraph *(b)* of the following item:

"(i) the making of supplies by any public authority or any national public entity or provincial public entity listed in Part A or C of Schedule 3 to the Public Finance Management Act, 1999 (Act No. 1 of 1999), respectively, of goods or services which the Minister, having regard to the circumstances of the case, is satisfied are of the same kind or are similar to taxable supplies of goods or services which are or might be made by any person other than such public authority or such public entity in the course or furtherance of any

Wysiging van artikel 1 van Wet 89 van 1991, soos gewysig deur artikel 21 van Wet 136 van 1991, paragraaf 1 van Goewermentskennisgewing 2695 van 8 November 1991, artikel 12 van Wet 136 van 1992, artikel 22 van Wet 97 van 1993, artikel 9 van Wet 20 van 1994, artikel 18 van Wet 37 van 1996, artikel 23 van Wet 27 van 1997, artikel 81 van Wet 53 van 1999, artikel 76 van Wet 30 van 2000, artikel 64 van Wet 59 van 2000, artikel 65 van Wet 19 van 2001, artikel 148 van Wet 60 van 2001, artikel 114 van Wet 74 van 2002 en artikel 47 van Wet 12 van 2003

164. Artikel 1 van die Wet op Belasting op Toegevoegde Waarde, 1991, word hierby gewysig—

(a) deur die volgende omskrywing voor die omskrywing van "aanvullende vervoerdienste" in te voeg:

" 'aangepaste koste', beteken die koste van enige goed of dienste waar belasting gehef is of hefbaar sou gewees het indien artikel 7 van die Wet van toepassing was voor die aanvangsdatum, in verband met die lewering van goed of dienste of indien die ondernemer op 'n insetbelastingaftrekking geregtig was of sou gewees het ingevolge die bepalings van paragraaf *(b)* van die omskrywing van 'insetbelasting';";

(b) die vervanging van die woorde in die omskrywing van "vergoeding" wat die voorbehoudsbepaling voorafgaan:

" 'vergoeding', met betrekking tot die lewering van goed of dienste aan 'n persoon, ook enige betaling gemaak of gemaak te word (met inbegrip van 'n deposito op 'n terugsendbare houer en belasting), hetsy in geld of andersins, of enige handeling of toegewendheid, hetsy vrywilliglik of nie, ten opsigte van, in antwoord op, of as aansporing vir, die lewering van enige goed of dienste, hetsy deur daardie persoon of 'n ander persoon, maar met die uitsluiting van—

(a) enige betaling gemaak deur 'n persoon aan 'n vereniging sonder winsoogmerk as 'n onvoorwaardelike skenking; en

(b) enige subsidie;";

(c) deur die volgende omskrywings na die omskrywing van "Doeane- en Aksynswet in te voeg:

" 'doeanebeheerdegebied' soos bepaal in artikel 21A van die Doeane- en Aksynswet;

'doeanebeheerdegebied-onderneming' soos bepaal in artikel 21A van die Doeane- en Aksynswet, 1964;

'aangewese entiteit' beteken 'n ondernemer—

(i) tot die mate wat dit goed en dienste lewer deur 'n bedrywigheid van daardie ondernemer, word ingevolge paragraaf *(b)*(i) van die omskrywing van 'onderneming' beskou as lewerings gemaak in die loop of ter bevordering van 'n onderneming;

(ii) wat 'n vername openbare entiteit, nasionale regerings besigheidsonderneming of provinsiale regerings besigheid is wat gelys is in Bylae 2 of Deel B of D van Bylae 3 by die Wet op Openbare Finansiële Bestuur, 1999 (Wet No. 1 van 1999), onderskeidelik; of

(iii) wat 'n 'Publieke Private Vennootskap' is soos omskryf in Regulasie 16 van die Tesourie Regulasies uitgereik in terme van artikel 76 van die Wet op Openbare Finansiële Bestuur, 1999 (Wet No. 1 van 1999): of

(iv) wat 'n welsynsorganisasie is;";

(d) deur die skrapping van die omskrywing van "doeane beveiligdegebied";

(e) deur item *(i)* van paragraaf *(b)* van die omskrywing van "onderneming" deur die volgende item te vervang:

"(i) die doen van lewerings deur 'n openbare bestuur of 'n nasionale openbare entiteit of provinsiale openbare instelling gelys in Deel A of C van Bylae 3 by die Wet op Openbare Finansiële Bestuur, 1999 (Wet No.1 van 1999), onderskeidelik, van goed of dienste wat die Minister, met inagneming van die omstandighede van die geval, oortuig is van dieselfde aard of soortgelyk is aan belasbare lewerings van goed of dienste wat in die loop of ter bevordering van 'n onderneming gedoen word of gedoen mag word deur 'n ander

enterprise, if the Commissioner, in pursuance of a decision of the Minister under this subparagraph, has notified such public authority or such public entity that its supplies of such goods or services are to be treated as supplies made in the course or furtherance of an enterprise;";

(f) by the substitution in the definition of "enterprise" for item *(aa)* of subparagraph (iii) of the proviso:

"*(aa)* the rendering of services by an employee to his employer in the course of his employment or the rendering of services by the holder of any office in performing the duties of his office, shall not be deemed to be the carrying on of an enterprise to the extent that any amount constituting remuneration as contemplated in the definition of "remuneration" in paragraph 1 of the Fourth Schedule to the Income Tax Act **[(disregarding paragraphs (i) and (vii) of that definition)]** is paid or is payable to such employee or office holder, as the case may be;";

(g) by the insertion in the definition of "enterprise" of the following paragraph to the proviso:

"(viii) the making of supplies by a constitutional institution listed in Schedule 1 of the Public Finance Management Act, 1999 (Act No. 1 of 1999), shall be deemed not to be the carrying on of an enterprise;";

(h) by the insertion after the definition of "goods" of the following definition:

" 'grant' means the amount of any payment, including any appropriation, grant-in-aid, subsidy and contribution granted or paid to a vendor by a public authority or local authority, but does not include a payment made for any goods or services supplied, to be supplied or deemed to be supplied to such public authority or local authority or a payment contemplated in section 8(23);";

(i) by the substitution for the definition of "Industrial Development Zone" of the following definition:

" 'Industrial Development Zone (IDZ)' has the meaning assigned thereto in **[the regulations made by the Minister of Trade and Industry under section 10(1) of the Manufacturing Development Act, 1993 (Act No. 187 of 1993)]** section 21A of the Customs and Excise Act;";

(j) by the insertion after the definition of 'Industrial Development Zone' of the following definitions:

" 'Industrial Development Zone (IDZ) operator' has the meaning assigned thereto in terms of section 21A of the Customs and Excise Act;";

(k) by the insertion after the definition of "money" of the following definition:

" 'month' means any of the twelve portions into which any calendar year is divided;";

(l) by the deletion in the definition of "second-hand goods" of the word "and" at the end of paragraph (i) and the addition of the word "and" at the end of paragraph (ii);

(m) by the addition to the definition of "second-hand goods" of the following paragraph:

"(iii) any prospecting right, mining right, exploration right or production right as defined in section 1 of the Mineral and Petroleum Resources Development Act, 2002 (Act No. 28 of 2002), issued or renewed in terms of that Act or received upon conversion pursuant to Schedule II;"; and

(n) by the insertion after the definition of "second-hand goods" of the following definition:

" 'service enterprise' has the meaning assigned thereto in terms of section 21A of the Customs and Excise Act;"; and

(o) by the deletion of the definition of "transfer payment".

(2) *(a)* Subsection (1)*(b), (c), (e), (g), (h), (i), (j)* and *(o)* shall come into operation on a date fixed by the President by proclamation in the *Gazette*.

persoon as daardie openbare bestuur of sodanige openbare entiteit, indien die Kommissaris, in opvolging van 'n beslissing van die Minister ingevolge hierdie subparagraaf, daardie openbare bestuur of sodanige openbare entiteit in kennis gestel het dat sy lewerings van bedoelde goed of dienste behandel moet word as lewerings gedoen in die loop of ter bevordering van 'n onderneming;";

(f) deur paragraaf *(aa)* van die voorbehoudsbepaling (iii) van die omskrywing van "onderneming" te vervang met die volgende paragraaf:

"*(aa)* die lewering van dienste deur 'n werknemer aan sy werkgewer in die loop van sy diens of die lewering van dienste deur die bekleër van 'n amp by die uitvoering van die pligte van sy amp, nie geag word die bedryf van 'n onderneming te wees nie vir sover 'n bedrag wat besoldiging uitmaak soos beoog in die omskrywing van "besoldiging" in paragraaf 1 van die Vierde Bylae by die Inkomstebelasting Wet **[(sonder inagneming van paragrawe (i) en (vii) van daardie omskrywing)]** aan bedoelde werknemer of ampsbekleër, na gelang van die geval, betaal of betaalbaar word;";

(g) deur die volgende paragraaf tot die voorbehoudsbepalings van die omskrywing van "onderneming" te voeg:

"(viii) die maak van belasbare lewerings deur 'n konstitusionele instelling gelys in Bylae 1 van die Wet op Openbare Finansiële Bestuur, 1999 (Wet No. 1 van 1999), sal geag word nie die bedryf van 'n onderneming te wees nie;";

(h) deur die volgende omskrywing na die omskrywing van "skip op vreemde vaart" in te voeg:

" 'subsidie' die bedrag van enige betaling, insluitend enige toe-eiening, hulptoelae, subsidie, bydrae en finansiële bystand toegestaan of betaal aan 'n ondernemer deur 'n openbare bestuur of 'n plaaslike bestuur, maar sluit nie 'n betaling in wat gemaak is vir dielewering van goed of dienste, wat gelewer moet word of geag gelewer te word aan sodanige openbare bestuur of plaaslike bestuur of 'n bataling soos beoog in artikel 8(23);";

(i) deur die omskrywing van "nywerheidsontwikkelingsone" met die volgende omskrywing te vervang"

"'n Nywerheidsontwikkelingsone (NOS) soos bepaal in **[die regulasies uitgevaardig deur die Minister van Handel en Nywerheid ingevolge artikel 10(1) van die Wet op Vervaardigingsontwikkeling, 1993 (Wet No. 187 van 1993)]** artikel 21A van die Doeane- en Aksynswet;";

(j) deur die volgende omskrywing na die omskrywing van "nywerheids-ontwikkelingsone" te voeg:

" 'nywerheidsontwikkelingsone operateur' soos bepaal ingevolge artikel 21A van die Doeane- en Aksynswet;";

(k) deur die volgende omskrywing na die omskrywing van "lugvaartuig op vreemde vaart" in te voeg:

" 'maand' beteken enigeen van die twaalf dele waarin 'n kalenderjaar ingedeel is;";

(l) deur die woord "en" aan die einde van paragraaf (i) van die omskrywing van "tweedehandse goed" te skrap en die woord "en" aan die einde van paragraaf (ii) te voeg;

(m) deur die volgende paragraaf in die omskrywing van "tweedehandse goed" te voeg:

"(iii) enige 'prospecting right', mining right', 'exploration right' of 'production right' soos omskryf in Bylae 1 by die 'Mineral and Petroleum Resources Development Act, 2002' (Wet No. 28 van 2002), uitgereik of hernu ooreenkomstig dieselfde Bylae of ontvang op oorskakeling ooreenkomstig Bylae II;"; en

(n) deur die volgende omskrywing voor die omskrywing van "dienste" in te voeg:

" 'diensonderneming, soos bepaal in artikel 21A van die Doeane- en Aksynswet;"; en

(o) deur die skrapping van die omskrywing van "oordragbetaling".

(2) *(a)* Subartikel (1)*(b)*, *(c)*, *(e)*, *(g)*, *(h)*, *(i)*, *(j)* en *(o)* tree in werking op die datum deur die President by proklamasie in die *Staatskoerant* bepaal.

(b) Subsection (1)*(m)* shall come into operation on the date that the Mineral and Petroleum Resources Development Act, 2002 (Act No. 28 of 2002), comes into operation.

Amendment of section 7 of Act 89 of 1991

165. (1) Section 7 of the Value-Added Tax Act, 1991, is hereby amended by the substitution in subsection (1) of paragraph *(b)* of the following paragraph:

"*(b)* on the importation of any goods into the Republic by any person on or after the commencement date or on the importation of goods from a customs controlled area into the Republic; and".

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

Amendment of section 8 of Act 89 of 1991, as amended by section 24 of Act 136 of 1991, paragraph 4 of Government Notice 2695 of 8 November 1991, section 15 of Act 136 of 1992, section 24 of Act 97 of 1993, section 11 of Act 20 of 1994, section 20 of Act 46 of 1996, section 25 of Act 27 of 1997, section 83 of Act 53 of 1999, section 67 of Act 19 of 2001 and section 151 of Act 60 of 2001

166. (1) Section 8 of the Value-Added Tax Act, 1991, is hereby amended—

(a) by the addition in subsection (2) of the following paragraph to the proviso:

"(iv) this subsection shall not apply to a vendor which is a Constitutional Institution or a Public Entity listed in Schedule 1 or 3 of the Public Finance Management Act, 1999 (Act No. 1 of 1999), respectively, where that vendor ceases to be a vendor as a result of the substitution of paragraph *(b)*(i) and the insertion of paragraph (viii) to the proviso to the definition of 'enterprise' in the Revenue Laws Amendment Act, 2003.";

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

"(5) For the purposes of this Act a **[vendor]** designated entity shall be deemed to supply services to any public authority or local authority to the extent of any payment made by the authority concerned to or on behalf of **[the vendor]** that designated entity in respect of the taxable supply of goods or services by **[the vendor to any person.]** that designated entity;"; and

(c) by the substitution for subsection (9) of the following subsection:

"(9) For the purposes of this Act, where any vendor in carrying on an enterprise in the Republic **[transfers]** consigns or delivers goods to an address outside the Republic or provides any service to or for the purposes of his branch or main business outside the Republic in respect of which the provisions of paragraph (ii) of the proviso to the definition of 'enterprise' in section 1 are applicable, the vendor shall be deemed to supply such goods or service in the course or furtherance of his enterprise.";

(d) by the addition of the following subsections:

"(22) For the purposes of this Act, where two or more public higher education institutions or one or more subdivisions of such institutions are merged with or incorporated into a single public higher education institution in terms of a direction by the Minister of Education in terms of section 23 or 24 of the Higher Education Act, 1997 (Act No. 101 of 1997), such institutions or such subdivisions thereof prior to the merger or incorporation and the newly merged or incorporated single institutions shall be deemed to be one and the same institution.

(23) For the purposes of this Act a vendor shall be deemed to supply services to any public authority or local authority to the extent of any payment in terms of the Housing Subsidy Scheme referred to in section 3(5)*(a)* of the Housing Act, 1997 (Act No. 107 of 1997), made to or on

(b) Subartikel (1)*(m)* tree in werking op die datum wat die "Mineral and Petroleum Resources Development Act, 2002 (Act No. 28 van 2002)," in werking tree.

Wysiging van artikel 7 van Wet 89 van 1991

165. (1) Artikel 7 van die Wet op Belasting op Toegevoegde Waarde, 1991, word hierby gewysig deur paragraaf *(b)* van subartikel (1) met die volgende paragraaf te vervang:

"*(b)* op die invoer van goed in die Republiek deur enige persoon op of na die aanvangsdatum of op die invoer van goed vanaf 'n doeanebeheerdegebied in die Republiek; en".

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

Wysiging van artikel 8 van Wet 89 van 1991, soos gewysig deur artikel 24 van Wet 136 van 1991, paragraaf 4 van Goewermentskennisgewing 2695 van 8 November 1991, artikel 15 van Wet 136 van 1992, artikel 24 van Wet 97 van 1993, artikel 11 van Wet 20 van 1994, artikel 20 van Wet 46 van 1996, artikel 25 van Wet 27 van 1997, artikel 83 van Wet 53 van 1999, artikel 67 van Wet 19 van 2001 en artikel 151 van Wet 60 van 2001

166. (1) Artikel 8 van die Wet op Belasting op Toegevoegde Waarde, 1991, word hierby gewysig—

(a) deur die volgende paragraaf tot die voorbehoudsbepaling van subartikel (2) te voeg:

"(iv) hierdie subartikel sal nie van toepassing wees op 'n ondernemer wat 'n Konstitusionele Instelling of 'n Openbare Entiteit soos gelys en Bylae 1 of 3 van die Wet op Openbare Finansiële Bestuur, 1999 (Wet No. 1 van 1999), onderskeidelik nie, waar daardie ondernemer ophou om 'n ondernemer te wees as gevolg van die vervanging van paragraaf *(b)*(i) en die toevoeging tot paragraaf (viii) van die voorbehoudsbepaling van die omskrywing van "onderneming" in die Wysigingswet op Inkomstewette, 2003.";

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

"(5) By die toepassing van die Wet word 'n **[ondernemer]** aangewese entiteit geag dienste aan 'n openbare bestuur of plaaslike bestuur te lewer vir sover 'n betaling deur die betrokke bestuur aan of ten behoewe van die **[ondernemer]** aangewese entiteit gemaak word ten opsigte van daardie belasbare lewering van goed of dienste deur die **[ondernemer aan enige persoon]** betrokke aangewese entiteit;"; en

(c) deur subartikel (9) met die volgende subartikel te vervang:

"(9) By die toepassing van hierdie Wet, waar 'n ondernemer by die bedryf van 'n onderneming in die Republiek goed **[oordra]** versend of aflewer aan 'n adres buite die Republiek of dienste voorsien aan of vir doeleindes van sy tak of hoofbesigheid buite die Republiek ten opsigte waarvan die bepalings van paragraaf *(ii)* van die voorbehousbepaling by die omskrywing van "onderneming" in artikel 1 van toepassing is, word die ondernemer geag daardie goed of dienste in die loop of ter bevordering van sy onderneming te lewer;";

(d) deur die volgende subartikels in te voeg:

"(22) By die toepassing van hierdie Wet, waar twee of meer openbare hoëronderwysinrigting of een of meer subdivisies van sodanige inrigtings saamsmelt of geëinkorporeer word in 'n enkele openbare hoëronderwysinrigting ingevolge 'n aanwysing deur die Minister van Onderwys in gevolge die bepalings van artikel 23 of 24 van die Wet op Hoër Onderwys, 1997 (Wet No. 101 van 1997), sal sodanige inrigting of subdivisie daarvan voor samestelling of inkorporasie en die nuwe saamgestelde of geinkorporeerde inrigting geag word een en dieselfde inrigting te wees.

(23) By die toepassing van hierdie Wet, sal 'n ondernemer geag word dienste te lewer aan 'n openbare bestuur of plaaslike bestuur tot die mate wat enige betaling ingevolge artikel 3(5)*(a)* van die Behuisingswet, 1997 (Wet No. 107 van 1997), gemaak aan of ten behoewe van daardie

behalf of that vendor in respect of the taxable supply of goods and services by that vendor.".

(2) Subsection (1)*(a)*, *(b)* and *(d)* shall to the extent it inserts subsection (23) come into operation on the date determined by the President by proclamation in the *Gazette*.

