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REPUBLIC OF SOUTH AFRICA  
REPUBLIEK VAN SUID-AFRIKA

Vol. 572 Cape Town, 1 February 2013 No. 36122  
Kaapstad,

## THE PRESIDENCY

No. 71 1 February 2013

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

**Act No 22 of 2012: Taxation Laws Amendment Act, 2012**

## DIE PRESIDENSIE

No. 71 1 Februarie 2013

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

**Wet Nr. 22 van 2012: Wysigingswet op Belastingswette, 2012**



**AIDS HELPLINE: 0800-0123-22 Prevention is the cure**

**GENERAL EXPLANATORY NOTE:**

- [                    ]     Words in bold type in square brackets indicate omissions from existing enactments.
- Words underlined with a solid line indicate insertions in existing enactments.
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\_\_\_\_\_  
*(English text signed by the President)*  
*(Assented to 30 January 2013)*  
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# ACT

To—

- amend the Transfer Duty Act, 1949, so as to amend a provision;
  - amend the Income Tax Act, 1962, so as to amend, delete and insert certain definitions; to effect technical corrections; to repeal certain provisions; to amend certain provisions; to make new provision; and to effect textual and consequential amendments;
  - amend the Customs and Excise Act, 1964, so as to amend provisions; and to make provision for continuations;
  - amend the Income Tax Act, 1990, so as to effect technical corrections;
  - amend the Value-Added Tax Act, 1991, so as to amend certain provisions;
  - amend the Unemployment Insurance Contributions Act, 2002, so as to amend a provision;
  - amend the Securities Transfer Tax Act, 2007, so as to amend certain provisions; and to effect a consequential amendment;
  - amend the Revenue Laws Amendment Act, 2008, so as to effect technical corrections;
  - amend the Taxation Laws Amendment Act, 2009, so as to effect technical corrections;
  - amend the Taxation Laws Amendment Act, 2010, so as to repeal a provision; and to effect technical corrections;
  - amend the Taxation Laws Amendment Act, 2011, so as to repeal a provision; and to effect technical corrections;
- and to provide for matters connected therewith.

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

**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.
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*(Engelse teks deur die President geteken)  
(Goedgekeur op 30 Januarie 2013)*

# WET

Tot—

- wysiging van die Wet op Hereregte, 1949, ten einde 'n bepaling te wysig;
  - wysiging van die Inkomstebelastingwet, 1962, ten einde sekere omskrywings te wysig, te skrap en in te voeg; tegniese korreksies aan te bring; sekere bepalings te herroep; sekere bepalings te wysig; nuwe bepalings te verorden; en tekstuele en gevolglike wysigings aan te bring;
  - wysiging van die Doeane- en Aksynswet, 1964, ten einde bepalings te wysig; en vir voortsettings voorsiening te maak;
  - wysiging van die Inkomstebelastingwet, 1990, ten einde tegniese korreksies aan te bring;
  - wysiging van die Wet op Belasting op Toegevoegde Waarde, 1991, ten einde sekere bepalings te wysig;
  - wysiging van die “Unemployment Insurance Contributions Act, 2002”, ten einde 'n bepaling te wysig;
  - wysiging van die Wet op Belasting op Oordrag van Sekuriteite, 2007, ten einde sekere bepalings te wysig; en 'n gevolglike wysiging aan te bring;
  - wysiging van die Wysigingswet op Inkomstewette, 2008, ten einde sekere tegniese korreksies aan te bring;
  - wysiging van die Wysigingswet op Belastingwette, 2009, ten einde sekere tegniese korreksies aan te bring;
  - wysiging van die Wysigingswet op Belastingwette, 2010, ten einde 'n bepaling te herroep; en sekere tegniese korreksies aan te bring;
  - wysiging van die Wysigingswet op Belastingwette, 2011, ten einde 'n bepaling te herroep; en sekere tegniese korreksies aan te bring;
- en om voorsiening te maak vir aangeleenthede wat daarmee verband hou.

**D**AAR WORD BEPAAL deur die Parlement van die Republiek van Suid-Afrika, soos volg:—

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 4 of Act 126 of 1998, section 3 of Act 32 of 1999, section 3 of Act 30 of 2000, section 2 of Act 5 of 2001, section 8 of Act 60 of 2001, section 3 of Act 30 of 2002, section 4 of Act 74 of 2002, section 3 of Act 45 of 2003, section 2 of Act 16 of 2004, section 2 of Act 32 of 2004, section 2 of Act 31 of 2005, section 16 of Act 9 of 2006, section 1 of Act 20 of 2006, section 2 of Act 35 of 2007, section 1 of Act 60 of 2008, section 3 of Act 17 of 2009, section 3 of Act 7 of 2010 and section 5 of Act 24 of 2011

1. (1) Section 9 of the Transfer Duty Act, 1949, is hereby amended by the substitution for subsection (19) of the following subsection:

“(19) No duty shall be payable by a [natural] person—

- (a) [on the conversion in terms of] in respect of any transaction contemplated in Item 8 of Schedule 1 to the Share Blocks Control Act, 1980 (Act No. 59 of 1980), in terms of which 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] defined in section 1 of that Act[,] is converted 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] by that person of that immovable property; or
- (b) in respect of the acquisition by that person of a part of the immovable property of a share block company as defined in section 1 of the Share Blocks Control Act, 1980 (Act No. 59 of 1980), where that person had a right of use of that part, which right was conferred by reason of the ownership of a share held by that person in that share block company.”

(2) Subsection (1) comes into operation on 1 January 2013 and applies in respect of acquisitions made on or after that date.

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 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 R780 of 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, Government Notice 46 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, Government Notice 1503 of 1998, section 10 of Act 53 of 1999, section 13 of Act 30 of 2000, section 2 of Act 59 of 2000, section 5 of Act 5 of 2001, section 3 of Act 19 of 2001, section 17 of Act 60 of 2001, section 9 of Act 30 of 2002, section 6 of Act 74 of 2002, section 33 of Act 12 of 2003, section 12 of Act 45 of 2003, section 3 of Act 16 of 2004, section 3 of Act 32 of 2004, section 3 of Act 32 of 2005, section 19 of Act 9

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 4 van Wet 126 van 1998, artikel 3 van Wet 32 van 1999, artikel 3 van Wet 30 van 2000, artikel 2 van Wet 5 van 2001, artikel 8 van Wet 60 van 2001, artikel 3 van Wet 30 van 2002, artikel 4 van Wet 74 van 2002, artikel 3 van Wet 45 van 2003, artikel 2 van Wet 16 van 2004, artikel 2 van Wet 32 van 2004, artikel 2 van Wet 31 van 2005, artikel 16 van Wet 9 van 2006, artikel 1 van Wet 20 van 2006, artikel 2 van Wet 35 van 2007, artikel 1 van Wet 60 van 2008, artikel 3 van Wet 17 van 2009, artikel 3 van Wet 7 van 2010 en artikel 5 van Wet 24 van 2011

1. (1) Artikel 9 van die Wet op Hereregte, 1949, word hierby gewysig deur subartikel (19) deur die volgende subartikel te vervang:

“(19) Geen reg is deur ’n **[natuurlike]** persoon betaalbaar nie **[waar]**—

- (a) ten opsigte van enige transaksie beoog in Item 8 van Bylae 1 tot die Wet op die Beheer van Aandeleblokke, 1980 (Wet No. 59 van 1980), ingevolge waarvan 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 omskryf 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]** deur daardie persoon **[die reg van gebruik gehad het, indien die verkryging van daardie aandeel ingevolge hierdie Wet aan reg onderhewig was]** van daardie onroerende eiendom; of
- (b) ten opsigte van die verkryging deur daardie persoon van ’n deel van die onroerende eiendom van ’n aandeleblokmaatskappy soos omskryf in artikel 1 van die Wet op die Beheer van Aandeleblokke, 1980 (Wet No. 59 van 1980), waar daardie persoon ’n reg van gebruik van daardie deel het, watter reg by wyse van die eienaarskap van ’n aandeel gehou deur daardie persoon in daardie aandeleblokmaatskappy oorgedra was.”

(2) Subartikel (1) tree op 1 Januarie 2013 in werking en is van toepassing ten opsigte van verkrygings gemaak op of na daardie datum.

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 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 R780 van 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, Goewermentskennisgewing 46 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, Goewermentskennisgewing 1503 van 1998, artikel 10 van Wet 53 van 1999, artikel 13 van Wet 30 van 2000, artikel 2 van Wet 59 van 2000, artikel 5 van Wet 5 van 2001, artikel 3 van Wet 19 van 2001, artikel 17 van Wet 60 van 2001, artikel 9 van Wet 30 van 2002, artikel 6 van Wet 74 van 2002, artikel 33 van Wet 12 van 2003, artikel 12 van Wet 45 van 2003, artikel 3 van Wet 16 van 2004, artikel 3 van Wet 32 van 2004, artikel 3 van Wet 32 van 2005, artikel 19 van Wet 9 van 2006, artikel 3

of 2006, section 3 of Act 20 of 2006, section 3 of Act 8 of 2007, section 5 of Act 35 of 2007, section 2 of Act 3 of 2008, section 4 of Act 60 of 2008, section 7 of Act 17 of 2009, section 6 of Act 7 of 2010, section 7 of Act 24 of 2011 and item 23 of Schedule to Act 28 of 2011

2. (1) Section 1 of the Income Tax Act, 1962, is hereby amended— 5
- (a) by the addition in paragraph (e) of the definition of “**company**” of the following subparagraph: 5
- “(iii) portfolio of a collective investment scheme in property; or”;
- (b) by the substitution in paragraph (a) of the definition of “**connected person**” for subparagraph (ii) of the following subparagraph: 10
- “(ii) any trust (other than a portfolio of a collective investment scheme in securities or a portfolio of a collective investment scheme in property) of which such natural person or such relative is a beneficiary;”;
- (c) by the substitution in paragraph (b) of the definition of “**connected person**” for the words preceding subparagraph (i) of the following words: 15
- “in relation to a trust (other than a portfolio of a collective investment scheme in securities or a portfolio of a collective investment scheme in property)—”;
- (d) by the substitution in the definition of “**connected person**” for paragraph (bA) of the following paragraph: 20
- “(bA) in relation to a connected person in relation to a trust (other than a portfolio of a collective investment scheme in property [shares managed or carried on by any company registered as a manager under section 42 of the Collective Investment Schemes Control Act, 2002, for purposes of Part V of that Act and other than] or a portfolio of a collective investment scheme in securities), includes any other person who is a connected person in relation to such trust;”;
- (e) by the substitution in paragraph (d)(vi) of the definition of “**connected person**” for item (bb) of the following item: 30
- “(bb) any relative of such member or any trust (other than a portfolio of a collective investment scheme in securities or a portfolio of a collective investment scheme in property) which is a connected person in relation to such member; and”;
- (f) by the deletion in the definition of “**foreign dividend**” of item (ii); 35
- (g) by the addition to the definition of “**foreign dividend**” of the following item: 35
- “(iii) constitutes a share in that foreign company;”;
- (h) by the insertion after the definition of “**foreign equity instrument**” of the following definition: 40
- “**foreign investment entity**’ means any person other than a natural person—
- (a) that is not incorporated, established or formed in the Republic; 45
- (b) the assets of which consist solely of a portfolio of one or more of the following:
- (i) amounts in cash or that constitute cash equivalents;
- (ii) financial instruments that—
- (aa) are issued by a listed company or by the government of the Republic in the national, provincial or local sphere; 50
- or
- (bb) if not issued by a listed company or by the government of the Republic in the national, provincial or local

van Wet 20 van 2006, artikel 3 van Wet 8 van 2007, artikel 5 van Wet 35 van 2007, artikel 2 van Wet 3 van 2008, artikel 4 van Wet 60 van 2008, artikel 7 van Wet 17 van 2009, artikel 6 van Wet 7 van 2010, artikel 7 van Wet 24 van 2011 en item 23 van Bylae by Wet 28 van 2011

2. (1) Artikel 1 van die Inkomstebelastingwet, 1962, word hierby gewysig— 5
- (a) deur die omskrywing van “**aandeel**” deur die volgende omskrywing te vervang: 5
- “**aandeel**, met betrekking tot ’n maatskappy, enige [**aandeel of soortgelyke ekwiteitsbelang**] eenheid waarin die eiendomsbelang in daardie maatskappy verdeel is;” 10
- (b) deur in die omskrywing van “**bruto inkomste**” paragraaf (ii) deur die volgende paragraaf te vervang: 10
- “(ii) in die geval van enige persoon behalwe ’n inwoner, die totale bedrag, hetsy in kontant of andersins, ontvang deur of toegeval aan of ten gunste van so ’n persoon uit ’n bron in die Republiek [**of geag in die Republiek te wees**];” 15
- (c) deur in die omskrywing van “**bruto inkomste**” paragraaf (a) deur die volgende paragraaf te vervang: 15
- “(a) ’n bedrag by wyse van jaargeld ontvang of toegeval, met inbegrip van ’n bedrag beoog in die omskrywing van ‘lewende annuïteit’ of die omskrywing van ‘jaargeldbedrag’ in artikel 10A(1), behalwe ’n bedrag in paragraaf (d)(ii) beoog;” 20
- (d) deur in paragraaf (d) van die omskrywing van “**bruto inkomste**” subparagraaf (ii) deur die volgende subparagraaf te vervang: 20
- “(ii) deur of aan ’n persoon, of afhanklike of benoemde van die persoon, regstreeks of onregstreeks ten opsigte van opbrengs uit ’n versekeringspolis waar die persoon ’n werknemer of direkteur van die polishouer is of was; of” 25
- (e) deur in paragraaf (d)(iii) van die omskrywing van “**bruto inkomste**” item (cc) te skrap; 30
- (f) deur in paragraaf (m) van die omskrywing van “**bruto inkomste**” die voorbehoudsbepaling deur die volgende voorbehoudsbepaling te vervang: 30
- “: Met dien verstande dat[—]
- [**(i)**] ’n bedrag aldus ontvang of toegeval verminder word deur die bedrag van enige sodanige lening of voorskot wat by die belastingpligtige se bruto inkomste ingesluit is of word; 35
- [**(ii)**] **namate paragraaf (a) of (d) van hierdie omskrywing op ’n bedrag van toepassing is, hierdie paragraaf nie op daardie bedrag van toepassing is nie;**” 35
- (g) deur na die omskrywing van “**bruto inkomste**” die volgende omskrywing in te voeg: 40
- “**buitelandse belastingjaar**, met betrekking tot ’n buitelandse maatskappy, enige jaar of tydperk van verslagdoening vir buitelandse inkomstebelastingdoeleindes deur daardie maatskappy of, indien daardie maatskappy nie onderhewig is aan buitelandse inkomstebelasting nie, enige jaarlikse tydperk van finansiële verslagdoening deur daardie maatskappy;” 45
- (h) deur voor die omskrywing van “**buitelandse dividend**” die volgende omskrywing in te voeg: 50
- “**buitelandse beleggingsentiteit**’ ’n persoon buiten ’n natuurlike persoon— 50
- (a) wat nie in die Republiek ingelyf, gestig of opgerig is nie; 55
- (b) waarvan die bates slegs bestaan uit ’n portefeulje van een of meer van die volgende: 55
- (i) bedrae van kontant of wat kontantekwivalente uitmaak; 55
- (ii) finansiële instrumente wat— 55
- (aa) uitgereik word deur ’n genoteerde maatskappy of deur die regering van die Republiek in die nasionale, provinsiale of plaaslike sfeer; of 55
- (bb) indien nie uitgereik deur ’n genoteerde maatskappy of deur die regering van die Republiek in die nasionale, provinsiale of plaaslike sfeer nie, verhandel word deur 60

- sphere, are traded by members of the general public and a market for that trade exists;
- (iii) financial instruments, the values of which are determined with reference to financial instruments contemplated in subparagraph (ii); or
- (iv) rights to receive any asset contemplated in subparagraph (i), (ii) or (iii), which amounts, financial instruments and rights are held by that person for investment purposes;
- (c) where no more than 10 per cent of the shares, units or other form of participatory interest in that person are directly or indirectly held by persons that are residents; and
- (d) where that person has no employees and has no directors or trustees that are engaged in the management of that person on a full-time basis;”;
- (i) by the substitution in the definition of **“foreign return of capital”** for the words following paragraph (b) of the following words:  
“but does not include any amount so paid or payable to the extent that the amount so paid or payable—  
(i) is deductible by that foreign company in the determination of any tax on income of companies of the country in which that foreign company has its place of effective management; or  
(ii) constitutes shares in that foreign company;”;
- (j) by the insertion after the definition of **“foreign return of capital”** of the following definition:  
“**‘foreign tax year’**, in relation to a foreign company, means any year or period of reporting for foreign income tax purposes by that company or, if that company is not subject to foreign income tax, any annual period of financial reporting by that company;”;
- (k) by the deletion of the definition of **“government grant”**;
- (l) by the deletion of the definition of **“government scrapping payment”**;
- (m) by the substitution in the definition of **“gross income”** for paragraph (ii) of the following paragraph:  
“(ii) in the case of any person other than a resident, the total amount, in cash or otherwise, received by or accrued to or in favour of such person from a source within **[or deemed to be within]** the Republic;”;
- (n) by the substitution in the definition of **“gross income”** for paragraph (a) of the following paragraph:  
“(a) any amount received or accrued by way of annuity, including any amount contemplated in the definition of ‘living annuity’ or the definition of ‘annuity amount’ in section 10A(1), other than an amount contemplated in paragraph (d)(ii);”;
- (o) by the substitution in paragraph (d) of the definition of **“gross income”** for subparagraph (ii) of the following subparagraph:  
“(ii) by or to a person, or dependant or nominee of the person, directly or indirectly in respect of proceeds from a policy of insurance where the person is or was an employee or director of the policyholder; or”;
- (p) by the deletion in paragraph (d)(iii) of the definition of **“gross income”** of item (cc);
- (q) by the substitution in paragraph (m) of the definition of **“gross income”** for the proviso of the following proviso:  
“: Provided that [—]  
[(i)] any amount so received or accrued shall be reduced by the amount of any such loan or advance which is or has been included in the taxpayer’s gross income;  
[(ii) to the extent that paragraph (a) or (d) of this definition applies to an amount, this paragraph does not apply to that amount;]”;



- lede van die algemene publiek en 'n mark vir daardie handel bestaan;
- (iii) finansiële instrumente, waarvan die waarde bepaal word met verwysing na finansiële instrumente beoog in subparagraaf (ii); of
- (iv) regte om 'n bate beoog in subparagraaf (i), (ii) of (iii) te ontvang, welke bedrae, finansiële instrumente en regte deur daardie persoon vir beleggingsdoeleindes gehou word;
- (c) waar hoogstens 10 persent van die aandele, eenhede of ander vorm van deelnemende belang in daardie persoon regstreeks of onregstreeks gehou word deur persone wat inwoners is; en
- (d) waar daardie persoon geen werknemers het nie en geen direkteurs of trustees het wat voltyds by die bestuur van daardie persoon betrokke is nie;”;
- (i) deur in die omskrywing van “**buitelandse dividend**” item (ii) te skrap;
- (j) deur tot die omskrywing van “**buitelandse dividend**” die volgende item by te voeg:  
“(iii) 'n aandeel in daardie buitelandse maatskappy uitmaak;”;
- (k) deur in die omskrywing van “**buitelandse teruggawe van kapitaal**” die woorde wat op paragraaf (b) volg deur die volgende woorde te vervang:  
“maar nie ook nie enige bedrag aldus betaal of betaalbaar namate die bedrag aldus betaal of betaalbaar—  
(i) deur daardie buitelandse maatskappy aftrekbaar is by die bepaling van enige belasting op inkomste op maatskappye van die land waarin daardie buitelandse maatskappy sy plek van effektiewe bestuur het; of  
(ii) aandele in daardie buitelandse maatskappy uitmaak;”;
- (l) deur na die omskrywing van “**dividend**” die volgende omskrywing in te voeg:  
“**EIT**” 'n maatskappy—  
(a) wat 'n inwoner is; en  
(b) waarvan die aandele genoteer word—  
(i) op 'n ‘exchange’ (soos omskryf in artikel 1 van die ‘Securities Services Act, 2004’ (Wet No. 36 van 2004), en gelisensieer kragtens artikel 10 van daardie Wet);  
(ii) as aandele in 'n ‘REIT’ soos omskryf in die ‘JSE Limited Listings Requirements’;”;
- (m) deur na die omskrywing van “**hotelhouer**” die volgende omskrywing in te voeg:  
“**IFRS**” die Internasionale Finansiële Verslagdoeningstandaarde uitgereik deur die ‘International Accounting Standards Board’;”;
- (n) deur in die omskrywing van “**inwoner**” die woorde wat op paragraaf (b) volg deur die volgende woorde te vervang:  
“maar sluit nie in nie—  
(A) enige persoon wat geag word uitsluitlik 'n inwoner van 'n ander land te wees vir doeleindes van die toepassing van enige ooreenkoms aangegaan tussen die regerings van die Republiek en van daardie ander land vir die vermyding van dubbele belasting; of  
(B) 'n maatskappy indien—  
(AA) daardie maatskappy ingelyf, gestig of opgerig is in 'n ander land as die Republiek;  
(BB) daardie maatskappy sy plek van effektiewe bestuur in die Republiek het;  
(CC) daardie maatskappy, by ontstentenis van die feit dat die maatskappy sy plek van effektiewe bestuur in die Republiek het, 'n beheerde buitelandse maatskappy sou wees met 'n buitelandse besigheidsaak soos omskryf in artikel 9D(1); en  
(DD) die totale bedrag van belasting betaalbaar aan alle regeringsfere van 'n ander land as die Republiek deur daardie maatskappy ten opsigte van enige buitelandse belastingjaar van daardie maatskappy minstens 75 persent is van die bedrag van normale belasting wat betaalbaar sou wees ten opsigte van enige belasbare inkomste van daardie maatskappy indien

- (r) by the insertion after the definition of “**hotel keeper**” of the following definition:  
“**‘IFRS’** means the International Financial Reporting Standards issued by the International Accounting Standards Board;”;
- (s) by the substitution in paragraph (c) of the definition of “**pension preservation fund**” for the words preceding the proviso of the following words: 5  
“with the exception of amounts transferred to any other pension fund [or], pension preservation fund or retirement annuity fund, not more than one amount contemplated in paragraph 2(1)(b)(ii) of the Second Schedule is allowed to be paid to the member during the period of membership of the fund or any other pension preservation fund”; 10
- (t) by the substitution in the definition of “**person**” for paragraph (d) of the following paragraph:  
“(d) any portfolio of a collective investment scheme [other than a portfolio of a collective investment scheme in property],”; 15
- (u) by the substitution in paragraph (c) of the definition of “**provident preservation fund**” for the words preceding the proviso of the following words:  
“with the exception of amounts transferred to any pension fund, pension preservation fund, other provident fund [or], provident preservation fund or retirement annuity fund, not more than one amount contemplated in paragraph 2(1)(b)(ii) of the Second Schedule is allowed to be paid to the member during the period of membership of the fund or any other pension preservation fund”; 20
- (v) by the insertion after the definition of “**regulation**” of the following definition: 25  
“**‘REIT’** means a company—  
(a) that is a resident; and  
(b) the shares of which are listed—  
(i) on an exchange (as defined in section 1 of the Securities Services Act, 2004 (Act No. 36 of 2004), and licensed under section 10 of that Act); and  
(ii) as shares in a REIT as defined in the JSE Limited Listings Requirements;”;
- (w) by the substitution in the definition of “**resident**” for the words following paragraph (b) of the following words: 35  
“but does not include—  
(A) any person who is deemed to be exclusively a resident of another country for purposes of the application of any agreement entered into between the governments of the Republic and that other country for the avoidance of double taxation; or 40  
(B) any company if—  
(AA) that company is incorporated, established or formed in a country other than the Republic;  
(BB) that company has its place of effective management in the Republic; 45  
(CC) that company would, but for the company having its place of effective management in the Republic, be a controlled foreign company with a foreign business establishment as defined in section 9D(1); and 50  
(DD) the aggregate amount of tax payable to all spheres of government of any country other than the Republic by that company in respect of any foreign tax year of that company is at least 75 per cent of the amount of normal tax that would have been payable in respect of any taxable income of that company had that company, but for this subitem (B), been a resident for that foreign tax year: Provided that the aggregate amount of tax so payable must be determined— 55

- daardie maatskappy, by ontstentenis van hierdie subitem (B), 'n inwoner vir daardie buitelandse belastingjaar sou wees: Met dien verstande dat die totale bedrag van belasting aldus betaalbaar bepaal moet word—
- (i) nadat in berekening gebring is enige toepaslike ooreenkoms vir die vermyding van dubbele belasting en enige krediet, korting of ander reg van verhaal van belasting van enige regeringsfeer van 'n ander land as die Republiek; en
- (ii) nadat buite rekening gelaat is enige verlies ten opsigte van 'n ander jaar as daardie buitelandse belastingjaar of van 'n ander maatskappy as daardie maatskappy;”;
- (o) deur die volgende voorbehoudsbepaling tot die omskrywing van **“inwoner”** by te voeg:
- “: Met dien verstande dat waar 'n persoon wat 'n inwoner is, ophou om 'n inwoner te wees gedurende 'n jaar van aanslag, daardie persoon beskou word nie 'n inwoner te wees nie vanaf die dag waarop daardie persoon ophou om 'n inwoner te wees”;
- (p) deur tot die omskrywing van **“inwoner”** die volgende verdere voorbehoudsbepaling by te voeg:
- “: Met dien verstande voorts dat by die bepaling of 'n persoon wat 'n buitelandse beleggingsentiteit is sy plek van effektiewe bestuur in die Republiek het, nie in berekening gebring word nie enige aktiwiteit—
- (a) wat—
- (i) 'n finansiële diens soos omskryf in artikel 1 van die Wet op Finansiële Advies- en Tussengangersdienste, 2002 (Wet No. 37 van 2002), uitmaak; of
- (ii) enige diens uitmaak wat bykomend is tot 'n finansiële diens beoog in subparagraaf (i) waar die bykomende diens is ten opsigte van 'n finansiële produk wat vrygestel word van die bepaling van daardie Wet, soos beoog in artikel 1(2) van daardie Wet; en
- (b) wat bedryf word deur 'n verskaffer van finansiële dienste soos omskryf in artikel 1 van die Wet op Finansiële Advies- en Tussengangersdienste, 2002 (Wet No. 37 van 2002), ingevolge 'n lisensie kragtens artikel 8 van daardie Wet aan daardie verskaffer van finansiële dienste uitgereik”;
- (q) deur tot paragraaf (e) van die omskrywing van **“maatskappy”** die volgende subparagraaf by te voeg:
- “(iii) portefeulje van 'n kollektiewe beleggingskema in eiendom; of”;
- (r) deur in paragraaf (c) van die omskrywing van **“pensioenbewaringsfonds”** die woorde wat die voorbehoudsbepaling voorafgaan deur die volgende woorde te vervang:
- “met die uitsondering van bedrae oorgeplaas na enige ander pensioenfonds [of], pensioenbewaringsfonds of uittreding-annuïteitsfonds, die betaling van hoogstens een bedrag beoog in paragraaf 2(1)(b)(ii) van die Tweede Bylae, tydens die tydperk van lidmaatskap van die fonds of enige ander pensioenbewaringsfonds aan die lid toegelaat word”;
- (s) deur die omskrywing van **“persoon”** in paragraaf (d) deur die volgende paragraaf te vervang:
- “(d) enige portefeulje van 'n kollektiewe beleggingskema [buiten 'n portefeulje van 'n kollektiewe beleggingskema in eiendom],”;
- (t) deur in die omskrywing van **“spesiale trust”** paragrawe (a) en (b) deur die volgende paragrawe te vervang:
- “(a) alleenlik tot voordeel van [’n persoon wat aan—
- (i) enige ‘geestesongesteldheid’ soos omskryf in artikel 1 van die ‘Mental Health Care Act, 2002’, (Wet No. 17 van 2002); of
- (ii) enige ernstige liggaamsgebrek,
- ly,] een of meer persone wat persone met 'n gestremdheid soos omskryf in artikel 18(3) is waar sodanige [ongesteldheid of

- (i) after taking into account any applicable agreement for the prevention of double taxation and any credit, rebate or other right of recovery of tax from any sphere of government of any country other than the Republic; and
  - (ii) after disregarding any loss in respect of a year other than that foreign tax year or from a company other than that company;”;
- (x) by the addition of the following proviso to the definition of “resident”:  
“: Provided that where any person that is a resident ceases to be a resident during a year of assessment, that person must be regarded as not being a resident from the day on which that person ceases to be a resident”;
- (y) by the addition of the following further proviso to the definition of “resident”:  
“: Provided further that in determining whether a person that is a foreign investment entity has its place of effective management in the Republic, no regard must be had to any activity that—
  - (a) constitutes—
    - (i) a financial service as defined in section 1 of the Financial Advisory and Intermediary Services Act, 2002 (Act No. 37 of 2002); or
    - (ii) any service that is incidental to a financial service contemplated in subparagraph (i) where the incidental service is in respect of a financial product that is exempted from the provisions of that Act, as contemplated in section 1(2) of that Act; and
  - (b) is carried on by a financial service provider as defined in section 1 of the Financial Advisory and Intermediary Services Act, 2002 (Act No. 37 of 2002), in terms of a licence issued to that financial service provider under section 8 of that Act”;
- (z) by the substitution for the definition of “share” of the following definition:  
“ ‘share’ means, in relation to any company, any **[share or similar equity interest]** unit into which the proprietary interest in that company is divided;”;
- (zA) by the substitution in the definition of “special trust” for paragraphs (a) and (b) of the following paragraphs:
  - “(a) solely for the benefit of **[a person who suffers from—**
    - (i) any ‘mental illness’ as defined in section 1 of the Mental Health Care Act, 2002 (Act No. 17 of 2002); or**
    - (ii) any serious physical disability,]**  
one or more persons who is or are persons with a disability as defined in section 18(3) where such **[illness or]** disability incapacitates such person or persons from earning sufficient income for **[the]** their maintenance **[of such person]**, or from managing **[his or her]** their own financial affairs: Provided that—
      - (aa) [where the person for whose benefit the trust was so created dies,]** such trust shall be deemed not to be a special trust in respect of years of assessment ending on or after the date **[of such person’s death]** on which all such persons are deceased; and
      - (bb) where such trust is created for the benefit of more than one person, all persons for whose benefit the trust is created must be relatives in relation to each other; or**
  - (b) by or in terms of the will of a deceased person, solely for the benefit of beneficiaries who are relatives in relation to that deceased person and who are alive on the date of death of that deceased person (including any beneficiary who has been conceived but not yet born on that date), where the youngest of those beneficiaries is on the last day of the year of assessment of that trust under the age of **[21]** 18 years;”;
- (zB) by the substitution in the definition of “spouse” for the proviso of the following proviso:

- gebrek]** gestremheid daardie persoon of persone buite staat stel om genoegsame inkomste vir **[daardie persoon se]** hulle onderhoud te verdien of om **[sy of haar]** hulle eie finansiële sake te bestuur: Met dien verstande dat—
- (aa) **[waar die persoon vir wie se voordeel die trust aldus geskep is te sterwe kom,]** sodanige trust geag word nie ’n spesiale trust te wees nie ten opsigte van jare van aanslag wat eindig op of na die datum **[van afsterwe van daardie persoon]** waarop al sodanige persone te sterwe kom; en
- (bb) waar sodanige trust geskep word ten behoeve van meer as een persoon, al die persone ten behoeve waarvan die trust geskep word familieled met betrekking tot mekaar moet wees; of
- (b) deur of ingevolge ’n testament van ’n oorlede persoon, alleenlik vir die voordeel van begunstigdes wat familieled met betrekking tot daardie oorlede persoon is en wat op die datum van dood van daardie oorlede persoon lewendig is (waarby ingesluit enige begunstigde wat verwek is maar nog nie op daardie datum gebore is nie), waar die jongste van daardie begunstigdes op die laaste dag van die jaar van aanslag van daardie trust onder die ouderdom van **[21] 18** jaar is;”;
- (u) deur in die Engelse teks in die omskrywing van “**spouse**” die voorbehoudsbepaling deur die volgende voorbehoudsbepaling te vervang:  
“: Provided that a marriage or union contemplated in paragraph (b) or (c) shall, in the absence of proof to the contrary, be deemed to be a marriage or union **[without] out of community of property**”;
- (v) deur die omskrywing van “**staatskrappingsbetaling**” te skrap;
- (w) deur die omskrywing van “**staatstoekening**” te skrap;
- (x) deur in paragraaf (a) van die omskrywing van “**verbonde persoon**” subparagraaf (ii) deur die volgende subparagraaf te vervang:  
“(ii) ’n trust (behalwe ’n portefeulje van ’n kollektiewe beleggingskema in effekte of ’n portefeulje van ’n kollektiewe beleggingskema in eiendom) waarvan bedoelde natuurlike persoon of bedoelde familielid ’n begunstigde is;”;
- (y) deur in paragraaf (b) van die omskrywing van “**verbonde persoon**” die woorde wat subparagraaf (i) voorafgaan deur die volgende woorde te vervang:  
“met betrekking tot ’n trust (behalwe ’n portefeulje van ’n kollektiewe beleggingskema in effekte of ’n portefeulje van ’n kollektiewe beleggingskema in eiendom)—”;
- (z) deur in die omskrywing van “**verbonde persoon**” paragraaf (bA) deur die volgende paragraaf te vervang:  
“(bA) met betrekking tot ’n verbonde persoon met betrekking tot ’n trust (behalwe ’n portefeulje van ’n kollektiewe beleggingskema in **[eiendomsaandele bestuur of bedryf deur ’n maatskappy wat as ’n bestuurder geregistreer is ingevolge artikel 42 van die Wet op die Beheer van Kollektiewe Beleggingskemas, 2002, vir doeleindes van Deel V van daardie Wet en behalwe] eiendom of ’n portefeulje van ’n kollektiewe beleggingskema in effekte**), ook enige ander persoon wat ’n verbonde persoon met betrekking tot daardie trust is;”;
- (zA) deur in die omskrywing van “**verbonde persoon**” item (bb) van paragraaf (d)(vi) deur die volgende item te vervang:  
“(bb) enige familielid van bedoelde lid of enige trust (behalwe ’n portefeulje van ’n kollektiewe beleggingskema in effekte of ’n portefeulje van ’n kollektiewe beleggingskema in eiendom) wat ’n verbonde persoon met betrekking tot bedoelde lid is; en”;
- (zB) deur in paragraaf (c) van die omskrywing van “**voorsorgbewaringsfonds**” die woorde wat die voorbehoudsbepaling voorafgaan deur die volgende woorde te vervang:  
“met die uitsondering van bedrae oorgeplaas na enige pensioenfonds, pensioenbewaringsfonds, ander voorsorgfonds [of], voorsorgbewaringsfonds of uittredeannuïteitsfonds, hoogstens een bedrag beoog in paragraaf 2(1)(b)(ii) van die Tweede Bylae tydens die tydperk van

“: Provided that a marriage or union contemplated in paragraph (b) or (c) shall, in the absence of proof to the contrary, be deemed to be a marriage or union **[without] out of community of property**”.

(2) Paragraphs (a), (t) and (v) of subsection (1) come into operation on 1 April 2013 and apply in respect of years of assessment commencing on or after that date. 5

(3) Paragraphs (b), (c), (d) and (e) of subsection (1) are deemed to have come into operation as from the commencement of years of assessment commencing on or after 1 January 2010.

(4) Paragraph (f) of subsection (1) is deemed to have come into operation on 1 March 2012. 10

(5) Paragraph (g) of subsection (1) is deemed to have come into operation on 1 January 2011.

(6) Paragraphs (h) and (y) of subsection (1) come into operation on 1 January 2013 and apply in respect of years of assessment commencing on or after that date.

(7) Paragraph (i) of subsection (1) is deemed to have come into operation on 1 January 2011 and applies in respect of amounts paid or that became payable on or after that date. 15

(8) Paragraph (j) of subsection (1) is deemed to have come into operation on 1 January 2012 and applies in respect of foreign tax years ending during years of assessment commencing on or after that date.

(9) Paragraphs (k) and (l) of subsection (1) come into operation on 1 January 2013 and apply in respect of years of assessment commencing on or after that date. 20

(10) Paragraph (m) of subsection (1) is deemed to have come into operation on 1 January 2012 and applies in respect of amounts received or accrued during years of assessment commencing on or after that date.

(11) Paragraphs (n), (o), (p) and (q) of subsection (1) are deemed to have come into operation on 1 March 2012 and apply in respect of amounts received or accrued on or after that date. 25

(12) Paragraph (r) of subsection (1) comes into operation on 1 January 2013.

(13) Paragraphs (s) and (u) of subsection (1) are deemed to have come into operation on 1 March 2012. 30

(14) Paragraph (w) of subsection (1) comes into operation on 1 January 2013 and applies in respect of years of assessment commencing on or after that date.

(15) Paragraph (x) of subsection (1) is deemed to have come into operation on 8 May 2012 and applies in respect of any person that ceases to be a resident on or after that date.

(16) Paragraph (z) of subsection (1) comes into operation on 1 January 2013. 35

(17) Paragraphs (zA) and (zB) of subsection (1) are deemed to have come into operation as from the commencement of years of assessment commencing on or after 1 March 2012.

**Amendment of section 6quat of Act 58 of 1962, as inserted by section 9 of Act 89 of 1969 and amended by section 5 of Act 94 of 1983, section 5 of Act 85 of 1987, section 5 of Act 28 of 1997, section 12 of Act 53 of 1999, section 16 of Act 30 of 2000, section 4 of Act 59 of 2000, section 8 of Act 5 of 2001, section 20 of Act 60 of 2001, section 9 of Act 74 of 2002, section 16 of Act 45 of 2003, section 4 of Act 32 of 2004, section 8 of Act 31 of 2005, section 7 of Act 35 of 2007, section 9 of Act 17 of 2009, section 7 of Act 18 of 2009 and section 11 of Act 24 of 2011** 40 45

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

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

“: Provided that—

(i) where such resident is a member of any partnership or a beneficiary of any trust and such partnership or trust is liable for tax as a separate entity in such other country, a proportional amount of any tax payable by such entity, which is attributable to the interest of such resident in such partnership or trust, shall be deemed to have been payable by such resident; and 50

(ii) for the purposes of this subsection, the amount so included in such resident's taxable income must be determined without regard to section 10B(3).”; and 55

lidmaatskap van die fonds of enige ander voorsorgbewaringsfonds toegelaat word om aan die lid betaal te word”.

- (2) Paragraaf (a) van subartikel (1) tree op 1 Januarie 2013 in werking.
- (3) Paragraaf (b) van subartikel (1) word geag op 1 Januarie 2012 in werking te getree het en is van toepassing ten opsigte van bedrae ontvang of toegeval gedurende jare van aanslag wat op of na daardie datum begin. 5
- (4) Paragraawe (c), (d), (e) en (f) van subartikel (1) word geag op 1 Maart 2012 in werking te getree het en is van toepassing ten opsigte van bedrae ontvang of toegeval op of na daardie datum.
- (5) Paragraaf (g) van subartikel (1) word geag op 1 Januarie 2012 in werking te getree het en is van toepassing ten opsigte van buitelandse belastingjare wat eindig gedurende jare van aanslag wat op of na daardie datum begin. 10
- (6) Paragraawe (h) en (p) van subartikel (1) tree op 1 Januarie 2013 in werking en is van toepassing ten opsigte van jare van aanslag wat op of na daardie datum begin.
- (7) Paragraaf (i) van subartikel (1) word geag op 1 Maart 2012 in werking te getree het. 15
- (8) Paragraaf (j) van subartikel (1) word geag op 1 Januarie 2011 in werking te getree het.
- (9) Paragraaf (k) van subartikel (1) word geag op 1 Januarie 2011 in werking te getree het en is van toepassing ten opsigte van bedrae betaal of betaalbaar op of na daardie datum. 20
- (10) Paragraawe (l), (q) en (s) van subartikel 1 tree op 1 April 2013 in werking en is van toepassing ten opsigte van jare van aanslag wat op of na daardie datum begin.
- (11) Paragraaf (m) van subartikel (1) tree op 1 Januarie 2013 in werking.
- (12) Paragraaf (n) van subartikel (1) tree op 1 Januarie 2013 in werking en is van toepassing ten opsigte van jare van aanslag wat op of na daardie datum begin. 25
- (13) Paragraaf (o) van subartikel (1) word geag op 8 Mei 2012 in werking te getree het en is van toepassing ten opsigte van enige persoon wat ophou om ’n inwoner op of na daardie datum te wees.
- (14) Paragraawe (r) en (zB) word geag op 1 Maart 2012 in werking te getree het. 30
- (15) Paragraawe (t) en (u) van subartikel (1) word geag as in werking te getree het vanaf die begin van jare van aanslag wat op of na 1 Maart 2012 begin.
- (16) Paragraawe (v) en (w) van subartikel (1) tree op 1 Januarie 2013 in werking en is van toepassing ten opsigte van jare van aanslag wat op of na daardie datum begin.
- (17) Paragraawe (x), (y), (z) en (zA) van subartikel (1) word geag in werking te getree het vanaf die begin van jare van aanslag wat op of na 1 Januarie 2010 begin. 35

**Wysiging van artikel 6quat van Wet 58 van 1962, soos ingevoeg deur artikel 9 van Wet 89 van 1969 en gewysig deur artikel 5 van Wet 94 van 1983, artikel 5 van Wet 85 van 1987, artikel 5 van Wet 28 van 1997, artikel 12 van Wet 53 van 1999, artikel 16 van Wet 30 van 2000, artikel 4 van Wet 59 van 2000, artikel 8 van Wet 5 van 2001, artikel 20 van Wet 60 van 2001, artikel 9 van Wet 74 van 2002, artikel 16 van Wet 45 van 2003, artikel 4 van Wet 32 van 2004, artikel 8 van Wet 31 van 2005, artikel 7 van Wet 35 van 2007, artikel 9 van Wet 17 van 2009, artikel 7 van Wet 18 van 2009 en artikel 11 van Wet 24 van 2011** 40

3. (1) Artikel 6quat van die Inkomstebelastingwet, 1962, word hierby gewysig— 45
- (a) deur in subartikel (1A) die voorbehoudsbepaling deur die volgende voorbehoudsbepaling te vervang:
- “: Met dien verstande dat—
- (i) waar bedoelde inwoner ’n lid van ’n vennootskap of ’n begunstigde van ’n trust is en daardie vennootskap of trust in bedoelde ander land as ’n aparte entiteit vir belasting aanspreeklik is, ’n proporsionele bedrag van enige belasting wat deur daardie entiteit betaalbaar is, wat toeskryfbaar is aan die belang van daardie persoon in daardie vennootskap of trust, geag word deur bedoelde inwoner betaalbaar te wees; en 50
- (ii) by die toepassing van hierdie subartikel word die bedrag aldus by sodanige inwoner se belasbare inkomste ingesluit, bepaal sonder inagneming van artikel 10B(3).”; en 55

- (b) by the substitution for subsection (1C) of the following subsection:  
“(1C) For the purpose of determining the taxable income derived by any resident from carrying on any trade, there **[shall] may at the election of the resident** be allowed as a deduction from the income of such resident so derived the sum of any taxes on income (other than taxes contemplated in subsection (1A)) proved to be payable by that resident to any sphere of government of any country other than the Republic, without any right of recovery by any person other than a right of recovery in terms of any entitlement to carry back losses arising during any year of assessment to any year of assessment prior to such year of assessment.”.
- (2) Paragraph (a) of subsection (1) is deemed to have come into operation—
- (a) insofar as it applies to any person that is a natural person, deceased estate, insolvent estate or trust, on 1 March 2012 and applies in respect of foreign dividends received or accrued on or after that date; and
- (b) insofar as it applies to any person that is a person other than a natural person, deceased estate, insolvent estate or trust, on 1 April 2012 and applies in respect of foreign dividends received or accrued on or after that date.
- (3) Paragraph (b) of subsection (1) is deemed to have come into operation on 1 January 2012 and applies in respect of amounts that become payable during years of assessment commencing on or after that date.

**Amendment of section 6quin of Act 58 of 1962, as inserted by section 12 of Act 24 of 2011 and amended by section 13 of Act 24 of 2011**

4. (1) Section 6quin 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:  
“Subject to subsection (3), where any portion of the taxable income of a resident is attributable to an amount that is, without taking into account any agreement between the government of the Republic and any other country for the avoidance of double taxation, from a source within the Republic and is received by or accrued to that resident in respect of services rendered within the Republic, and an amount of tax in respect of that amount is—”;
- (b) by the substitution in subsection (1) for paragraph (b) of the following paragraph:  
“(b) imposed by any sphere of government of any country—  
(aa) other than the Republic; and  
(bb) with which the Republic has not concluded an agreement for the avoidance of double taxation,  
in terms of the laws of that country,”;
- (c) by the substitution in subsection (3) for the words following paragraph (c) of the following words:  
“is—  
(i) taken into account in determining any amount of any rebate that is, in terms of section 6quat(1), deducted from the normal tax payable by that resident; or  
(ii) deducted from the income of that resident in terms of section 6quat(1C).”;
- (d) by the addition of the following subsection:  
“(5) Where, during any year of assessment, a rebate has been deducted in terms of this section from the normal tax payable by a resident as a result of any amount of tax having been—  
(a) levied and withheld as contemplated in subsection (1)(a); or  
(b) imposed as contemplated in subsection (1)(b),  
and, in any year of assessment subsequent to that year of assessment, the resident—  
(i) receives any amount by way of refund in respect of the amount of tax so levied and withheld; or  
(ii) is discharged from any liability in respect of the amount of tax so imposed,



- (b) deur subartikel (1C) deur die volgende subartikel te vervang:

“(1C) By die berekening van die belasbare inkomste deur enige inwoner uit die beoefening van ’n bedryf verkry, [word] mag daar ter keuse van die inwoner as ’n aftrekking van daardie inwoner se inkomste aldus verkry, toegestaan word die som van enige belastings op inkomste (behalwe belastings in subartikel (1A) beoog) wat bewys word deur daardie inwoner betaalbaar te wees aan enige regeringsfeer van ’n land behalwe die Republiek, sonder enige reg van verhaal deur enige persoon, behalwe ’n reg van verhaal ingevolge ’n reg om enige verliese wat gedurende ’n jaar van aanslag ontstaan na ’n jaar van aanslag wat bedoelde jaar van aanslag voorafgaan, terug te dra.”

- (2) Paragraaf (a) van subartikel (1) word geag in werking te getree het—

(a) insoverre dit van toepassing is op enige persoon wat ’n natuurlike persoon, gestorwe boedel, insolvente boedel of trust is, op 1 Maart 2012 en is van toepassing ten opsigte van buitelandse dividende ontvang of toegeval op of na daardie datum; en

(b) insoverre dit van toepassing is op enige persoon wat ’n persoon behalwe ’n natuurlike persoon, gestorwe boedel, insolvente boedel of trust is, op 1 April 2012 en is van toepassing ten opsigte van dividende ontvang of toegeval op of na daardie datum.

- (3) Paragraaf (b) van subartikel (1) word geag op 1 Januarie 2012 in werking te getree het en is van toepassing ten opsigte van bedrae wat betaalbaar word gedurende jare van aanslag wat op of na daardie datum begin.

**Wysiging van artikel 6quin van Wet 58 van 1962, soos ingevoeg deur artikel 12 van Wet 24 van 2011 en gewysig deur artikel 13 van Wet 24 van 2011**

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

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

“Behoudens subartikel (3) waar enige gedeelte van die belasbare inkomste van ’n inwoner toeskryfbaar is aan ’n bedrag wat, sonder inagneming van enige ooreenkoms tussen die regering van die Republiek en enige ander land vir die vermyding van dubbele belasting, van ’n bron binne die Republiek is en ontvang word deur of toeval aan daardie inwoner ten opsigte van enige dienste bewys binne die Republiek, en ’n bedrag van belasting ten opsigte van daardie bedrag—”;

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

“(b) opgelê word deur enige regeringsfeer van enige land—  
(aa) buiten die Republiek; en  
(bb) waarmee die Republiek nie ’n ooreenkoms vir die vermyding van dubbele belasting aangegaan het nie,  
ingevolge die wette van daardie land,”;

(c) deur in subartikel (3) die woorde wat op paragraaf (c) volg deur die volgende woorde te vervang:

“ingevolge—  
(i) artikel 6quat(1) in berekening gebring word by die bepaling van enige bedrag van korting wat van die normale belasting deur daardie inwoner betaalbaar afgetrek word; of  
(ii) artikel 6quat(1C) van die inkomste van daardie inwoner afgetrek word.”; en

(d) deur die volgende subartikel in te voeg:

“(5) Waar, gedurende enige jaar van aanslag, ’n korting ingevolge hierdie artikel afgetrek is van die normale belasting betaalbaar deur ’n inwoner as gevolg van enige bedrag van belasting wat—  
(a) gehef en teruggehou is soos beoog in subartikel (1)(a); of  
(b) gehef is soos beoog in subartikel (1)(b),  
en, in enige jaar van aanslag wat volg op daardie jaar van aanslag, die inwoner—  
(i) enige bedrag ontvang by wyse van terugbetaling ten opsigte van die bedrag van belasting aldus gehef en teruggehou; of

so much of the amount so received or the amount of that discharge as does not exceed that rebate must be deemed to be an amount of normal tax payable by that resident in respect of that subsequent year of assessment.”.

(2) Subsection (1) is deemed to have come into operation on 1 January 2012 and applies in respect of amounts of tax levied and withheld or imposed by any sphere of government of any country other than the Republic during years of assessment commencing on or after that date. 5

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

5. (1) The Income Tax Act, 1962, is hereby amended by the repeal of section 6sex. 10  
(2) Subsection (1) is deemed to have come into operation on 1 April 2012.

**Amendment of section 6A of Act 58 of 1962, as inserted by section 10 of Act 24 of 2011 and amended by section 3 of Act 13 of 2012**

6. (1) Section 6A of the Income Tax Act, 1962, is hereby amended by the substitution for subsection (1) of the following subsection: 15

“(1) A rebate, to be known as the medical scheme fees tax credit, must be deducted from the normal tax payable by a taxpayer who is a natural person[, **unless the taxpayer is entitled to a rebate under section 6(2)(b)**].”.

(2) Subsection (1) comes into operation on 1 March 2014 and applies in respect of years of assessment commencing on or after that date. 20

**Insertion of section 6B in Act 58 of 1962**

7. (1) The Income Tax Act, 1962, is hereby amended by the insertion after section 6A of the following section:

**“Additional medical expenses tax credit**

**6B.** (1) For the purposes of this section— 25

‘**child**’ means a person’s child or child of his or her spouse who was alive during any portion of the year of assessment, and who on the last day of the year of assessment—

- (a) was unmarried and was not or would not, had he or she lived, have been— 30
  - (i) over the age of 18 years;
  - (ii) over the age of 21 years and was wholly or partially dependent for maintenance upon the person and has not become liable for the payment of normal tax in respect of such year; or
  - (iii) over the age of 26 years and was wholly or partially dependent 35 for maintenance upon the person and has not become liable for the payment of normal tax in respect of such year and was a full-time student at an educational institution of a public character; or

- (b) in the case of any other child, was incapacitated by a disability from 40 maintaining himself or herself and was wholly or partially dependent for maintenance upon the person and has not become liable for the payment of normal tax in respect of that year;

‘**dependant**’ means—

- (a) a person’s spouse; 45
- (b) a person’s child and the child of his or her spouse;
- (c) any other member of a person’s family in respect of whom he or she is liable for family care and support; and
- (d) any other person who is recognised as a dependant of that person in 50 terms of the rules of a medical scheme or fund contemplated in section 6A(2)(a)(i) or (ii),

- (ii) vrygestel word van enige verpligting ten opsigte van die bedrag van belasting aldus opgelê, word soveel van die bedrag aldus ontvang of die bedrag van daardie vrystelling wat nie daardie korting oorskry nie geag 'n bedrag van normale belasting betaalbaar deur daardie inwoner ten opsigte van daardie daaropvolgende jaar van aanslag te wees.” 5

(2) Subartikel (1) word geag op 1 Januarie 2012 in werking te getree het en is van toepassing ten opsigte van bedrae van belasting gehef en teruggehou of opgelê deur enige regeringsfeer van enige land behalwe die Republiek gedurende jare van aanslag wat op of na daardie datum begin. 10

#### Herroeping van artikel 6sex van Wet 58 van 1962

5. (1) Die Inkomstebelastingwet, 1962, word hierby gewysig deur artikel 6sex te herroep.

(2) Subartikel (1) word geag op 1 April 2012 in werking te getree het.

#### Wysiging van artikel 6A van Wet 58 van 1962, soos ingevoeg deur artikel 10 van Wet 24 van 2011 en gewysig deur artikel 3 van Wetsontwerp 10 van 2012 15

6. (1) Artikel 6A van die Inkomstebelastingwet, 1962, word hierby gewysig deur subartikel (1) deur die volgende subartikel te vervang:

“(1) 'n Korting, die belastingkrediet vir mediese skemafoorie genoem, moet afgetrek word van die normale belasting betaalbaar deur 'n belastingpligtige wat 'n natuurlike persoon is, tensy die belastingpligtige kragtens artikel 6(2)(b) op 'n korting geregtig is.” 20

(2) Subartikel (1) tree op 1 Maart 2014 in werking en is van toepassing ten opsigte van jare van aanslag wat op of na daardie datum begin.

#### Invoeging van artikel 6B in Wet 58 van 1962 25

7. (1) Die Inkomstebelastingwet, 1962, word hierby gewysig deur na artikel 6A die volgende artikel in te voeg:

##### “Bykomende belastingkrediet vir mediese onkoste

6B. (1) By die toepassing van hierdie artikel beteken—

‘afhanklike’—

- (a) 'n persoon se gade; 30
- (b) 'n persoon se kind en die kind van sy of haar gade;
- (c) enige ander lid van 'n persoon se familie ten opsigte van wie hy of sy aanspreeklik is vir gesinsorg en bystand; en
- (d) enige ander persoon wat as 'n afhanklike van daardie persoon ingevolge die reëls van 'n mediese skema of fonds beoog in artikel 6A(2)(a)(i) of (ii) erken word, 35

op die tydstip wat die foorie beoog in artikel 6A(2)(a) betaal is, die bedrae beoog in paragraaf (a) en (b) van die omskrywing van ‘kwalifiserende mediese onkoste’ betaal is of die uitgawes beoog in paragraaf (c) van daardie omskrywing aangegaan en betaal is; 40

‘gestremdheid’ 'n matige tot ernstige beperking van 'n persoon se vermoë om te funksioneer of om daaglikse aktiwiteite uit te voer as gevolg van 'n fisiese, sensoriese, kommunikasie-, intellektuele of geestesstremming, indien die beperking— 45

- (a) langer as 'n jaar geduur het of 'n prognose het dat dit langer as 'n jaar sal duur; en
- (b) deur 'n behoorlik geregistreerde mediese praktisyn gediagnoseer is ooreenkomstig kriteria wat deur die Kommissaris voorgeskryf word; 50

‘kind’ die kind van 'n persoon of kind van sy of haar gade wat gedurende enige gedeelte van die jaar van aanslag in lewe was, en wat op die laaste dag van die jaar van aanslag—

- (a) ongetroud was en—
  - (i) nie bo die ouderdom van 18 jaar;
  - (ii) geheel en al of gedeeltelik van die persoon vir onderhoud 55

at the time the fees contemplated in section 6A(2)(a) were paid, the amounts contemplated in paragraph (a) and (b) of the definition of 'qualifying medical expenses' were paid or the expenditure contemplated in paragraph (c) of that definition was incurred and paid;

**'disability'** means a moderate to severe limitation of any person's ability to function or perform daily activities as a result of a physical, sensory, communication, intellectual or mental impairment, if the limitation—

(a) has lasted or has a prognosis of lasting more than a year; and  
(b) is diagnosed by a duly registered medical practitioner in accordance with criteria prescribed by the Commissioner;

**'qualifying medical expenses'** means—

(a) any amounts (other than amounts recoverable by a person or his or her spouse) which were paid by the person during the year of assessment to any duly registered—

(i) medical practitioner, dentist, optometrist, homeopath, naturopath, osteopath, herbalist, physiotherapist, chiropractor or orthopedist for professional services rendered or medicines supplied to the person or any dependant of the person;

(ii) nursing home or hospital or any duly registered or enrolled nurse, midwife or nursing assistant (or to any nursing agency in respect of the services of such a nurse, midwife or nursing assistant) in respect of the illness or confinement of the person or any dependant of the person; or

(iii) pharmacist for medicines supplied on the prescription of any person mentioned in subparagraph (i) for the person or any dependant of the person;

(b) any amounts (other than amounts recoverable by a person or his or her spouse) which were paid by the person during the year of assessment in respect of expenditure incurred outside the Republic on services rendered or medicines supplied to the person or any dependant of the person, and which are substantially similar to the services and medicines contemplated in paragraph (a); and

(c) any expenditure that is prescribed by the Commissioner (other than expenditure recoverable by a person or his or her spouse) necessarily incurred and paid by the person during the year of assessment in consequence of any physical impairment or disability suffered by the person or any dependant of the person.

(2) A rebate, to be known as the additional medical expenses tax credit, must be deducted from the normal tax payable by a person who is a natural person.

(3) The amount of the additional medical expenses tax credit must be—

(a) where the person is entitled to a rebate under section 6(2)(b), the aggregate of—

(i) 33,3 per cent of so much of the amount of the fees paid by the person to a medical scheme or fund contemplated in section 6A(2)(a) as exceeds three times the amount of the medical scheme fees tax credit to which that person is entitled under section 6A(2)(b); and

(ii) 33,3 per cent of the amount of qualifying medical expenses paid by the person;

(b) where the person, his or her spouse or his or her child is a person with a disability, the aggregate of—

(i) 33,3 per cent of so much of the amount of the fees paid by the person to a medical scheme or fund contemplated in section 6A(2)(a) as exceeds three times the amount of the medical scheme fees tax credit to which that person is entitled under section 6A(2)(b); and

- afhanklik was en nie vir die betaling van normale belasting ten opsigte van bedoelde jaar aanspreeklik geword het nie, nie bo die ouderdom van 21 jaar; of
- (iii) geheel en al of gedeeltelik van die belastingpligtige vir onderhoud afhanklik was en nie vir die betaling van normale belasting ten opsigte van bedoelde jaar aanspreeklik geword het nie en 'n voltydse student was aan 'n opvoedkundige inrigting van 'n openbare aard, nie bo die ouderdom van 26 jaar, was of sou gewees het nie indien hy of sy die lewe behou het; of
- (b) in die geval van 'n ander kind, weens 'n gestremdheid nie in staat was om homself of haarself te onderhou nie en geheel en al of gedeeltelik van die persoon vir onderhoud afhanklik was en nie vir die betaling van normale belasting ten opsigte van bedoelde jaar aanspreeklik geword het nie;
- 'kwalifiserende mediese onkoste'** enige—
- (a) bedrae (buiten bedrae verhaalbaar deur 'n persoon of sy of haar gade) wat deur die persoon betaal is gedurende die jaar van aanslag aan 'n behoorlik geregistreerde—
- (i) mediese praktisyn, tandarts, oogkundige, homeopaat, naturopaat, osteopaat, kruiekundige, fisioterapeut, chiropraktisyn of ortopeet vir professionele dienste gelewer of medisyne verskaf aan die persoon of enige afhanklike van die persoon; of
- (ii) verpleeginrigting of hospitaal of 'n behoorlik geregistreerde of ingeskrewe verpleegster, vroedvrou of verpleegassistent (of aan 'n verplegingsagentskap ten opsigte van die dienste van so 'n verpleegster, vroedvrou of verpleegassistent) ten opsigte van die siekte of bevalling van die persoon of enige afhanklike van die persoon; of
- (iii) apteker vir medisyne wat op die voorskrif van 'n persoon bedoel in subparagraaf (i) verskaf is vir die persoon of enige afhanklike van die persoon;
- (b) bedrae (buiten bedrae verhaalbaar deur 'n persoon of sy of haar gade) wat deur die persoon betaal is gedurende die jaar van aanslag ten opsigte van uitgawes aangegaan buite die Republiek aan dienste gelewer of medisyne verskaf aan die persoon of enige afhanklike van die persoon, en wat wesenlik soortgelyk is aan die dienste en medisyne beoog in paragraaf (a); en
- (c) uitgawes deur die Kommissaris voorgeskryf (buiten uitgawes verhaalbaar deur 'n persoon of sy of haar gade) noodsaaklikerwys aangegaan en betaal deur die persoon gedurende die jaar van aanslag ten gevolge van enige fisiese belemmering of gestremdheid waaraan die persoon of enige afhanklike van die persoon ly.
- (2) 'n Korting, bekend as die bykomende belastingkrediet op mediese onkoste, moet afgetrek word van die normale belasting betaalbaar deur 'n persoon wat 'n natuurlike persoon is.
- (3) Die bedrag van die bykomende belastingkrediet op mediese onkoste is—
- (a) waar die persoon geregtig is op 'n korting kragtens artikel 6(2)(b), die totaal van—
- (i) 33,3 persent van soveel van die bedrag van die fooie betaal deur die persoon aan 'n mediese skema of fonds beoog in artikel 6A(2)(a) wat drie maal die bedrag van die belastingkrediet vir mediese skemafooie waarop daardie persoon kragtens artikel 6A(2)(b) geregtig is, oorskry; en
- (ii) 33,3 persent van die bedrag van kwalifiserende mediese onkoste deur die persoon betaal;
- (b) waar die persoon, sy of haar gade of sy of haar kind 'n persoon met 'n gestremdheid is, die totaal van—
- (i) 33,3 persent van soveel van die bedrag van die fooie betaal deur die persoon aan 'n mediese skema of fonds beoog in artikel 6A(2)(a) wat drie maal die bedrag van die belastingkrediet vir mediese skemafooie waarop daardie persoon kragtens artikel 6A(2)(b) geregtig is, oorskry; en

- (ii) 33,3 per cent of the amount of qualifying medical expenses paid by the person; or
- (c) in any other case, 25 per cent of so much of the aggregate of—
  - (i) the amount of the fees paid by the person to a medical scheme or fund contemplated in section 6A(2)(a) as exceeds four times the amount of the medical scheme fees tax credit to which that person is entitled under section 6A(2)(b); and
  - (ii) the amount of qualifying medical expenses paid by the person, as exceeds 7,5 per cent of the person's taxable income (excluding any retirement fund lump sum benefit, retirement fund lump sum withdrawal benefit and severance benefit).
- (4) For the purposes of this section, any amount contemplated in subsection (3) or the definition of 'qualifying medical expenses' that has been paid by—
  - (a) the estate of a deceased person is deemed to have been paid by the person on the day before his or her death; or
  - (b) an employer of the person is, to the extent that the amount has been included in the income of that person as a taxable benefit in terms of the Seventh Schedule, deemed to have been paid by that person."
- (2) Subsection (1) comes into operation on 1 March 2014 and applies in respect of years of assessment commencing on or after that date.

**Insertion of section 7B in Act 58 of 1962**

8. (1) The Income Tax Act, 1962, is hereby amended by the insertion after section 7A of the following section:

**"Timing of accrual and incurral of variable remuneration**

**7B.** (1) For the purposes of this section—

'employee' means an employee as defined in paragraph 1 of the Fourth Schedule;

'employer' means an employer as defined in paragraph 1 of the Fourth Schedule;

'variable remuneration' means—

(a) overtime pay, bonus or commission contemplated in the definition of 'remuneration' in paragraph 1 of the Fourth Schedule;

(b) an allowance or advance paid in respect of transport expenses as contemplated in section 8(1)(b)(ii); or

(c) any amount which an employer has during any year of assessment become liable to pay to an employee in consequence of the employee having during such year become entitled to any period of leave which had not been taken by the employee during that year.

(2) In determining the taxable income derived by any person during a year of assessment, any amount to which an employee becomes entitled from an employer in respect of variable remuneration is deemed to—

(a) accrue to the employee; and

(b) constitute expenditure incurred by the employer, on the date during the year of assessment on which the amount is paid to the employee by the employer."

(2) Subsection (1) comes into operation on 1 March 2013 and applies in respect of amounts accrued or expenditure incurred on or after that date.

- (ii) 33,3 persent van die bedrag van kwalifiserende mediese onkoste deur die persoon betaal; of
  - (c) in enige ander geval, 25 persent van soveel van die totaal van—
    - (i) die bedrag van die fooie betaal deur die persoon aan 'n mediese skema of fonds beoog in artikel 6A(2)(a) wat vier maal die bedrag van die belastingkrediet vir mediese skemafooie waarop daardie persoon kragtens artikel 6A(2)(b) geregtig is, oorskry; en
    - (ii) die bedrag van kwalifiserende mediese onkoste deur die persoon betaal, wat 7,5 persent van die persoon se belasbare inkomste (behalwe enige uittreefonds enkelbedragvoordeel, uittreefonds enkelbedragonttrekingsvoordeel en skeidingsvoordeel) oorskry.
  - (4) By die toepassing van hierdie artikel word enige bedrag beoog in subartikel (3) of die omskrywing van 'kwalifiserende mediese onkoste' wat betaal is deur—
    - (a) die boedel van 'n gestorwe persoon geag op die dag voor sy of haar dood deur die persoon betaal te gewees het; of
    - (b) 'n werkgewer van die persoon, namate die bedrag by die inkomste van daardie persoon ingesluit is as 'n belasbare voordeel ingevolge die Sewende Bylae, geag deur daardie persoon betaal te gewees het.”.
- (2) Subartikel (1) tree op 1 Maart 2014 in werking en is van toepassing ten opsigte van jare van aanslag wat op of na daardie datum begin.

#### Invoeging van artikel 7B in Wet 58 van 1962

8. (1) Die Inkomstebelastingwet, 1962, word hierby gewysig deur na artikel 7A die volgende artikel in te voeg:

#### “Tydsberekening van toevalling en aangaan van wisselende besoldiging

- 7B.** (1) By die toepassing van hierdie artikel beteken—
- ‘**werkgewer**’ ’n werkgewer soos omskryf in paragraaf 1 van die Vierde Bylae;
  - ‘**werknemer**’ ’n werknemer soos omskryf in paragraaf 1 van die Vierde Bylae;
  - ‘**wisselende besoldiging**’—
    - (a) besoldiging vir oortydwerk, bonus of kommissie beoog in die omskrywing van ‘besoldiging’ in paragraaf 1 van die Vierde Bylae;
    - (b) ’n toelae of voorskot betaal ten opsigte van reiskoste soos beoog in artikel 8(1)(b)(ii); of
    - (c) enige bedrag wat ’n werkgewer gedurende enige jaar van aanslag aanspreeklik word om te betaal aan ’n werknemer ten gevolge daarvan dat die werknemer gedurende so ’n jaar geregtig geword het op enige tydperk van verlof wat nie gedurende daardie jaar deur die werknemer geneem was nie.
- (2) By die bepaling van die belasbare inkomste verkry deur ’n persoon gedurende ’n jaar van aanslag word enige bedrag waarop ’n werknemer van ’n werkgewer geregtig word ten opsigte van wisselende besoldiging geag—
  - (a) aan die werknemer toe te val; en
  - (b) uitgawes aangegaan deur die werkgewer uit te maak, op die datum gedurende die jaar van aanslag waarop die bedrag deur die werkgewer aan die werknemer betaal word.”.
- (2) Subartikel (1) tree op 1 Maart 2013 in werking en is van toepassing ten opsigte van bedrae toegeval of uitgawes aangegaan op of na daardie datum.

Amendment of section 8 of Act 58 of 1962 as amended by section 6 of Act 90 of 1962, section 6 of Act 90 of 1964, section 9 of Act 88 of 1965, section 10 of Act 55 of 1966, section 10 of Act 89 of 1969, section 6 of Act 90 of 1972, section 8 of Act 85 of 1974, section 7 of Act 69 of 1975, section 7 of Act 113 of 1977, section 8 of Act 94 of 1983, section 5 of Act 121 of 1984, section 4 of Act 96 of 1985, section 5 of Act 65 of 1986, section 6 of Act 85 of 1987, section 6 of Act 90 of 1988, section 5 of Act 101 of 1990, section 9 of Act 129 of 1991, section 6 of Act 141 of 1992, section 4 of Act 113 of 1993, section 6 of Act 21 of 1994, section 8 of Act 21 of 1995, section 6 of Act 36 of 1996, section 6 of Act 28 of 1997, section 24 of Act 30 of 1998, section 14 of Act 53 of 1999, section 17 of Act 30 of 2000, section 6 of Act 59 of 2000, section 7 of Act 19 of 2001, section 21 of Act 60 of 2001, section 12 of Act 30 of 2002, section 11 of Act 74 of 2002, section 18 of Act 45 of 2003, section 6 of Act 32 of 2004, section 4 of Act 9 of 2005, section 21 of Act 9 of 2006, section 5 of Act 20 of 2006, section 6 of Act 8 of 2007, section 9 of Act 35 of 2007, section 5 of Act 3 of 2008, section 9 of Act 60 of 2008, section 11 of Act 17 of 2009, section 10 of Act 7 of 2010 and section 16 of Act 24 of 2011

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

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

“(iv) The provisions of this paragraph shall not apply in respect of any amount paid or granted as an allowance or advance that is received by or accrued to a person in respect of—

(aa) the holding of a public office by that person as contemplated in section 9[(1)(e)] (2)(g); or

(bb) services rendered or work or labour performed by that person as contemplated in section 9(2)(h),

if that person is stationed outside the Republic [which] and that amount is attributable to [that person’s] services rendered by that person outside the Republic.”;

(b) by the substitution in subsection (4)(a) for the proviso of the following proviso:

“: Provided that the provisions of this paragraph shall not apply in respect of any such amount so recovered or recouped which has been—

(i) included in the gross income of such taxpayer in terms of paragraph (jA) of the definition of ‘gross income’; or

(ii) applied to reduce any cost or expenditure incurred by such taxpayer in terms of section 19”;

(c) by the deletion in subsection (4) of paragraph (m); and

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

“(o) For the purposes of paragraph (a), where during any year of assessment a government grant is received for the purpose of acquiring trading stock or to defray expenditure in respect of the acquisition of trading stock, any amount by which the government grant exceeds the expenditure incurred in respect of the acquisition of that trading stock must be deemed to be an amount recovered or recouped by the taxpayer.

(p) For the purposes of paragraph (a), where during any year of assessment a government grant is received for the purpose of the acquisition, creation or improvement of an allowance asset as defined in section 41(1) or to defray expenditure in respect of the acquisition, creation or improvement of that allowance asset, any amount by which the government grant exceeds the expenditure incurred in respect of the acquisition, creation or improvement of that allowance asset must be deemed to be an amount recovered or recouped by the taxpayer.”.

(2) Paragraph (a) of subsection (1) is deemed to have come into operation on 1 January 2012 and applies in respect of amounts received or accrued during years of assessment commencing on or after that date.



Wysiging van artikel 8 van Wet 58 van 1962 soos gewysig deur artikel 6 van Wet 90 van 1962, artikel 6 van Wet 90 van 1964, artikel 9 van Wet 88 van 1965, artikel 10 van Wet 55 van 1966, artikel 10 van Wet 89 van 1969, artikel 6 van Wet 90 van 1972, artikel 8 van Wet 85 van 1974, artikel 7 van Wet 69 van 1975, artikel 7 van Wet 113 van 1977, artikel 8 van Wet 94 van 1983, artikel 5 van Wet 121 van 1984, artikel 4 van Wet 96 van 1985, artikel 5 van Wet 65 van 1986, artikel 6 van Wet 85 van 1987, artikel 6 van Wet 90 van 1988, artikel 5 van Wet 101 van 1990, artikel 9 van Wet 129 van 1991, artikel 6 van Wet 141 van 1992, artikel 4 van Wet 113 van 1993, artikel 6 van Wet 21 van 1994, artikel 8 van Wet 21 van 1995, artikel 6 van Wet 36 van 1996, artikel 6 van Wet 28 van 1997, artikel 24 van Wet 30 van 1998, artikel 14 van Wet 53 van 1999, artikel 17 van Wet 30 van 2000, artikel 6 van Wet 59 van 2000, artikel 7 van Wet 19 van 2001, artikel 21 van Wet 60 van 2001, artikel 12 van Wet 30 van 2002, artikel 11 van Wet 74 van 2002, artikel 18 van Wet 45 van 2003, artikel 6 van Wet 32 van 2004, artikel 4 van Wet 9 van 2005, artikel 21 van Wet 9 van 2006, artikel 5 van Wet 20 van 2006, artikel 6 van Wet 8 van 2007, artikel 9 van Wet 35 van 2007, artikel 5 van Wet 3 van 2008, artikel 9 van Wet 60 van 2008, artikel 11 van Wet 17 van 2009, artikel 10 van Wet 7 van 2010 en artikel 16 van Wet 24 van 2011

9. (1) Artikel 8 van die Inkomstebelastingwet, 1962, word hierby gewysig—
- (a) deur in subartikel (1)(a) subparagraaf (iv) deur die volgende subparagraaf te vervang:
- “(iv) Die bepalings van hierdie paragraaf is nie van toepassing nie ten opsigte van enige bedrag betaal of toegestaan as ’n toelae of voorskot wat ontvang is deur of toegeval het aan ’n persoon ten opsigte van—
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- (aa) die bekleding van ’n openbare amp deur daardie persoon soos in artikel 9[(1)(e)](2)(g) bedoel; of
- (bb) dienste gelewer of werk of arbeid deur daardie persoon verrig soos in artikel 9(2)(h) beoog,
- [wat] indien daardie persoon buite die Republiek gestasioneer is, en daardie bedrag [wat aan daardie persoon se] aan dienste deur daardie persoon [wat] buite die Republiek gelewer [word], toeskryfbaar is.”; en
- (b) deur in subartikel (4)(a) die voorbehoudsbepaling deur die volgende voorbehoudsbepaling te vervang:
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- “: Met dien verstande dat die bepalings van hierdie paragraaf nie van toepassing is nie ten opsigte van enige bedoelde bedrag aldus verhaal of vergoed wat—
- (i) ingevolge paragraaf (jA) van die omskrywing van ‘bruto inkomste’ by die bruto inkomste van bedoelde belastingpligtige ingesluit is; of
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- (ii) ingevolge artikel 19 toegepas is om enige koste of uitgawes deur bedoelde belastingpligtige aangegaan te verminder”;
- (c) deur in subartikel (4) paragraaf (m) te skrap;
- (d) deur tot subartikel (4) na paragraaf (n) die volgende paragraawe by te voeg:
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- “(o) By die toepassing van paragraaf (a) waar gedurende enige jaar van aanslag ’n staatstoekenning ontvang word met die doel om handelsvoorraad te verkry of om uitgawes te bestry ten opsigte van die verkryging van handelsvoorraad, word enige bedrag waarmee die staatstoekenning die uitgawes aangegaan ten opsigte van die verkryging van daardie handelsvoorraad oorskry, geag ’n bedrag te wees wat deur die belastingpligtige vergoed of verhaal is.
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- (p) By die toepassing van paragraaf (a) waar gedurende enige jaar van aanslag ’n staatstoekenning ontvang word met die oog op die verkryging, skepping of verbetering van ’n afskryfbare bate soos omskryf in artikel 41(1) of om uitgawes te bestry ten opsigte van die verkryging, skepping of verbetering van so ’n afskryfbare bate, word enige bedrag waarmee die staatstoekenning die uitgawes aangegaan ten opsigte van die verkryging, skepping of verbetering van daardie bate oorskry, geag ’n bedrag te wees wat deur die belastingpligtige vergoed of verhaal is.”
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- (2) Paragraaf (a) van subartikel (1) word geag op 1 Januarie 2012 in werking te getree het en is van toepassing ten opsigte van bedrae ontvang of toegeval gedurende jare van aanslag wat op of na daardie datum begin.
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(3) Paragraphs (b) and (c) of subsection (1) come into operation on 1 January 2013 and apply in respect of years of assessment commencing on or after that date.

(4) Paragraph (d) of subsection (1) comes into operation on 1 January 2013 and applies in respect of government grants received on or after that date.

**Amendment of section 8E of Act 58 of 1962, as inserted by section 6 of Act 70 of 1989 and amended by section 19 of Act 45 of 2003, section 9 of Act 32 of 2004, section 7 of Act 8 of 2007, section 13 of Act 7 of 2010 and section 20 of Act 24 of 2011**

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

(a) by the addition in subsection (1) to the definition of “**date of issue**” after paragraph (a) of the following paragraph: 10

“(b) the date on which the holder at any time after the share is issued acquires a right of disposal in respect of that share, otherwise than as a result of the acquisition of that share by that holder.”;

(b) by the substitution in subsection (1) for paragraph (a) of the definition of “**hybrid equity instrument**” of the following paragraph: 15

“(a) any share other than an equity share which the relevant company is obliged to redeem in whole or in part within a period of three years from the date of issue thereof, or which may at the option of the holder be redeemed in whole or in part within the said period, or in respect of which the holder has a right of disposal which may be exercised within the said period; or”;

(c) by the substitution in subsection (1) for subparagraph (i) of paragraph (b) of the definition of “**hybrid equity instrument**” of the following subparagraph: 20

“(i) the holder has a right of disposal in respect of such share which may be exercised within a period of three years from the date of issue thereof or at the time of issue of that share, the existence of the company issuing that share is to be terminated within a period of three years or is likely to be terminated within such period upon a reasonable consideration of all the facts at the time that share is issued; and”;

(d) by the deletion in subsection (1) of the word “or” at the end of paragraph (b)(ii)(cc) of the definition of “**hybrid equity instrument**”;

(e) by the deletion in subsection (1) of paragraph (c) of the definition of “**hybrid equity instrument**”;

(f) by the addition to subsection (1) of the following definition after the definition of “**hybrid equity instrument**”: 35

“**‘right of disposal’** means a right which the holder of a share has to require any party—

(a) to acquire that share from that holder; or 40

(b) to procure, facilitate or assist with the redemption in whole or in part of that share or the repayment in whole or in part of the capital subscribed for that share or the conversion of that share into any other share which is redeemable in whole or in part within a period of three years from the date of issue thereof.”; and

(g) by the substitution for subsection (2) of the following subsection: 45

“(2) Any dividend or foreign dividend received by or accrued to a person in respect of a hybrid equity instrument which is received by or accrues to that person on or after the date that the share becomes a hybrid equity instrument must be deemed in relation to that person only to be an amount of interest accrued to that person.”. 50

(2) Subsection (1) is deemed to have come into operation on 1 April 2012 and applies in respect of dividends or foreign dividends received or accrued on or after that date.

(3) Paragrafe (b) en (c) van subartikel (1) tree op 1 Januarie 2013 in werking en is van toepassing ten opsigte van jare van aanslag wat op of na daardie datum begin.

(4) Paragraaf (d) van subartikel (1) tree op 1 Januarie 2013 in werking en is van toepassing ten opsigte van staatstoekennings op of na daardie datum ontvang.

**Wysiging van artikel 8E van Wet 58 van 1962, soos ingevoeg deur artikel 6 van Wet 70 van 1989 en gewysig deur artikel 19 van Wet 45 van 2003, artikel 9 van Wet 32 van 2004, artikel 7 van Wet 8 van 2007, artikel 13 van Wet 7 van 2010 en artikel 20 van Wet 24 van 2011**

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

(a) deur in subartikel (1) tot die omskrywing van “**datum van uitreiking**” die volgende paragraaf na paragraaf (a) by te voeg:

“(b) die datum waarop die houer ten eniger tyd nadat die aandeel uitgereik is, ’n reg van beskikking ten opsigte van daardie aandeel verkry, andersins as as gevolg van die verkryging van daardie aandeel deur daardie houer;”;

(b) deur in subartikel (1) paragraaf (a) van die omskrywing van “**hibriede ekwiteitsinstrument**” deur die volgende paragraaf te vervang:

“(a) enige aandeel buiten ’n ekwiteitsaandeel wat die toepaslike maatskappy verplig is om in geheel of gedeeltelik af te los binne ’n tydperk van drie jaar vanaf die datum van die uitreiking daarvan, of wat by keuse van die houer in geheel of gedeeltelik afgeelos kan word binne die bedoelde tydperk, of ten opsigte waarvan die houer ’n reg van beskikking het wat binne die bedoelde tydperk uitgeoefen kan word; of”;

(c) deur in subartikel (1) subparagraaf (i) van paragraaf (b) van die omskrywing van “**hibriede ekwiteitsinstrument**” deur die volgende subparagraaf te vervang:

“(i) die houer ’n reg van beskikking het ten opsigte van sodanige aandeel wat uitgeoefen kan word binne ’n tydperk van drie jaar vanaf die datum van die uitreiking daarvan of ten tye van die uitreiking van daardie aandeel, die bestaan van die maatskappy wat daardie aandeel uitreik, beëindig gaan word binne ’n tydperk van drie jaar of waarskynlik beëindig gaan word binne sodanige tydperk by ’n redelike oorweging van al die feite op die tydstip wat daardie aandeel uitgereik word; en”;

(d) deur in subartikel (1) die woord “of” aan die einde van paragraaf (b)(ii)(cc) van die omskrywing van “**hibriede ekwiteitsinstrument**” te skrap;

(e) deur in subartikel (1) paragraaf (c) van die omskrywing van “**hibriede ekwiteitsinstrument**” te skrap;

(f) deur tot subartikel (1) die volgende omskrywing na die omskrywing van “**hibriede ekwiteitsinstrument**” by te voeg:

“**reg van beskikking**’ ’n reg wat die houer van ’n aandeel het om van enige party te vereis—

(a) om daardie aandeel van daardie houer te verkry; of

(b) om die aflossing in geheel of gedeeltelik van daardie aandeel of die terugbetaling in geheel of gedeeltelik van die kapitaal ingeskryf vir daardie aandeel of die omskakeling van daardie aandeel na enige ander aandeel wat in geheel of gedeeltelik aflosbaar is binne ’n tydperk van drie jaar vanaf die datum van uitreiking daarvan te bewerkstellig of te fasiliteer of daarmee behulpsaam te wees.”; en

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

“(2) Enige dividend of buitelandse dividend ontvang deur of toegeval aan ’n persoon ten opsigte van ’n hibriede ekwiteitsinstrument wat ontvang word deur of toeval aan daardie persoon op of na die datum waarop die aandeel ’n hibriede ekwiteitsinstrument word, word geag met betrekking tot daardie persoon alleenlik ’n bedrag van rente toegeval aan daardie persoon te wees.”

(2) Subartikel (1) word geag op 1 April 2012 in werking te getree het en is van toepassing ten opsigte van dividende of buitelandse dividende ontvang of toegeval op of na daardie datum.

**Substitution of section 8E of Act 58 of 1962**

**11.** (1) The Income Tax Act, 1962, is hereby amended by the substitution for section 8E of the following section:

**“Dividends on certain shares deemed to be income in relation to recipients thereof**

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**8E.** (1) For the purposes of this section—

**‘date of issue’**, in relation to a share in a company, means the date on which—

- (a) the share is issued by the company;
- (b) the company at any time after the share has been issued undertakes the obligation to redeem that share in whole or in part; or
- (c) the holder of the share at any time after the share has been issued obtains the right to require that share to be redeemed in whole or in part, otherwise than as a result of the acquisition of that share by that holder;

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**‘financial instrument’** means any—

- (a) interest-bearing arrangement; or
- (b) financial arrangement based on or determined with reference to a specified rate of interest or the time value of money;

**‘hybrid equity instrument’** means—

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- (a) any share, other than an equity share, if—
  - (i) the issuer of that share is obliged to redeem that share in whole or in part; or
  - (ii) that share may at the option of the holder be redeemed in whole or in part,

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within a period of three years from the date of issue of that share;

- (b) any share, other than a share contemplated in paragraph (a), if—

- (i) (aa) the issuer of that share is obliged to redeem that share in whole or in part within a period of three years from the date of issue of that share;

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- (bb) that share may at the option of the holder be redeemed in whole or in part within a period of three years from the date of issue of that share; or

- (cc) at any time on the date of issue of that share, the existence of the company issuing that share—

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- (A) is to be terminated within a period of three years; or
    - (B) is likely to be terminated within a period of three years upon a reasonable consideration of all the facts at that time; and

- (ii) (aa) that share does not rank *pari passu* as regards its participation in dividends or foreign 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

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- (bb) any dividend or foreign dividend payable on such share is to be calculated directly or indirectly with reference to any specified rate of interest or the time value of money; or

- (c) any preference share if that share is—

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- (i) secured by a financial instrument; or
  - (ii) subject to an arrangement in terms of which a financial instrument may not be disposed of,

unless that share was issued for a qualifying purpose;

**Vervanging van artikel 8E van Wet 58 van 1962**

**11.** (1) Die Inkomstebelastingwet, 1962, word hierby gewysig deur artikel 8E deur die volgende artikel te vervang:

**“Dividende op sekere aandele geag inkomste met betrekking tot ontvangers daarvan te wees**

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**8E.** (1) By die toepassing van hierdie artikel beteken—

**‘finansiële instrument’** enige—

(a) rentedraende reëling; of

(b) finansiële reëling gegrond op of bepaal met verwysing na ’n spesifieke rentekoers of die tydwaarde van geld;

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**‘hibriede ekwiteitsinstrument’**—

(a) ’n aandeel, buiten ’n ekwiteitsaandeel, indien—

(i) die uitreiker van daardie aandeel verplig is om daardie aandeel in geheel of gedeeltelik af te los; of

(ii) daardie aandeel by keuse van die houer in geheel of gedeeltelik afgelos kan word,

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binne ’n tydperk van drie jaar vanaf die uitreikingsdatum van daardie aandeel;

(b) ’n aandeel, buiten ’n aandeel beoog in paragraaf (a), indien—

(i) (aa) die uitreiker van daardie aandeel verplig is om daardie aandeel in geheel of gedeeltelik binne ’n tydperk van drie jaar vanaf die uitreikingsdatum van daardie aandeel af te los;

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(bb) daardie aandeel by keuse van die houer in geheel of gedeeltelik afgelos kan word binne ’n tydperk van drie jaar vanaf die uitreikingsdatum van daardie aandeel; of

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(cc) te eniger tyd op die uitreikingsdatum van daardie aandeel, die bestaan van die maatskappy wat daardie aandeel uitreik—

(A) beëindig staan te word binne ’n tydperk van drie jaar; of

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(B) waarskynlik beëindig sal word binne ’n tydperk van drie jaar by redelike oorweging van al die feite op daardie tydstip; en

(ii) (aa) daardie aandeel nie gelyke voorkeur geniet nie wat betref sy deelname in dividende of buitelandse dividende met alle ander gewone aandele in die kapitaal van die relevante maatskappy of, waar die gewone aandele in so ’n maatskappy in twee of meer klasse verdeel is, met die aandele van minstens een van sodanige klasse; of

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(bb) enige dividend of buitelandse dividend betaalbaar op so ’n aandeel regstreeks of onregstreeks met verwysing na enige spesifieke rentekoers of die tydwaarde van geld bereken word; of

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(c) enige voorkeuraandeel indien daardie aandeel—

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(i) deur ’n finansiële instrument gesekureer word; of

(ii) onderworpe is aan ’n reëling ingevolge waarvan nie oor ’n finansiële instrument beskik mag word nie,

tensy daardie aandeel vir ’n kwalifiserende doel uitgereik is;

**‘kwalifiserende doel’** ’n kwalifiserende doel soos omskryf in artikel 8EA(1);

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**‘uitreikingsdatum’**, met betrekking tot ’n aandeel in ’n maatskappy, die datum waarop—

(a) die aandeel deur die maatskappy uitgereik word;

(b) die maatskappy te eniger tyd nadat die aandeel uitgereik is die verpligting aanvaar om daardie aandeel in geheel of gedeeltelik af te los; of

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(c) die houer van die aandeel te eniger tyd nadat die aandeel uitgereik is die reg verkry om te vereis dat daardie aandeel in geheel of gedeeltelik

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‘**preference share**’ means a preference share as defined in section 8EA(1);  
‘**qualifying purpose**’ means a qualifying purpose as defined in section 8EA(1).

(2) Any dividend or foreign dividend received by or accrued to a person during any year of assessment in respect of a share must be deemed in relation to that person to be an amount of income accrued to that person if that share constitutes a hybrid equity instrument at any time during that year of assessment.”

(2) Subsection (1) comes into operation—

- (a) in the case of dividends or foreign dividends received in cash by any person during any year of assessment of that person that commences on or after 1 January 2013, on 1 April 2012 and applies in respect of any dividend or foreign dividend so received if that dividend or foreign dividend—
  - (i) accrued to that person on or after 1 April 2012; and
  - (ii) is received by that person on or after a date three months after the date on which that dividend or foreign dividend accrued to that person; or
- (b) in the case of dividends or foreign dividends—
  - (i) received by or accrued to any person; and
  - (ii) that are not received by and accrued to that person as contemplated in paragraph (a),on 1 January 2013 and applies in respect of any dividend or foreign dividend so received and accrued during years of assessment of that person that commence on or after that date.

**Insertion of section 8EA in Act 58 of 1962**

12. (1) The Income Tax Act, 1962, is hereby amended by the insertion after section 8E of the following section:

**“Dividends on third-party backed shares deemed to be income in relation to recipients thereof**

**8EA.** (1) For the purposes of this section—

‘**enforcement obligation**’ in relation to a share means any obligation, whether fixed or contingent, of any person other than the issuer of that share to—

- (a) acquire the share from the holder of that share;
- (b) make any payment in respect of that share in terms of a guarantee, indemnity or similar arrangement; or
- (c) procure, facilitate or assist with any acquisition contemplated in paragraph (a) or the making of any payment contemplated in paragraph (b);

‘**enforcement right**’ in relation to a share means any right, whether fixed or contingent, of the holder of that share or of any person that is a connected person in relation to that holder to require any person other than the issuer of that share to—

- (a) acquire that share from the holder;
- (b) make any payment in respect of that share in terms of a guarantee, indemnity or similar arrangement; or
- (c) procure, facilitate or assist with any acquisition contemplated in paragraph (a) or the making of any payment contemplated in paragraph (b);

‘**operating company**’ means—

- (a) any company that carries on business continuously, and in the course or furtherance of that business provides goods or services for consideration;
- (b) any company that is a controlling group company in relation to a company contemplated in paragraph (a); or
- (c) any company that is a listed company;

- afgelos word, andersins as as gevolg van die verkryging van daardie aandeel deur daardie houer;
- ‘voorkeuraandeel’** ’n voorkeuraandeel soos omskryf in artikel 8EA(1).
- (2) Enige dividend of buitelandse dividend ontvang deur of toegeval aan ’n persoon gedurende enige jaar van aanslag ten opsigte van ’n aandeel word geag met betrekking tot daardie persoon te wees ’n bedrag van inkomste toegeval aan daardie persoon indien daardie aandeel ’n hibriede ekwiteitsinstrument te eniger tyd gedurende daardie jaar van aanslag uitmaak.”
- (2) Subartikel (1) tree in werking—
- (a) in die geval van dividende of buitelandse dividende in kontant ontvang deur enige persoon gedurende enige jaar van aanslag van daardie persoon wat op of na 1 Januarie 2013 begin, op 1 April 2012 en is van toepassing ten opsigte van enige dividend of buitelandse dividend aldus ontvang indien daardie dividend of buitelandse dividend—
- (i) aan daardie persoon toegeval het op of na 1 April 2012; en
- (ii) ontvang word deur daardie persoon op of na ’n datum drie maande na die datum waarop daardie dividend of buitelandse dividend aan daardie persoon toegeval het; of
- (b) in die geval van dividende of buitelandse dividende—
- (i) ontvang deur of toegeval aan enige persoon; en
- (ii) wat nie ontvang word deur en toeval aan daardie persoon soos in paragraaf (a) beoog nie,
- op 1 Januarie 2013 en is van toepassing ten opsigte van enige dividend of buitelandse dividend aldus ontvang of toegeval gedurende jare van aanslag van daardie persoon wat op of na daardie datum begin.

#### **Invoeging van artikel 8EA in Wet 58 van 1962**

12. (1) Die Inkomstebelastingwet, 1962, word hierby gewysig deur na artikel 8E die volgende artikel in te voeg:

#### **“Dividende op derdeparty-ondersteunde aandele geag inkomste met betrekking tot ontvangers daarvan te wees**

- 8EA.** (1) By die toepassing van hierdie artikel beteken—
- ‘afdwingingsreg’** met betrekking tot ’n aandeel ’n reg, hetsy gewis of voorwaardelik, van die houer van daardie aandeel, of van ’n persoon wat ’n verbonde persoon is met betrekking tot daardie houer, om van ’n persoon buiten die uitreiker van daardie aandeel te vereis om—
- (a) daardie aandeel van die houer te verkry;
- (b) enige betaling ten opsigte van daardie aandeel te maak ingevolge ’n waarborg, vrywaring of soortgelyke reëling; of
- (c) enige verkryging beoog in paragraaf (a) te bewerkstellig of te fasiliteer of daarmee behulpsaam te wees of die maak van enige betaling beoog in paragraaf (b) te bewerkstellig of te fasiliteer of daarmee behulpsaam te wees;
- ‘afdwingingsverpligting’** met betrekking tot ’n aandeel enige verpligting, hetsy gewis of voorwaardelik, van ’n persoon buiten die uitreiker van daardie aandeel om—
- (a) die aandeel van die houer van daardie aandeel te verkry;
- (b) enige betaling ten opsigte van daardie aandeel te maak ingevolge ’n waarborg, vrywaring of soortgelyke reëling; of
- (c) enige verkryging beoog in paragraaf (a) te bewerkstellig of te fasiliteer of daarmee behulpsaam te wees of die maak van enige betaling beoog in paragraaf (b) te bewerkstellig of te fasiliteer of daarmee behulpsaam te wees;
- ‘bedryfsmaatskappy’** ’n maatskappy wat—
- (a) voortdurend besigheid dryf, en in die loop of bevordering van daardie besigheid goedere of dienste vir vergoeding verskaf;
- (b) ’n beheerde groepsmaatskappy met betrekking tot ’n maatskappy beoog in paragraaf (a) is; of
- (c) ’n genoteerde maatskappy is;

- ‘preference share’** means any share—
- (a) other than an equity share; or
  - (b) that is an equity share, if the amount of any dividend or foreign dividend in respect of that share is based on or determined with reference to a specified rate of interest or the time value of money;
- ‘qualifying purpose’**, in relation to the issue of a share, means one or more of the following purposes:
- (a) the direct or indirect acquisition of an equity share by any person in an operating company, other than a direct or indirect acquisition of an equity share from a company that, immediately before that acquisition, formed part of the same group of companies as the person acquiring that share;
  - (b) the partial or full settlement by any person of any—
    - (i) debt incurred for one or more of the following purposes:
      - (aa) the direct or indirect acquisition of an equity share by any person in an operating company, other than a direct or indirect acquisition of an equity share from a company that, immediately before that acquisition, formed part of the same group of companies as the person acquiring that share;
      - (bb) a direct or indirect acquisition or a redemption contemplated in paragraph (c);
      - (cc) the payment of any dividend or foreign dividend as contemplated in paragraph (d); or
      - (dd) the partial or full settlement, directly or indirectly, of any debt incurred as contemplated in item (aa), (bb) or (cc); or
    - (ii) interest accrued on any debt contemplated in subparagraph (i);
  - (c) the direct or indirect acquisition by any person or a redemption by any person of any preference share if—
    - (i) that preference share was issued for any purpose contemplated in paragraph (a), (b), this paragraph or paragraph (d); and
    - (ii) the amount received by or accrued to the issuer of that preference share as consideration for the issue of that preference share does not exceed the amount outstanding in respect of that preference share, being the sum of—
      - (aa) that amount; and
      - (bb) any amount of dividends, foreign dividends or interest accrued in respect of that preference share; or
  - (d) the payment by any person of any dividend or foreign dividend in respect of a preference share contemplated in paragraph (c);
- ‘third-party backed share’** means any preference share in respect of which an enforcement right is exercisable by the holder of that preference share or an enforcement obligation is enforceable as a result of any amount of any specified dividend, foreign dividend, return of capital or foreign return of capital attributable to that share not being received by or accruing to any person entitled thereto: Provided that where that share (which, but for this proviso, would have constituted a third-party backed share) was issued by a person for a qualifying purpose, in determining whether—
- (a) an enforcement right is exercisable in respect of that share, no regard must be had to any arrangement in terms of which the holder of that share has an enforcement right in respect of that share and that right is exercisable; or
  - (b) an enforcement obligation is enforceable in respect of that share, no regard must be had to any arrangement in terms of which that obligation is enforceable,
- only against one or more of the following other persons:



- ‘derdeparty-ondersteunde aandeel’** enige voorkeuraandeel ten opsigte waarvan ’n afdwingingsreg uitoefenbaar is deur die houer van daardie voorkeuraandeel of ’n afdwingingsverpligting afdwingbaar is as gevolg daarvan dat enige bedrag van enige bepaalde dividend, buitelandse dividend, teruggawe van kapitaal of buitelandse teruggawe van kapitaal toeskryfbaar aan daardie aandeel nie ontvang is deur of toegeval het aan ’n persoon wat daarop geregtig was nie: Met dien verstande dat waar daardie aandeel (wat, by ontstentenis van hierdie voorbehoudsbepaling, ’n derdeparty-ondersteunde aandeel sou uitgemaak het) uitgereik is deur ’n persoon vir ’n kwalifiserende doel, by die bepaling of—
- (a) ’n afdwingingsreg uitoefenbaar is ten opsigte van daardie aandeel, nie in aanmerking geneem word nie enige reëling ingevolge waarvan die houer van daardie aandeel ’n afdwingingsreg het ten opsigte van daardie aandeel en daardie reg uitgeoefen kan word; of
- (b) ’n afdwingingsverpligting afdwingbaar is ten opsigte van daardie aandeel, nie in aanmerking geneem word nie enige reëling ingevolge waarvan daardie verpligting afdwingbaar is,
- slegs teen een of meer van die volgende ander persone:
- (i) die bedryfsmaatskappy waarop daardie kwalifiserende doel betrekking het;
- (ii) enige uitreiker van ’n voorkeuraandeel indien daardie voorkeuraandeel uitgereik is met die oog op die regstreekse of onregstreekse verkryging deur ’n persoon van ’n ekwiteitsaandeel in ’n bedryfsmaatskappy waarop daardie kwalifiserende doel betrekking het;
- (iii) enige ander persoon wat regstreks of onregstreks minstens 20 persent van die ekwiteitsaandele hou in—
- (aa) die bedryfsmaatskappy beoog in subparagraaf (i);
- (bb) daardie persoon; of
- (cc) die uitreiker beoog in subparagraaf (ii);
- (iv) ’n maatskappy wat deel uitmaak van dieselfde groep van maatskappye as—
- (aa) die bedryfsmaatskappy beoog in subparagraaf (i);
- (bb) daardie persoon; of
- (cc) die uitreiker beoog in subparagraaf (ii);
- (v) enige natuurlike persoon; of
- (vi) enige organisasie—
- (aa) wat—
- (A) ’n maatskappy sonder winsoogmerk is soos omskryf in artikel 1 van die Maatskappywet, 2008 (Wet No. 71 van 2008); of
- (B) ’n trust of vereniging van persone; en
- (bb) indien—
- (A) al die aktiwiteite van daardie organisasie uitgevoer word sonder winsoogmerk; en
- (B) nie een van die aktiwiteite van daardie organisasie bedoel is om regstreks of onregstreks die ekonomiese selfbelang te bevorder van enige fiduciarius of werknemer van daardie organisasie, andersins as by wyse van redelike besoldiging betaalbaar aan daardie fiduciarius of werknemer;
- ‘kwalifiserende doel’**, met betrekking tot die uitreik van ’n aandeel, een of meer van die volgende doeleindes:
- (a) die regstreekse of onregstreekse verkryging van ’n ekwiteitsaandeel deur ’n persoon in ’n bedryfsmaatskappy, buiten ’n regstreekse of onregstreekse verkryging van ’n ekwiteitsaandeel vanaf ’n maatskappy wat, onmiddellik voor daardie verkryging, deel uitgemaak het van dieselfde groep van maatskappye as die persoon wat daardie aandeel verkry;
- (b) die gedeeltelike of gehele vereffening deur ’n persoon van enige—
- (i) skuld aangegaan vir een of meer van die volgende doeleindes:
- (aa) die regstreekse of onregstreekse verkryging van ’n ekwiteitsaandeel deur ’n persoon in ’n bedryfsmaatskappy, buiten ’n regstreekse of onregstreekse verkryging van ’n ekwiteitsaandeel vanaf ’n maatskappy wat,

- (i) the operating company to which that qualifying purpose relates;
  - (ii) any issuer of a preference share if that preference share was issued for the purpose of the direct or indirect acquisition by any person of an equity share in an operating company to which that qualifying purpose relates; 5
  - (iii) any other person that directly or indirectly holds at least 20 per cent of the equity shares in—
    - (aa) the operating company contemplated in subparagraph (i);
    - (bb) that person; or
    - (cc) the issuer contemplated in subparagraph (ii); 10
  - (iv) any company that forms part of the same group of companies as—
    - (aa) the operating company contemplated in subparagraph (i);
    - (bb) that person; or
    - (cc) the issuer contemplated in subparagraph (ii); 15
  - (v) any natural person; or 15
  - (vi) any organisation—
    - (aa) which is—
      - (A) a non-profit company as defined in section 1 of the Companies Act, 2008 (Act No. 71 of 2008); or
      - (B) a trust or association of persons; and 20
    - (bb) if—
      - (A) all the activities of that organisation are carried on in a non-profit manner; and
      - (B) none of the activities of that organisation are intended to directly or indirectly promote the economic self-interest of any fiduciary or employee of that organisation, otherwise than by way of reasonable remuneration payable to that fiduciary or employee. 25
- (2) Any dividend or foreign dividend received by or accrued to a person during any year of assessment in respect of a share must be deemed in relation to that person to be an amount of income received by or accrued to that person if that share constitutes a third-party backed share at any time during that year of assessment.” 30
- (2) Subsection (1) comes into operation—
- (a) in the case of dividends or foreign dividends received in cash by any person during any year of assessment of that person that commences on or after 1 January 2013, on 1 April 2012 and applies in respect of any dividend or foreign dividend so received if that dividend or foreign dividend— 35
    - (i) accrued to that person on or after 1 April 2012; and
    - (ii) is received by that person on or after a date three months after the date on which that dividend or foreign dividend accrued to that person; or 40
  - (b) in the case of dividends or foreign dividends—
    - (i) received by or accrued to any person; and
    - (ii) that are not received by and accrued to that person as contemplated in paragraph (a), 45
- on 1 January 2013 and applies in respect of any dividend or foreign dividend so received and accrued during years of assessment of that person that commence on or after that date.

**Amendment of section 9C of Act 58 of 1962, as inserted by section 14 of Act 35 of 2007 and amended by section 7 of Act 3 of 2008, section 12 of Act 60 of 2008, section 15 of Act 7 of 2010 and section 24 of Act 24 of 2011** 50

13. (1) Section 9C of the Income Tax Act, 1962, is hereby amended by the addition to subsection (5) of the following proviso:

- onmiddellik voor daardie verkryging, deel uitgemaak het van dieselfde groep van maatskappye as die persoon wat daardie aandeel verkry;
- (bb) 'n regstreekse of onregstreekse verkryging of 'n aflossing beoog in paragraaf (c);
- (cc) die betaling van enige dividend of buitelandse dividend soos beoog in paragraaf (d); of
- (dd) die gedeeltelike of gehele vereffening, regstreeks of onregstreeks, van enige skuld aangegaan soos beoog in item (aa), (bb) of (cc); of
- (ii) rente toegeval op enige skuld beoog in subparagraaf (i);
- (c) die regstreekse of onregstreekse verkryging deur 'n persoon of 'n aflossing deur 'n persoon van enige voorkeuraandeel indien—
- (i) daardie voorkeuraandeel uitgereik is vir enige doel beoog in paragraaf (a), (b), hierdie paragraaf of paragraaf (d); en
- (ii) die bedrag ontvang deur of toegeval aan die uitreiker van daardie voorkeuraandeel as vergoeding vir die uitreik van daardie voorkeuraandeel nie die bedrag oorskry nie wat uitstaande is ten opsigte van daardie voorkeuraandeel, synde die som van—
- (aa) daardie bedrag; en
- (bb) enige bedrag van dividende, buitelandse dividende of rente toegeval ten opsigte van daardie voorkeuraandeel; of
- (d) die betaling deur 'n persoon van enige dividend of buitelandse dividend ten opsigte van 'n voorkeuraandeel beoog in paragraaf (c);
- 'voorkeuraandeel'** 'n aandeel—
- (a) buiten 'n ekwiteitsaandeel; of
- (b) wat 'n ekwiteitsaandeel is, indien die bedrag van enige dividend of buitelandse dividend ten opsigte van daardie aandeel gebaseer is op of bepaal word met verwysing na 'n spesifieke rentekoers of die tydwaarde van geld.
- (2) Enige dividend of buitelandse dividend ontvang deur of toegeval aan 'n persoon gedurende enige jaar van aanslag ten opsigte van 'n aandeel word geag met betrekking tot daardie persoon te wees 'n bedrag van inkomste ontvang deur of toegeval aan daardie persoon indien daardie aandeel te eniger tyd gedurende daardie jaar van aanslag 'n derdeparty-ondersteunde aandeel uitmaak.'.
- (2) Subartikel (1) tree in werking—
- (a) in die geval van dividende of buitelandse dividende in kontant ontvang deur enige persoon gedurende enige jaar van aanslag van daardie persoon wat op of na 1 Januarie 2013 begin, op 1 April 2012 en is van toepassing ten opsigte van enige dividend of buitelandse dividend aldus ontvang indien daardie dividend of buitelandse dividend—
- (i) aan daardie persoon toegeval het op of na 1 April 2012; en
- (ii) ontvang word deur daardie persoon op of na 'n datum drie maande na die datum waarop daardie dividend of buitelandse dividend aan daardie persoon toegeval het; of
- (b) in die geval van dividende of buitelandse dividende—
- (i) ontvang deur of toegeval aan enige persoon; en
- (ii) wat nie ontvang word deur en toeval aan daardie persoon soos in paragraaf (a) beoog nie, op 1 Januarie 2013 en is van toepassing ten opsigte van enige dividend of buitelandse dividend aldus ontvang of toegeval gedurende jare van aanslag van daardie persoon wat op of na daardie datum begin.

**Wysiging van artikel 9C van Wet 58 van 1962, soos ingevoeg deur artikel 14 van Wet 35 van 2007 en gewysig deur artikel 7 van Wet 3 van 2008, artikel 12 van Wet 60 van 2008, artikel 15 van Wet 7 van 2010 en artikel 24 van Wet 24 van 2011**

13. (1) Artikel 9C van die Inkomstebelastingwet, 1962, word hierby gewysig deur tot subartikel (5) die volgende voorbehoudsbepaling by te voeg:

“: Provided that this subsection must not apply in respect of any expenditure or loss to the extent that the amount of that expenditure or loss is taken into account in terms of section 8(4)(a) or section 19”.

(2) Subsection (1) comes into operation on 1 January 2013 and applies in respect of years of assessment commencing 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, section 22 of Act 60 of 2001, section 14 of Act 74 of 2002, section 22 of Act 45 of 2003, section 13 of Act 32 of 2004, section 14 of Act 31 of 2005, section 9 of Act 20 of 2006, section 9 of Act 8 of 2007, section 15 of Act 35 of 2007, section 8 of Act 3 of 2008, section 13 of Act 60 of 2008, section 12 of Act 17 of 2009, section 16 of Act 7 of 2010 and section 25 of Act 24 of 2011**

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

- (a) by the deletion in subsection (1) of the definition of “foreign tax year”;
- (b) by the substitution in subsection (2A) for paragraph (f) of the proviso of the following paragraph:

“(f) where the resident contemplated in subsection (2) is a natural person, special trust or an insurer in respect of its individual policyholder fund, the taxable capital gain of the controlled foreign company shall, for the purposes of paragraph 10 of the Eighth Schedule, be [25] 33,3 per cent of that company’s net capital gain for the relevant foreign tax year;”;

- (c) by the substitution in subsection (2A) for subparagraph (ii) of the further proviso of the following subparagraph:

“(ii) the aggregate amount of tax payable by a controlled foreign company in respect of a foreign tax year of that controlled foreign company as contemplated in subparagraph (i) must be determined—

(aa) after taking into account any applicable agreement for the prevention of double taxation and any credit, rebate or other right of recovery of tax from any sphere of government of any country other than the Republic; **[and]**

(bb) after disregarding any loss in respect of a year other than **[a]** that foreign tax year **[contemplated in subparagraph (i)]** or from a company other than **[a]** that controlled foreign company **[contemplated in subparagraph (i)]**; and

(cc) before taking into account any amount which would, had that controlled foreign company been a resident for that foreign tax year, have been included in the income of that controlled foreign company in terms of subsection (2) for that foreign tax year.”;

- (d) by the insertion in subsection (9) after paragraph (c) of the following paragraph:

“(d) is subject to—

(i) the withholding tax on interest in terms of Part IA; or

(ii) the withholding tax on royalties in terms of Part IVA,

after taking into account any applicable agreement for the prevention of double taxation;”;

- (e) by the substitution in subsection (9A)(a)(iii)(cc) for the words following subitem (B) of the following words:

“other than amounts in respect of which paragraphs (e) to (fB) of subsection (9) apply, **[does not exceed]** exceeds five per cent of the total of all amounts received by or accrued to the controlled foreign company that are attributable to that foreign business establishment;”;

“: Met dien verstande dat hierdie subartikel nie van toepassing is nie ten opsigte van enige uitgawe of verlies namate die bedrag van daardie uitgawe of verlies in berekening gebring word ingevolge artikel 8(4)(a) of artikel 19”.

(2) Subartikel (1) tree op 1 Januarie 2013 in werking en is van toepassing ten opsigte van jare van aanslag wat op of na daardie datum begin. 5

**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, artikel 22 van Wet 60 van 2001, artikel 14 van Wet 74 van 2002, artikel 22 van Wet 45 van 2003, artikel 13 van Wet 32 van 2004, artikel 14 van Wet 31 van 2005, artikel 9 van Wet 20 van 2006, artikel 9 van Wet 8 van 2007, artikel 15 van Wet 35 van 2007, artikel 8 van Wet 3 van 2008, artikel 13 van Wet 60 van 2008, artikel 12 van Wet 17 van 2009, artikel 16 van Wet 7 van 2010 en artikel 25 van Wet 24 van 2011** 10

14. (1) Artikel 9D van die Inkomstebelastingwet, 1962, word hierby gewysig— 15

(a) deur in subartikel (1) die omskrywing van “**buitelandse belastingjaar**” te skrap;

(b) deur in subartikel (2A) paragraaf (f) van die voorbehoudsbepaling deur die volgende paragraaf te vervang:

“(f) waar die inwoner in subartikel (2) bedoel ’n natuurlike persoon, ’n spesiale trust of ’n versekeraar met betrekking tot sy individuele polishouerfonds is, is die belasbare kapitaalwins van die beheerde buitelandse maatskappy, by die toepassing van paragraaf 10 van die Agtste Bylae, [25] 33,3 persent van daardie maatskappy se netto kapitaalwins vir die betrokke buitelandse belastingjaar;”;

(c) deur in subartikel (2A) subparagraaf (ii) van die verdere voorbehoudsbepaling deur die volgende subparagraaf te vervang:

“(ii) die totale bedrag van belasting betaalbaar deur ’n beheerde buitelandse maatskappy ten opsigte van ’n buitelandse belastingjaar van daardie beheerde buitelandse maatskappy soos in subparagraaf (i) beoog, bereken moet word—

(aa) na verrekening van enige toepaslike ooreenkoms vir die voorkoming van dubbele belasting en enige krediet, korting of ander reg van verhaal van belasting van enige regeringsfeer van enige land behalwe die Republiek; [en] 35

(bb) nadat enige verlies ten opsigte van ’n ander jaar as [’n jaar beoog in subparagraaf (i)] daardie buitelandse belastingjaar of van ’n ander maatskappy as [’n maatskappy beoog in subparagraaf (i)] daardie beheerde buitelandse maatskappy buite rekening gelaat is; en 40

(cc) voordat in berekening gebring word enige bedrag wat, indien daardie beheerde buitelandse maatskappy ’n inwoner was vir daardie buitelandse belastingjaar, vir daardie buitelandse belastingjaar by die inkomste van daardie beheerde buitelandse maatskappy ingevolge subartikel (2) ingesluit sou wees.”; 45

(d) deur in subartikel (9) na paragraaf (c) die volgende paragraaf in te voeg:

“(d) onderhewig is aan—

(i) die terughoudingsbelasting op rente ingevolge Deel IA; of

(ii) die terughoudingsbelasting op tantième ingevolge Deel IVA, nadat in berekening gebring is enige toepaslike ooreenkoms vir die voorkoming van dubbele belasting;”;

(e) deur in subartikel (9A)(a)(iii)(cc) die woorde wat op subitem (B) volg deur die volgende woorde te vervang:

“behalwe bedrae ten opsigte waarvan paragrafe (e) tot (fB) van subartikel (9) van toepassing is, [nie] vyf persent van die totaal van alle bedrae ontvang deur of toegeval aan die beheerde buitelandse maatskappy wat aan die buitelandse besigheidsaak toeskryfbaar is, oorskry [nie];”;

- (f) by the substitution in subsection (9A)(a)(iv) for the word “and” at the end of item (aa) of the word “or”; and
- (g) by the substitution in subsection (9A)(a) for subparagraphs (v) and (vi) of the following subparagraphs:
  - “(v) arises in respect of the use or right of use of or permission to use any intellectual property as defined in section 23I, unless—
    - (aa) that controlled foreign company directly and regularly creates, develops or substantially upgrades any intellectual property as defined in section 23I which gives rise to that amount; and
    - (bb) that intellectual property does not constitute property which constitutes tainted intellectual property as defined in section 23I;
  - (vi) is a capital gain determined in respect of the disposal or deemed disposal of any intellectual property as defined in section 23I, unless—
    - (aa) that controlled foreign company directly and regularly creates, develops or substantially upgrades any intellectual property as defined in section 23I which gives rise to that amount; and
    - (bb) that intellectual property does not constitute property which, if that controlled foreign company were a resident, would constitute tainted intellectual property as defined in section 23I in relation to that controlled foreign company;] or”.

(2) Paragraph (a) of subsection (1) is deemed to have come into operation on 1 January 2012 and applies in respect of foreign tax years ending during years of assessment commencing on or after that date.

(3) Paragraph (b) of subsection (1) is deemed to have come into operation on 1 March 2012 and applies in respect of foreign tax years of controlled foreign companies ending during years of assessment commencing on or after that date.

(4) Paragraph (c) of subsection (1) is deemed to have come into operation on 1 January 2008 and applies in respect of foreign tax years of controlled foreign companies ending during years of assessment ending on or after that date.

(5) Paragraph (d) of subsection (1) comes into operation on 1 July 2013 and applies in respect of amounts that are paid or that become payable during foreign tax years ending during years of assessment commencing on or after that date.

(6) Paragraphs (e), (f) and (g) of subsection (1) are deemed to have come into operation on 1 April 2012 and apply in respect of foreign tax years of controlled foreign companies ending during years of assessment commencing on or after that date.

#### Repeal of section 9E of Act 58 of 1962 40

- 15. (1) The Income Tax Act, 1962, is hereby amended by the repeal of section 9E.
- (2) Subsection (1) is deemed to have come into operation on 21 October 2008.

#### Amendment of section 9H of Act 58 of 1962, as inserted by section 26 of Act 24 of 2011

16. (1) Section 9H of the Income Tax Act, 1962, is hereby amended by the substitution in subsection (2) for the words preceding paragraph (a) of the following words:

“Subject to subsection (3), where a person that is a resident ceases to be a resident or becomes a headquarter company, that person must be treated as having—”.

- (2) Subsection (1) is deemed to have come into operation on 1 April 2012.

- (f) deur in subartikel (9A)(a)(iv) die woord “en” aan die einde van item (aa) deur die woord “of” te vervang; en
- (g) deur in subartikel (9A)(a) subparagraawe (v) en (vi) deur die volgende subparagraawe te vervang:
- “(v) voorspruit ten opsigte van die gebruik, reg van gebruik of toestemming tot gebruik van enige immateriële goedere soos omskryf in artikel 23I, tensy—
- 5 (aa) daardie beheerde buitelandse maatskappy direk en gereeld enige immateriële goedere soos omskryf in artikel 23I skep, ontwikkel of wesenlik opgradeer, wat tot daardie bedrag 10 aanleiding gee; en
- (bb) daardie immateriële goedere nie goedere uitmaak wat besmette immateriële goedere soos omskryf in artikel 23I uitmaak nie;
- (vi) ’n kapitaalwins is wat bepaal word ten opsigte van die beskikking oor of geagte **[beskikking]** beskikking oor enige immateriële goedere soos omskryf in artikel 23I tensy—
- 15 (aa) daardie beheerde buitelandse maatskappy direk en gereeld enige immateriële goedere soos omskryf in artikel 23I skep, ontwikkel of wesenlik opgradeer, wat tot daardie bedrag 20 aanleiding gee; **en**
- (bb) daardie immateriële goedere nie goedere uitmaak nie wat, indien daardie beheerde buitelandse maatskappy ’n inwoner was, besmette immateriële goedere soos omskryf in artikel 23I met betrekking tot daardie beheerde 25 buitelandse maatskappy sou uitmaak;] of”.

(2) Paragraaf (a) van subartikel (1) word geag op 1 Januarie 2012 in werking te getree het en is van toepassing ten opsigte van buitelandse belastingjare wat eindig gedurende jare van aanslag wat op of na daardie datum begin.

(3) Paragraaf (b) van subartikel (1) word geag op 1 Maart 2012 in werking te getree 30 het en is van toepassing ten opsigte van buitelandse belastingjare van beheerde buitelandse maatskappye wat eindig gedurende jare van aanslag wat op of na daardie datum begin.

(4) Paragraaf (c) van subartikel (1) word geag op 1 Januarie 2008 in werking te getree 35 het en is van toepassing ten opsigte van buitelandse belastingjare van beheerde buitelandse maatskappye wat eindig gedurende jare van aanslag wat op of na daardie datum eindig.

(5) Paragraaf (d) van subartikel (1) tree op 1 Julie 2013 in werking en is van toepassing ten opsigte van bedrae wat betaal word of wat betaalbaar word gedurende buitelandse belastingjare wat eindig gedurende jare van aanslag wat op of na daardie 40 datum begin.

(6) Paragraawe (e), (f) en (g) van subartikel (1) word geag op 1 April 2012 in werking te getree het en is van toepassing ten opsigte van buitelandse belastingjare van beheerde buitelandse maatskappye wat eindig gedurende jare van aanslag wat op of na daardie 45 datum begin.

### Herroeping van artikel 9E van Wet 58 van 1962

15. (1) Die Inkomstebelastingwet, 1962, word hierby gewysig deur artikel 9E te herroep.

(2) Subartikel (1) word geag op 21 Oktober 2008 in werking te getree het.

### Wysiging van artikel 9H van Wet 58 van 1962, soos ingevoeg deur artikel 26 van 50 Wet 24 van 2011

16. (1) Subartikel 9H van die Inkomstebelastingwet, 1962, word hierby gewysig deur in subartikel (2) die woorde wat paragraaf (a) voorafgaan deur die volgende woorde te vervang:

“Behoudens subartikel (3) waar ’n persoon wat ’n inwoner is, ophou om ’n 55 inwoner te wees of ’n hoofkwartiermaatskappy word, word daardie persoon behandel asof die persoon—”.

(2) Subartikel (1) word geag op 1 April 2012 in werking te getree het.

**Substitution of section 9H of Act 58 of 1962**

17. (1) The Income Tax Act, 1962, is hereby amended by the substitution for section 9H of the following section:

**“Change of residence, ceasing to be controlled foreign company or becoming headquarter company** 5

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

‘asset’ means an asset as defined in paragraph 1 of the Eighth Schedule; and ‘market value’, in relation to an asset, means the price which could be obtained upon a sale of that asset between a willing buyer and a willing seller dealing at arm’s length in an open market. 10

(2) Subject to subsection (4), where a person (other than a company) that is a resident ceases during any year of assessment of that person to be a resident—

(a) that person must be treated as having—

(i) disposed of each of that person’s assets on the date immediately before the day on which that person so ceases to be a resident for an amount received or accrued equal to the market value of the asset on that date; and 15

(ii) reacquired each of those assets on the day on which that person so ceases to be a resident at an expenditure equal to the market value contemplated in subparagraph (i); 20

(b) that year of assessment must be deemed to have ended on the date immediately before the day on which that person so ceases to be a resident; and

(c) the next succeeding year of assessment of that person must be deemed to have commenced on the day on which that person so ceases to be a resident. 25

(3) (a) Subject to subsections (4) and (5), this subsection applies where a company that is—

(i) a resident ceases to be a resident or becomes a headquarter company during any year of assessment of that company; or 30

(ii) a controlled foreign company ceases, otherwise than by way of becoming a resident, to be a controlled foreign company during any foreign tax year of that controlled foreign company.

(b) Where, during any year of assessment or foreign tax year of a company, the company ceases to be a resident, becomes a headquarter company or ceases to be a controlled foreign company as contemplated in paragraph (a), that company must be treated as having— 35

(i) disposed of each of that company’s assets on the date immediately before the day on which that company so ceased to be a resident, became a headquarter company or ceased to be a controlled foreign company for an amount received or accrued equal to the market value of that asset on that date; and 40

(ii) reacquired each of those assets on the day on which that company so ceased to be a resident, became a headquarter company or ceased to be a controlled foreign company at an expenditure equal to the market value contemplated in subparagraph (i). 45

(c) Where a company that is a resident ceases to be a resident or becomes a headquarter company during any year of assessment of that company as contemplated in paragraph (a)(i)— 50

(i) that year of assessment must be deemed to have ended on the date immediately before the day on which that company so ceased to be a resident or became a headquarter company;

(ii) the next succeeding year of assessment of that company must be



### Vervanging van artikel 9H van Wet 58 van 1962

17. (1) Die Inkomstebelastingwet, 1962, word hierby gewysig deur artikel 9H deur die volgende artikel te vervang:

**“Verandering van inwoning, ophou om beheerde buitelandse maatskappy te wees of word van hoofkwartiermaatskappy** 5

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

‘bate’ ’n bate soos omskryf in paragraaf 1 van die Agtste Bylae;  
‘markwaarde’, met betrekking tot ’n bate, die prys wat behaal sou kon word tydens die verkoop van daardie bate tussen ’n gewillige koper en ’n gewillige verkoper wat op uiterste voorwaardes in ’n oop mark beding. 10

(2) Behoudens subartikel (4) waar ’n persoon (buiten ’n maatskappy) wat ’n inwoner is gedurende enige jaar van aanslag van daardie persoon ophou om ’n inwoner te wees—

(a) word daardie persoon behandel asof die persoon— 15

(i) oor elk van daardie persoon se bates beskik het op die datum onmiddellik voor die dag waarop daardie persoon aldus ophou om ’n inwoner te wees vir ’n bedrag ontvang of toegeval gelyk aan die markwaarde van die bate op daardie datum; en

(ii) elkeen van daardie bates herverkry het op die dag waarop daardie persoon aldus ophou om ’n inwoner te wees teen 20

(b) word daardie jaar van aanslag geag te geëindig het op die datum onmiddellik voor die dag waarop daardie persoon aldus ophou om ’n inwoner te wees; en

(c) word die daaropvolgende jaar van aanslag van daardie persoon geag te 25

(3)(a) Behoudens subartikels (4) en (5) is hierdie subartikel van toepassing waar ’n maatskappy wat—

(i) ’n inwoner is, ophou om ’n inwoner te wees of ’n hoofkwartiermaatskappy word gedurende enige jaar van aanslag van daardie maatskappy; of 30

(ii) ’n beheerde buitelandse maatskappy is, ophou, andersins as by wyse van ’n inwoner te word, om ’n beheerde buitelandse maatskappy te wees gedurende enige buitelandse belastingjaar van daardie beheerde 35

(b) Waar, gedurende enige jaar van aanslag of buitelandse belastingjaar van ’n maatskappy, die maatskappy ophou om ’n inwoner te wees, ’n hoofkwartiermaatskappy word of ophou om ’n beheerde buitelandse maatskappy te wees soos beoog in paragraaf (a), word daardie maatskappy 40

(i) oor elk van daardie maatskappy se bates beskik het op die datum onmiddellik voor die dag waarop daardie maatskappy aldus ophou om ’n inwoner te wees, ’n hoofkwartiermaatskappy word of ophou om ’n beheerde 45

(ii) elkeen van daardie bates herverkry het op die dag waarop daardie maatskappy aldus ophou om ’n inwoner te wees, ’n hoofkwartiermaatskappy word of ophou om ’n beheerde 50

(c) Waar ’n maatskappy wat ’n inwoner is, ophou om ’n inwoner te wees of ’n hoofkwartiermaatskappy word gedurende enige jaar van aanslag van daardie maatskappy soos beoog in paragraaf (a)(i)— 55

(i) word daardie jaar van aanslag geag te geëindig het op die datum onmiddellik voor die dag waarop daardie maatskappy aldus opgehou 60

(ii) word die daaropvolgende jaar van aanslag van daardie maatskappy geag te begin het op die dag waarop daardie maatskappy aldus

- deemed to have commenced on the day on which that company so  
ceased to be a resident or became a headquarter company; and
- (iii) that company must, on the date immediately before the day on which  
the company so ceased to be a resident or became a headquarter  
company and for the purposes of section 64EA(b), be deemed to have  
declared and paid a dividend that consists solely of a distribution of an  
asset *in specie*— 5
- (aa) the amount of which must be deemed to be equal to the sum of  
the market values of all the shares in that company on that date  
less the sum of the contributed tax capital of all the classes of  
shares in the company as at that date; and 10
- (bb) to the person or persons holding shares in that company in  
accordance with the effective interest of that person or those  
persons in the shares in the company as at that date.
- (d) Where a controlled foreign company ceases to be a controlled foreign  
company during any foreign tax year of that controlled foreign company as  
contemplated in paragraph (a)(ii)— 15
- (i) that foreign tax year must be deemed to have ended on the date  
immediately before the day on which that controlled foreign company  
so ceased to be a controlled foreign company; and 20
- (ii) the next succeeding foreign tax year of that controlled foreign  
company must be deemed to have commenced on the day on which  
that controlled foreign company so ceased to be a controlled foreign  
company.
- (4) Subsections (2) and (3) do not apply in respect of an asset of a person  
where that asset constitutes— 25
- (a) immovable property situated in the Republic that is held by that  
person;
- (b) any interest or right of whatever nature of that person to or in  
immovable property situated in the Republic, including an interest in  
immovable property contemplated in paragraph 2(2) of the Eighth  
Schedule; 30
- (c) any asset which is, after the person ceases to be a resident or a  
controlled foreign company as contemplated in subsection (2) or (3),  
attributable to a permanent establishment of that person in the  
Republic; 35
- (d) any qualifying equity share contemplated in section 8B that was  
granted to that person less than five years before the date on which that  
person ceases to be a resident as contemplated in subsection (2) or (3);
- (e) any equity instrument contemplated in section 8C that had not yet  
vested as contemplated in that section at the time that the person  
ceases to be a resident as contemplated in subsection (2) or (3); or 40
- (f) any right of that person to acquire any marketable security con-  
templated in section 8A.
- (5) If— 45
- (a) a person disposes of an equity share in a foreign company that is a  
controlled foreign company;
- (b) the capital gain or capital loss determined in respect of a disposal  
contemplated in paragraph (a) is disregarded in terms of paragraph  
64B of the Eighth Schedule; and 50
- (c) as a direct or indirect result of a disposal contemplated in paragraph  
(a), a foreign company ceases to be a controlled foreign company,  
subsection (3) must not apply to any foreign company contemplated in  
paragraph (c).
- (6) This section must not apply in respect of— 55
- (a) any company that ceases to be a controlled foreign company as a result  
of—
- (i) an amalgamation transaction as defined in section 44(1) to  
which section 44 applies; or

- opgehou het om 'n inwoner te wees of 'n hoofkwartiermaatskappy  
geword het; en
- (iii) word daardie maatskappy, op die datum onmiddellik voor die dag  
waarop die maatskappy aldus ophou om 'n inwoner te wees of 'n  
hoofkwartiermaatskappy word en by die toepassing van artikel 5  
64EA(b), geag 'n dividend te verklaar en betaal het wat bestaan uit  
slegs 'n uitkering van 'n bate *in specie*—
- (aa) die bedrag waarvan geag word gelyk te wees aan die som van  
die markwaardes van al die aandele in daardie maatskappy op  
daardie datum minus die som van die toegevoegde 10  
belastingkapitaal van al die klasse aandele in die maatskappy op  
daardie datum; en
- (bb) aan die persoon of persone wat aandele in daardie maatskappy  
hou ooreenkomstig die effektiewe belang van daardie persoon  
of persone in die aandele in die maatskappy op daardie datum. 15
- (d) Waar 'n beheerde buitelandse maatskappy ophou om 'n beheerde  
buitelandse maatskappy te wees gedurende enige buitelandse belastingjaar  
van daardie beheerde buitelandse maatskappy soos beoog in paragraaf  
(a)(ii)—
- (i) word daardie buitelandse belastingjaar geag te geëindig het op die 20  
datum onmiddellik voor die dag waarop daardie beheerde buitelandse  
maatskappy aldus opgehou het om 'n beheerde buitelandse  
maatskappy te wees; en
- (ii) word die daarvolgende buitelandse belastingjaar van daardie beheerde 25  
buitelandse maatskappy geag te begin het op die dag waarop daardie  
beheerde buitelandse maatskappy aldus opgehou het om 'n beheerde  
buitelandse maatskappy te wees.
- (4) Subartikels (2) en (3) is nie van toepassing nie ten opsigte van 'n bate  
van 'n persoon waar daardie bate bestaan uit—
- (a) onroerende eiendom geleë in die Republiek wat deur daardie persoon 30  
gehou word;
- (b) enige belang of reg van watter aard ook al van daardie persoon op of  
in onroerende eiendom geleë in die Republiek, insluitend 'n belang in  
onroerende eiendom beoog in paragraaf 2(2) van die Agtste Bylae;
- (c) 'n bate wat, nadat die persoon ophou om 'n inwoner of 'n beheerde 35  
buitelandse maatskappy te wees soos beoog in subartikel (2) of (3),  
aan 'n permanente saak van daardie persoon in die Republiek  
toeskryfbaar sal wees;
- (d) enige kwalifiserende ekwiteitsaandeel beoog in artikel 8B wat aan  
daardie persoon toegestaan is minder as vyf jaar voor die datum 40  
waarop daardie persoon ophou om 'n inwoner te wees soos beoog in  
subartikel (2) of (3);
- (e) enige ekwiteitsinstrument beoog in artikel 8C wat nog nie gevestig het  
nie soos beoog in daardie artikel op die tydstip waarop die persoon  
ophou om 'n inwoner te wees soos beoog in subartikel (2) of (3); of 45
- (f) 'n reg van daardie persoon om enige handelseffek beoog in artikel 8A  
te verkry.
- (5) Indien—
- (a) 'n persoon beskik oor 'n ekwiteitsaandeel in 'n buitelandse maat- 50  
skappy wat 'n beheerde buitelandse maatskappy is;
- (b) die kapitaalwins of kapitaalverlies bepaal ten opsigte van 'n  
beskikking beoog in paragraaf (a) buite rekening gelaat word  
ingevolge paragraaf 64B van die Agtste Bylae; en
- (c) as 'n regstreekse of onregstreekse gevolg van 'n beskikking beoog in 55  
paragraaf (a), 'n buitelandse maatskappy ophou om 'n beheerde  
buitelandse maatskappy te wees,  
is subartikel (3) nie van toepassing nie op enige buitelandse maatskappy  
beoog in paragraaf (c).
- (6) Hierdie artikel is nie van toepassing nie ten opsigte van—
- (a) 'n maatskappy wat ophou om 'n beheerde buitelandse maatskappy te 60  
wees as gevolg van—
- (i) 'n amalgamasietransaksie soos omskryf in artikel 44(1)  
waarop artikel 44 van toepassing is; of

- (ii) a liquidation distribution as defined in section 47(1) to which section 47 applies; or
  - (b) any person that is a resident and that ceases to be a resident by reason of the coming into operation of section 2(1)(w) of the Taxation Laws Amendment Act, 2012.” 5
- (2) Subsection (1) is deemed to have come into operation on 8 May 2012 and applies in respect of any person that—
- (a) ceases to be a resident;
  - (b) becomes a headquarter company; or
  - (c) ceases to be a controlled foreign company in relation to a resident, 10
- on or after that date.