Amendment of section 9 of Act 89 of 1991, as amended by section 25 of Act 136 of 1991

167. Section 9 of the Value-Added Tax Act, 1991, is hereby amended by the substitution in subsection (2) for paragraph *(e)* of the following paragraph:

"*(e)* where the provisions of section 8(9) are applicable in respect of **[transfer of]** the consignment or delivery of goods at an address outside the Republic or the provision of any service by a vendor to his branch or main branch at the time the goods are **[delivered]** consigned or delivered to such branch or the service is performed, as the case may be.".

Amendment of section 10 of Act 89 of 1991, as amended by section 26 of Act 136 of 1991, paragraph 5 of Government Notice 2695 of 8 November 1991, section 16 of Act 13 of 1992, section 26 of Act 97 of 1993, section 12 of Act 20 of 1994, section 21 of Act 37 of 1996, section 22 of Act 46 of 1996, section 27 of act 27 of 1997, section 84 of Act 53 of 1999, section 68 of Act 19 of 2001 and section 152 of Act 60 of 2001

168. Section 10 of the Value Added Tax Act, 1991, is hereby amended—

(a) by the substitution in subsection (5) for subparagraph (iii) of paragraph *(a)* of the following paragraph:

"Any costs (including tax) incurred by the vendor in respect of the transportation or delivery of such goods or the provision of such services in **[connection with the transfer]** respect of such goods that are consigned or delivered or the provision of such services as contemplated in section 8(9); and"; and

(b) by the substitution in subsection (9) for item *(aa)* of subparagraph (i) of symbol "A" of the formula of the following item:

"*(aa)* the adjusted cost (including any tax forming part of such adjusted cost) to the vendor of the acquisition, manufacture, assembly, construction or production of those goods or services: Provided that where the goods or services were acquired under a supply in respect of which the consideration in money was in terms of section 10(4) deemed to be the open market value of the supply or would in terms of that section have been deemed to be the open market value of the supply were it not for the fact that the recipient would have been entitled under section 16(3) to make a deduction of the full amount of tax in respect of that supply, the adjusted cost of those goods or services shall be deemed to include such open market value to the extent that it exceeds the consideration in money for that supply; or".

Amendment of section 11 of Act 89 of 1991, as amended by section 27 of Act 136 of 1991, paragraph 6 of Government Notice 2695 of 8 November 1991, section 17 of Act 136 of 1992, section 27 of Act 97 of 1993, section 13 of Act 20 of 1994, section 28 of Act 27 of 1997, section 89 of Act 30 of 1998, section 85 of Act 53 of 1999, section 77 of Act 30 of 2000, section 43 of Act 5 of 2001 and section 153 of Act 60 of 2001

169. (1) Section 11 of the Value-Added Tax Act, 1991, is hereby amended—

(a) by the substitution in subsection (1) for paragraph *(m)* of the following paragraph:

"*(m)* a registered vendor supplies goods in terms of a sale or instalment credit agreement to a registered vendor in **[the]** customs **[secured]** controlled area **[of an Industrial Development Zone]** and consigns or delivers the goods to that vendor in that area:";

ondernemer ten opsigte van belasbare lewerings van goed of dienste deur daardie ondernemer gemaak."

(2) Subartikel (1)*(a)*, *(b)* en *(d)* tree in werking op 'n datum deur die President by proklamasie in die *Staatskoerant* bepaal.

Wysiging van artikel 9 van Wet 89 van 1991, soos gewysig deur artikel 25 van Wet 136 van 1991

167. Artikel 9 van die Wet op Belasting op Toegevoegde Waarde, 1991, word hierby gewysig deur paragraaf *(e)* van subartikel (2) met die volgende paragraaf te vervang:

"*(e)* waar die bepalings van artikel 8(9) van toepassing is ten opsigte van **['n oordrag of]** die versending of aflewering van goed aan 'n adres buite die Republiek of die voorsiening van 'n diens deur 'n ondernemer aan sy tak of hoofbesigheid op die tydstip waarop die goed by daardie tak toevertrou of afgelewer word of die diens verrig word, na gelang van die geval.".

Wysiging van artikel 10 van Wet 89 van 1991, soos gewysig deur artikel 26 van Wet 136 van 1991, paragraaf 5 van Goewermentskennisgewing 2695 van 8 November 1991, artikel 16 van Wet 13 van 1992, artikel 26 van Wet 97 van 1993, artikel 12 van Wet 20 van 1994, artikel 21 van Wet 37 van 1996, artikel 22 van Wet 46 van 1996, artikel 27 van Wet 27 van 1997, artikel 84 van Wet 53 van 1999, artikel 68 van Wet 19 van 2001 en artikel 152 van Wet 60 van 2001

168. Artikel 10 van die Wet op Belasting op Toegevoegde Waarde, 1991, word hierby gewysig—

(a) deur subparagraaf (iii) paragraaf *(a)* van subartikel (5) met die volgende paragraaf te vervang: "die koste (met inbegrip van belasting) wat deur die ondernemer aangegaan is ten opsigte van die vervoer of aflewering van bedoelde goed of die voorsiening van bedoelde dienste in verband met **[die oordrag van]** bedoelde goed wat versend of afgelewer word of die voorsiening van bedoelde dienste soos in artikel 8(9) beoog; en"; en

(b) deur item *(aa)* van subparagraaf (i) van simbool "A" van subartikel (9) met die volgende item te vervang:

"*(aa)* die aangepaste koste (met inbegrip van enige belasting wat deel uitmaak van daardie aangepaste koste) vir die ondernemer van die verkryging, vervaardiging, montering, oprigting of produksie van daardie goed of dienste: Met dien verstande dat waar die goed of dienste verkry is kragtens 'n lewering ten opsigte waarvan die vergoeding in geld ingevolge artikel 10(4) geag was die ope markwaarde van die lewering te wees of ingevolge daardie artikel geag sou gewees het die ope markwaarde van die lewering te wees as dit nie vir die feit was dat die ontvanger ingevolge artikel 16(3) geregtig sou gewees het op 'n aftrekking van die volle bedrag belasting ten opsigte van daardie lewering te doen nie, die aangepaste koste van daardie goed of dienste geag word daardie ope markwaarde in te sluit vir sover dit die vergoeding in geld vir daardie lewering te bowe gaan; of".

Wysiging van artikel 11 van Wet 89 van 1991, soos gewysig deur artikel 27 van Wet 136 van 1991, paragraaf 6 van Goewermentkennisgewing 2695 van 8 November 1991, artikel 17 van Wet 136 van 1992, artikel 27 van Wet 97 van 1993, artikel 13 van Wet 20 van 1994, artikel 28 van Wet 27 van 1997, artikel 89 van Wet 30 van 1998, artikel 85 van Wet 53 van 1999, artikel 77 van Wet 30 van 2000, artikel 43 van Wet 5 van 2001 en artikel 153 van Wet 60 van 2001

169.(1) Artikel 11 van die Wet op Belasting op Toegevoegde Waarde, 1991, word hierby gewysig—

(a) deur paragraaf *(m)* van subartikel (1) met die volgende paragraaf te vervang:

"*(m)* 'n geregistreerde ondernemer goed ingevolge 'n verkoop of paaiementkredietooreenkoms aan 'n geregistreerde ondernemer in **[die doeane beveiligdegebied]** 'n doeanebeheerdegebied **[van 'n nywerheidsontwikkelingsone]** lewer en die goed aan die ondernemer in daardie gebied versend of aflewer:";

(b) by the addition in subsection (1) of the following paragraph:

"*(n)* the goods consist of—

(i) any old order right or OP26 right as defined in Schedule II of the Mineral and Petroleum Resources Development Act, 2002 (Act No. 28 of 2002), wholly or partially continuing in force or wholly or partially converted into a new right pursuant to the same Schedule; or

(ii) any prospecting right, mining right, exploration right or production right mining permit or retention permit as defined in section 1 of the Mineral and Petroleum Resources Development Act, 2002 (Act No. 28 of 2002), renewed in terms of that Act:";

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

"*(i)* the goods are supplied as contemplated in section 8(9);";

(d) by the addition to subsection (1) of the following paragraph:

"*(o)* the goods are supplied by a vendor to the extent that the consideration for such goods is from donor funds granted under any international agreement to which the Government of the Republic is a party;";

(e) by the substitution in subsection (2) for paragraph *(k)* of the following paragraph:

"*(k)* the services are physically rendered elsewhere than in the Republic **[not being telecommunication services supplied to any person who utilizes such services in the Republic]** or to a registered vendor in a customs controlled area; or";

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

"*(n)* the services comprise the carrying on by a welfare organization of the activities referred to in the definition of 'welfare organization' in section 1 and to the extent that any payment in respect of those services is made in terms of section 8(5) those services shall be deemed to be supplied by that organisation to a public authority or local authority; or";

(g) by the substitution in subsection (2) for paragraph *(o)* of the following paragraph:

"*(o)* the services are supplied as contemplated in section 8(9) by a vendor, not being services which are supplied directly—

(i) in connection with land or any improvements thereto situated inside the Republic; or

(ii) in connection with movable property (excluding debt securities, equity securities or participatory securities) situated inside the Republic at the time the services are rendered, except movable property which—

(aa) is consigned or delivered to the said person at an address in an export country subsequent to the supply of such services; or

(bb) forms part of a supply by the said person to a registered vendor and such services are supplied to the said person for purposes of such supply to the registered vendor; or

(iii) to the said person or any other person, other than in the circumstances contemplated in subparagraph (ii)*(bb)*, if the said person or such other person is in the Republic at the time that the services are rendered.";

(h) by the deletion of paragraph *(p)* of subsection (2);

(i) by the substitution for paragraph *(q)* of subsection (2) of the following paragraph:

"*(q)* the services are **[in terms of section 8(5) deemed to be]** supplied by a vendor **[to a public authority or local authority]** to the extent that the consideration for such services **[payment contemplated in that section]** is **[made]** from donor funds granted under any international agreement to which the Government of the Republic is a party; or";

(b) deur die volgende paragraaf in subartikel (1) in te voeg:

"*(n)* die goed bestaan uit—

(i) enige 'old order right' of 'OP26 right' soos omskryf in Bylae II by die 'Mineral and Petroleum Resources Development Act, 2002, (Wet No. 28 van 2002), wat nog van krag is of omgeskakel is in 'n nuwe reg ingevolge dieselfde Bylae; of

(ii) enige 'prospecting right', 'mining right', 'exploration right' of 'production right' soos omskryf in Bylae 1 by die 'Mineral and Petroleum Resources Development Act, 2002, (Wet No. 28 van 2002)", hernu ingevolge daardie Wet:";

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

"*(i)* die goed is gelewer soos bepaal in artikel 8(9); of";

(d) deur die toevoeging van die volgende paragraaf in subartikel (1):

"*(o)* die goed gelewer word deur 'n ondernemer tot die mate wat die vergoeding vir sodanige goed uit donateursfondse kragtens 'n internasionale ooreenkoms waartoe die Regering van die Republiek 'n party is;";

(e) deur paragraaf *(k)* van subartikel (2) met die volgende paragraaf te vervang:

"*(k)* die dienste fisies elders as in die Republiek gelewer word **[behalwe telekommunikasiedienste gelewer aan 'n persoon wat daardie dienste in die Republiek gebruik]** of aan 'n geregistreerde ondernemer in 'n doeanebeheerdegebied; of";

(f) deur paragraaf *(n)* van subartikel (2) met die volgende paragraaf te vervang:

"*(n)* die dienste bestaan uit die voortsetting deur 'n welsynsorganisasie van die bedrywighede bedoel in die omskrywing van 'welsynsorganisasie' in artikel 1 en tot die mate wat enige betaling ten opsigte van sodanige dienste **[word deur]** ingevolge artikel 8(5) gemaak word, sal geag word deur daardie organisasie aan 'n openbare bestuur of 'n plaaslike bestuur gelewer te word; of";

(g) deur paragraaf *(o)* van subartikel (2) met die volgende paragraaf te vervang:

"*(o)* die dienste gelewer word, soos beoog in artikel 8(9), deur 'n ondernemer, behalwe dienste gelewer regstreeks—

(i) in verband met grond of verbeterings daarop geleë in die Republiek; of

(ii) in verband met roerende eiendom (uitgesonderd skuldobligasies, ekwiteitseffekte of deelnemersekuriteite) wat in die Republiek geleë is op die tydstip waarop die dienste gelewer word, behalwe roerende eiendom wat-

(aa) versend of afgelewer word aan daardie persoon by 'n adres in 'n uitvoerland na die lewering van sodanige dienste; of

(bb) vorm deel van 'n lewering deur daardie persoon aan 'n geregistreerde ondernemer en sodanige dienste word gelewer aan daardie persoon vir doeleindes van daardie lewering aan die geregistreerde ondernemer; of

(iii) aan daardie persoon of enige ander persoon, behalwe in omstandighede beoog in subparagraaf (ii)*(bb)*, indien daardie persoon of bedoelde ander persoon in die Republiek is op die tydstip waarop die dienste verrig word.";

(h) deur die skrapping van paragraaf *(p)* van subartikel (2);

(i) deur paragraaf *(q)* van subartikel (2) met die volgende paragraaf te vervang:

"*(q)* die dienste **[ingevolge artikel 8(5) geag word]** deur 'n ondernemer **[aan 'n openbare bestuur of plaaslike bestuur]** gelewer te word vir sover die vergoeding vir sodanige dienste **[betaling beoog in daardie artikel]** uit donateursfondse **[gedoen word]** wat ingevolge enige internasionale ooreenkoms waartoe die Regering van die Republiek 'n party is, toegestaan is; of";

(j) by the addition in subsection (2) of the word "or" at the end of paragraph *(r)*;

(k) by the addition in subsection (2) of the following paragraph:

"*(s)* the services are deemed to be supplied to a public authority or local authority in terms of section 8(23);".

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

"(3) Where a rate of zero per cent has been applied by any vendor under the provisions of this section or section 13(1)(ii), the vendor shall obtain and retain such documentary proof substantiating the vendor's entitlement to apply the said rate under **[the]** those provisions as is acceptable to the Commissioner.".

(2) *(a)* Subsection (1)*(b)* shall come into operation on the date that the Mineral and Petroleum Resources Development Act, 2002 (Act No. 28 of 2002), comes into operation.

(b) Subsection (1)*(a), (e), (f), (h), (j)* and *(k)* shall come into operation on a date to be determined by the President by proclamation in the *Gazette*.

Amendment of section 13 of Act 89 of 1991, as amended by section 29 of Act 136 of 1991, section 19 of Act 136 of 1992, section 29 of Act 97 of 1993, section 15 of Act 20 of 1994, section 30 of Act 27 of 1997, section 86 of Act 53 of 1999, section 70 of Act 19 of 2001 and section 155 of Act 60 of 2001

170. (1) Section 13 of the Value-Added Tax Act, 1991, is hereby amended—

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

"(1) For the purposes of this Act goods shall be deemed to be imported into the Republic on the date on which the goods are in terms of section 10 or 21A of the Customs and Excise Act deemed to be imported:"

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

"(ii) where any goods have been imported and entered in a licensed Customs and Excise warehouse or customs controlled area but have not been entered for home consumption, any supply of such goods before they are entered for home consumption shall be **[disregarded]** zero-rated for the purposes of this Act;";

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

"*(b)* where such goods have their origin in Botswana, Lesotho, Swaziland or Namibia or a customs controlled area, and are imported from such a country or such customs controlled area, the amount of the value as contemplated in paragraph *(a)*, except that such value shall not be increased by the factor of 10 per cent:".

(2) Subsection (1) shall to the extent that it inserts a reference to—

(a) a customs controlled area come into operation on a date determined by the President by proclamation in the *Gazette*;

(b) zero-rating of goods be deemed to have come into operation on 1 January 2002 and apply in respect of any supply made on or after that date.

Amendment of section 14 of Act 89 of 1991

171. (1) Section 14 of the Value-Added Tax Act, 1991, is hereby amended by the addition to subsection (5) of the following paragraph:

"*(c)* a supply of an educational service by an educational institution established in an export country which is regulated by an educational authority in that export country.".

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

(j) deur die toevoeging van die woord "of" aan die einde van paragraaf *(r)* van subartikel (2);

(k) deur die toevoeging van die volgende paragraaf in subartikel (2):

"*(s)* die dienste geag word gelewer te wees aan 'n openbare bestuur of plaaslike bestuur ingevolge artikel 8(23);";

(l) deur subartikel (3) met die volgende subartikel te vervang:

"(3) Waar 'n koers van nul persent deur 'n ondernemer ingevolge 'n bepaling van hierdie artikel of artikel 13(1)(ii) toegepas is, moet die ondernemer die dokumentêre bewys verkry en behou ter ondersteuning van die ondernemer se geregtigheid om bedoelde koers toe te pas, kragtens die vereistes wat vir die Kommissaris aanvaarbaar is.".

(2) *(a)* Subartikel (1)*(b)* sal inwerking tree op die datum waarop die "Mineral and Petroleum Resources Development Act, 2002 (Act No. 28 of 2002)", in werking tree.

(b) Subartikel (1)*(a)*, *(e)*, *(f)*, *(h)*, en *(k)* sal inwerking tree op 'n datum wat deur die President by proklamasie in die *Staatskoerant* bepaal sal word.

Wysiging van artikel 13 van Wet 89 van 1991, soos gewysig deur artikel 29 van Wet 136 van 1991, artikel 19 van Wet 136 van 1992, artikel 29 van Wet 97 van 1993, artikel 15 van Wet 20 van 1994, artikel 30 van Wet 27 van 1997, artikel 86 van Wet 53 van 1999, artikel 70 van Wet 19 van 2001 en artikel 155 van Wet 60 van 2001

170.(1) Artikel 13 van die Wet op Belasting op Toegevoegde Waarde, 1991, word hierby gewysig—

(a) deur die woorde wat die voorbehousdbepaling in subartikel (1) voorafgaan met die volgende woorde te vervang:

"(1) By die toepassing van hierdie Wet word goed geag in die Republiek ingevoer te wees op die datum waarop die goed ingevolge artikel 10 of 21A van die Doeane- en Aksynswet geag ingevoer word ingevoer te word:";

(b) deur voorbehoudsbepaling (ii) van subartikel (1) met die volgende paragraaf te vervang:

"(ii) waar enige goed ingevoer is en geklaar is in 'n gelisensieerde Doeane- en Aksynspakhuis of doeanebeheerdegebied maar nie vir binnelandse verbruik geklaar is nie, 'n lewering van bedoelde goed voordat dit vir binnelandse verbruik geklaar word, sal by die toepassing van die Wet **[verontagsaam word]** aan die nulkoers van belasting onderhewig sal wees.

(c) deur paragraaf *(b)* van subartikel (2) met die volgende paragraaf te vervang:

"*(b)* waar daardie goed hul oorsprong in Botswana, Lesotho, Swaziland of Namibië of 'n doeanebeheerdegebied gehad het en vanaf daardie land of daardie doeanebeheerdegebied ingevoer is, die bedrag te wees van die waarde soos beoog in paragraaf *(a)*, behalwe dat daardie waarde nie deur die faktor van 10 persent verhoog word nie:";

(2) subartikel (1) sal tot die mate wat dit verwys na—

(a) 'n doeanebeheerdegebied tree in werking op 'n datum deur die President by proklamasie in die *Staatskoerant* bepaal;

(b) die nulkoers van goed word geag in werking te getree het op 1 Januarie 2002 en is van toepassing op enige lewering op of na daardie datum gemaak.