**Amendment of section 9I of Act 58 of 1962, as inserted by section 27 of Act 24 of 2011**

- 18.** (1) Section 9I of the Income Tax Act, 1962, is hereby amended by the substitution in subsection (2) for paragraphs (a) and (b) of the following paragraphs: 15
- “(a) for the duration of that year of assessment [**and of all previous years of assessment of the company**], each shareholder in the company (whether alone or together with any other company forming part of the same group of companies as that shareholder) held 10 per cent or more of the equity shares and voting rights in that company: Provided that in determining whether a company complies with the requirements prescribed by this paragraph in relation to any year of assessment of that company during which the company commenced the carrying on of trade, no regard must be had to any period during that year before which the company so commenced the carrying on of trade; 20
  - (b) at the end of that year of assessment and of all previous years of assessment of that company, 80 per cent or more of the cost of the total assets of the company was attributable to one or more of the following: 25
    - (i) any interest in equity shares in;
    - (ii) any [**amount loaned or advanced to**] debt owed by; or 30
    - (iii) any intellectual property as defined in section 23I(1) that is licensed by that company to, any foreign company in which that company (whether alone or together with any other company forming part of the same group of companies as that company) held at least 10 per cent of the equity shares and voting rights: 35Provided that in determining—
    - (aa) the total assets of the company, there must not be taken into account any amount in cash or in the form of a bank deposit payable on demand; and
    - (bb) whether a company complies with the requirements prescribed by this paragraph in relation to any year of assessment of that company, no regard must be had to any such year of assessment if the company did not at any time during such year of assessment own assets with a total market value exceeding R50 000; and” 40

(2) Subsection (1) comes into operation on 1 January 2013 and applies in respect of years of assessment commencing on or after that date. 45

**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** 50

- (ii) 'n likwidasië-uitkering soos omskryf in artikel 47(1) waarop artikel 47 van toepassing is; of
- (b) 'n persoon wat 'n inwoner is en wat ophou om 'n inwoner te wees ten gevolge van die inwerkingtreding van artikel 2(1)(w) van die Wysigingswet op Belastingwette, 2012.” 5
- (2) Subartikel (1) word geag op 8 Mei 2012 in werking te getree het en is van toepassing ten opsigte van 'n persoon wat—
- (a) ophou om 'n inwoner te wees;
- (b) 'n hoofkwartiermaatskappy word; of
- (c) ophou om 'n beheerde buitelandse maatskappy met betrekking tot 'n inwoner 10 te wees,
- op of na daardie datum.

**Wysiging van artikel 9I van Wet 58 van 1962, soos ingevoeg deur artikel 27 van Wet 24 van 2011**

18. (1) Artikel 9I van die Inkomstebelastingwet, 1962, word hierby gewysig deur in 15 subartikel (2) paragrawe (a) en (b) deur die volgende paragrawe te vervang:
- “(a) vir die duur van daardie jaar van aanslag [**en van alle vorige jare van aanslag van die maatskappy**], elke aandeelhouer in die maatskappy (hetsy alleen of tesame met enige ander maatskappy wat deel uitmaak van dieselfde groep van maatskappye as daardie aandeelhouer) 10 persent of meer van die ekwiteitsaandeel en stemregte in daardie maatskappy gehou het: Met dien verstande dat by die bepaling of 'n maatskappy aan die vereistes voorgeskryf 20 deur hierdie paragraaf voldoen met betrekking tot enige jaar van aanslag van daardie maatskappy waartydens die maatskappy begin het om 'n bedryf te beoefen, nie in ag geneem word nie enige tydperk gedurende daardie jaar 25 waarvoor die maatskappy aldus begin het om 'n bedryf te beoefen;
- (b) aan die einde van daardie jaar van aanslag en van alle vorige jare van aanslag van daardie maatskappy, 80 persent of meer van die koste van die totale bates van die maatskappy toeskryfbaar was aan een of meer van die volgende:
- (i) enige belang in ekwiteitsaandeel in; 30
- (ii) enige [**bedrag geleen of voorgeskiet aan**] skuld verskuldig deur; of
- (iii) enige immateriële goedere soos omskryf in artikel 23I(1) wat deur daardie maatskappy gelisensieer word aan, 35
- enige buitelandse maatskappy waarin daardie maatskappy (hetsy alleen of tesame met enige ander maatskappy wat deel uitmaak van dieselfde groep van maatskappye as daardie maatskappy) minstens 10 persent van die ekwiteitsaandeel en stemregte gehou het: Met dien verstande dat by die bepaling— 40
- (aa) van die totale bates van die maatskappy daar nie in berekening gebring moet word nie enige bedrag in kontant of in die vorm van 'n bankdeposito op aanvraag betaalbaar; en 45
- (bb) of 'n maatskappy voldoen aan die vereistes voorgeskryf deur hierdie paragraaf met betrekking tot enige jaar van aanslag van daardie maatskappy, nie in ag geneem word nie enige sodanige jaar van aanslag indien die maatskappy nie te eniger tyd gedurende sodanige jaar van aanslag bates besit met 'n totale markwaarde wat R50 000 oorskry nie; en”.
- (2) Subartikel (1) tree op 1 Januarie 2013 in werking en is van toepassing ten opsigte van jare van aanslag wat op of na daardie datum begin.

**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 60**

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 1 of Act 49 of 1996, section 10 of Act 28 of 1997, section 29 of Act 30 of 1998, section 18 of Act 53 of 1999, section 21 of Act 30 of 2000, section 13 of Act 59 of 2000, sections 9 and 78 of Act 19 of 2001, section 26 of Act 60 of 2001, section 13 of Act 30 of 2002, section 18 of Act 74 of 2002, section 36 of Act 12 of 2003, section 26 of Act 45 of 2003, section 8 of Act 16 of 2004, section 14 of Act 32 of 2004, section 5 of Act 9 of 2005, section 16 of Act 31 of 2005, section 23 of Act 9 of 2006, section 10 of Act 20 of 2006, section 10 of Act 8 of 2007, section 2 of Act 9 of 2007, section 16 of Act 35 of 2007, section 9 of Act 3 of 2008, section 16 of Act 60 of 2008, section 13 of Act 17 of 2009, section 18 of Act 7 of 2010 and section 28 of Act 24 of 2011

19. (1) Section 10 of the Income Tax Act, 1962, is hereby amended—
- (a) by the substitution in subsection (1)(gC) for subparagraph (ii) of the following subparagraph:

“(ii) pension received by or accrued to any resident from a source outside the Republic [, which is not deemed to be from a source in the Republic in terms of section 9(1)(g), in consideration of] as consideration for past employment outside the Republic;”;
  - (b) by the substitution in subsection (1) for paragraph (gH) of the following paragraph:

“(gH) any amount received or accrued in respect of a policy of insurance where—

    - (i) the policy relates to death, disablement or severe illness of an employee or director, or former employee or director, of the person that is the policyholder; and
    - (ii) no amount of premiums payable in respect of that policy on or after 1 March 2012 is deductible from the income of that person for the purposes of determining the taxable income derived by the person from carrying on any trade;”;
  - (c) by the substitution in subsection (1) for paragraph (h) of the following paragraph:

“(h) any amount of interest as defined in section [24J(1) or deemed interest as contemplated in section 8E(2),] 371 which is received or accrued [during any year of assessment] by or to any person [who] that is not a resident, unless that person—

    - (i) is a natural person who was physically present in the Republic for a period exceeding 183 days in aggregate during [that year] the twelve-month period preceding the date on which the interest is received or accrued by or to that person; or
    - (ii) at any time during [that year] the twelve-month period preceding the date on which the interest is received or accrued by or to that person carried on business through a permanent establishment in the Republic;”;
  - (d) by the substitution in subsection (1) for paragraph (hA) of the following paragraph:

“(hA) any amount received by or accrued to the holder of a debt [instrument as defined in section 23K(1)]—

    - (i) if the holder of that debt [instrument] is a company that forms part of the same group of companies, as defined in section 41, as the issuer of that debt [instrument]; and
    - (ii) to the extent that the amount is attributable to any amount of interest as defined in section 23K(1) that is not deductible as a result of the application of section 23K;”;
  - (e) by the substitution in subsection (1)(k)(i) for the words preceding the proviso of the following words:

“dividends (other than dividends paid or declared by a headquarter company) received by or accrued to [or in favour of] any person”;

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 1 van Wet 49 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, artikels 9 en 78 van Wet 19 van 2001, artikel 26 van Wet 60 van 2001, artikel 13 van Wet 30 van 2002, artikel 18 van Wet 74 van 2002, artikel 36 van Wet 12 van 2003, artikel 26 van Wet 45 van 2003, artikel 8 van Wet 16 van 2004, artikel 14 van Wet 32 van 2004, artikel 5 van Wet 9 van 2005, artikel 16 van Wet 31 van 2005, artikel 23 van Wet 9 van 2006, artikel 10 van Wet 20 van 2006, artikel 10 van Wet 8 van 2007, artikel 2 van Wet 9 van 2007, artikel 16 van Wet 35 van 2007, artikel 9 van Wet 3 van 2008, artikel 16 van Wet 60 van 2008, artikel 13 van Wet 17 van 2009, artikel 18 van Wet 7 van 2010 en artikel 28 van Wet 24 van 2011

19. (1) Artikel 10 van die Inkomstebelastingwet, 1962, word hierby gewysig—
- (a) deur in subartikel (1)(gC) subparagraaf (ii) deur die volgende subparagraaf te vervang:
- “(ii) pensioen ontvang deur of toegeval aan enige inwoner uit ’n bron buite die Republiek, **wat nie ingevolge artikel 9(1)(g) geag word uit ’n bron in die Republiek te wees nie,**] as vergoeding vir dienste in die verlede buite die Republiek gelewer;”;
- (b) deur in subartikel (1) paragraaf (gH) deur die volgende paragraaf te vervang:
- “(gH) enige bedrag ontvang of toegeval ten opsigte van ’n versekeringspolis waar—
- (i) die polis betrekking het op dood, gestremdheid of ernstige siekte van ’n werknemer of direkteur, of gewese werknemer of direkteur, van die persoon wat die polishouer is; en
- (ii) geen bedrag van premies betaalbaar ten opsigte van daardie polis op of na 1 Maart 2012 aftrekbaar is nie van die inkomste van daardie persoon ten einde die belasbare inkomste verkry deur die persoon uit die beoefening van ’n bedryf te bepaal;”;
- (c) deur in subartikel (1) paragraaf (h) deur die volgende paragraaf te vervang:
- “(h) **enige bedrag van rente soos omskryf in artikel [24J(1) of ’n bedrag geag rente te wees soos in artikel 8E(2) bedoel,] 37I wat [in ’n jaar van aanslag] ontvang is deur of toeval aan ’n persoon wat nie ’n inwoner is nie, tensy daardie persoon—**
- (i) ’n natuurlike persoon is wat vir ’n tydperk van meer as 183 dae in totaal in **[daardie jaar] die tydperk van twaalf maande wat die datum voorafgaan waarop die rente ontvang word of toeval deur of aan daardie persoon fisies in die Republiek teenwoordig was;** of
- (ii) op enige tydstip in **[daardie jaar] die tydperk van twaalf maande wat die datum voorafgaan waarop die rente ontvang word of toeval deur of aan daardie persoon ’n besigheid deur middel van ’n permanente saak in die Republiek bedryf het;**”;
- (d) deur in subartikel (1) paragraaf (hA) deur die volgende paragraaf te vervang:
- “(hA) enige bedrag ontvang deur of toegeval aan die houer van ’n **[skuldinstrument soos in artikel 23K(1) omskryf] skuld—**
- (i) indien die houer van daardie **[skuldinstrument] skuld** ’n maatskappy is wat deel uitmaak van dieselfde groep van maatskappye, soos in artikel 41 omskryf, as die uitreiker van daardie **[skuldinstrument] skuld;** en
- (ii) namate die bedrag toeskryfbaar is aan enige bedrag van rente soos in artikel 23K(1) omskryf wat nie aftrekbaar is nie as gevolg van die toepassing van artikel 23K;”;
- (e) deur in subartikel (1)(k)(i) die woorde wat die voorbehoudsbepaling voorafgaan deur die volgende woorde te vervang:
- “dividende (behalwe dividende deur ’n hoofkwartiermaatskappy betaal of verklaar) ontvang deur of toegeval aan **[of ten gunste van] ’n persoon**”;

- (f) by the substitution in subsection (1)(k)(i) for paragraph (aa) of the proviso of the following paragraph:  
“(aa) to dividends (other than those received by or accrued to or in favour of a person that is not a resident) distributed by a REIT, or by a controlled property company as defined in section 25BB;”;
- (g) by the substitution in the proviso to subsection (1)(k)(i) in paragraph (dd) for the words preceding subparagraph (A) of the following words:  
“to any dividend in respect of a restricted equity instrument as defined in section 8C to the extent that the restricted equity instrument was acquired in the circumstances contemplated in section 8C, unless—”;
- (h) by the addition to the proviso to subsection (1)(k)(i) of the following paragraphs:  
“(ee) to any dividend received by or accrued to a company in consequence of—  
(A) any cession of the right to that dividend; or  
(B) the exercise of a discretionary power by any trustee of a trust,  
unless that cession or exercise is part of the disposal of all of the rights attaching to a share;  
(ff) to any dividends received by or accrued to a company in respect of a share borrowed by that company; or  
(gg) to any dividends received by or accrued to a company in respect of a share held by that company to the extent that the aggregate of those dividends does not exceed an amount equal to the aggregate of any amounts incurred by that company as compensation for any distributions in respect of any other share borrowed by the company where the share so borrowed and the share so held are of the same kind and of the same or equivalent quality: Provided that where the company borrowing the share has lent out any other share of the same kind and of the same or equivalent quality as the share so borrowed, the aggregate amount so incurred must be reduced by the amount accrued to that company as compensation for any distribution in respect of the share so lent;”;
- (i) by the addition to the proviso to subsection (1)(k)(i) after paragraph (gg) of the following paragraph:  
“(hh) to any dividend received by or accrued to a company in respect of a share that is acquired from a person whereby that acquisition is part of an arrangement in terms of which that share or a share of the same kind or of the same or equivalent quality must be disposed of to that person or to any other person forming part of the same group of companies as that person;”;
- (j) by the deletion in subsection (1)(k)(ii) of paragraph (iii) of the proviso to item (dd);
- (k) by the substitution in subsection (1) for paragraph (l) of the following paragraph:  
“(l) [any] the amount of any royalty as defined in section 49A which is received [by] or [accrued] accrues by or to any person [which amount has been subject to withholding tax in terms of the provisions of section 35] that is not a resident, unless that person—  
(i) is a natural person who was physically present in the Republic for a period exceeding 183 days in aggregate during the twelve-month period preceding the date on which the amount is received or accrued by or to that person; or  
(ii) at any time during the twelve-month period preceding the date on which the amount is received or accrued by or to that person carried on business through a permanent establishment in the Republic;”;



- (f) deur in subartikel (1)(k)(i) paragraaf (aa) van die voorbehoudsbepaling deur die volgende paragraaf te vervang:  
“(aa) op dividende (buiten dividende ontvang deur of toegeval aan of ten gunste van ’n persoon wat nie ’n inwoner is nie) uitgekeer deur ’n EIT, of deur ’n beheerde eiendomsmaatskappy soos omskryf in artikel 25BB;”;
- (g) deur in die voorbehoudsbepaling tot subartikel (1)(k)(i) die woorde wat subparagraaf (A) in paragraaf (dd) voorafgaan deur die volgende woorde te vervang:  
“op enige dividend ten opsigte van ’n beperkte ekwiteitsinstrument soos omskryf in artikel 8C namate die beperkte ekwiteitsinstrument verkry is in die omstandighede beoog in artikel 8C, tensy—”;
- (h) deur tot die voorbehoudsbepaling tot subartikel (1)(k)(i) die volgende paragrawe by te voeg:  
“(ee) op enige dividend ontvang deur of toegeval aan ’n maatskappy ten gevolge van—  
(A) enige sedering van die reg op daardie dividend; of  
(B) die uitoefening van ’n diskresionêre mag deur ’n trustee van ’n trust,  
tensy daardie sedering of uitoefening deel uitmaak van die beskikking oor al die regte wat geheg is aan ’n aandeel;  
(ff) op enige dividende ontvang deur of toegeval aan ’n maatskappy ten opsigte van ’n aandeel geleen deur daardie maatskappy; of  
(gg) op enige dividende ontvang deur of toegeval aan ’n maatskappy ten opsigte van ’n aandeel gehou deur daardie maatskappy namate die totaal van daardie dividende nie ’n bedrag oorskry nie gelyk aan die totaal van enige bedrae aangegaan deur daardie maatskappy as vergoeding vir enige uitkerings ten opsigte van enige ander aandeel geleen deur die maatskappy waar die aandeel aldus geleen en die aandeel aldus gehou van dieselfde soort en van dieselfde of gelykstaande kwaliteit is: Met dien verstande dat waar die maatskappy wat die aandeel leen, enige ander aandeel van dieselfde soort en van dieselfde of gelykstaande kwaliteit as die aandeel aldus geleen uitgeleen het, word die totale bedrag aldus aangegaan verminder deur die bedrag toegeval aan daardie maatskappy as vergoeding vir enige uitkering ten opsigte van die aandeel aldus geleen;”;
- (i) deur tot die voorbehoudsbepaling tot subartikel (1)(k)(i) na paragraaf (gg) die volgende paragraaf by te voeg:  
“(hh) op enige dividend ontvang deur of toegeval aan ’n maatskappy ten opsigte van ’n aandeel wat verkry word van ’n persoon waardeur daardie verkryging deel is van ’n reëling ingevolge waarvan oor daardie aandeel of ’n aandeel van dieselfde soort of van dieselfde of gelykwaardige kwaliteit beskik moet word aan daardie persoon of aan enige ander persoon wat deel uitmaak van dieselfde groep van maatskappye as daardie persoon;”;
- (j) deur in subartikel (1)(k)(ii) paragraaf (iii) van die voorbehoudsbepaling tot item (dd) te skrap;
- (k) deur in subartikel (1) paragraaf (l) deur die volgende paragraaf te vervang:  
“(l) **[enige]** die bedrag van enige tantième soos omskryf in artikel 49A wat ontvang word deur of **[toegeval]** toeval aan enige persoon **[welke bedrag ingevolge die bepalings van artikel 35 aan terughoudingsbelasting onderhewig was]** wat nie ’n inwoner is nie, tensy daardie persoon—  
(i) ’n natuurlike persoon is wat fisies in die Republiek teenwoordig was vir ’n tydperk wat 183 dae in totaal oorskry gedurende die tydperk van twaalf maande wat die datum voorafgaan waarop die bedrag ontvang word of toeval deur of aan daardie persoon; of  
(ii) te eniger tyd gedurende die tydperk van twaalf maande wat die datum voorafgaan waarop die bedrag ontvang word of toeval deur of aan daardie persoon deur ’n permanente saak in die Republiek ’n besigheid bedryf het;”;

- (l) by the substitution in subsection (1)(o) for paragraph (B) of the proviso to subparagraph (ii) of the following paragraph:  
“(B) the provisions of this subparagraph shall not apply in respect of any remuneration—  
(AA) derived in respect of the holding of **[any] a public office** contemplated in section 9(2)(g); or  
(BB) **[from] received by or accrued to any person in respect of services rendered or work or labour performed [for or on behalf of any employer,]** as contemplated in section 9[(1)(e)](2)(h); and”;
- (m) by the deletion in subsection (1) of paragraphs (y), (zA) and (zH).
- (2) Paragraph (a) of subsection (1) is deemed to have come into operation on 1 January 2012 and applies in respect of amounts received or accrued during years of assessment commencing on or after that date.
- (3) Paragraph (b) of subsection (1) is deemed to have come into operation on 1 March 2012 and applies in respect of receipts and accruals on or after that date.
- (4) Paragraphs (c) and (k) of subsection (1) come into operation on 1 July 2013 and apply in respect of amounts that—  
(a) accrue; or  
(b) are paid or that become due and payable,  
on or after that date.
- (5) Paragraph (d) of subsection (1) comes into operation on 1 January 2013.
- (6) Paragraphs (e) and (g) of subsection (1) are deemed to have come into operation on 1 January 2011.
- (7) Paragraph (f) of subsection (1) comes into operation on 1 April 2013 and applies in respect of dividends received or accrued on or after that date.
- (8) Paragraph (h) of subsection (1) is deemed to have come into operation on 25 October 2012 and applies in respect of dividends received or accrued on or after that date.
- (9) Paragraph (i) of subsection (1) comes into operation on 1 April 2013 and applies in respect of dividends received or accrued during years of assessment commencing on or after that date.
- (10) Paragraph (j) of subsection (1) is deemed to have come into operation on 1 October 2011 and applies in respect of dividends received or accrued during years of assessment commencing on or after that date.
- (11) Paragraph (l) of subsection (1) is deemed to have come into operation on 1 January 2012 and applies in respect of remuneration derived or received or accrued during years of assessment commencing on or after that date.
- (12) Paragraph (m) of subsection (1) comes into operation on 1 January 2013 and applies in respect of years of assessment commencing on or after that date.

**Amendment of section 10B of Act 58 of 1962, as inserted by section 29 of Act 24 of 2011 and amended by section 4 of Act 13 of 2012**

20. (1) Section 10B of the Income Tax Act, 1962, is hereby amended—  
(a) by the substitution in subsection (2) for paragraph (b) of the following paragraph:  
“(b) if that person is a foreign company and the foreign dividend is paid or declared by another foreign company that is resident in the same country as that **[company] person;**”;
- (b) by the addition in subsection (2) of the following proviso to paragraph (c):  
“: Provided that for the purposes of this paragraph, the net income of any company contemplated in subparagraphs (i) and (ii) must be determined without regard to subsection (3)”;
- (c) by the addition to subsection (2) of the following proviso:  
“: Provided that paragraphs (a) and (b) must not apply to any foreign dividend to the extent that the foreign dividend is deductible by the foreign company declaring or paying that foreign dividend in the determination of any tax on income on companies of the country in which that foreign company has its place of effective management”;

- (l) deur in subartikel (1)(o) paragraaf (B) van die voorbehoudsbepaling tot subparagraaf (ii) deur die volgende paragraaf te vervang:  
“(B) die bepalings van hierdie subparagraaf nie van toepassing is nie ten opsigte van enige besoldiging—  
(AA) verkry ten opsigte van die bekleding van [enige] ’n openbare amp beoog in artikel 9(2)(g); of  
(BB) [uit] ontvang deur of toegeval aan enige persoon ten opsigte van dienste gelewer of werk of arbeid verrig [vir of ten behoeve van enige werkgever,] soos in artikel 9[(1)(e)] (2)(h) bedoel; en”;  
(m) deur in subartikel (1) paragrawe (y), (zA) en (zH) te skrap.  
(2) Paragraaf (a) van subartikel (1) word geag op 1 Januarie 2012 in werking te getree het en is van toepassing ten opsigte van bedrae ontvang of toegeval gedurende jare van aanslag wat op of na daardie datum begin.  
(3) Paragraaf (b) van subartikel (1) word geag op 1 Maart 2012 in werking te getree het en is van toepassing ten opsigte van ontvangste en toevallings op of na daardie datum.  
(4) Paragraaf (c) en (k) van subartikel (1) tree op 1 Julie 2013 in werking en is van toepassing ten opsigte van bedrae wat—  
(a) toeval; of  
(b) betaal word of wat verskuldig en betaalbaar word, op of na daardie datum.  
(5) Paragraaf (d) van subartikel (1) tree op 1 Januarie 2013 in werking.  
(6) Paragraaf (e) en (g) van subartikel (1) word geag op 1 Januarie 2011 in werking te getree het.  
(7) Paragraaf (f) van subartikel (1) tree op 1 April 2013 in werking en is van toepassing ten opsigte van dividende ontvang of toegeval op of na daardie datum.  
(8) Paragraaf (h) van subartikel (1) word geag op 25 Oktober 2012 in werking te getree het en is van toepassing ten opsigte van dividende ontvang of toegeval op of na daardie datum.  
(9) Paragraaf (i) van subartikel (1) tree op 1 April 2013 in werking en is van toepassing ten opsigte van dividende ontvang of toegeval gedurende jare van aanslag wat op of na daardie datum begin.  
(10) Paragraaf (j) van subartikel (1) word geag op 1 Oktober 2011 in werking te getree het en is van toepassing ten opsigte van dividende ontvang of toegeval gedurende jare van aanslag wat op of na daardie datum begin.  
(11) Paragraaf (l) van subartikel (1) word geag op 1 Januarie 2012 in werking te getree het en is van toepassing ten opsigte van besoldiging verkry of ontvang of toegeval gedurende jare van aanslag wat op of na daardie datum begin.  
(12) Paragraaf (m) van subartikel (1) tree op 1 Januarie 2013 in werking en is van toepassing ten opsigte van jare van aanslag wat op of na daardie datum begin.

**Wysiging van artikel 10B van Wet 58 van 1962, soos ingevoeg deur artikel 29 van Wet 24 van 2011 en gewysig deur artikel 4 van Wetsontwerp 10 van 2012**

20. (1) Artikel 10B van die Inkomstebelastingwet, 1962, word hierby gewysig—  
(a) deur in subartikel (2) paragraaf (b) deur die volgende paragraaf te vervang:  
“(b) indien daardie persoon ’n buitelandse maatskappy is en die buitelandse dividend betaal of verklaar word deur ’n ander buitelandse maatskappy wat ’n inwoner is in dieselfde land as daardie [maatskappy] persoon;”;  
(b) deur in subartikel (2) die volgende voorbehoudsbepaling tot paragraaf (c) by te voeg:  
“: Met dien verstande dat by die toepassing van hierdie paragraaf die netto inkomste van enige maatskappy beoog in subparagraaf (i) en (ii) bepaal moet word sonder inagneming van subartikel (3)”;  
(c) deur tot subartikel (2) die volgende voorbehoudsbepaling by te voeg:  
“: Met dien verstande dat paragrawe (a) en (b) nie van toepassing is nie op enige buitelandse dividend namate die buitelandse dividend aftrekbaar is deur die buitelandse maatskappy wat daardie buitelandse dividend verklaar of betaal by die bepaling van enige belasting op inkomste op maatskappye van die land waarin daardie buitelandse maatskappy sy plek van effektiewe bestuur het”;

- (d) by the substitution in subsection (3)(b) for subparagraph (ii) of the following subparagraph:  
“(ii) ‘B’ represents—  
(aa) where the person is a natural person deceased estate, insolvent estate or **[special]** trust, the ratio of the number 25 to the number 40; **[or]**  
(bb) where the person is—  
(A) a person other than a natural person, deceased estate, insolvent estate or **[special]** trust; or  
(B) an insurer in respect of its company policyholder fund and corporate fund,  
the ratio of the number 13 to the number 28; or  
(cc) where the person is an insurer in respect of its individual policyholder fund, the ratio of the number 15 to the number 30; and”;
- (e) by the substitution in subsection (4)(a)(i) for the words following item (bb) of the following words:  
“any amount paid or payable by any person to any other person; and”;
- (f) by the substitution in subsection (4)(a) for subparagraph (ii) of the following subparagraph:  
“(ii) the amount so paid or payable is deductible **[by]** from the income of the person by whom it is paid or payable and—  
(aa) is not subject to normal tax in the hands of **[that]** the other person contemplated in subparagraph (i); **[or]** and  
(bb) where that other person contemplated in subparagraph (i) is a controlled foreign company, is not taken into account in determining the net income, contemplated in section 9D(2A), of that controlled foreign company,  
unless the amount so paid or payable is paid or payable as consideration for the purchase of trading stock by the person by whom the amount is paid or payable; or”;
- (g) by the substitution for subsection (5) of the following subsection:  
“(5) The exemptions from tax provided by **[this section]** subsection (2) do not extend to any payments out of any foreign dividend received by or accrued to any person.”.
- (2) Subsection (1) is deemed to have come into operation—  
(a) insofar as it applies to any person that is a natural person, deceased estate, insolvent estate or trust, on 1 March 2012 and applies in respect of dividends and foreign dividends received or accrued on or after that date; and  
(b) insofar as it applies to any person that is a person other than a natural person, deceased estate, insolvent estate or trust, on 1 April 2012 and applies in respect of dividends and foreign dividends received or accrued on or after that date.

**Insertion of section 10C in Act 58 of 1962**

21. (1) The Income Tax Act, 1962, is hereby amended by the insertion after section 10B of the following section:

**“Exemption of non-deductible element of compulsory annuities**

**10C.** (1) For the purposes of this section—

- ‘**compulsory annuity**’ means the amount of the remainder of the retirement interest of a person payable in the form of an annuity as contemplated in—  
(a) paragraph (ii)(dd) of the proviso to paragraph (c) of the definition of ‘pension fund’;  
(b) paragraph (e) of the proviso to the definition of ‘pension preservation fund’; or

- (d) deur in subartikel (3)(b) subparagraaf (ii) deur die volgende subparagraaf te vervang:  
“(ii) ‘B’—  
(aa) waar die persoon ’n natuurlike persoon, gestorwe boedel, insolvente boedel of **[spesiale]** trust is, die verhouding van die getal 25 tot die getal 40 voorstel; **[of]** 5  
(bb) waar die persoon—  
(A) ’n persoon behalwe ’n natuurlike persoon, gestorwe boedel, insolvente boedel of **[spesiale]** trust is; of  
(B) ’n versekeraar ten opsigte van sy maatskappy polishouersfonds en korporatiewe fonds is, die verhouding van die getal 13 tot die getal 28 voorstel; of 10  
(cc) waar die persoon ’n versekeraar ten opsigte van sy individuele polishouersfonds is, die verhouding van die getal 15 tot die getal 30 voorstel; en”;
- (e) deur in subartikel 4(a)(i) die woorde wat op item (bb) volg deur die volgende woorde te vervang:  
“ ’n bedrag betaal of betaalbaar deur ’n persoon aan enige ander persoon; en”;
- (f) deur in subartikel (4)(a) subparagraaf (ii) deur die volgende subparagraaf te vervang:  
“(ii) die bedrag aldus betaal of betaalbaar aftrekbaar is **[deur]** van die inkomste van die persoon deur wie dit betaal of betaalbaar is en—  
(aa) nie aan normale belasting in die hande van **[daardie]** die ander persoon beoog in subparagraaf (i) onderhewig is nie; **[of]** en 25  
(bb) waar daardie ander persoon beoog in subparagraaf (i) ’n beheerde buitelandse maatskappy is, nie in berekening gebring word by die bepaling van die netto inkomste, beoog in artikel 9D(2A), van daardie beheerde buitelandse maatskappy nie, tensy die bedrag aldus betaal of betaalbaar betaal word of betaalbaar is as vergoeding vir die aankoop van handelsvoorraad deur die persoon waardeur die bedrag betaal of betaalbaar is; of”; en 30
- (g) deur subartikel (5) deur die volgende subartikel te vervang: 35  
“(5) Die vrystellings van belasting waarvoor in **[hierdie artikel]** subartikel (2) voorsiening gemaak word, word nie uitgebrei nie tot enige betalings uit ’n buitelandse dividend ontvang deur of toegeval aan ’n persoon.”
- (2) Subartikel (1) word geag in werking te getree het— 40  
(a) insoverre dit van toepassing is op ’n persoon wat ’n natuurlike persoon, gestorwe boedel, insolvente boedel of trust is, op 1 Maart 2012 en is van toepassing ten opsigte van dividende en buitelandse dividende op of na daardie datum ontvang of toegeval; en  
(b) insoverre dit van toepassing is op ’n persoon wat ’n persoon behalwe ’n natuurlike persoon, gestorwe boedel, insolvente boedel of trust is, op 1 April 2012 en is van toepassing ten opsigte van dividende en buitelandse dividende op of na daardie datum ontvang of toegeval. 45

### Invoeging van artikel 10C in Wet 58 van 1962

21. (1) Die Inkomstebelastingwet, 1962, word hierby gewysig deur na artikel 10B die volgende artikel in te voeg: 50

#### “Vrystelling van nie-aftrekbare element van verpligte annuïteite

**10C.** (1) By die toepassing van hierdie artikel beteken—

‘verpligte annuïteit’ die bedrag van die restant van die uitreebelang van ’n persoon betaalbaar in die vorm van ’n annuïteit soos beoog in— 55

- (a) paragraaf (ii)(dd) van die voorbehoudsbepaling tot paragraaf (c) van die omskrywing van ‘pensioenfonds’;  
(b) paragraaf (e) van die voorbehoudsbepaling tot die omskrywing van ‘pensioenbewaringsfonds’; of

(c) paragraph (b)(ii) of the proviso to the definition of ‘retirement annuity fund’.

(2) There shall be exempt from normal tax in respect of the aggregate of compulsory annuities payable to a person an amount equal to so much of the person’s own contributions to any pension fund, provident fund and retirement annuity fund that did not rank for a deduction against the person’s income in terms of section 11(k) or (n) as has not previously been—

(a) allowed to the person as a deduction in terms of the Second Schedule;

or

(b) exempted from normal tax in terms of this section, in respect of any year of assessment.”.

(2) Subsection (1) comes into operation on 1 March 2014 and applies in respect of amounts 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 11 of Act 121 of 1984, section 46 of Act 97 of 1986, section 10 of Act 85 of 1987, section 8 of Act 90 of 1988, section 8 of Act 70 of 1989, section 11 of Act 101 of 1990, section 13 of Act 129 of 1991, section 11 of Act 141 of 1992, section 9 of Act 113 of 1993, section 5 of Act 140 of 1993, section 10 of Act 21 of 1994, section 12 of Act 21 of 1995, section 9 of Act 36 of 1996, section 12 of Act 28 of 1997, section 30 of Act 30 of 1998, section 20 of Act 53 of 1999, section 22 of Act 30 of 2000, section 15 of Act 59 of 2000, section 10 of Act 19 of 2001, section 27 of Act 60 of 2001, section 14 of Act 30 of 2002, section 19 of Act 74 of 2002, section 27 of Act 45 of 2003, section 9 of Act 16 of 2004, section 16 of Act 32 of 2004, section 6 of Act 9 of 2005, section 18 of Act 31 of 2005, section 11 of Act 20 of 2006, section 11 of Act 8 of 2007, section 17 of Act 35 of 2007, section 10 of Act 3 of 2008, section 18 of Act 60 of 2008, section 14 of Act 17 of 2009, section 19 of Act 7 of 2010, section 30 of Act 24 of 2011 and item 33 of Schedule to Act 28 of 2011**

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

(a) by the substitution in paragraph (e) for paragraph (iiA) of the proviso of the following paragraph:

“(iiA) where any machinery, implement, utensil or article qualifying for an allowance under this paragraph is mounted on or affixed to any concrete or other foundation or supporting structure and **[the Commissioner is satisfied]**—

(aa) **[that]** the foundation or supporting structure is designed for such machinery, implement, utensil or article and constructed in such manner that it is or should be regarded as being integrated with the machinery, implement, utensil or article; and

(bb) **[that]** the useful life of the foundation or supporting structure is or will be limited to the useful life of the machinery, implement, utensil or article mounted thereon or affixed thereto,

the said foundation or supporting structure shall for the purposes of this paragraph not be deemed to be a structure or work of a permanent nature but shall for the purposes of this Act be deemed to be a part of the machinery, implement, utensil or article mounted thereon or affixed thereto;”;

(c) paragraaf (b)(ii) van die voorbehoudsbepaling tot die omskrywing van 'uittredingannuïteitsfonds'.

(2) Daar word vrygestel van normale belasting ten opsigte van die totaal van verpligte annuïteite betaalbaar aan 'n persoon 'n bedrag gelyk aan soveel van die persoon se eie bydraes tot enige pensioenfonds, voorsorgs fonds en uittredingannuïteitsfonds wat nie vir 'n aftrekking in aanmerking gekom het nie teen die persoon se inkomste ingevolge artikel 11(k) of (n) as wat nie voorheen—

(a) aan die persoon toegelaat is as 'n aftrekking ingevolge die Tweede Bylae nie; of

(b) vrygestel is van normale belasting ingevolge hierdie artikel nie, ten opsigte van enige jaar van aanslag."

(2) Subartikel (1) tree op 1 Maart 2014 in werking en is van toepassing ten opsigte van bedrae ontvang of toegeval op of na daardie datum.

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 11 van Wet 121 van 1984, artikel 46 van Wet 97 van 1986, artikel 10 van Wet 85 van 1987, artikel 8 van Wet 90 van 1988, artikel 8 van Wet 70 van 1989, artikel 11 van Wet 101 van 1990, artikel 13 van Wet 129 van 1991, artikel 11 van Wet 141 van 1992, artikel 9 van Wet 113 van 1993, artikel 5 van Wet 140 van 1993, artikel 10 van Wet 21 van 1994, artikel 12 van Wet 21 van 1995, artikel 9 van Wet 36 van 1996, artikel 12 van Wet 28 van 1997, artikel 30 van Wet 30 van 1998, artikel 20 van Wet 53 van 1999, artikel 22 van Wet 30 van 2000, artikel 15 van Wet 59 van 2000, artikel 10 van Wet 19 van 2001, artikel 27 van Wet 60 van 2001, artikel 14 van Wet 30 van 2002, artikel 19 van Wet 74 van 2002, artikel 27 van Wet 45 van 2003, artikel 9 van Wet 16 van 2004, artikel 16 van Wet 32 van 2004, artikel 6 van Wet 9 van 2005, artikel 18 van Wet 31 van 2005, artikel 11 van Wet 20 van 2006, artikel 11 van Wet 8 van 2007, artikel 17 van Wet 35 van 2007, artikel 10 van Wet 3 van 2008, artikel 18 van Wet 60 van 2008, artikel 14 van Wet 17 van 2009, artikel 19 van Wet 7 van 2010, artikel 30 van Wet 24 van 2011 en item 33 van Bylaag tot Wet 28 van 2011

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

(a) deur in paragraaf (e) paragraaf (iiA) van die voorbehoudsbepaling deur die volgende paragraaf te vervang:

“(iiA) waar enige masjinerie, gereedskap, werktuig of artikel wat ingevolge hierdie paragraaf vir 'n vermindering in aanmerking kom, op 'n beton- of ander fondament of steunende bouwerk gemonteer of daaraan vasgeheg is en [die Kommissaris oortuig is]—

(aa) [dat] die fondament of steunende bouwerk vir bedoelde masjinerie, gereedskap, werktuig of artikel ontwerp is en op so 'n wyse opgerig is dat dit met die masjinerie, gereedskap, werktuig of artikel geïntegreer is of dat dit aldus as geïntegreer beskou moet word; en

(bb) [dat] die nuttige lewe van die fondament of steunende bouwerk beperk word of beperk sal word tot die nuttige lewe van die masjinerie, gereedskap, werktuig of artikel wat daarop gemonteer of daaraan vasgeheg is,

bedoelde fondament of steunende bouwerk, by die toepassing van hierdie paragraaf, nie geag word 'n bouwerk of werk van 'n permanente aard te wees nie maar, by die toepassing van hierdie Wet, geag word deel uit te maak van die masjinerie, gereedskap, werktuig of artikel wat daarop gemonteer of daaraan vasgeheg is;”;

- (b) by the substitution for paragraphs (i) and (j) of the following paragraphs:
- “(i) the amount of any **[debts]** debt due to the taxpayer which have during the year of assessment become bad, provided such amount is included in the current year of assessment or was included in previous years of assessment in the taxpayer’s income; 5
  - (j) an allowance as may be made each year by the Commissioner in respect of so much of any **[debts]** debt due to the taxpayer as the Commissioner considers to be doubtful, if **[those debts]** that debt would have been allowed as a deduction under any other provisions of this Part had **[they]** that debt become bad: Provided that such allowance shall be included in the income of the taxpayer in the following year of assessment;”;
- (c) by the substitution in paragraph (n) for paragraph (cc) of the proviso to subparagraph (i) of the following paragraph:
- “(cc) any current contributions (excluding any amount referred to in item (aa) of this proviso) to any retirement annuity fund or funds which are made by the taxpayer as a member of such fund or funds during a year of assessment and do not qualify for deduction from his or her income for that year under subparagraph (i)(aa) shall be carried forward and, except to the extent that such contributions have been exempted under section 10C or accounted for under paragraph **[5(1) or 6(1)(b) or (3)]** 5(1)(a) or 6(1)(b)(i) of the Second Schedule, be deemed for the purposes of subparagraph (i)(aa) to be current contributions made to the fund or funds in question during the next succeeding year of assessment;”;
- (d) by the deletion of paragraph (s); and
- (e) by the substitution in paragraph (w) for the words preceding subparagraph (i) of the following words:
- “expenditure incurred by a taxpayer in respect of any premiums payable under a policy of insurance (other than a policy of insurance **[solely against an accident as defined in section 1 of the Compensation for Occupational Injuries and Diseases Act, 1993 (Act No. 130 of 1993)]** that relates to the death, disablement or severe illness of an employee or director of the taxpayer arising solely out of and in the course of employment of such employee or director) of which the taxpayer is the policyholder, where—”;
- (2) Paragraph (a) of subsection (1) comes into operation on 1 January 2013 and applies in respect of years of assessment commencing on or after that date.
- (3) Paragraph (b) of subsection (1) comes into operation on 1 January 2013.
- (4) Paragraph (c) of subsection (1) comes into operation on 1 March 2013 and applies in respect of amounts received or accrued on or after that date.
- (5) Paragraph (d) of subsection (1) comes into operation on 1 April 2013 and applies in respect of years of assessment commencing on or after that date.
- (6) Paragraph (e) of subsection (1) is deemed to have come into operation on 1 March 2012 and applies in respect of premiums paid or incurred on or after that date.

**Amendment of section 12B of Act 58 of 1962, as substituted by section 19 of Act 31 of 2005 and amended by section 21 of Act 35 of 2007 and section 18 of Act 17 of 2009**

23. (1) Section 12B of the Income Tax Act, 1962, is hereby amended—
- (a) by the substitution in subsection (1) for paragraphs (h) and (i) of the following paragraphs: 50
- “(h) machinery, plant, implement, utensil or article owned by the taxpayer or acquired by the taxpayer as purchaser in terms of an agreement contemplated in paragraph (a) of an ‘instalment credit agreement’ as defined in section 1 of the Value-Added Tax Act,



- (b) deur paragrawe (i) en (j) deur die volgende paragrawe te vervang:
- “(i) die bedrag van enige **[skulde]** skuld aan die belastingpligtige verskuldig wat gedurende die jaar van aanslag oninbaar geword het, mits sodanige bedrag in die lopende jaar van aanslag by die belastingpligtige se inkomste ingesluit is of in vorige jare van aanslag daarby ingesluit was; 5
  - (j) ’n vermindering as wat elke jaar deur die Kommissaris toegestaan mag word ten opsigte van soveel van enige **[skulde]** skuld aan die belastingpligtige verskuldig wat die Kommissaris as twyfelagtig beskou, indien daardie **[skulde]** skuld as ’n aftrekking kragtens enige ander bepaling van hierdie Deel toegelaat sou word indien **[dit]** daardie skuld oninbaar geword het. Met dien verstande dat bedoelde vermindering in die volgende jaar van aanslag by die inkomste van die belastingpligtige ingereken word[.]”;
- (c) deur in paragraaf (n) paragraaf (cc) van die voorbehoudsbepaling tot subparagraaf (i) deur die volgende paragraaf te vervang: 15
- “(cc) enige lopende bydraes (uitgesonderd ’n bedrag bedoel in item (aa) van hierdie voorbehoudsbepaling) aan ’n uittredingannuïteitsfonds of -fondse wat deur die belastingpligtige gemaak word as ’n lid van bedoelde fonds of fondse gedurende ’n jaar van aanslag en wat nie ingevolge subparagraaf (i)(aa) in aanmerking kom vir aftrekking van sy of haar inkomste vir bedoelde jaar nie, oorgedra word en, behalwe in soverre bedoelde bydraes kragtens artikel 10C vrygestel is of ingevolge paragraaf **[5(1) of 6(1)(b) of (3)] 5(1)(a) of 6(1)(b)(i)** van die Tweede Bylae in rekening geneem is, by die toepassing van subparagraaf (i)(aa) geag word lopende bydraes te wees wat gedurende die daaropvolgende jaar van aanslag aan die betrokke fonds of fondse gemaak is;”;
- (d) deur paragraaf (s) te skrap; en
- (e) deur in paragraaf (w) die woorde wat subparagraaf (i) voorafgaan deur die volgende woorde te vervang: 30
- “uitgawes aangegaan deur ’n belastingpligtige ten opsigte van enige premies betaalbaar ingevolge ’n versekeringspolis (behalwe ’n versekeringspolis **[slegs teen ’n ongeluk soos in artikel 1 van die Wet op Vergoeding vir Beroepsbeserings en -siektes, 1993 (Wet No. 130 van 1993), omskryf]** wat betrekking het op die dood, ongeskikstelling of ernstige siekte van ’n werknemer of direkteur van die belastingpligtige wat slegs voortspruit uit en in die loop van indiensneming van sodanige werknemer of direkteur) waarvan die belastingpligtige die polishouer is, waar—”.
- (2) Paragraaf (a) van subartikel (1) tree op 1 Januarie 2013 in werking en is van toepassing ten opsigte van jare van aanslag wat op of na daardie datum begin.
- (3) Paragraaf (b) van subartikel (1) tree op 1 Januarie 2013 in werking.
- (4) Paragraaf (c) van subartikel (1) tree op 1 Maart 2013 in werking en is van toepassing ten opsigte van bedrae ontvang of toegeval op of na daardie datum. 45
- (5) Paragraaf (d) van subartikel (1) tree op 1 April 2013 in werking en is van toepassing ten opsigte van jare van aanslag wat op of na daardie datum begin.
- (6) Paragraaf (e) van subartikel (1) word geag op 1 Maart 2012 in werking te getree het en is van toepassing ten opsigte van premies op of na daardie datum betaal of aangegaan. 50

**Wysiging van artikel 12B van Wet 58 van 1962, soos vervang deur artikel 19 van Wet 31 van 2005 en gewysig deur artikel 21 van Wet 35 van 2007 en deur artikel 18 van Wet 17 van 2009**

23. (1) Artikel 12B van die Inkomstebelastingwet, 1962, word hierby gewysig—
- (a) deur in subartikel (1) paragrawe (h) en (i) deur die volgende paragrawe te vervang: 55
  - “(h) masjinerie, installasie, gereedskap, werktuig of artikel waarvan die belastingpligtige die eienaar is of wat deur die belastingpligtige verkry is as koper ingevolge ’n ooreenkoms in paragraaf (a) van die omskrywing van ‘paaientkredietooreenkoms’ in artikel 1 van die Wet op Belasting op Toegevoegde Waarde, 1991 (Wet No. 89 van 60

1991 (Act No. 89 of 1991), and which was or is brought into use for the first time by that taxpayer for the purpose of his or her trade to be used by that taxpayer in the generation of electricity from—

- (i) wind power;
  - (ii) **[sunlight]** solar energy;
  - (iii) **[gravitational water forces]** hydropower to produce electricity of not more than 30 megawatts; and
  - (iv) biomass comprising organic wastes, landfill gas or **[plants]** plant material;
- (i) improvements (other than repairs) to—
- (i) any machinery, plant, implement, utensil or article referred to in paragraph (f), (g) or (h); and
  - (ii) any foundation or supporting structure that is, in terms of the proviso to this subsection, deemed to be part of the machinery, plant, implement, utensil or article referred to in paragraph (h), which is during the year of assessment used as contemplated in the relevant paragraph,”; and

(b) by the addition to subsection (1) of the following proviso:

“: Provided that where any machinery, plant, implement, utensil, article or improvement for which a deduction is allowed under paragraph (h) is mounted on or affixed to any concrete or other foundation or supporting structure and—

- (a) the foundation or supporting structure is designed for such machinery, plant, implement, utensil, article or improvement and constructed in such manner that it is or should be regarded as being integrated with the machinery, plant, implement, utensil, article or improvement;
  - (b) the useful life of the foundation or supporting structure is or will be limited to the useful life of the machinery, plant, implement, utensil, article or improvement mounted thereon or affixed thereto; and
  - (c) the foundation or supporting structure was brought into use on or after 1 January 2013,
- the foundation or supporting structure shall be deemed to be a part of the machinery, plant, implement, utensil, article or improvement mounted thereon or affixed thereto”.

(2) Subsection (1) comes into operation on 1 January 2013 and applies in respect of years of assessment commencing on or after that date.

**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 10 of Act 46 of 1996, section 18 of Act 59 of 2000, section 11 of Act 19 of 2001, section 15 of Act 30 of 2002, section 30 of Act 45 of 2003, section 8 of Act 9 of 2005, section 20 of Act 31 of 2005, section 14 of Act 8 of 2007, section 22 of Act 35 of 2007, section 20 of Act 60 of 2008, section 19 of Act 17 of 2009 and section 33 of Act 24 of 2011**

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

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

“a deduction equal to 20 per cent of the cost to that taxpayer to acquire that machinery, plant, implement, utensil, article, ship, aircraft or improvement (hereinafter referred to as the asset) shall **[, subject to the provisions of subsection (4),]** be allowed in the year of assessment during which the asset is so brought into use and in each of the four succeeding years of assessment”; and

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

“Provided further that where any machinery, plant, implement, utensil,

1991), bedoel en wat vir die eerste maal deur daardie belastingpligtige in gebruik geneem is vir doeleindes van sy of haar bedryf wat gebruik staan te word vir die vervaardiging van elektrisiteit uit—

- (i) **[wind]** windkrag; 5
  - (ii) **[sonlig]** sonenergie;
  - (iii) **[swartekrag watermassas]** waterkrag om elektrisiteit van nie meer nie as 30 megawatt te vervaardig; en
  - (iv) biomassa bestaande uit organiese afval, grondvulgas of **[plante]** plantmateriaal; 10
- (i) verbeterings (behalwe herstelwerk) aan—
- (i) enige masjinerie, installasie, gereedskap, werktuig of artikel bedoel in paragraaf (f), (g) of (h); en
  - (ii) enige fondament of ondersteunende struktuur wat, ingevolge die voorbehoudsbepaling tot hierdie subartikel, geag word deel uit te maak van die masjinerie, installasie, gereedskap, werktuig of artikel in paragraaf (h) bedoel, 15  
wat gedurende die jaar van aanslag gebruik word soos in daardie paragraaf beoog.”; en
- (b) deur tot subartikel (1) die volgende voorbehoudsbepaling by te voeg: 20
- “: Met dien verstande dat waar enige masjinerie, installasie, gereedskap, werktuig, artikel of verbetering waarvoor ’n aftrekking toegelaat word kragtens paragraaf (h) gemonteer is op of vasgeheg is aan enige beton- of ander fondament of ondersteunende struktuur en—
- (a) die fondament of ondersteunende struktuur ontwerp is vir sodanige masjinerie, installasie, gereedskap, werktuig, artikel of verbetering en opgerig is op sodanige wyse dat dit geïntegreer is met die masjinerie, installasie, gereedskap, werktuig, artikel of verbetering of beskou moet word as sodanig geïntegreer te wees; 25
  - (b) die bruikbare lewe van die fondament of ondersteunende struktuur beperk is of sal wees tot die bruikbare lewe van die masjinerie, installasie, gereedskap, werktuig, artikel of verbetering daarop gemonteer of daaraan vasgeheg; en
  - (c) die fondament of ondersteunende struktuur op of na 1 Januarie 2013 in gebruik geneem is, 35  
word die fondament of ondersteunende struktuur geag ’n deel van die masjinerie, installasie, gereedskap, werktuig, artikel of verbetering daarop gemonteer of daaraan vasgeheg te wees”.
- (2) Subartikel (1) tree op 1 Januarie 2013 in werking en is van toepassing ten opsigte van jare van aanslag wat op of na daardie datum begin. 40

**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 10 van Wet 46 van 1996, artikel 18 van Wet 59 van 2000, artikel 11 van Wet 19 van 2001, artikel 15 van Wet 30 van 2002, artikel 30 van Wet 45 van 2003, artikel 8 van Wet 9 van 2005, artikel 20 van Wet 31 van 2005, artikel 14 van Wet 8 van 2007, artikel 22 van Wet 35 van 2007, artikel 20 van Wet 60 van 2008, artikel 19 van Wet 17 van 2009 en artikel 33 van Wet 24 van 2011** 45

24. (1) Artikel 12C van die Inkomstebelastingwet, 1962, word hierby gewysig—
- (a) deur in subartikel (1) die woorde wat op paragraaf (h) volg en wat die voorbehoudsbepaling voorafgaan deur die volgende woorde te vervang: 50  
“word[, **behoudens die bepalinge van subartikel (4),**] ’n aftrekking toegestaan gelykstaande aan 20 persent van die koste vir daardie belastingpligtige van verkryging van daardie masjinerie, installasie, gereedskap, werktuig, artikel, skip, vliegtuig of verbetering (hierna die bate genoem) in die jaar van aanslag waarin die bate aldus in gebruik geneem word en elkeen van die daaropvolgende vier jare van aanslag”; 55  
en
  - (b) deur in subartikel (1) die woorde wat paragraaf (a) van die verdere voorbehoudsbepaling voorafgaan deur die volgende woorde te vervang: 60  
“Met dien verstande voorts dat waar enige masjinerie, installasie,

article or improvement qualifying for an allowance under this section is mounted on or affixed to any concrete or other foundation or supporting structure and **[the Commissioner is satisfied that]**—”.

(2) Paragraph (a) of subsection (1) is deemed to have come into operation on 1 April 2012 and applies in respect of expenditure incurred in respect of research and development on or after that date. 5

(3) Paragraph (b) of subsection (1) comes into operation on 1 January 2013 and applies in respect of years of assessment commencing on or after that date.

**Amendment of section 12E of Act 58 of 1962, as amended by section 12 of Act 19 of 2001, section 17 of Act 30 of 2002, section 21 of Act 74 of 2002, section 37 of Act 12 of 2003, section 31 of Act 45 of 2003, section 9 of Act 9 of 2005, section 21 of Act 31 of 2005, section 24 of Act 9 of 2006, section 14 of Act 20 of 2006, section 15 of Act 8 of 2007, section 25 of Act 35 of 2007, section 13 of Act 3 of 2008, section 23 of Act 60 of 2008, section 21 of Act 17 of 2009, section 23 of Act 7 of 2010 and section 34 of Act 24 of 2011** 10  
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25. Section 12E of the Income Tax Act, 1962, is hereby amended by the substitution in subsection (4)(a)(ii) for item (ii) of the following item:

“(ii) any company, co-operative or close corporation if the company, co-operative or close corporation has taken the steps contemplated in section 41(4) to liquidate, wind up or deregister: Provided that this item ceases to apply if the company, co-operative or close corporation has at any stage withdrawn any step so taken or does anything to invalidate any step so taken, with the result that the company, co-operative or close corporation will not be liquidated, wound up or deregistered;” 20

**Repeal of section 12G of Act 58 of 1962** 25

26. (1) The Income Tax Act, 1962, is hereby amended by the repeal of section 12G.

(2) Subsection (1) comes into operation on 1 January 2013 and applies in respect of years of assessment commencing on or after that date.

**Amendment of section 12H of Act 58 of 1962, as substituted by section 23 of Act 17 of 2009 and amended by section 25 of Act 7 of 2010 and section 36 of Act 24 of 2011** 30

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

(a) by the insertion in subsection (1) before the definition of “**employer**” of the following definition:

“**‘associated institution’**, in relation to any single employer, means— 35  
(a) where the employer is a company, any other company which is associated with the employer company by reason of the fact that both companies are managed or controlled directly or indirectly by substantially the same persons; 35  
(b) where the employer is not a company, any company which is managed or controlled directly or indirectly by the employer or by any partnership of which the employer is a member; or 40  
(c) any fund established solely or mainly for providing benefits for employees or former employees of the employer or for employees or former employees of the employer and any company which is in terms of paragraph (a) or (b) an associated institution in relation to the employer, but excluding any fund established by a trade union or industrial council and any fund established for postgraduate research otherwise than out of moneys provided by the employer or by any associated institution in relation to the employer;” 45

(b) by the substitution in subsection (1) for the definition of “**registered learnership agreement**” of the following definition— 50

gereedskap, werktuig, artikel of verbetering wat kwalifiseer vir 'n vermindering ingevolge hierdie artikel gemonteer is op of vasgeheg is aan enige beton- of ander fondament of steunende bouwerk en [**die Kommissaris oortuig is dat**]—”.

(2) Paragraaf (a) van subartikel (1) word geag op 1 April 2012 in werking te getree het en is van toepassing ten opsigte van uitgawes aangegaan ten opsigte van navorsing en ontwikkeling op of na daardie datum. 5

(3) Paragraaf (b) van subartikel (1) tree op 1 Januarie 2013 in werking en is van toepassing ten opsigte van jare van aanslag wat op of na daardie datum begin.

**Wysiging van artikel 12E van Wet 58 van 1962, soos gewysig deur artikel 12 van Wet 19 van 2001, artikel 17 van Wet 30 van 2002, artikel 21 van Wet 74 van 2002, artikel 37 van Wet 12 van 2003, artikel 31 van Wet 45 van 2003, artikel 9 van Wet 9 van 2005, artikel 21 van Wet 31 van 2005, artikel 24 van Wet 9 van 2006, artikel 14 van Wet 20 van 2006, artikel 15 van Wet 8 van 2007, artikel 25 van Wet 35 van 2007, artikel 13 van Wet 3 van 2008, artikel 23 van Wet 60 van 2008, artikel 21 van Wet 17 van 2009, artikel 23 van Wet 7 van 2010 en artikel 34 van Wet 24 van 2011** 10 15

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

“(ii) 'n maatskappy, koöperasie of beslote korporasie indien die maatskappy, koöperasie of beslote korporasie die stappe beoog in artikel 41(4) gedoen het om te likwideer of te deregistreer: Met dien verstande dat hierdie item ophou om van toepassing te wees indien die maatskappy, koöperasie of beslote korporasie in enige stadium enige stap aldus gedoen, teruggetrek het of enigiets doen om enige stap aldus gedoen ongeldig te maak, met die gevolg dat die maatskappy, koöperasie of beslote korporasie nie gelikwideer of gederegistreer sal word nie;” 20 25

#### **Herroeping van artikel 12G van Wet 58 van 1962**

26. (1) Die Inkomstebelastingwet, 1962, word hierby gewysig deur artikel 12G te herroep.