Wysiging van artikel 14 van Wet 89 van 1991

171. (1) Artikel 14 van die Wet op Belasting op Toegevoegde Waarde, 1991, word hierby gewysig deur die toevoeging van die volgende paragraaf tot subartikel (5):

"*(c)* 'n lewering van 'n opvoedkundige diens deur 'n opvoedkundige inrigting ingestel in 'n uitvoerland wat gereguleer word deur 'n opvoedkundige gesag in daardie uitvoerland.".

(2) Subartikel (1) word geag in werking te getree het op 1 Desember 1998.

Amendment of section 16 of Act 89 of 1991, as amended by section 30 of Act 136 of 1991, section 21 of Act 136 of 1992, section 30 of Act 97 of 1993, section 16 of Act 20 of 1994, section 23 of Act 37 of 1996, section 32 of Act 27 of 1997, section 91 of Act 30 of 1998, section 87 of Act 53 of 1999, section 71 of Act 19 of 2001 and section 156 of Act 60 of 2001

172. Section 16 of the Value-Added Tax Act, 1991, is hereby amended—

(a) by the deletion in subsection (2) of the provisos to paragraphs *(a)* and *(e)*; and

(b) by the substitution in subsection (3) of item *(aa)* of subparagraph (i) of symbol "B" in paragraph *(h)* of the following item:

"*(aa)* the adjusted cost (including any tax forming part of such adjusted cost) to the vendor of the acquisition, manufacture, assembly, construction or production of those goods or services: Provided that where the goods or services were acquired under a supply in respect of which the consideration in money was in terms of section 10(4) deemed to be the open market value of the supply, the adjusted cost of those goods or services shall be deemed to include such open market value to the extent that it exceeds the consideration in money for that supply; or".

Amendment of section 17 of Act 89 of 1991, as amended by section 31 of Act 136 of 1991, paragraph 9 of Government Notice 2695 of 8 November 1991, section 22 of Act 136 of 1992, section 31 of Act 97 of 1993, section 17 of Act 20 of 1994, section 33 of Act 27 of 1997, section 92 of Act 30 of 1998 and section 88 of Act 53 of 1999

173. (1) Section 17 of the Value-Added Tax Act is hereby amended—

(a) by the substitution in subsection (2) for subparagraph (iii) of paragraph *(a)* of the following paragraph:

"(iii) such goods or services consist of a meal or refreshment supplied by the vendor as operator of any conveyance to a passenger and a crew member, in such conveyance during a journey, where such meal or refreshment is supplied as part of or in conjunction with the transport service supplied by the vendor, where the supply of such transport service is a taxable supply;";

(b) by the addition in subsection (2) to paragraph *(a)* of the following paragraph:

"(vii) such goods or services (where no consideration relating specifically to the supply of entertainment is payable shall be deemed to constitute a single supply for purposes of this subsection) are acquired by a vendor for an employee or office holder of such vendor, that are incidental to the admission into a medical care facility."; and

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

"*(e)* in respect of goods and services that were acquired or imported for the purpose of consumption, use or supply in the course of making taxable supplies to the extent that those goods or services were acquired as a result of or in anticipation of the receipt of a grant:".

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

Wysiging van artikel 16 van Wet 89 van 1991, soos gewysig deur artikel 30 van Wet 136 van 1991, artikel 21 van Wet 136 van 1992, artikel 30 van Wet 97 van 1993, artikel 16 van Wet 20 van 1994, artikel 23 van Wet 37 van 1996, artikel 32 van Wet 27 van 1997, artikel 91 van Wet 30 van 1998, artikel 87 van Wet 53 van 1999, artikel 71 van Wet 19 van 2001 en artikel 156 van Wet 60 van 2001

172. Artikel 16 van die Wet op Belasting op Toegevoegde Waarde, 1991, word hierby gewysig deur—

(a) die skrapping van voorbehoudsbepalings *(a)* en *(e)* van subartikel (2); en

(b) deur item *(aa)* van subparagraaf (i) van simbool "B" van paragraaf *(h)* van subartikel (3) met die volgende item te vervang:

"*(aa)* die aangepaste koste (met inbegrip van enige belasting wat deel uitmaak van daardie aangepaste koste) vir die ondernemer van die verkryging, vervaardiging, montering, oprigting of produksie van daardie goed of dienste: Met dien verstande dat waar die goed of dienste verkry is kragtens 'n lewering ten opsigte waarvan die vergoeding in geld ingevolge artikel 10(4) geag was die ope markwaarde van die lewering te wees, die aangepaste koste van daardie goed of dienste geag word daardie ope markwaarde in te sluit vir sover dit die vergoeding in geld vir daardie lewering te bowe gaan; of".

Wysiging van artikel 17 van Wet 89 van 1991, soos gewysig deur artikel 31 van Wet 136 van 1991, paragraaf 9 van Goewermentskennisgewing 2695 van 8 November 1991, artikel 22 van Wet 136 van 1992, artikel 31 van Wet 97 van 1993, artikel 17 van Wet 20 van 1994, artikel 33 van Wet 27 van 1997, artikel 92 van Wet 30 van 1998 en artikel 88 van Wet 53 van 1999

173. (1) Artikel 17 van die Wet op Belasting op Toegevoegde Waarde, 1991, word hierby gewysig—

(a) deur subartikel (2) van subparagraaf (iii) van paragraaf *(a)* met die volgende paragraaf te vervang:

"(iii) genoemde goed of dienste bestaan uit 'n maaltyd of verversings wat gelewer word deur die ondernemer as bediener van 'n vervoermiddel aan 'n passasier en 'n bemanningslid, in daardie vervoermiddel tydens 'n reis, waar daardie maaltyd of verversing gelewer word as deel van of gekoppel aan die vervoerdiens gelewer deur die ondernemer waar die lewering van bedoelde vervoerdiens 'n belasbare lewering is;";

(b) deur die toevoeging van die volgende paragraaf in paragraaf *(a)* van subartikel (2):

"(vii) genoemde goed of dienste (waar geen vergoeding wat spesifiek verband hou met die lewering van onthaal betaalbaar is nie sal geag een lewering te wees vir doeleindes van hierdie subartikel) verkry is deur 'n ondernemer vir 'n werknemer of ampsbekleër van sodanige ondernemer, wat toevallig is tot die opname in 'n mediese sorgeenheid.";en

(c) deur die toevoeging tot subartikel (2) van die volgende paragraaf:

"*(e)* ten opsigte van goed of dienste wat verkry of ingevoer was vir doeleindes van verbruik, gebruik of lewering in die maak van belasbare lewerings tot die mate wat daardie goed of dienste aangeskaf was as gevolg van of in afwagting op die ontvangs van 'n subsidie:".

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

Amendment of section 18 of Act 89 of 1991, as amended by section 32 of Act 136 of 1991, section 23 of Act 136 of 1992, section 32 of Act 97 of 1993, section 18 of Act 20 of 1994, section 34 of Act 27 of 1997, section 93 of Act 30 of 1998 and section 89 of Act 53 of 1999

174. Section 18 of the Value-Added Tax Act is hereby amended—

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

"Provided that this subsection shall not apply to any capital goods or services which have an adjusted cost of less than R40 000 (excluding tax) or where such goods or services were deemed to be supplied to the vendor by subsection (4) if the amount which was represented by 'B' in the formula contemplated in that subsection was less than R40 000 when such goods or services were deemed to be supplied to such vendor.";

(b) by the substitution in subsection (4) for subparagraph (i) of symbol "B" of the following subparagraph:

"(i) the adjusted cost (including any tax forming part of such adjusted cost) to the vendor of the acquisition, manufacture, construction or production of those goods or services: Provided that where the goods or services were acquired under a supply in respect of which the consideration in money was in terms of section 10(4) deemed to be the open market value of the supply, the adjusted cost of those goods or services shall be deemed to include such open market value to the extent that it exceeds the consideration in money for that supply; or"; and

(c) by the substitution in subsection (5) for item *(aa)* subparagraph (i) of symbol "B" of the following item:

"*(aa)* the adjusted cost (including any tax forming part of such adjusted cost) to the vendor of the acquisition, manufacture, assembly, construction or production of those goods or services: Provided that where the goods or services were acquired under a supply in respect of which the consideration in money was in terms of section 10(4) deemed to be the open market value of the supply, the adjusted cost of those goods or services shall be deemed to include such open market value to the extent that it exceeds the consideration in money for that supply; or".

Amendment of section 20 of Act 89 of 1991, as amended by paragraph 11 of Government Notice 2695 of 8 November 1991, section 25 of Act 136 of 1992, section 33 of Act 97 of 1993, section 35 of Act 27 of 1997, section 94 of Act 30 of 1998, section 91 of Act 53 of 1999 and section 157 of Act 60 of 2001

175. (1) Section 20 of the Value Added Tax Act, 1991, is hereby amended by the substitution in subsection (4) for paragraph *(c)* of the following paragraph:

"*(c)* the **[legal or trading]** name, address and where the recipient is a registered vendor, the registration number of the recipient.".

(2) Subsection (1) shall come into operation on 1 March 2005 and shall apply in respect of any supply made on or after that date.

Amendment of section 21 of Act 89 of 1991, as amended by section 26 of Act 136 of 1992

176. (1) Section 21 of the Value Added Tax Act, 1991, is hereby amended—

(a) by the substitution in subsection (3) for subparagraph (iii) of paragraph *(a)* of the following subparagraph:

Wysiging van artikel 18 van Wet 89 van 1991, soos gewysig deur artikel 32 van Wet 136 van 1991, artikel 23 van Wet 136 van 1992, artikel 32 van Wet 97 van 1993, artikel 18 van Wet 20 van 1994, artikel 34 van Wet 27 van 1997, artikel 93 van Wet 30 van 1998 en artikel 89 van Wet 53 van 1999

174. Artikel 18 van die Wet op Belasting op Toegevoegde Waarde, 1991, word hierby gewysig—

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

"Met dien verstande dat hierdie subartikel nie van toepassing is nie op enige kapitaalgoed of dienste wat 'n aangepaste koste van minder as R40 000 (uitgesonderd belasting) **[gekos]** het of waar bedoelde goed of dienste deur subartikel (4) geag is aan die ondernemer gelewer te wees, indien die bedrag wat deur "B" voorgestel is in die formule beoog in daardie subartikel minder was as R40 000 op die tydstip waarop bedoelde goed of dienste geag is aan bedoelde ondernemer gelewer te wees.";

(b) deur in subparagraaf (i) van simbool "B" van subartikel (4) die volgende subparagraaf te vervang:

"(i) die aangepaste koste (met inbegrip van enige belasting wat deel uitmaak van daardie aangepaste koste) vir die ondernemer van die verkryging, vervaardiging, montering, oprigting of produksie van daardie goed of dienste: Met dien verstande dat waar die goed of dienste verkry is kragtens 'n lewering ten opsigte waarvan die vergoeding in geld ingevolge artikel 10(4) geag was die ope markwaarde van die lewering te wees, die aangepaste koste van daardie goed of dienste geag word daardie ope markwaarde in te sluit vir sover dit die vergoeding in geld vir daardie lewering te bowe gaan; of"; en

(c) deur item *(aa)* van subparagraaf (i) van simbool "B" van subartikel (5) met die volgende item te vervang:

"*(aa)* die aangepaste koste (met inbegrip van enige belasting wat deel uitmaak van daardie aangepaste koste) vir die ondernemer van die verkryging, vervaardiging, montering, oprigting of produksie van daardie goed of dienste: Met dien verstande dat waar die goed of dienste verkry is kragtens 'n lewering ten opsigte waarvan die vergoeding in geld ingevolge artikel 10(4) geag was die ope markwaarde van die lewering te wees, die aangepaste koste van daardie goed of dienste geag word daardie ope markwaarde in te sluit vir sover dit die vergoeding in geld vir daardie lewering te bowe gaan; of".

Wysiging van artikel 20 van Wet 89 van 1991, soos gewysig deur paragraaf 11 van Goewermentskennisgewing 2695 van 8 November 1991, artikel 25 van Wet 136 van 1992, artikel 33 van Wet 97 van 1993, artikel 35 van Wet 27 van 1997, artikel 94 van Wet 30 van 1998, artikel 91 van Wet 53 van 1999 en artikel 157 van Wet 60 van 2001

175. (1) Artikel 20 van die Wet op Belasting op Toegevoegde Waarde, 1991, word hierby gewysig deur paragraaf *(c)* van subartikel (4) deur die volgende paragraaf te vervang:

"*(c)* die **[regs of handels]** naam, adres en waar die ontvanger 'n geregistreerde ondernemer is, die registrasienommer van die ontvanger.".

(2) Subartikel (1) tree in werking op 1 Maart 2005 en is van toepassing op alle lewerings op of na daardie datum gemaak.

Wysiging van artikel 21 van Wet 89 van 1991, soos gewysig deur artikel 26 van Wet 136 van 1992

176. (1) Artikel 21 van die Wet op Belasting op Toegevoegde Waarde, 1991, word hierby gewysig—

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

"(iii) the **[legal or trading]** name, address and, where the recipient is a registered vendor, the registration number of the recipient, except where the credit note relates to a supply in respect of which a tax invoice contemplated in section 20(5) was issued;"; and

(b) by the substitution in subsection (3) for subparagraph (iii) of paragraph *(b)* of the following subparagraph:

"(iii) the **[legal or trading]** name, address and, where the recipient is a registered vendor, the registration number of the recipient, except where the debit note relates to a supply of goods in respect of which a tax invoice contemplated in section 20(5) was issued.".

(2) Subsection (1) shall come into operation on 1 March 2005 and shall apply in respect of any supply made on or after that date.

Amendment of section 22 of Act 89 of 1991, as amended by section 33 of Act 136 of 1991, paragraph 13 of Government Notice 2695 of 8 November 1991, section 27 of Act 136 of 1992, section 25 of Act 37 of 1996, section 36 of Act 27 of 1997 and section 95 of Act 30 of 1998

177. Section 22 of the Value-Added Tax Act, 1991, is hereby amended by the deletion of subsection (5).

Amendment of section 23 of Act 89 of 1991, as amended by section 20 of Act 20 of 1994, section 37 of Act 27 of 1997 and section 92 of Act 53 of 1999

178. Section 23 of the Value-Added Tax Act, 1991, is hereby amended by the deletion of subsection (8).

Amendment of section 28 of Act 89 of 1991, as amended by section 29 of Act 136 of 1992, section 79 of Act 30 of 2000, section 44 of Act 5 of 2001, section 158 of Act 60 of 2001 and section 118 of Act 74 of 2002

179. Section 28 of the Value-Added Tax Act, 1991, is hereby amended—

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

"(iv) the Commissioner may prescribe the time by which any payment made on any business day must be received by the Commissioner and any payment received after that time shall be deemed to have been made on the first business day following that day.";

(b) by the deletion of subsection (4).

Amendment of section 31 of Act 89 of 1991, as amended by section 80 of Act 30 of 2000

180. Section 31 of the Value-Added Tax Act, 1991, is hereby amended by the addition to subsection (1) of the following paragraph:

"*(f)* any person who produces, furnishes, authorises, or makes use of any false tax invoice or debit note and has obtained any undue tax benefit or refund under the provisions of an export incentive scheme referred to in paragraph *(d)* of the definition of 'exported' in section 1, to which such person is not entitled,".

Insertion of sections 31A and 31B in Act 89 of 1991

181. The following sections are hereby inserted in the Value-Added Tax Act, 1991, after section 31:

"(iii) die **[regs of handels]** naam, adres en waar die ontvanger 'n geregistreerde ondernemer is, die verwysingsnommer van die ontvanger, behalwe waar die kreditnota betrekking het op 'n lewering ten opsigte waarvan 'n belastingfaktuur beoog in artikel 20(5) uitgereik is;"; en

(b) deur subparagraaf (iii) van paragraaf *(b)* van subartikel (3) deur die volgende subparagraaf te vervang:

"(iii) die **[regs of handels]** naam, adres en waar die ontvanger 'n geregistreerde ondernemer is, die verwysingsnommer van die ontvanger, behalwe waar die debetnota betrekking het op 'n lewering ten opsigte waarvan 'n belastingfaktuur beoog in artikel 20(5) uitgereik is.".

(2) Subartikel (1) tree in werking op 1 Maart 2005 en is van toepassing op alle lewerings op of na daardie datum gemaak.

Wysiging van artikel 22 van Wet 89 van 1991, soos gewysig deur artikel 33 van Wet 136 van 1991, paragraaf 13 van Goewermentskennisgewing 2695 van 8 November 1991, artikel 27 van Wet 136 van 1992, artikel 25 van Wet 37 van 1996, artikel 36 van Wet 27 van 1997 en artikel 95 van Wet 30 van 1998

177. Artikel 22 van die Wet op Belasting op Toegevoegde Waarde, 1991, word hierby gewysig deur die skrapping van subartikel (5).

Wysiging van artikel 23 van Wet 89 van 1991, soos gewysig deur artikel 20 van Wet 20 van 1994, artikel 37 van Wet 27 van 1997 en artikel 92 van Wet 53 van 1999

178. Artikel 23 van die Wet op Belasting op Toegevoegde Waarde, 1991, word hierby gewysig deur die skrapping van subartikel (8).

Wysiging van artikel 28 van Wet 89 van 1991, soos gewysig deur artikel 29 van Wet 136 van 1992, artikel 79 van Wet 30 van 2000, artikel 44 van Wet 5 van 2001, artikel 158 van Wet 60 van 2001 en artikel 118 van Wet 74 van 2002

179. Artikel 28 van die Wet op Belasting op Toegevoegde Waarde, 1991, word hierby gewysig—

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

"(iv) die Kommissaris mag die tyd voorskryf waarop enige betaling gemaak op enige besigheidsdag ontvang moet word deur die Kommissaris en enige betaling ontvang na daardie tyd sal geag word gemaak te wees op die eerste besigheidsdag wat daarop volg.";

(b) deur die skrapping van subartikel (4).

Wysiging van artikel 31 van Wet 89 van 1991, soos gewysig deur artikel 80 van Wet 30 van 2000

180. Artikel 31 van die Wet op Belasting op Toegevoegde Waarde, 1991, word hierby gewysig deur die volgende paragraaf by subartikel (1) te voeg:

"*(f)* enige persoon wat 'n vals belastingfaktuur of debetnota produseer, uitreik, goedkeur, of van gebruik maak ten einde 'n onbehoorlike belastingvoordeel kragtens die bepalings van die uitvoeraansporingskema soos na verwys in paragraaf *(d)* van die omskrywing van 'uitgevoer' in artikel 1 te verkry, waarop sodanige persoon nie geregtig is nie,".