(2) Subartikel (1) tree op 1 Januarie 2013 in werking en is van toepassing ten opsigte van jare van aanslag wat op of na daardie datum begin. 30

**Wysiging van artikel 12H van Wet 40 van 1949, soos vervang deur artikel 23 van Wet 17 van 2009 en gewysig deur artikel 25 van Wet 7 van 2010 en artikel 36 van Wet 24 van 2011**

27. (1) Artikel 12H van die Inkomstebelastingwet, 1962, word hierby gewysig— 35

(a) deur in subartikel (1) die volgende omskrywing in te voeg:

“**‘verwante inrigting’**, met betrekking tot enige enkele werkgewer—

(a) waar die werkgewer 'n maatskappy is, enige ander maatskappy wat verwant is aan die werkgewermaatskappy ten gevolge van die feit dat beide maatskappye regstreeks of onregstreeks deur wesenlik dieselfde persone bestuur of beheer word; 40

(b) waar die werkgewer nie 'n maatskappy is nie, 'n maatskappy wat regstreeks of onregstreeks bestuur of beheer word deur die werkgewer of deur enige vennootskap waarvan die werkgewer 'n lid is; of 45

(c) enige fonds gestig slegs of hoofsaaklik om voordele te voorsien vir werknemers of gewese werknemers van die werkgewer of vir werknemers of gewese werknemers van die werkgewer en 'n maatskappy wat ingevolge paragraaf (a) of (b) 'n verwante inrigting met betrekking tot die werkgewer is, maar sluit nie in nie enige fonds gestig deur 'n vakbond of nywerheidsraad en enige fonds gestig vir nagraadse navorsing andersins as uit geld voorsien deur die werkgewer of deur enige verwante inrigting met betrekking tot die werkgewer;” 50

(b) deur in subartikel (1) die omskrywing van “**geregistreerde leerlingooreenkoms**” deur die volgende omskrywing te vervang: 55

“**‘registered learnership agreement’** means a learnership agreement that is—

- (a) registered in accordance with the Skills Development Act, 1998; and
- (b) entered into between a learner and an employer before 1 October 2016.”;

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

“(c) If a registered learnership agreement is registered as contemplated in paragraph (a) of the definition of ‘registered learnership agreement’ within a period of twelve months after the last day of the year of assessment contemplated in paragraph (a), the registered learnership agreement must be deemed to have been so registered on the date on which the registered learnership agreement was entered into as contemplated in paragraph (b) of that definition.”; and

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

“(6) This section does not apply in respect of any registered learnership agreement where—

- (a) the learner that is the party to that agreement previously failed to complete any other registered learnership agreement to which the employer or an associated institution in relation to that employer was a party; and
- (b) the registered learnership agreement contains the same education and training component as that other registered learnership agreement.”.

(2) Subsection (1) comes into operation on 1 January 2013 and applies in respect of learnership agreements entered into on or after that date.

**Amendment of section 12I of Act 58 of 1962, as inserted by section 26 of Act 60 of 2008 and amended by section 24 of Act 17 of 2009, section 26 of Act 7 of 2010 and section 37 of Act 24 of 2011**

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

(a) by the substitution in subsection (3) for paragraphs (a) and (b) of the following paragraphs:

“(a) R900 million in the case of any greenfield project with preferred status, or R550 million in the case of any other greenfield project from the date of approval;

(b) R550 million in the case of any brownfield project with preferred status, or R350 million in the case of any other brownfield project from the date of approval.”; and

(b) by the deletion in subsection (7) of paragraph (b).

(2) Subsection (1) is deemed to have come into operation on 1 January 2012 and applies in respect of industrial policy projects approved on or after that date.

**Amendment of section 12L of Act 58 of 1962, as inserted by section 27 of Act 17 of 2009 and amended by section 27 of Act 7 of 2010**

29. (1) The Income Tax Act, 1962, is hereby amended by the substitution for section 12L of the following section:

**“Deduction in respect of energy efficiency savings**

**12L.** (1) For the purpose of determining the taxable income derived by any person from carrying on any trade in respect of any year of assessment ending before 1 January 2020, there must be allowed as a deduction from the income of that person an amount in respect of energy efficiency savings by that person in respect of that year of assessment determined in accordance with subsection (2), subject to subsection (3).

(2) The amount of the deduction contemplated in subsection (3) must be calculated at 45 cents per kilowatt hour or kilowatt hour equivalent of energy efficiency savings.

- “ **‘geregisteerde leerlingooreenkoms’** ’n leerlingooreenkoms wat—
- (a) ooreenkomstig die ‘Skills Development Act, 1998,’ geregistreer is; en
  - (b) voor 1 Oktober 2016 tussen ’n leerling en ’n werkgewer aangeaan is;”;
- (c) deur tot subartikel (2) die volgende paragraaf by te voeg:
- “(c) Indien ’n geregisteerde leerlingooreenkoms geregistreer word soos beoog in paragraaf (a) van die omskrywing van ‘geregisteerde leerlingooreenkoms’ binne ’n tydperk van twaalf maande na die laaste dag van die jaar van aanslag beoog in paragraaf (a), word die geregisteerde leerlingooreenkoms geag aldus geregistreer te wees op die datum waarop die geregisteerde leerlingooreenkoms aangegaan is soos beoog in paragraaf (b) van daardie omskrywing.”;
- (d) deur subartikel (6) deur die volgende subartikel te vervang:
- “(6) Hierdie artikel is nie van toepassing nie ten opsigte van enige geregisteerde leerlingooreenkoms waar—
- (a) die leerling wat die party by daardie ooreenkoms is tevore versuim het om enige ander geregisteerde leerlingooreenkoms waarby die werkgewer of ’n verwante inrigting met betrekking tot daardie werkgewer ’n party was te voltooi; en
  - (b) die geregisteerde leerlingooreenkoms dieselfde onderwys- en opleidingskomponent as daardie ander geregisteerde leerlingooreenkoms bevat.”.

(2) Subartikel (1) tree op 1 Januarie 2013 in werking en is van toepassing ten opsigte van leerlingooreenkomste op of na daardie datum aangegaan.

**Wysiging van artikel 12I van Wet 58 van 1962, soos ingevoeg deur artikel 26 van Wet 60 van 2008 en gewysig deur artikel 24 van Wet 17 van 2009, artikel 26 van Wet 7 van 2010 en artikel 37 van Wet 24 van 2011**

28. (1) Artikel 12I van die Inkomstebelastingwet, 1962, word hierby gewysig—
- (a) deur in subartikel (3) paragrawe (a) en (b) deur die volgende paragrawe te vervang:
    - “(a) R900 miljoen in die geval van ’n groenveldprojek met voorkeurstatus, of R550 miljoen in die geval van ’n ander groenveldprojek, oorskry nie vanaf die datum van goedkeuring; of
    - (b) R550 miljoen in die geval van ’n bruinveldprojek met voorkeurstatus, of R350 miljoen in die geval van ’n ander bruinveldprojek, oorskry nie vanaf die datum van goedkeuring.”;
  - (b) deur in subartikel (7) paragraaf (b) te skrap.
- (2) Subartikel (1) word geag op 1 Januarie 2012 in werking te getree het en is van toepassing ten opsigte van nywerheidsbeleidsprojekte op of na daardie datum goedgekeur.

**Wysiging van artikel 12L van Wet 58 van 1962, soos ingevoeg deur artikel 27 van Wet 17 van 2009 en gewysig deur artikel 27 van Wet 7 van 2010**

29. (1) Die Inkomstebelastingwet, 1962, word hierby gewysig deur artikel 12L deur die volgende artikel te vervang:

**“Aftrekking ten opsigte van besparings deur energiedoeltreffendheid**

- 12L.** (1) By die bepaling van die belasbare inkomste verkry deur ’n persoon uit die beoefening van ’n bedryf ten opsigte van enige jaar van aanslag wat eindig voor 1 Januarie 2020, word daar toegelaat as ’n aftrekking van die inkomste van daardie persoon ’n bedrag ten opsigte van besparings deur energiedoeltreffendheid deur daardie persoon ten opsigte van daardie jaar van aanslag bepaal ooreenkomstig subartikel (2), behoudens subartikel (3).
- (2) Die bedrag van die aftrekking beoog in subartikel (3) word bereken teen 45 sent per kilowatt-uur of die ekwivalent van kilowatt-uur van besparings deur energiedoeltreffendheid.

(3) A person claiming the deduction allowed in terms of subsection (2) during any year of assessment must obtain a certificate issued by an institution, board or body prescribed by the regulations contemplated in subsection (5) in respect of the energy efficiency savings for which a deduction is claimed in respect of that year of assessment containing— 5

- (a) the baseline at the beginning of the year of assessment;
- (b) the reporting period energy use at the end of the year of assessment;
- (c) the annual energy efficiency savings expressed in kilowatt hours or kilowatt hours equivalent for the year of assessment including the full criteria and methodology used to calculate the energy efficiency savings; and
- (d) any other information prescribed by the regulations contemplated in subsection (5). 10

(4) A deduction must not be allowed in terms of this section if the person claiming the allowance receives any concurrent benefit in respect of energy efficiency savings. 15

(5) The Minister of Finance, in consultation with the Minister of Energy and the Minister of Trade and Industry, must make regulations prescribing—

- (a) the institution, board or body that must issue the certificate contemplated in subsection (3);
- (b) the powers and responsibilities of the institution, board or body contemplated in paragraph (a);
- (c) the information that must be contained in the certificate contemplated in subsection (3) in addition to the information contemplated in that subsection; 20
- (d) those benefits that constitute concurrent benefits for the purpose of subsection (4); and
- (e) any limitation of energy sources in respect of which the allowance may be claimed.” 25 30

(2) Subsection (1) comes into operation on a date determined by the Minister of Finance by notice in the *Gazette*.

**Amendment of section 12M of Act 58 of 1962, as inserted by section 28 of Act 17 of 2009 and amended by section 28 of Act 7 of 2010**

30. (1) Section 12M of the Income Tax Act, 1962, is hereby amended by the substitution in subsection (2) for the words following paragraph (b) and preceding the proviso of the following words: 35

“but only to the extent that the amount is paid for the purposes of making any contribution, in respect of any former employee or dependant contemplated in paragraph (a), to any medical scheme or fund contemplated in section [18(1)(a)(i) or (ii)] 6A(2)(a)(i) or (ii)” 40

(2) Subsection (1) comes into operation on 1 March 2014 and applies in respect of contributions made on or after that date.

**Amendment of section 12N of Act 58 of 1962, as inserted by section 29 of Act 7 of 2010** 45

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

- (a) by the deletion in subsection (1)(b) of the word “or” at the end of subparagraph (i);
- (b) by the addition in subsection (1)(b) of the word “or” to subparagraph (ii);
- (c) by the addition to subsection (1)(b) of the following subparagraph: 50  
“(iii) the Independent Power Producer Procurement Programme administered by the Department of Energy;”; and

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

“the taxpayer must, for the purposes of any deduction contemplated in section 11D, 12B, 12D, 12F, 12I, 13, 13bis, 13ter, 13quat, 13quin, 13sex or 36, and for the purposes of the Eighth Schedule, be deemed to be the owner of the improvement so completed.” 55



(3) 'n Persoon wat die aftrekking toegelaat ingevolge subartikel (2) eis gedurende enige jaar van aanslag moet 'n sertifikaat uitgereik deur 'n instelling, raad of liggaam voorgeskryf deur die regulasies beoog in subartikel (5) ten opsigte van die besparings deur energiedoeltreffendheid waarvoor 'n aftrekking geëis word ten opsigte van daardie jaar van aanslag verkry, bevattende—

- (a) die basislyn aan die begin van die jaar van aanslag;
- (b) die energieverbruik vir die verslaggewingstydperk aan die einde van die jaar van aanslag;
- (c) die jaarlikse besparings deur energiedoeltreffendheid uitgedruk in kilowatt-uur of die ekwivalent van kilowatt-uur vir die jaar van aanslag insluitend die volle kriteria en metodologie gebruik om die besparings deur energiedoeltreffendheid te bereken; en
- (d) enige ander inligting voorgeskryf deur die regulasies beoog in subartikel (5).

(4) 'n Aftrekking word nie ingevolge hierdie artikel toegelaat nie indien die persoon wat die aftrekking eis enige gelyklopende voordeel ten opsigte van besparings deur energiedoeltreffendheid ontvang.

(5) Die Minister van Finansies, in oorleg met die Minister van Energie en die Minister van Handel en Nywerheid, moet regulasies uitvaardig wat voorskryf—

- (a) die instelling, raad of liggaam wat die sertifikaat beoog in subartikel (3) moet uitreik;
- (b) die bevoegdhede en verantwoordelikhede van die instelling, raad of liggaam beoog in paragraaf (a);
- (c) die inligting wat vervat moet wees in die sertifikaat beoog in subartikel (3) bykomend tot die inligting beoog in daardie subartikel;
- (d) daardie voordele wat gelyklopende voordele by die toepassing van subartikel (4) uitmaak; en
- (e) enige beperking van energiebronne ten opsigte waarvan die toelaag geëis mag word.”.

(2) Subartikel (1) tree in werking op 'n datum deur die Minister van Finansies by kennisgewing in die *Staatskoerant* bepaal.

**Wysiging van artikel 12M van Wet 58 van 1962, soos ingevoeg deur artikel 28 van Wet 17 van 2009 en gewysig deur artikel 28 van Wet 7 van 2010**

30. (1) Artikel 12M van die Inkomstebelastingwet, 1962, word hierby gewysig deur in subartikel (2) die woorde wat op paragraaf (b) volg en wat die voorbehoudsbepaling voorafgaan deur die volgende woorde te vervang:

“maar slegs namate die bedrag betaal is met die doel om enige bydrae te maak, ten opsigte van enige voormalige werknemer of afhanklike beoog in paragraaf (a), aan enige mediese skema of fonds beoog in artikel [18(1)(a)(i) of (ii)] 6A(2)(a)(i) of (ii)”.

(2) Subartikel (1) tree op 1 Maart 2014 in werking en is van toepassing ten opsigte van bydraes gemaak op of na daardie datum.

**Wysiging van artikel 12N van Wet 58 van 1962, soos ingevoeg deur artikel 29 van Wet 7 van 2010**

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

- (a) deur in subartikel (1)(b) die woord “of” aan die einde van subparagraaf (i) te skrap;
- (b) deur in subartikel (1)(b) die woord “of” tot subparagraaf (ii) by te voeg;
- (c) deur in subartikel (1)(b) die volgende subparagraaf by te voeg:  
“(iii) die ‘Independent Power Producer Procurement Programme’ geadministreer deur die Departement van Energie;”; en
- (d) deur in subartikel (1) die woorde wat op paragraaf (e) volg deur die volgende woorde te vervang:

“moet die belastingpligtige, by die toepassing van enige aftrekking beoog in artikel 11D, 12B, 12D, 12F, 12I, 13, 13bis, 13ter, 13quat, 13quin, 13sex of 36, en by die toepassing van die Agtste Bylae, geag word die eenaar van die verbetering aldus voltooi te wees.”.

(2) Paragraphs (a), (b) and (c) of subsection (1) come into operation on 1 January 2013 and apply in respect of an obligation incurred on or after that date.

(3) Paragraph (d) of subsection (1) is deemed to have come into operation on 2 November 2010 and applies in respect of a right of use or occupation granted on or after that date.

5

**Amendment of section 12O of Act 58 of 1962, as inserted by section 39 of Act 24 of 2011**

32. (1) Section 12O of the Income Tax Act, 1962 is hereby amended by the substitution in subsection (4) for paragraph (a) of the following paragraph:

“(a) [A] ~~Any—~~ 10

(i) special purpose corporate vehicle; or

(ii) collection account manager ~~that—~~

[(i)](aa) [that] manages exploitation rights under a collection account management agreement; and

[(ii)](bb) [that] is approved by the Minister for the purpose of this section by notice in the *Gazette*, 15

must provide a report to the National Film and Video Foundation containing such information, within such time and in such manner as is prescribed by the Minister when income arising from exploitation rights of a film is distributed to a person within a period of 10 years commencing from the completion date of the film.”. 20

(2) Subsection (1) is deemed to have come into operation on 1 January 2012 and applies in respect of receipts and accruals in respect of films of which principal photography commences on or after that date but before 1 January 2022.

**Insertion of section 12P in Act 58 of 1962**

33. (1) The Income Tax Act, 1962, is hereby amended by the insertion after section 12O of the following section: 25

**“Exemption of amounts received or accrued in respect of government grants**

**12P.** (1) For the purposes of this section—

‘allowance asset’ means an asset as defined in paragraph 1 of the Eighth Schedule, other than trading stock, in respect of which a deduction or allowance is allowable in terms of this Act for purposes other than the determination of any capital gain or capital loss; 30

‘base cost’ means base cost as defined in paragraph 1 of the Eighth Schedule; 35

‘government grant’ means a grant-in-aid, subsidy or contribution by the government of the Republic in the national or provincial sphere.

(2) There must be exempt from normal tax any amount received by or accrued to a person as a beneficiary of a government grant if that government grant— 40

(a) is listed in the Eleventh Schedule; or

(b) is identified by the Minister by notice in the *Gazette* for the purpose of exempting that government grant with effect from a date specified by the Minister in that notice (including any date that precedes the date of that notice), after having regard to— 45

(i) the implications of the exemption for the National Revenue Fund; and

(ii) whether the tax implications were taken into account in allocating that grant.

(3) Where during any year of assessment any amount is received by or accrues to a person by way of a government grant as contemplated in subsection (2), other than a government grant in kind, for the acquisition, creation or improvement, or as a reimbursement for expenditure incurred in respect of the acquisition, creation or improvement of— 50

(a) trading stock— 55

(2) Paragrafe (a), (b) en (c) van subartikel (1) tree op 1 Januarie 2013 in werking en is van toepassing ten opsigte van 'n verpligting aangegaan op of na daardie datum.

(3) Paragraaf (d) van subartikel (1) word geag op 2 November 2010 in werking te getree het en is van toepassing ten opsigte van 'n reg van gebruik of okkupasie toegestaan op of na daardie datum.

5

### Wysiging van artikel 12O van Wet 58 van 1962 soos ingevoeg deur artikel 39 van Wet 24 van 2011

32. (1) Artikel 12O van die Inkomstebelastingwet, 1962 word hierby gewysig deur in subartikel (4) paragraaf (a) deur die volgende paragraaf te vervang:

“(a) [’n] Enige— 10

(i) spesialedoelwit- korporatiewe voertuig; of

(ii) invorderingsrekeningbestuurder wat—

[(i)](aa) [wat] benuttingsregte bestuur kragtens 'n ooreenkoms vir invorderingsrekeningbestuur; en

[(ii)](bb) [wat] goedgekeur word deur die Minister vir die doeleindes van hierdie artikel by kennisgewing in die *Staatskoerant*, 15

moet 'n verslag aan die Nasionale Stigting vir Rolprente en Video's voorlê wat die inligting bevat en binne die tyd en op die wyse deur die Minister voorgeskryf wanneer inkomste wat voortspruit uit benuttingsregte van 'n rolprent uitgekeer word aan 'n persoon binne 'n tydperk van 10 jaar wat op die voltooiingsdatum van die rolprent begin.” 20

(2) Subartikel (1) word geag op 1 Januarie 2012 in werking te getree het en is van toepassing ten opsigte van ontvangste en toevallings ten opsigte van rolprente waarvan hoof fotografie op of na daardie datum maar voor 1 Januarie 2022 begin.

### Invoeging van artikel 12P in Wet 58 van 1962

25

33. (1) Die Inkomstebelastingwet, 1962, word hierby gewysig deur na artikel 12O die volgende artikel in te voeg:

#### “Vrystelling van bedrae ontvang of toegeval ten opsigte van staatstoekenings

12P. (1) By die toepassing van hierdie artikel beteken— 30

‘afskryfbare bate’ 'n bate soos omskryf in paragraaf 1 van die Agtste Bylae, buiten handelsvoorraad, ten opsigte waarvan 'n aftrekking of toelae ingevolge hierdie Wet toelaatbaar is vir doeleindes buiten die bepaling van enige kapitaalwins of kapitaalverlies;

‘basiskoste’ basiskoste soos omskryf in paragraaf 1 van die Agtste Bylae; 35  
‘staatstoekening’ 'n hulptoekening, subsidie of bydrae deur die regering van die Republiek in die nasionale of provinsiale sfeer.

(2) Daar word vrygestel van normale belasting enige bedrag ontvang deur of toegeval aan 'n persoon as 'n bevoordeelde van 'n staatstoekening indien daardie staatstoekening— 40

(a) in die Elfde Bylae gelys word; of

(b) deur die Minister by kennisgewing in die *Staatskoerant* geïdentifiseer word met die doel om daardie staatstoekening vry te stel met ingang van 'n datum deur die Minister in daardie kennisgewing vermeld (insluitend enige datum wat die datum van daardie kennisgewing voorafgaan), na inagneming van— 45

(i) die implikasies van die vrystelling vir die Nasionale Inkomstefonds; en

(ii) of die belastingimplikasies by die toekening van daardie toekening in berekening gebring is. 50

(3) Waar gedurende enige jaar van aanslag enige bedrag ontvang word deur of toeval aan 'n persoon by wyse van 'n staatstoekening soos beoog in subartikel (2), behalwe 'n staatstoekening in goedere, vir die verkryging, skepping of verbetering, of as 'n terugbetaling vir uitgawes aangegaan ten opsigte van die verkryging, skepping of verbetering van— 55

(a) handelsvoorraad word—

- (i) any expenditure incurred in respect of that trading stock allowed as a deduction in terms of section 11(a); or
- (ii) any amount taken into account in respect of the value of trading stock as contemplated in section 22(1) or (2); or

(b) an allowance asset, the base cost of that allowance asset, must be reduced to the extent that the amount of that government grant is applied for that purpose. 5

(4) Where any amount is received by or accrues to a person by way of a government grant as contemplated in subsection (2) for the acquisition, creation or improvement of an allowance asset or as a reimbursement for expenditure incurred in respect of that acquisition, creation or improvement, the aggregate amount of the deductions or allowances allowable to that person in respect of that allowance asset may not exceed an amount equal to the aggregate of the expenditure incurred in the acquisition, creation or improvement of that allowance asset, reduced by an amount equal to the sum of— 10 15

- (a) the amount of the government grant; and
- (b) the aggregate amount of all deductions and allowances previously allowed to that person in respect of that allowance asset.

(5) Where during any year of assessment any amount is received by or accrues to a person by way of a government grant as contemplated in subsection (2), other than a government grant in kind— 20

- (a) for the purpose of the acquisition, creation or improvement of an asset other than an asset contemplated in subsection (3) or (4); or
- (b) as a reimbursement for expenditure incurred for the acquisition, creation or improvement of an asset other than an asset contemplated in subsection (3) or (4), 25

the base cost of that asset must be reduced to the extent that the amount of the government grant is applied for that acquisition, creation or improvement. 30

(6) (a) Where during any year of assessment—

- (i) any amount is received by or accrues to a person by way of a government grant as contemplated in subsection (2), other than a government grant in kind; and

(ii) subsection (3), (4) or (5) does not apply to that amount, any amount allowed to be deducted from that person's income in terms of section 11 for that year of assessment must be reduced to the extent of the amount of that government grant. 35

(b) To the extent that the amount received or accrued by way of a government grant exceeds the amount allowed to be deducted as contemplated in paragraph (a), that excess is deemed to be an amount received or accrued in respect of that government grant during the following year of assessment for the purposes of paragraph (a).” 40

(2) Subsection (1) comes into operation on 1 January 2013 and applies in respect of years of assessment commencing on or after that date. 45

**Amendment of section 13quat of Act 58 of 1962, as inserted by section 33 of Act 45 of 2003 and amended by section 12 of Act 16 of 2004, section 19 of Act 32 of 2004, section 23 of Act 31 of 2005, section 16 of Act 8 of 2007, section 5 of Act 4 of 2008, section 29 of Act 60 of 2008, section 29 of Act 17 of 2009, section 33 of Act 7 of 2010 and section 41 of Act 24 of 2011** 50

34. (1) Section 13quat of the Income Tax Act, 1962, is hereby amended by the substitution in subsection (5) for paragraph (c) of the following paragraph:

“(c) which is brought into use by the taxpayer after 31 March [2014] 2020.”

(2) Subsection (1) comes into operation on 30 March 2014 and applies in respect of any building, part thereof or improvement thereto that is brought into use on or after that date. 55

- (i) enige uitgawes aangegaan ten opsigte van daardie handelsvoorraad wat as 'n aftrekking ingevolge artikel 11(a) toegelaat word; of
- (ii) enige bedrag in berekening gebring ten opsigte van die waarde van handelsvoorraad soos beoog in artikel 22(1) of (2); of
- (b) 'n afskryfbare bate, word die basiskoste van daardie afskryfbare bate, verminder namate die bedrag van daardie staatstoekenning vir daardie doel toegepas word.
- (4) Waar enige bedrag ontvang word deur of toeval aan 'n persoon by wyse van 'n staatstoekenning soos beoog in subartikel (2) vir die verkryging, skepping of verbetering van 'n afskryfbare bate of as 'n terugbetaling vir uitgawes aangegaan ten opsigte van daardie verkryging, skepping of verbetering, mag die totale bedrag van die aftrekkings of toelaes toelaatbaar aan daardie persoon ten opsigte van daardie afskryfbare bate nie 'n bedrag oorskry nie gelyk aan die totaal van die uitgawes aangegaan in die verkryging, skepping of verbetering van daardie afskryfbare bate, verminder deur 'n bedrag gelyk aan die som van—
- (a) die bedrag van die staatstoekenning; en
- (b) die totale bedrag van alle aftrekkings en toelaes voorheen aan daardie persoon toegelaat ten opsigte van daardie afskryfbare bate.
- (5) Waar gedurende enige jaar van aanslag enige bedrag ontvang word deur of toeval aan 'n persoon by wyse van 'n staatstoekenning soos beoog in subartikel (2), behalwe 'n staatstoekenning in goedere—
- (a) met die oog op die verkryging, skepping of verbetering van 'n bate buiten 'n bate beoog in subartikel (3) of (4); of
- (b) as 'n terugbetaling vir uitgawes aangegaan vir die verkryging, skepping of verbetering van 'n bate buiten 'n bate beoog in subartikel (3) of (4),
- word die basiskoste van daardie bate verminder namate die bedrag van die staatstoekenning vir daardie verkryging, skepping of verbetering toegepas word.
- (6)(a) Waar gedurende enige jaar van aanslag—
- (i) enige bedrag ontvang word deur of toeval aan 'n persoon by wyse van 'n staatstoekenning soos beoog in subartikel (2), behalwe 'n staatstoekenning in goedere; en
- (ii) subartikel (3), (4) of (5) nie op daardie bedrag van toepassing is nie, word enige bedrag wat toegelaat word om van daardie persoon se inkomste ingevolge artikel 11 vir daardie jaar van aanslag afgetrek te word, verminder tot die bedrag van daardie staatstoekenning.
- (b) Namate die bedrag ontvang of toegeval by wyse van 'n staatstoekenning die bedrag oorskry wat toegelaat word om afgetrek te word soos beoog in paragraaf (a), word daardie oorskot geag 'n bedrag ontvang of toegeval ten opsigte van daardie staatstoekenning gedurende die volgende jaar van aanslag by die toepassing van paragraaf (a) te wees.”.
- (2) Subartikel (1) tree op 1 Januarie 2013 in werking en is van toepassing ten opsigte van jare van aanslag wat op of na daardie datum begin.

**Wysiging van artikel 13quat van Wet 58 van 1962, soos ingevoeg deur artikel 33 van Wet 45 van 2003 en gewysig deur artikel 12 van Wet 16 van 2004, artikel 19 van Wet 32 van 2004, artikel 23 van Wet 31 van 2005, artikel 16 van Wet 8 van 2007, artikel 5 van Wet 4 van 2008, artikel 29 van Wet 60 van 2008, artikel 29 van Wet 17 van 2009, artikel 33 van Wet 7 van 2010 en artikel 41 van Wet 24 van 2011**

34. (1) Artikel 13quat van die Inkomstebelastingwet, 1962, word hierby gewysig deur in subartikel (5) paragraaf (c) deur die volgende paragraaf te vervang:

“(c) wat na 31 Maart [2014] 2020 deur die belastingpligtige in gebruik geneem word.”.

(2) Subartikel (1) tree op 30 Maart 2014 in werking en is van toepassing ten opsigte van enige gebou, deel daarvan of verbetering daaraan wat op of na daardie datum in gebruik geneem word.

**Amendment of section 18 of Act 58 of 1962, as amended by section 15 of Act 95 of 1967, section 12 of Act 76 of 1968, section 17 of Act 89 of 1969, section 14 of Act 52 of 1970, section 15 of Act 88 of 1971, section 12 of Act 104 of 1980, section 15 of Act 96 of 1981, section 15 of Act 121 of 1984, section 11 of Act 96 of 1985, section 14 of Act 90 of 1988, section 11 of Act 70 of 1989, section 16 of Act 101 of 1990, section 19 of Act 129 of 1991, section 18 of Act 141 of 1992, section 16 of Act 21 of 1995, section 23 of Act 53 of 1999, section 26 of Act 59 of 2000, section 19 of Act 30 of 2002, section 25 of Act 31 of 2005, sections 2 and 17 of Act 8 of 2007, section 30 of Act 35 of 2007, section 1 of Act 3 of 2008, section 33 of Act 60 of 2008, section 31 of Act 17 of 2009, section 36 of Act 7 of 2010 and section 43 of Act 24 of 2011**

**35.** (1) Section 18 of the Income Tax Act, 1962, is hereby amended by the substitution in subsection (2)(c) for the words following subparagraph (ii) of the following words:  
“as in the aggregate exceeds 7,5 per cent of the taxpayer’s taxable income (excluding any retirement fund lump sum benefit **[and]** retirement fund lump sum withdrawal benefit **and** severance benefit) as determined before allowing any deduction under this **[subparagraph]** paragraph.”  
(2) Subsection (1) is deemed to have come into operation on 1 March 2011 and applies in respect of years of assessment commencing on or after that date.

**Insertion of section 19 in Act 58 of 1962**

**36.** (1) The Income Tax Act, 1962, is hereby amended by the insertion after section 18A of the following section:

**“Reduction or cancellation of debt**

**19.** (1) For the purposes of this section—  
‘**allowance asset**’ means a capital asset in respect of which a deduction or allowance is allowable in terms of this Act for purposes other than the determination of any capital gain or capital loss;  
‘**capital asset**’ means an asset as defined in paragraph 1 of the Eighth Schedule that is not trading stock;  
‘**debt**’ does not include a tax debt as defined in section 1 of the Tax Administration Act;  
‘**reduction amount**’, in relation to a debt owed by a person, means any amount by which that debt is reduced less any amount applied by that person as consideration for that reduction.  
(2) Subject to subsection (8), this section applies where a debt that is owed by a person is reduced by any amount and—  
(a) the amount of that debt was used, directly or indirectly, to fund any expenditure in respect of which a deduction or allowance was granted in terms of this Act; and  
(b) the amount of that reduction exceeds any amount applied by that person as consideration for the reduction.  
(3) Where—  
(a) a debt owed by a person is reduced as contemplated in subsection (2); and  
(b) the amount of that debt was used as contemplated in paragraph (a) of that subsection to fund expenditure incurred in the acquisition of trading stock that is held and not disposed of by that person at the time of the reduction of the debt,  
the reduction amount in respect of that debt must, to the extent that an amount is taken into account by that person in respect of that trading stock in terms of section 11(a) or 22(1) or (2) for the year of assessment in which the debt is so reduced, be applied to reduce the amount so taken into account in respect of that trading stock.

Wysiging van artikel 18 van Wet 58 van 1962, soos gewysig deur artikel 15 van Wet 95 van 1967, artikel 12 van Wet 76 van 1968, artikel 17 van Wet 89 van 1969, artikel 14 van Wet 52 van 1970, artikel 15 van Wet 88 van 1971, artikel 12 van Wet 104 van 1980, artikel 15 van Wet 96 van 1981, artikel 15 van Wet 121 van 1984, artikel 11 van Wet 96 van 1985, artikel 14 van Wet 90 van 1988, artikel 11 van Wet 70 van 1989, artikel 16 van Wet 101 van 1990, artikel 19 van Wet 129 van 1991, artikel 18 van Wet 141 van 1992, artikel 16 van Wet 21 van 1995, artikel 23 van Wet 53 van 1999, artikel 26 van Wet 59 van 2000, artikel 19 van Wet 30 van 2002, artikel 25 van Wet 31 van 2005, artikels 2 en 17 van Wet 8 van 2007, artikel 30 van Wet 35 van 2007, artikel 1 van Wet 3 van 2008, artikel 33 van Wet 60 van 2008, artikel 31 van Wet 17 van 2009, artikel 36 van Wet 7 van 2010 en artikel 43 van Wet 24 van 2011

35. (1) Artikel 18 van die Inkomstebelastingwet, 1962, word hierby gewysig deur in subartikel (2)(c) die woorde wat op subparagraaf (ii) volg deur die volgende woorde te vervang:

“as wat in totaal 7,5 persent van die belastingpligtige se belasbare inkomste (uitgesluit enige uitreefonds-enkelbedragvoordeel [en] uitreefonds-enkelbedrag-onttrekkingsvoordeel en skeidingsvoordeel) soos vasgestel voor enige bedrag kragtens hierdie [subparagraaf] paragraaf as aftrekking toegelaat is, oorskry.”

(2) Subartikel (1) word geag op 1 Maart 2011 in werking te getree het en is van toepassing ten opsigte van jare van aanslag wat op of na daardie datum begin.

#### Invoeging van artikel 19 in Wet 58 van 1962

36. (1) Die Inkomstebelastingwet, 1962, word hierby gewysig deur na artikel 18A die volgende artikel in te voeg:

#### “Vermindering of kansellasië van skuld

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

‘afskryfbare bate’ ’n kapitaalbate ten opsigte waarvan ’n aftrekking of toelaag toelaatbaar is ingevolge hierdie Wet vir doeleindes buiten die bepaling van enige kapitaalwins of kapitaalverlies;

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

‘skuld’ nie ook ’n belastingskuld soos omskryf in artikel 1 van die Wet op Belastingadministrasie nie;

‘verminderingsbedrag’, met betrekking tot ’n skuld verskuldig deur ’n persoon, enige bedrag waarmee daardie skuld verminder word, minus enige bedrag toegepas deur daardie persoon as vergoeding vir daardie vermindering.

(2) Behoudens subartikel (8) is hierdie artikel van toepassing waar ’n skuld wat verskuldig word deur ’n persoon verminder word deur enige bedrag en—

(a) die bedrag van daardie skuld, regstreeks of onregstreeks, gebruik is om enige uitgawes te befonds ten opsigte waarvan ’n aftrekking of toelae ingevolge hierdie Wet toegestaan is; en

(b) die bedrag van daardie vermindering enige bedrag toegepas deur daardie persoon as vergoeding vir die vermindering oorskry.

(3) Waar—

(a) ’n skuld verskuldig deur ’n persoon verminder word soos beoog in subartikel (2); en

(b) die bedrag van daardie skuld gebruik is soos beoog in paragraaf (a) van daardie subartikel om uitgawes aangegaan in die verkryging van handelsvoorraad wat gehou word en nie oor beskik is nie deur daardie persoon ten tye van die vermindering van die skuld te befonds,

word die verminderingsbedrag ten opsigte van daardie skuld, namate ’n bedrag deur daardie persoon in berekening gebring word ten opsigte van daardie handelsvoorraad ingevolge artikel 11(a) of 22(1) of (2) vir die jaar van aanslag waarin die skuld aldus verminder word, toegepas ten einde die bedrag aldus in berekening gebring ten opsigte van daardie handelsvoorraad te verminder.

- (4) Where—
- (a) a debt owed by a person is reduced as contemplated in subsection (2);
  - (b) the amount of that debt was used as contemplated in paragraph (a) of that subsection to fund expenditure incurred in the acquisition of trading stock that is held and not disposed of by that person at the time of the reduction of the debt; and
  - (c) subsection (3) has been applied to reduce an amount taken into account by that person in respect of trading stock as contemplated in that subsection to the full extent of that amount so taken into account, the reduction amount in respect of that debt, less any amount of that reduction amount that has been applied to reduce an amount as contemplated in subsection (3), must, to the extent that a deduction or allowance was granted in terms of this Act to that person in respect of that expenditure, be deemed, for the purposes of section 8(4)(a), to be an amount that has been recovered or recouped by that person for the year of assessment in which the debt is reduced.
- (5) Where—
- (a) a debt owed by a person is reduced as contemplated in subsection (2); and
  - (b) the amount of that debt was used as contemplated in paragraph (a) of that subsection to fund any expenditure other than expenditure incurred—
    - (i) in the acquisition of trading stock that is held and not disposed of by that person at the time of the reduction of the debt; or
    - (ii) in the acquisition, creation or improvement of an allowance asset,the reduction amount in respect of that debt must, to the extent that a deduction or allowance was granted in terms of this Act to that person in respect of that expenditure, be deemed to be an amount that has been recovered or recouped by that person for the year of assessment in which the debt is reduced.

(6) Where—

    - (a) a debt owed by a person is reduced as contemplated in subsection (2); and
    - (b) the amount of that debt was used as contemplated in paragraph (a) of that subsection to fund expenditure incurred in the acquisition, creation or improvement of an allowance asset,

the reduction amount in respect of that debt must, to the extent that—

    - (i) a deduction or allowance was granted in terms of this Act to that person in respect of that expenditure; and
    - (ii) paragraph 12A of the Eighth Schedule has been applied to reduce the amount of expenditure for the purposes of paragraph 20 of that Schedule in respect of that allowance asset to the full extent of that expenditure,

be deemed, for the purposes of section 8(4)(a), to be an amount that has been recovered or recouped by that person for the year of assessment in which the debt is reduced.

(7) Where a debt owed by a person that was used to fund expenditure incurred in respect of the acquisition, creation or improvement of an allowance asset is reduced, the aggregate amount of the deductions and allowances allowable to that person in respect of that allowance asset may not exceed an amount equal to the aggregate of the expenditure incurred in the acquisition of that allowance asset, reduced by an amount equal to the sum of—

    - (a) the reduction amount in respect of that debt; and
    - (b) the aggregate amount of all deductions and allowances previously allowed to that person in respect of that allowance asset.



- (4) Waar—
- (a) 'n skuld verskuldig deur 'n persoon verminder word soos beoog in subartikel (2);
- (b) die bedrag van daardie skuld gebruik is soos beoog in paragraaf (a) van daardie subartikel om uitgawes aangegaan in die verkryging van handelsvoorraad wat gehou word en nie oor beskik is nie deur daardie persoon ten tye van die vermindering van die skuld te befonds; en 5
- (c) subartikel (3) toegepas is om 'n bedrag in berekening gebring deur daardie persoon ten opsigte van handelsvoorraad soos beoog in daardie subartikel te verminder tot die volle bedrag van daardie bedrag aldus in berekening gebring, 10
- word die verminderingsbedrag ten opsigte van daardie skuld, minus enige bedrag van daardie verminderingsbedrag wat toegepas is om 'n bedrag te verminder soos beoog in subartikel (3), namate 'n aftrekking of toelae ingevolge hierdie Wet toegestaan is aan daardie persoon ten opsigte van daardie uitgawes, by die toepassing van artikel 8(4)(a), 'n bedrag te wees wat vergoed of verhaal is deur daardie persoon vir die jaar van aanslag waarin die skuld verminder word. 15
- (5) Waar—
- (a) 'n skuld verskuldig deur 'n persoon verminder word soos beoog in subartikel (2); en 20
- (b) die bedrag van daardie skuld gebruik is soos beoog in paragraaf (a) van daardie subartikel om enige uitgawes te befonds buiten uitgawes aangegaan—
- (i) in die verkryging van handelsvoorraad wat gehou word en nie oor beskik is nie deur daardie persoon ten tye van die vermindering van die skuld; of 25
- (ii) in die verkryging, skepping of verbetering van 'n afskryfbare bate,
- word die verminderingsbedrag ten opsigte van daardie skuld, namate 'n aftrekking of toelae ingevolge hierdie Wet aan daardie persoon toegestaan is ten opsigte van daardie uitgawes, geag 'n bedrag te wees wat vergoed of verhaal is deur daardie persoon vir die jaar van aanslag waarin die skuld verminder word. 30
- (6) Waar— 35
- (a) 'n skuld verskuldig deur 'n persoon verminder word soos beoog in subartikel (2); en
- (b) die bedrag van daardie skuld gebruik is soos beoog in paragraaf (a) van daardie subartikel om uitgawes aangegaan in die verkryging, skepping of verbetering van 'n afskryfbare bate te befonds, 40
- word die verminderingsbedrag ten opsigte van daardie skuld, namate—
- (i) 'n aftrekking of toelae ingevolge hierdie Wet aan daardie persoon toegelaat is ten opsigte van daardie uitgawes; en
- (ii) paragraaf 12A van die Agtste Bylae toegepas is om die bedrag van uitgawes by die toepassing van paragraaf 20 van daardie Bylae ten opsigte van daardie afskryfbare bate tot die volle bedrag van daardie uitgawes te verminder, 45
- by die toepassing van artikel 8(4)(a) geag 'n bedrag te wees wat vergoed of verhaal is deur daardie persoon vir die jaar van aanslag waarin die skuld verminder word. 50
- (7) Waar 'n skuld verskuldig deur 'n persoon wat gebruik is om uitgawes aangegaan ten opsigte van die verkryging, skepping of verbetering van 'n afskryfbare bate te befonds, verminder word, mag die totale bedrag van die aftrekkings en toelaes toelaatbaar aan daardie persoon ten opsigte van daardie afskryfbare bate nie 'n bedrag oorskry nie gelyk aan die totaal van die uitgawes aangegaan in die verkryging van daardie afskryfbare bate, verminder deur 'n bedrag gelyk aan die som van— 55
- (a) die verminderingsbedrag ten opsigte van daardie skuld; en
- (b) die totale bedrag van alle aftrekkings en toelaes voorheen toegelaat aan daardie persoon ten opsigte van daardie afskryfbare bate. 60

- (8) This section must not apply to any debt owed by a person—
- (a) that is an heir or legatee of a deceased estate, to the extent that—
    - (i) the debt is owed to that deceased estate;
    - (ii) the debt is reduced by the deceased estate; and
    - (iii) the amount by which the debt is reduced by the deceased estate forms part of the property of the deceased estate for the purposes of the Estate Duty Act, 1955 (Act No. 45 of 1955);
  - (b) to the extent that the debt is reduced by way of—
    - (i) a donation as defined in section 55(1); or
    - (ii) any transaction to which section 58 applies; or
  - (c) to an employer of that person, to the extent that the debt is reduced in the circumstances contemplated in paragraph 2(h) of the Seventh Schedule.”.

(2) Subsection (1) comes into operation on 1 January 2013 and applies in respect of years of assessment commencing on or after that date.

**Amendment of section 20 of Act 58 of 1962, as amended by section 13 of Act 90 of 1964, section 18 of Act 88 of 1965, section 13 of Act 76 of 1968, section 18 of Act 89 of 1969, section 15 of Act 65 of 1973, section 8 of Act 101 of 1978, section 18 of Act 94 of 1983, section 19 of Act 101 of 1990, section 16 of Act 113 of 1993, section 17 of Act 21 of 1995, section 15 of Act 28 of 1997, section 26 of Act 30 of 2000, section 27 of Act 59 of 2000, section 23 of Act 74 of 2002, section 35 of Act 45 of 2003, section 19 of Act 8 of 2007, section 32 of Act 35 of 2007, section 15 of Act 3 of 2008, section 35 of Act 60 of 2008 and section 32 of Act 17 of 2009**

37. (1) Section 20 of the Income Tax Act, 1962, is hereby amended by the deletion in subsection (1) of the proviso to paragraph (a).

(2) Subsection (1) comes into operation on 1 January 2013 and applies in respect of years of assessment commencing on or after that date.

**Amendment of section 20C of Act 58 of 1962, as inserted by section 38 of Act 7 of 2010**

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

“(2) Where a headquarter company has during any year of assessment incurred any interest in respect of any financial assistance granted to that headquarter company by a person—

(a) that is not a resident; and

(b) if that person is a company, that directly or indirectly (and whether alone or together with any other company forming part of the same group of companies as that person) holds at least 10 per cent of the equity shares and voting rights in that headquarter company,

the amount of [the] that interest in respect of which a deduction is allowable to that headquarter company in that year of assessment is limited to so much of the amount of interest received by or accrued to the headquarter company as relates to any portion of that financial assistance that is directly applied as financial assistance to any foreign company in which the headquarter company directly or indirectly (whether alone or together with any other company forming part of the same group of companies as that headquarter company) holds at least [20] 10 per cent of the equity shares and voting rights.”.

(2) Subsection (1) is deemed to have come into operation on 1 April 2012 and applies in respect of years of assessment commencing on or after that date.

(8) Hierdie artikel is nie van toepassing nie op enige skuld verskuldig deur 'n persoon—

- (a) wat 'n erfgenaam of legataris van 'n bestorwe boedel is, namate—
  - (i) die skuld aan daardie bestorwe boedel verskuldig is;
  - (ii) die skuld verminder word deur die bestorwe boedel;
  - (iii) die bedrag waarmee die skuld deur die bestorwe boedel verminder word deel uitmaak van die eiendom van die bestorwe boedel by die toepassing van die Boedelbelastingwet, 1955 (Wet No. 45 van 1955);
- (b) namate die skuld verminder word by wyse van—
  - (i) 'n skenking soos omskryf in artikel 55(1); of
  - (ii) enige transaksie waarop artikel 58 van toepassing is; of
- (c) aan 'n werkgewer van daardie persoon, namate die skuld verminder word in die omstandighede beoog in paragraaf 2(h) van die Sewende Bylae.”

(2) Subartikel (1) tree op 1 Januarie 2013 in werking en is van toepassing ten opsigte van jare van aanslag wat op of na daardie datum begin.

**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 101 van 1990, artikel 16 van Wet 113 van 1993, artikel 17 van Wet 21 van 1995, artikel 15 van Wet 28 van 1997, artikel 26 van Wet 30 van 2000, artikel 27 van Wet 59 van 2000, artikel 23 van Wet 74 van 2002, artikel 35 van Wet 45 van 2003, artikel 19 van Wet 8 van 2007, artikel 32 van Wet 35 van 2007, artikel 15 van Wet 3 van 2008, artikel 35 van Wet 60 van 2008 en artikel 32 van Wet 17 van 2009**

37. (1) Artikel 20 van die Inkomstebelastingwet, 1962, word hierby gewysig deur in subartikel (1) die voorbehoudsbepaling tot paragraaf (a) te skrap.

(2) Subartikel (1) tree op 1 Januarie 2013 in werking en is van toepassing ten opsigte van jare van aanslag wat op of na daardie datum begin.

**Wysiging van artikel 20C van Wet 58 van 1962, soos ingevoeg deur artikel 38 van Wet 7 van 2011**

38. (1) Artikel 20C van die Inkomstebelastingwet, 1962, word hierby gewysig deur subartikel (2) deur die volgende subartikel te vervang:

“(2) Waar 'n hoofkwartiermaatskappy gedurende enige jaar van aanslag enige rente aangegaan het ten opsigte van enige finansiële bystand toegestaan aan daardie hoofkwartiermaatskappy deur 'n persoon—

- (a) wat nie 'n inwoner is nie; en
- (b) indien daardie persoon 'n maatskappy is wat regstreeks of onregstreeks (en hetsy alleen of tesame met enige ander maatskappy wat deel uitmaak van dieselfde groep van maatskappye as daardie persoon) minstens 10 persent van die ekwiteitsaandeel en stemregte in daardie hoofkwartiermaatskappy hou, word die bedrag van [die] daardie rente ten opsigte waarvan 'n aftrekking toelaatbaar is aan daardie hoofkwartiermaatskappy in daardie jaar van aanslag beperk tot soveel van die bedrag aan rente ontvang deur of toegeval aan die hoofkwartiermaatskappy as wat betrekking het op enige gedeelte van daardie finansiële bystand wat regstreeks toegepas word as finansiële bystand aan enige buitelandse maatskappy waarin die hoofkwartiermaatskappy regstreeks of onregstreeks (hetsy alleen of tesame met enige ander maatskappy wat deel uitmaak van dieselfde groep van maatskappye as daardie hoofkwartiermaatskappy) minstens [20] 10 persent van die ekwiteitsaandeel en stemregte hou.”

(2) Subartikel (1) word geag op 1 April 2012 in werking te getree het en is van toepassing ten opsigte van jare van aanslag wat op of na daardie datum begin.

**Substitution of section 20C of Act 58 of 1962**

**39.** (1) The Income Tax Act, 1962, is hereby amended by the substitution for section 20C of the following section:

**“Ring-fencing of interest and royalties incurred by headquarter companies**

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

**‘financial assistance’** means financial assistance contemplated in section 31(1); and

**‘royalty’** means any amount that is, before taking into account section 49D(b), subject to the withholding tax on royalties in terms of Part IVA.

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(2) Where a headquarter company has during any year of assessment incurred any interest in respect of any financial assistance granted to that headquarter company by a person—

(a) that is not a resident; and

(b) if that person is a company, that directly or indirectly (and whether alone or together with any other company forming part of the same group of companies as that person) holds at least 10 per cent of the equity shares and voting rights in that headquarter company,

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the amount of that interest in respect of which a deduction is allowable to that headquarter company in that year of assessment is limited to so much of the amount of interest received by or accrued to the headquarter company as relates to any portion of that financial assistance that is directly applied as financial assistance to any foreign company in which the headquarter company directly or indirectly (whether alone or together with any other company forming part of the same group of companies as that headquarter company) holds at least 10 per cent of the equity shares and voting rights.

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(2A) Where a headquarter company has during any year of assessment incurred any amount that constitutes a royalty payable to a person—

(a) that is not a resident; and

(b) if that person is a company, that directly or indirectly (and whether alone or together with any other company forming part of the same group of companies as that person) holds at least 10 per cent of the equity shares and voting rights in that headquarter company,

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the amount of that royalty in respect of which a deduction is allowable to that headquarter company in that year of assessment is limited to so much of any amounts received by or accrued to the headquarter company in respect of—

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(i) the use or right of use of or permission to use any intellectual property as defined in section 23I; or

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(ii) the imparting of or the undertaking to impart any scientific, technical, industrial or commercial knowledge or information, or the rendering of or the undertaking to render, any assistance or service in connection with the application or utilisation of such knowledge or information,

from any foreign company in which the headquarter company directly or indirectly (whether alone or together with any other company forming part of the same group of companies as that headquarter company) holds at least 10 per cent of the equity shares and voting rights.

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(3) Any amount that is disallowed as a deduction in any year of assessment of a headquarter company in terms of subsection (2) or (2A) must—

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

### Vervanging van artikel 20C van Wet 58 van 1962

39. (1) Die Inkomstebelastingwet, 1962, word hierby gewysig deur artikel 20C deur die volgende artikel te vervang:

**“Omheining van rente en tantième aangeaan deur hoofkwartiermaatskappye**

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**20C.** (1) By die toepassing van hierdie artikel beteken—

**‘finansiële bystand’** finansiële bystand beoog in artikel 31(1);  
**‘tantième’** enige bedrag wat, voor inagneming van artikel 49D(b), aan die terughoudingsbelasting op tantième ingevolge Deel IVA onderhewig is.

(2) Waar ’n hoofkwartiermaatskappy gedurende enige jaar van aanslag enige rente aangeaan het ten opsigte van enige finansiële bystand verleen aan daardie hoofkwartiermaatskappy deur ’n persoon—

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(a) wat nie ’n inwoner is nie; en

(b) indien daardie persoon ’n maatskappy is wat regstreeks of onregstreeks (en hetsy alleen of tesame met enige ander maatskappy wat deel uitmaak van dieselfde groep van maatskappye as daardie persoon) minstens 10 persent van die ekwiteitsaandeel en stemregte in daardie hoofkwartiermaatskappy hou,

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word die bedrag van daardie rente ten opsigte waarvan ’n aftrekking toelaatbaar is aan daardie hoofkwartiermaatskappy in daardie jaar van aanslag beperk tot soveel van die bedrag aan rente ontvang deur of toegeval aan die hoofkwartiermaatskappy as wat betrekking het op enige gedeelte van daardie finansiële bystand wat regstreeks toegepas word as finansiële bystand aan enige buitelandse maatskappy waarin die hoofkwartiermaatskappy regstreeks of onregstreeks (hetsy alleen of tesame met enige ander maatskappy wat deel uitmaak van dieselfde groep van maatskappye as daardie hoofkwartiermaatskappy) minstens 10 persent van die ekwiteitsaandeel en stemregte hou.

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(2A) Waar ’n hoofkwartiermaatskappy gedurende enige jaar van aanslag enige bedrag aangeaan het wat ’n tantième uitmaak, betaalbaar aan ’n persoon—

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(a) wat nie ’n inwoner is nie; en

(b) indien daardie persoon ’n maatskappy is, wat regstreeks of onregstreeks (en hetsy alleen of tesame met enige ander maatskappy wat deel uitmaak van dieselfde groep van maatskappye as daardie persoon) minstens 10 persent hou van die ekwiteitsaandeel en stemregte in daardie hoofkwartiermaatskappy,

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word die bedrag van daardie tantième ten opsigte waarvan ’n aftrekking aan daardie hoofkwartiermaatskappy toelaatbaar is in daardie jaar van aanslag beperk tot soveel van enige bedrae ontvang deur of toegeval aan die hoofkwartiermaatskappy ten opsigte van—

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(i) die gebruik, reg van gebruik of toestemming tot gebruik van enige immateriële goedere soos omskryf in artikel 23I; of

(ii) die mededeling van enige wetenskaplike, tegniese, industriële of kommersiële kennis of inligting, of die onderneming om sodanige kennis of inligting mee te deel, of die verlening van hulp of die lewering van ’n diens in verband met die toepassing of gebruik van sodanige kennis of inligting, of die onderneming om sodanige hulp te verleen of diens te lewer,

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van enige buitelandse maatskappy waarin die hoofkwartiermaatskappy regstreeks of onregstreeks (hetsy alleen of tesame met enige ander maatskappy wat deel uitmaak van dieselfde groep van maatskappye as daardie hoofkwartiermaatskappy) minstens 10 persent van die ekwiteitsaandeel en stemregte hou.

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(3) Enige bedrag wat ingevolge subartikel (2) of (2A) nie in enige jaar van aanslag van ’n hoofkwartiermaatskappy as ’n aftrekking toegelaat word nie moet—

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

- (b) where that amount is disallowed as a deduction—
  - (i) in terms of subsection (2), be deemed to be an amount of interest actually incurred by the headquarter company during that succeeding year in respect of financial assistance granted to that headquarter company by a person that is not a resident; or
  - (ii) in terms of subsection (2A), be deemed to be an amount actually incurred by the headquarter company during that succeeding year that constitutes a royalty payable to a person that is not a resident.”.

(2) Subsection (1) comes into operation on 1 January 2013 and applies in respect of years 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, section 24 of Act 74 of 2002, section 37 of Act 45 of 2003, section 16 of Act 3 of 2008, section 36 of Act 60 of 2008, section 39 of Act 7 of 2010 and section 45 of Act 24 of 2011**

40. Section 22 of the Income Tax Act, 1962, is hereby amended by the substitution in subsection (8) for paragraph (B) of the following paragraph:

- “(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] paragraph (C)) or ceases to be held as trading stock, an amount equal to the market value of such trading stock; or”.

**Amendment of section 22B of Act 58 of 1962, as substituted by section 46 of Act 24 of 2011**

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

- (a) by the substitution for subsections (2) and (3) of the following subsections:
  - “(2) Where a taxpayer that is a company disposes of shares in any other company, the amount of any exempt dividend received by or accrued to the taxpayer in respect of any share held by the taxpayer in that other company must be included in the income of the taxpayer—
    - (a) to the extent that the exempt dividend is received by or accrues to the taxpayer within a period of 18 months prior to or as part of the disposal;
    - (b) if the taxpayer immediately before the disposal—
      - (i) held the shares disposed of as trading stock; and
      - (ii) held more than 50 per cent of the equity shares in the other company; and
    - (c) if the other company (or any company in which that other company directly or indirectly holds more than 50 per cent of the equity shares) has, within a period of 18 months prior to that disposal, by reason of or in consequence of that disposal, obtained any loan or advance or incurred any debt—
      - (i) owing to the person acquiring the shares or any connected person in relation to that person; or
      - (ii) that is guaranteed or otherwise secured by the person acquiring the shares or any connected person in relation to that person.

- (b) waar daardie bedrag nie as 'n aftrekking toegelaat word nie—
- (i) ingevolge subartikel (2) geag word 'n bedrag van rente werklik aangegaan deur die hoofkwartiermaatskappy gedurende daardie daaropvolgende jaar ten opsigte van finansiële bystand verleen aan daardie hoofkwartiermaatskappy deur 'n persoon wat nie 'n inwoner is nie te wees; of
  - (ii) ingevolge subartikel (2A) geag word 'n bedrag werklik aangegaan deur die hoofkwartiermaatskappy gedurende daardie daaropvolgende jaar te wees wat 'n tantième betaalbaar aan 'n persoon wat nie 'n inwoner is nie uitmaak.”.

(2) Subartikel (1) tree op 1 Januarie 2013 in werking en is van toepassing ten opsigte van jare van aanslag wat op of na daardie datum begin.

**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, artikel 24 van Wet 74 van 2002, artikel 37 van Wet 45 van 2003, artikel 16 van Wet 3 van 2008, artikel 36 van Wet 60 van 2008, artikel 39 van Wet 7 van 2010 en artikel 45 van Wet 24 van 2011**

40. Artikel 22 van die Inkomstebelastingwet, 1962, word hierby gewysig deur in subartikel (8) paragraaf (B) deur die volgende paragraaf 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] paragraaf (C) bedoel) of ophou om as handelsvoorraad gehou te word, 'n bedrag gelyk aan die markwaarde van bedoelde handelsvoorraad; of”.

**Wysiging van artikel 22B van Wet 58 van 1962, soos vervang deur artikel 46 van Wet 24 van 2011**

41. (1) Artikel 22B van die Inkomstebelastingwet, 1962, word hierby gewysig—

- (a) deur subartikels (2) en (3) deur die volgende subartikels te vervang:

“(2) Waar 'n belastingpligtige wat 'n maatskappy is oor aandele in enige ander maatskappy beskik, word die bedrag van enige vrygestelde dividend ontvang deur of toegeval aan die belastingpligtige ten opsigte van 'n aandeel deur die belastingpligtige in daardie ander maatskappy gehou by die inkomste van die belastingpligtige ingesluit—

- (a) namate die vrygestelde dividend ontvang word deur of toeval aan die belastingpligtige binne 'n tydperk van 18 maande voor of as deel van die beskikking;

- (b) indien die belastingpligtige onmiddellik voor die beskikking—

(i) die aandele waaroor beskik word as handelsvoorraad gehou het; en

(ii) meer as 50 persent van die ekwiteitsaandele in die ander maatskappy gehou het; en

- (c) indien die ander maatskappy (of 'n maatskappy waarin daardie ander maatskappy regstreeks of onregstreeks meer as 50 persent van die ekwiteitsaandele hou) binne 'n tydperk van 18 maande voor daardie beskikking, as gevolg of ten gevolge van daardie beskikking, enige lening of voorskot verkry het of enige skuld aangegaan het—

(i) verskuldig aan die persoon wat die aandele verkry of enige verbonde persoon met betrekking tot daardie persoon; of

(ii) wat gewaarborg word of andersins gesekureer word deur die persoon wat die aandele verkry of enige verbonde persoon met betrekking tot daardie persoon.

- (3) For the purposes of subsection (2), the amount that must be included in the income of the taxpayer is limited to the amount of the loan, advance or debt contemplated in paragraph (c) of that subsection.”;
- (b) by the substitution in subsection (2)(c) for the words preceding subparagraph (i) of the following words:
- “if the other company (or any company in which that other company directly or indirectly holds more than 50 per cent of the equity shares) has, within a period of 18 months prior to that disposal, by reason of or in consequence of that disposal, **[obtained any loan or advance or]** incurred any debt—”; and
- (c) by the substitution for subsection (3) of the following subsection:
- “(3) For the purposes of subsection (2), the amount that must be included in the income of the taxpayer is limited to the amount of the **[loan, advance or]** debt contemplated in paragraph (c) of that subsection.”.
- (2) Paragraph (a) of subsection (1) is deemed to have come into operation on 1 April 2012.
- (3) Paragraphs (b) and (c) of subsection (1) come into operation on 1 January 2013.

**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, section 21 of Act 30 of 2002, section 38 of Act 45 of 2003, section 13 of Act 16 of 2004, section 28 of Act 31 of 2005, section 17 of Act 20 of 2006, section 20 of Act 8 of 2007, section 37 of Act 60 of 2008, section 41 of Act 7 of 2010 and section 47 of Act 24 of 2011**

42. (1) Section 23 of the Income Tax Act, 1962, is hereby amended—
- (a) by the substitution in paragraph (n) for subparagraph (i) of the following subparagraph:
- “(i) is granted or paid to the taxpayer and is exempt from tax in terms of section **[10(1)(j) or (jA)] 10(1)(yA)**; and”;
- (b) by the deletion of the proviso to paragraph (n).
- (2) Subsection (1) comes into operation on 1 January 2013 and applies in respect of years of assessment commencing on or after that date.

**Amendment of section 23B of Act 58 of 1962, as inserted by section 25 of Act 129 of 1991 and amended by section 16 of Act 21 of 1994, section 29 of Act 30 of 2000, section 39 of Act 45 of 2003, section 18 of Act 20 of 2006, section 42 of Act 7 of 2010 and section 48 of Act 24 of 2011**

43. (1) Section 23B of the Income Tax Act, 1962, is hereby amended by the substitution for subsection (5) of the following subsection:
- “(5) No deduction shall be allowed under section 11(a) in respect of any expenditure incurred by a **[taxpayer] person** in respect of any premium paid under a policy of insurance **[contemplated in section 11(w)]**, where the policy relates to death, disablement or severe illness of an employee or director, or former employee or director, of the person that is the policyholder (other than a policy that relates to death, disablement or severe illness arising solely out of and in the course of employment of the employee or director).”.
- (2) Subsection (1) is deemed to have come into operation on 1 March 2012 and applies in respect of premiums paid or incurred on or after that date.

**Amendment of section 23D of Act 58 of 1962, as inserted by section 19 of Act 113 of 1993 and amended by section 10 of Act 140 of 1993, section 20 of Act 21 of 1995, section 29 of Act 31 of 2005, section 21 of Act 8 of 2007, section 34 of Act 35 of 2007 and section 18 of Act 3 of 2008**

44. (1) Section 23D of the Income Tax Act, 1962, is hereby amended by the substitution in subsection (2A) for paragraph (c) of the following paragraph:



(3) By die toepassing van subartikel (2) word die bedrag wat by die inkomste van die belastingpligtige ingesluit word beperk tot die bedrag van die lening, voorskot of skuld beoog in paragraaf (c) van daardie subartikel.”; en

(b) deur in subartikel (2)(c) die woorde wat subparagraaf (i) voorafgaan deur die volgende woorde te vervang: 5

“indien die ander maatskappy (of ’n maatskappy waarin daardie ander maatskappy regstreeks of onregstreeks meer as 50 persent van die ekwiteitsaandele hou) binne ’n tydperk van 18 maande voor daardie beskikking, as gevolg of ten gevolge van daardie beskikking, [enige lening of voorskot verkry het of] enige skuld aangegaan het—”; en 10

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

“(3) By die toepassing van subartikel (2) word die bedrag wat by die inkomste van die belastingpligtige ingesluit word beperk tot die bedrag van die [lening, voorskot of] skuld beoog in paragraaf (c) van daardie subartikel.”. 15

(2) Paragraaf (a) van subartikel (1) word geag op 1 April 2012 in werking te getree het.

(3) Paragrafe (b) en (c) van subartikel (1) tree op 1 Januarie 2013 in werking.

**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, artikel 21 van Wet 30 van 2002, artikel 38 van Wet 45 van 2003, artikel 13 van Wet 16 van 2004, artikel 28 van Wet 31 van 2005, artikel 17 van Wet 20 van 2006, artikel 20 van Wet 8 van 2007, artikel 37 van Wet 60 van 2008 en artikel 41 van Wet 7 van 2010 en Artikel 47 van Wet 24 van 2011** 20 25

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

(a) deur in paragraaf (n) subparagraaf (i) deur die volgende subparagraaf te vervang: 30

“(i) aan die belastingpligtige toegestaan of betaal is en ingevolge artikel [10(1)(y) of (yA)] 10(1)(yA) van belasting vrygestel is; en”;

(b) deur die voorbehoudsbepaling tot paragraaf (n) te skrap.