Invoeging van artikels 31A en 31B in Wet 89 van 1991

181. Die volgende artikels word hierby ingevoeg in die Wet op Belasting op Toegevoegde Waarde, 1991, na artikel 31:

"**Reduced assessments**

31A. (1) The Commissioner may, notwithstanding the fact that no objection has been lodged or appeal noted in terms of the provisions of Part V of this Act, reduce an assessment—

(a) to rectify any processing error made in issuing that assessment; or

(b) where it is proved to the satisfaction of the Commissioner that in issuing that assessment any amount which—

(i) was taken into account by the Commissioner in determining the liability for tax, should not have been taken into account; or

(ii) should have been taken into account in determining the liability for tax, was not taken into account by the Commissioner:

Provided that such assessment, wherein the amount was so taken into account or not taken into account, as contemplated in subparagraph (i) or (ii), as the case may be, was issued by the Commissioner based on information provided in the vendor's return for the current or any previous tax period.

(2) The Commissioner shall not reduce an assessment under subsection (1)—

(a) after the expiration of three years from the date of that assessment; or

(b) if the amount was assessed in terms of an assessment accepted by the taxpayer and which was made in accordance with the practice generally prevailing at the date of that assessment.

Withdrawal of assessments

31B. (1) The Commissioner may, notwithstanding the fact that no objection has been lodged or appeal has been noted in terms of Part V, withdraw an assessment, which—

(a) was issued to the incorrect person; or

(b) was issued in respect of the incorrect tax period.

(2) Any assessment withdrawn by the Commissioner in terms of this section shall for all purposes of this Act be deemed not to have been issued.".

Amendment of section 32 of Act 89 of 1991, as amended by section 38 of Act 27 of 1997, section 97 of Act 30 of 1998, section 95 of Act 53 of 1999 and section 159 of Act 60 of 2001

182. Section 32 of the Value-Added Tax Act is hereby amended by the substitution for subsection (2) of the following subsection:

"(2) The provisions of sections 107A and Part IIIA of Chapter III of the Income Tax Act, 1962 (Act No. 58 of 1962), and any rules under that Act relating to any objection or to the settlements of disputes shall *mutatis mutandis* apply with reference to any objection under this section.".

Amendment of section 33 of Act 89 of 1991

183. Section 33 of the Value-Added Tax Act, 1991, is hereby amended by the substitution for subsection (4) of the following subsection:

"(4) The provisions of sections 83 (8), (11), (12), (14), (17), (18), (19), 84, 85, 107A and **[107B]** Part IIIA of Chapter III of the Income Tax Act and any **[regulations]** rules under that Act relating to any appeal to the tax court or to the settlement of disputes shall *mutatis mutandis* apply with reference to any appeal under this section which is or is to be heard by that court or to any settlement of a dispute in terms of this Act.".

"Verminderde aanslae

31A. (1) Die Kommissaris mag, nieteenstaande die feit dat geen beswaar ingedien of appel aangeteken is nie ingevolge die bepalings van Deel V van hierdie Wet, 'n aanslag verminder—

(a) om enige verwerkings fout in die uitreiking van daardie aanslag reg te maak; of

(b) waar dit tot die bevrediging van die Kommissaris bewys word dat in die uitreiking van daardie aanslag enige bedrag wat—

(i) inberekening gebring was deur die Kommissaris om die aanspreeklikheid vir belasting te bereken, en wat nie inberekening gebring moes gewees het nie; of

(ii) moes inberekening gebring gewees om die aanspreeklikheid vir belasting te bereken, maar was nie deur die Kommissaris inberekening gebring nie:

Met dien verstande dat waar die bedrag inbereken gebring was of nie gebring was nie, soos uiteengesit in paragraaf (i) of (ii), wat ookal die geval mag wees, uitgereik was deur die Kommissaris gebaseer op inligting verskaf in die ondernemer se opgawe vir die huidige of enige vorige belastingtydperk.

(2) Die Kommissaris sal nie 'n aanslag ingevolge subartikel (1) verminder nie—

(a) na die verstryking van drie jaar vanaf die datum van daardie aanslag; of

(b) indien die bedrag wat aangeslaan was ingevolge 'n aanslag wat deur die belastingpligtige aanvaar was en wat gemaak was inooreenstemming met die praktyk wat van toepassing was op die datum van daardie aanslag.

Terugtrekking van aanslae

31B. (1) Die Kommissaris mag, nieteenstaande die feit dat geen beswaar ingedien of appel aangeteken is nie ingevolge Deel V, 'n aanslag terugtrek, wat—

(a) uitgereik was aan die verkeerde persoon; of

(b) uitgereik was met betrekking tot die verkeerde belastingtydperk.

(2) Enige aanslag wat deur die Kommissaris teruggetrek word ingevolge hierdie artikel sal vir alle doeleindes van hierdie Wet geag word nie uitgereik te wees nie.".

Wysiging van artikel 32 van Wet 89 van 1991, soos gewysig deur artikel 38 van Wet 27 van 1997, artikel 97 van Wet 30 van 1998, artikel 95 van Wet 53 van 1999 en artikel 159 van Wet 60 van 2001

182. Artikel 32 van die Wet op Belasting op Toegevoegde Waarde, 1991, word hierby gewysig deur subartikel (2) met die volgende subartikel te vervang:

"(2) Die bepalings van artikels 107A en Deel IIIA van Hoofstuk III van die Inkomstebelastingwet, 1962 (Wet No. 58 van 1962), en enige reëls onder daardie Wet wat verband hou met enige beswaar of die beslegting van geskille is *mutatis mutandis* van toepassing op enige beswaar kragtens hierdie artikel.".

Wysiging van artikel 33 van Wet 89 van 1991

183. Artikel 33 van die Wet op Belasting op Toegevoegde Waarde, 1991, word hierby gewysig deur subartikel (4) met die volgende subartikel te vervang:

"(4) Die bepalings van artikels 83(8), (11), (12), (14), (17), (18), (19), 84, 85, 107A en **[107B]** Deel IIIA van Hoofstuk III van die Inkomstebelastingwet en enige **[regulasies]** reëls kragtens genoemde Wet uitgevaardig met betrekking tot enige appel na die belastinghof of die beslegting tot geskille, is *mutatis mutandis* van toepassing met betrekking van enige appel kragtens hierdie artikel wat deur genoemde hof aangehoor word of staan te word of enige geskil besleg ingevolge hierdie Wet.".

Amendment of section 39 of Act 89 of 1991, as amended by section 166 of Act 60 of 2001

184. (1) Section 39 of the Value-Added Tax Act is hereby amended—

(a) by the insertion of the following subsection:

"(4) Where any importer of goods which are required to be entered under the Customs and Excise Act, fails to pay any amount of tax payable in respect of the importation of the goods on the date on which the goods are entered under the said Act for home consumption in the Republic or the date on which customs duty is payable in terms of the said Act in respect of the importation or, if such duty is not payable, the date on which it would be so payable if it had been payable, whichever date is later, that importer shall, in addition to such amount of tax pay—

(a) a penalty equal to 10 per cent of the said amount of tax; and

(b) where payment of the said amount of tax is made on or after the first day of the month following the month during which the period allowed for payment of the tax ended, interest on the said amount of tax, calculated at the prescribed rate (but subject to the provisions of section 45A) for each month or part of a month in the period reckoned from the said first day."; and

(b) by the deletion of subsection (8).

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

Amendment of section 46 of Act 89 of 1991

185. Section 46 of the Value-Added Tax Act, 1991, is hereby amended by the substitution for the words preceding paragraph *(a)* of the following words:

"The natural person who is a resident of the Republic responsible for the duties imposed by this Act—".

Amendment of section 48 of Act 89 of 1991

186. Section 48 of the Value-Added Tax Act, 1991, is hereby amended—

(a) by the substitution for subsections (3) and (4) of the following subsections:

"(3) For purposes of subsection (2), any tax, additional tax, penalty or interest payable by any representative vendor in his representative capacity shall be recoverable from him, but to the extent only of any assets belonging to the person whom he represents which may be in his possession or under his management, disposal or control: Provided that any tax, additional tax, penalty or interest payable by a company shall not be recoverable from the public officer of the company but shall be recoverable from the company.

(4) Every representative vendor or other person who is personally liable, who, as such, pays any tax, additional tax, penalty or interest due under this Act shall be entitled to recover the amount so paid from the person on whose behalf it is paid, or to retain out of any moneys that may be in his possession or may come to him in his representative capacity, an amount equal to the amount so paid.";

(b) by the substitution in subsection (6) for the words preceding paragraph *(a)* of the following words:

Wysiging van artikel 39 van Wet 89 van 1991, soos gewysig deur artikel 166 van Wet 60 van 2001

184. Artikel 39 van die Wet op Belasting op Toegevoegde Waarde, 1991, word hierby gewysig—

(a) deur die volgende subartikel in te voeg:

"(4) Waar enige invoerder van goed wat geklaar moet word onder die Doeane- en Aksynswet, nalaat om enige bedrag van belasting ten opsigte van die invoer van die goed te betaal op die datum waarop die goed geklaar word onder die bedoelde Wet vir binnelandse verbruik in die Republiek of die datum waarop doeane reg betalbaar is ingevolge die bedoelde Wet ten opsigte van die invoer daarvan, indien so 'n reg nie betaalbaar is nie, die datum waarop dit betaalbaar moes gewees het indien dit betaalbaar was, welke datum ook al die laaste is, sal die invoerder, addisioneel tot so 'n bedrag van belasting betaal—

(a) 'n boete gelyk aan 10 persent van die bedoelde bedrag van belasting; en

(b) waar betaling van bedoelde bedrag van belasting gedoen is op of na die eerste dag van die maand wat volg op die maand waarin die tydperk toegelaat vir betaling van die belasting eindig, rente betaal op bedoelde bedrag van belasting, bereken teen die voorgeskrewe koers (maar behoudens die bepalings van artikel 45A) vir elke maand of gedeelte van 'n maand in die tydperk gereken vanaf daardie eerste dag."; **[en]**

(b) deur die skrapping van subartikel (8);

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

Wysiging van artikel 46 van Wet 89 van 1991

185. Artikel 46 van die Wet op Belasting op Toegevoegde Waarde, 1991, word hierby gewysig deur die woorde wat paragraaf *(a)* voorafgaan deur die volgende woorde te vervang:

"Die natuurlike persoon wat 'n inwoner van die Republiek is, is verantwoordelik vir die nakoming van die pligte deur hierdie Wet opgelê—".

Wysiging van artikel 48 van Wet 89 van 1991

186. Artikel 48 van die Wet op Belasting op Toegevoegde Waarde, 1991, word hierby gewysig—

(a) deur die vervanging van subartikel (3) en (4) van die volgende subartikels:

"(3) Vir doeleindes van subartikel (2), enige belasting, addisionele belasting, boete of rente wat deur 'n verteenwoordigende ondernemer in sy verteenwoordigende hoedanigheid betaabaar is, is op hom verhaalbaar, maar slegs vir sover bates behorende aan die persoon wat hy verteenwoordig, in sy besit of onder sy bestuur, beskikking of beheer mag wees: Met dien verstande dat belasting, addisionele belasting, boete of rente wat deur 'n maatskappy betaalbaar is, nie op die openbare amptenaar van die maatskappy verhaalbaar is nie, maar op die maatskappy.

(4) Elke verteenwoordigende ondernemer of ander persoon wat persoonlik aanspreeklik is, wat in die hoedanigheid belasting, addisionele belasting, boete of rente betaal wat ingevolge hierdie Wet verskuldig is, is geregtig om die aldus betaalde bedrag op die persoon ten behoewe van wie dit betaal word, te verhaal of om 'n bedrag gelyk aan die aldus betaalde bedrag terug te hou uit gelde wat in sy verteenwoordigende hoedanigheid in sy besit mag wees of hom ter hand mag kom.";

(b) deur die woorde wat paragraaf *(a)* van subartikel 6 voorafgaan met die volgende woorde te vervang:

"(6) Every representative vendor shall be personally liable for the payment of any tax, additional tax, penalty or interest payable by him in his representative capacity, **[if, while]** to the extent that it remains unpaid, **[the amount thereof remains unpaid]**—;";

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

"(6A) The additional tax, penalty or interest payable by any representative vendor in terms of subsection (6) shall be recoverable by the Commissioner from that representative vendor.";

(d) by the addition of the following subsection:

"(9) Where a vendor is a company, every shareholder and director who controls or is regularly involved in the management of the company's overall financial affairs shall be personally liability for the tax, additional tax, penalty or interest for which the company is liable.".

Amendment of section 57 of Act 89 of 1991, as amended by section 24 of Act 46 of 1996, section 47 of Act 27 of 1997 and section 172 of Act 60 of 2001

187. Section 57 of the Value-Added Tax Act, 1991, is hereby amended by the substitution in subsection (1) for the definitions of "documents" and "information" of the following definitions:

" 'documents' include any document, book, marketable security, record, account, deed, plan, instrument, trade list, stock list, brokers note, affidavit, certificate, photograph, map, drawing and any **['computer print-out' as defined in section 1 of the Computer Evidence Act, 1983 (Act No. 57 of 1983)]** printout of information generated, sent, received, stored, displayed or processed by electronic means;

'information' includes any **[data stored by means of a 'computer' as defined in section 1 of the Computer Evidence Act, 1983]** electronic representations of information in any form;".

Amendment of section 74 of Act 89 of 1991

188. Section 74 of the Value-Added Tax Act, 1991, is hereby amended—

(a) by the substitution for the heading of the following heading: "**Schedules and Regulations**"; and

(b) by the addition of the following subsections:

"(3) *(a)* Whenever the Minister amends any Schedule under any provision of the Customs and Excise Act, 1964 (Act No. 91 of 1964), by notice in the *Gazette* and it is necessary to amend in consequence thereof Schedule 1 of this Act, the Minister may by like notice amend the said Schedule 1.

(b) The provisions of section 48(6) of the Customs and Excise Act, 1964, shall apply *mutatis mutandis* in respect of any amendment by the Minister under this subsection.".

Amendment of Schedule 1 to Act 89 of 1991, as substituted by section 106 of Act 53 of 1999 and section 177 of Act 60 of 2001 and amended by section 58 of Act 30 of 2002 and section 121 of Act 74 of 2002

189. Schedule 1 of the Value-Added Tax Act, 1991, is hereby amended by the substitution for Item No. 490.40 of paragraph 8 of the following Item:

"490.40/00.00/01.00 Machinery or plant (excluding tower cranes) for use on contract in civil engineering or construction work, in such quantities and at such times and subject to such conditions as the Commissioner **[on the recommendation of the Board of Trade and Industry,]** may allow by specific permit.".

"(6) Elke verteenwoordigende ondernemer is persoonlik aanspreeklik vir die betaling van belasting, addisionele belasting, boete of rente wat deur hom in sy veteenwoordigende hoedanigheid betaalbaar is,**[indien hy]**tot die mate wat dit onbetaald bly **[solank die bedrag daarvan onbetaal bly]**-;";

(c) deur die volgende subartikel na subartikel (6) in te voeg:

"(6A) Die addisionele belasting , boete en rente betaalbaar deur 'n verteenwoordigende ondernemer ingevolge subartikel (6) is deur die Kommissaris verhaalbaar vanaf daardie verteenwoordigende ondernemer.";

(d) deur die toevoeging van die volgende subartikel:

"(9) Waar 'n ondernemer 'n maatskappy is, is elke aandeelhouer en direkteur wat gereeld betrokke is by die bestuur of beheer van die maatskappy se oorhoofse finansiële aktiwiteite persoonlik aanspreeklik vir die betaling van die belasting, addisionele belasting, boete en rente waarvoor die maatskappy aanspreeklik is.";

Wysiging van artikel 57 van Wet 89 van 1991, soos gewysig deur artikel 24 van Wet 46 van 1996, artikel 47 van Wet 27 van 1997 en artikel 172 van Wet 60 van 2001

187. Artikel 57 van die Wet op Belasting op Toegevoegde Waarde, 1991, word hierby gewysig deur die vervanging in subartikel (1) van die omskrywings van "dokumente" en "inligting" van die volgende omskrywings:

" 'dokumente', ook enige dokument, boek, rekord, rekening, akte, plan, instrument, handelslys, voorraadlys, beëdigde verklaring, sertifikaat, foto, kaart, tekening en enige **['rekenaardrukstuk' soos omskryf in artikel 1 van die Wet op Rekenaargetuienis, 1983 (Wet No. 57 van 1983)]** uitdruk van inligting gegenereer, gestuur, ontvang, gestoor, vertoon of geprosesseer deur elektroniese formaat;

'inligting' ook enige **[data gestoor deur middel van 'n 'rekenaar' soos omskryf in artikel 1 van die Wet op Rekenaargetuienis, 1983]** elektroniese aanbiedinge van inligting in enige vorm;".

Wysiging van artikel 74 van Wet 89 van 1991

188. Artikel 74 van die Wet op Belasting op Toegevoegde Waarde, 1991, word hierby gewysig—

(a) deur die vervanging van die opskrif met die volgende opskrif:

"**Bylaes en Regulasies**"; en

(b) deur die toevoeging van die volgende subartikel:

"(3)*(a)* Wanneer ookal die Minister enige Bylae wysig kragtens enige bepalings van die Doeane en Aksynswet, 1964 (Wet No.91 van 1964), by kennisgewing in die *Staatskoerant* en dit nodig is as gevolg daarvan Bylae 1 van die Wet te wysig, die Minister mag by soortgelyke kennisgewing die toepaslike Bylae 1 wysig.

(b) Die bepalings van artikel 48(6) van die Doeane en Aksynswet, 1964, is *mutatis mutandis* van toepassing ten opsigte van enige wysiging deur die Minister kragtens hierdie subartikel.".

Wysiging van Bylae 1 by Wet 89 van 1991, soos vervang deur artikel 106 van Wet 53 van 1999 en artikel 177 van Wet 60 van 2001 en gewysig deur artikel 58 van Wet 30 van 2002 en artikel 121 van Wet 74 van 2002

189. Bylae 1 van die Wet op Belasting op Toegevoegde Waarde, 1991, word hierby gewysig deur Item No. 490.40 van paragraaf 8 met die volgende Item te vervang:

"490.40/00.00/01 Masjinerie of installasies (uitgesonderd toringhyskrane) vir gebruik op kontrak by siviele ingenieurs- of konstruksiewerk, in die hoeveelhede en op die tye en onderworpe aan die voorwaardes wat die Kommissaris, **[op aanbeveling van die Raad van Handel en Nywerheid]** by bepaalde permit toelaat.".