(2) Subartikel (1) tree op 1 Januarie 2013 in werking en is van toepassing ten opsigte van jare van aanslag wat op of na daardie datum begin. 35

**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, artikel 29 van Wet 30 van 2000, artikel 39 van Wet 45 van 2003, artikel 18 van Wet 20 van 2006, artikel 42 van Wet 7 van 2010 en artikel 48 van Wet 24 van 2011**

43. (1) Artikel 23B van die Inkomstebelastingwet, 1962, word hierby gewysig deur subartikel (5) deur die volgende subartikel te vervang: 40

“(5) Geen aftrekking word kragtens artikel 11(a) toegelaat nie ten opsigte van enige uitgawes aangegaan deur ’n [belastingpligtige] persoon ten opsigte van enige premie betaal kragtens ’n versekeringspolis [in artikel 11(w) beoog], waar die polis betrekking het op die dood, ongeskikstelling of ernstige siekte van ’n werknemer of direkteur, of voormalige werknemer of direkteur, van die persoon wat die polishouer is (behalwe ’n polis wat betrekking het op dood, ongeskikstelling of ernstige siekte wat slegs voortspruit uit en in die loop van indiensneming van die werknemer of direkteur.”. 45

(2) Subartikel (1) word geag op 1 Maart 2012 in werking te getree het en is van toepassing ten opsigte van premies op of na daardie datum betaal of aangegaan. 50

**Wysiging van artikel 23D van Wet 58 van 1962, soos ingevoeg deur artikel 19 van Wet 113 van 1993 en gewysig deur artikel 10 van Wet 140 van 1993, artikel 20 van Wet 21 van 1995, artikel 29 van Wet 31 van 2005, artikel 21 van Wet 8 van 2007, artikel 34 van Wet 35 van 2007 en artikel 18 van Wet 3 van 2008** 55

44. (1) Artikel 23D van die Inkomstebelastingwet, 1962, word hierby gewysig deur in die Engelse teks subartikel (2A) paragraaf (c) deur die volgende paragraaf te vervang:

“(c) the applicable percentage in paragraph 10 of the Eighth Schedule, of the capital gain of the lessee, licensee, **[sublessor]** sublessee, sublicensee, or connected person that arises as a result of the disposal.”

(2) Subsection (1) is deemed to have come into operation as from the commencement of years of assessment ending on or after 1 January 2009. 5

**Repeal of section 23E of Act 58 of 1962**

45. (1) The Income Tax Act, 1962, is hereby amended by the repeal of section 23E.  
(2) Subsection (1) comes into operation on 1 March 2013.

**Amendment of section 23H of Act 58 of 1962, as inserted by section 31 of Act 30 of 2000 and amended by section 29 of Act 59 of 2000, section 34 of Act 60 of 2001, section 36 of Act 35 of 2007, section 19 of Act 3 of 2008 and section 43 of Act 7 of 2010 10**

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

“(a) which is allowable as a deduction in terms of the provisions of section 11(a), (c), (d) or (w), section 11A[,], or section 11D(1) [, or **section 28(2)(a)**]; and” 15

(2) Subsection (1) comes into operation on 1 January 2013 and applies in respect of years of assessment commencing on or after that date.

**Amendment of section 23I of Act 58 of 1962, as substituted by section 38 of Act 60 of 2008 and amended by section 36 of Act 17 of 2009 and section 44 of Act 7 of 2010 20**

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

(a) by the substitution in subsection (1) for paragraph (a) of the definition of “**tainted intellectual property**” of the following paragraph:

“(a) which was the property of the end user or of a taxable person that is or was a connected person, as defined in section 31[(1A)](4), in relation to the end user;” 25

(b) by the substitution in subsection (1) for the words preceding subparagraph (i) of paragraph (d) of the definition of “**tainted intellectual property**” of the following words:

“which was discovered, devised, developed, created or produced by the end user of that property, or by a taxable person that is a connected person, as defined in section 31[(1A)](4), in relation to the end user, if that end user, together with any taxable person that is a connected person in relation to that end user, holds at least 20 per cent of the participation rights, as defined in section 9D, in a person by or to whom an amount is received or accrues—” 35

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

“(3) Notwithstanding any provision of subsection (2) to the contrary, an amount equal to—

(a) one third of any expenditure contemplated in subsection (2) [shall] must be allowed to be deducted if withholding tax on royalties contemplated in [section 35] Part IVA is payable in respect of that amount at a rate of [at least] 10 per cent; or 40

(b) one half of any expenditure contemplated in subsection (2) must be allowed to be deducted if withholding tax on royalties contemplated in Part IVA is payable in respect of that amount at a rate of 15 per cent.” 45

(2) Paragraphs (a) and (b) of subsection (1) are deemed to have come into operation on 1 April 2012 and apply in respect of years of assessment commencing on or after that date. 50

(3) Paragraph (c) of subsection (1) comes into operation on 1 July 2013 and applies in respect of amounts received or accrued to the extent that those amounts constitute amounts that are paid or that become payable on or after that date.

“(c) the applicable percentage in paragraph 10 of the Eighth Schedule, of the capital gain of the lessee, licensee, [sublessor] sublessee, sublicensee, or connected person that arises as a result of the disposal.”.

(2) Subartikel (1) word geag in werking te getree het vanaf die aanvang van jare van aanslag wat op of na 1 Januarie 2009 eindig. 5

#### Herroeping van artikel 23E van Wet 58 van 1962

45. (1) Die Inkomstebelastingwet, 1962, word hierby gewysig deur artikel 23E te herroep.

(2) Subartikel (1) tree op 1 Maart 2013 in werking.

#### Wysiging van artikel 23H van Wet 58 van 1962, soos ingevoeg deur artikel 31 van Wet 30 van 2000 en gewysig deur artikel 29 van Wet 59 van 2000, artikel 34 van Wet 60 van 2001, artikel 36 van Wet 35 van 2007, artikel 19 van Wet 3 van 2008 en artikel 43 van Wet 7 van 2010

46. (1) Artikel 23H van die Inkomstebelastingwet, 1962, word hierby gewysig deur in subartikel (1) paragraaf (a) deur die volgende paragraaf te vervang: 15

“(a) wat ingevolge die bepalings van artikel 11(a), (c), (d) of (w), artikel 11A[, of artikel 11D(1)[, of artikel 28(2)(a)] as ’n aftrekking toelaatbaar is; en”.

(2) Subartikel (1) tree op 1 Januarie 2013 in werking en is van toepassing ten opsigte van jare van aanslag wat op of na daardie datum begin.

#### Wysiging van artikel 23I van Wet 58 van 1962, soos vervang deur artikel 38 van Wet 60 van 2008 en gewysig deur artikel 36 van Wet 17 van 2009 en artikel 44 van Wet 7 van 2010

47. (1) Artikel 23I van die Inkomstebelastingwet, 1962, word hierby gewysig—

(a) deur in subartikel (1) paragraaf (a) van die omskrywing van “**besmette immateriële goedere**” deur die volgende paragraaf te vervang: 25

“(a) wat die eiendom was van die eindgebruiker of van ’n belasbare persoon wat ’n verbonde persoon, soos in artikel 31[(1A)](4) omskryf, met betrekking tot die eindgebruiker is of was;”;

(b) deur in subartikel (1) die woorde wat subparagraaf (i) van paragraaf (d) van die omskrywing van “**besmette immateriële goedere**” voorafgaan deur die volgende woorde te vervang: 30

“wat ontdek, ontwerp, ontwikkel, geskep of vervaardig is deur die eindgebruiker van daardie eiendom, of deur ’n belasbare persoon wat ’n verbonde persoon is, soos in artikel 31[(1A)](4) omskryf, met betrekking tot die eindgebruiker, indien daardie eindgebruiker, tesame met enige belasbare persoon wat ’n verbonde persoon met betrekking tot daardie eindgebruiker is, minstens 20 persent van die deelnemende regte, soos in artikel 9D omskryf, hou in ’n persoon wat ’n bedrag verkry of waaraan ’n bedrag toeval—”; en 35

(c) deur subartikel (3) deur die volgende subartikel te vervang: 40

“(3) Ondanks enige andersluidende bepaling van subartikel (2) word ’n bedrag gelyk aan—

(a) een-derde van enige uitgawes beoog in subartikel (2) toegelaat om afgetrek te word indien [belasting] terughoudingsbelasting op tantième beoog in [artikel 35] Deel IVA ten opsigte van daardie bedrag teen ’n koers van [minstens] 10 persent betaalbaar is; of 45

(b) een-helfte van enige uitgawes beoog in subartikel (2) toegelaat om afgetrek te word indien terughoudingsbelasting op tantième beoog in Deel IVA ten opsigte van daardie bedrag teen ’n koers van 10 persent betaalbaar is.”. 50

(2) Paragrafe (a) en (b) van subartikel (1) word geag op 1 April 2012 in werking te getree het en is van toepassing ten opsigte van jare van aanslag wat op of na daardie datum begin.

(3) Paragraaf (c) van subartikel (1) tree op 1 Julie 2013 in werking en is van toepassing ten opsigte van bedrae ontvang of toegeval namate daardie bedrae bedrae uitmaak wat op of na daardie datum betaal word of betaalbaar word. 55

**Repeal of section 23J of Act 58 of 1962**

48. (1) The Income Tax Act, 1962, is hereby amended by the repeal of section 23J.

(2) Subsection (1) comes into operation on 1 January 2013 and applies in respect of depreciable assets acquired by a taxpayer on or after that date.

**Amendment of section 23K of Act 58 of 1962, as inserted by section 49 of Act 24 of 2011 and amended by section 50 of Act 24 of 2011** 5

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

- (a) by the substitution for the heading of the following heading:  
“**Limitation of deductions in respect of reorganisation and acquisition transactions**”; 10
- (b) by the deletion in subsection (1) of the word “or” at the end of paragraph (a) of the definition of “acquiring company”;
- (c) by the addition in subsection (1) of the word “or” at the end of paragraph (b) of the definition of “acquiring company”;
- (d) by the addition in subsection (1) in the definition of “acquiring company” of the following paragraph: 15  
“(c) a company that acquires an equity share in another company in terms of an acquisition transaction;”;
- (e) by the insertion of the following definition after the definition of “acquiring company”: 20  
“**‘acquisition transaction’** means an acquisition transaction as defined in section 24O(1) to which section 24O applies;”;
- (f) by the deletion in subsection (1) of the definition of “**debt instrument**”;
- (g) by the substitution for subsection (2) of the following subsection: 25  
“(2) Subject to subsections (3) and (9), no deduction is allowed in respect of any amount of interest incurred by an acquiring company in terms of—  
(a) a debt [**instrument**] if that debt [**instrument**] was issued, assumed or used directly or indirectly— 30  
[(a)](i) for the purpose of procuring, enabling, facilitating or funding the acquisition by that acquiring company of any asset in terms of a reorganisation transaction; or  
[(b)](ii) in substitution for any debt [**instrument**] issued, assumed or used as contemplated in [paragraph (a)] subparagraph (i); or 35  
(b) an instrument as defined in section 24J(1) that constitutes a debt if that debt was issued, assumed or used—  
(i) for the purpose of financing the acquisition of an equity share in a company in terms of an acquisition transaction; or 40  
(ii) in substitution for any other debt issued, assumed or used as contemplated in subparagraph (i).”;
- (h) by the substitution in subsection (4)(a) for subparagraphs (i) and (ii) of the following subparagraphs: 45  
“(i) the amount of interest incurred as contemplated in subsection (2) by an acquiring company in terms of a debt [**instrument**] contemplated in that subsection; and  
(ii) all amounts of interest incurred, received or accrued in respect of all [**debt instruments**] debts issued, assumed or used directly or indirectly to fund a debt [**instrument**] in respect of which any amount of interest is incurred by an acquiring company as 50 contemplated in subsection (2); and”;
- (i) by the substitution in subsection (4)(b) for the words following subparagraph (ii) and preceding the proviso of the following words: 55  
“any debt [**instrument**] contemplated in subparagraphs (i) and (ii) of paragraph (a)”;

### Herroeping van artikel 23J van Wet 58 van 1962

48. (1) Die Inkomstebelastingwet, 1962, word hierby gewysig deur artikel 23J te herroep.

(2) Subartikel (1) tree op 1 Januarie 2013 in werking en is van toepassing ten opsigte van slytasiebatas op of na daardie datum deur 'n belastingpligtige verkry.

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### Wysiging van artikel 23K van Wet 58 van 1962, soos ingevoeg deur artikel 49 van Wet 24 van 2001 en gewysig deur artikel 50 van Wet 24 van 2011

49. (1) Artikel 23K van die Inkomstebelastingwet, 1962, word hierby gewysig—

- (a) deur die titel deur die volgende titel te vervang:  
“**Beperking van aftrekkings ten opsigte van [reorganisasietransaksies] reorganisasie- en verkrygingstransaksies**”;
- (b) deur in subartikel (1) die woord “of” aan die einde van paragraaf (a) van die omskrywing van “**verkrygende maatskappy**” te skrap;
- (c) deur in subartikel (1) die woord “of” aan die einde van paragraaf (b) van die omskrywing van “**verkrygende maatskappy**” by te voeg;
- (d) deur in subartikel (1) na paragraaf (b) van die omskrywing van “**verkrygende maatskappy**” die volgende paragraaf in te voeg:  
“(c) ’n maatskappy wat ’n ekwiteitsaandeel in ’n ander maatskappy ingevolge ’n verkrygingstransaksie verkry;”;
- (e) deur die volgende omskrywing na die omskrywing van “**verkrygende maatskappy**” in te voeg:  
““verkrygingstransaksie” ’n verkrygingstransaksie soos in artikel 24O(1) omskryf waarop artikel 24O van toepassing is;”;
- (f) deur in subartikel (1) die omskrywing van “skuldinstrument” te skrap;
- (g) deur subartikel (2) deur die volgende subartikel te vervang:  
“(2) Behoudens subartikels (3) en (9) word geen aftrekking toegelaat nie ten opsigte van enige bedrag van rente aangegaan deur ’n verkrygende maatskappy ingevolge—  
(a) ’n [skuldinstrument] skuld indien daardie [skuldinstrument] skuld direk of indirek uitgereik, aangeneem of gebruik is—  
[(a)](i) ten einde die verkryging deur daardie verkrygende maatskappy van enige bate ingevolge ’n reorganisasietransaksie te bewerkstellig, in staat te stel, te fasiliteer of te befonds; of  
[(b)](ii) ter vervanging van enige [skuldinstrument] skuld uitgereik, aangeneem of gebruik soos in [paragraaf (a)] subparagraaf (i) beoog; of  
(b) ’n instrument soos in artikel 24J(1) omskryf wat ’n skuld uitmaak indien daardie skuld uitgereik, aangeneem of gebruik is—  
(i) met die doel om die verkryging van ’n ekwiteitsaandeel in ’n maatskappy ingevolge ’n verkrygingstransaksie te befonds; of  
(ii) ter vervanging van enige ander skuld uitgereik, aangeneem of gebruik soos in subparagraaf (i) beoog.”;
- (h) deur in subartikel (4)(a) subparagrafe (i) en (ii) deur die volgende subparagrafe te vervang:  
“(i) die bedrag van rente aangegaan soos in subartikel (2) beoog deur ’n verkrygende maatskappy ingevolge ’n [skuldinstrument] skuld beoog in daardie subartikel; en  
(ii) alle bedrae van rente aangegaan, ontvang of toegeval ten opsigte van alle [skuldinstrumente] skulde direk of indirek uitgereik, aangeneem of gebruik vir die befondsing van ’n [skuldinstrument] skuld ten opsigte waarvan enige bedrag van rente deur ’n verkrygende maatskappy aangegaan word soos in subartikel (2) beoog; en”;
- (i) deur in subartikel (4)(b) die woorde wat op subparagraaf (ii) volg en wat die voorbehoudsbepaling voorafgaan deur die volgende woorde te vervang:  
“enige [skuldinstrument] skuld beoog in subparagrafe (i) en (ii) van paragraaf (a) nie”;

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- (j) by the substitution for subsection (6) of the following subsection:  
“(6) A directive issued by the Commissioner in terms of subsection (3) in respect of an amount of interest incurred in terms of a debt instrument must be effective from—  
(a) the date on which that debt instrument was issued or assumed if the application for that directive is made—  
(i) on or before 31 December 2011, where that debt instrument was issued or assumed before 25 October 2011; or  
(ii) within 60 days of the date of issue of that debt instrument, where that debt instrument is issued or assumed on or after 25 October 2011; or  
(b) the date on which the application for that directive is made if—  
(i) that debt instrument was issued or assumed before 25 October 2011 and that application is made after 31 December 2011; or  
(ii) that debt instrument is issued or assumed on or after 25 October 2011 and that application is made later than 60 days after the date of issue or assumption of that debt instrument.”;
- (k) by the substitution for subsection (6) of the following subsection:  
“(6) A directive issued by the Commissioner in terms of subsection (3) in respect of an amount of interest incurred in terms of a debt **[instrument]** must be effective from—  
(a) the date on which that debt **[instrument]** was issued or assumed if the application for that directive is made—  
(i) on or before 31 December 2011, where that debt **[instrument]** was issued or assumed before 25 October 2011; or  
(ii) within 60 days of the date of issue of that debt **[instrument]**, where that debt **[instrument]** is issued or assumed on or after 25 October 2011; or  
(b) the date on which the application for that directive is made if—  
(i) that debt **[instrument]** was issued or assumed before 25 October 2011 and that application is made after 31 December 2011; or  
(ii) that debt **[instrument]** is issued or assumed on or after 25 October 2011 and that application is made later than 60 days after the date of issue or assumption of that debt **[instrument]**.”;
- (l) by the substitution in subsection (7) for the words preceding paragraph (a) of the following words:  
“The Minister must make regulations that prescribe criteria that the Commissioner must, in terms of subsection (4)(b), have regard to in considering any application made in terms of subsection (3) by an acquiring company in respect of any amount of interest incurred by such an acquiring company in terms of any debt **[instrument]**, which criteria must relate to—”;
- (m) by the substitution in subsection (7) for paragraph (a) of the following paragraph:  
“(a) all amounts of debt in relation to total equity of such an acquiring company;”;
- (n) by the substitution in subsection (7) for paragraphs (c) and (d) of the following paragraphs:  
“(c) terms of such a debt **[instrument]**, including the economic effect of such a debt **[instrument]**, having regard to any debt or equity features of such a debt **[instrument]**;  
(d) the direct or indirect holding of shares in such an acquiring company by any holder (or any company that forms part of the same

- (j) deur subartikel (6) deur die volgende subartikel te vervang:  
“(6) ’n Aanwysing uitgereik deur die Kommissaris ingevolge subartikel (3) ten opsigte van enige bedrag van rente aangegaan ingevolge ’n skuldinstrument tree in werking vanaf—
- (a) die datum waarop daardie skuldinstrument uitgereik of aangeneem is indien die aansoek vir daardie aanwysing gemaak is—
    - (i) op of voor 31 Desember 2011, waar daardie skuldinstrument voor 25 Oktober 2011 uitgereik of aangeneem is; of
    - (ii) binne 60 dae vanaf die datum van uitreiking van daardie skuldinstrument, waar daardie skuldinstrument op of na 25 Oktober 2011 uitgereik of aangeneem is; of
  - (b) die datum waarop die aansoek om daardie aanwysing gemaak is indien—
    - (i) daardie skuldinstrument voor 25 Oktober 2011 uitgereik of aangeneem is en daardie aansoek na 31 Desember 2011 gemaak word; of
    - (ii) daardie skuldinstrument op of na 25 Oktober 2011 uitgereik of aangeneem word en daardie aansoek gemaak word meer as 60 dae na die datum van uitreiking of aanname van daardie skuldinstrument.”;
- (k) deur subartikel (6) deur die volgende subartikel te vervang:  
“(6) ’n Aanwysing uitgereik deur die Kommissaris ingevolge subartikel (3) ten opsigte van ’n bedrag van rente aangegaan ingevolge ’n **[skuldinstrument]** skuld tree in werking vanaf—
- (a) die datum waarop daardie **[skuldinstrument]** skuld uitgereik of aangeneem is indien die aansoek vir daardie aanwysing gemaak is—
    - (i) op of voor 31 Desember 2011, waar daardie **[skuldinstrument]** skuld voor 25 Oktober 2011 uitgereik of aangeneem is; of
    - (ii) binne 60 dae vanaf die datum van uitreiking van daardie **[skuldinstrument]** skuld, waar daardie **[skuldinstrument]** skuld op of na 25 Oktober 2011 uitgereik of aangeneem is; of
  - (b) die datum waarop die aansoek om daardie aanwysing gemaak is indien—
    - (i) daardie **[skuldinstrument]** skuld voor 25 Oktober 2011 uitgereik of aangeneem is en daardie aansoek na 31 Desember 2011 gemaak word; of
    - (ii) daardie **[skuldinstrument]** skuld op of na 25 Oktober 2011 uitgereik of aangeneem word en daardie aansoek gemaak word meer as 60 dae na die datum van uitreiking of aanname van daardie **[skuldinstrument]** skuld.”;
- (l) deur in subartikel (7) die woorde wat paragraaf (a) voorafgaan deur die volgende woorde te vervang:  
“Die Minister moet regulasies uitvaardig wat maatstawwe voorskryf wat die Kommissaris, ingevolge subartikel (4)(b), in ag moet neem by die oorweging van enige aansoek ingevolge subartikel (3) deur ’n verkrygende maatskappy gedoen ten opsigte van enige bedrag van rente aangegaan deur so ’n verkrygende maatskappy ingevolge enige **[skuldinstrument]** skuld, welke maatstawwe betrekking moet hê op—”;
- (m) deur in subartikel (7) paragraaf (a) deur die volgende paragraaf te vervang:  
“(a) alle bedrae van skuld met betrekking tot totale ekwiteit van so ’n verkrygende maatskappy;” en
- (n) deur in subartikel (7) paragrawe (c) en (d) deur die volgende paragrawe te vervang:  
“(c) bedinge van so ’n **[skuldinstrument]** skuld, insluitend die ekonomiese uitwerking van so ’n **[skuldinstrument]** skuld, met inagneming van enige skuld- of ekwiteitskenmerke van so ’n **[skuldinstrument]** skuld;  
(d) die direkte of indirekte hou van aandele in so ’n verkrygende maatskappy deur enige houer (of enige maatskappy wat deel

group of companies as the holder) of such a debt **[instrument]**; and”.

(2) Paragraphs (a), (b), (c), (d), (e) and (g) of subsection (1) come into operation on 1 January 2013 and apply in respect of acquisition transactions entered into on or after that date. 5

(3) Paragraphs (f), (h), (i), (k), (l), (m) and (n) of subsection (1) come into operation on 1 January 2013.

(4) Paragraph (j) of subsection (1) is deemed to have come into operation on 3 June 2011 and applies in respect of any amount of interest incurred in terms of a debt instrument where that debt instrument was issued or used for the purpose of procuring, enabling, facilitating or funding the acquisition by an acquiring company of an asset in terms of a reorganisation transaction entered into on or after that date. 10

#### Insertion of section 23L in Act 58 of 1962

50. (1) The Income Tax Act, 1962, is hereby amended by the insertion after section 23K of the following section: 15

#### “Investment policies disguised as short-term insurance policies

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

‘investment policy’ means a policy which is not an insurance contract as defined in International Financial Reporting Standard 4 of IFRS;

‘policy’ means a policy of insurance or reinsurance other than a long-term policy as defined in section 1 of the Long-term Insurance Act, 1998 (Act No. 52 of 1998); 20

‘policy benefits’ means any amount, in cash or otherwise, received or accrued under a policy;

‘premium’ means the consideration given or to be given in return for an undertaking to provide policy benefits. 25

(2) No deduction is allowed in respect of any premium incurred by a person in terms of an investment policy.

(3) Where policy benefits are received by or accrue to a person in terms of an investment policy during a year of assessment, there must be included in the gross income of that person an amount equal to the aggregate amount of all policy benefits received by or accrued to that person during that year of assessment and previous years of assessment in respect of that investment policy, less— 30

(a) the aggregate amount of premiums incurred in terms of that investment policy that were not deductible in terms of subsection (2); and 35

(b) the aggregate amount of policy benefits in respect of that investment policy that were included in the gross income of that person during previous years of assessment.”. 40

(2) Subsection (1) comes into operation on 1 January 2013 and applies in respect of premiums incurred and policy benefits received or accrued on or after that date.

#### Amendment of section 24B of Act 58 of 1962, as inserted by section 9 of Act 101 of 1978 and amended by section 13 of Act 104 of 1979, section 20 of Act 113 of 1993, section 32 of Act 30 of 2000, section 22 of Act 32 of 2004, section 39 of Act 35 of 2007, section 39 of act 60 of 2008 and section 37 of Act 17 of 2009 45

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

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

“**Transactions where [assets] shares are acquired by way of issue in exchange for shares issued**”; 50

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

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

“(2) **[If] Notwithstanding section 40CA, if a company acquires any share which is issued to that company directly or indirectly in exchange for the issue of shares by that company or any connected person in** 55



uitmaak van dieselfde groep van maatskappye as die houer) van so 'n [skuldinstrument] skuld; en”.

(2) Paragrafe (a), (b), (c), (d), (e) en (g) van subartikel (1) tree op 1 Januarie 2013 in werking en is van toepassing ten opsigte van verkrygingstransaksies op of na daardie datum aangegaan. 5

(3) Paragrafe (f), (h), (i), (k), (l), (m) en (n) van subartikel (1) tree op 1 Januarie 2013 in werking.

(4) Paragraaf (j) van subartikel (1) word geag op 3 Junie 2011 in werking te getree het en is van toepassing ten opsigte van enige bedrag van rente aangegaan ingevolge 'n skuldinstrument waar daardie skuldinstrument uitgereik of gebruik is met die doel om die verkryging van 'n bate deur 'n verkrygende maatskappy te bewerkstellig, in staat te stel, te fasiliteer of te befonds ingevolge 'n reorganisasietransaksie op of na daardie datum aangegaan. 10

### Invoeging van artikel 23L in Wet 58 van 1962

50. (1) Die Inkomstebelastingwet, 1962, word hierby gewysig deur na artikel 23K die volgende artikel in te voeg: 15

#### “Beleggingspolis se verbloem as korttermynversekeringspolis se

**23L.** (1) By die toepassing van hierdie artikel beteken—

‘beleggingspolis’ 'n polis wat nie 'n ‘insurance contract’ soos omskryf in die ‘International Financial Reporting Standard 4’ van IFRS is nie; 20  
‘polis’ 'n polis van versekering of herversekering buiten 'n langtermynpolis soos omskryf in artikel 1 van die Langtermynversekeringswet, 1998 (Wet No. 52 van 1998);

‘polisvoordele’ enige bedrag, in kontant of andersins, ontvang of toegeval kragtens 'n polis; 25

‘premie’ die vergoeding gegee of gegee te word as teenprestasie vir 'n onderneming om polisvoordele te voorsien.

(2) Geen aftrekking word toegelaat ten opsigte van enige premie aangegaan deur 'n persoon ingevolge 'n beleggingspolis nie.

(3) Waar polisvoordele ontvang word deur of toeval aan 'n persoon ingevolge 'n beleggingspolis gedurende 'n jaar van aanslag, word by die bruto inkomste van daardie persoon ingesluit 'n bedrag gelyk aan die totale bedrag van alle polisvoordele ontvang deur of toegeval aan daardie persoon gedurende daardie jaar van aanslag en vorige jare van aanslag ten opsigte van daardie beleggingspolis, minus— 35

(a) die totale bedrag van premies aangegaan ingevolge daardie beleggingspolis wat nie ingevolge subartikel (2) aftrekbaar was nie; en

(b) die totale bedrag van polisvoordele ten opsigte van daardie beleggingspolis wat by die bruto inkomste van daardie persoon ingesluit was gedurende vorige jare van aanslag.”. 40

(2) Subartikel (1) tree op 1 Januarie 2013 in werking en is van toepassing ten opsigte van premies aangegaan en polisvoordele ontvang of toegeval op of na daardie datum.

**Wysiging van artikel 24B van Wet 58 van 1962, soos ingevoeg deur artikel 9 van Wet 101 van 1978 en gewysig deur artikel 13 van Wet 104 van 1979, artikel 20 van Wet 113 van 1993, artikel 32 van Wet 30 van 2000, artikel 22 van Wet 32 van 2004, artikel 39 van Wet 35 van 2007, artikel 39 van Wet 60 van 2008 en artikel 37 van Wet 17 van 2009** 45

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

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

“**Transaksies waar [bates] aandele verkry word by wyse van uitreiking in ruil vir [uitreik van] aandele uitgereik**”; 50

(b) deur subartikel (1) te skrap; en

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

“(2) [Indien] Ondanks artikel 40CA, indien 'n maatskappy enige aandeel verkry wat aan daardie maatskappy uitgereik is regstreeks of onregstreeks in ruil vir die uitreik van aandele deur daardie maatskappy of enige verbonde persoon met betrekking tot daardie maatskappy, word 55

relation to that company, that company is deemed not to have incurred any expenditure in respect of the acquisition of that share so acquired.”.

(2) Subsection (1) comes into operation on 1 January 2013 and applies in respect of acquisitions made on or after that date.

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

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**52.** (1) The Income Tax Act, 1962, is hereby amended by the insertion after section 24B of the following section:

**“Transactions where assets are acquired as consideration for shares issued**

**24BA.** (1) For the purposes of this section, ‘**asset**’ means an asset as defined in paragraph 1 of the Eighth Schedule or a number of such assets. 10

(2) Subject to subsection (4), this section applies where—

- (a) in terms of any transaction, a company, for consideration, acquires an asset from a person in exchange for the issue by that company to that person of shares in that company; and 15
- (b) the consideration contemplated in paragraph (a) is (before taking into account any other transaction, operation, scheme, agreement or understanding that directly or indirectly affects that consideration) different from the consideration that would have applied had that asset been acquired in exchange for the issue of those shares in terms of a transaction between independent persons dealing at arm’s length. 20

(3) Notwithstanding paragraph 11(2)(b) of the Eighth Schedule and subject to section 24B, where a company acquires an asset from a person in exchange for the issue by that company to that person of shares in that company as contemplated in subsection (2) and the market value of— 25

- (a) that asset immediately before that disposal exceeds the market value of the shares immediately after that issue, the amount of the excess must—
  - (i) be deemed to be a capital gain in respect of a disposal by that company of the shares; and 30
  - (ii) where those shares are acquired by that person as—
    - (aa) a capital asset, be applied to reduce any amount of expenditure incurred by that person in acquiring those shares that is allowable in terms of paragraph 20 of the Eighth Schedule; or 35
    - (bb) trading stock, be applied to reduce any amount that must be taken into account by the person in respect of the shares in terms of section 11(a) or 22(1) or (2); or 40
- (b) the shares immediately after that issue exceeds the market value of that asset immediately before the disposal, the amount of the excess must, for the purposes of Part VIII, be deemed to be a dividend as defined in section 64D that—
  - (i) consists of a distribution of an asset *in specie*; and 45
  - (ii) is paid by the company on the date of that issue.

(4) This section must not apply where a company acquires an asset from a person as contemplated in subsection (2)(a) if that company and that person form part of the same group of companies.”. 45

(2) Subsection (1) comes into operation on 1 January 2013 and applies in respect of transactions entered into on or after that date.

daardie maatskappy geag geen onkoste ten opsigte van die verkryging van daardie aandeel aldus verkry, aan te gegaan het nie.”.

(2) Subartikel (1) tree op 1 Januarie 2013 in werking en is van toepassing ten opsigte van verkrygings op of na daardie datum gemaak.

**Invoeging van artikel 24BA in Wet 58 van 1962**

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**52.** (1) Die Inkomstebelastingwet, 1962, word hierby gewysig deur na 24B die volgende artikel in te voeg:

**“Transaksies waar bates verkry word as vergoeding vir aandele uitgereik**

**24BA.** (1) By die toepassing van hierdie artikel beteken ‘bate’ ’n bate soos omskryf in paragraaf 1 van die Agtste Bylae of ’n aantal sodanige bates. 10

(2) Behoudens subartikel (4) is hierdie artikel van toepassing waar—

(a) ingevolge enige transaksie, ’n maatskappy, teen vergoeding, ’n bate verkry van ’n persoon in ruil vir die uitreiking deur daardie maatskappy aan daardie persoon van aandele in daardie maatskappy; en 15

(b) die vergoeding beoog in paragraaf (a) (voor inagneming van enige ander transaksie, handeling, skema, ooreenkoms of verstandhouding wat regstreeks of onregstreeks daardie vergoeding raak) anders is as die vergoeding wat van toepassing sou gewees het indien daardie bate verkry is in ruil vir die uitreik van daardie aandele ingevolge ’n transaksie tussen onafhanklike persone wat op uiterste voorwaardes beding. 20

(3) Ondanks paragraaf 11(2)(b) van die Agtste Bylae en behoudens artikel 24B, waar ’n maatskappy ’n bate van ’n persoon verkry in ruil vir die uitreiking deur daardie maatskappy aan daardie persoon van aandele in daardie maatskappy soos beoog in subartikel (2) en die markwaarde van— 25

(a) daardie bate onmiddellik voor daardie beskikking die markwaarde oorskry van die aandele onmiddellik na daardie uitreiking, word die bedrag van die oorskot— 30

(i) geag ’n kapitaalwins ten opsigte van ’n beskikking deur daardie maatskappy van die aandele te wees; en

(ii) waar daardie aandele verkry word deur daardie persoon as—  
(aa) ’n kapitaalbate, toegepas om enige bedrag te verminder van uitgawes aangegaan deur daardie persoon in die verkryging van daardie aandele wat ingevolge paragraaf 20 van die Agtste Bylae toelaatbaar is; of 35

(bb) handelsvoorraad, toegepas om enige bedrag te verminder wat deur die persoon ten opsigte van die aandele ingevolge artikel 11(a) of 22(1) of (2) in berekening gebring moet word; of 40

(b) die aandele onmiddellik na daardie uitreiking die markwaarde oorskry van daardie bate onmiddellik voor die beskikking, word die bedrag van die oorskot by die toepassing van Deel VIII geag ’n dividend soos omskryf in artikel 64D te wees wat— 45

(aa) bestaan uit ’n uitkering van ’n bate *in specie*; en

(bb) betaal word deur die maatskappy op die datum van daardie uitreiking. 40

(4) Hierdie artikel is nie van toepassing nie waar ’n maatskappy ’n bate verkry van ’n persoon soos beoog in subartikel (2)(a) indien daardie maatskappy en daardie persoon deel van dieselfde groep van maatskappye uitmaak.”. 50

(2) Subartikel (1) tree op 1 Januarie 2013 in werking en is van toepassing ten opsigte van transaksies op of na daardie datum aangegaan. 55

**Amendment of section 24I of Act 58 of 1962, as inserted by section 21 of Act 90 of 1988 and amended by section 21 of Act 113 of 1993, section 11 of Act 140 of 1993, section 18 of Act 21 of 1994, section 13 of Act 36 of 1996, section 18 of Act 28 of 1997, section 35 of Act 30 of 1998, section 26 of Act 53 of 1999, section 31 of Act 59 of 2000, section 36 of Act 60 of 2001, section 27 of Act 74 of 2002, section 42 of Act 45 of 2003, section 23 of Act 32 of 2004, section 33 of Act 31 of 2005, section 26 of Act 9 of 2006, section 19 of Act 20 of 2006, section 23 of Act 8 of 2007, section 40 of Act 35 of 2007, section 20 of Act 3 of 2008, section 47 of Act 7 of 2010 and section 52 of Act 24 of 2011**

53. (1) Section 24I of the Income Tax Act, 1962, is hereby amended— 10

(a) by the substitution in subsection (1) for the definition of “**affected contract**” of the following definition:

“**‘affected contract’** means any foreign currency option contract or forward exchange contract [, **as the case may be,**] which has been entered into by any person during any year of assessment [,] to serve as a hedge in respect of a [**loan, advance or**] debt, where— 15

(a) [**such loan or advance has not yet been obtained or granted, as the case may be, by such person, or**] such debt has not yet been incurred by, or the amount payable in respect of such debt has not yet accrued to, such person [, **as the case may be,**] during such year of assessment; and 20

(b) such [**loan, advance or**] debt—

(i) is to be utilised by such person to acquire any asset or to finance any expense; or

(ii) will arise from the sale of any asset or the supply of any services, 25

in the ordinary course of [**his**] the person’s trade in terms of an agreement entered into by such person prior to the end of such year of assessment;”;

(b) by the substitution in subsection (1) for paragraph (b) of the definition of “**exchange item**” of the following paragraph: 30

“(b) owing by or to that person in respect of a [**loan or advance or a**] debt incurred by or payable to such person;”;

(c) by the substitution in subsection (1) for paragraph (a) of the definition of “**realised**” of the following paragraph: 35

“(a) a [**loan or advance or**] debt in any foreign currency, when and to the extent to which payment is received or made in respect of such [**loan, advance or**] debt, or when and to the extent to which such [**loan, advance or**] debt is settled or disposed of in any other manner;”;

(d) by the substitution in subsection (1) for the words preceding subparagraph (i) of paragraph (a) of the definition of “**ruling exchange rate**” of the following words: 40

“a [**loan or advance or**] debt in a foreign currency on—”;

(e) by the substitution in subsection (1) for the proviso to paragraph (a) of the definition of “**ruling exchange rate**” of the following proviso: 45

“: Provided that where the rate prescribed in respect of a [**loan or advance or**] debt in terms of this definition is the spot rate on transaction date or the spot rate on the date on which such [**loan or advance or**] debt is realised, and any consideration paid or [**payable**] incurred or received or [**receivable**] accrued in respect of the acquisition or disposal of such [**loan or advance or**] debt was determined by applying a rate other than such spot rate on transaction date or date realised, such spot rate shall be deemed to be the acquisition rate or disposal rate, as the case may be;”;

(f) by the deletion in subsection (1) of paragraphs (a) and (c) of the definition of “**transaction date**”; 55

Wysiging van artikel 24I van Wet 58 van 1962, soos ingevoeg deur artikel 21 van Wet 90 van 1988 en gewysig deur artikel 21 van Wet 113 van 1993, artikel 11 van Wet 140 van 1993, artikel 18 van Wet 21 van 1994, artikel 13 van Wet 36 van 1996, artikel 18 van Wet 28 van 1997, artikel 35 van Wet 30 van 1998, artikel 26 van Wet 53 van 1999, artikel 31 van Wet 59 van 2000, artikel 36 van Wet 60 van 2001, artikel 27 van Wet 74 van 2002, artikel 42 van Wet 45 van 2003, artikel 23 van Wet 32 van 2004, artikel 33 van Wet 31 van 2005, artikel 26 van Wet 9 van 2006, artikel 19 van Wet 20 van 2006, artikel 23 van Wet 8 van 2007, artikel 40 van Wet 35 van 2007, artikel 20 van Wet 3 van 2008, artikel 47 van Wet 7 van 2010 en artikel 52 van Wet 24 van 2011

53. (1) Artikel 24I van die Inkomstebelastingwet, 1962, word hierby gewysig—
- (a) deur in subartikel (1) die omskrywing van “**geaffekteerde kontrak**” deur die volgende omskrywing te vervang:
- “**geaffekteerde kontrak**” ’n buitelandse valuta-opsiekontrak of valutatermyntontrak[, **na gelang van die geval,**] wat gedurende ’n jaar van aanslag deur ’n persoon aangegaan is om as dekking te dien ten opsigte van ’n [**lening, voorskot of**] skuld, waar—
- (a) [**bedoelde lening of voorskot nog nie deur bedoelde persoon verkry of toegestaan is nie, na gelang van die geval, of**] bedoelde skuld nog nie aangegaan is of die bedrag betaalbaar ten opsigte van bedoelde skuld nog nie aan bedoelde persoon toegeval het [**nie, na gelang van die geval,**] gedurende bedoelde jaar van aanslag nie; en
- (b) bedoelde [**lening, voorskot of**] skuld—
- (i) aangewend staan te word deur bedoelde persoon om ’n bate te verkry of om ’n uitgawe [**to**] te finansier; of
- (ii) sal voortspruit uit die verkoop van ’n bate of die lewering van [**die**] enige dienste, in die gewone loop van [**sy**] die persoon se besigheid ingevolge ’n ooreenkoms deur bedoelde persoon aangegaan voor die einde van bedoelde jaar van aanslag;”;
- (b) deur in subartikel (1) paragraaf (b) van die omskrywing van “**valuta-item**” deur die volgende paragraaf te vervang:
- “(b) deur of aan daardie persoon verskuldig ten opsigte van ’n [**lening of voorskot of ’n**] skuld aangegaan deur of betaalbaar aan daardie persoon;”;
- (c) deur in subartikel (1) paragraaf (a) van die omskrywing van “**gerealiseer**” deur die volgende paragraaf te vervang:
- “(a) ’n [**lening of voorskot of**] skuld in ’n buitelandse valuta is, wanneer en vir sover betaling ten opsigte van bedoelde [**lening, voorskot of**] skuld ontvang of gemaak is, of wanneer en vir sover bedoelde [**lening, voorskot of**] skuld op enige ander wyse vereffen of vervreem word;”;
- (d) deur in subartikel (1) die woorde wat subparagraaf (i) van paragraaf (a) van die omskrywing van “**heersende wisselkoers**” voorafgaan deur die volgende woorde te vervang:
- “’n [**lening of voorskot of**] skuld in buitelandse valuta is, op—”;
- (e) deur in subartikel (1) die voorbehoudsbepaling tot paragraaf (a) van die omskrywing van “**heersende wisselkoers**” deur die volgende voorbehoudsbepaling te vervang:
- “: Met dien verstande dat waar die koers wat ten opsigte van ’n [**lening of voorskot of**] skuld ingevolge hierdie omskrywing voorgeskryf die kontantkoers is op transaksiedatum of die kontantkoers is op die datum waarop bedoelde [**lening of voorskot of**] skuld gerealiseer is, en enige vergoeding ten opsigte van die verkryging of vervreemding van bedoelde [**lening of voorskot of**] skuld betaal of [**betaalbaar**] aangegaan of ontvang of [**ontvangbaar**] toegeval vasgestel is deur ’n koers toe te pas anders as bedoelde kontantkoers op transaksiedatum of datum gerealiseer, bedoelde kontantkoers geag word die verkrygingskoers of vervreemdingskoers, na gelang van die geval, te wees;”;
- (f) deur in subartikel (1) paragrafe (a) en (c) van die omskrywing van “**transaksiedatum**” te skrap;

- (g) by the substitution in subsection (3) for paragraph (a) of the following paragraph:  
“(a) any exchange difference in respect of an exchange item of or in relation to that person, subject to **[subsection]** subsections (10) and (10A)”;
- (h) by the substitution in subsection (7)(a) for the words preceding subparagraph (i) of the following words:  
“any exchange difference arising from a **[loan, advance or]** debt having been **[utilized]** utilised by a person in respect of—”;
- (i) by the substitution in subsection (7) for paragraphs (b) and (c) of the following paragraphs:  
“(b) any exchange difference arising from a forward exchange contract or a foreign currency option contract which has been entered into by a person contemplated in paragraph (a), to the extent to which such forward exchange contract or foreign currency option contract is entered into to serve as a hedge in respect of a **[loan or advance obtained or to be obtained or a]** debt incurred or to be incurred for the **[utilization]** utilisation thereof as contemplated in paragraph (a); and  
(c) any premium or other consideration paid or payable in respect of or in terms of a foreign currency option contract entered into or acquired by a person contemplated in paragraph (a), to the extent to which such foreign currency option contract is entered into or obtained in order to serve as a hedge in respect of a **[loan or advance obtained or to be obtained or a]** debt incurred or to be incurred for the **[utilization]** utilisation thereof as contemplated in paragraph (a),”;
- (j) by the substitution in the proviso to subsection (7) for paragraphs (a) and (b) of the following paragraphs:  
“(a) the **[loan, advance or]** debt to be **[obtained or]** incurred **[, as the case may be,]** as contemplated in paragraph (b) or (c) of this subsection will no longer be so **[obtained or]** incurred;  
(b) such **[loan, advance or]** debt has not been utilised as contemplated in paragraph (a); or”;
- (k) by the substitution in subsection (10) for the words preceding paragraph (a) of the following words:  
“Subject to **[the provisions of]** subsection (7A), no **[amount]** exchange difference arising during any year of assessment in respect of an exchange item shall in terms of this section be included in or deducted from the income of—”;
- (l) by the substitution for the proviso and the further proviso to subsection (10) of the following proviso and further provisos:  
“: Provided that **[where]** any exchange difference arising during any year of assessment in respect of an exchange item must be included or deducted if that exchange item is realised during [any] that year [of assessment], in which case the exchange difference in respect of that exchange item shall be determined by multiplying that exchange item by the difference between the ruling exchange rate on the date on which that exchange item is realised and the ruling exchange rate on transaction date, after taking into account any exchange difference included in or deducted from the income of that person in terms of this section in respect of that exchange item for all years of assessment during which the person was a party to the contractual provisions of the exchange item: Provided further that any **[exchange difference in respect of any]** forward exchange contract or foreign currency option contract contemplated in paragraph (d) shall be deemed to **[arise]** be realised when the relevant exchange item contemplated in paragraph (a), (b) or (c) is realised: Provided further that any exchange item contemplated in paragraph (a), (b) or (c) or any forward exchange contract or foreign currency option contract contemplated in paragraph (d) that is held and not realised before the last day of the last year of assessment of a person (that is the holder or issuer of that exchange item, forward exchange

- (g) deur in subartikel (3) paragraaf (a) deur die volgende paragraaf te vervang:  
“(a) enige valutaverskil ten opsigte van ’n valuta-item van of met betrekking tot daardie persoon, behoudens **[subartikel subartikels (10) en (10A); en**”;
- (h) deur in subartikel (7)(a) die woorde wat subparagraaf (i) voorafgaan deur die volgende woorde te vervang:  
“enige valutaverskil wat ontstaan uit ’n **[lening, voorskot of]** skuld wat deur ’n persoon aangewend word ten opsigte van—”;
- (i) deur in subartikel (7) paragrawe (b) en (c) deur die volgende paragrawe te vervang:  
“(b) enige valutaverskil wat ontstaan uit ’n valutatermykontrak of ’n buitelandse valuta-opsiekontrak wat deur ’n persoon beoog in paragraaf (a) aangegaan is vir sover bedoelde valutatermykontrak of buitelandse valuta-opsiekontrak aangegaan is om as dekking te dien ten opsigte van ’n **[lening of voorskot verkry of wat verkry staan te word of ’n]** skuld wat aangegaan is of aangegaan staan te word vir die aanwending daarvan soos beoog in paragraaf (a); en  
(c) enige premie of ander vergoeding betaal of betaalbaar ten opsigte van of ingevolge ’n buitelandse valuta-opsiekontrak aangegaan of verkry deur ’n persoon beoog in paragraaf (a), vir sover bedoelde buitelandse valuta-opsiekontrak aangegaan of verkry is om as dekking te dien ten opsigte van ’n **[lening of voorskot verkry of wat verkry staan te word of]** ’n skuld wat aangegaan is of aangegaan staan te word vir die aanwending daarvan soos in paragraaf (a) beoog.”;
- (j) deur in subartikel (7) paragrawe (a) en (b) van die voorbehoudsbepaling deur die volgende paragrawe te vervang:  
“(a) die **[lening, voorskot of]** skuld **[verkry of]** aangegaan staan te word, **[na gelang van die geval,]** soos in paragraaf (b) of (c) van hierdie subartikel beoog, nie meer aldus **[verkry of]** aangegaan sal word nie;  
(b) bedoelde **[lening, voorskot of]** skuld nie aangewend is soos beoog in paragraaf (a) nie; of”;
- (k) deur in subartikel (10) die woorde wat paragraaf (a) voorafgaan deur die volgende woorde te vervang:  
“Behoudens **[die bepaling van]** subartikel (7A), word geen **[bedrag]** valutaverskil wat gedurende enige jaar van aanslag ten opsigte van ’n valuta-item voorspruit kragtens hierdie artikel ingesluit in of afgetrek van die inkomste van—”;
- (l) deur die voorbehoudsbepaling en die verdere voorbehoudsbepaling tot subartikel (10) deur die volgende voorbehoudsbepaling en verdere voorbehoudsbepalings te vervang:  
“: Met dien verstande dat **[waar]** enige valutaverskil wat gedurende enige jaar van aanslag ten opsigte van ’n valuta-item voortspruit, ingesluit of afgetrek moet word indien daardie valuta-item gedurende [enige] daardie jaar [van aanslag] gerealiseer word, in welke geval die valutaverskil ten opsigte van daardie valuta-item vasgestel word deur daardie valuta-item te vermenigvuldig met die verskil tussen die heersende wisselkoers op die datum waarop daardie valuta-item gerealiseer word en die heersende wisselkoers op transaksiedatum nadat enige valutaverskil, wat ingevolge hierdie artikel ingesluit is in of afgetrek is van die inkomste van daardie persoon ten opsigte van daardie valuta-item, in berekening gebring is vir alle jare van aanslag waartydens die persoon ’n party by die kontraktuele bepaling van die valuta-item was: Met dien verstande voorts dat enige [valuta-verskil ten opsigte van enige] valutatermykontrak of buitelandse valuta-opsiekontrak in paragraaf (d) beoog, geag word [te ontstaan] gerealiseer te word wanneer die betrokke valuta-item in paragraaf (a), (b) of (c) beoog, gerealiseer word: Met dien verstande voorts dat enige valuta-item beoog in paragraaf (a), (b) of (c) of enige valutatermykontrak of buitelandse valuta-opsiekontrak in paragraaf (d) beoog wat gehou word en nie gerealiseer het nie voor die laaste dag van die laaste jaar van aanslag van ’n persoon (wat die houer of uitreiker van daardie valuta-item,

contract or foreign currency option contract) ending before the year of assessment of that person commencing on or after 1 January 2014 shall be deemed to have been realised on that last day.”;

(m) by the insertion of the following subsection after subsection (10):

“(10A) (a) Subject to subsection (7A) and paragraph (b), no exchange difference arising during any year of assessment in respect of an exchange item contemplated in paragraph (b) of the definition of ‘exchange item’ shall be included in or deducted from the income of a person in terms of this section if, at the end of that year of assessment—

(i) that person and the other party to the contractual provisions of that exchange item—

(aa) form part of the same group of companies; or  
(bb) are connected persons in relation to each other;

(ii) that exchange item—

(aa) does not represent for that person a current asset or a current liability for the purposes of financial reporting pursuant to IFRS; or

(bb) is not directly or indirectly funded by any debt owed to any person that—

(A) does not form part of the same group of companies as;  
or

(B) is not a connected person in relation to, that person or the other party to the contractual provisions of that exchange item; and

(iii) no forward exchange contract and no foreign currency option contract has been entered into by that person to serve as a hedge in respect of that exchange item.

(b) Where paragraph (a) was applied during any year of assessment to any exchange difference in respect of an exchange item and—

(i) that exchange difference was not included in nor deducted from the income of a person in that year of assessment; and

(ii) during any year of assessment—

(aa) subsequent to that year of assessment, paragraph (a) no longer applies to that exchange difference; or

(bb) that exchange item is realised,

an amount in respect of that exchange item must be included in or deducted from the income of that person in that subsequent year of assessment or in the year of assessment during which the exchange item is realised, which amount shall be determined by multiplying that exchange item by the difference between the ruling exchange rate on the last day of the year of assessment immediately preceding that subsequent year of assessment and the ruling exchange rate on transaction date, less any amount of the exchange differences included in or deducted from the income of that person in terms of this section in respect of that exchange item for all years of assessment preceding that subsequent year of assessment during which the person was a party to the contractual provisions of the exchange item.”; and

(n) by the deletion of subsection (11).

(2) Paragraphs (g), (k), (l) and (m) of subsection (1) come into operation on 1 January 2013 and apply in respect of years of assessment commencing on or after that date.

(3) Paragraph (n) of subsection (1) comes into operation on 1 January 2013 and applies in respect of exchange differences arising on or after that date.

**Amendment of section 24J of Act 58 of 1962, as inserted by section 21 of Act 21 of 1995 and amended by section 14 of Act 36 of 1996, section 19 of Act 28 of 1997, section 27 of Act 53 of 1999, section 24 of Act 32 of 2004, section 10 of Act 9 of 2005, section 20 of Act 20 of 2006 and section 53 of Act 24 of 2011**

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



- valutatermyinkontrak of buitelandse valuta-opsiekontrak is) wat eindig voor die jaar van aanslag van daardie persoon wat op of na 1 Januarie 2014 begin, geag word op daardie laaste dag gerealiseer te word.”;
- (m) deur die volgende subartikel na subartikel (10) in te voeg:
- “(10A)(a) Behoudens subartikel (7A) en paragraaf (b) word geen valutaverskil wat gedurende enige jaar van aanslag voorkom ten opsigte van ’n valuta-item beoog in paragraaf (b) van die omskrywing van ‘valuta-item’ ingesluit by of afgetrek van die inkomste van ’n persoon ingevolge hierdie artikel nie indien, teen die einde van daardie jaar van aanslag—
- (i) daardie persoon en die ander party by die kontraktuele bepalings van daardie valuta-item—
- (aa) deel van dieselfde groep van maatskappye uitmaak; of
- (bb) verbonde persone met betrekking tot mekaar is;
- (ii) daardie valuta-item—
- (aa) nie vir daardie persoon ’n lopende bate of ’n lopende las by die toepassing van finansiële verslaggewing ooreenkomstig IFRS verteenwoordig nie; of
- (bb) nie regstreeks of onregstreeks befonds word deur enige skuld verskuldig aan ’n persoon wat—
- (A) nie deel uitmaak van dieselfde groep van maatskappye as; of
- (B) nie ’n verbonde persoon is met betrekking tot, daardie persoon of die ander party by die kontraktuele bepalings van daardie valuta-item nie; en
- (iii) geen valutatermyinkontrak en geen buitelandse valuta-opsiekontrak aangegaan is deur daardie persoon om as daaldekking te dien ten opsigte van daardie valuta-item nie.
- (b) Waar paragraaf (a) gedurende enige jaar van aanslag toegepas is op enige valutaverskil ten opsigte van ’n valuta-item en—
- (i) daardie valutaverskil nie ingesluit by of afgetrek van die inkomste van ’n persoon in daardie jaar van aanslag was nie; en
- (ii) gedurende enige jaar van aanslag—
- (aa) wat volg op daardie jaar van aanslag, paragraaf (a) nie meer op daardie valutaverskil van toepassing is nie; of
- (bb) daardie valuta-item gerealiseer word, word ’n bedrag ten opsigte van daardie valuta-item ingesluit by of afgetrek van die inkomste van daardie persoon in daardie daaropvolgende jaar van aanslag of in die jaar van aanslag waartydens die valuta-item gerealiseer word, welke bedrag bepaal word deur daardie valuta-item te vermenigvuldig met die verskil tussen die heersende wisselkoers op die laaste dag van die jaar van aanslag onmiddellik voor daardie daaropvolgende jaar van aanslag en die heersende wisselkoers op die transaksiedatum, minus enige bedrag van die valutaverskil ingesluit by of afgetrek van die inkomste van daardie persoon ingevolge hierdie artikel ten opsigte van daardie valuta-item vir alle jare van aanslag wat daardie daaropvolgende jaar van aanslag waartydens die persoon ’n party by die kontraktuele bepalings van die valuta-item was, voorafgaan.”; en
- (n) deur subartikel (11) te skrap.
- (2) Paragraawe (g), (k), (l) en (m) van subartikel (1) tree op 1 Januarie 2013 in werking en is van toepassing ten opsigte van jare van aanslag wat op of na daardie datum begin.
- (3) Paragraaf (n) van subartikel (1) tree op 1 Januarie 2013 in werking en is van toepassing ten opsigte van valutaverskille wat op of na daardie datum voortspruit.
- Wysiging van artikel 24J van Wet 58 van 1962, soos ingevoeg deur artikel 21 van Wet 21 van 1995 en gewysig deur artikel 14 van Wet 36 van 1996, artikel 19 van Wet 28 van 1997, artikel 27 van Wet 53 van 1999, artikel 24 van Wet 32 van 2004, artikel 10 van Wet 9 van 2005, artikel 20 van Wet 20 van 2006 en artikel 53 van Wet 24 van 2011**
54. (1) Artikel 24J van die Inkomstebelastingwet, 1962, word hierby gewysig—

- (a) by the substitution in subsection (1) for the words preceding paragraph (a) of the definition of **“date of redemption”** of the following words:  
“**‘date of redemption’**, in relation to an instrument [other than a demand instrument], means—”;
  - (b) by the deletion in subsection (1) of the definition of **“demand instrument”**;
  - (c) by the substitution in subsection (1) for the words preceding paragraph (a) of the definition of **“instrument”** of the following words:  
“**‘instrument’** means [any form of interest-bearing arrangement, whether in writing or not, including]—”;
  - (d) by the deletion in subsection (1) of paragraphs (a) and (b) of the definition of **“instrument”**;
  - (e) by the substitution in subsection (1) for paragraph (c) of the definition of **“instrument”** of the following paragraph:  
“(c) any form of interest-bearing arrangement or any secured or unsecured loan, advance or debt;”;
  - (f) by the substitution in subsection (1) for paragraph (c) of the definition of **“instrument”** of the following paragraph:  
“(c) any form of interest-bearing arrangement or any [secured or unsecured loan, advance or] debt;”;
  - (g) by the substitution in subsection (1) for the definition of **“term”** of the following definition:  
“**‘term’**, in relation to[—  
(a) a demand instrument, means a period of 365 days commencing on the date of issue or transfer of that instrument; or  
(b)] an instrument [other than a demand instrument], means the period commencing on the date of issue or transfer of that instrument and ending on the date of redemption of that instrument;”;
  - (h) by the substitution in subsection (4A)(b) for the words after subparagraph (ii) of the following words:  
“which amount has been allowed as a deduction from the income of such issuer during such year of assessment or any previous year of assessment, to the extent that such amount is not taken into account in terms of section 19, such amount shall be included in the income of such issuer during such year of assessment.”;
  - (i) by the deletion of subsection (9); and
  - (j) by the addition after subsection (11) of the following subsection:  
“(12) This section must not apply to an instrument if—  
(a) the holder of that instrument has, throughout any period during a year of assessment during which that holder holds that instrument, a right to require the redemption of that instrument at any time during that period; and  
(b) that instrument does not provide for the payment of any deferred interest.”.
- (2) Paragraphs (a), (b), (g) and (j) of subsection (1) are deemed to have come into operation on 1 April 2012 and apply in respect of amounts received by or accrued to or incurred by any person during years of assessment commencing on or after that date.
- (3) Paragraphs (c) and (e) of subsection (1) are deemed to have come into operation on 29 February 2012.
- (4) Paragraphs (d) and (f) of subsection (1) come into operation on 1 January 2013.
- (5) Paragraph (h) of subsection (1) comes into operation on 1 January 2013 and applies in respect of years of assessment commencing on or after that date.
- (6) Paragraph (i) of subsection (1) comes into operation on 1 January 2014 and applies in respect of years of assessment commencing on or after that date.

**Amendment of section 24JA of Act 58 of 1962, as inserted by section 48 of Act 7 of 2010 and amended by section 54 of Act 24 of 2011**

55. (1) Section 24JA of the Income Tax Act, 1962, is hereby amended by the substitution in subsection (3) for paragraphs (d) and (e) of the following paragraphs:  
“(d) the difference between the amount of consideration paid for the asset by the financier to the seller and the consideration payable to the financier by the

- (a) deur in subartikel (1) die woorde wat paragraaf (a) van die omskrywing van “**aflossingsdatum**” voorafgaan deur die volgende woorde te vervang:  
“**‘aflossingsdatum’, met betrekking tot ’n instrument [behalwe ’n opeisbare instrument]—**”;
- (b) deur in subartikel (1) die omskrywing van “**opeisbare instrument**” te skrap; 5
- (c) deur in subartikel (1) die woorde wat paragraaf (a) van die omskrywing van “**instrument**” voorafgaan deur die volgende woorde te vervang:  
“**‘instrument’ [enige vorm van rentedraende reëling, hetsy skriftelik al dan nie, met inbegrip van]—**”;
- (d) deur in subartikel (1) paragrawe (a) en (b) van die omskrywing van “**opeisbare instrument**” te skrap; 10
- (e) deur in subartikel (1) paragraaf (c) van die omskrywing van “**instrument**” deur die volgende paragraaf te vervang:  
“(c) ’n vorm van rentedraende reëling of enige versekerde of onversekerde lening, voorskot of skuld;”;
- (f) deur in subartikel (1) paragraaf (c) van die omskrywing van “**instrument**” deur die volgende paragraaf te vervang:  
“(c) ’n vorm van rentedraende reëling of enige [versekerde of onversekerde lening, voorskot of] skuld;”;
- (g) deur in subartikel (1) die omskrywing van “**termyn**” deur die volgende omskrywing te vervang:  
“**‘termyn’, met betrekking tot[—**  
(a) **’n opeisbare instrument, ’n tydperk van 365 dae wat begin op die datum van uitreiking of oordrag van daardie instrument; of**  
(b) **’n instrument [behalwe ’n opeisbare instrument], die tydperk wat** 25  
begin op die datum van uitreiking of oordrag van daardie instrument en wat eindig op die aflossingsdatum van daardie instrument;”;
- (h) deur in subartikel (4A)(b) die woorde na subparagraaf (ii) deur die volgende woorde te vervang:  
“**voorstel, welke bedrag as ’n aftrekking van die inkomste van bedoelde uitreiker gedurende bedoelde jaar van aanslag of ’n vorige jaar van aanslag toegelaat is, namate bedoelde bedrag nie ingevolge artikel 19 in berekening gebring word nie, word bedoelde bedrag by die inkomste van bedoelde uitreiker gedurende bedoelde jaar van aanslag ingesluit.**”;
- (i) deur subartikel (9) te skrap; en 35
- (j) deur na subartikel (11) die volgende subartikel by te voeg:  
“(12) Hierdie artikel is nie van toepassing op ’n instrument nie indien—  
(a) die houer van daardie instrument, gedurende enige tydperk gedurende ’n jaar van aanslag waartydens daardie houer daardie instrument hou, ’n reg het om die aflossing van daardie instrument te eniger tyd gedurende daardie tydperk te vereis; en  
(b) daardie instrument nie vir die betaling van enige uitgestelde rente voorsiening maak nie.” 40
- (2) Paragrawe (a), (b), (g) en (j) van subartikel (1) word geag op 1 April 2012 in werking te getree het en is van toepassing ten opsigte van bedrae ontvang deur of toegeval aan of aangegaan deur enige persoon gedurende jare van aanslag wat op of na daardie datum begin. 45
- (3) Paragrawe (c) en (e) van subartikel (1) word geag op 29 Februarie 2012 in werking te getree het. 50
- (4) Paragrawe (d) en (f) van subartikel (1) tree op 1 Januarie 2013 in werking.
- (5) Paragraaf (h) van subartikel (1) tree op 1 Januarie 2013 in werking en is van toepassing ten opsigte van jare van aanslag wat op of na daardie datum begin.
- (6) Paragraaf (i) van subartikel (1) tree op 1 Januarie 2014 in werking en is van toepassing ten opsigte van jare van aanslag wat op of na daardie datum begin. 55

**Wysiging van artikel 24JA van Wet 58 van 1962, soos ingevoeg deur artikel 48 van Wet 7 van 2010 en gewysig deur artikel 54 van Wet 24 van 2011**

55. (1) Artikel 24JA van die Inkomstebelastingwet, 1962, word hierby gewysig deur in subartikel (3) paragrawe (d) en (e) deur die volgende paragrawe te vervang:  
“(d) word die verskil tussen die bedrag aan vergoeding vir die bate deur die finansier aan die verkoper betaal en die vergoeding betaalbaar aan die 60

client to acquire the asset as contemplated in paragraph [(a)(ii)(bb)] (b)(ii) of the definition of ‘murabaha’ is deemed to be a premium paid for the purposes of section 24J; and

- (e) the amount of consideration paid by the financier to acquire the asset as contemplated in paragraph [(a)(i)] (a) of the definition of ‘murabaha’ is deemed to be an issue price for the purposes of section 24J.”. 5
- (2) Subsection (1) comes into operation on 1 January 2013.