Amendment of section 1 of Act 31 of 1998

190. (1) Section 1 of the Uncertificated Securities Tax Act, 1998, is hereby amended—

(a) by the substitution for the definition of "lending arrangement" of the following definition:

" 'lending arrangement' means any arrangement in terms of which—

(a) a person (hereinafter referred to as the lender) lends securities to another person (hereinafter referred to as the borrower) in order to enable that borrower to effect delivery (for any purpose other than for delivery to any lender in relation to that borrower unless the borrower can demonstrate that the arrangement was not entered into for purposes of the avoidance of any tax and was not entered into for purposes of keeping any position open for more than 12 months) of the security within 10 business days after the date of transfer of those securities from the lender to the borrower in terms of that arrangement;

(b) that borrower in return contractually agrees in writing to deliver securities of the same kind and quality to that lender within a period of 12 months from the date of transfer of those securities from the lender to the borrower in terms of that arrangement;

(c) that borrower is contractually required to compensate that lender for any distributions in respect of the securities which that lender would have been entitled to receive during that period had that arrangement not been entered into; and

(d) that arrangement does not affect the lender's benefits or risks arising from fluctuations in the market value of the securities:

Provided that where—

(i) that borrower has not on delivered the securities within the period contemplated in paragraph *(a)*; or

(ii) that borrower has not returned securities as contemplated in paragraph *(b)* to the lender within the period contemplated in that paragraph,

that arrangement shall be deemed not to be a lending arrangement.";

(b) by the insertion after the definition of "participant" of the following definition:

" 'person' includes any public authority, any local authority, any company, any body of persons (corporate or unincorporate), the estate of any deceased or insolvent person and any trust fund;"; and

(c) by the substitution for the definition of "securities" of the following definition:

" 'securities' means listed securities as defined in section 1 of the Stock Exchange Control Act, 1985 (Act No. 1 of 1985)**[, which are transferable without a written instrument and which are not evidenced by a certificate]**;".

(2) Subsection (1)*(a)* shall come into operation on the date of promulgation of this Act and shall apply in respect of any lending arrangement entered into on or after that date.

Amendment of section 6 of Act 31 of 1998, as amended by section 15 of Act 32 of 1999, section 87 of Act 30 of 2000, section 75 of Act 19 of 2001, section 180 of Act 60 of 2001, section 60 of Act 30 of 2002 and section 122 of Act 74 of 2002

191. (1) Section 6 of the Uncertificated Securities Tax Act, 1998, is hereby amended—

(a) by the substitution in subsection (1) for item *(ee)* of subparagraph (ix) of paragraph *(b)* of the following item:

"*(ee)* in **[pursuance]** terms of **[a distribution *in specie* in the course of]** an unbundling transaction contemplated in section 46 of that Act;"; and

Wysiging van artikel 1 van Wet 31 van 1998

190. (1) Artikel 1 van die Wet op Belasting op Sertifikaatlose Aandele, 1998, word hiermee gewysig—

(a) deur die omskrywing van "aandele" deur die volgende omskrywing te vervang:

" 'aandele' genoteerde aandele soos omskryf in artikel 1 van die Wet op Beheer van Aandelebeurse, 1985 (Wet 1 van 1985), **[wat oordraagbaar is sonder 'n skriftelike stuk en wat nie deur 'n sertifikaat gestaaf word nie]**;".

(b) deur die omskrywing van "leningsreëling" deur die volgende omskrywing te vervang:

" 'leningsreëling' 'n reëling ingevolge waarvan—

(a) 'n persoon (hieronder die uitlener genoem) aandele aan 'n ander persoon (hieronder die lener genoem) leen ten einde daardie lener in staat te stel om lewering van die aandele te bewerkstelling (vir enige doel behalwe vir lewering aan enige uitlener met betrekking tot daardie lener tensy die lener bewys dat die reëling nie aangegaan was ten einde enige belasting te ontduiking nie en nie aangegaan was om die posisie oop te hou vir langer as 12 maande nie) binne 10 besigheidsdae na die datum van oordrag van daardie aandele van die uitlener aan die lener ingevolge daardie reëling;

(b) daardie lener in ruil skriftelik kontraktueel onderneem om aandele van dieselfde soort en gehalte binne 'n tydperk van 12 maande vanaf die datum van oordrag van daardie aandele van die uitlener aan die lener ingevolge daardie reëling, oor te dra;

(c) daardie lener kontraktueel verbind is om daardie uitlener te vergoed vir enige uitkerings ten opsigte van die aandele wat daardie uitlener geregtig sou wees om te ontvang gedurende daardie tydperk indien die reëling nie aangegaan was nie: en

(d) daardie reëling nie die uitlener se voordele of risiko's wat uit die veranderings in die markwaarde van die aandele voortvloei, affekteer nie:

Met dien verstande dat indien—

(i) daardie lener nie die aandele verder gelewer het binne die tydperk in paragraaf *(a)* bedoel nie; of

(ii) daardie lener nie aandele aan die uitlener teruggelewer het soos in paragraaf *(b)* bedoel binne die tydperk in daardie paragraaf bedoel nie,

word daardie reëling geag nie 'n leningsreëling te wees nie;";

(c) deur na die omskrywing van "lid" die volgende omskrywing by te voeg:

" 'persoon' ook enige openbare gesag, enige plaaslike bestuur, enige maatskappy, enige liggaam van persone (ingelyf of oningelyf), die boedel van enige oorlede persoon of insolvente persoon en enige trustfonds;".

(2) Subartikel (1)*(b)* tree in werking op die datum van afkondiging van hierdie Wet en is van toepassing ten opsigte van leningsreëling op of na daardie datum aangegaan.

Wysiging van artikel 6 van Wet 31 van 1998, soos gewysig deur artikel 15 van Wet 32 van 1999, artikel 87 van Wet 30 van 2000, artikel 75 van Wet 19 van 2001, artikel 180 van Wet 60 van 2001, artikel 60 van Wet 30 van 2002 en artikel 122 van Wet 74 van 2002

191. (1) Artikel 6 van die Wet op Belasting op Sertifikaatlose Aandele, 1998, is hierby gewysig:

(a) deur subartkel (1) van item *(ee)* van subparagraaf (ix) van paragraaf *(b)* met die volgende te vervang:

"*(ee)* **[ten gevolge van 'n uitreiking *in specie* in die loop van]** in terme van 'n ontbondelingstransaksie in artikel 46 van daardie Wet bedoel;";

(b) by the substitution for item *(gg)* of subparagraph (ix) of paragraph *(b)* of the following item:

"*(gg)* in terms of any transaction which would have constituted a transaction or distribution contemplated—

(A) in subparagraphs (i) to (vi) regardless of whether or not an election has been made for the provisions of that section to apply;

(B) in subparagraph (i), (ii) or (iii) regardless of the market value of the asset disposed of in exchange for those securities; or

(C) in subparagraphs (i) to (vi) regardless of whether or not that person acquired those securities as capital assets or as trading stock,

where the public officer of the relevant company has made a sworn affidavit or solemn declaration that the acquisition of those securities complies with the provisions of this paragraph.".

(2) Subsection (1) shall be deemed to have come into operation on 6 November 2002 and shall apply in respect of a change in beneficial ownership in securities in terms of any transaction which takes effect on or after that date.

Insertion of section 11A in Act 31 of 1998

192. (1) The following sections are hereby inserted in the Uncertificated Securities Tax Act, 1998, after section 11:

"Schemes for obtaining undue tax benefits

11A. (1) Notwithstanding anything in this Act, whenever the Commissioner is satisfied that any transaction, operation, scheme or understanding (whether enforceable or not), including all steps by which it is carried into effect—

(a) has been entered into or carried out which has the effect of any person obtaining a tax benefit;

(b) having regard to the substance of the transaction, operation, scheme or understanding—

(i) was entered into or carried out in a manner which would not normally be employed for *bona fide* business purposes other than the obtaining of a tax benefit; or

(ii) has created rights or obligations which would not normally be created between persons dealing at arm's length; and

(c) was entered into or carried out solely or mainly for the purposes of obtaining a tax benefit,

the Commissioner shall determine the liability for any tax imposed by this Act and the amount thereof, as if the transaction, operation, scheme or understanding had not been entered into or carried out, or in such manner as in the circumstances of the case the Commissioner deems appropriate for the prevention or diminution of such tax benefit.

(2) For the purpose of this section 'tax benefit' means—

(a) any reduction in the liability of any person to pay tax;

(b) any increase in the entitlement of any person to the refund of tax; or

(c) any other avoidance or postponement of liability for the payment of any tax imposed by this Act or any tax, duty or levy imposed by any other Act administered by the Commissioner.

(3) Any decision of the Commissioner under subsection (1) shall be subject to objection and appeal, and whenever in proceedings relating thereto it is proved that the relevant transaction, operation, scheme or understanding results or would result in a tax benefit, it shall be presumed, until the contrary is proved, that such scheme was entered into or carried out solely or mainly for the purpose of obtaining a tax benefit.

(b) deur item *(gg)* van subparagraaf (ix) van paragraaf *(b)* met die volgende te vervang:

"*(gg)* ingevolge enige transaksie wat 'n transaksie of uitkering sou uitmaak soos bedoel—

(A) in subparagrawe (i) tot (vi) ongeag of 'n keuse uitgeoefen is of nie dat die bepalings van daardie artikel van toepassing is;

(B) in subparagrawe (i), (ii) of (iii) ongeag die markwaarde van die bate oor beskik in reuil vir daardie aandele; of

(C) ingevolge subparagrawe (i) tot (vi) ongeag of daardie persoon daardie aandele as kapitaalbates of as handelsvoorraag verkry het, waar die openbare amptenaar van die betrokke maatskappy onder eed of plegtige verklaring verklaar het dat daardie oordrag van aandele aan die bepalings van hierdie paragraaf voldoen.".

(2) Subartikel (1) word geag op 6 November 2002 in werking te getree het en is van toepassing op die verandering in voordelige eienaarskap in aandele ingevolge enige transaksie wat op of na daardie datum plaasgevind het.

Invoeging van artikel 11A in Wet 31 van 1998

192. Die volgende artikels word hierby na artikel 11 van die Wet op Belasting op Sertifikaatlose Aandele, 1998, ingevoeg:

"**Skemas vir verkryging van onbehoorlike belastingvoordele**

11A. (1) Ondanks enige bepaling van hierdie Wet, wanneer die Kommissaris oortuig is dat 'n transaksie, handeling, skema of verstandhouding (hetsy afdwingbaaar of nie) waarby ingesluit alle stappe ingevolge waarvan die inwerking gestel word—

(a) aangegaan of uitgevoer is wat die uitwerking het dat 'n belastingvoordeel aan enige persoon verleen word; en

(b) met inagneming van die substansie van die transaksie, handeling, skema of verstandhouding—

(i) aangegaan of uitgevoer was op 'n wyse wat nie normaalweg vir bona fide- sakedoeleindes, behalwe die verkryging van 'n belastingvoordeel, gebruik sou word nie; of

(ii) regte of verpligtings geskep het wat nie normaalweg tussen persone wat onder uiterste voorwaardes beding, geskep sou word nie; en

(c) aangegaan of uitgevoer was uitsluitlik of hoofsaaklik om 'n belastingvoordeel te verkry,

stel die Kommissaris die aanspreeklikeid vir enige belasting opgelê kragtens die Wet en die bedrag daarvan vas, asof die transaksie, handeling, skema of verstandhouding nie aangegaan of uitgevoer was nie, of op sodanige wyse as wat die Kommissaris in die omstandighede van die geval paslik ag vir die voorkoming of vermindering van daardie belastingvoordeel.

(2) By die toepassing van hierdie artikel beteken 'belastingvoordeel'—

(a) 'n vermindering van die aanspreeklikheid van enige persoon om belasting te betaal; of

(b) 'n vermeerdering van die geregtigheid van 'n persoon om 'n terugbetaling van belasting te verkry; of

(c) enige ander vermyding of uitstel van verpligting om enige belasting kragtens hierdie Wet opgeleê of enige belasting, reg of heffing opgelê kragtens enige ander Wet deur die Kommissaris geadministreer, te betaal.

(3) 'n Beslissing van die Kommissaris ingevolge hierdie artikel is aan beswaar en appèl onderworpe, en wanneer by verrigtings wat daarop betrekking het, bewys word dat die betrokke transaksie, handeling, skema of verstandhouding 'n belastingvoordeel tot gevolg het of sou hê, word vermoed, totdat die teendeel bewys word, dat bedoelde transaksie, handeling, skema of verstandhouding uitsluitlik of hoofsaaklik aangegaan of uitgevoer is ten einde 'n belastingvoordeel te verkry.

Power to appoint agent

11B. The Commissioner may, if he or she deems it necessary, declare any person to be the agent of any other person, and the person so declared an agent—

(a) shall for the purposes of this Act be the agent of that other person in respect of the payment of any amount of tax, penalty or interest payable by that other person under this Act; and

(b) may be required to make payment of such amount from any moneys which may be held by that agent for or be due by that agent to the person whose agent he or she has been declared to be:

Provided that a person so declared an agent who is unable to comply with a requirement of the notice of appointment as agent, must advise the Commissioner in writing of the reasons for not complying with that notice within the period specified in the notice.

Remedies of Commissioner against agent or trustee

11C. The Commissioner shall have the same remedies against all property of any kind vested in or under the control or management of any agent or trustee as the Commissioner would have against the property of any person liable to pay any tax and in as full and ample a manner.".

(2) Subsection (1) shall in so far as it inserts section 12A in the Uncertificated Securities Tax Act, 1998, come into operation on the date of promulgation of this Act and shall apply in respect of the purchase of any security in terms of a transaction, operation, scheme or understanding entered into on or after that date.

Amendment of section 13 of Act 31 of 1998, as amended by section 181 of Act 60 of 2001

193. Section 13 of the Uncertificated Securities Tax Act, 1998, is hereby amended by the substitution in subsection (1) for the definitions of "documents" and "information" of the following definitions:

" 'documents' include any document, book, marketable security, record, account, deed, plan, instrument, trade list, stock list, brokers note, affidavit, certificate, photograph, map, drawing and any **['computer print-out' as defined in section 1 of the Computer Evidence Act, 1983 (Act No. 57 of 1983)]** printout of information generated, sent, received, stored, displayed or processed by electronic means;";

'information' includes any **[data stored by means of a 'computer' as defined in section 1 of the Computer Evidence Act, 1983]** electronic representations of information in any form;".

Insertion of section 14A in Act 31 of 1998

194. (1) The following section is hereby inserted in the Uncertificated Securities Tax Act, 1998, after section 14:

"**Records**

14A. Any issuer, member or participant must keep such records of every issue of, or change in beneficial ownership in, any securities issued by the issuer or in respect of which a change in beneficial ownership has been effected by the member, or any transfer of securities by the participant for a period of five years as may be required to enable the issuer, member or participant, as the case may be, to observe the requirements of this Act and to enable the Commissioner to be satisfied that those requirements have been observed.".

(2) Subsection (1) shall come into operation on the date of promulgation of this Act and shall apply in respect of any records relating to the issue of, or change in beneficial ownership in, any securities on or after that date.

Bevoegdheid om agent aan te stel

11B. Die Kommissaris kan, indien hy dit nodig ag, 'n persoon tot agent van 'n ander persoon verklaar, en die persoon aldus tot agent verklaar—

(a) is by die toepassing van hierdie Wet die agent van daardie ander persoon ten opsigte van die betaling van enige bedrag aan belasting, boete of rente wat deur daardie ander persoon kragtens hierdie Wet betaalbaar is; en

(b) kan vereis word om betaling te maak van daardie bedrag uit enige gelde wat deur daardie agent gehou mag word or wat deur daardie agent verskuldig is aan die persoon namens wie hy of sy as agent verklaar is:

Met dien verstande dat 'n persoon aldus as 'n agent verklaar wat nie in staat is om 'n vereiste in die kennisgewing van aanstelling as agent vervat na te kom nie, moet die Kommissaris skriftelik van die redes vir die nie-nakom inlig binne die tydperk in daardie kennisgewing gespesifiseer.

Regsmiddele van Kommissaris teen agente en trustee

11C. Die Kommissaris het in dieselfde mate en op dieselfde wyse al die regsmiddele teen alle eiendom van welke aard ook al wat gevestig is in of onder die beheer of bestuur is van 'n agent of trustee, as wat die Kommissaris sou hê teen die eiendom van 'n persoon wat verplig is om enige belasting te betaal.

(2) Subartikel (1) vir sover dit artikel 11A in die Wet op Belasting op Sertifikaatlose Aandele, 1998, invoeg, tree in werking op die datum van afkondiging van hierdie Wet en is van toepassing ten opsigte van die aankoop van enige aandele ingevolge 'n transaksie, handeling, skema of verstandhouding op of na daardie datum aangegaan.

Wysiging van artikel 13 van Wet 31 van 1998, soos gewysig deur artikel 181 van Wet 60 van 2001

193. Artikel 13 van die Wet op Belasting op Sertifikaatlose Aandele, 1998, word hierby gewysig deur subartikel (1) van die omskrywings van "dokument" en "inligting" deur die volgende omskrywings te vervang:

" 'dokumente' ook enige dokument, boek, handelseffek, rekord, rekening, akte, plan, instrument, handeslys, voorraadlys, beëdigde verklaring, sertifikaat, foto, kaart, tekening en enige **['rekenaardrukstuk' soos omskryf in artikel 1 van die Wet op Rekenaargetuienis, 1983 (Wet No. 57 van 1983), seël en instrument beoog in Bylae 1]** uitdruk van inligting wat op elektroniese wyse gegenereer, gestuur, ontvang, gestoor, vertoon of geprosesseer is;

'inligting' ook enige **[data gestoor deur middel van 'n 'rekenaar' soos omskryf in artikel 1 van die Wet op Rekenaargetuienis, 1983]** elektroniese weergawe van inligting in enige vorm;".

Invoeging van artikel 14A in Wet 31 van 1998

194. (1) Die volgende artikel word na artikel 14 van die Wet op Belasting op Sertifikaatlose Aandele, 1998, ingevoeg:

"**Rekords**

14A. Enige uitreiker, lid of deelnemer moet rekords hou van elke uitreiking van, of verandering in vordelige eienaarskap deur die lid bewerkstellig, of enige oordrag van effekte deur die deelnemer vir 'n tydperk van 5 jaar soos bepaal om die uitreiker, lid of deelnemer in staat te stel, na gelang van die geval, om die bepalings van hierdie Wet na te kom en om die Kommissaris tevrede te stel dat daardie bepalings nagekom is.".

(2) Subartikel (1) tree in werking op datum van afkondiging van hierdie Wet en is van toepassing op enige dokumente wat betrekking het op die uitreiking van, of 'n verandering in voordelige eienaarskap in enige effekte op of na daardie datum.

Amendment of section 17A of Act 31 of 1998

195. Section 17A of the Uncertificated Securities Tax Act, 1998, is hereby amended by the substitution in subsection (2) for paragraph *(b)* of the following paragraph:

"*(b)* settlement of disputes, as provided for in **[section 107B]** Part IIIA of Chapter III of that Act,".

Amendment of section 4 of Act 9 of 1999, as amended by section 112 of Act 53 of 1999, section 91 of Act 30 of 2000 and section 62 of Act 30 of 2002

196. Section 4 of the Skills Development Levies Act, 1999, is hereby amended by the substitution for paragraph *(c)* of the following paragraph:

"*(c)* any public benefit organisation contemplated in section 10(1)*(c*N*)* of the Income Tax Act, which—

(i) solely carries on any public benefit activity contemplated in paragraphs 1, 2 *(a)*, *(b)*, *(c)* and *(d)* and 5 of Part I of the Ninth Schedule to that Act; or

(ii) **[any public benefit organisation which]** solely provides funds **[solely]** to **[such]** public benefit **[organisation which so carries on any such public benefit activity]** organisations contemplated in subparagraph (i); or".

Amendment of section 12 of Act 9 of 1999, as amended by section 113 of Act 53 of 1999

197. (1) Section 12 of the Skills Development Levies Act, 1999, is hereby amended by the addition of the following subsections:

"(3) If an employer fails to pay an amount of levy with intent to evade that employer's obligations under this Act, the employer may be liable to pay a penalty not exceeding an amount equal to twice the amount of levy which that employer so failed to pay.

(4) Any penalty contemplated in subparagraph (3)—

(a) must be determined by the Commissioner and must be paid within such period as the Commissioner may determine; and

(b) shall be deemed to be a tax for purposes of—

(i) the determination of any interest payable in terms of section 11; and

(ii) the provisions relating to the allocation of payments by the employer as applied in terms of section 13*(e)* and (iii).".

(2) Subsection (1) shall come into operation on the date of promulgation of this Act and shall apply in respect of any failure by an employer to pay any amount which becomes payable on or after that date.

Amendment of section 21 of Act 30 of 2000, as amended by section 78 of Act 19 of 2001 and section 63 of Act 30 of 2002

198. Section 21 of the Taxation Laws Amendment Act, 2000, is hereby amended by the substitution in subsection (2) for the first proviso to paragraph *(a)* of the following proviso:

"Provided that—

(a) any company, society, trust, institution, union, chamber, exchange, other association of persons or fund—

(i) whose receipts and accruals were exempt from tax in terms of the provisions of paragraphs *(c*B*)*, *(c*C*)*, *(c*D*)*, *(c*F*)*, *(c*I*)*, *(c*J*)*, *(f)* and *(f*A*)* of section 10(1) of the Income Tax Act, 1962, prior to the amendment thereof by this section**[, which company, society, trust, institution, union, chamber, exchange, other association of persons or fund applies for approval by the Commissioner in terms of section**

Wysiging van artikel 17A van Wet 31 van 1998

195. Artikel17A van die Wet op Belasting op Sertifikaatlose Aandele, 1998, word hierby gewysig deur die vervanging van subartikel (2) van paragraaf *(b)* deur die volgende paragraaf:

"*(b)* die beslegting van geskillle, soos in **[artikel 107B]** Deel IIIA van Hoofstuk III van daardie Wet, bepaal;".

Wysiging van artikel 4 van Wet 9 van 1999, soos gewysig deur artikel 112 van Wet 53 van 1999, artikel 91 van Wet 30 van 2000 en artikel 62 van Wet 30 van 2002

196. Artikel 4 van die "uMthetho weZibizontela wokuThuthukisa aMakhono, 1999" ("Skills Development Levies Act, 1999"), word hierby gewysig deur paragraaf *(c)* deur die volgende paragraaf te vervang:

"*(c)* noma iyiphi inhlangano ehlomulisa umphakathi ecatshangwe esigabeni 10(1)*(c*N*)* soMthetho weNtela yoMholo—

(i) eyenza noma yimuphi umsebenzi wokuhlomulisa umphakathi njengoba ucatshangwe endimeni 1, 2*(a)*, *(b)*, *(c)* no *(d)* no 5 yeNgxenye I yeSheduli yesiShiyagalolunye yalo Mthetho; noma

(ii) **[iyiphi inhlangano ehlomulisa umphakathini]** ezihlinzeka yona ngezimali **[yona kuleyo nhlangano ehlomulisa umphakathi futhi eqhubeka nanoma yimuphi umsebenzi wokuhlomulisa umphakathi]** izinhlangano ezicatshangwe kwindinyana (i); noma".

Wysiging van artikel 12 van Wet 9 van 1999, soos gewysig deur artikel 113 van Wet 53 van 1999

197. (1) Artikel 12 van die "uMthetho weZibizontela wokuThuthukisa aMakhono, 1999" ("Skills Development Levies Act, 1999"), word hierby gewysig deur die volgende subartikels by te voeg:

"(3) Uma umqashi ehluleka ukukhokha isamba sentela ngenhloso yokugwema izibophezelo zakhe ngaphansi kwalo Mthetho, lo mqashi engakhokhiswa inhlawulo engeqile esambeni esiphindwe kabili sentela lo mqashi ahluleke ukuyikhokha.

(4) Noma iyiphi inhlawulo ecatshangwe kwindinyana (3)—

(a) kufanele iqagulwe uKhomishina futhi kufanele ikhokhwe ngesikhathi esinganqunywa uKhomishina; futhi

(b) kufanele ibe eyentela, ukwenzela—

(i) ukuqagula noma iyiphi inzalo engakhokhwa ngokwamaphuzu esigaba 11; ne

(ii) zihlinzeko ezihlobene nokwabiwa kwezimali ezikhokhwe ngumqashi ngokusho kwamaphuzu esigaba 13*(e)* no (iii).".

(2) Subartikel (1) tree in werking op die datum van afkondiging van hierdie Wet en is van toepassing ten opsigte van enige nalate deur 'n werkgewer om 'n bedrag te betaal wat op of na daardie datum betaalbaar word.

Wysiging van artikel 21 van Wet 30 van 2000, soos gewysig deur artikel 78 van Wet 19 van 2001 en artikel 63 van Wet 30 van 2002

198. Artikel 21 van die Wysigingswet op Belastingwette, 2000, word hierby gewysig deur in subartikel (2) die eerste voorbehoudsbepaling by paragraaf *(a)* deur die volgende voorbehoudsbepaling te vervang:

"Met dien verstande dat—

(a) enige maatskappy, genootskap, trust, instelling, kamer, beurs, ander vereniging van persone of fonds—

(i) wie se ontvangste en toevallings ingevolge die bepalings van paragrawe *(c*B*)*, *(c*C*)*, *(c*D*)*, *(c*F*)*, *(c*I*)*, *(c*J*)*, *(f)* en *(f*A*)* van artikel 10 (1) van die Inkomstebelastingwet, 1962, vrygestel was van belasting voor die wysiging daarvan deur hierdie artikel, **[welke maatskappy, genootskap, trust, instelling, ander vereniging van persone of fonds voor 31 Desember 2003, ingevolge artikel 10(1)*(d)*(iii) of (iv) of artikel 30 van daardie Wet vir goedkeuring**

10(1)*(d)*(iii) or (iv) or section 30 of that Act before 31 December 2003, or submits a written undertaking as provided for in the said section 30 before that date,]; or

(ii) which was exempt from any other tax, duty, levy charge or other amount imposed in terms of any other Act administered by the Commissioner for the South African Revenue Service,

shall continue to enjoy such exemption if that company, society, trust, institution, union, chamber, exchange, other association of persons or fund applies for approval by the Commissioner in terms of section 10(1)*(d)*(iii) or (iv) or section 30 of that Act before 31 December 2004, or submits a written undertaking as provided for in the said section 30 before that date; and

(b) where the provisions of section 18A of the Income Tax Act, 1962, prior to its amendment by section 24 of this Act were applicable in respect of any entity, section 18A shall continue to apply in respect of that entity if that entity applies for approval by the Commissioner in terms of section 18A of the Income Tax Act before 31 December 2003,

until written notification by the Commissioner of his or her decision in terms of **[the said]** section 10(1)*(d)*(iii) or (iv) or section 30 of **[that Act]** the Income Tax Act, 1962, as the case may be.".

Amendment of section 113 of Act 60 of 2001, as amended by section 73 of Act 30 of 2002

199. Section 113 of the Second Revenue Laws Amendment Act, 2001 is hereby amended by the deletion of paragraphs *(a)* to *(d)* and *(f)* to *(i)* of subsection (1) and paragraph *(b)* of subsection (2).

Amendment of section 116 of Act 60 of 2001, as amended by section 74 of Act 30 of 2002

200. Section 116 of the Second Revenue Laws Amendment Act, 2001 is hereby amended by the deletion of paragraph *(d)* of subsection (1) and paragraph *(b)* of subsection (2).

Repeal of sections 117 and 118 of Act 60 of 2001

201. Sections 117 and 118 of the Second Revenue Laws Amendment Act, 2001 are hereby repealed.

Amendment of section 121 of Act 60 of 2001

202. Section 121(1) of the Second Revenue Laws Amendment Act, 2001 is hereby amended by the substitution for the proposed section 21A of the Customs and Excise Act, 1964 of the following—

"**Provisions for the administration of customs controlled areas within industrial development zones**

21A. (1) For the purposes of this section, unless the context otherwise indicates—

'Customs Controlled Area' or 'CCA' means an area within an IDZ, designated by the Commissioner in concurrence with the Director General: Trade and Industry, which area is controlled by the Commissioner;

'Industrial Development Zone' or 'IDZ' means an area designated by the Minister of Trade and Industry in terms of any regulation made under section 10 (1) of the Manufacturing Development Act, 1993 (Act No. 187 of 1993);

'IDZ operator', 'CCA enterprise', 'Service enterprise' or any other expression as may be necessary, relating to any activity inside or outside an IDZ or a CCA shall have the meaning assigned thereto in any Schedule or rule.

deur die Kommissaris aansoek doen, of voor daardie datum 'n skriftelike onderneming indien soos in genoemde artikel 30 bepaal,]; of

(ii) wat van enige ander belasting, reg, heffing of ander bedrag opgelê kragtens enige ander Wet wat deur die Kommissaris van die Suid-Afrikaanse Inkomstediens geadministreer word, gaan voort om daardie vrystelling te geniet indien daardie maatskappy, genootskap, trust, instelling, vakvereniging, sake- of nywerheidskamer, beurs, ander vereniging van persone of fonds voor 31 Desember 2004 by die Kommissaris om goedkeuring aansoek doen ingevolge artikel 10(1)*(d)*(iii) of (iv) of artikel 30, of voor daardie datum 'n skriftelike onderneming indien soos in artikel 30 bepaal; en

(b) waar die bepalings van artikel 18A van die Inkomstebelastingwet, 1962, voor die wysiging daarvan deur artikel 24 van hierdie Wet van toepassing was ten opsigte van 'n entiteit, geld artikel 18A steeds ten opsigte van daardie entiteit, indien daardie entiteit voor 31 December 2003 by die Kommissaris om goedkeuring aansoek doen ingevolge artikel 18A,

tot skriftelike kennisgewing deur die Kommissaris van sy of haar besluit ingevolge **[genoemde]** artikel 10(1)*(d)*(iii) of (iv) of artikel 30, na gelang van die geval:"

Wysiging van artikel 113 van Wet 60 van 2001, soos gewysig deur artikel 73 van Wet 30 van 2002

199. Artikel 113 van die Tweede Wysigingswet op Inkomstewette, 2001 word hierby gewysig deur paragrawe *(a)* tot *(d)* en *(f)* tot *(i)* van subartikel (1) en paragraaf *(b)* van subartikel (2) te skrap.

Wysiging van artikel 116 van Wet 60 van 2001, soos gewysig deur artikel 74 van Wet 30 van 2002

200. Artikel 116 van die Tweede Wysigingswet op Inkomstewette, 2001 word hierdeur gewysig deur paragraaf *(d)* van subartikel (1) en paragraaf *(b)* van subartikel (2) te skrap.

Herroeping van artikels 117 en 118 van Wet 60 van 2001

201. Artikels 117 en 118 van die Tweede Wysigingswet op Inkomstewette, 2001 word hierby herroep.

Wysiging van artikel 121 van Wet 60 van 2001

202. (1) Artikel 121(1) van die Tweede Wysigingswet op Inkomstewette, 2001, word hierby gewysig deur die voorgestelde artikel 21 A van die Doeane- en Aksynswet, 1964 met die volgende te vervang-

"**Voorsiening vir administrasie van doeane-beheerde gebiede binne nywerheidsontwikkelingsones**

21A. By die toepassing van hierdie artikel, tensy uit die samehang anders blyk beteken—

'Doeane-Beheerde Gebied' of 'DBG' 'n gebied binne 'n NOS, deur die Kommissaris in samewerking met die Direkteur-Generaal: Handel en Nywerheid aangewys, welke gebied deur die Kommissaris beheer word;

'Nywerheidsontwikkelingsone' of 'NOS' 'n gebied deur die Minister van Handel en Nywerheid aangewys ingevolge enige regulasie wat kragtens artikel 10 (1) van die Wet op Vervaardigingsontwikkeling, 1993 (Wet No. 187 van 1993) uitgevaardig is;

'NOS-bediener', 'DBG-onderneming', 'Diensonderneming' of enige ander uitdrukking wat nodig mag wees in verband met enige aktiwiteit binne of buite 'n NOS of 'n DBG dra die betekenis wat daaraan in enige Bylae of reël toegewys is.

(2) Any reference in this section, any Schedule or any rule to 'regulations' or 'regulation' shall, unless otherwise specified, be a reference to the regulations made under section 10(1) of the Manufacturing Act 1993.

(3) Where any provision of the Manufacturing Development Act, 1993, or any regulation made thereunder for the purpose of the IDZ is inconsistent or in conflict with any provision of this Act governing the administration of the CCA, including any matter relating to the liability or levying of duty or any rebate, refund or drawback of duty, the provisions of this Act shall prevail over the provisions of the Manufacturing Development Act, 1993, or the regulations made thereunder.

(4) Notwithstanding anything to the contrary contained in this section or any other provision of this Act or in the Value-Added Tax Act, 1991, goods to which subsection (7) relates shall, subject to any exception or adaptation prescribed in any Schedule or rule—

(a) even if free of duty, be deemed to be goods liable to duty for the purposes of the application of any provision of this Act; and

(b) if removed from a CCA, be deemed to have been imported into the Republic.

(5) Any reference in this section to liability for duty or termination of liability for duty or in any Schedule or rule to which it relates shall, subject to any exemption or exception allowed in terms of the Value-Added Tax Act, 1991 (Act No. 89 of 1991), and notwithstanding anything to the contrary contained in that Act, be deemed to include a reference to the liability or termination of liability for value-added tax.

(6) A CCA shall be subject to such controls and procedures, as the Commissioner may prescribe by rule.

(7) Any goods to which this section or any other provision of this Act relates, whether or not such goods are free of duty, which are—

(a) brought into a CCA;

(b) produced or manufactured, stored, or moved for any purpose therein; or

(c) removed therefrom,

shall, except to the extent that this section, any Schedule or any rule may otherwise provide, be subject to the provisions of this Act and any procedure that may be prescribed in terms of such provisions.

(8) Any person, including, where relevant, a CCA enterprise or an IDZ operator, who for the purposes of any activity within a CCA—

(a) brings any goods to which this section or any other provision of this Act relates into or receives any such goods in the CCA, including any licensed or registered premises therein;

(b) produces or manufactures any goods therein;

(c) removes any goods therefrom; or

(d) otherwise deals with goods to which this section relates,

shall, except where any provision of this Act otherwise provides—

(i) be liable for the fulfilment of all obligations imposed in terms of this section or any other provision of this Act in respect of such goods;

(ii) in addition to any liability incurred by any other person in terms of the provisions of this Act, be liable for the duty on such goods.

(9) The liability for duty in respect of any goods to which this section relates of an IDZ operator or a CCA enterprise or such other person shall cease—

(a) if the IDZ operator or CCA enterprise or such other person proves that, as the case may be—

(2) Enige verwysing in hierdie artikel, enige Bylae of enige reël na 'regulasies' of 'regulasie' is, tensy anders vermeld, 'n verwysing na die regulasies wat kragtens artikel 10(1) van die Wet op Vervaardigingsontwikkeling, 1993 uitgevaardig is.

(3) Waar enige bepaling van die Wet op Vervaardigingsontwikkeling, 1993 of enige regulasie daarkragtens uitgevaardig vir die doeleindes van die NOS onbestaanbaar of strydig is met enige bepaling van hierdie Wet wat die administrasie van die DBG, met inbegrip van enige aangeleentheid rakende die aanspreeklikheid of heffing van reg of enige korting, terugbetaling of teruggawe van reg, beheers, moet die bepalings van hierdie Wet bo die bepalings van die Wet op Vervaardigingsontwikkeling, 1993 of die regulasie daarkragtens uitgevaardig, voorrang geniet.

(4) Ondanks andersluidende bepalings in hierdie artikel of enige ander bepaling van hierdie Wet of in die Wet op Belasting op Toegevoegde Waarde, 1991 word goedere waarop subartikel (7) betrekking het, behoudens enige uitsondering of aanpassing in enige Bylae of reël voorgeskryf—

(a) selfs indien vry van reg, vir die doeleindes om enige bepaling van hierdie Wet toe te pas, geag goedere onderhewig aan reg te wees; en

(b) indien verwyder van 'n DBG, geag om in die Republiek ingevoer te gewees het.

(5) Enige verwysing in hierdie artikel na aanspreeklikheid vir reg of beëindiging van aanspreeklikheid vir reg of in enige Bylae of reël waarop dit betrekking het, word, behoudens enige vrystelling of uitsondering toegestaan ingevolge die Wet op Belasting op Toegevoegde Waarde, 1991 (Wet No. 89 van 1991), en ondanks andersluidende bepalings in hierdie Wet, geag 'n verwysing na die aanspreeklikheid of beëindiging van aanspreeklikheid vir belasting op toegevoegde waarde in te sluit.

(6) 'n DBG is onderhewig aan sodanige beheer en prosedures wat die Kommissaris by reël voorskryf.

(7) Enige goedere waarop hierdie artikel of enige ander bepaling van hierdie Wet betrekking het, hetsy sodanige goedere vry van reg is al dan nie, wat—

(a) 'n DBG binnegebring word;

(b) geproduseer of vervaardig word, opgeslaan, of daarbinne vir enige doel beweeg word; of

(c) daarvandaan verwyder word, is, behalwe in die mate wat hierdie artikel, enige Bylae of enige reël andersins bepaal, onderhewig aan die bepalings van die Wet en enige prosedure wat ingevolge sodanige bepalings voorgeskryf word.

(8) Iemand wat, met inbegrip van, waar toepaslik, 'n DBG-onderneming of 'n NOS-bediener, wat vir die doeleindes van enige aktiwiteit binne 'n DBG—

(a) enige goedere waarop hierdie artikel of enige ander bepaling van hierdie Wet betrekking het, die DBG binnebring of sodanige goedere daarin ontvang, met inbegrip van in enige gelisensieerde of geregistreerde persele;

(b) enige goedere daarbinne produseer of vervaardig;

(c) enige goedere daarvandaan verwyder; of

(d) anders handel met goedere waarop hierdie artikel betrekking het, is, uitgesonderd waar enige bepaling van hierdie Wet andersins bepaal—

(i) aanspreeklik vir die voldoening aan alle verpligtinge wat ingevolge hierdie artikel of enige ander bepaling van hierdie Wet ten opsigte van sodanige goedere opgelê is;

(ii) benewens enige aanspreeklikheid wat enige ander persoon ingevolge die bepalings van die Wet oploop, vir die reg op sodanige goedere aanspreeklik.

(9) Die aanspreeklikheid van 'n NOS-bediener of 'n DBG-onderneming of sodanige ander persoon ten opsigte van enige goedere waarop hierdie artikel betrekking het, verval—

(a) indien die NOS-bediener of DBG-onderneming of sodanige ander persoon, na gelang van die geval, bewys dat—

(i) the duty on the goods concerned has been paid;

(ii) the goods have been duly consumed or otherwise used in the manufacture or production of any goods by the CCA enterprise in accordance with any CCA enterprise permit and any relevant provision of this Act;

(iii) the goods have been duly exported;

(iv) the goods have, where relevant, been removed and received in any other premises registered or licensed under the provisions of this Act; or

(v) any goods brought temporarily into the CCA are removed therefrom in accordance with the provisions of this Act and any conditions imposed by the Commissioner;

(b) where liability otherwise ceases in terms of any provision of this Act, including in terms of any provision of any Schedule or rule made for the purposes of this section;

(c) where the goods are abandoned or destroyed under the provisions of this Act.