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

**56.** (1) The Income Tax Act, 1962, is hereby amended by the insertion after section 24JA of the following section: 10

**“Fair value taxation in respect of financial instruments**

**24JB.** (1) For the purposes of this section—

**‘covered person’** means—

- (a) any authorised user as defined in section 1 of the Securities Services Act, 2004 (Act No. 36 of 2004), that is a company; or 15
- (b) any—
  - (i) bank;
  - (ii) branch;
  - (iii) branch of a bank; or
  - (iv) controlling company, 20

as defined in section 1 of the Banks Act, 1990 (Act No. 94 of 1990);

**‘derivative’** means a derivative as defined by International Financial Reporting Standard 9 of IFRS;

**‘financial asset’** means a financial asset referred to in International Financial Reporting Standard 9 of IFRS; 25

**‘financial instrument’** means a financial instrument referred to in International Financial Reporting Standard 9 of IFRS;

**‘financial liability’** means a financial liability referred to in International Financial Reporting Standard 9 of IFRS;

**‘financial reporting value’**, in relation to a financial asset or a financial liability, means the value, as determined for the purposes of financial reporting pursuant to IFRS, of that financial asset or financial liability; 30

**‘post-realisation year’**, in relation to a person, means—

- (a) the first year of assessment contemplated in paragraph (a) or (b), as the case may be, of the definition of ‘realisation year’ of that covered person; and 35
- (b) each of the two years of assessment of that person succeeding that first year of assessment of that person;

**‘realisation year’**, in relation to a person, means—

- (a) where that person is a covered person during the last year of assessment ending before the year of assessment of that person commencing on or after 1 January 2014, the year of assessment of that person that precedes the first year of assessment of that person that commences on or after 1 January 2013; or 40
- (b) where that person becomes a covered person during any year of assessment commencing on or after 1 January 2013, the year of assessment of that person that precedes the first year of assessment of that person in which that person becomes a covered person; and 45

**‘tax value’**, in relation to—

- (a) a financial asset held by a person, means— 50
  - (i) where that financial asset is held by that person as a capital asset, the base cost of that asset;
  - (ii) where that financial asset is held by that person as trading stock, the amount taken into account in respect of that asset in terms of section 11(a) or 22(1) or (2); or 55

- finansier deur die kliënt om die bate soos beoog in paragraaf [(a)(ii)(bb)] (b)(ii) van die omskrywing van ‘murabaha’ te verkry, geag ’n premie betaal by die toepassing van artikel 24J te wees; en
- (e) word die bedrag aan vergoeding deur die finansier betaal om die bate soos beoog in paragraaf [(a)(i)] (a) van die omskrywing van ‘murabaha’ te verkry, geag ’n uitreikingsprys by die toepassing van artikel 24J te wees.”. 5
- (2) Subartikel (1) tree op 1 Januarie 2013 in werking.

#### Invoeging van artikel 24JB in Wet 58 van 1962

56. (1) Die Inkomstebelastingwet, 1962, word hierby gewysig deur na artikel 24JA die volgende artikel in te voeg: 10

#### “Billike waarde belasting ten opsigte van finansiële instrumente

- 24JB.** (1) By die toepassing van hierdie artikel beteken—
- ‘afgeleide instrument’ ’n ‘derivative’ soos omskryf deur ‘International Financial Reporting Standard 9’ van die IFRS;
- ‘belastingwaarde’, met betrekking tot— 15
- (a) ’n finansiële bate gehou deur ’n persoon—
- (i) waar daardie finansiële bate deur daardie persoon as ’n kapitaalbate gehou word, die basiskoste van daardie bate;
- (ii) waar daardie finansiële bate deur daardie persoon as handelsvoorraad gehou word, die bedrag in berekening gebring ten opsigte van daardie bate ingevolge artikel 11(a) of 22(1) of (2); of 20
- (b) ’n finansiële las van ’n persoon, die bedrag verskuldig ten opsigte van daardie las;
- ‘finansiële bate’ ’n ‘financial asset’ bedoel in ‘International Financial Reporting Standard 9’ van die IFRS; 25
- ‘finansiële instrument’ ’n ‘financial instrument’ bedoel in ‘International Financial Reporting Standard 9’ van die IFRS;
- ‘finansiële las’ ’n ‘financial liability’ bedoel in ‘International Financial Reporting Standard 9’ van die IFRS; 30
- ‘finansiële verslaggewingswaarde’, met betrekking tot ’n finansiële bate of ’n finansiële las, die waarde, soos bepaal by die toepassing van finansiële verslaggewing ooreenkomstig die IFRS, van daardie finansiële bate of finansiële las; 35
- ‘gedekte persoon’—
- (a) enige ‘authorised user’ soos omskryf in artikel 1 van die ‘Securities Services Act, 2004’ (Wet No. 36 van 2004), wat ’n maatskappy is; of
- (b) enige— 40
- (i) bank;
- (ii) tak;
- (iii) tak van ’n bank; of
- (iv) beheerende maatskappy,
- soos omskryf in artikel 1 van die Bankwet, 1990 (Wet No. 94 van 1990);
- ‘na-realisasiejaar’, met betrekking tot ’n persoon— 45
- (a) die eerste jaar van aanslag beoog in paragraaf (a) of (b), na gelang van die geval, van die omskrywing van ‘realisasiejaar’ van daardie gedekte persoon; en
- (b) elk van die twee jare van aanslag van daardie persoon wat volg op daardie eerste jaar van aanslag van daardie persoon; 50
- ‘realisasiejaar’, met betrekking tot ’n persoon—
- (a) waar daardie persoon ’n gedekte persoon is gedurende die laaste jaar van aanslag wat eindig voor die jaar van aanslag van daardie persoon wat op of na 1 Januarie 2014 begin, die jaar van aanslag van daardie persoon wat die eerste jaar van aanslag van daardie persoon wat op of na 1 Januarie 2013 begin, voorafgaan; of 55
- (b) waar daardie persoon ’n gedekte persoon word gedurende enige jaar van aanslag wat op of na 1 Januarie 2013 begin, die jaar van aanslag

(b) a financial liability of a person, means the amount owing in respect of that liability.

(2) Subject to subsection (4), there must be included in or deducted from the taxable income, as the case may be, of any covered person for any year of assessment commencing on or after 1 January 2014 all amounts in respect of financial assets and financial liabilities of that covered person that are recognised through profit or loss in the statement of comprehensive income of that covered person for that year of assessment, excluding any amount in respect of—

- (a) a share not held for trading;
- (b) an endowment policy;
- (c) an interest held in a collective investment scheme; and
- (d) an interest in a trust, that is not hedged.

(3) Any amount in respect of a financial asset or a financial liability that is included in or deducted from the taxable income of a covered person for any year of assessment as contemplated in subsection (2) must not be taken into account in determining—

- (a) gross income;
- (b) any deduction in terms of section 11;
- (c) taxable income; and
- (d) any capital gain or capital loss of that person as contemplated in the Eighth Schedule.

(4) Subsection (2) does not apply to any amount in respect of a financial asset or a financial liability of a covered person that is recognised through profit or loss in the statement of comprehensive income of that covered person as contemplated in that subsection where—

- (a) that financial asset or financial liability arises from a derivative to which that covered person and another person that is not a covered person are parties;
- (b) that covered person and the other person contemplated in paragraph (a) form part of a group for the purposes of financial reporting pursuant to IFRS; and
- (c) that covered person is not a party to any financial instrument that gives rise to any right or obligation that serves as a hedge in respect of that financial asset or financial liability.

(5) In addition to any amount included in or deducted from the taxable income of any person in terms of subsection (2), there must be included in or deducted from the taxable income, as the case may be, of any person for a realisation year and each of the three post-realisation years of that person an amount determined in terms of subsection (6).

(6) Subject to subsection (7), the amount to be included in or deducted from the taxable income of any person as contemplated in subsection (5) is an amount equal to 25 per cent of the aggregate of—

- (a) the difference between—
  - (i) the aggregate of the financial reporting values of all financial assets held by that person as at the end of the realisation year of that person that are, in terms of IFRS—
    - (aa) classified as held for trading; or
    - (bb) designated upon initial recognition as at fair value through the statement of profit or loss and other comprehensive income of that covered person on the basis that the designation eliminates or reduces a measurement or recognition inconsistency; and
  - (ii) the aggregate of the tax values of those financial assets as at the end of the realisation year of that person; and
- (b) the difference between—
  - (i) the aggregate of the financial reporting values of all financial liabilities held by that person as at the end of the realisation year of that person that are, in terms of IFRS—
    - (aa) classified as held for trading; or

- van daardie persoon wat die eerste jaar van aanslag van daardie persoon waarin daardie persoon 'n gedekte persoon word, voorafgaan.
- (2) Behoudens subartikel (4) word daar ingesluit by of afgetrek van die belasbare inkomste, na gelang van die geval, van enige gedekte persoon vir enige jaar van aanslag wat op of na 1 Januarie 2014 begin alle bedrae ten opsigte van finansiële bates en finansiële laste van daardie gedekte persoon wat deur wins of verlies erken word in die staat van volledige inkomste van daardie gedekte persoon vir daardie jaar van aanslag, behalwe enige bedrag ten opsigte van—
- (a) 'n aandeel nie vir handel gehou nie;
  - (b) 'n termynpolis;
  - (c) 'n belang gehou in 'n kollektiewe beleggingskema; en
  - (d) 'n belang in 'n trust,
- wat nie daaldekking het nie.
- (3) Enige bedrag ten opsigte van 'n finansiële bate of 'n finansiële las wat ingesluit word by of afgetrek word van die belasbare inkomste van 'n gedekte persoon vir enige jaar van aanslag soos beoog in subartikel (2) word nie in berekening gebring nie by die bepaling van—
- (a) bruto inkomste;
  - (b) enige aftrekking ingevolge artikel 11;
  - (c) belasbare inkomste; en
  - (d) enige kapitaalwins of kapitaalverlies van daardie persoon soos beoog in die Agtste Bylae.
- (4) Subartikel (2) is nie van toepassing nie op enige bedrag ten opsigte van 'n finansiële bate of 'n finansiële las van 'n gedekte persoon wat deur wins of verlies erken word in die staat van volledige inkomste van daardie gedekte persoon soos beoog in daardie subartikel waar—
- (a) daardie finansiële bate of finansiële las voortspruit uit 'n afgeleide instrument waarby daardie gedekte persoon en 'n ander persoon wat nie 'n gedekte persoon is nie partye is;
  - (b) daardie gedekte persoon en die ander persoon beoog in paragraaf (a) deel uitmaak van 'n groep by die toepassing van finansiële verslaggewing ooreenkomstig die IFRS; en
  - (c) daardie gedekte persoon nie 'n party is nie by 'n finansiële instrument wat aanleiding gee tot 'n reg of verpligting wat as daaldekking dien ten opsigte van daardie finansiële bate of finansiële las.
- (5) Bykomend tot enige bedrag ingesluit by of afgetrek van die belasbare inkomste van 'n persoon ingevolge subartikel (2), moet ingesluit word by of afgetrek word van die belasbare inkomste, na gelang van die geval, van 'n persoon vir 'n realisasiejaar en elk van die drie na-realisasiejare van daardie persoon 'n bedrag bepaal ingevolge subartikel (6).
- (6) Behoudens subartikel (7) is die bedrag ingesluit te word by of afgetrek te word van die belasbare inkomste van 'n persoon soos beoog in subartikel (5) 'n bedrag gelyk aan 25 persent van die totaal van—
- (a) die verskil tussen—
    - (i) die totaal van die finansiële verslaggewingswaardes van alle finansiële bates gehou deur daardie persoon aan die einde van die realisasiejaar van daardie persoon wat, ingevolge die IFRS—
      - (aa) geklassifiseer word as gehou vir handel; of
      - (bb) aangedui word by aanvanklike erkenning as teen billike waarde deur die staat van wins of verlies en ander volledige inkomste van daardie gedekte persoon op basis daarvan dat die aanduiding 'n onkonsekwentheid in meting of erkenning uitskakel of verminder; en
    - (ii) die totaal van die belastingwaardes van daardie finansiële bates aan die einde van die realisasiejaar van daardie persoon; en
  - (b) die verskil tussen—
    - (i) die totaal van die finansiële verslaggewingswaardes van alle finansiële laste gehou deur daardie persoon aan die einde van die realisasiejaar van daardie persoon wat, ingevolge die IFRS—
      - (aa) geklassifiseer word as gehou vir handel; of

(bb) designated upon initial recognition as at fair value through the statement of profit or loss and other comprehensive income of that covered person on the basis that the designation eliminates or reduces a measurement or recognition inconsistency; and

(ii) the aggregate of the tax values of those financial liabilities as at the end of the realisation year of that person.

(7) For the purposes of subsection (6), in determining the amount to be included in or deducted from the taxable income of any person as contemplated in subsection (5), there must not be taken into account any financial asset or financial liability held by that person if—

(a) that financial asset or financial liability arises from a derivative to which that person and another person that is not a covered person are parties;

(b) that person and the other person contemplated in paragraph (a) form part of a group for the purposes of financial reporting pursuant to IFRS; and

(c) that person is not a party to any financial instrument other than the derivative contemplated in paragraph (a), which financial instrument gives rise to any right or obligation that serves as a hedge in respect of that financial asset or financial liability.”

(2) Subsection (1) comes into operation on 1 January 2014 and applies in respect of years of assessment commencing on or after that date.

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

57. (1) The Income Tax Act, 1962, is hereby amended by the insertion after section 24N of the following section:

**“Incurral of interest in terms of certain debts deemed to be in production of income**

**24O.** (1) For the purposes of this section—

**‘acquisition transaction’** means any transaction—

(a) in terms of which a company acquires an equity share in another company that is an operating company; and

(b) as a result of which that company, as at the close of the day of that transaction, becomes a controlling group company in relation to that operating company;

**‘instrument’** means an instrument as defined in section 24J(1);

**‘operating company’** means any company—

(a) that carries on business continuously, and in the course or furtherance of that business provides goods or services for consideration; or

(b) that is a controlling group company in relation to a company contemplated in paragraph (a).

(2) Subject to subsection (3), where during any year of assessment an instrument is issued, assumed or used by a company—

(a) for the purpose of financing the acquisition by that company of an equity share in an operating company in terms of an acquisition transaction; or

(b) in substitution for an instrument issued, assumed or used as contemplated in paragraph (a),

any interest incurred by that company in terms of that instrument must be deemed to have been—

(i) so incurred in the production of the income of that company;

(ii) laid out or expended by that company for the purposes of trade; and

(iii) incurred in respect of an amount received by or accrued to that company that constitutes income.

(3) Subsection (2) does not apply to so much of any interest incurred as relates to any period—



- (bb) aangedui word by aanvanklike erkenning as teen billike waarde deur die staat van wins of verlies en ander volledige inkomste van daardie gedekte persoon op basis daarvan dat die aanduiding 'n onkonsekwentheid in meting of erkenning uitskakel of verminder; en 5
- (ii) die totaal van die belastingwaardes van daardie finansiële laste aan die einde van die realisasiejaar van daardie persoon.
- (7) By die toepassing van subartikel (6) by die bepaling van die bedrag ingesluit te word by of afgetrek te word van die belasbare inkomste van 'n persoon soos beoog in subartikel (5), word nie in berekening gebring nie enige finansiële bate of finansiële las gehou deur daardie persoon indien— 10
- (a) daardie finansiële bate of finansiële las voortspruit uit 'n afgeleide instrument waarby daardie persoon en 'n ander persoon wat nie 'n gedekte persoon is nie partye is;
- (b) daardie persoon en die ander persoon beoog in paragraaf (a) deel uitmaak van 'n groep by die toepassing van finansiële verslaggewing ooreenkomstig die IFRS; en 15
- (c) daardie persoon nie 'n party is nie by 'n finansiële instrument buiten die afgeleide instrument beoog in paragraaf (a), welke finansiële instrument aanleiding gee tot 'n reg of verpligting wat ten opsigte van daardie finansiële bate of finansiële las as daaldekking dien.” 20
- (2) Subartikel (1) tree op 1 Januarie 2014 in werking en is van toepassing ten opsigte van jare van aanslag wat op of na daardie datum begin.

#### Invoeging van artikel 24O in Wet 58 van 1962

57. (1) Die Inkomstebelastingwet, 1962, word hierby gewysig deur na artikel 24N die volgende artikel in te voeg: 25

#### “Aangaan van rente ingevolge sekere skulde geag in voortbrenging van inkomste te wees

- 24O.** (1) By die toepassing van hierdie artikel beteken—
- ‘bedryfsmaatskappy’** 'n maatskappy— 30
- (a) wat voortdurend besigheid dryf, en in die loop of bevordering van daardie besigheid goedere of dienste vir vergoeding verskaf; of
- (b) wat 'n beherende groepsmaatskappy met betrekking tot 'n maatskappy beoog in paragraaf (a) is;
- ‘instrument’** 'n instrument soos omskryf in artikel 24J(1); 35
- ‘verkrygingstransaksie’** enige transaksie—
- (a) ingevolge waarvan 'n maatskappy 'n ekwiteitsaandeel verkry in 'n ander maatskappy wat 'n bedryfsmaatskappy is; en
- (b) as gevolg waarvan daardie maatskappy, aan die einde van die dag van daardie transaksie, 'n beherende groepsmaatskappy met betrekking tot daardie bedryfsmaatskappy word. 40
- (2) Behoudens subartikel (3) waar gedurende enige jaar van aanslag 'n instrument uitgereik, aanvaar of gebruik word deur 'n maatskappy—
- (a) met die doel om die verkryging deur daardie maatskappy van 'n ekwiteitsaandeel in 'n bedryfsmaatskappy ingevolge 'n verkrygingstransaksie te finansier; of 45
- (b) ter vervanging van 'n instrument uitgereik, aanvaar of gebruik soos beoog in paragraaf (a),
- word enige rente aangegaan deur daardie maatskappy ingevolge daardie instrument geag— 50
- (i) aldus aangegaan in die voortbrenging van die inkomste van daardie maatskappy te wees;
- (ii) bestee of uitgegee deur daardie maatskappy met die oog op handel te wees; en
- (iii) aangegaan ten opsigte van 'n bedrag ontvang deur of toegeval aan daardie maatskappy wat inkomste uitmaak, te wees. 55
- (3) Subartikel (2) is nie van toepassing nie op soveel van enige rente aangegaan as wat betrekking het op enige tydperk—

- (a) during which the company contemplated in that subsection is not a controlling group company in relation to the operating company contemplated in that subsection: Provided that, for the purposes of this paragraph, the company contemplated in subsection (2) is not a controlling group company in relation to the operating company contemplated in that subsection if that company and the operating company do not form part of a group of companies as defined in section 41(1); or
- (b) after which the operating company contemplated in that subsection ceases to be an operating company.”

(2) Subsection (1) comes into operation on 1 January 2013 and applies in respect of acquisition transactions entered into on or after that date.

**Amendment of section 25BA of Act 58 of 1962, as inserted by section 39 of Act 17 of 2009 and amended by section 49 of Act 7 of 2010 and section 55 of Act 24 of 2011**

**58.** (1) Section 25BA of the Income Tax Act, 1962, is hereby amended— 15

- (a) by the substitution in paragraph (a) for subparagraph (ii) of the following subparagraph:
  - “(ii) **[within] not later than 12 months [of its receipt by] after its accrual to that portfolio,**”;
- (b) by the substitution in paragraph (b) for the words preceding subparagraph (i) of the following words:
  - “to the extent that the amount is not distributed as contemplated in paragraph (a) **[within] not later than 12 months [of its receipt by] after its accrual to that portfolio—**”; and
- (c) by the substitution in paragraph (b) for subparagraph (i) of the following subparagraph:
  - “(i) be deemed to have accrued to that portfolio on the last day of the period of 12 months commencing on the date of its **[receipt by] accrual to that portfolio; and**”.

(2) Subsection (1) comes into operation on 1 January 2013 and applies in respect of years of assessment commencing on or after that date. 30

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

**59.** (1) The Income Tax Act, 1962, is hereby amended by the insertion after section 25BA of the following section:

“**Taxation of REITs** 35

**25BB.** (1) For the purposes of this section—

- ‘**associated property company**’ means a company in which 20 per cent or more of the equity shares or linked units are held by a REIT or a controlled property company (whether alone or together with any other company forming part of the same group of companies as that REIT or that controlled property company);
- ‘**controlled property company**’ means a company that is a subsidiary, as defined in International Financial Reporting Standard 10 of IFRS, of a REIT;
- ‘**declared**’, in relation to any dividend, means the approval thereof by the directors of a company, or by some other person with comparable authority;
- ‘**property linked unit**’ means a unit comprising a share and a debenture in a company, where that share and that debenture are linked together and cannot be disposed of independently of each other;
- ‘**qualifying distribution**’ means any dividend (other than a dividend contemplated in paragraph (b) of the definition of ‘dividend’) declared, or interest incurred in respect of a debenture forming part of a property linked unit, during a year of assessment, if—
- (a) in the case of a REIT, a controlled property company or an associated property company that is incorporated, formed or established during that year of assessment, more than 75 per cent of the gross income received by or accrued to that REIT, that controlled property company

- (a) waartydens die maatskappy beoog in daardie subartikel nie 'n beherende groepsmaatskappy met betrekking tot die bedryfsmaatskappy beoog in daardie subartikel is nie: Met dien verstande dat by die toepassing van hierdie paragraaf die maatskappy beoog in subartikel (2) nie 'n beherende groepsmaatskappy is met betrekking tot die bedryfsmaatskappy beoog in daardie subartikel nie indien daardie maatskappy en die bedryfsmaatskappy nie deel uitmaak van 'n groep van maatskappye soos omskryf in artikel 41(1) nie; of
- (b) waarna die bedryfsmaatskappy beoog in daardie subartikel ophou om 'n bedryfsmaatskappy te wees."

(2) Subartikel (1) tree op 1 Januarie 2013 in werking en is van toepassing ten opsigte van verkrygingstransaksies op of na daardie datum aangegaan.

**Wysiging van artikel 25BA van Wet 58 van 1962, soos ingevoeg deur artikel 39 van Wet 17 van 2009 en gewysig deur artikel 49 van Wet 7 van 2010 en artikel 55 van Wet 24 van 2011**

**58.** (1) Artikel 25BA van die Inkomstebelastingwet, 1962, word hierby gewysig—  
(a) deur in paragraaf (a) subparagraaf (ii) deur die volgende subparagraaf te vervang:

“(ii) **[binne] nie later nie as 12 maande na [ontvangs daarvan deur] toevalling daarvan aan** daardie portefeulje,”;

(b) deur in paragraaf (b) die woorde wat subparagraaf (i) voorafgaan deur die volgende woorde te vervang:

“namate die bedrag nie soos beoog in paragraaf (a) **[binne] nie later nie as 12 maande na [ontvangs] toevalling** daarvan **[deur] aan** daardie portefeulje uitgekeer word nie—”;

(c) deur in paragraaf (b) subparagraaf (i) deur die volgende subparagraaf te vervang:

“(i) geag word aan daardie portefeulje toe te geval het op die laaste dag van die tydperk van 12 maande wat op die datum van **[ontvangs] toevalling** daarvan **[deur]** aan die portefeulje begin; en”.

(2) Subartikel (1) tree op 1 Januarie 2013 in werking en is van toepassing ten opsigte van jare van aanslag wat op of na daardie datum begin.

**Invoeging van artikel 25BB in Wet 58 van 1962**

**59.** (1) Die Inkomstebelastingwet, 1962, word hierby gewysig deur na artikel 25BA die volgende artikel in te voeg:

**“Belasting van EITs**

**25BB.** (1) By die toepassing van hierdie artikel beteken—

**‘beheerde eiendomsmaatskappy’** 'n maatskappy wat 'n ‘subsidiary’, soos omskryf in ‘International Financial Reporting Standard 10’ van die IFRS, van 'n EIT is;

**‘eiendom gekoppelde eenheid’** 'n eenheid wat bestaan uit 'n aandeel en 'n obligasie in 'n maatskappy, waar daardie aandeel en daardie obligasie aan mekaar gekoppel is en daar nie onafhanklik van mekaar oor hulle beskik kan word nie;

**‘geassosieerde eiendomsmaatskappy’** 'n maatskappy waarin 20 persent of meer van die ekwiteitsaandeel of gekoppelde eenhede gehou word deur 'n EIT of 'n beheerde eiendomsmaatskappy (hetsy alleen of tesame met enige ander maatskappy wat deel uitmaak van dieselfde groep van maatskappye as daardie EIT of daardie beheerde eiendomsmaatskappy);

**‘huurinkomste’** enige bedrag ontvang of toegeval—

(a) ten opsigte van die gebruik van onroerende eiendom, insluitend 'n boete of rente ten opsigte van laat betaling van enige sodanige bedrag;

(b) as 'n dividend (buiten 'n dividend beoog in paragraaf (b) van die omskrywing van ‘dividend’) vanaf 'n EIT;

(c) as 'n kwalifiserende uitkering vanaf 'n beheerde eiendomsmaatskappy; of

- or that associated property company until the date of the declaration consists of rental income; or
- (b) in any other case, more than 75 per cent of the gross income received by or accrued to a REIT, a controlled property company or an associated company in the preceding year of assessment consists of rental income; 5
- ‘rental income’** means any amount received or accrued—
- (a) in respect of the use of immovable property, including a penalty or interest in respect of late payment of any such amount;
- (b) as a dividend (other than a dividend contemplated in paragraph (b) of the definition of ‘dividend’) from a REIT; 10
- (c) as a qualifying distribution from a controlled property company; or
- (d) as a qualifying distribution by or from an associated property company.
- (2) (a) There must be deducted from the gross income for a year of assessment of— 15
- (i) a REIT; or
- (ii) a controlled property company that is a resident, the amount of any qualifying distribution declared or incurred during that year of assessment by that REIT or that controlled property company. 20
- (b) The aggregate amount of the deductions contemplated in paragraph (a) may not exceed the taxable income for that year of assessment of that REIT or that controlled property company, before taking into account—
- (i) the amount of taxable capital gain included in taxable income in terms of section 26A; and 25
- (ii) any deduction in terms of this subsection.
- (3) Any amount received by or accrued to a REIT or a controlled property company during a year of assessment in respect of a financial instrument (other than a share in a REIT, a controlled property company or an associated property company) must— 30
- (a) be deemed to be an amount that is not of a capital nature; and
- (b) be included in the income of that REIT or that controlled property company for that year of assessment.
- (4) A REIT or a controlled property company may not deduct by way of an allowance any amount in respect of immovable property in terms of section 11(g), 13, 13bis, 13ter, 13quat, 13quin or 13sex. 35
- (5) In determining the aggregate capital gain or capital loss of a REIT or a controlled property company for purposes of the Eighth Schedule, any capital gain or capital loss determined in respect of the disposal of— 40
- (a) immovable property;
- (b) a share in a REIT; or
- (c) a share in a controlled property company, must be disregarded.
- (6) (a) Any amount of interest received by or accrued to a person during a year of assessment in respect of a debenture forming part of a property linked unit in a REIT or a controlled property company held by that person must be deemed to be a dividend received by or accrued to that person during that year of assessment. 45
- (b) Any amount of interest paid in respect of a property linked unit in a REIT or a controlled property company must be deemed— 50
- (i) to be a dividend paid by that REIT or that controlled property company for the purposes of the dividends tax contemplated in Part VIII of this Chapter; and

- (d) as 'n kwalifiserende uitkering deur of vanaf 'n geassosieerde eiendomsmaatskappy;
- 'kwalifiserende uitkering'** enige dividend (buiten 'n dividend beoog in paragraaf (b) van die omskrywing van 'dividend') verklaar, of rente aangegaan ten opsigte van 'n obligasie wat deel uitmaak van 'n eiendom gekoppelde eenheid, gedurende 'n jaar van aanslag, indien—
- (a) in die geval van 'n EIT, 'n beheerde eiendomsmaatskappy of 'n geassosieerde eiendomsmaatskappy wat ingelyf, gestig of opgerig word gedurende daardie jaar van aanslag, meer as 75 persent van die bruto inkomste ontvang deur of toegeval aan daardie EIT, daardie beheerde eiendomsmaatskappy of daardie geassosieerde eiendomsmaatskappy tot die datum van die verklaring bestaan uit huurinkomste; of
- (b) in enige ander geval, meer as 75 persent van die bruto inkomste ontvang deur of toegeval aan 'n EIT, 'n beheerde eiendomsmaatskappy of 'n geassosieerde eiendomsmaatskappy in die voorafgaande jaar van aanslag bestaan uit huurinkomste;
- 'verklaar'**, met betrekking tot enige dividend, die goedkeuring daarvan deur die direkteure van 'n maatskappy, of deur 'n ander persoon met vergelykbare gesag.
- (2) (a) Daar word afgetrek van die bruto inkomste vir 'n jaar van aanslag van—
- (i) 'n EIT; of
- (ii) 'n beheerde eiendomsmaatskappy wat 'n inwoner is, die bedrag van enige kwalifiserende uitkering verklaar of aangegaan gedurende daardie jaar van aanslag deur daardie EIT of daardie beheerde eiendomsmaatskappy.
- (b) Die totale bedrag van die aftrekkings beoog in paragraaf (a) mag nie die belasbare inkomste vir daardie jaar van aanslag van daardie EIT of daardie beheerde eiendomsmaatskappy oorskry nie, voordat in berekening gebring word—
- (i) die bedrag van belasbare kapitaalwins ingesluit by belasbare inkomste ingevolge artikel 26A; en
- (ii) enige aftrekking ingevolge hierdie subartikel.
- (3) Enige bedrag ontvang deur of toegeval aan 'n EIT of 'n beheerde eiendomsmaatskappy gedurende 'n jaar van aanslag ten opsigte van 'n finansiële instrument (buiten 'n aandeel in 'n EIT, 'n beheerde eiendomsmaatskappy of 'n geassosieerde eiendomsmaatskappy) word—
- (a) geag 'n bedrag te wees wat nie van 'n kapitale aard is nie; en
- (b) ingesluit by die inkomste van daardie EIT of daardie beheerde eiendomsmaatskappy vir daardie jaar van aanslag.
- (4) 'n EIT of 'n beheerde eiendomsmaatskappy mag nie by wyse van 'n toelae enige bedrag ten opsigte van onroerende eiendom ingevolge artikel 11(g), 13, 13bis, 13ter, 13quat, 13quin of 13sex aftrek nie.
- (5) By die bepaling van die totale kapitaalwins of kapitaalverlies van 'n EIT of 'n beheerde eiendomsmaatskappy by die toepassing van die Agtste Bylae, word enige kapitaalwins of kapitaalverlies bepaal ten opsigte van die beskikking oor—
- (a) onroerende eiendom;
- (b) 'n aandeel in 'n EIT; of
- (c) 'n aandeel in 'n beheerde eiendomsmaatskappy, verontagsaam.
- (6) (a) Enige bedrag van rente ontvang deur of toegeval aan 'n persoon gedurende 'n jaar van aanslag ten opsigte van 'n obligasie wat deel uitmaak van 'n eiendom gekoppelde eenheid in 'n EIT of 'n beheerde eiendomsmaatskappy gehou deur daardie persoon word geag 'n dividend ontvang deur of toegeval aan daardie persoon gedurende daardie jaar van aanslag te wees.
- (b) Enige bedrag van rente betaal ten opsigte van 'n eiendom gekoppelde eenheid in 'n EIT of 'n beheerde eiendomsmaatskappy word geag—
- (i) 'n dividend betaal deur daardie EIT of daardie beheerde eiendomsmaatskappy by die toepassing van die dividendbelasting beoog in Deel VIII van hierdie Hoofstuk te wees; en

(ii) not to be amount of interest paid by that REIT or that controlled property company for the purposes of the withholding tax on interest contemplated in Part IA of this Chapter.”

(2) Subsection (1) comes into operation on 1 April 2013 and applies in respect of years of assessment commencing on or after that date.

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**Amendment of section 26B of the Income Tax Act 58 of 1962, as inserted by section 21 of Act 20 of 2006 and amended by section 24 of Act 8 of 2007**

60. (1) Section 26B of the Income Tax Act, 1962, is hereby amended by the substitution for subsection (2) of the following subsection:

“(2) The dividends tax [imposed on] levied in respect of the [net] amount of any dividend [declared, as determined in terms of section 64B(3)], as defined in section 64D, that is paid as contemplated in section 64E(2) by an oil and gas company, as defined in the Tenth Schedule, [as derived] out of [profits] amounts attributable to its oil and gas income [(1) as defined in that Schedule(1)], shall be determined in accordance with this Act but subject to [the Tenth] that Schedule.”

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(2) Subsection (1) is deemed to have come into operation on 1 April 2012.

**Amendment of section 28 of Act 58 of 1962, as amended by section 17 of Act 90 of 1962, section 22 of Act 55 of 1966, section 24 of Act 89 of 1969, section 21 of Act 88 of 1971, section 19 of Act 65 of 1973, section 19 of Act 91 of 1982, section 22 of Act 94 of 1983, section 17 of Act 65 of 1986, section 23 of Act 90 of 1988, section 13 of Act 70 of 1989, section 25 of Act 101 of 1990, section 29 of Act 129 of 1991, section 24 of Act 113 of 1993, section 19 of Act 21 of 1994, section 33 of Act 30 of 2000, section 42 of Act 35 of 2007, section 40 of Act 60 of 2008, section 40 of Act 17 of 2009 and section 51 of Act 7 of 2010**

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

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

“**Taxation of short-term insurance business**”;

(b) by the substitution for subsections (1), (2), (3) and (4) of the following subsections respectively:

“(1) For the purposes of this section—

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‘**premium**’ means a premium as defined in the Short-term Insurance Act; ‘**Short-term Insurance Act**’ means the Short-term Insurance Act, 1998 (Act No. 53 of 1998);

‘**short-term insurance business**’ means short-term insurance business as defined in the Short-term Insurance Act;

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‘**short-term insurer**’ means a short-term insurer as defined in the Short-term Insurance Act;

‘**short-term policy**’ means a short-term policy as defined in the Short-term Insurance Act, which is issued by a short-term insurer.

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(2) For the purpose of determining the taxable income derived during a year of assessment by any person that is a resident from carrying on short-term insurance business—

(a) a premium received by or accrued to that person in respect of a short-term policy issued by that person prior to the date of commencement of the risk cover under that policy shall be deemed to have been received by or accrued to that person on the date of commencement of the risk cover under that policy;

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(b) an amount of expenditure actually incurred by that person in respect of a refund of a premium may only be deducted in terms of section 11(a) to the extent that the amount of the premium was included in the gross income of that person;

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(c) (i) sections 23(c) and 23H shall not apply to expenditure incurred in respect of a short-term policy issued by that person; and

- (ii) nie 'n bedrag van rente betaal deur daardie EIT of daardie beheerde eiendomsmaatskappy by die toepassing van die terughoudingsbelasting op rente beoogt in Deel IA van hierdie Hoofstuk te wees nie.”

(2) Subartikel (1) tree op 1 April 2013 in werking en is van toepassing ten opsigte van 5  
jare van aanslag wat op of na daardie datum begin.

**Wysiging van artikel 26B van die Inkomstebelastingwet 58 van 1962, soos ingevoeg deur artikel 21 van Wet 20 van 2006 en gewysig deur artikel 24 van Wet 8 van 2007**

60. (1) Artikel 26B van die Inkomstebelastingwet, 1962, word hierby gewysig deur subartikel (2) deur die volgende subartikel te vervang: 10

“(2) Die [belasting] dividendbelasting gehef [op] ten opsigte van die [netto] bedrag van enige dividend [verklaar, soos bepaal ingevolge artikel 64B(3)], soos omskryf in artikel 64D wat betaal word soos in artikel 64E(2) beoog deur 'n olie en gas maatskappy, soos in die Tiende Bylae omskryf, [verkry] uit [winste] bedrae toeskryfbaar aan sy olie of gas inkomste, [(soos omskryf in daardie Bylae)]<sub>2</sub> sal vasgestel word ingevolge hierdie Wet maar behoudens [die Tiende] daardie Bylae.” 15

(2) Subartikel (1) word geag op 1 April 2012 in werking te getree het.

**Wysiging van artikel 28 van Wet 58 van 1962, soos gewysig deur artikel 17 van Wet 90 van 1962, artikel 22 van Wet 55 van 1966, artikel 24 van Wet 89 van 1969, artikel 21 van Wet 88 van 1971, artikel 19 van Wet 65 van 1973, artikel 19 van Wet 91 van 1982, artikel 22 van Wet 94 van 1983, artikel 17 van Wet 65 van 1986, artikel 23 van Wet 90 van 1988, artikel 13 van Wet 70 van 1989, artikel 25 van Wet 101 van 1990, artikel 29 van Wet 129 van 1991, artikel 24 van Wet 113 van 1993, artikel 19 van Wet 21 van 1994, artikel 33 van Wet 30 van 2000, artikel 42 van Wet 35 van 2007, artikel 40 van Wet 60 van 2008, artikel 40 van Wet 17 van 2009 en Wet 7 van 2010** 20

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

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

“**Belasting van korttermynversekeringsbesigheid**”;

(b) deur subartikels (1), (2), (3) en (4) onderskeidelik deur die volgende subartikels te vervang: 30

“(1) By die toepassing van hierdie artikel beteken—

‘**korttermynpolis**’ ’n korttermynpolis soos omskryf in die Korttermynversekeringswet, wat uitgereik word deur ’n korttermynversekeraar; 35

‘**korttermynversekeraar**’ ’n korttermynversekeraar soos omskryf in die Korttermynversekeringswet;

‘**korttermynversekeringsbesigheid**’ korttermynversekeringsbesigheid soos omskryf in die Korttermynversekeringswet;

‘**Korttermynversekeringswet**’ die Korttermynversekeringswet, 1998 (Wet No. 53 van 1998); 40

‘**premie**’ ’n premie soos omskryf in die Korttermynversekeringswet.

(2) By die bepaling van die belasbare inkomste wat gedurende ’n jaar van aanslag verkry word deur ’n persoon wat ’n inwoner is van die dryf van korttermynversekeringsbesigheid—

(a) word ’n premie ontvang deur of toegeval aan daardie persoon ten opsigte van ’n korttermynpolis uitgereik deur daardie persoon voor die aanvangsdatum van die risikodekking kragtens daardie polis geag ontvang deur of toegeval aan daardie persoon op die aanvangsdatum van die risikodekking kragtens daardie polis te wees; 45

(b) mag ’n bedrag van uitgawes werklik aangegaan deur daardie persoon ten opsigte van ’n terugbetaling van ’n premie slegs ingevolge artikel 11(a) afgetrek word namate die bedrag van die premie by die bruto inkomste van daardie persoon ingesluit is; 50

(c) (i) is artikels 23(c) en 23H nie van toepassing nie op uitgawes aangegaan ten opsigte van ’n korttermynpolis deur daardie persoon uitgereik; en 55

- (ii) section 23H shall not apply to expenditure incurred in respect of a reinsurance policy entered into by that person;
- (d) an amount of expenditure payable by that person in respect of any claim in terms of a short-term policy may only be deducted in terms of section 11(a) on the date that the amount is paid by that person; and 5
- (e) an amount recoverable by that person in respect of a claim incurred under a short-term policy shall only be included in the income of that person when the amount is received by that person.
- (3) Notwithstanding the provisions of section 23(e), for the purpose of determining the taxable income derived during a year of assessment by any person that is a resident from carrying on short-term insurance business, there shall be allowed as a deduction from the income of that person— 10
- (a) the amount estimated to become payable as contemplated in section 32(1)(a) of the Short-term Insurance Act in respect of that year of assessment: Provided that the amount to be taken into account shall be the amount which that person estimates will be recoverable by that person in respect of all reinsurance policies entered into by that person; and 15
- (b) the amount of the unearned premium provision contemplated in section 32(1)(b) of the Short-term Insurance Act in respect of that year of assessment: Provided that— 20
- (i) consideration payable in respect of all reinsurance policies entered into by that person shall be taken into account; and 25
- (ii) a reserve for a cash-back bonus contemplated in paragraph 4.1.1 of Board Notice 169 of 2011, published in *Gazette* No. 34715 of 28 October 2011, may only be taken into account if the reserve is determined in accordance with a method comprising a best estimate of the liability plus a risk margin, and such method is approved by the Financial Services Board. 30
- (4) The total of all amounts deducted from the income of a person in respect of a year of assessment in terms of subsection (3) shall be included in the income of that person in the following year of assessment.”; 35
- (c) by the deletion of subsection (5);
- (d) by the deletion of subsection (6);
- (e) by the substitution in subsection (7) for the words preceding paragraph (a) of the following words: 40
- “In determining the net income, as contemplated in section 9D(2A), derived by any person that is a controlled foreign company from the carrying on outside the Republic of short-term insurance business [as defined in the Short-Term Insurance Act, 1998 (Act No. 53 of 1998),] there shall be deducted from the sum of all premiums (including reinsurance premiums) received by or accrued to that person in respect of the insurance or reinsurance of any risk and other amounts derived from the carrying on of that business, the sum of—”; 45
- (f) by the substitution in subsection (8) for paragraph (c) of the following paragraph: 50
- “(c) to the extent that the estimate and provision contemplated in subsection (7)(c) would have been allowed or required in terms of the Short-Term Insurance Act[, 1998 (Act No. 53 of 1998),] had the liability or provision been incurred in the Republic; and”; and
- (g) by the substitution for subsection (9) of the following subsection: 55
- “(9) Any deduction contemplated in subsection [(2) or] (7) shall be subject to such adjustments as may be made by the Commissioner.”.
- (2) Paragraphs (a), (b), (d), (e), (f) and (g) of subsection (1) come into operation on 1 January 2013 and apply in respect of years of assessment commencing on or after that date. 60



- (ii) is artikel 23H nie van toepassing nie op uitgawes aangegaan ten opsigte van 'n herverskeringspolis deur daardie persoon aangegaan;
- (d) mag 'n bedrag van uitgawes betaalbaar deur daardie persoon ten opsigte van enige eis ingevolge 'n korttermynpolis slegs ingevolge artikel 11(a) afgetrek word op die datum waarop die bedrag deur daardie persoon betaal word; en 5
- (e) word 'n bedrag verhaalbaar deur daardie persoon ten opsigte van 'n eis aangegaan kragtens 'n korttermynpolis slegs ingesluit by die inkomste van daardie persoon wanneer die bedrag deur daardie persoon ontvang word. 10
- (3) Ondanks die bepalings van artikel 23(e), by die bepaling van die belasbare inkomste verkry gedurende 'n jaar van aanslag deur 'n persoon wat 'n inwoner is uit die dryf van korttermynversekeringsbesigheid word daar toegelaat as 'n aftrekking van die inkomste van daardie persoon— 15
- (a) die bedrag geskat betaalbaar te word soos beoog in artikel 32(1)(a) van die Korttermynversekeringswet ten opsigte van daardie jaar van aanslag: Met dien verstande dat die bedrag in berekening gebring te word die bedrag moet wees wat daardie persoon skat verhaalbaar sal wees deur daardie persoon ten opsigte van alle herverskeringspolisse deur daardie persoon aangegaan; en 20
- (b) die bedrag van die voorsiening vir onverdiende premies beoog in artikel 32(1)(b) van die Korttermynversekeringswet ten opsigte van daardie jaar van aanslag: Met dien verstande dat— 25
- (i) vergoeding betaalbaar ten opsigte van alle herverskeringspolisse aangegaan deur daardie persoon in berekening gebring word; en
- (ii) 'n reserwe vir 'n kontantterugbetalingsbonus beoog in paragraaf 4.1.1 van Raadskennisgewing 169 van 2011, gepubliseer in *Staatskoerant* No. 34715 van 28 Oktober 2011, slegs in berekening gebring mag word indien die reserwe bepaal word ooreenkomstig 'n metode wat bestaan uit 'n beste skatting van die las plus 'n risikomarge, en sodanige metode deur die Raad op Finansiële Dienste goedgekeur word. 30
- (4) Die totaal van alle bedrae afgetrek van die inkomste van 'n persoon ten opsigte van 'n jaar van aanslag ingevolge subartikel (3) word in die volgende jaar van aanslag by die inkomste van daardie persoon ingesluit.”; 35
- (c) deur subartikel (5) te skrap;
- (d) deur subartikel (6) te skrap;
- (e) deur in subartikel (7) die woorde wat paragraaf (a) voorafgaan deur die volgende woorde te vervang: 40
- “By die berekening van die netto inkomste, soos beoog in artikel 9D(2A), verkry deur enige persoon wat 'n beheerde buitelandse maatskappy is uit die bedryf buite die Republiek van korttermynversekeringsbesigheid [**soos in die Korttermynversekeringswet, 1998 (Wet No. 53 van 1998), omskryf,**] word daar afgetrek van die som van alle premies (met inbegrip van herverskeringspremies) ontvang deur of toegeval aan daardie persoon ten opsigte van die versekering of herverskering van enige risiko en ander bedrae verkry uit die bedryf van daardie besigheid, die som van—”; 45
- (f) deur in subartikel (8) paragraaf (c) deur die volgende paragraaf te vervang: 50
- “(c) namate die raming en voorsiening beoog in subartikel (7)(c) ingevolge die Korttermynversekeringswet, [**1998 (Wet No. 53 van 1998),**] toegelaat of vereis sou gewees het indien die aanspreeklikheid of voorsiening in die Republiek aangegaan sou gewees het; en”; en 55
- (g) deur subartikel (9) deur die volgende subartikel te vervang: 60
- “(9) Enige aftrekking beoog in subartikel [(2) of] (7) is onderhewig aan die aanpassings wat deur die Kommissaris gemaak word.”.
- (2) Paragrafe (a), (b), (d), (e), (f) en (g) van subartikel (1) tree op 1 Januarie 2013 in werking en is van toepassing ten opsigte van jare van aanslag wat op of na daardie datum begin. 60

(3) Paragraph (c) of subsection (1) comes into operation on 1 January 2014 and applies in respect of years of assessment commencing on or after that date.

**Amendment of section 29A of Act 58 of 1962, as inserted by section 30 of Act 53 of 1999 and amended by section 36 of Act 59 of 2000, section 15 of Act 5 of 2001, section 15 of Act 19 of 2001, section 39 of Act 60 of 2001, section 30 of Act 74 of 2002, section 16 of Act 16 of 2004, section 23 of Act 20 of 2006 and section 21 of Act 3 of 2008** 5

62. (1) Section 29A of the Income Tax Act, 1962, is hereby amended—

(a) by the substitution for subsections (2) and (3) of the following subsections: 10

“(2) The taxable income derived by any insurer in respect of any year of assessment commencing on or after 1 January 2000, shall be determined in accordance with the provisions of this Act, but subject to the provisions of this section and section 29B.

(3) Every insurer shall establish four separate funds as contemplated in subsection (4), and shall thereafter maintain such funds in accordance with the provisions of this section and section 29B.”; 15

(b) by the substitution in subsection (7) for the words following paragraph (b) of the following words:

“and such transfer shall for the purposes of this section and section 29B be deemed to have been made on such last day.”; 20

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

“(10) The taxable income derived by an insurer in respect of its individual policyholder fund, its company policyholder fund and its corporate fund shall be determined separately in accordance with the provisions of this Act as if each such fund had been a separate taxpayer and the individual policyholder fund, company policyholder fund, untaxed policyholder fund and corporate fund, shall be deemed to be separate companies which are connected persons in relation to each other for the purposes of subsections (6), (7) and (8) and sections 9B, 20, 24I, 24J, 24K, 24L [and], 26A and 29B and the Eighth Schedule to this Act.”; 25 30

(d) by the substitution in subsection (11)(a)(ii) for the words following item (bb) of the following words:

“which percentage shall be determined in accordance with the formula

$$Y = \frac{X}{Z}$$
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in which formula—

(A) ‘Y’ represents the percentage to be applied to such amount;

(B) ‘X’ represents an amount which would have been equal to the taxable income calculated in respect of such fund and in respect of such year of assessment, but for any deduction during such year of any amount incurred in respect of— 40

(AA) the selling and administration of policies; and

(BB) any indirect expenses allocated to such fund; and

(C) ‘Z’ represents an amount equal to the amount represented by X in the formula, plus— 45

(AA) the aggregate amount of all dividends that are exempt from normal tax and that are received in respect of such fund during such year;

(BB) the aggregate amount of all foreign dividends received in respect of such fund during such year, less any amount of that aggregate amount that is included in taxable income; and 50

(CC) any portion of the aggregate capital gain in respect of such fund and in respect of such year that is not, by virtue of paragraph 10 of the Eighth Schedule, included in the taxable income in respect of such fund and in respect of such year; and”; 55

(3) Paragraaf (c) van subartikel (1) tree op 1 Januarie 2014 in werking en is van toepassing ten opsigte van jare van aanslag wat op of na daardie datum begin.

**Wysiging van artikel 29A van Wet 58 van 1962, soos ingevoeg deur artikel 30 van Wet 53 van 1999 en gewysig deur artikel 36 van Wet 59 van 2000, artikel 15 van Wet 5 van 2001, artikel 15 van Wet 19 van 2001, artikel 39 van Wet 60 van 2001, artikel 30 van Wet 74 van 2002, artikel 16 van Wet 16 van 2004, artikel 23 van Wet 20 van 2006 en artikel 21 van Wet 3 van 2008** 5

62. (1) Artikel 29A van die Inkomstebelastingwet, 1962, word hierby gewysig—

- (a) deur subartikels (2) en (3) deur die volgende subartikels te vervang: 10  
“(2) Die belasbare inkomste wat deur ’n versekeraar verkry word ten opsigte van enige jaar van aanslag wat op of na 1 Januarie 2000 begin, word ooreenkomstig die bepalings van hierdie Wet, maar behoudens die bepalings van hierdie artikel en artikel 29B, vasgestel.  
(3) Elke versekeraar stig vier afsonderlike fondse soos in subartikel (4) beoog, en hou bedoelde fondse daarna ooreenkomstig die bepalings van hierdie artikel en artikel 29B in stand.”; 15
- (b) deur in subartikel (7) die woorde wat op paragraaf (b) volg deur die volgende woorde te vervang: 20  
“en bedoelde oorplasing word by die toepassing van hierdie artikel en artikel 29B geag op bedoelde laaste dag gemaak te gewees het.”;
- (c) deur subartikel (10) deur die volgende subartikel te vervang: 25  
“(10) Die belasbare inkomste deur ’n versekeraar verkry ten opsigte van sy individuele polishouerfonds, sy maatskappypolishouerfonds en sy korporatiewe fonds word afsonderlik ooreenkomstig die bepalings van hierdie Wet vasgestel asof elke bedoelde fonds ’n afsonderlike belastingpligtige was en die individuele polishouerfonds, maatskappypolishouerfonds, onbelaste polishouerfonds en korporatiewe fonds word geag afsonderlike maatskappye te wees wat verbonde persone is met betrekking tot mekaar by die toepassing van subartikels (6), (7) en (8) en artikels 9B, 20, 24I, 24J, 24K, 24L<sub>2</sub>, [en] 26A en 29B en die Agtste Bylae by hierdie Wet.”; 30
- (d) deur in subartikel (11)(a)(ii) die woorde wat op item (bb) volg deur die volgende woorde te vervang: 35  
“welke persentasie bepaal word ooreenkomstig die formule

$$Y = \frac{X}{Z}$$

in welke formule—

- (A) ‘Y’ die persentasie verteenwoordig wat op daardie bedrag toegepas moet word; 40
- (B) ‘X’ ’n bedrag verteenwoordig wat gelyk sou wees aan die belasbare inkomste bereken ten opsigte van sodanige fonds en ten opsigte van sodanige jaar van aanslag, by ontstentenis van enige aftrekking gedurende sodanige jaar van enige bedrag aangegaan ten opsigte van— 45
- (AA) die verkoop en administrasie van polisse; en  
(BB) enige indirekte uitgawes aan sodanige fonds toegeken; en
- (C) ‘Z’ ’n bedrag verteenwoordig gelyk aan die bedrag verteenwoordig deur X in die formule, plus— 50
- (AA) die totale bedrag van alle dividende wat vrygestel word van normale belasting en wat ontvang word ten opsigte van sodanige fonds gedurende sodanige jaar;  
(BB) die totale bedrag van alle buitelandse dividende ontvang ten opsigte van sodanige fonds gedurende sodanige jaar, minus enige bedrag van daardie totale bedrag wat by belasbare inkomste ingesluit word; en 55
- (CC) enige gedeelte van die totale kapitaalwins ten opsigte van sodanige fonds en ten opsigte van sodanige jaar wat nie, uit hoofde van paragraaf 10 van die Agtste Bylae, by die belasbare inkomste ten opsigte van sodanige fonds en ten opsigte van sodanige jaar ingesluit word nie; en”;

- (e) by the substitution in subsection (11)(a)(iii) for the words preceding the proviso of the following words:
- “such percentage, determined in accordance with the formula contemplated in subparagraph (ii), of [50] 30 per cent of the amount transferred from the policyholder fund in terms of subsection (7)(a), to the extent that the amount of such transfer is required to be included in the income of the corporate fund during such year of assessment in terms of paragraph (d)(i) of this subsection”;
- (f) by the deletion in subsection (11) of the word “and” at the end of paragraph (f);
- (g) by the substitution in subsection (11) for the full-stop at the end of paragraph (g) of the expression “; and”;
- (h) by the addition to subsection (11) after paragraph (g) of the following paragraph:

“(h) no amount may be deducted by way of an allowance in respect of an asset as defined in the Eighth Schedule.”

(2) Paragraphs (a), (b) and (c) of subsection (1) are deemed to have come into operation on 29 February 2012.

(3) Paragraphs (d), (e), (f), (g) and (h) of subsection (1) come into operation on 1 January 2013 and apply in respect of years of assessment commencing on or after that date.

#### Insertion of section 29B in Act 58 of 1962

63. (1) The Income Tax Act, 1962, is hereby amended by the insertion after section 29A of the following section:

#### “Mark-to-market taxation in respect of long-term insurers

29B. (1) For the purposes of this section, unless the context otherwise indicates, any word or expression that has been defined in section 29A must bear the same meaning as defined in that section, and—

‘Category III Financial Services Provider’ means a financial services provider as defined in section 1 of the Financial Advisory and Intermediary Services Act, 2002 (Act No. 37 of 2002), that has been issued with a Category III licence in terms of that Act;

‘market value’, in relation to any asset placed in any policyholder fund as contemplated in section 29A(4), means—

- (a) where that asset constitutes a financial instrument that is listed on—
- (i) an exchange as defined in section 1 of the Securities Services Act, 2004 (Act No. 36 of 2004), and licensed under section 10 of that Act; or
- (ii) an exchange in a country other than the Republic which has been recognised by the Minister as contemplated in paragraph (c) of the definition of ‘recognised exchange’ in paragraph 1 of the Eighth Schedule,

the sum which a person having the right to freely dispose of that asset might reasonably expect to obtain from a sale of that asset in the open market; or

- (b) where that asset is an asset other than an asset contemplated in paragraph (a), the value of that asset as taken into account in determining the investment value of policies as reported to the owners of the policies in respect of the policyholder fund in which the asset is so placed; and

‘realisation year’, in relation to an insurer, means the first year of assessment of that insurer that ends on or after 29 February 2012.

(2) An insurer must, on 29 February 2012, be deemed to have disposed of each asset held by that insurer in respect of all its policyholder funds, other than an asset that constitutes—

- (a) an instrument as defined in section 24J(1);
- (b) an interest rate agreement as defined in section 24K(1);
- (c) a contractual right or obligation the value of which is determined directly or indirectly with reference to—
- (i) an instrument contemplated in paragraph (a);

- (e) deur in subartikel (11)(a)(iii) die woorde wat die voorbehoudsbepaling voorafgaan deur die volgende woorde te vervang:  
“daardie persentasie, ooreenkomstig die formule in subparagraaf (ii) beoog, vasgestel, van [50] 30 persent van die bedrag wat ingevolge subartikel (7)(a) vanaf die polishouerfonds oorgeplaas is, vir sover die bedrag van daardie oorplasing ingevolge paragraaf (d)(i) van hierdie subartikel gedurende daardie jaar van aanslag in die inkomste van die korporatiewe fonds ingesluit moet word”;
- (f) deur in subartikel (11) die woord “en” aan die einde van paragraaf (f) te skrap;
- (g) deur in subartikel (11) die punt aan die einde van paragraaf (g) van die uitdrukking “; en”; te vervang; en
- (h) deur in subartikel (11) na paragraaf (g) die volgende paragraaf by te voeg:  
“(h) mag geen bedrag by wyse van ’n toelae ten opsigte van ’n bate soos omskryf in die Agtste Bylae afgetrek word nie.”.

(2) Paragrafe (a), (b) en (c) van subartikel (1) word geag op 29 Februarie 2012 in werking te getree het.

(3) Paragraaf (d), (e), (f), (g) en (h) van subartikel (1) tree op 1 Januarie 2013 in werking en is van toepassing ten opsigte van jare van aanslag wat op of na daardie datum begin.

### Invoeging van artikel 29B in Wet 58 van 1962 20

63. (1) Die Inkomstebelastingwet, 1962, word hierby gewysig deur na artikel 29A die volgende artikel in te voeg:

#### “Merk-tot-mark belasting ten opsigte van langtermynversekeraars

**29B.** (1) By die toepassing van hierdie artikel, tensy uit die samehang anders blyk, dra enige woord of uitdrukking wat in artikel 29A omskryf word dieselfde betekenis as in daardie artikel omskryf, en beteken—  
‘**Kategorie III Verskaffer van Finansiële Dienste**’ ’n verskaffer van finansiële dienste soos omskryf in artikel 1 van die Wet op Finansiële Advies- en Tussengangersdienste, 2002 (Wet No. 37 van 2002), aan wie ’n Kategorie III lisensie ingevolge daardie Wet uitgereik is;  
‘**markwaarde**’, met betrekking tot ’n bate geplaas in enige polishouerfonds soos beoog in artikel 29A(4)—

- (a) waar daardie bate ’n finansiële instrument uitmaak wat genoteer word op—
- (i) ’n ‘exchange’ soos omskryf in artikel 1 van die ‘Securities Services Act, 2004’ (Wet No. 36 van 2004), en gelisensieer kragtens artikel 10 van daardie Wet; of
- (ii) ’n beurs in ’n ander land as die Republiek wat deur die Minister erken is soos beoog in paragraaf (c) van die omskrywing van ‘erkende beurs’ in paragraaf 1 van die Agtste Bylae,

die som wat ’n persoon wat die reg het om vryelik te beskik oor daardie bate redelikerwyse kon verwag om te behaal uit ’n verkoop van daardie bate op die ope mark; of

- (b) waar daardie bate ’n bate buiten ’n bate beoog in paragraaf (a) is, die waarde van daardie bate soos in berekening gebring by die bepaling van die beleggingswaarde van daardie bate soos berig aan die eienaars van die polisse ten opsigte van die polishouerfonds waarin die bate aldus geplaas word; en

‘**realisasiejaar**’, met betrekking tot ’n versekeraar, die eerste jaar van aanslag van daardie versekeraar wat op of na 29 Februarie 2012 eindig.

(2) ’n Versekeraar word, op 29 Februarie 2012, geag te beskik het oor elke bate gehou deur daardie versekeraar ten opsigte van al sy polishouerfondse, buiten ’n bate wat—

- (a) ’n instrument soos omskryf in artikel 24J(1) uitmaak;
- (b) ’n rentekoersooreenkoms soos omskryf in artikel 24K(1) uitmaak;
- (c) ’n kontraktuele reg of verpligting uitmaak waarvan die waarde bepaal word regstreeks of onregstreeks met verwysing na—
- (i) ’n instrument beoog in paragraaf (a);

- (ii) an interest rate agreement contemplated in paragraph (b); or
- (iii) any specified rate of interest;
- (d) trading stock; or
- (e) a policy of reinsurance.

(3) Where an asset is deemed to have been disposed of by an insurer as contemplated in subsection (2) on the date contemplated in that subsection—

- (a) that asset must be deemed to have been so disposed of on that date for an amount received or accrued equal to the market value of the asset on that date; and
- (b) that insurer must be deemed to have immediately reacquired that asset at an expenditure equal to the market value contemplated in paragraph (a), which expenditure must be deemed to be an amount of expenditure actually incurred for the purposes of paragraph 20(1)(a) of the Eighth Schedule.

(4) Where an asset is deemed to have been disposed of by an insurer as contemplated in subsection (2) and that asset, in the hands of that insurer, constitutes an asset as defined in paragraph 1 of the Eighth Schedule, that disposal must not be taken into account for the purposes of determining the amount of any allowance or deduction—

- (a) to which that insurer may be entitled in respect of that asset; or
- (b) that is to be recovered or recouped by or included in the income of that insurer in respect of that asset.

(5) (a) In addition to any inclusion in any aggregate capital gain or aggregate capital loss of the policyholder funds of an insurer, that insurer must, in respect of each of those policyholder funds, include in the aggregate capital gain or aggregate capital loss of each of those funds for the realisation year and each of the three years of assessment following that realisation year an amount equal to 18,75 per cent of an amount determined in terms of paragraph (b).

(b) The amount to be determined for the purposes of paragraph (a) is an amount equal to the aggregate of all capital gains and losses determined in respect of the disposal, on 29 February 2012, of any asset as contemplated in subsection (2).

(6) This section does not apply to any asset held by an insurer if that insurer is a Category III Financial Services Provider and that asset is held by that insurer in its capacity as a Category III Financial Services Provider.”

(2) Subsection (1) is deemed to have come into operation on 29 February 2012.

**Amendment of section 31 of Act 58 of 1962, as substituted by section 56 of Act 24 of 2011**

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

(a) by the substitution in subsection (1) for paragraph (a) of the definition of “**financial assistance**” of the following paragraph:

“(a) [loan, advance or] debt; or”;

(b) by the deletion in subsection (5) of the word “or” at the end of paragraph (a);

(c) by the substitution in subsection (5) for the full-stop at the end of paragraph (b) of a semi-colon;

(d) by the addition in subsection (5) of the following paragraphs:

“(c) any other person that is not a resident and that transaction, operation, scheme, agreement or understanding is in respect of the granting of the use, right of use or permission to use any intellectual property as defined in section 23I(1) by that other person to that headquarter company, this section does not apply to the extent that the headquarter company—

- (i) grants that use, right of use or permission to use that intellectual property to any foreign company in which the headquarter company directly or indirectly (whether alone or together with any other company forming part of the same group of companies as that headquarter company)

- (ii) 'n rentekoersoreenkoms beoog in paragraaf (b); of
  - (iii) enige spesifieke rentekoers;
  - (d) handelsvoorraad uitmaak; of
  - (e) 'n herversekeringspolis uitmaak.
  - (3) Waar 'n bate geag word oor beskik te word deur 'n versekeraar soos beoog in subartikel (2) op die datum beoog in daardie subartikel—
    - (a) word daardie bate geag aldus oor beskik te gewees het op daardie datum vir 'n bedrag ontvang of toegeval gelyk aan die markwaarde van die bate op daardie datum; en
    - (b) word daardie versekeraar geag daardie bate onmiddellik te herverkry het teen 'n uitgawe gelyk aan die markwaarde beoog in paragraaf (a), welke uitgawe geag word 'n bedrag van uitgawe werklik aangegaan by die toepassing van paragraaf 20(1)(a) van die Agtste Bylae te wees.
  - (4) Waar 'n bate geag word oor beskik te word deur 'n versekeraar soos beoog in subartikel (2) en daardie bate, in die hande van daardie versekeraar, 'n bate soos omskryf in paragraaf 1 van die Agtste Bylae uitmaak, word daardie beskikking nie in berekening gebring nie met die oog op die bepaling van die bedrag van enige toelae of aftrekking—
    - (a) waarop daardie versekeraar geregtig mag wees ten opsigte van daardie bate; of
    - (b) vergoed of verhaal te word deur of ingesluit te word by die inkomste van daardie versekeraar ten opsigte van daardie bate.
  - (5) (a) Bykomend tot enige insluiting by enige totale kapitaalwins of totale kapitaalverlies van die polishouerfondse van 'n versekeraar moet daardie versekeraar, ten opsigte van elk van daardie polishouerfondse, by die totale kapitaalwins of totale kapitaalverlies van elk van daardie fondse vir die realisasiejaar en elk van die drie jare van aanslag wat volg op daardie realisasiejaar 'n bedrag gelyk aan 18,75 persent van 'n bedrag ingevolge paragraaf (b) bepaal, insluit.
    - (b) Die bedrag bepaal te word by die toepassing van paragraaf (a) is 'n bedrag gelyk aan die totaal van alle kapitaalwinste en -verliese bepaal ten opsigte van die beskikking, op 29 Februarie 2012, oor 'n bate soos beoog in subartikel (2).
  - (6) Hierdie artikel is nie van toepassing nie op 'n bate gehou deur 'n versekeraar indien daardie versekeraar 'n Kategorie III Verskaffer van Finansiële Dienste is en daardie bate deur daardie versekeraar in sy hoedanigheid as 'n Kategorie III Verskaffer van Finansiële Dienste gehou word.”
- (2) Subartikel (1) word geag op 29 Februarie 2012 in werking te getree het.