(10) Any goods manufactured or produced in a CCA shall, when removed therefrom for any purpose other than export, except if otherwise provided in any Schedule or rule, be deemed to be imported goods.

(11) Notwithstanding anything to the contrary contained in this Act or the Manufacturing Development Act, 1993 (Act No. 187 of 1993), or any regulation or any other law, the Minister may, at the request of the Minister of Trade and Industry, in respect of any goods produced or manufactured in or removed for home consumption or exported from or brought into or used in any activity in the CCA, by notice in the *Gazette*—

(a) in a schedule which shall be deemed to be incorporated in Schedule No. 1 as Part 9 thereof and to constitute an amendment of Schedule No. 1, specify the duty leviable on goods manufactured or produced in, or any other goods brought into a CCA on entry for home consumption;

(b) in any item in a separate Part of each of Schedule No. 3, 4, 5 or 6, as the case may be, which shall be deemed to be an amendment of such Schedule, provide for a rebate, refund or drawback of duty in respect of any goods brought into, produced or manufactured or used in or removed from a CCA, in the circumstances and for the purposes and on compliance with any conditions that may be specified in such Part or item.

(12) Any amendment contemplated in subsection (11) may be made with retrospective effect from such date as may be specified in such notice.

(13) Notwithstanding the provisions of sections 48 and 75(15) any amendment to the said Part 9 or Schedule No. 3, 4, 5 or 6 shall unless otherwise specified in any amendment to any Schecule be made under the provisions of this section.

(14) The provisions of section 48(6) shall apply *mutatis mutandis* to any amendment to which subsections (11), (12) and (13) relates.

(15) 'Manufactured or produced' shall have the meaning applied in terms of this Act to goods imported into the Republic, and in determining the duty leviable in Part 9 of Schedule No. 1, the Minister shall take into account the preferential rates of duty in operation in Part 1 of the said Schedule No. 1 in respect of goods originating in a country which is entitled to such preferential rates.

(16) The provisions of sections 65, 66 and 67 shall, subject to the rules, apply *mutatis mutandis* in respect of the valuation of such goods.

(17) The Commissioner may make rules—

(a) to designate a CCA;

(b) to ensure the security and control of a CCA;

(i) die reg op die betrokke goedere betaal is;

(ii) die goedere in die vervaardiging of produksie van enige goedere deur die DBG-onderneming ooreenkomstig enige DBG-ondernemingspermit en enige betrokke bepaling van hierdie Wet behoorlik verbruik is of andersins gebruik is;

(iii) die goedere behoorlik uitgevoer is;

(iv) die goedere, waar toepaslik, verwyder is en ontvang is in enige ander persele wat kragtens die bepalings van hierdie Wet geregistreer of gelisensieer is; of

(v) enige goedere wat tydelik in die DBG ingebring is daarvan verwyder word ooreenkomstig die bepalings van hierdie Wet en enige voorwaardes wat die Kommissaris oplê;

(b) waar aanspreeklikheid andersins verval ingevolge enige bepaling van hierdie Wet met inbegrip van enige bepaling van enige Bylae of reël wat vir die doeleindes van hierdie artikel uitgevaardig is;

(c) waar die goedere ingevolge bepalings van hierdie Wet prysgegee of vernietig is.

(10) Enige goedere wat in 'n DBG vervaardig of geproduseer is, word wanneer dit daaruit verwyder word vir enige doel anders as uitvoer, behalwe indien andersins bepaal in enige Bylae of reël, geag ingevoerde goedere te wees.

(11) Ondanks andersluidende bepalings van hierdie Wet of in die Wet op Vervaardigingsontwikkeling, 1993 (Wet No. 187 van 1993), of enige regulasie of enige ander wet, kan die Minister op versoek van die Minister van Handel en Nywerheid ten opsigte van enige goedere in 'n DBG geproduseer of vervaardig of daaruit verwyder vir binnelandse verbruik of daaruit uitgevoer of daarin gebring of gebruik in enige aktiwiteit daarbinne, by kennisgewing in die *Staatskoerant*—

(a) in 'n bylae wat geag word ingelyf te wees in Bylae No. 1 as Deel 9 daarvan en 'n wysiging van Bylae No. 1 te wees die reg hefbaar op goedere in 'n DBG geproduseer of vervaardig of enige ander goedere daarin gebring by klaring vir binnelandse verbruik, vermeld;

(b) in enige item in 'n afsonderlike Deel van elk van Bylaes No. 3, 4, 5 of 6, na gelang van die geval, wat 'n wysiging van sodanige Bylae geag word 'n korting, terugbetaling of teruggawe van reg bepaal ten opsigte van goedere wat in die DBG ingebring, geproduseer of vervaardig is of gebruik is in of daaruit verwyder word in die omstandighede en vir die doeleindes en by nakoming van die voorwaardes wat in sodanige Deel of item vermeld word.

(12) Enige wysiging in subartikel (11) beoog, kan met terugwerkende krag vanaf die datum wat in sodanige kennisgewing vermeld word, uitgevaardig word

(13) Ondanks die bepalings van artikels 48 en 75(15) moet, tensy andersins vermeld in enige wysiging van enige Bylae, enige wysiging van die gemelde Deel 9 van Bylae No. 3, 4, 5 of 6 ingevolge die bepalings van hierdie artikel uitgevaardig word.

(14) Die bepalings van artikel 48(6) is *mutatis mutandis* op enige wysiging waarop subartikels (11), (12) en (13) betrekking het van toepassing.

(15) 'Vervaardig of geproduseer' het die betekenis ingevolge die bepalings van hierdie Wet toegepas op goedere in die Republiek ingevoer, en by die bepaling van die reg hefbaar in Deel 9 van Bylae No. 1, moet die Minister die voorkeurskale van reg in werking in Deel 1 van die genoemde Bylae No. 1 wat oorsprong verwerf het in 'n land wat geregtig is op sodanige voorkeurtariewe in ag neem.

(16) Die bepalings van artikels 65, 66 en 67 is, behoudens die reëls, *mutatis mutandis* ten opsigte van die waardasie van sodanige goedere van toepassing.

(17) Die Kommissaris kan reëls uitvaardig—

(a) om 'n DBG aan te wys;

(b) om die sekerheid en kontrole van 'n DBG te verseker;

(c) to regulate the customs and excise administration of a CCA in connection with goods received or removed or manufactured or produced or consumed or any other activity to which this section or any other provisions of this Act relates;

(d) notwithstanding anything contained to the contrary in this section or any other provision of this Act, requiring that—

(i) any person who participates in any activity within or having access to a CCA must be licensed or registered in terms of this Act;

(ii) any premises or area in the CCA used for any activity specified in such rule must be licensed as a customs and excise warehouse;

(e) to prescribe after consultation with the Director-General: Trade and Industry conditions and procedures regulating the activities and registration or licensing in respect of any enterprise or any other person partaking in any activity in, or having access to a CCA;

(f) after consultation with the Director-General: Trade and Industry in addition to or in substitution of any power, duty or function relating to the South African Revenue Service or any officer thereof or any procedure or process prescribed in the regulations;

(g) after consultation with the Director-General: Trade and Industry regarding duties or functions of an IDZ operator or a CCA enterprise;

(h) in respect of all matters which are required or permitted in terms of this section to be prescribed by rule;

(i) regarding any other matter which may be necessary and useful for the purpose of the effective and efficient administration of a CCA.

(18) *(a)* The Commissioner may refuse any application for a licence or registration required in terms of this section or cancel or suspend any such licence or registration.

(b) The provisions of sections 59A (2) or 60 (2), as the case may be, shall apply *mutatis mutandis* for the purposes of paragraph *(a)*.

(19) Any person who, in connection with any activity to which this section relates—

(a) makes any false statement or makes use of any declaration or document containing such statement; or

(b) contravenes or fails to comply with any provision of this section or any other provision of the Act,

shall be guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding 5 years, or to both such fine and such imprisonment and the goods in respect of which the offence was committed shall be liable to forfeiture in accordance with this Act.".

Repeal of section 125 of Act 60 of 2001

203. Section 125 of the Second Revenue Laws Amendment Act, 2001, is hereby repealed.

Repeal of section 135 of Act 60 of 2001

204. Section 135 of the Second Revenue Laws Amendment Act, 2001, is hereby repealed.

Repeal of section 137 of Act 60 of 2001, as amended by section 76 of Act 30 of 2002

205. Section 137 of the Second Revenue Laws Amendment Act, 2001, is hereby repealed.

(c) om die doeane- en aksynsadministrasie van 'n DBG te reguleer in verband met goedere ontvang of verwyder of vervaardig of geproduseer of verbruik of enige ander bedrywigheid waarmee hierdie artikel of enige ander bepalings van hierdie Wet in verband staan;

(d) ondanks andersluidende bepalings van hierdie artikel of enige ander bepaling van hierdie Wet, wat vereis dat—

(i) enige persoon wat deelneem aan enige aktiwiteit binne die DBG of wat toegang daartoe het ingevolge hierdie Wet moet lisensieer of registreer;

(ii) enige persele of gebied in die DBG wat gebruik word vir engie aktiwiteit in sodanige reël vermeld as 'n doeane- en aksynspakhuis moet lisensieer;

(e) om, na oorlegpleging met die Direkteur-Generaal: Handel en Nywerheid voorwaardes en prosedures voor te skryf wat die aktiwiteite en registrasie of lisensiëring reguleer ten opsigte van enige onderneming of enige ander persoon wat deelneem aan enige aktiwiteit in, of wat toegang het tot die DBG;

(f) na oorlegpleging met die Direkteur-Generaal: Handel en Nywerheid, bykomend tot of ter vervanging van enige bevoegdheid, plig of funksie met betrekking tot die Suid-Afrikaanse Inkomstediens of enige beampte daarvan of enige prosedure of proses wat in die regulasies voorgeskryf word;

(g) na oorlegpleging met die Direkteur-Generaal: Handel en Nywerheid aangaande pligte en funksies van die NOS-bediener of DBG-onderneming;

(h) ten opsigte van alle aangeleenthede wat ingevolge hierdie artikel moet of kan voorgeskryf word;

(i) aangaande enige aangeleentheid wat nodig en nuttig vir die doeleindes van die doeltreffende en effektiewe administrasie van die DBG kan wees.

(18) *(a)* Die Kommissaris mag enige aansoek om 'n lisensie of registrasie soos vereis ingevolge hierdie artikel weier, of enige sodanige lisensie of registrasie kanselleer of opskort.

(b) Die bepalings van artikels 59A (2) of 60 (2) is, na gelang van die geval *mutatis mutandis* van toepassing vir die doeleindes van paragraaf *(a)*.

(19) Iemand wat, in verband met enige aktiwiwteit waarop hierdie artikel betrekking het—

(a) enige vals verklaring maak of gebruik maak van enige deklarasie of dokument wat sodanige verklaring bevat; of

(b) enige bepaling van hierdie artikel of enige ander bepaling van die Wet oortree of versuim om daaraan te voldoen, is aan 'n misdryf skuldig en by skuldigbevinding strafbaar met 'n boete of met gevangenisstraf vir 'n tydperk van 5 jaar, of met sowel sodanige boete en sodanige gevangenisstraf en die goedere ten opsigte waarvan die misdryf gepleeg is, is aan verbeuring ingevolge hierdie Wet onderhewig.".

Herroeping van artikel 125 van Wet 60 van 2001

203. Artikel 125 van die Tweede Wysigingswet op Inkomstewette, 2001, word hierby herroep.

Herroeping van artikel 135 van Wet 60 van 2001

204. Artikel 135 van die Tweede Wysigingswet op Inkomstewette, 2001, word hierby herroep.

Herroeping van artikel 137 van Wet 60 van 2001, soos gewysig deur artikel 76 van Wet 30 van 2002

205. Artikel 137 van die Tweede Wysigingswet op Inkomstewette, 2001, word hierby herroep.

Amendment of section 190 of Act 60 of 2001

206. Section 190 of the Second Revenue Laws Amendment Act, 2001, is hereby amended by the deletion of subsection (2).

Amendment of section 1 of Act 4 of 2002

207. (1) Section 1 of the Unemployment Insurance Contributions Act, 2002, is hereby amended by the deletion of the definition of "seasonal worker".

(2) Subsection (1) shall come into operation on the date that section 1 of the Unemployment Insurance Amendment Act, 2003, comes into operation.

Amendment of section 4 of Act 4 of 2002

208. (1) Section 4 of the Unemployment Insurance Contributions Act, 2002, is hereby amended—

(a) by the substitution in subsection (1) for paragraphs *(b)* and *(c)* of the following paragraphs:

"*(b)* **[an employee and his or her employer, where that employee receives remuneration under a learnership agreement registered in terms]** employees under a contract of employment contemplated in section 18(2) of the Skills Development Act, 1998 (Act No. 97 of 1998), and their employers;

(c) **[employers and]** employees in the national and provincial spheres of government who are officers or employees as defined in section 1(1) of the Public Service Act, 1994 (Proclamation No. 103 of 1994), and their employers; and"; and

(b) by the deletion of subsection (2).

(2) Subsection (1) shall come into operation on the date that section 2 of the Unemployment Insurance Amendment Act, 2003, comes into operation.

Amendment of section 7 of Act 4 of 2002

209. (1) Section 7 of the Unemployment Insurance Contributions Act, 2002, is hereby amended by the insertion after subsection (4) of the following subsection:

"(4A) Where an amount of an employee's contribution which has been deducted or withheld by an employer which is a company (other than a listed company) in terms of this section has not been paid over to the Commissioner or the Unemployment Insurance Commissioner, as the case may be, the representative employer and every director and shareholder of that company who controls or is regularly involved in the management of the company's overall financial affairs shall be personally liable for the payment of that amount to the Commissioner or the Unemployment Insurance Commissioner and for any penalty contemplated in section 13(2) which may be imposed in respect of that payment.".

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

Repeal of section 73 of Act 30 of 2002

210. Section 73 of the Taxation Laws Amendment Act, 2002, is hereby repealed.

Repeal of section 76 of Act 30 of 2002

211. Section 76 of the Taxation Laws Amendment Act, 2002, is hereby repealed.

Wysiging van artikel 190 van Wet 60 van 2001

206. Artikel 190 die Tweede Wysigingswet op Inkomstewette, 2001, word hierby gewysig deur subartikel (2) te skrap.

Wysiging van artikel 1 van Wet 4 van 2002

207. (1) Artikel 1 van die Mulayo Wa Zwibviswa Zwa Ndindakhombo Ya U Shaya Mushumo, 2002 ("Unemployment Insurance Contributions Act, 2002"), word hierby gewysig deur die omskrywing van "mushumi wa khala-nwaha" te skrap.

(2) Subartikel (1) tree in werking op die datum wat die "Unemployment Insurance Amendment Act, 2003, in werking tree.

Wysiging van artikel 4 van Wet 4 van 2002

208. (1) Artikel 4 van die Mulayo Wa Zwibviswa Zwa Ndindakhombo Ya U Shaya Mushumo, 2002 ("Unemployment Insurance Contributions Act, 2002"), word hierby gewysig—

(a) deur in subartikel (1) paragrawe *(b)* en *(c)* deur die volgende paragrawe te vervang:

"*(b)* **[mutholwa na mutholi wawe, hune mutholwa uyo a vha o tholwa a wana malamba e kha thendelano ya u guda yo redzhitsitarwaho hu tshi tevhela]** vhashumi vhane vha shuma nga fhasi ha kontiraka yo sumbedziwaho kha khethekanyo ya 18(2) ya Mulayo wa u Bveledza Vhukoni (Mulayo Nom. 97 wa 1998), na vhatholi vha vho; na

(c) **[Vhatholi na]** vhatholwa kha muvhuso wa lushaka na mivhuso ya phurovinsi vhane vha vha vhaofisiri nga ndila ya tandavhudzo yo sumbedziwaho kha khethekanyo 1(1) ya "Public Service Act, 1994 (Proklameishini Nom. 103 ya 1994, na vhatholi vha vho; na"

(b) deur subartikel (2) te skrap.

(2) Subartikel (1) tree in werking op die datum wat artikel 2 van die "Unemployment Insurance Amendment Act, 2003" in werking tree.

Wysiging van artikel 7 van Wet 4 van 2002

209. (1) Artikel 7 van die Mulayo Wa Zwibviswa Zwa Ndindakhombo Ya U Shaya Mushumo, 2002 ("Unemployment Insurance Contributions Act, 2002"), word hierby gewysig deur na subartikel (4) die volgende subartikel by te voeg:

"(4A) Hune zwibvizwa zwa ndindakhombo ya ushaya mushumo zwa vha zwo lifhiwa kana dzi songo lifhiwa nga mutholi a ne a vha mune wa bindu (nanga wa bindu lo nwaliswaho nga ndila I tevhelaho kha heyi khethekanyo ya vha I songo lifhiwa kha Khomishinari kana Khomishinari wa Ndindakhombo ya vhushaya mushumo, u ya nga ndila yo raloho, moimeli wa mutholi na Dairekita inwe na inwe, mune wa bindu a ne a vha muhulwane wa vhashumi vha ne vha vha nga fhasi hawe, na u fara tshikwama tsha zwibviswa, u tea u lifha zwibvisa nga ene mune kha Khomishinari kana kha Khomoshinari wa Ndindakhombo ya vhushaya mushumo na uri zwibviswa zwine zwa tandavudzwa kha khethekanyo-thuku 13(2) ine ya nga tiwa malugana na iyo mbadelo.".

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

Heroeping van artikel 73 van Wet 30 van 2002

210. Artikel 73 van die Wysigingswet op Belastingwette, 2002, word hierby herroep.

Heroeping van artikel 76 van Wet 30 van 2002

211. Artikel 76 van die Wysigingswet op Belastingwette, 2002, word hierby herroep.

Amendment of section 14 of Act 74 of 2002

212. (1) Section 14 of the Revenue Laws Amendment Act, 2002, is hereby amended—

(a) by the substitution in the definition of 'foreign financial instrument holding company' inserted by that Act in section 9D of the Income Tax Act, 1962, for the words preceding paragraph *(a)* of the following words:

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

(b) by the substitution in the definition of 'foreign financial instrument holding company' inserted by that Act in section 9D of the Income Tax Act, 1962, for the proviso of the following proviso:

"Provided that in determining whether more than 50 per cent of the market value or two-thirds of the actual cost of the assets of the company and controlled group company consist of financial instruments, the following assets must be wholly disregarded—

(i) any share in any other company in the same group of companies; and

(ii) any financial instrument which constitutes a loan, advance or debt if both the debtor and creditor companies form part of the same group of companies;".

(2) Subsection (1) shall be deemed to have come into operation on 6 November 2002.