**Wysiging van artikel 31 van Wet 58 van 1962, soos vervang deur artikel 56 van Wet 24 van 2011**

64. (1) Artikel 31 van die Inkomstebelastingwet, 1962, word hierby gewysig—
- (a) deur in subartikel (1) paragraaf (a) van die omskrywing van “**finansiële bystand**” deur die volgende paragraaf te vervang:
    - “(a) [lening, voorskot of] skuld; of”;
  - (b) deur in subartikel (5) die woord “of” aan die einde van paragraaf (a) te skrap;
  - (c) deur in subartikel (5) die punt aan die einde van paragraaf (b) deur 'n kommapunt te vervang;
  - (d) deur in subartikel (5) die volgende paragrawe by te voeg:
    - “(c) enige ander persoon wat nie 'n inwoner is nie en daardie transaksie, handeling, skema, ooreenkoms of verstandhouding is ten opsigte van die verlening van die gebruik, reg van gebruik of toestemming tot gebruik van enige immateriële goedere soos omskryf in artikel 23I(1) deur daardie ander persoon aan daardie hoofkwartiermaatskappy, is hierdie artikel nie van toepassing nie namate die hoofkwartiermaatskappy—
      - (i) daardie gebruik, reg van gebruik of toestemming tot gebruik van daardie immateriële goedere verleen aan enige buitelandse maatskappy waarin die hoofkwartiermaatskappy regstreeks of onregstreeks (hetsy alleen of tesame met enige ander maatskappy wat deel uitmaak van dieselfde groep van

- holds at least 10 per cent of the equity shares and voting rights; and
- (ii) does not make use of that intellectual property otherwise than as contemplated in subparagraph (i); or
- (d) any foreign company in which the headquarter company directly or indirectly (whether alone or together with any other company forming part of the same group of companies as that headquarter company) holds at least 10 per cent of the equity shares and voting rights and that transaction, operation, scheme, agreement or understanding comprises the granting of the use, right of use or permission to use any intellectual property as defined in section 23I(1) by that headquarter company to that foreign company, this section does not apply to that granting to that foreign company.”; and
- (e) by the addition of the following subsection:
- “(6) Where any transaction, operation, scheme, agreement or understanding that comprises the granting of—
- (a) financial assistance; or
  - (b) the use, right of use or permission to use any intellectual property as defined in section 23I, by a person that is a resident (other than a headquarter company) to a controlled foreign company in relation to that resident, this section must not be applied in calculating the taxable income or tax payable by that resident in respect of any amount received by or accrued to that resident in terms of that transaction, operation, scheme, agreement or understanding if—
- (i) that resident (whether alone or together with any other company forming part of the same group of companies as that resident) owns at least 10 per cent of the equity shares and voting rights in that controlled foreign company;
  - (ii) that controlled foreign company has a foreign business establishment as defined in section 9D(1); and
  - (iii) the aggregate amount of tax payable to all spheres of government of any country other than the Republic by that controlled foreign company in respect of any foreign tax year of that controlled foreign company during which that transaction, operation, scheme, agreement or understanding exists is at least 75 per cent of the amount of normal tax that would have been payable in respect of any taxable income of that controlled foreign company had that controlled foreign company been a resident for that foreign tax year: Provided that the aggregate amount of tax so payable must be determined—
- (aa) after taking into account any applicable agreement for the prevention of double taxation and any credit, rebate or other right of recovery of tax from any sphere of government of any country other than the Republic; and
  - (bb) after disregarding any loss in respect of a year other than that foreign tax year or from a company other than that controlled foreign company.”.

(2) Paragraph (a) of subsection (1) comes into operation on 1 January 2013.

(3) Paragraphs (b), (c), (d) and (e) of subsection (1) come into operation on 1 January 2013 and apply in respect of years of assessment commencing on or after that date.

### Repeal of section 35 of Act 58 of 1962

65. (1) The Income Tax Act, 1962, is hereby amended by the repeal of section 35.

(2) Subsection (1) comes into operation on 1 July 2013 and applies in respect of amounts received or accrued on or after that date.



- maatskappye as daardie hoofkwartiermaatskappy) minstens 10  
persent van die ekwiteitsaandele en stemregte hou; en
- (ii) nie van daardie immateriële goedere gebruik maak nie  
andersins as soos beoog in subparagraaf (i); of
- (d) enige buitelandse maatskappy waarin die hoofkwartiermaatskappy 5  
regstreeks of onregstreeks (hetsy alleen of tesame met enige ander  
maatskappy wat deel uitmaak van dieselfde groep van maatskappye  
as daardie hoofkwartiermaatskappy) minstens 10 persent van die  
ekwiteitsaandele en stemregte hou en daardie transaksie, handeling,  
skema, ooreenkoms of verstandhouding bestaan uit die verlening 10  
van die gebruik, reg van gebruik of toestemming tot gebruik van  
enige immateriële goedere soos omskryf in artikel 23I(1) deur  
daardie hoofkwartiermaatskappy aan daardie buitelandse maat-  
skappy, is hierdie artikel nie van toepassing nie op daardie verlening  
aan daardie buitelandse maatskappy.”; en 15
- (e) deur na subartikel (5) die volgende subartikel in te voeg:
- “(6) Waar enige transaksie, handeling, skema, ooreenkoms of  
verstandhouding wat bestaan uit die verlening van—
- (a) finansiële bystand; of
- (b) die gebruik, reg van gebruik of toestemming tot gebruik van enige 20  
immateriële goedere soos omskryf in artikel 23I,  
deur ’n persoon wat ’n inwoner is (buiten ’n hoofkwartiermaatskappy)  
aan ’n beheerde buitelandse maatskappy met betrekking tot daardie  
inwoner, word hierdie artikel nie toegepas nie in die berekening van die  
belasbare inkomste of belasting betaalbaar deur daardie inwoner ten 25  
opsigte van enige bedrag ontvang deur of toegeval aan daardie inwoner  
ingevolge daardie transaksie, handeling, skema, ooreenkoms of  
verstandhouding indien—
- (i) daardie inwoner (hetsy alleen of tesame met enige ander  
maatskappy wat deel uitmaak van dieselfde groep van maatskappye 30  
as daardie inwoner) minstens 10 persent van die ekwiteitsaandele  
en stemregte in daardie beheerde buitelandse maatskappy besit;
- (ii) daardie beheerde buitelandse maatskappy ’n buitelandse  
besigheidsaak soos omskryf in artikel 9D(1) het; en
- (iii) die totale bedrag van belasting betaalbaar aan alle regeringsfere van 35  
’n ander land as die Republiek deur daardie beheerde buitelandse  
maatskappy ten opsigte van enige buitelandse belastingjaar van  
daardie beheerde buitelandse maatskappy waartydens daardie  
transaksie, handeling, skema, ooreenkoms of verstandhouding  
bestaan minstens 75 persent is van die bedrag van normale belasting 40  
wat betaalbaar sou wees ten opsigte van enige belasbare inkomste  
van daardie beheerde buitelandse maatskappy indien daardie  
beheerde buitelandse maatskappy vir daardie buitelandse  
belastingjaar ’n inwoner was: Met dien verstande dat die totale  
bedrag van belasting aldus betaalbaar bepaal moet word— 45
- (aa) nadat in berekening gebring is enige toepaslike ooreenkoms  
vir die voorkoming van dubbele belasting en enige krediet,  
korting of ander reg van verhaal van belasting van enige  
regeringsfere van ’n ander land as die Republiek; en
- (bb) nadat buite berekening gelaat is enige verlies ten opsigte van 50  
’n ander jaar as daardie buitelandse belastingjaar of van ’n  
ander maatskappy as daardie beheerde buitelandse maat-  
skappy.”.
- (2) Paragraaf (a) van subartikel (1) tree op 1 Januarie 2013 in werking.
- (3) Paragraawe (b), (c), (d) en (e) van subartikel (1) tree op 1 Januarie 2013 in werking 55  
en is van toepassing ten opsigte van jare van aanslag wat op of na daardie datum begin.

### Herroeping van artikel 35 van Wet 58 van 1962

65. (1) Die Inkomstebelastingwet, 1962, word hierby gewysig deur artikel 35 te herroep.

(2) Subartikel (1) tree op 1 Julie 2013 in werking en is van toepassing ten opsigte van 60  
bedrae op of na daardie datum ontvang of toegeval.

**Amendment of section 37B of Act 58 of 1962, as inserted by section 48 of Act 35 of 2007 and amended by section 45 of Act 60 of 2008 and section 44 of Act 17 of 2009**

66. (1) Section 37B of the Income Tax Act, 1962, is hereby amended by the substitution in subsection (2) for paragraphs (a) and (b) of the following paragraphs:
- “(a) in the case of a new and unused environmental treatment and recycling asset owned by the taxpayer or acquired by the taxpayer as purchaser in terms of an agreement contemplated in paragraph (a) of the definition of an ‘instalment credit agreement’ in section 1 of the Value-Added Tax Act, 1991 (Act No. 89 of 1991), 40 per cent of the cost to the taxpayer to acquire the asset in the year of assessment that it is brought into use for the first time by that taxpayer, and 20 per cent in each succeeding year of assessment; and
- (b) in the case of a new and unused environmental waste disposal asset owned by the taxpayer or acquired by the taxpayer as purchaser in terms of an agreement contemplated in paragraph (a) of the definition of an ‘instalment credit agreement’ in section 1 of the Value-Added Tax Act, 1991 (Act No. 89 of 1991), five per cent of the cost to the taxpayer to acquire the asset in the year of assessment that it is brought into use for the first time by that taxpayer, and five per cent in each succeeding year of assessment.”.
- (2) Subsection (1) comes into operation on 1 January 2013 and applies in respect of years of assessment commencing on or after that date.

**Repeal of section 37H of Act 58 of 1962**

67. (1) The Income Tax Act, 1962, is hereby amended by the repeal of section 37H.  
(2) Subsection (1) comes into operation as from the commencement of years of assessment commencing on or after 1 January 2013.

**Repeal of Part IA of Chapter II of Act 58 of 1962, as inserted by section 58 of Act 7 of 2010**

68. (1) Chapter II of the Income Tax Act, 1962, is hereby amended by the repeal of Part IA.  
(2) Subsection (1) comes into operation on 31 December 2012.

**Insertion of Part IA in Chapter II of Act 58 of 1962**

69. (1) Chapter II of the Income Tax Act, 1962, is hereby amended by the insertion after Part I of the following Part:

*“Part IA*

*Withholding tax on interest*

**Definitions**

- 37I. (1) In this Part—
- ‘bank’ means any—
- (a) bank as defined in section 1 of the Banks Act, 1990 (Act No. 94 of 1990);
- (b) mutual bank as defined in section 1 of the Mutual Banks Act, 1993 (Act No. 124 of 1993); or
- (c) co-operative bank as defined in section 1 of the Co-operative Banks Act, 2007 (Act No. 40 of 2007);
- ‘Development Bank of Southern Africa’ means the Development Bank of Southern Africa Limited, incorporated in terms of the Development Bank of Southern Africa Act, 1997 (Act No. 13 of 1997);
- ‘foreign person’ means any person that is not a resident;
- ‘goods’ means any corporeal movable thing;

**Wysiging van artikel 37B van Wet 58 van 1962, soos ingevoeg deur artikel 48 van Wet 35 van 2007 en gewysig deur artikel 45 van Wet 60 van 2008 en artikel 44 van Wet 17 van 2009**

- 66.** (1) Artikel 37B van die Inkomstebelastingwet, 1962, word hierby gewysig deur in subartikel (2) paragrawe (a) en (b) deur die volgende paragrawe te vervang: 5
- “(a) in die geval van ’n nuwe en ongebruikte omgewingsbehandelings- en herwinningsbate besit deur die belastingpligtige of verkry deur die belastingpligtige as koper ingevolge ’n ooreenkoms beoog in paragraaf (a) van die omskrywing van ’n ‘paaientkredietooreenkoms’ in artikel 1 van die Wet op Belasting op Toegevoegde Waarde, 1991 (Wet No. 89 van 1991), 40 10  
persent van die koste vir die belastingpligtige om die bate te verkry in die jaar van aanslag wat dit vir die eerste keer deur daardie belastingpligtige in gebruik geneem is, en 20 persent in elkeen van die daaropvolgende jare van aanslag; en
- (b) in die geval van ’n nuwe en ongebruikte omgewingsafvalverwyderingsbate 15  
besit deur die belastingpligtige of verkry deur die belastingpligtige as koper ingevolge ’n ooreenkoms beoog in paragraaf (a) van die omskrywing van ’n ‘paaientkredietooreenkoms’ in artikel 1 van die Wet op Belasting op Toegevoegde Waarde, 1991 (Wet No. 89 van 1991), vyf persent van die koste 20  
vir die belastingpligtige om die bate te verkry in die jaar van aanslag wat dit vir die eerste keer deur die belastingpligtige in gebruik geneem is en vyf persent in elkeen van die daaropvolgende jare van aanslag.”
- (2) Subartikel (1) tree op 1 Januarie 2013 in werking en is van toepassing ten opsigte van jare van aanslag wat op of na daardie datum begin.

**Herroeping van artikel 37H van Wet 58 van 1962** 25

- 67.** (1) Die Inkomstebelastingwet, 1962, word hierby gewysig deur artikel 37H te herroep.
- (2) Subartikel (1) tree in werking vanaf die begin van jare van aanslag wat op of na 1 Januarie 2013 begin.

**Herroeping van Deel IA van Hoofstuk II van Wet 58 van 1962, soos ingevoeg deur artikel 58 van Wet 7 van 2010** 30

- 68.** (1) Hoofstuk II van die Inkomstebelastingwet, 1962, word hierby gewysig deur Deel IA te herroep.
- (2) Subartikel (1) tree op 31 Desember 2012 in werking.

**Invoeging van Deel IA in Hoofstuk II van Wet 58 van 1962** 35

- 69.** (1) Hoofstuk II van die Inkomstebelastingwet, 1962, word hierby gewysig deur na Deel I die volgende Deel in te voeg:

“Deel IA

Terughoudingsbelasting op rente

**Woordomskrywing** 40

**37I.** (1) In hierdie Deel beteken—

‘bank’ enige—

- (a) bank soos omskryf in artikel 1 van die Bankwet, 1990 (Wet No. 94 van 1990);
- (b) onderlinge bank soos omskryf in artikel 1 van die Wet op Onderlinge 45  
Banke, 1993 (Wet No. 124 van 1993); of
- (c) koöperatiewe bank soos omskryf in artikel 1 van die ‘Co-operative  
Banks Act, 2007’ (Wet No. 40 van 2007);

‘buitelandse persoon’ ’n persoon wat nie ’n inwoner is nie;

‘genoteerde skuld’ enige skuld genoteer op ’n erkende beurs soos omskryf 50  
in paragraaf 1 van die Agtste Bylae;

‘goedere’ enige stofflike roerende ding;

**‘Industrial Development Corporation’** means the Industrial Development Corporation of South Africa Limited, registered in terms of the Industrial Development Corporation Act, 1940 (Act No. 22 of 1940);  
**‘listed debt’** means any debt that is listed on a recognised exchange as defined in paragraph 1 of the Eighth Schedule; and  
**‘South African Reserve Bank’** means the central bank of the Republic regulated in terms of the South African Reserve Bank Act, 1989 (Act No. 90 of 1989).

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**Levy of withholding tax on interest**

**37J.** (1) There must be levied for the benefit of the National Revenue Fund a tax, to be known as the withholding tax on interest, calculated at the rate of 15 per cent of the amount of any interest that is paid by any person to or for the benefit of any foreign person to the extent that the amount is regarded as having been received or accrued from a source within the Republic in terms of section 9(2)(b).

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(2) For the purposes of this Part, interest is deemed to be paid on the earlier of the date on which the interest is paid or becomes due and payable.

(3) The withholding tax on interest is a final tax.

(4) Where a person making payment of any amount of interest to or for the benefit of a foreign person has withheld an amount as contemplated in section 37L(1), that person must, for the purposes of this Part, be deemed to have paid the amount so withheld to that foreign person.

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**Liability for tax**

**37JA.** (1) A foreign person to which an amount of interest is paid is liable for the withholding tax on interest to the extent that the interest is regarded as having been received by or accrued to that foreign person from a source within the Republic in terms of section 9(2)(b).

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(2) Where any amount of withholding tax on interest is—

(a) withheld as contemplated in section 37L(1); and

(b) paid as contemplated in section 37M(2),

that amount of withholding tax on interest must be regarded as an amount that is paid in respect of that foreign person’s liability under subsection (1).

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**Exemption from withholding tax on interest**

**37K.** (1) Subject to subsection (2), there must be exempt from the withholding tax on interest any amount of interest—

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(a) if that amount of interest is paid to any foreign person—

(i) by—

(aa) the government of the Republic in the national, provincial or local sphere;

(bb) any bank, the South African Reserve Bank, the Development Bank of Southern Africa or the Industrial Development Corporation; or

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(cc) a headquarter company in respect of the granting of financial assistance as defined in section 31(1) to which section 31 does not apply as a result of the exclusions contained in section 31(5)(a) or (b); or

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(ii) in respect of any—

(aa) listed debt; or

(bb) bill of exchange, letter of credit or similar instrument—

(A) to the extent that the interest is incurred in respect of the purchase price of goods imported into the Republic; and

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‘**Nywerheid-ontwikkelingskorporasie**’ die Nywerheid-ontwikkelingskorporasie van Suid-Afrika, Beperk, geregistreer ingevolge die Wet op Nywerheid-ontwikkelingskorporasie, 1940 (Wet No. 22 van 1940);  
‘**Ontwikkelingsbank van Suider-Afrika**’ die Ontwikkelingsbank van Suider-Afrika Beperk, ingelyf ingevolge die Wet op die Ontwikkelingsbank van Suider-Afrika, 1997 (Wet No. 13 van 1997);  
‘**Suid-Afrikaanse Reserwebank**’ die sentrale bank van die Republiek gereguleer ingevolge die Wet op die Suid-Afrikaanse Reserwebank, 1989 (Wet No. 90 van 1989).

**Heffing van terughoudingsbelasting op rente** 10

**37J.** (1) Daar word gehef ten behoeve van die Nasionale Inkomstefonds ’n belasting, bekend te staan as die terughoudingsbelasting op rente, bereken teen die koers van 15 persent van die bedrag van enige rente wat betaal word deur ’n persoon aan of ten behoeve van enige buitelandse persoon namate die bedrag ingevolge artikel 9(2)(b) as ontvang of toegeval van ’n bron binne die Republiek beskou word. 15

(2) By die toepassing van hierdie Deel word rente geag betaal te wees op die vroegste van die datum waarop die rente betaal word of verskuldig en betaalbaar word.

(3) Die terughoudingsbelasting op rente is ’n finale belasting. 20

(4) Waar ’n persoon wat betaling maak van enige bedrag van rente aan of ten behoeve van ’n buitelandse persoon ’n bedrag teruggehou het soos beoog in artikel 37L(1), word daardie persoon by die toepassing van hierdie Deel geag die bedrag aldus teruggehou aan daardie buitelandse persoon te betaal het. 25

**Aanspreeklikheid vir belasting**

**37JA.** (1) ’n Buitelandse persoon waaraan ’n bedrag van rente betaal word, is aanspreeklik vir die terughoudingsbelasting op rente namate die rente ingevolge artikel 9(2)(b) as ontvang deur of toegeval aan daardie buitelandse persoon van ’n bron binne die Republiek beskou word. 30

(2) Waar enige bedrag van terughoudingsbelasting op rente—

(a) teruggehou word soos beoog in artikel 37L(1); en  
(b) betaal word soos beoog in artikel 37M(2),  
word daardie bedrag van terughoudingsbelasting op rente as ’n bedrag wat betaal word ten opsigte van daardie buitelandse persoon se aanspreeklikheid kragtens subartikel (1) beskou. 35

**Vrystelling van terughoudingsbelasting op rente**

**37K.** (1) Behoudens subartikel (2) word daar vrygestel van die terughoudingsbelasting op rente enige bedrag van rente— 40

(a) indien daardie bedrag van rente betaal word aan enige buitelandse persoon—

(i) deur—

(aa) die regering van die Republiek in die nasionale, provinsiale of plaaslike sfeer; 45

(bb) enige bank, die Suid-Afrikaanse Reserwebank, die Ontwikkelingsbank van Suider-Afrika of die Nywerheid-ontwikkelingskorporasie; of

(cc) ’n hoofkwartiermaatskappy ten opsigte van die verlening van finansiële bystand soos omskryf in artikel 31(1) waarop artikel 31 nie van toepassing is nie as gevolg van die uitsluitels vervat in artikel 31(5)(a) of (b); of 50

(ii) ten opsigte van enige—

(aa) genoteerde skuld; of

(bb) wisselbrief, kredietnota of soortgelyke instrument—  
(A) namate die rente aangegaan is ten opsigte van die aankoopprys van goedere in die Republiek ingevoer; en 55

- (B) if an authorised dealer as defined in the Exchange Control Regulations, 1961, has certified on the instrument that a bill of lading or other document covering the importation of the goods has been exhibited to it; or
- (b) payable as contemplated in section 27(6) of the Securities Services Act, 2004 (Act No. 36 of 2004), to any foreign person that is a client as defined in section 1 of that Act; or
- (c) that is deemed to have accrued to any foreign person in terms of section 25BA(a).
- (2) Interest paid to a foreign person in respect of any amount advanced by the foreign person to a bank is not exempt from the withholding tax on interest if the amount is advanced in the course of any arrangement, transaction, operation or scheme to which the foreign person and any other person are parties and in terms of which the bank advances any amount to that other person on the strength of the amount advanced by the foreign person to the bank.
- (3) A foreign person is exempt from the withholding tax on interest if that foreign person—
- (a) is a natural person who was physically present in the Republic for a period exceeding 183 days in aggregate during the twelve-month period preceding the date on which the interest is paid; or
- (b) at any time during the twelve-month period preceding the date on which the interest is paid carried on business through a permanent establishment in the Republic.”.
- (2) Subsection (1) comes into operation on 1 July 2013 and applies in respect of—
- (a) interest that accrues; or
- (b) interest that is paid or that becomes due and payable, on or after that date.

**Substitution of section 40C of Act 58 of 1962**

70. (1) The Income Tax Act, 1962, is hereby amended by the substitution for section 40C of the following section:

**“Distribution of shares and issue of shares or options for no consideration**

**40C.** (1) Where a company—

- (a) distributes a share in that company; or
- (b) issues a share in that company or an option or other right to the issue of a share in that company, to a person for no consideration, the expenditure actually incurred by the person to acquire the share, option or right must be deemed to be nil.”.

(2) Subsection (1) comes into operation on 1 January 2013 and applies in respect of distributions and issues made on or after that date.

**Insertion of section 40CA in Act 58 of 1962**

71. (1) The Income Tax Act, 1962, is hereby amended by the insertion after section 40C of the following section:

**“Acquisitions of assets in exchange for shares or debt issued**

**40CA.** (1) Subject to section 24B, if a company acquires any asset, as defined in paragraph 1 of the Eighth Schedule, from any person in exchange for—

- (a) shares issued by that company, that company must be deemed to have actually incurred an amount of expenditure in respect of the

- (B) indien 'n gemagtigde handelaar soos omskryf in die Regulasies op Valutabeheer, 1961, op die instrument gesertifiseer het dat 'n ladingsbrief of ander stuk wat die invoer van die goedere dek aan die gemagtigde handelaar getoon is; of 5
- (b) betaalbaar soos beoog in artikel 27(6) van die 'Securities Services Act, 2004' (Wet No. 36 van 2004), aan enige buitelandse persoon wat 'n kliënt is soos omskryf in artikel 1 van daardie Wet; of
- (c) wat geag word toe te geval het aan enige buitelandse persoon ingevolge artikel 25BA(a). 10
- (2) Rente betaal aan 'n buitelandse persoon ten opsigte van enige bedrag voorgeskiet deur die buitelandse persoon aan 'n bank word nie vrygestel van die terughoudingsbelasting op rente nie indien die bedrag voorgeskiet word in die loop van enige reëling, transaksie, handeling of skema waarby die buitelandse persoon en enige ander persoon partye is en ingevolge waarvan die bank enige bedrag aan daardie ander persoon voorskiet op grond van die bedrag deur die buitelandse persoon aan die bank voorgeskiet. 15
- (3) 'n Buitelandse persoon word vrygestel van die terughoudingsbelasting op rente indien daardie buitelandse persoon— 20
- (a) 'n natuurlike persoon is wat fisies in die Republiek teenwoordig was vir 'n tydperk wat in totaal 183 dae oorskry gedurende die tydperk van twaalf maande wat die datum voorafgaan waarop die rente betaal word; of
- (b) te eniger tyd gedurende die tydperk van twaalf maande wat die datum voorafgaan waarop die rente betaal word deur 'n permanente saak in die Republiek sake gedryf het.''. 25
- (2) Subartikel (1) tree op 1 Julie 2013 in werking en is van toepassing ten opsigte van— 30
- (a) rente wat toeval; of
- (b) rente wat betaal word of wat verskuldig en betaalbaar word, op of na daardie datum.

#### Vervanging van artikel 40C van Wet 58 van 1962

70. (1) Die Inkomstebelastingwet, 1962, word hierby gewysig deur artikel 40C deur die volgende artikel te vervang: 35

#### “Uitkering van aandele en uitreik van aandele of opsies teen geen vergoeding

40C. (1) Waar 'n maatskappy—

- (a) 'n aandeel in daardie maatskappy uitkeer; of
- (b) 'n aandeel in daardie maatskappy of 'n opsie of ander reg op die uitreik van 'n aandeel in daardie maatskappy uitreik, 40
- aan 'n persoon teen geen vergoeding, word die uitgawes werklik aangegaan deur die persoon om die aandeel, opsie of reg te verkry, geag nul te wees.'".

(2) Subartikel (1) tree op 1 Januarie 2013 in werking en is van toepassing ten opsigte van uitkerings en uitreikings op of na daardie datum gemaak. 45

#### Invoeging van artikel 40CA in Wet 58 van 1962

71. (1) Die Inkomstebelastingwet, 1962, word hierby gewysig deur na artikel 40C die volgende artikel in te voeg:

#### “Verkrygings van bates in ruil vir aandele of skuld uitgereik

40CA. (1) Behoudens artikel 24B, indien 'n maatskappy 'n bate, soos omskryf in paragraaf I van die Agtste Bylae, verkry van 'n persoon in ruil vir—

- (a) aandele uitgereik deur daardie maatskappy, word daardie maatskappy geag werklik 'n bedrag van uitgawes aan te gegaan het ten opsigte van

- acquisition of that asset which is equal to the market value of the shares immediately after the acquisition; or
- (b) any amount of debt issued by that company, that company must be deemed to have actually incurred an amount of expenditure in respect of the acquisition of that asset which is equal to that amount of debt.” 5

(2) Subsection (1) comes into operation on 1 January 2013 and applies in respect of acquisitions made on or after that date.

**Amendment of heading to Part III of Act 58 of 1962, as inserted by section 44 of Act 60 of 2001 and amended by section 34 of Act 74 of 2002 and section 51 of Act 35 of 2007** 10

72. (1) Chapter II of the Income Tax Act, 1962, is hereby amended by the substitution for the heading to Part III of the following heading:

“*Special rules relating to asset-for-share transactions, substitutive share-for-share transactions, amalgamation transactions, intra-group transactions, unbundling transactions and liquidation distributions*” 15

(2) Subsection (1) comes into operation on 1 January 2013 and applies in respect of transactions entered into on or after that date.

**Amendment of section 41 of Act 58 of 1962, as substituted by section 34 of Act 74 of 2002 and amended by section 49 of Act 45 of 2003, section 32 of Act 32 of 2004, section 37 of Act 31 of 2005, section 28 of Act 20 of 2006, section 32 of Act 8 of 2007, section 52 of Act 35 of 2007, section 25 of Act 3 of 2008, section 128 of Act 60 of 2008, section 47 of Act 17 of 2009, section 61 of Act 7 of 2010 and section 67 of Act 24 of 2011** 20

73. (1) Section 41 of the Income Tax Act, 1962, is hereby amended by the substitution for subsection (2) of the following subsection: 25

“(2) The provisions of this Part must, subject to subsection (3), apply in respect of an asset-for-share transaction, a substitutive 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 24B(2), 24BA and 103 and Part IIA of Chapter III.” 30

(2) Subsection (1) comes into operation on 1 January 2013 and applies in respect of transactions entered into on or after that date.

**Amendment of section 42 of Act 58 of 1962, as amended by section 21 of Act 88 of 1965, section 17 of Act 95 of 1967, section 29 of Act 89 of 1969, section 19 of Act 52 of 1970, section 23 of Act 88 of 1971, section 18 of Act 90 of 1972, section 22 of Act 65 of 1973, section 32 of Act 85 of 1974, section 22 of Act 69 of 1975, section 18 of Act 103 of 1976, section 19 of Act 113 of 1977, section 20 of Act 91 of 1982, section 28 of Act 94 of 1983, section 31 of Act 129 of 1991, section 27 of Act 141 of 1992, section 23 of Act 21 of 1994, section 25 of Act 21 of 1995, section 44 of Act 60 of 2001, section 34 of Act 74 of 2002, section 50 of Act 45 of 2003, section 33 of Act 32 of 2004, section 38 of Act 31 of 2005, section 29 of Act 20 of 2006, section 34 of Act 8 of 2007, section 53 of Act 35 of 2007, section 26 of Act 3 of 2008, section 49 of Act 60 of 2008, section 48 of Act 17 of 2009, section 62 of Act 7 of 2010 and section 68 of Act 24 of 2011** 35  
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74. (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)(i) of the definition of “**asset-for-share transaction**” following item (bb) of the following words:

“to a company which is a resident, in exchange for the issue of an equity share [or shares of] in that company and that person—”; 50



- die verkryging van daardie bate wat gelyk aan die markwaarde van die aandele onmiddellik na die verkryging is; of
- (b) enige bedrag van skuld uitgereik deur daardie maatskappy, word daardie maatskappy geag 'n bedrag van uitgawes aan te gegaan het ten opsigte van die verkryging van daardie bate wat gelyk aan daardie bedrag van skuld is.” 5

(2) Subartikel (1) tree op 1 Januarie 2013 in werking en is van toepassing ten opsigte van verkrygings op of na daardie datum gemaak.

**Wysiging van opskrif tot Deel III van Wet 58 van 1962, soos ingevoeg deur artikel 44 van Wet 60 van 2001 en gewysig deur artikel 34 van Wet 74 van 2002 en artikel 51 van Wet 35 van 2007** 10

72. (1) Hoofstuk II van die Inkomstebelastingwet, 1962, word hierby gewysig deur die opskrif tot Deel III deur die volgende opskrif te vervang:  
“*Spesiale reëls met betrekking tot bate-vir-aandeel-transaksies, vervangende aandeel-vir-aandeel-transaksies, amalgamasietransaksies, intragroeptransaksies, ontbondelingstransaksies en likwidasië-uitkerings*” 15

(2) Subartikel (1) tree op 1 Januarie 2013 in werking en is van toepassing ten opsigte van transaksies op of na daardie datum aangegaan.

**Wysiging van artikel 41 van Wet 58 van 1962, soos vervang deur artikel 34 van Wet 74 van 2002 en gewysig deur artikel 49 van Wet 45 van 2003, artikel 32 van Wet 32 van 2004, artikel 37 van Wet 31 van 2005, artikel 28 van Wet 20 van 2006, artikel 32 van Wet 8 van 2007, artikel 52 van Wet 35 van 2007, artikel 25 van Wet 3 van 2008, artikel 128 van Wet 60 van 2008, artikel 47 van Wet 17 van 2009, artikel 61 van Wet 7 van 2010 en artikel 67 van Wet 24 van 2011** 20

73. (1) Artikel 41 van die Inkomstebelastingwet, 1962, word hierby gewysig deur subartikel (2) deur die volgende subartikel te vervang: 25

“(2) Die bepalings van hierdie Deel moet, behoudens subartikel (3), toegepas word ten opsigte van 'n bate-vir-aandeel-transaksie, 'n vervangende aandeel-vir-aandeel-transaksie, 'n amalgamasietransaksie, 'n intragroeptransaksie, 'n ontbondelingstransaksie en 'n likwidasiëuitkering soos in artikels 42, 43, 44, 45, 46 en 47, respektiewelik beoog, ondanks enige andersluidende bepaling vervat in hierdie Wet, behalwe artikels 24B(2), 24BA en 103 en Deel IIA van Hoofstuk III.” 30

(2) Subartikel (1) tree op 1 Januarie 2013 in werking en is van toepassing ten opsigte van transaksies op of na daardie datum aangegaan.

**Wysiging van artikel 42 van Wet 58 van 1962, soos gewysig deur artikel 21 van Wet 88 van 1965, artikel 17 van Wet 95 van 1967, artikel 29 van Wet 89 van 1969, artikel 19 van Wet 52 van 1970, artikel 23 van Wet 88 van 1971, artikel 18 van Wet 90 van 1972, artikel 22 van Wet 65 van 1973, artikel 32 van Wet 85 van 1974, artikel 22 van Wet 69 van 1975, artikel 18 van Wet 103 van 1976, artikel 19 van Wet 113 van 1977, artikel 20 van Wet 91 van 1982, artikel 28 van Wet 94 van 1983, artikel 31 van Wet 129 van 1991, artikel 27 van Wet 141 van 1992, artikel 23 van Wet 21 van 1994, artikel 25 van Wet 21 van 1995, artikel 44 van Wet 60 van 2001, artikel 34 van Wet 74 van 2002, artikel 50 van Wet 45 van 2003, artikel 33 van Wet 32 van 2004, artikel 38 van Wet 31 van 2005, artikel 29 van Wet 20 van 2006, artikel 34 van Wet 8 van 2007, artikel 53 van Wet 35 van 2007, artikel 26 van Wet 3 van 2008, artikel 49 van Wet 60 van 2008, artikel 48 van Wet 17 van 2009, artikel 62 van Wet 7 van 2010 en artikel 68 van Wet 24 van 2011** 35  
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74. (1) Artikel 42 van die Inkomstebelastingwet, 1962, word hierby gewysig—

- (a) deur in subartikel (1) die woorde in paragraaf (a)(i) van die omskrywing van “**bate-vir-aandeel-transaksie**” wat op item (bb) volg deur die volgende woorde te vervang: 50

“aan 'n maatskappy wat 'n inwoner is, in ruil vir die uitreiking van 'n ekwiteitsaandeel [of ekwiteitsaandele van] in daardie maatskappy en daardie persoon—”;

- (b) by the substitution in subsection (1) for paragraph (b) of the definition of “**asset-for-share transaction**” of the following paragraph:
- “(b) in terms of which a person that is a company disposes of an asset that constitutes an equity share held by that person in a foreign company as a capital asset, the market value of which is equal to or exceeds[— 5
- (i) in the case of an equity share held as a capital asset, the base cost of that equity share on the date of that disposal; or
- (ii) in the case of an equity share held as trading stock, the amount taken into account in respect of that equity share in terms of section 11(a) or 22(1) or (2),] 10
- the base cost of that equity share on the date of that disposal, to another foreign company[,] in exchange for the issue of an equity share in that other foreign company and— 15
- (i) immediately before [and at the close of the day on which] the asset is disposed of in terms of that transaction—
- (aa) that person [holds a qualifying interest in] and the other foreign company form part of the same group of companies (as defined in section 1); and 20
- (bb) the other foreign company is a controlled foreign company in relation to any company that is a resident and that forms part of [the same] that group of companies[, as defined in section 1, as that person]; and
- (ii) at the close of the day on which the asset is disposed of in terms of that transaction— 25
- (aa) more than 50 per cent of the equity shares in the foreign company are directly or indirectly held by a resident (whether alone or together with any company forming part of the same group of companies as that resident); or 30
- (bb) at least 70 per cent of the equity shares in that other foreign company are directly or indirectly held by a resident (whether alone or together with any other company forming part of the same group of companies as that resident);”;
- (c) by the substitution in subsection (1) for the definition of “**qualifying interest**” of the following definition: 35
- “**‘qualifying interest’** of a person means—
- (a) an equity share held by that person in a company which is a listed company or will become a listed company within 12 months after the transaction as a result of which that person holds that share; 40
- (b) an equity share held by that person in a portfolio of a collective investment scheme in securities;
- (c) equity shares held by that person in a company that constitute at least 10 per cent of the equity shares and that confer at least 10 per cent of the voting rights in that company; or 45
- (d) an equity share held by that person in a company which forms part of the same group of companies as that person.”;
- (d) by the substitution for subsection (6) of the following subsection: 50
- “(6) Where a person—
- (a) disposed of an asset to a company in terms of an asset-for-share transaction contemplated in paragraph (a) of the definition of ‘asset-for-share transaction’ and, within a period of 18 months after the date of that disposal, that person ceases—

- (b) deur in subartikel (1) paragraaf (b) van die omskrywing van “**bate-vir-aandeel-transaksie**” deur die volgende paragraaf te vervang:
- “(b) ingevolge waarvan ’n persoon wat ’n maatskappy is oor ’n bate beskik wat ’n ekwiteitsaandeel gehou deur daardie persoon in ’n buitelandse maatskappy as ’n kapitaalbate uitmaak, waarvan die markwaarde gelyk is aan of meer is as—
- 5
- (i) **in die geval van ’n ekwiteitsaandeel wat as ’n kapitaalbate gehou word, die basiskoste van daardie ekwiteitsaandeel op die datum van daardie beskikking; of**
- (ii) **in die geval van ’n ekwiteitsaandeel wat as handels-voorraad gehou word, die bedrag wat ten opsigte van daardie ekwiteitsaandeel ingevolge artikel 11(a) of 22(1) of (2) in ag geneem is,**
- 10
- die basiskoste van daardie ekwiteitsaandeel op die datum van daardie beskikking, aan ’n ander buitelandse maatskappy[,] in ruil vir die uitreiking van ’n ekwiteitsaandeel in daardie ander buitelandse maatskappy en—
- 15
- (i) onmiddellik voor [**en aan die einde van die dag waarop**] oor die bate ingevolge daardie transaksie beskik word—
- (aa) daardie persoon [**’n kwalifiserende belang in**] en die ander buitelandse maatskappy [hou] deel uitmaak van dieselfde groep van maatskappye (soos in artikel 1 omskryf); en
- 20
- (bb) die ander buitelandse maatskappy ’n beheerde buitelandse maatskappy is met betrekking tot enige **[persoon] maatskappy wat ’n inwoner is en wat deel van [dieselfde] daardie groep van maatskappye[, soos omskryf in artikel 1, as daardie persoon]** uitmaak; en
- 25
- (ii) aan die einde van die dag waarop oor die bate beskik word ingevolge daardie transaksie—
- 30
- (aa) meer as 50 persent van die ekwiteitsaandeel in die buitelandse maatskappy regstreeks of onregstreeks gehou word deur ’n inwoner (hetsy alleen of tesame met enige maatskappy wat deel uitmaak van dieselfde groep van maatskappye as daardie inwoner); of
- 35
- (bb) minstens 70 persent van die ekwiteitsaandeel in daardie ander buitelandse maatskappy regstreeks of onregstreeks gehou word deur ’n inwoner (hetsy alleen of tesame met enige ander maatskappy wat deel uitmaak van dieselfde groep van maatskappye as daardie inwoner);”;
- 40
- (c) deur in subartikel (1) die omskrywing van “**kwalifiserende belang**” deur die volgende omskrywing te vervang:
- “**’kwalifiserende belang**’ van ’n persoon—
- (a) ’n ekwiteitsaandeel gehou deur daardie persoon in ’n maatskappy wat ’n genoteerde maatskappy is of ’n genoteerde maatskappy sal
- 45
- word binne 12 maande na die transaksie as gevolg waarvan daardie persoon daardie aandeel hou;
- (b) ’n ekwiteitsaandeel gehou deur daardie persoon in ’n portefeulje van ’n kollektiewe beleggingskema in effekte;
- (c) ekwiteitsaandeel gehou deur daardie persoon in ’n maatskappy wat
- 50
- minstens 10 persent van die ekwiteitsaandeel uitmaak en wat minstens 10 persent van die stemregte in daardie maatskappy verleen; of
- (d) ’n ekwiteitsaandeel gehou deur daardie persoon in ’n maatskappy wat deel uitmaak van dieselfde groep van maatskappye as daardie
- 55
- persoon.”;
- (d) deur subartikel (6) deur die volgende subartikel te vervang:
- “(6) Waar ’n persoon—
- (a) ingevolge ’n bate-vir-aandeel-transaksie beoog in paragraaf (a) van die omskrywing van ‘bate-vir-aandeel-transaksie’ oor ’n bate aan ’n
- 60
- maatskappy beskik het en daardie persoon binne ’n tydperk van 18 maande na die datum van daardie beskikking—

- (i) to hold a qualifying interest in that company, as contemplated in paragraph (a)(iii) and (iv) of the definition of ‘qualifying interest’ (whether or not as a result of the disposal of shares in that company); or
- (ii) to be engaged on a full-time basis in the business of the company, or controlled group company in relation to that company, of rendering the service contemplated in paragraph (a)(i)(B) of the definition of ‘asset-for-share transaction’,  
that person is for purposes of subsection (5), section 22 or the Eighth Schedule deemed to have—  
(aa) disposed of all the equity shares acquired in terms of that asset-for-share transaction that are still held immediately after that person ceased—
  - (A) to hold the qualifying interest contemplated in subparagraph (i); or
  - (B) to be engaged as contemplated in subparagraph (ii),  
for an amount equal to the market value of those equity shares as at the date of the disposal in terms of the asset-for-share transaction; and  
(bb) immediately reacquired all the equity shares contemplated in item (aa) at a cost equal to the amount contemplated in that item:  
Provided that this paragraph does not apply where the person ceases to hold a qualifying interest in that company as a result of—
  - (a) an intra-group transaction contemplated in section 45, an unbundling transaction contemplated in section 46 or a liquidation distribution contemplated in section 47;
  - (b) an involuntary disposal contemplated in paragraph 65 of the Eighth Schedule or a disposal that would have constituted an involuntary disposal contemplated in that paragraph had that asset not been a financial instrument; or
  - (c) the death of that person; or  
(b) disposed of an equity share in a foreign company to another foreign company in terms of an asset-for-share transaction contemplated in paragraph (b) of the definition of ‘asset-for-share transaction’ and, at any time within a period of 18 months after the date of that disposal and whether or not as a result of the disposal of shares in that foreign company—
  - (i) where that asset-for-share transaction was constituted as a result of compliance with the requirement prescribed by paragraph (b)(ii)(aa) of that definition, that requirement is no longer met; or
  - (ii) where that asset-for-share transaction was constituted as a result of compliance with the requirement prescribed by paragraph (b)(ii)(bb) of that definition, that requirement is no longer met,  
that person is for purposes of subsection (5), section 22 or the Eighth Schedule deemed to have—  
(aa) disposed of all the equity shares acquired in terms of that asset-for-share transaction that are still held immediately after the applicable requirement is no longer met, for an amount equal to the market value of those equity shares as at the date of the disposal in terms of the asset-for-share transaction; and
  - (bb) immediately reacquired all the equity shares contemplated in item (aa) at a cost equal to the amount contemplated in that item:  
Provided that this paragraph does not apply where any requirement

- (i) ophou om 'n kwalifiserende belang in daardie maatskappy te hou, soos in paragraaf (a)(iii) en (iv) van die omskrywing van 'kwalifiserende belang' beoog (hetsy as gevolg van die beskikking oor aandele in daardie maatskappy of nie); of
- (ii) ophou om op 'n voltydse basis betrokke te wees in die besigheid van die maatskappy, of 'n beheerde groepmaatskappy met betrekking tot daardie maatskappy, om diens te lewer in paragraaf (a)(i)(B) van die omskrywing van 'bate-vir-aandeeltransaksie' beoog,
- word daardie persoon by die toepassing van subartikel (5), artikel 22 of die Agtste Bylae geag—
- (aa) oor al die ekwiteitsaandele verkry ingevolge daardie bate-vir-aandeel-transaksie wat nog gehou word onmiddellik na daardie persoon opgehou het—
- (A) om die kwalifiserende belang beoog in subparagraaf (i) te hou; of
- (B) om betrokke te wees soos beoog in subparagraaf (ii), te beskik het vir 'n bedrag gelyk aan die markwaarde van daardie ekwiteitsaandele op die datum van die beskikking ingevolge die bate-vir-aandeel-transaksie; en
- (bb) onmiddellik al die ekwiteitsaandele beoog in item (aa) te herverkry het teen 'n koste gelyk aan die bedrag beoog in daardie item:
- Met dien verstande dat hierdie paragraaf nie van toepassing is nie waar die persoon ophou om 'n kwalifiserende belang in daardie maatskappy te hou as gevolg van—
- (a) 'n intragroeptransaksie beoog in artikel 45, 'n ontbondelings-transaksie beoog in artikel 46 of 'n likwidasië-uitkering beoog in artikel 47;
- (b) 'n onvrywillige beskikking beoog in paragraaf 65 van die Agtste Bylae of 'n beskikking wat 'n onvrywillige beskikking beoog in daardie paragraaf sou uitgemaak het indien daardie bate nie 'n finansiële instrument was nie; of
- (c) die dood van daardie persoon; of
- (b) ingevolge 'n bate-vir-aandeel-transaksie beoog in paragraaf (b) van die omskrywing van 'bate-vir-aandeel-transaksie' oor 'n ekwiteitsaandeel in 'n buitelandse maatskappy aan 'n ander buitelandse maatskappy beskik het en, te eniger tyd binne 'n tydperk van 18 maande na die datum van daardie beskikking en hetsy as gevolg van die beskikking oor aandele in daardie buitelandse maatskappy al dan nie—
- (i) waar daardie bate-vir-aandeel-transaksie saamgestel is as gevolg van nakoming van die vereiste voorgeskryf deur paragraaf (b)(ii)(aa) van daardie omskrywing, daardie vereiste nie langer nagekom word nie; of
- (ii) waar daardie bate-vir-aandeel-transaksie saamgestel is as gevolg van nakoming van die vereiste voorgeskryf deur paragraaf (b)(ii)(bb) van daardie omskrywing, daardie vereiste nie langer nagekom word nie,
- word daardie persoon by die toepassing van subartikel (5), artikel 22 of die Agtste Bylae geag—
- (aa) oor al die ekwiteitsaandele wat ingevolge daardie bate-vir-aandeel-transaksie verkry is en wat nog gehou word onmiddellik na daardie persoon opgehou het om sodanige kwalifiserende belang te hou, te beskik het vir 'n bedrag gelyk aan die markwaarde van daardie ekwiteitsaandele soos op die datum van die beskikking ingevolge die bate-vir-aandeel-transaksie; en
- (bb) al die ekwiteitsaandele in paragraaf (a) beoog onmiddellik weer te verkry het teen 'n koste gelyk aan die bedrag in daardie paragraaf beoog:
- Met dien verstande dat hierdie paragraaf nie van toepassing is nie waar nie meer aan enige vereiste voorgeskryf deur paragraaf

- prescribed by paragraph (b)(ii)(aa) or (bb) of the definition of ‘asset-for-share transaction’ is no longer met as a result of—
- (a) an intra-group transaction contemplated in section 45, an unbundling transaction contemplated in section 46 or a liquidation distribution contemplated in section 47; or
  - (b) an involuntary disposal contemplated in paragraph 65 of the Eighth Schedule or a disposal that would have constituted an involuntary disposal contemplated in that paragraph had that asset not been a financial instrument.”;
- (e) 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 asset-for-share 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—
- [(aa)](A)** where that equity share is held as a capital asset, as **[a return of capital by way of a distribution of cash]** an amount received or accrued in respect of that equity share that accrues to that person **[immediately after]** in respect of the [acquisition] disposal by that person of that equity share **[in terms of that asset-for-share transaction]**; or
- [(bb)](B)** where that equity share is held as trading stock, as income to be included in that person’s income for the year of assessment during which that equity share is **[acquired]** disposed of by that person **[in terms of that asset-for-share transaction]**.”;
- (f) by the deletion in subsection (8A) of the word “or” at the end of paragraph (a);
- (g) by the substitution in subsection (8A)(b) for subparagraph (ii) of the following subparagraph:
- “(ii) any proportional amount of the net income of a controlled foreign company which is included in the income of **[that person]** any resident in terms of section 9D[.]; or”; and
- (h) by the addition to subsection (8A) of the following paragraph:
- “**(c)** that asset constitutes a debt owing by or a share in that company.”.
- (2) Paragraphs (a), (b), (c), (d), (f), (g) and (h) of subsection (1) come into operation on 1 January 2013 and apply in respect of transactions entered into on or after that date.
- (3) Paragraph (e) of subsection (1) is deemed to have come into operation on 1 April 2012 and applies in respect of transactions entered into on or after that date.

**Insertion of section 43 in Act 58 of 1962**

75. (1) The Income Tax Act, 1962, is hereby amended by the insertion after section 42 of the following section:

**“Substitutive share-for-share transactions**

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

‘**equity share**’ includes a property linked unit;

‘**equity share interest**’ means a single equity share or a number of equity shares;

‘**non-equity share**’ means any share other than an equity share;

‘**non-equity share interest**’ means a single non-equity share or a number of non-equity shares;

‘**property linked unit**’ means a unit comprising a share and a debenture in a REIT or a controlled property company as defined in section 25BB, where that share and that debenture are linked together and cannot be disposed of independently of each other;

- (b)(ii)(aa) of (bb) van die omskrywing van ‘bate-vir-aandeel-transaksie’ voldoen word nie as gevolg van—
- (a) ’n intragroeptransaksie in artikel 45 beoog, ’n ontbonde-  
lingstransaksie in artikel 46 beoog of ’n likwidasië-uitkering  
in artikel 47 beoog; of 5
- (b) ’n onvrywillige beskikking in paragraaf 65 van die Agtste  
Bylae beoog of ’n beskikking wat ’n onvrywillige beskikking  
soos beoog in daardie paragraaf sou uitgemaak het indien  
daardie bate nie ’n finansiële instrument was nie.”;
- (e) deur in subartikel (8) die woorde wat op paragraaf (b) volg deur die volgende  
woorde te vervang: 10
- “moet daardie persoon, indien daardie persoon beskik oor enige  
ekwiteitsaandeel ingevolge daardie bate-vir-aandeel-transaksie verkry,  
ondanks die feit dat daardie persoon as borg vir die betaling van die skuld  
waarna in subparagraaf (a) en (b) verwys word, verantwoordelik is, die 15
- deel van die sigwaarde van daardie skuld wat betrekking het op daardie  
ekwiteitsaandeel—
- [(aa)](A)** waar daardie ekwiteitsaandeel as ’n kapitaalbate gehou word,  
hanteer as ’n **[teruggawe van kapitaal by wyse van ’n  
uitkering van kontant]** bedrag ontvang of toegeval ten 20
- opsigte van die ekwiteitsaandeel wat daardie persoon toeval  
**[onmiddellik na]** ten opsigte van die **[verkryging]** beskikking  
deur daardie persoon **[van]** oor daardie ekwiteitsaandeel  
**[ingevolge daardie bate-vir-aandeel-transaksie]**; of
- [(bb)](B)** indien daardie ekwiteitsaandeel as handelsvoorraad gehou 25
- word, hanteer as inkomste wat in daardie persoon se inkomste  
ingesluit moet word vir die jaar van aanslag waartydens oor  
daardie ekwiteitsaandeel **[ingevolge daardie bate-vir-  
aandeel-transaksie]** deur daardie persoon **[verkry]** beskik  
word.”; 30
- (f) deur in subartikel (8A) die woord “of” aan die einde van paragraaf (a) te  
skrap;
- (g) deur in subartikel (8A)(b) subparagraaf (ii) deur die volgende subparagraaf te  
vervang: 35
- “(ii) enige proporsionele bedrag van die netto inkomste van ’n beheerde  
buitelandse maatskappy wat ingevolge artikel 9D by die inkomste  
van **[daardie persoon]** enige inwoner ingesluit word, te bepaal[.];  
of”;
- (h) deur in subartikel (8A) die volgende paragraaf na paragraaf (b) te vervang: 40
- “(c) daardie bate ’n skuld verskuldig deur of ’n aandeel in daardie  
maatskappy uitmaak.”.
- (2) Paragrafe (a), (b), (c), (d), (f), (g) en (h) van subartikel (1) tree op 1 Januarie 2013  
in werking en is van toepassing ten opsigte van transaksies op of na daardie datum  
aangegaan.
- (3) Paragraaf (e) van subartikel (1) word geag op 1 April 2012 in werking te getree het 45  
en is van toepassing ten opsigte van transaksies op of na daardie datum aangegaan.

### Invoeging van artikel 43 in Wet 58 van 1962

75. (1) Die Inkomstebelastingwet, 1962, word hierby gewysig deur na artikel 42 die  
volgende artikel in te voeg:

“**Vervangende aandeel-vir-aandeel-transaksies** 50

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

‘**aandeelbelang**’ ’n ekwiteitsaandeelbelang of ’n nie-ekwiteitsaandeel-  
belang;

‘**eiendom gekoppelde eenheid**’ ’n eenheid wat bestaan uit ’n aandeel en ’n  
obligasie in ’n EIT of ’n beheerde eiendomsmaatskappy soos omskryf in 55

artikel 25BB, waar daardie aandeel en daardie obligasie aanmekaar  
gekoppel is en daar nie onafhanklik van mekaar oor hulle beskik kan word  
nie;

‘**ekwiteitsaandeel**’ ook ’n eiendom gekoppelde eenheid;

**'share interest'** means an equity share interest or a non-equity share interest;

**'substitutive share-for-share transaction'** means a transaction between a person and a company in terms of which—

- (a) that person—
  - (i) disposes of an equity share interest in that company and acquires another equity share interest in that company; or
  - (ii) disposes of a non-equity share interest in that company and acquires another non-equity share interest in that company by means of a subdivision or consolidation; and
- (b) that other equity share interest or that other non-equity share interest, as the case may be, is acquired by that person—
  - (i) as either a capital asset or as trading stock, in the case where the equity share interest or non-equity share interest disposed of is disposed of as a capital asset; or
  - (ii) as trading stock in the case where the equity share interest or non-equity share interest disposed of is disposed of as trading stock.

(2) Subject to subsection (4), where a person disposes of a share interest in a company and acquires another share interest in that company in terms of a substitutive share-for-share transaction, that person must be deemed to have—

- (a) disposed of that share interest so disposed of for an amount equal to the expenditure incurred by that person in respect of that share interest so disposed of which is or was 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;
- (b) acquired that other share interest so acquired on the latest date on which that person acquired any share comprising the share interest so disposed of for a cost equal to the expenditure incurred by that person as contemplated in paragraph (a); and
- (c) incurred the cost contemplated in paragraph (b) on the date contemplated in that paragraph, which cost must be treated as—
  - (i) an expenditure actually incurred and paid by that person in respect of the share interest so acquired for the purposes of paragraph 20 of the Eighth Schedule, if the share interest so acquired is acquired as a capital asset; or
  - (ii) the amount to be taken into account by that person in respect of the share interest so acquired for the purposes of section 11(a) or 22(1) or (2), if the share interest so acquired is acquired as trading stock.

(3) Subject to subsection (4), any valuation of a share interest disposed of in terms of a substitutive share-for-share transaction which was done by the person disposing of that share interest within the period contemplated in paragraph 29(4) of the Eighth Schedule is deemed to have been done by that person in respect of the share interest acquired by that person in terms of that substitutive share-for-share transaction.

(4) (a) This subsection applies where—

- (i) a person disposes of a share interest in a company in terms of a substitutive share-for-share transaction; and
- (ii) that person becomes entitled, in exchange for that share interest, to any consideration other than another share interest that is acquired by that person in terms of that substitutive share-for-share transaction.



- ‘ekwiteitsaandeelbelang’** ’n enkele ekwiteitsaandeel of ’n aantal ekwiteitsaandeel;
- ‘nie-ekwiteitsaandeel’** ’n aandeel buiten ’n ekwiteitsaandeel;
- ‘nie-ekwiteitsaandeelbelang’** ’n enkele nie-ekwiteitsaandeel of ’n aantal nie-ekwiteitsaandeel; 5
- ‘vervangende aandeel-vir-aandeel-transaksie’** ’n transaksie tussen ’n persoon en ’n maatskappy ingevolge waarvan—
- (a) daardie persoon—
- (i) beskik oor ’n ekwiteitsaandeelbelang in daardie maatskappy en ’n ander ekwiteitsaandeelbelang in daardie maatskappy verkry; of 10
- (ii) beskik oor ’n nie-ekwiteitsaandeelbelang in daardie maatskappy en ’n ander nie-ekwiteitsaandeelbelang in daardie maatskappy verkry deur middel van ’n onderverdeling of konsolidering; en 15
- (b) daardie ander ekwiteitsaandeelbelang of daardie ander nie-ekwiteitsaandeelbelang, na gelang van die geval, deur daardie persoon verkry word—
- (i) of as ’n kapitaalbate of as handelsvoorraad, in die geval waar oor die ekwiteitsaandeelbelang of nie-ekwiteitsaandeelbelang oor beskik, as ’n kapitaalbate beskik word; of 20
- (ii) as handelsvoorraad in die geval waar oor die ekwiteitsaandeelbelang of nie-ekwiteitsaandeelbelang oor beskik as handelsvoorraad beskik word.
- (2) Behoudens subartikel (4) waar ’n persoon beskik oor ’n aandeelbelang in ’n maatskappy en ’n ander aandeelbelang in daardie maatskappy verkry ingevolge ’n vervangende aandeel-vir-aandeel-transaksie, word daardie persoon geag— 25
- (a) oor daardie aandeelbelang aldus oor beskik te beskik het vir ’n bedrag gelyk aan die uitgawes aangegaan deur daardie persoon ten opsigte van daardie aandeelbelang aldus oor beskik wat ingevolge paragraaf 20 van die Agtste Bylae toelaatbaar is of was of ingevolge artikel 11(a) of 22(1) of (2) in berekening gebring is, na gelang van die geval; 30
- (b) daardie ander aandeelbelang aldus verkry te verkry het op die laaste datum waarop daardie persoon ’n aandeel verkry het wat die aandeelbelang aldus oor beskik omvat vir ’n koste gelyk aan die uitgawes aangegaan deur daardie persoon soos beoog in paragraaf (a); en 35
- (c) die koste beoog in paragraaf (b) aan te gegaan het op die datum beoog in daardie paragraaf, welke koste behandel moet word soos— 40
- (i) ’n uitgawe werklik aangegaan en betaal deur daardie persoon ten opsigte van die aandeelbelang aldus verkry by die toepassing van paragraaf 20 van die Agtste Bylae, indien die aandeelbelang aldus verkry as ’n kapitaalbate verkry word; of 45
- (ii) die bedrag in berekening gebring te word deur daardie persoon ten opsigte van die aandeelbelang aldus verkry by die toepassing van artikel 11(a) of 22(1) of (2), indien die aandeelbelang aldus verkry as handelsvoorraad verkry word.
- (3) Behoudens subartikel (4) word enige waardering van ’n aandeelbelang oor beskik ingevolge ’n vervangende aandeel-vir-aandeel-transaksie wat gedoen is deur die persoon wat oor daardie aandeelbelang beskik binne die tydperk beoog in paragraaf 29(4) van die Agtste Bylae geag gedoen te wees deur daardie persoon ten opsigte van die aandeelbelang deur daardie persoon ingevolge daardie vervangende aandeel-vir-aandeel-transaksie verkry. 50
- (4) (a) Hierdie subartikel is van toepassing waar— 55
- (i) ’n persoon beskik oor ’n aandeelbelang in ’n maatskappy ingevolge ’n vervangende aandeel-vir-aandeel-transaksie; en
- (ii) daardie persoon geregtig word, in ruil vir daardie aandeelbelang, op enige vergoeding buiten ’n ander aandeelbelang wat verkry word deur daardie persoon ingevolge daardie vervangende aandeel-vir-aandeel-transaksie. 60

- (b) Where a person disposes of a share interest in terms of a substitutive share-for-share transaction and becomes entitled to consideration other than another share interest as contemplated in paragraph (a)(ii)—
- (i) subsections (2) and (3) must not apply to the part of the share interest so disposed of that relates to that consideration; and
  - (ii) either—
    - (aa) where that share interest is so disposed of as a capital asset, the base cost at the time of that disposal of the part of the share interest contemplated in subparagraph (i) must be deemed to be equal to an amount which bears to the base cost of the share interest so disposed of the same ratio as the market value of that consideration bears to the sum of the market value of that consideration and the market value of the share interest acquired by that person in terms of that substitutive share-for-share transaction; or
    - (bb) where that interest is so disposed of as trading stock, the amount to be taken into account in terms of section 11(a) or 22(1) or (2) in respect of the part of the share interest contemplated in subparagraph (i) must be deemed to be equal to an amount which bears to the total amount taken into account in terms of section 11(a) or 22(1) or (2) in respect of the share interest so disposed of the same ratio as the market value of that consideration bears to the sum of the market value of that consideration and the market value of the share interest acquired by that person in terms of that substitutive share-for-share transaction.”.

(2) Subsection (1) comes into operation on 1 January 2013 and applies in respect of transactions entered into 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 amended by section 34 of Act 74 of 2002, section 52 of Act 45 of 2003, section 40 of Act 31 of 2005, section 34 of Act 8 of 2007, section 55 of Act 35 of 2007, section 27 of Act 3 of 2008, section 50 of Act 60 of 2008, section 49 of Act 17 of 2009, section 63 of Act 7 of 2010 and section 69 of Act 24 of 2011**

76. (1) Section 44 of the Income Tax Act, 1962, is hereby amended—
- (a) by the substitution in subsection (1) for the definition of “**amalgamation transaction**” of the following definition:
    - “**‘amalgamation transaction’** means any transaction—
    - (a) (i) in terms of which any company (hereinafter referred to as the ‘amalgamated company’) which is a resident 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
    - (ii) as a result of which **[that amalgamated company’s]** the existence of that amalgamated company will be terminated; **[or]**
    - (b) (i) in terms of which an amalgamated company which is a foreign 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 a resultant company which is a **[foreign company]** resident, by means of an amalgamation, conversion or merger;
    - (ii) if,—
      - (aa) **that amalgamated company and that resultant company form part of the same group of companies (without regard to paragraph (i)(ee) of the proviso to the definition of ‘group of companies’ in section 41) immediately before that transaction: Provided that**

- (b) Waar 'n persoon beskik oor 'n aandeelbelang ingevolge 'n vervangende aandeel-vir-aandeel-transaksie en geregtig word op vergoeding buiten 'n ander aandeelbelang soos beoog in paragraaf (a)(ii)—
- (i) is subartikels (2) en (3) nie van toepassing nie op die deel van die aandeelbelang aldus oor beskik wat op daardie vergoeding betrekking het; en
  - (ii) of—
    - (aa) waar daardie aandeelbelang aldus oor beskik word as 'n kapitaalbate, word die basiskoste op die tydstip van daardie beskikking oor die deel van die aandeelbelang beoog in subparagraaf (i) geag gelyk te wees aan 'n bedrag wat tot die basiskoste van die aandeelbelang aldus oor beskik in dieselfde verhouding staan as wat die markwaarde van daardie vergoeding tot die som van die markwaarde van daardie vergoeding en die markwaarde van die aandeelbelang deur daardie persoon verkry ingevolge daardie vervangende aandeel-vir-aandeel-transaksie staan; of
    - (bb) waar daardie belang aldus oor beskik word as handelsvoorraad, word die bedrag ingevolge artikel 11(a) of 22(1) of (2) ten opsigte van die deel van die aandeelbelang beoog in subparagraaf (i) in berekening gebring te word, geag gelyk te wees aan 'n bedrag wat tot die totale bedrag ingevolge artikel 11(a) of 22(1) of (2) in berekening gebring ten opsigte van die aandeelbelang aldus oor beskik in dieselfde verhouding staan as wat die markwaarde van daardie vergoeding tot die som van die markwaarde van daardie vergoeding en die markwaarde van die aandeelbelang deur daardie persoon verkry ingevolge daardie vervangende aandeel-vir-aandeel-transaksie staan."