Amendment of section 33 of Act 74 of 2002

213. Section 33 of the Revenue Laws Amendment Act, 2002, is hereby amended—

(a) by numbering the existing wording of the English text as subsection (1); and

(b) by the addition in the English text of the following subsection:

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

Amendment of section 34 of Act 74 of 2002

214. (1) Section 34 of the Revenue Laws Amendment Act, 2002, is hereby amended—

(a) by the substitution in the definition of 'domestic financial instrument holding company' inserted by that Act in section 41 of the Income Tax Act, 1962, for the words preceding paragraph *(a)* of the following words:

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

(b) by the substitution in the definition of 'domestic financial instrument holding company' inserted by that Act in the Income Tax Act, 1962, for the proviso of the following proviso:

"Provided that in determining the 50 per cent and two-thirds ratio, the following will be wholly disregarded—

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

Wysiging van artikel 14 van Wet 74 van 2002

212. (1) Artikel 14 van die Wysigingswet op Inkomstewette, 2002, word hierby gewysig—

(a) deur in die omskrywing van "buitelandse finansiële instrumenthouermaatskappy ingevoeg deur daardie Wet in artikel 9D van die Inkomstebelastingwet, 1962, die woorde wat paragraaf *(a)* voorafgaan deur die volgende woorde te vervang:

" "buitelandse finansiële instrumenthouermaatskappy" 'n buitelandse maatskappy waar meer as 50 persent van die markwaarde of twee-derdes van die werklike koste van al die bates van daardie maatskappy, tesame met enige beheerde groepsmaatskappy met betrekking tot daardie buitelandse maatskappy, bestaan uit finansiële instrumente, behalwe—";

(b) deur in die omskrywing van "buitelandse finansiële instrumenthouermaatskappy ingevoeg deur daardie Wet in artikel 9D van die Inkomstebelastingwet, 1962, die voorbehoudsbepaling deur die volgende voorbehoudsbepaling te vervang:

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

(i) enige aandeel in 'n ander maatskappy binne dieselfde groep van maatskappye; en

(ii) enige finansiële instrument wat 'n lening, voorskot of skuld daarstel indien beide die skuldenaar- en skuldeisermaatskappy deel van dieselfde groep van maatskappye vorm;".

(2) Subartikel (1) word geag op 6 November 2002 in werking te getree het.

Wysiging van artikel 33 van Wet 74 van 2002

213. Artikel 33 van die Wysigingswet op Inkomstewette, 2002, word hierby gewysig—

(a) deur die bestaande in die Engelse teks as subartikel (1) te nommer; en

(b) deur in die Engelse teks die volgende subartikel by te voeg:

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

Wysiging van artikel 34 van Wet 74 van 2002

214. (1) Artikel 34 van die Wysigingswet op Inkomstewette, 2002, word hierby gewysig—

(a) deur in die omskrywing van "plaaslike finansiële instrumenthouermaatskappy" ingevoeg deur daardie Wet in artikel 41 van die Inkomstebelastingwet, 1962, die woorde wat paragraaf *(a)* voorafgaan deur die volgende woorde te vervang:

" 'plaaslike finansiële instrumenthouermaatskappy' 'n maatskappy wat 'n inwoner is, waar meer as 50 persent van die markwaarde of twee-derdes van die werklike koste van al die bates van daardie maatskappy, tesame met die bates van al die beheerde groepmaatskappye met betrekking tot daardie maatskappy uit finansiële instrumente bestaan, anders as—";

(b) deur in die omskrywing van "plaaslike finansiële instrumenthouermaatskappy" ingevoeg deur daardie Wet in artikel 41 van die Inkomstebelastingwet, 1962, die voorbehoudsbepaling deur die volgende voorbehoudsbepaling te vervang:

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

(i) enige aandeel van 'n beheerde groepmaatskappy met betrekking tot daardie maatskappy; en

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

(2) Subsection (1) shall be deemed to have come into operation on 6 November 2002.

Amendment of section 36 of Act 74 of 2002

215. (1) Section 36 of the Revenue Laws Amendment Act, 2002, is hereby amended by the deletion in subsection (1) of paragraph *(b)*.

(2) Subsection (1) shall be deemed to have come into operation on 13 December 2002.

Amendment of section 113 of Act 74 of 2002

216. Section 113 of the Revenue Laws Amendment Act, 2002, is hereby amended by the addition of the following subsection:

"(2) Subsection (1)*(a)* and *(b)* shall be deemed to have come into operation on 6 November 2002 and shall apply in respect of any registration of transfer of a marketable security in terms of a transaction which takes effect on or after that date.".

Amendment of section 122 of Act 74 of 2002

217. Section 122 of the Revenue Laws Amendment Act, 2002, is hereby amended by the substitution for subsection (2) of the following subsection:

"(2) Subsection (1) shall be deemed to have come into operation on **[the date of promulgation of this Act]** 6 November 2002 and shall apply in respect of any acquisition of beneficial ownership in terms of a transaction which takes effect on or after that date.".

Repeal of section 128 of Act 74 of 2002

218. Section 128 of the Revenue Laws Amendment Act, 2002, is hereby repealed.

Amendment of section 1 of Act 12 of 2003

219. (1) Section 1 of the Exchange Control Amnesty and Amendment of Taxation Laws Act, 2003, is hereby amended by—

(a) the substitution for the definition of "Commissioner" of the following definition:

" 'Commissioner' means the Commissioner for the South African Revenue Service appointed in terms of section **[13]** 6 of the South African Revenue Service Act, 1997 (Act No. 34 of 1997);".

(b) by the addition of the word "or" at the end of paragraph *(b)* of the definition of "unlawful activity" and by the addition of the following paragraph:

"*(c)* any contravention or failure to comply with any other Act administered by the Commissioner, if the applicant or facilitator, as the case may be, no later than 60 days after the date of application rectifies any such contravention or failure and makes arrangements with the Commissioner to pay any outstanding liability relating to that contravention or failure.";

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

Amendment of section 4 of Act 12 of 2003

220. (1) Section 4 of the Exchange Control Amnesty and Amendment of Taxation Laws Act, 2003, is hereby amended—

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

"**Special rules for donors to and beneficiaries of discretionary trust**";

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

"(1) A person who is a donor (or the deceased estate of a donor) or a beneficiary in relation to a discretionary trust which is not a resident, may elect that any foreign asset contemplated in subsection (2), which was

(ii) enige finansiële instrument wat 'n lening, voorskot of skuld verteenwoordig indien beide die skuldenaar en die skuldeiser maatskappy lede van dieselfde groep van maatskappye is.".

(2) Subartikel (1) word geag op 6 November 2002 in werking te getree het.

Wysiging van artikel 36 van Wet 74 van 2002

215. (1) Artikel 36 van die Wysigingswet op Inkomstewette, 2002, word hierby gewysig deur in subartikel (1) paragraaf *(b)* te skrap.

(2) Subartikel (1) word geag op 13 Desember 2002 in werking te getree het.

Wysiging van artikel 113 van Wet 74 van 2002

216. Artikel 113 van die Wysigingswet op Inkomstewette, 2002, word hierby gewysig deur die volgende subparagraaf by te voeg:

"(2) Subartikel (1)*(a)* en *(b)* word geag op 6 November 2002 in werking te getree het en is van toepassing ten opsigte van enige registrasie van oordrag van 'n handelseffek ingevolge 'n transaksie wat op of na daardie datum in werking tree.".

Wysiging van artikel 122 van Wet 74 van 2002

217. Artikel 122 van die Wysigingswet op Inkomstewette, 2002, word hierby gewysig deur subartikel (2) deur die volgende subartikel te vervang:

"(2) Subartikel (1) **[tree]** word geag in werking te getree het op **[die datum van afkondiging van hierdie Wet]** 6 November 2002 en is van toepassing ten opsigte van enige verkryging van voordelige eienaarskap ingevolge 'n transaksie wat op of na daardie datum in werking tree.".

Herroeping van artikel 128 van Wet 74 van 2002

218. Artikel 128 van die Wysigingswet op Inkomstewette, 2002, word hierby herroep.

Wysiging van artikel 1 van Wet 12 van 2003

219. (1) Artikel 1 van die Wet op Deviesebeheeramnestie en Wysiging van Belastingwette, 2003, word hierby gewysig—

(a) deur die omskrywing van "Kommissaris" deur die volgende omskrywing te vervang:

" 'Kommissaris' die Kommissaris van die Suid-Afrikaanse Inkomstediens ingevolge artikel **[13]** 6 van die Wet op die Suid-Afrikaanse Inkomstediens, 1997 (Wet No. 34 van 1997), aangestel;";

(b) deur in die omskrywing van "onregmatige aktiwiteit" die woord "of" aan die einde van paragraaf *(b)* by te voeg en die volgende paragraaf by te voeg:

"*(c)* 'n oortreding of nalate om enige ander Wet deur die Kommissaris geadministreer na te kom, indien die applikant of fasilieerder, na gelang va die geval, nie later nie as 60 dae na die datum van aansoek enige sodanige oortreding of nalate reggestel het en reëlings met die Kommissaris getref het om enige uitstaande verpligtinge wat met die oortreding of nalate in verband staan, te betaal.".

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

Wysiging van artikel 4 van Wet 12 van 2003

220. (1) Artikel 4 van die Wet op Deviesebeheeramnestie en Wysiging van Belastingwette, 2003, word hierby gewysig—

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

"**Spesiale reëls vir skenkers aan en begunstigdes van diskresionêre trust**";

(b) deur subartikel (1) deur die volgende subartikel te vervang:

"(1) 'n Persoon wat 'n skenker (of die bestorwe boedel van 'n skenker) of 'n begunstigde is met betrekking tot 'n diskresionêre trust wat nie 'n inwoner is nie, kan 'n keuse uitoefen dat 'n buitelandse bate in

held by that discretionary trust on 28 February 2003, must be deemed to be held by that person.";

(c) by the substitution in subsection (2) for paragraphs *(a)* and *(b)* of the following paragraphs:

"*(a)* was acquired by that discretionary trust by way of a donation **[made by the person contemplated in subsection (1)]**;

(b) has been wholly or partly derived from any unauthorised asset or from any amount not declared **[by that donor]** to the Commissioner as required by the Estate Duty Act, 1955, or the Income Tax Act, 1962; and"; and

(d) by the substitution in subsection (3) for subparagraph (ii) of paragraph *(a)* of the following subparagraph:

"(ii) for the purposes of the Income Tax Act, 1962, (other than Part V and VII of Chapter II of that Act) from the first day of the last year of assessment ending on or before 28 February 2003;".

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

Substitution of section 5 of Act 12 of 2003

221. (1) The following section hereby substitutes section 5 of the Exchange Control Amnesty and Amendment of Taxation Laws Act, 2003:

"**Application for amnesty and period for application**

5. An applicant or facilitator applying for amnesty contemplated in this Chapter must submit an application by way of a sworn affidavit or solemn declaration which must be delivered to the amnesty unit during the period commencing 1 June 2003 and ending **[30 November 2003]** 29 February 2004, at the address and in the form and manner as may be prescribed by the amnesty unit.".

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

Amendment of section 10 of Act 12 of 2003

222. (1) Section 10 of the Exchange Control Amnesty and Amendment of Taxation Laws Act, 2003, is hereby amended by the substitution in subsection (1) for paragraph *(a)* of the following paragraph:

"*(a)* that applicant delivered the application to the amnesty unit within the period commencing 1 June 2003 and ending **[30 November 2003]** 29 February 2004;".

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

Amendment of section 17 of Act 12 of 2003

223. (1) Section 17 of the Exchange Control Amnesty and Amendment of Taxation Laws Act, 2003, is hereby amended by the addition of the following subsection:

"(3) No tax relief shall be granted in terms of this section in respect of any—

(a) normal tax which could have been imposed in terms of the Income Tax Act, 1962, in respect of any year of assessment ending after 28 February 2002;

(b) secondary tax on companies which could have been imposed in terms of the Income Tax Act, 1962, in respect of any dividend declared or amount distributed after 28 February 2002;

(c) donations tax which could have been imposed in terms of the Income Tax Act, 1962, in respect of any donation after 28 February 2003; or

(d) estate duty which could have been imposed in terms of the Estate Duty Act, 1955, in respect of the estate of any person who died after 28 February 2003."

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

subartikel (2) beoog, wat op 28 Februarie 2003 deur daardie diskresionêre trust gehou is, geag word deur daardie persoon gehou te wees.";

(c) deur in subartikel (2) paragrawe *(a)* en *(b)* deur die volgende paragrawe te vervang:

"*(a)* deur daardie diskresionêre trust verkry is by wyse van 'n skenking **[gemaak deur die persoon in subartikel (1) beoog]**;

(b) in geheel of gedeeltelik verkry is uit enige ongemagtigde bate of van enige bedrag wat nie **[deur daardie skenker]** aan die Kommissaris verklaar is nie soos deur die Boedelbelastingwet, 1955, of die Inkomstebelastingwet, 1962, vereis word; en"; en

(d) deur in subartikel (3) subparagraaf (ii) van paragraaf *(a)* deur die volgende subparagraaf te vervang:

"(ii) by die toepassing van die Inkomstebelastingwet, 1962, (behalwe Deel V en VII van daardie Wet) vanaf die eerste dag van die laaste jaar van aanslag wat voor of op 28 Februarie 2003 eindig,".

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

Substitution van artikel 5 van Wet 12 van 2003

221. (1) Die volgende artikel vervang hierby artikel 5 van die Wet op Deviesebeheer-amnestie en Wysiging van Belastingwette, 2003:

"**Aansoek om amnestie en tydperk vir aansoek**

5. 'n Applikant of fasiliteerder wat om omnestie in hierdie Hoofstuk beoog aansoek doen, moet 'n aansoek by wyse van eedsverklaring of bevestigende verklaring indien wat aan die anmestie-eenheid gelewer moet word gedurende die tydperk wat op 1 Junie 2003 'n aanvang neem en op **[30 November 2003]** 29 Februarie 2004 eindig, by die adres in in die vorm en op die wyse wat die amnestie-eenheid voorskryf.".

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

Wysiging van artikel 10 van Wet 12 van 2003

222. (1) Artikel 10 van die Wet op Deviesebeheeramnestie en Wysiging van Belastingwette, 2003, word hierby gewysig deur in subartikel (1) paragraaf *(a)* deur die volgende paragraaf te vervang:

"*(a)* daardie applikant die aansoek binne die tydperk wat op 1 Junie 2003 begin en op **[30 November 2003]** 29 Februarie 2004 eindig, aan die amnestie-eenheid gelewer het;".

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

Wysiging van artikel 17 van Wet 12 van 2003

223. (1) Artikel 17 van die Wet op Deviesebeheeramnestie en Wysiging van Belastingwette, 2003, word hierby gewysig deur die volgende subartikel by te voeg:

"(3) Geen belastingverligting word verleen ingevolge hierdie artikel nie ten opsigte van enige—

(a) normale belasting wat kragtens die Inkomstebelastingwet, 1962, gehef kon word ten opsigte van enige jaar van aanslag wat na 28 Februarie 2002 eindig;

(b) sekondêre belasting op maatskappye wat kragtens die Inkomstebelastingwet, 1962, gehef kon word ten opsigte van 'n dividend verklaar of 'n bedrag uitgekeer na 28 Februarie 2002;

(c) geskenkebelasting wat kragtens die Inkomstebelastingwet, 1962, gehef kon word ten opsigte van enige skenking na 28 Februarie 2003; of

(d) boedelbelasting wat kragtens die Boedelbelastingwet, 1955, gehef kon word ten opsigte van die boedel van 'n persoon wat na 28 Februarie 2003 te sterwe kom.".

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

Repeal of Act and withdrawal of regulations

224. (1) The Marketable Securities Tax Act, 1948 (Act No. 32 of 1948), is hereby repealed.

(2) The provisions of the Marketable Securities Tax Act, 1948, shall continue to apply in respect of any purchase of marketable securities before the date of the repeal of that Act as if that Act had not been so repealed.

(3) The regulations prescribing the circumstances under which the Commissioner for the South African Revenue Service may settle a dispute between the Commissioner and any person, issued in terms of section 107B of the Income Tax Act, 1962 (Act No. 58 of 1962), and section 93A of the Customs and Excise Act, 1964 (Act No. 91 of 1964), and published as Government Notice R. 468 in *Gazette* No. 24639 of 1 April 2003, are hereby withdrawn.

Transitional provisions relating to gold bullion and shares of companies acquired from funds transferred to Republic

225. A company contemplated in section 10(1)*(s)* of the Income Tax Act, 1962, must disregard any capital gain or capital loss in respect of the disposal during any year of assessment of that company commencing on or before 1 January 2004 of any asset consisting of gold bullion or shares as contemplated in section 10(1)*(s)*.

Short title and commencement

226. (1) This Act shall be called the Revenue Laws Amendment Act, 2003.

(2) Save in so far as is otherwise provided in this Act or the context otherwise indicates, the amendments effected by this Act to the Income Tax Act, 1962, shall for purposes of assessments in respect of normal tax under the Income Tax Act, 1962, be deemed to have come into operation as from the commencement of years of assessment ending on or after 1 January 2004.

Herroeping van Wet en terugtrekking van regulasies

224. (1) Die Handelseffektebelastingswet, 1948 (Wet No. 32 van 1948), word hierby herroep.

(2) Die bepalings van die Handelseffektebelastingswet, 1948, bly van krag ten opsigte van elke koop van handelseffekte voor of op die datum van die herroeping van daardie Wet asof daardie Wet nie herroep is nie.

(3) Die regulasies wat die omstandighede voorskryf waaronder die Kommissaris van die Suid-Afrikaanse Inkomstediens 'n dispuut tussen die Kommissaris en enige persoon kan skik, uitgereik in gevolge artikel 107B van die Inkomstebelastingwet, 1962 (Wet No. 58 van 1962), en artikel 93A van die Doeane- en Aksynswet, 1964 (Wet No. 91 van 1964), en gepubliseer as Goewermentskennisgewing No. R468 in *Staatskoerant* No. 24639 van 1 April 2003, word hierby teruggetrek.

Oorgangsbepalinge met betrekking tot ongemunte goud en aandele verkry uit fondse oorgeplaas na Republiek

225. 'n Maatskappy in artikel 10(1)*(s)* van die Inkomstebelastingwet, 1962, bedoel moet enige kapitaalwins of kapitaalverlies ten opsigte van die beskikking gedurende enige jaar van aanslag van daardie maatskappy wat voor of op 1 Januarie 2004 'n aanvang neem van enige bate wat ongemunte goud of aandele soos in artikel 10(1)*(s)* bedoel, uitmaak, buite rekening laat.

Kort titel en inwerkingtreding

226. (1) Hierdie Wet heet die Wysigingswet op Inkomstewette, 2003.

(2) Behalwe vir sover hierdie Wet anders bepaal of uit die samehang anders blyk, word die wysigings aan die Inkomstebelastingwet, 1962, by hierdie Wet aangebring, vir die doeleindes van aanslae ten opsigte van normale belasting ingevolge die Inkomstebelastingwet, 1962, geag in werking te getree het met ingang van die begin van jare van aanslag wat op of na 1 Januarie 2004 eindig.

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