(2) Subartikel (1) tree op 1 Januarie 2013 in werking en is van toepassing ten opsigte van transaksies op of na daardie datum aangegaan.

**Wysiging van artikel 44 van Wet 58 van 1962, soos ingevoeg deur artikel 44 van Wet 60 van 2001 en gewysig deur artikel 34 van Wet 74 van 2002, artikel 52 van Wet 45 van 2003, artikel 40 van Wet 31 van 2005, artikel 34 van Wet 8 van 2007, artikel 55 van Wet 35 van 2007, artikel 27 van Wet 3 van 2008, artikel 50 van Wet 60 van 2008, artikel 49 van Wet 17 van 2009, artikel 63 van Wet 7 van 2010 en artikel 69 van Wet 24 van 2011**

76. (1) Artikel 44 van die Inkomstebelastingwet, 1962, word hierby gewysig—
- (a) deur in subartikel (1) die omskrywing van **“amalgamasietransaksie”** deur die volgende omskrywing te vervang:
    - “**‘amalgamasietransaksie’** 'n transaksie—
    - (a) (i) ingevolge waarvan enige maatskappy (hierna die ‘geamalgameerde maatskappy’ genoem) wat 'n inwoner is 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
    - (ii) as gevolg waarvan die geamalgameerde maatskappy se bestaan beëindig sal word; **[of]**
    - (b) (i) ingevolge waarvan 'n geamalgameerde maatskappy wat 'n buitelandse maatskappy is, 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 gevolglike maatskappy wat 'n **[buitelandse maatskappy]** inwoner is, by wyse van 'n amalgamasie, omskepping of samesmelting beskik;
    - (ii) indien,—
      - (aa) **daardie geamalgameerde maatskappy en daardie gevolglike maatskappy deel vorm van dieselfde groep van maatskappye (sonder inagneming van paragraaf (i)(ee) van die voorbehoudsbepaling tot die omskrywing van ‘groep van maatskappye’ in artikel**

- for the purposes of this item an amalgamated company and a resultant company will only form part of the same group of companies if the expression ‘at least 70 per cent’ in paragraphs (a) and (b) of the definition of ‘group of companies’ in section 1 were replaced by the expression ‘at least 95 per cent’; and] 5**
- [(bb) that resultant company is a controlled foreign company in relation to any company that is a resident and that forms part of the group of companies contemplated in item (aa) immediately before and after that transaction] 10**
- immediately before that transaction, any shares in that amalgamated company that are directly or indirectly held by that resultant company are held as capital assets; and
- (iii) as a result of which **[that amalgamated company’s]** the existence of that amalgamated company will be terminated; or 15
- (c) (i) in terms of which an amalgamated company which is a foreign 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 a resultant company which is a foreign company, by means of an amalgamation, conversion or merger; 20
- (ii) if—
- (aa) immediately before that transaction— 25
- (A) that amalgamated company and that resultant company form part of the same group of companies (as defined in section 1);
- (B) that resultant company is a controlled foreign company in relation to any resident that is part of the group of companies contemplated in subitem (A); and 30
- (C) any shares in that amalgamated company that are directly or indirectly held by that resultant company are held as capital assets; and
- (bb) immediately after that transaction, more than 50 per cent of the equity shares in that resultant company are directly or indirectly held by a resident (whether alone or together with any other person that is a resident and that forms part of the same group of companies as that resident); and 35
- (iii) as a result of which the existence of that amalgamated company will be terminated.”; 40
- (b) by the addition to paragraph (a) of subsection (2) of the following proviso: 45
- “: Provided that this paragraph does not apply to any asset disposed of in terms of an amalgamation transaction contemplated in paragraph (b) of the definition of ‘amalgamation transaction’ if, on the date of that disposal, the market value of that asset is less than the base cost of that asset”;
- (c) by the addition to paragraph (b) of subsection (2) of the following proviso: 50
- “: Provided that this paragraph does not apply to any asset disposed of in terms of an amalgamation transaction contemplated in paragraph (b) of the definition of ‘amalgamation transaction’ if, on the date of that disposal, the market value of that asset is less than the amount taken into account in respect of that asset in terms of section 11(a) or 22(1) or (2)”;

- 41) onmiddellik voor daardie transaksie: Met dien verstande dat by die toepassing van hierdie item 'n geamalgameerde maatskappy en 'n gevolglike maatskappy slegs deel sal vorm van dieselfde groep van maatskappye indien die uitdrukking 'minstens 70 persent' in paragrafe (a) en (b) van die omskrywing van 'groep van maatskappye' in artikel 1 deur die uitdrukking 'minstens 95 persent' vervang word; en 5
- (bb) daardie gevolglike maatskappy 'n beheerde buitelandse maatskappy is met betrekking tot enige maatskappy wat 'n inwoner is en wat deel vorm van die groep van maatskappye beoog in item (aa) onmiddellik voor en na daardie transaksie] 10
- onmiddellik voor daardie transaksie, enige aandele in daardie geamalgameerde maatskappy wat regstreeks of onregstreeks deur daardie gevolglike maatskappy as kapitaalbates gehou word; en 15
- (iii) as gevolg waarvan [daardie geamalgameerde maatskappye] die bestaan van daardie geamalgameerde maatskappy beëindig sal word; of 20
- (c) (i) ingevolge waarvan 'n geamalgameerde maatskappy wat 'n buitelandse maatskappy is, 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 gevolglike maatskappy wat 'n buitelandse maatskappy is, by wyse van 'n amalgamasie, omskepping of samesmelting beskik; 25
- (ii) indien—
- (aa) onmiddellik voor daardie transaksie—
- (A) daardie geamalgameerde maatskappy en daardie gevolglike maatskappy deel uitmaak van dieselfde groep van maatskappye (soos omskryf in artikel 1); 30
- (B) daardie gevolglike maatskappy 'n beheerde buitelandse maatskappy is met betrekking tot enige inwoner wat deel uitmaak van die groep van maatskappye beoog in subitem (A); en 35
- (C) enige aandele in daardie geamalgameerde maatskappy wat regstreeks of onregstreeks deur daardie gevolglike maatskappy as kapitaalbates gehou word; en 40
- (bb) onmiddellik na daardie transaksie meer as 50 persent van die ekwiteitsaandele in daardie gevolglike maatskappy regstreeks of onregstreeks deur 'n inwoner gehou word (hetsy alleen of tesame met enige ander persoon wat 'n inwoner is en wat deel uitmaak van dieselfde groep van maatskappye as daardie inwoner); en 45
- (iii) as gevolg waarvan die bestaan van daardie geamalgameerde maatskappy beëindig sal word.”; 50
- (b) deur tot paragraaf (a) van subartikel (2) die volgende voorbehoudsbepaling by te voeg: 50
- “: Met dien verstande dat hierdie paragraaf nie van toepassing is nie op enige bate oor beskik ingevolge 'n amalgamasietransaksie beoog in paragraaf (b) van die omskrywing van 'amalgamasietransaksie' indien, op die datum van daardie beskikking, die markwaarde van daardie bate minder as die basiskoste van daardie bate is”; 55
- (c) deur tot paragraaf (b) van subartikel (2) die volgende voorbehoudsbepaling by te voeg: 60
- “: Met dien verstande dat hierdie paragraaf nie van toepassing is nie op enige bate oor beskik ingevolge 'n amalgamasietransaksie beoog in paragraaf (b) van die omskrywing van 'amalgamasietransaksie' indien, op die datum van daardie beskikking, die markwaarde van daardie bate minder is as die bedrag ten opsigte van daardie bate ingevolge artikel 11(a) of 22(1) of (2) in berekening gebring”; 60

- (d) by the substitution in subsection (4) for paragraph (b) of the following paragraph:  
“(b) the assumption by that resultant company of a debt of that amalgamated company, **[unless]** that **[debt]**—  
(i) was incurred by that amalgamated company— 5  
(aa) more than 18 months before that disposal; or  
(bb) within a period of 18 months before that disposal, to the extent that the debt—  
(A) constitutes the refinancing of any debt incurred as contemplated in subparagraph (aa); or 10  
(B) is attributable to and arose in the **[normal]** ordinary course of **[the disposal, as a going concern, of]** a business undertaking disposed of, as a going concern, to that resultant company as part of that amalgamation transaction; and 15  
(ii) was not incurred by that amalgamated company for the purpose of procuring, enabling, facilitating or funding the acquisition by that resultant company of any asset in terms of that amalgamation transaction.”;
- (e) by the substitution in subsection (6) for paragraph (a) of the following paragraph: 20  
“(a) Subject to subsection (7), this subsection applies where—  
(i) a person disposes of **[any equity shares]** an equity share in an amalgamated company as a result of the liquidation, winding-up or deregistration of that amalgamated company and acquires equity 25  
shares in the resultant company as part of an amalgamation transaction in respect of which subsection (2) or (3) applied, which equity shares in the resultant company are acquired—  
**[(aa)](i)** as either capital assets or trading stock, in the case where that equity share in the amalgamated company is disposed 30  
of as a capital asset; or  
**[(bb)](ii)** as trading stock in the case where that equity share in the amalgamated company is disposed of as trading stock.”;
- (f) by the substitution in subsection (6)(b)(iii) for the words preceding item (aa) of the following words: 35  
“**[to have]** incurred the cost contemplated in subparagraph (ii) on the date on which that person incurred the expenditure in respect of the equity share in the amalgamated company, which cost must be treated as—”;
- (g) by the substitution in subsection (9) for paragraph (a) of the following paragraph: 40  
“(a) the disposal by that amalgamated company of those shares must be **[deemed not to be a dividend for purposes of Part VIII of Chapter II]** disregarded in determining any liability for dividends tax; and”;
- (h) by the substitution in subsection (13) for paragraph (a) of the following paragraph: 45  
“(a) has not, within a period of **[18]** 36 months after the date of the amalgamation transaction, or such further period as the Commissioner may allow, taken the steps contemplated in section 41(4) to 50  
liquidate, wind up or deregister; or”;
- (i) by the substitution in subsection (14) for paragraph (a) of the following paragraph:  
“(a) in respect of any transaction **[if the resultant company holds at least 70 per cent of the equity shares in the amalgamated company immediately before the amalgamation, conversion or merger]** that constitutes a liquidation distribution as defined in section 47(1);”.

(2) Paragraphs (a), (b), (c), (e), (f), (h) and (i) of subsection (1) come into operation on 1 January 2013 and apply in respect of transactions entered into on or after that date. 55

(3) Paragraph (d) of subsection (1) is deemed to have come into operation on 1 January 2012 and applies in respect of transactions entered into on or after that date.

- (d) deur in subartikel (4) paragraaf (b) deur die volgende paragraaf te vervang:  
“(b) die oornome deur daardie gevolglike maatskappy van ’n skuld van daardie geamalgameerde maatskappy, **[tensy daardie skuld] wat—**  
(i) deur daardie geamalgameerde maatskappy aangegaan is—  
(aa) meer as 18 maande voor daardie beskikking; of 5  
(bb) binne ’n tydperk van 18 maande voor daardie beskikking, in die mate wat daardie skuld—  
(A) die herfinansiering van enige skuld in subparagraaf (aa) beoog, uitmaak; of  
(B) toeskryfbaar is aan en ontstaan het in die **[normale]** 10  
**gewone** verloop van **[die beskikking, as ’n lopende saak, oor]** ’n besigheidsonderneming waaroor as ’n lopende saak beskik is, aan daardie gevolglike maatskappy as deel van daardie amalgamasietransaksie; en 15  
(ii) nie deur daardie geamalgameerde maatskappy aangegaan is met die doel om die verkryging deur daardie gevolglike maatskappy van enige bate ingevolge daardie amalgamasietransaksie te bewerkstellig, in staat te stel, te fasiliteer of te befonds nie.”; 20
- (e) deur in subartikel (6) paragraaf (a) deur die volgende paragraaf te vervang:  
“(a) Behoudens subartikel (7), is hierdie subartikel van toepassing waar—  
(i) ’n persoon oor **[ekwiteitsaandeel]** ’n ekwiteitsaandeel in ’n geamalgameerde maatskappy beskik as gevolg van die likwidasië of deregistrasie van daardie geamalgameerde maatskappy en ekwiteitsaandeel in die gevolglike maatskappy verkry as deel van ’n amalgamasietransaksie ten opsigte waarvan subartikel (2) of (3) van toepassing was, welke ekwiteitsaandeel in die gevolglike maatskappy verkry is— 25  
**[(aa)](i)** as óf kapitaalbate óf handelsvoorraad, in die geval waar daardie **[aandeel]** ekwiteitsaandeel in die geamalgameerde maatskappy oor beskik is as ’n kapitaalbate; of  
**[(bb)](ii)** as handelsvoorraad in die geval waar daardie **[aandeel]** ekwiteitsaandeel in die geamalgameerde maatskappy oor beskik is as handelsvoorraad.”; 30 35
- (f) deur in die Engelse teks in subartikel (6)(b)(iii) die woorde wat item (aa) voorafgaan deur die volgende woorde te vervang:  
“**[to have]** incurred the cost contemplated in subparagraph (ii) on the date on which that person incurred the expenditure in respect of the equity share in die amalgamated company, which cost must be treated as—”; 40
- (g) deur in subartikel (9) paragraaf (a) deur die volgende paragraaf te vervang:  
“(a) word die beskikking deur daardie geamalgameerde maatskappy oor daardie aandeel **[geag nie ’n dividend Deel VIII van Hoofstuk II te wees nie]** buite rekening gelaat by die bepaling van enige aanspreeklikheid vir dividendbelasting; en”; 45
- (h) deur in subartikel (13) paragraaf (a) deur die volgende paragraaf te vervang:  
“(a) nie binne ’n periode van **[18]** 36 maande na die datum van die amalgamasietransaksie, of die verdere tydperk wat die Kommissaris toelaat, stappe bedoel in artikel 41(4) om te likwideer of te deregistreer gedoen het nie; of”; en 50
- (i) deur in subartikel (14) paragraaf (a) deur die volgende paragraaf te vervang:  
“(a) ten opsigte van ’n transaksie **[indien die gevolglike maatskappy minstens 70 persent van die ekwiteitsaandeel in die geamalgameerde maatskappy hou onmiddellik voor die amalgamasie, omskakeling of samesmelting]** wat ’n likwidasië-uitkering soos omskryf in artikel 47(1) uitmaak;”. 55
- (2) Paragrafe (a), (b), (c), (e), (f), (h) en (i) van subartikel (1) tree op 1 Januarie 2013 in werking en is van toepassing ten opsigte van transaksies op of na daardie datum aangegaan. 60
- (3) Paragraaf (d) van subartikel (1) word geag op 1 Januarie 2012 in werking te getree het en is van toepassing ten opsigte van transaksies op of na daardie datum aangegaan.

(4) Paragraph (g) of subsection (1) is deemed to have come into operation on 1 April 2012 and applies in respect of disposals made on or after that date.

**Amendment of section 45 of Act 58 of 1962, as amended by section 24 of Act 55 of 1966, section 18 of Act 95 of 1967, section 25 of Act 21 of 1995, section 44 of Act 60 of 2001, section 34 of Act 74 of 2002, section 53 of Act 45 of 2003, section 35 of Act 32 of 2004, section 41 of Act 31 of 2005, section 35 of Act 8 of 2007, section 56 of Act 35 of 2007, section 28 of Act 3 of 2008 and section 51 of Act 60 of 2008, section 64 of Act 7 of 2010 and section 70 of Act 24 of 2011**

77. (1) Section 45 of the Income Tax Act, 1962, is hereby amended—
- (a) by the substitution in subsection (1) for the definition of “**intra-group transaction**” of the following definition:
- “For the purposes of this section—
- ‘intra-group transaction’** means any transaction—
- (a) (i) 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 as at the end of the day of that transaction; and
- [b] (ii) as a result of which that transferee company acquires that asset from that transferor company—
- [i](aa) as a capital asset, where that transferor company holds it as a capital asset; or
- [ii](bb) as trading stock, where that transferor company holds it as trading stock; or
- (b) (i) in terms of which any asset that constitutes an equity share held by a transferor company as a capital asset in a foreign company is disposed of by that transferor company to a transferee company in exchange for the issue of debt or shares other than equity shares by that transferee company;
- (ii) as a result of which that transferee company acquires that asset from that transferor company as a capital asset; and
- (iii) if, immediately before and as at the end of the day of that transaction—
- (aa) that transferor company and that transferee company form part of the same group of companies (as defined in section 1);
- (bb) that transferor is a resident or is a controlled foreign company in relation to one or more residents that form part of that group of companies; and
- (cc) that transferee is a resident or is a controlled foreign company in relation to one or more residents that form part of that group of companies.”;
- (b) by the addition in subsection (2) of the following proviso to paragraph (a):
- “: Provided that in the case of an intra-group transaction contemplated in paragraph (b) of the definition of ‘intra-group transaction’, this paragraph does not apply to any asset that constitutes an equity share disposed of by a transferor company to a transferee company in terms of that intra-group transaction if—
- (A) that transferor company is a controlled foreign company in relation to any resident;
- (B) that transferee is a resident; and
- (C) the base cost of that equity share exceeds the market value of that equity share at the time of that disposal;”;



(4) Paragraaf (g) van subartikel (1) word geag op 1 April 2012 in werking te getree het en is van toepassing ten opsigte van beskikkings op of na daardie datum gemaak.

**Wysiging van artikel 45 van Wet 58 van 1962, soos gewysig deur artikel 24 van Wet 55 van 1966, artikel 18 van Wet 95 van 1967, artikel 25 van Wet 21 van 1995, artikel 44 van Wet 60 van 2001, artikel 34 van Wet 74 van 2002, artikel 53 van Wet 45 van 2003, artikel 35 van Wet 32 van 2004, artikel 41 van Wet 31 van 2005, artikel 35 van Wet 8 van 2007, artikel 56 van Wet 35 van 2007, artikel 28 van Wet 3 van 2008 en artikel 51 van Wet 60 van 2008, artikel 64 van Wet 7 van 2010 en artikel 70 van Wet 24 van 2011**

77. (1) Artikel 45 van die Inkomstebelastingwet, 1962, word hierby gewysig— 10

(a) deur in subartikel (1) die omskrywing van “**intragroeptransaksie**” deur die volgende omskrywing te vervang:

“ **‘intragroeptransaksie’** enige transaksie—

(a) (i) 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 teen die einde van die dag van daardie transaksie deel van dieselfde groep van maatskappye vorm; en

**[(b)]** (ii) wat tot gevolg het dat die oordragnemende maatskappy daardie bate van die oordraggewende maatskappy verkry — 20

**[(i)](aa)** as ’n kapitaalbate, waar daardie oordraggewende maatskappy dit as ’n kapitaalbate hou; of

**[(ii)](bb)** as handelsvoorraad, waar daardie oordraggewende maatskappy dit as handelsvoorraad hou; of 25

(b) (i) ingevolge waarvan oor ’n bate wat ’n ekwiteitsaandeel gehou deur ’n oordraggewende maatskappy as ’n kapitaalbate in ’n buitelandse maatskappy uitmaak, beskik word deur daardie oordraggewende maatskappy aan ’n oordragnemende maatskappy in ruil vir die uitreik van skuld of aandele buiten ekwiteitsaandele deur daardie oordragnemende maatskappy; 30

(ii) as gevolg waarvan daardie oordragnemende maatskappy daardie bate van daardie oordraggewende maatskappy as ’n kapitaalbate verkry; en

(iii) indien, onmiddellik voor en aan die einde van die dag van daardie transaksie— 35

**(aa)** daardie oordraggewende maatskappy en daardie oordragnemende maatskappy deel uitmaak van dieselfde groep van maatskappye (soos omskryf in artikel 1);

**(bb)** daardie oordraggewer ’n inwoner is of ’n beheerde buitelandse maatskappy is met betrekking tot een of meer inwoners wat deel uitmaak van daardie groep van maatskappye; en

**(cc)** daardie oordragnemer ’n inwoner is of ’n beheerde buitelandse maatskappy is met betrekking tot een of meer inwoners wat deel uitmaak van daardie groep van maatskappye.”; 45

(b) deur in subartikel (2) die volgende voorbehoudsbepaling tot paragraaf (a) by te voeg:

“: Met dien verstande dat in die geval van ’n intragroeptransaksie beoog in paragraaf (b) van die omskrywing van ‘intragroeptransaksie’, hierdie paragraaf nie van toepassing is nie op ’n bate wat ’n ekwiteitsaandeel oor beskik deur ’n oordraggewende maatskappy aan ’n oordragnemende maatskappy ingevolge daardie intragroeptransaksie uitmaak indien— 50

(A) daardie oordraggewende maatskappy ’n beheerde buitelandse maatskappy is met betrekking tot enige inwoner; 55

(B) daardie oordragnemer ’n inwoner is; en

(C) die basiskoste van daardie ekwiteitsaandeel die markwaarde van daardie ekwiteitsaandeel op die tydstip van daardie beskikking oorskry”; 60

- (c) by the substitution in subsection (2)(b) for the words preceding subparagraph (i) of the following words:  
“an asset held by it as trading stock in terms of an intra-group transaction contemplated in paragraph (a) of the definition of ‘intra-group transaction’ to a transferee company which acquires it as trading stock—”; 5
- (d) by the substitution in subsection (3)(a) for the words preceding subparagraph (i) of the following words:  
“an asset that constitutes an allowance asset in that transferor company’s hands to a transferee company in terms of an intra-group transaction contemplated in paragraph (a) of the definition of ‘intra-group transaction’ and that transferee company acquires that asset as an allowance asset—”; 10
- (e) by the substitution in subsection (3)(b) for the words preceding subparagraph (i) of the following words:  
“a contract to a transferee company as part of a disposal of a business as a going concern in terms of an intra-group transaction contemplated in paragraph (a) of the definition of ‘intra-group transaction’ and that contract imposes an obligation on that transferor company in respect of which an allowance in terms of section 24C was allowable to that transferor company for the year preceding that in which that contract is transferred or would have been allowable to that transferor company for the year of that transfer had that contract not been so transferred—”; 15 20
- (f) by the substitution in subsection (3A)(a) for the words preceding subparagraph (i) of the following words:  
“This subsection applies where an asset is acquired by a transferee company from a transferor company in terms of an intra-group transaction contemplated in paragraph (a) of the definition of ‘intra-group transaction’ and—”; 25
- (g) by the substitution in subsection (3A)(a) for subparagraph (i) of the following subparagraph: 30  
“(i) any amount incurred by that transferee company as consideration for the acquisition of that asset from that transferor company is funded directly or indirectly by the issue of any[—  
(aa) debt **[instrument as defined in section 37I(1);]** or  
**[(bb)]** share other than an equity share; and”; 35
- (h) by the substitution in subsection (3A)(a)(ii) for the words preceding item (aa) of the following words:  
“that debt **[instrument]** or share—”;
- (i) by the substitution in subsection (3A) for paragraph (b) of the following paragraph: 40  
“(b) The holder of any debt **[instrument]** or share contemplated in paragraph (a) who is part of the same group of companies as the issuer of that debt **[instrument]** or share must, for the purposes of—  
(i) paragraph 20 of the Eighth Schedule, be deemed to have acquired that debt **[instrument]** or share for an amount of expenditure of nil; and 45  
(ii) section 11(a) or 22 (1) or (2), be deemed to have acquired that debt **[instrument]** or share for an amount of expenditure or cost of nil.”;
- (j) by the substitution in subsection (3A) for paragraph (c) of the following paragraph: 50  
“(c) Where an amount, other than an amount of interest, is received by or **[accrued]** accrues to a holder in respect of a debt instrument contemplated in paragraph (a) from any company that forms part of the same group of companies as that holder and that amount is applied by the holder in settlement of the amount outstanding in respect of that debt instrument, that amount must be disregarded in determining the aggregate capital gain or the taxable income of that holder to the extent 55

- (c) deur in subartikel (2)(b) die woorde wat subparagraaf (i) voorafgaan deur die volgende woorde te vervang:  
“ ’n bate deur daardie maatskappy as handelsvoorraad gehou ingevolge ’n intragroeptransaksie beoog in paragraaf (a) van die omskrywing van ‘intragroeptransaksie’ aan ’n oordragnemende maatskappy wat dit as handelsvoorraad verkry—”;
- (d) deur in subartikel (3)(a) die woorde wat subparagraaf (i) voorafgaan deur die volgende woorde te vervang:  
“ ’n bate wat ’n afskryfbare bate in daardie oordraggewende maatskappy se hande uitmaak aan ’n oordragnemende maatskappy ingevolge ’n intragroeptransaksie beoog in paragraaf (a) van die omskrywing van ‘intragroeptransaksie’ oordra en daardie oordragnemende maatskappy daardie bate as ’n afskryfbare bate verkry—”;
- (e) deur in subartikel (3)(b) die woorde wat subparagraaf (i) voorafgaan deur die volgende woorde te vervang:  
“ ’n kontrak aan ’n oordragnemende maatskappy as deel van ’n beskikking oor ’n besigheid as ’n lopende saak ingevolge ’n intragroeptransaksie beoog in paragraaf (a) van die omskrywing van ‘intragroeptransaksie’ oordra en daardie kontrak ’n verpligting op daardie oordraggewende maatskappy plaas ten opsigte waarvan ’n toelae ingevolge artikel 24C vir daardie oordraggewende maatskappy toelaatbaar was ten opsigte van die jaar wat die jaar waarin die kontrak oorgeplaas is, voorafgegaan het of wat vir daardie oordraggewende maatskappy toelaatbaar sou gewees het vir die jaar van daardie oordrag indien die kontrak nie aldus oorgedra was nie—”;
- (f) deur in subartikel (3A)(a) die woorde wat subparagraaf (i) voorafgaan deur die volgende woorde te vervang:  
“Hierdie subartikel is van toepassing waar ’n bate verkry word deur ’n oordragnemende maatskappy van ’n oordraggewende maatskappy ingevolge ’n intragroeptransaksie beoog in paragraaf (a) van die omskrywing van ‘intragroeptransaksie’ en—”;
- (g) deur in subartikel (3A)(a) subparagraaf (i) deur die volgende subparagraaf te vervang:  
“(i) enige bedrag aangegaan deur daardie oordragnemende maatskappy as vergoeding vir die verkryging van daardie bate van daardie oordraggewende maatskappy direk of indirek befonds word deur die uitreiking van enige[—  
**(aa) skuldinstrument skuld soos in artikel 37(1) omskryf;]**  
skuld of  
**[(bb)]**aandeel buiten ’n ekwiteitsaandeel; en”;
- (h) deur in subartikel (3A)(a)(ii) die woorde wat item (aa) voorafgaan deur die volgende woorde te vervang:  
“daardie **[skuldinstrument]** skuld of aandeel—”;
- (i) deur in subartikel (3A) paragraaf (b) deur die volgende paragraaf te vervang:  
“(b) Die houer van enige **[skuldinstrument]** skuld of aandeel in paragraaf (a) beoog wat deel is van dieselfde groep van **[maatskappy]** maatskappye as die uitreiker van daardie **[skuldinstrument]** skuld of aandeel moet, by die toepassing van—  
(i) paragraaf 20 van die Agtste Bylae geag word daardie **[skuldinstrument]** skuld of aandeel te verkry het vir ’n bedrag van uitgawes van nul; en  
(ii) artikel 11(a) of 22(1) of (2) geag word daardie **[skuldinstrument]** skuld of aandeel te verkry het vir ’n bedrag van uitgawes of koste van nul.”;
- (j) deur in subartikel (3A) paragraaf (c) deur die volgende paragraaf te vervang:  
“(c) Waar ’n bedrag, buiten ’n bedrag van rente, ontvang word of toeval aan ’n houer ten opsigte van ’n skuldinstrument beoog in paragraaf (a) van enige maatskappy wat deel vorm van dieselfde groep van maatskappye as daardie houer en daardie bedrag word toegepas deur die houer ter vereffening van die uitstaande bedrag ten opsigte van daardie skuldinstrument, word daardie bedrag verontagsaam by die bepaling van die saamgestelde kapitaalwins of die belasbare inkomste

that that amount reduces the liability of the issuer of that debt instrument to that holder.”;

- (k) by the substitution in subsection (3A) for paragraphs (c) and (d) of the following paragraphs:

“(c) Where an amount, other than an amount of interest or an amount previously taken into account as interest, is received by or accrues to a holder in respect of a debt instrument contemplated in paragraph (a) from any company that forms part of the same group of companies as that holder and that amount is applied by the holder in settlement of the amount outstanding in respect of that debt instrument, that amount must be disregarded in determining the aggregate capital gain or the taxable income of that holder to the extent that that amount reduces the liability of the issuer of that debt instrument to that holder.

(d) Where an amount, other than an amount that constitutes a dividend or an amount previously taken into account as a dividend, is received by or accrued to a holder in respect of a share contemplated in paragraph (a) from any company that forms part of the same group of companies as that holder and that amount is applied in reduction of the capital subscribed for that share, that amount must be disregarded in determining the aggregate capital gain or the taxable income of that holder.”.

- (l) by the substitution in subsection (3A) for paragraph (c) of the following paragraph:

“(c) Where an amount, other than an amount of interest or an amount previously taken into account as interest, is received by or accrues to a holder in respect of a debt **[instrument]** contemplated in paragraph (a) from any company that forms part of the same group of companies as that holder and that amount is applied by the holder in settlement of the amount outstanding in respect of that debt **[instrument]**, that amount must be disregarded in determining the aggregate capital gain or the taxable income of that holder to the extent that that amount reduces the liability of the issuer of that debt **[instrument]** to that holder.”;

- (m) by the substitution in subsection (4)(b) for the words preceding subparagraph (i) of the following words:

“Where a transferee company contemplated in paragraph (a) of the definition of ‘intra-group transaction’ which has acquired an asset as contemplated in paragraph (a) ceases within a period of six years after the acquisition to form part of any group of companies in relation to the transferor company contemplated in paragraph (a)(i) or a controlling group company in relation to the transferor company, and the transferee company has not disposed of that asset—”;

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

“(bA) Where a transferee company contemplated in paragraph (b) of the definition of ‘intra-group transaction’ which has acquired an asset that constitutes an equity share as contemplated in paragraph (a)—

- (i) ceases within a period of six years after the acquisition—

(aa) to form part of any group of companies (as defined in section 1) in relation to—

(A) the transferor company contemplated in paragraph (a)(i); or

(B) any controlling group company of a group of companies (as defined in section 1) in relation to that transferor company; or

(bb) to be a controlled foreign company in relation to any resident that is part of any group of companies contemplated in item (aa); and

- (ii) at the time of so ceasing, that transferee company has not disposed of that equity share,  
an amount equal to the lesser of—

- van daardie houer namate daardie bedrag die aanspreeklikheid van die uitreiker van daardie skuldinstrument aan daardie houer verminder.”;
- (k) deur in subartikel (3A) paragrawe (c) en (d) deur die volgende paragrawe te vervang:
- “(c) Waar ’n bedrag, buiten ’n bedrag van rente of ’n bedrag tevore as rente in berekening gebring, ontvang word of toeval aan ’n houer ten opsigte van ’n skuldinstrument beoog in paragraaf (a) van enige maatskappy wat deel vorm van dieselfde groep van maatskappye as daardie houer en daardie bedrag word toegepas deur die houer ter vereffening van die uitstaande bedrag ten opsigte van daardie skuldinstrument, word daardie bedrag verontagsaam by die bepaling van die saamgestelde kapitaalwins of die belasbare inkomste van daardie houer namate daardie bedrag die aanspreeklikheid van die uitreiker van daardie skuldinstrument aan daardie houer verminder. 5
- 10
- (d) Waar ’n bedrag, buiten ’n bedrag wat ’n dividend uitmaak of ’n bedrag tevore as ’n dividend in berekening gebring, ontvang word deur of toeval aan ’n houer ten opsigte van ’n aandeel beoog in paragraaf (a) van enige maatskappy wat deel vorm van dieselfde groep van maatskappye as daardie houer en daardie bedrag word toegepas ter vermindering van die kapitaal ingeskryf vir daardie aandeel, word daardie bedrag verontagsaam by die bepaling van die saamgestelde kapitaalwins of die belasbare inkomste van daardie houer.”. 15
- 20
- (l) deur in subartikel (3A) paragraaf (c) deur die volgende paragraaf te vervang:
- “(c) Waar ’n bedrag, buiten ’n bedrag van rente of ’n bedrag tevore as rente in berekening gebring, ontvang word of toeval aan ’n houer ten opsigte van ’n [skuldinstrument] skuld beoog in paragraaf (a) van enige maatskappy wat deel vorm van dieselfde groep van maatskappye as daardie houer en daardie bedrag word toegepas deur die houer ter vereffening van die uitstaande bedrag ten opsigte van daardie [skuldinstrument] skuld, word daardie bedrag verontagsaam by die bepaling van die saamgestelde kapitaalwins of die belasbare inkomste van daardie houer namate daardie bedrag die aanspreeklikheid van die uitreiker van daardie [skuldinstrument] skuld aan daardie houer verminder.” 25
- 30
- (m) deur in subartikel (4)(b) die woorde wat subparagraaf (i) voorafgaan deur die volgende woorde te vervang: 35
- “Waar ’n oordragnemende maatskappy beoog in paragraaf (a) van die omskrywing van ‘intragroeptransaksie’ wat ’n bate verkry het soos beoog in paragraaf (a) binne ’n tydperk van ses jaar na die verkryging ophou om deel uit te maak van enige groep van maatskappye met betrekking tot die oordraggewende maatskappy beoog in paragraaf (a)(i) of ’n beherende groepsmaatskappy met betrekking tot die oordraggewende maatskappy, en die oordragnemende maatskappy nie oor daardie bate beskik het nie—” 40
- (n) deur in subartikel (4) die volgende paragraaf na paragraaf (b) in te voeg: 45
- “(bA) Waar ’n oordragnemende maatskappy beoog in paragraaf (b) van die omskrywing van ‘intragroeptransaksie’ wat ’n bate verkry het wat ’n ekwiteitsaandeel uitmaak soos beoog in paragraaf (a)—
- (i) binne ’n tydperk van ses jaar na die verkryging ophou— 50
- (aa) om deel uit te maak van enige groep van maatskappye (soos omskryf in artikel 1) met betrekking tot—
- (A) die oordraggewende maatskappy beoog in paragraaf (a)(i); of
- (B) enige beherende groepmaatskappy van ’n groep van maatskappye (soos omskryf in artikel 1) met betrekking tot daardie oordraggewende maatskappy; of 55
- (bb) om ’n beheerde buitelandse maatskappy te wees met betrekking tot enige inwoner wat deel is van enige groep van maatskappye beoog in item (aa); en
- (ii) op die tydstip waarop dit aldus ophou, daardie oordragnemende maatskappy nie oor daardie ekwiteitsaandeel beskik het nie, 60
- word ’n bedrag gelyk aan die minste van—

- (AA) the greatest capital gain that would have been determined in respect of any disposal of the equity share in terms of an intra-group transaction within the period of six years preceding the date on which the transferee company ceased to form part of the group of companies as contemplated in item (aa), had subsection (2) not applied in respect of that disposal; or 5
- (BB) the capital gain that would be determined if the asset was disposed of on the date on which the transferee company ceases to form part of the group of companies as contemplated in item (aa) for an amount equal to the market value of the equity share on that date, must be deemed to be a capital gain of the transferee company for the year of assessment in which the transferee company ceased to form part of the group of companies as contemplated in item (aa) and applied to increase the base cost of the equity share.”; 10

(o) by the addition in subsection (4) of the following paragraph: 15

“(d) Where the transferor company or transferee company contemplated in paragraph (bA) is liquidated, wound up or deregistered at a time when a company (hereinafter referred to as the ‘holding company’), which is a resident or a controlled foreign company in relation to any resident, holds at least 70 per cent of the equity shares of that company which is liquidated, wound up or deregistered, the holding company and the company which is liquidated, wound up or deregistered must be deemed to be one and the same company for purposes of paragraph (bA).”; and 20

(p) by the substitution in subsection (4B) for the words preceding paragraph (a) of the following words: 25

“A transferee company and a transferor company contemplated in subsection (4)(b) must for purposes of [that] subsection (4) be deemed to have ceased to form part of any group of companies in relation to each other if a disposal contemplated in [that] subsection (4) forms part of any transaction, operation or scheme in terms of which—” 30

(2) Paragraphs (a), (b), (c), (d), (e), (f), (m), (n), (o) and (p) of subsection (1) come into operation on 1 January 2013 and apply in respect of transactions entered into on or after that date.

(3) Paragraphs (g), (h), (i) and (l) of subsection (1) come into operation on 1 January 2013. 35

(4) Paragraph (j) of subsection (1) is deemed to have come into operation on 30 August 2011 and applies in respect of debt instruments issued on or after that date.

(5) Paragraph (k) of subsection (1) is deemed to have come into operation on 1 January 2012 and applies in respect of years of assessment commencing on or after that date. 40

**Amendment of section 46 of Act 58 of 1962, as amended by section 25 of Act 21 of 1995, section 44 of Act 60 of 2001, section 34 of Act 74 of 2002, section 54 of Act 45 of 2003, section 36 of Act 32 of 2004, section 42 of Act 31 of 2005, section 36 of Act 8 of 2007, section 57 of Act 35 of 2007, section 29 of Act 3 of 2008, section 52 of Act 60 of 2008, section 65 of Act 7 of 2010 and section 71 of Act 24 of 2011** 45

78. (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 the purposes of this section, ‘**unbundling transaction**’ means any transaction— 50

(a) (i) in terms of which all the equity shares of a company (hereinafter referred to as the ‘unbundled company’) which is a resident that are held by a company (hereinafter referred to as the ‘unbundling company’) which is a resident, are distributed by that unbundling company to [the] any shareholder [or **shareholders**] of that unbundling company in accordance with 55

- (AA) die grootste kapitaalwins wat bepaal sou word ten opsigte van 'n beskikking oor die ekwiteitsaandeel ingevolge 'n intragroep-transaksie binne die tydperk van ses jaar voor die datum waarop die oordragnemende maatskappy ophou om deel uit te maak van die groep van maatskappye soos beoog in item (aa), indien subartikel (2) nie ten opsigte van daardie beskikking van toepassing was nie; of
- (BB) die kapitaalwins wat bepaal sou word indien oor die bate beskik is op die datum waarop die oordragnemende maatskappy ophou om deel van die groep van maatskappye uit te maak soos beoog in item (aa) vir 'n bedrag gelyk aan die markwaarde van die ekwiteitsaandeel op daardie datum, geag 'n kapitaalwins van die oordragnemende maatskappy te wees vir die jaar van aanslag waarin die oordragnemende maatskappy ophou om deel van die groep van maatskappye uit te maak soos beoog in item (aa) en toegepas om die basiskoste van die ekwiteitsaandeel te verhoog.”;
- (o) deur in subartikel (4) die volgende paragraaf by te voeg:  
“(d) Waar die oordraggewende maatskappy of oordragnemende maatskappy beoog in paragraaf (bA) gelikwieder of gederegistreer word op 'n tydstip wanneer 'n maatskappy (hierna die ‘houermaatskappy’ genoem), wat 'n inwoner is of 'n beheerde buitelandse maatskappy is met betrekking tot enige inwoner, minstens 70 persent hou van die ekwiteitsaandeel van daardie maatskappy wat gelikwieder of gederegistreer word, word die houermaatskappy en die maatskappy wat gelikwieder of gederegistreer word, geag een en dieselfde maatskappy by die toepassing van paragraaf (bA) te wees.”; en
- (p) deur in subartikel (4B) die woorde wat paragraaf (a) voorafgaan deur die volgende woorde te vervang:  
“'n Oordragnemende maatskappy en 'n oordraggewende maatskappy beoog in subartikel (4)(b) moet by die toepassing van [daardie] subartikel (4) geag word op te gehou het om deel te vorm van 'n groep van maatskappye met betrekking tot mekaar indien 'n beskikking beoog in [daardie] subartikel (4) deel uitmaak van 'n transaksie, operasie of skema ingevolge waarvan—”.
- (2) Paragraawe (a), (b), (c), (d), (e), (f), (m), (n), (o) en (p) van subartikel (1) tree op 1 Januarie 2013 in werking en is van toepassing ten opsigte van transaksies op of na daardie datum aangegaan.
- (3) Paragraawe (g), (h), (i) en (l) van subartikel (1) tree op 1 Januarie 2013 in werking.
- (4) Paragraaf (j) van subartikel (1) word geag op 30 Augustus 2011 in werking te getree het en is van toepassing ten opsigte van skuldinstrumente uitgereik op of na daardie datum.
- (5) Paragraaf (k) van subartikel (1) word geag op 1 Januarie 2012 in werking te getree het en is van toepassing ten opsigte van jare van aanslag wat op of na daardie datum begin.
- Wysiging van artikel 46 van Wet 58 van 1962, soos gewysig deur artikel 25 van Wet 21 van 1995, artikel 44 van Wet 60 van 2001, artikel 34 van Wet 74 van 2002, artikel 54 van Wet 45 van 2003, artikel 36 van Wet 32 van 2004, artikel 42 van Wet 31 van 2005, artikel 36 van Wet 8 van 2007, artikel 57 van Wet 35 van 2007, artikel 29 van Wet 3 van 2008, artikel 52 van Wet 60 van 2008, artikel 65 van Wet 7 van 2010 en artikel 71 van Wet 24 van 2011**
- 78.** (1) Artikel 46 van die Inkomstebelastingwet, 1962, word hierby gewysig—
- (a) deur subartikel (1) deur die volgende subartikel te vervang:  
“(1) By die toepassing van hierdie artikel beteken, ‘**ontbondelingstransaksie**’ 'n transaksie—
- (a) (i) ingevolge waarvan al die ekwiteitsaandeel van 'n maatskappy (hierna die ‘ontbondelde maatskappy’ genoem) wat 'n inwoner is wat gehou word deur 'n maatskappy (hierna die ‘ontbondelingsmaatskappy’ genoem) en wat 'n inwoner is, uitgekeer word deur daardie ontbondelingsmaatskappy aan [die] enige aandeelhouer [of aandeelhouders] van daardie ontbondelingsmaatskappy ooreenkomstig die effektiewe belang van daardie

- 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 equity shares are so distributed—
- (aa) where that unbundling company is a listed company and the equity shares of the unbundled company are listed shares or will become listed shares within 12 months after that distribution, to the shareholders of that unbundling company; 5
  - (bb) 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 10
  - (cc) 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; and 15
- (ii) if the equity shares distributed as contemplated in subparagraph (i) constitute—
- (aa) where that unbundled company is a listed company immediately before that distribution— 20
    - (A) and no shareholder **[in]** of the unbundled company other than the unbundling company holds the same number of equity shares as or more equity shares than the unbundling company **[in]** of that unbundled company, more than 25 per cent of the equity shares of the unbundled company; or 25
    - (B) and any shareholder **[in]** of the unbundled company other than the unbundling company holds the same number of equity shares as or more equity shares than the unbundling company **[in]** of that unbundled company, at least 35 per cent of the equity shares of that unbundled company; or 30
  - (bb) where that unbundled company is an unlisted company immediately before that distribution, more than 50 per cent of the equity shares of that unbundled company; or 35
- (b) (i) in terms of which all the equity shares of an unbundled company which is a **[controlled]** foreign company that are held by an unbundling company which is a resident or a controlled foreign company are distributed by that unbundling company to **[the]** any 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 distributed to **[shareholders]** any shareholder of that unbundling company **[that form part of the same group of companies as that unbundling company (without regard to paragraph (i)(ee) of the proviso to the definition of ‘group of companies’ in section 41) immediately after that distribution]** which— 45
- (aa) if that shareholder is a resident, forms part of the same group of companies (as defined in section 1); or 50



- aandeelhouer **[of aandeelhouders, na gelang van die geval,]** in die aandeel van daardie ontbondelingsmaatskappy, maar slegs tot die mate waarin daardie **[aandeel]** ekwiteitsaandeel so uitgekeer word—
- (aa) waar daardie ontbondelingsmaatskappy 'n genoteerde maatskappy is en die **[aandeel]** ekwiteitsaandeel van die ontbondelde maatskappy binne 12 maande na daardie uitkering genoteer of genoteerde aandeel is of sal word, aan die aandeelhouders van daardie ontbondelingsmaatskappy; 5
- (bb) 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 10
- (cc) aan die aandeelhouders 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); en 15
- (ii) indien die **[aandeel]** ekwiteitsaandeel uitgekeer soos beoog in subparagraaf (i)— 20
- (aa) waar daardie ontbondelde maatskappy 'n genoteerde maatskappy is onmiddellik voor daardie uitkering—
- (A) en geen aandeelhouer **[in]** van die ontbondelde maatskappy behalwe die ontbondelingsmaatskappy dieselfde getal ekwiteitsaandeel as of meer ekwiteitsaandeel as die ontbondelingsmaatskappy **[in]** van daardie ontbondelde maatskappy hou, meer as 25 persent van die ekwiteitsaandeel van die ontbondelde maatskappy uitmaak; of 30
- (B) en enige aandeelhouer **[in]** van die ontbondelde maatskappy behalwe die ontbondelingsmaatskappy dieselfde getal ekwiteitsaandeel as of meer ekwiteitsaandeel as die ontbondelingsmaatskappy **[in]** van daardie ontbondelde maatskappy hou, minstens 35 persent van die ekwiteitsaandeel van daardie ontbondelde maatskappy uitmaak; of 35
- (bb) waar daardie ontbondelde maatskappy 'n ongenoteerde maatskappy is onmiddellik voor daardie uitkering, meer as 50 persent van die ekwiteitsaandeel van daardie ontbondelde maatskappy uitmaak; of 40
- (b) (i) ingevolge waarvan al die ekwiteitsaandeel van 'n ontbondelde maatskappy wat 'n **[beheerde]** buitelandse maatskappy is wat gehou word deur 'n ontbondelingsmaatskappy wat 'n inwoner of 'n beheerde buitelandse maatskappy is, uitgekeer word deur daardie ontbondelingsmaatskappy aan **[die]** enige aandeelhouer **[of aandeelhouders]** van daardie ontbondelingsmaatskappy ooreenkomstig die effektiewe belang van daardie aandeelhouer **[of daardie aandeelhouders, na gelang van die geval,]** in die aandeel van daardie ontbondelingsmaatskappy, maar slegs tot die mate waarin daardie aandeel aldus uitgekeer word aan **[aandeelhouders]** enige aandeelhouer van daardie ontbondelingsmaatskappy **[wat deel vorm van dieselfde groep van maatskappye as daardie ontbondelingsmaatskappy (sonder inagneming van paragraaf (i)(ee) van die voorbehoudsbepaling tot die omskrywing van 'groep van maatskappye' in artikel 41) onmiddellik na daardie uitkering]** wat— 50
- (aa) indien daardie aandeelhouer 'n inwoner is, deel uitmaak van dieselfde groep van maatskappye (soos omskryf in artikel 1); of 60

- (bb) if that shareholder is not a resident, is a controlled foreign company in relation to any resident that forms part of the same group of companies (as defined in section 1),  
as that unbundling company; **[and]**
- (ii) if, immediately before the distribution of the equity shares of an unbundled company by an unbundling company to any shareholder of that unbundling company as contemplated in subparagraph (i),—
- (aa) the unbundling company holds more than 50 per cent of the equity shares of the unbundled company;
- (bb) each of those equity shares of that unbundled company are held by the unbundling company as a capital asset;
- (cc) where the unbundling company is a foreign company, that unbundling company is a controlled foreign company in relation to any resident that forms part of the same group of companies (as defined in section 1) as that unbundling company; and
- (iii) if, immediately after the distribution of the equity shares of an unbundled company by an unbundling company as contemplated in subparagraph (i), more than 50 per cent of the equity shares of that unbundled company are directly or indirectly held by a resident (whether alone or together with any other resident that forms part of the same group of companies as that resident) where that unbundling company is a foreign company.”;
- (b) by the substitution for subsection (5) of the following subsection:  
“(5) Where shares are distributed by an unbundling company to a shareholder in terms of an unbundling transaction, the distribution by that unbundling company of the shares must **[, for the purposes of the definition of ‘dividend’ and the definition of ‘return of capital’ in section 1, be deemed not to be an amount transferred by that unbundling company for the purposes of Part VIII of Chapter II] be disregarded in determining any liability for dividends tax.**”;
- (c) by the substitution in subsection (7)(b) for subparagraph (i) of the following subparagraph:  
“(i) a person that is not a resident, unless that person is a controlled foreign company and more than 50 per cent of the equity shares in that controlled foreign company are directly or indirectly held by a resident (whether alone or together with any other resident that forms part of the same group of companies as that resident);”.
- (2) Paragraphs (a) and (c) of subsection (1) come into operation on 1 January 2013 and apply in respect of transactions entered into on or after that date.
- (3) Paragraph (b) of subsection (1) is deemed to have come into operation on 1 April 2012 and applies in respect of distributions made on or after that date.

**Amendment of section 47 of Act 58 of 1962, as amended by section 25 of Act 21 of 1995, section 34 of Act 74 of 2002, section 55 of Act 45 of 2003, section 37 of Act 32 of 2004, section 43 of Act 31 of 2005, section 31 of Act 20 of 2006, section 37 of Act 8 of 2007, section 58 of Act 35 of 2007, section 31 of Act 3 of 2008, section 53 of Act 60 of 2008, section 50 of Act 17 of 2009, section 66 of Act 7 of 2010 and section 72 of Act 24 of 2011**

79. (1) Section 47 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:

- (bb) indien daardie aandeelhouer nie 'n inwoner is nie, 'n beheerde buitelandse maatskappy is met betrekking tot enige inwoner wat deel uitmaak van dieselfde groep van maatskappye (soos omskryf in artikel 1),  
as daardie ontbondelingsmaatskappy; [en] 5
- (ii) indien, onmiddellik voor die uitkering van die ekwiteitsaandeel van 'n ontbondelde maatskappy deur 'n ontbondelingsmaatskappy aan enige aandeelhouer van daardie ontbondelingsmaatskappy soos beoog in subparagraaf (i),—  
(aa) die ontbondelingsmaatskappy meer as 50 persent hou 10  
van die ekwiteitsaandeel van die ontbondelde maatskappy;  
(bb) elk van daardie ekwiteitsaandeel van daardie ontbondelde maatskappy deur die ontbondelingsmaatskappy as 'n kapitaalbate gehou word; 15  
(cc) waar die ontbondelingsmaatskappy 'n buitelandse maatskappy is, daardie ontbondelingsmaatskappy 'n beheerde buitelandse maatskappy is met betrekking tot enige inwoner wat deel uitmaak van dieselfde groep van maatskappye (soos omskryf in artikel 1) as daardie ontbondelingsmaatskappy; en 20
- (iii) indien, onmiddellik na die uitkering van die ekwiteitsaandeel van 'n ontbondelde maatskappy deur 'n ontbondelingsmaatskappy soos beoog in subparagraaf (i), meer as 50 persent van die ekwiteitsaandeel van daardie ontbondelde maatskappy regstreeks of onregstreeks gehou word deur 'n inwoner (hetsy alleen of tesame met enige ander inwoner wat deel uitmaak van dieselfde groep van maatskappye as daardie inwoner) waar daardie ontbondelingsmaatskappy 'n buitelandse maatskappy is;” 25 30
- (b) deur subartikel (5) deur die volgende subartikel te vervang:  
“(5) Waar 'n ontbondelingsmaatskappy aandeel aan 'n aandeelhouer ingevolge 'n ontbondelingstransaksie uitkeer, word die uitkering deur daardie ontbondelingsmaatskappy van die aandeel, **by die toepassing van die omskrywing van ‘dividend’ en die omskrywing van ‘teruggawe van kapitaal’ in artikel 1, geag nie 'n bedrag oorgedra deur daardie ontbondelingsmaatskappy te wees nie by die toepassing van Deel VIII van Hoofstuk II] buite rekening gelaat by die bepaling van enige aanspreeklikheid vir dividendbelasting.**” 35
- (c) deur in subartikel (7)(b) subparagraaf (i) deur die volgende subparagraaf te 40  
vervang:  
“(i) 'n persoon wat nie 'n inwoner is nie, tensy daardie persoon 'n beheerde buitelandse maatskappy is en meer as 50 persent van die ekwiteitsaandeel in daardie beheerde buitelandse maatskappy regstreeks of onregstreeks gehou word deur 'n inwoner (hetsy 45  
alleen of tesame met enige ander inwoner wat deel uitmaak van dieselfde groep van maatskappye as daardie inwoner);”.
- (2) Paragrafe (a) en (c) van subartikel (1) tree op 1 Januarie 2013 in werking en is van toepassing ten opsigte van transaksies op of na daardie datum aangegaan.
- (3) Paragraaf (b) van subartikel (1) word geag op 1 April 2012 in werking te getree het 50  
en is van toepassing ten opsigte van uitkerings op of na daardie datum gemaak.

**Wysiging van artikel 47 van Wet 58 van 1962, soos gewysig deur artikel 25 van Wet 21 van 1995, artikel 34 van Wet 74 van 2002, artikel 55 van Wet 45 van 2003, artikel 37 van Wet 32 van 2004, artikel 43 van Wet 31 van 2005, artikel 31 van Wet 20 van 2006, artikel 37 van Wet 8 van 2007, artikel 58 van Wet 35 van 2007, artikel 31 van 55  
Wet 3 van 2008, artikel 53 van Wet 60 van 2008, artikel 50 van Wet 17 van 2009, artikel 66 van Wet 7 van 2010 en artikel 72 van Wet 24 van 2011**

79. (1) Artikel 47 van die Inkomstebelastingwet, 1962, word hierby gewysig—  
(a) deur in subartikel (1) paragrafe (a) en (b) deur die volgende paragrafe te 60  
vervang:

- “(a) in terms of which any company (hereinafter referred to as the ‘liquidating company’) which is a resident **[distributes]** 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 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—
- (i) is not—
    - (bb) a public benefit organisation as defined in section 30 that has been approved by the Commissioner in terms of that section;**
    - (cc) a recreational club as defined in section 30A that has been approved by the Commissioner in terms of that section; or**
    - (dd) a person contemplated in section 10(1)(cA), (cP), (d), (e) or (t); and**
  - (ii) on the date of that disposal forms part of the same group of companies as the liquidating company; or
- (b) in terms of which a liquidating company which is a controlled foreign company in relation to any resident **[distributes]** 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 its shareholders in anticipation of or in the course of the liquidation, winding up or deregistration of that company, **[if]**—
- (i) to the extent that those assets are so disposed of to a holding company which—
    - [(i)](aa) is a resident and which forms part of the same group of companies (as defined in section 1) as the liquidating company [(without regard to paragraph (i)(ee) of the proviso to the definition of ‘group of companies’ in section 41)] immediately before that distribution; [and] or**
    - [(ii)](bb) is a controlled foreign company in relation to any resident [that forms part of the group of companies contemplated in subparagraph (i) immediately before and after that distribution];**
  - (ii) if, immediately before that transaction, each of the shares held by the holding company in the liquidating company is held as a capital asset; and
  - (iii) if, immediately after that transaction, where that holding company is a controlled foreign company as contemplated in subparagraph (i)(bb), more than 50 per cent of the equity shares in the holding company are directly or indirectly held by a resident (whether alone or together with any other resident that forms part of the same group of companies as that resident).”;
- (b) by the addition of the following proviso to subsection (2):
- “: Provided that in the case of a liquidation distribution contemplated in paragraph (b) of the definition of ‘liquidation distribution’, this subsection does not apply to any asset disposed of in terms of that liquidation distribution to a holding company which is a resident and which forms part of the same group of companies (as defined in section 1) as the liquidating company if that asset constitutes—
- (a) a capital asset acquired by the holding company as a capital asset and the base cost of that asset exceeds the market value of that asset at the time of that disposal; or
  - (b) trading stock acquired by the holding company as trading stock and the amount taken into account in respect of that asset in terms of

- “(a) ingevolge waarvan ’n maatskappy (hierna die ‘likwiderende maatskappy’ genoem) wat ’n inwoner is oor al sy bates (behalwe bates wat dit na keuse wil aanwend ter delging van skulde in die gewone loop van besigheid aangegaan) aan sy aandeelhouders [uitkeer] beskik in afwagting van of in die loop van die likwidasië of deregistrasie van daardie maatskappy, maar slegs tot die mate waarin daar oor daardie bates so beskik word aan ’n ander maatskappy (hierna die ‘houermaatskappy’ genoem) wat ’n inwoner is en wat— 5
- (i) **nie—** 10
- (bb) **’n openbare weldaadsorganisasie soos omskryf in artikel 30 wat ingevolge daardie artikel deur die Kommissaris goedgekeur is, is nie;**
- (cc) **’n ontspanningsklub soos omskryf in artikel 30A wat ingevolge daardie artikel deur die Kommissaris goedgekeur is, is nie; of** 15
- (dd) **’n persoon beoog in artikel 10(1)(cA), (cP), (d), (e) of (f) is nie; en**
- (ii) op die datum van daardie beskikking deel van dieselfde groep van maatskappye as daardie likwiderende maatskappy vorm; 20  
of
- (b) ingevolge waarvan ’n likwiderende maatskappy wat ’n beheerde buitelandse maatskappy is met betrekking tot enige inwoner oor al sy bates (behalwe bates wat dit na keuse wil aanwend ter delging van skulde in die gewone loop van besigheid aangegaan) aan sy aandeelhouders [uitkeer] beskik in afwagting op of in die loop van die likwidasië of deregistrasie van daardie maatskappy [indien]— 25
- (i) namate aldus oor daardie bates beskik word aan ’n houermaatskappy wat—
- [(i)](aa) ’n inwoner is en wat deel van dieselfde groep van maatskappye (soos omskryf in artikel 1) as die likwiderende maatskappy [(sonder inagneming van paragraaf (i)(ee) van die voorbehoudsbepaling tot die omskrywing van ‘groep van maatskappye’ in artikel 41)] onmiddellik voor daardie uitkering vorm; [en] of 30
- [(ii)](bb) ’n beheerde buitelandse maatskappy is met betrekking tot enige inwoner [wat deel van die groep van maatskappye beoog in subparagraaf (i) vorm onmiddellik voor en na daardie uitkering]; 40
- (ii) indien, onmiddellik voor daardie transaksie, elk van die aandeelhouers van die houermaatskappy in die likwiderende maatskappy as ’n kapitaalbate gehou word; en
- (iii) indien, onmiddellik na daardie transaksie, waar daardie houermaatskappy ’n beheerde buitelandse maatskappy soos beoog in subparagraaf (i)(bb) is, meer as 50 persent van die ekwiteitsaandeel in die houermaatskappy regstreeks of onregstreeks deur ’n inwoner gehou word (hetsy alleen of tesame met enige ander inwoner wat deel uitmaak van dieselfde groep van maatskappye as daardie inwoner).”]; 45
- (b) deur die volgende voorbehoudsbepaling tot subartikel (2) by te voeg: 50
- “: Met dien verstande dat in die geval van ’n likwidasië-uitkering beoog in paragraaf (b) van die omskrywing van ‘likwidasië-uitkering’, hierdie subartikel nie van toepassing is nie op ’n bate oor beskik ingevolge daardie likwidasië-uitkering aan ’n houermaatskappy wat ’n inwoner is en wat deel uitmaak van dieselfde groep van maatskappye (soos omskryf in artikel 1) as die likwiderende maatskappy indien daardie bate— 55
- (a) ’n kapitaalbate verkry deur die houermaatskappy as ’n kapitaalbate uitmaak en die basiskoste van daardie bate die markwaarde van daardie bate op die tydstip van daardie beskikking oorskry; of 60
- (b) handelsvoorraad verkry deur die houermaatskappy as handelsvoorraad uitmaak en die bedrag in berekening gebring ten opsigte van daardie bate ingevolge artikel 11(a) of 22(1) of (2) die

- section 11(a) or 22(1) or (2) exceeds the market value of that asset at the time of that disposal”;
- (c) by the insertion in subsection (6) before paragraph (b) of the following paragraph:  
“(a) the holding company is—  
(i) a public benefit organisation as defined in section 30 that has been approved by the Commissioner in terms of that section;  
(ii) a recreational club as defined in section 30A that has been approved by the Commissioner in terms of that section; or  
(iii) a person contemplated in section 10(1)(cA), (cP), (d), (e) or (t);”;
- (d) by the substitution in subsection (6)(c) for subparagraph (i) of the following subparagraph:  
“(i) has not, within a period of [18] 36 months after the date of the liquidation distribution, or such further period as the Commissioner may allow, taken the steps contemplated in section 41(4) to liquidate, wind up or deregister; or”.
- (2) Subsection (1) comes into operation on 1 January 2013 and applies in respect of transactions entered into on or after that date.

**Insertion of Part IVA in Chapter II of Act 58 of 1962** 20

**80.** (1) Chapter II of the Income Tax Act, 1962, is hereby amended by the insertion after Part IV of the following Part:

*“PART IVA*

*Withholding tax on royalties*

**Definitions** 25

- 49A.** In this Part—  
‘**foreign person**’ means any person that is not a resident;  
‘**royalty**’ means any amount that is received or accrues in respect of—  
(a) the use or right of use of or permission to use any intellectual property as defined in section 231; or  
(b) the imparting of or the undertaking to impart any scientific, technical, industrial or commercial knowledge or information, or the rendering of or the undertaking to render any assistance or service in connection with the application or utilisation of such knowledge or information.

**Levy of withholding tax on royalties** 35

- 49B.** (1) There must be levied for the benefit of the National Revenue Fund a tax, to be known as the withholding tax on royalties, calculated at the rate of 15 per cent of the amount of any royalty that is paid by any person to or for the benefit of any foreign person to the extent that the amount is regarded as having been received by or accrued to that foreign person from a source within the Republic in terms of section 9(2)(c), (d), (e) or (f).  
(2) For the purposes of this Part, a royalty is deemed to be paid on the earlier of the date on which the royalty is paid or becomes due and payable.  
(3) The withholding tax on royalties is a final tax.  
(4) Where a person making payment of a royalty to or for the benefit of a foreign person has withheld an amount as contemplated in section 49E(1), that person must, for the purposes of this Part, be deemed to have paid the amount so withheld to that foreign person.

- markwaarde van daardie bate op die tydstip van daardie beskikking |  
oorskry”;
- (c) deur in subartikel (6) voor paragraaf (b) die volgende paragraaf in te voeg: |  
“(a) die houermaatskappy— |  
(i) ’n openbare weldaadsorganisasie soos omskryf in artikel 30 is | 5  
wat deur die Kommissaris ingevolge daardie artikel  
goedgekeur is;  
(ii) ’n ontspanningsklub soos omskryf in artikel 30A is wat deur |  
die Kommissaris ingevolge daardie artikel goedgekeur is; of  
(iii) ’n persoon beoog in artikel 10(1)(cA), (cP), (d), (e) of (t) | 10  
is;” en
- (d) deur in subartikel (6)(c) subparagraaf (i) deur die volgende subparagraaf te |  
vervang: |  
“(i) nie binne ’n tydperk van [18] 36 maande na die datum van die | 15  
likwidasië-uitkering, of die verdere tydperk wat die Kommissaris  
toelaat, die stappe in artikel 41(4) bedoel gedoen het om te  
likwideer of deregistreer nie; of”.
- (2) Subartikel (1) tree op 1 Januarie 2013 in werking en is van toepassing ten opsigte |  
van transaksies op of na daardie datum aangegaan.

## **Invoeging van Deel IVA in Hoofstuk II van Wet 58 van 1962** 20

**80.** (1) Hoofstuk II van die Inkomstebelastingwet, 1962, word hierby gewysig deur na |  
artikel 48C die volgende deel in te voeg:

### “DEEL IVA

#### Terughoudingsbelasting op tantième

### **Woordomskrywing** 25

**49A.** In hierdie Deel beteken—

- ‘**buitelandse persoon**’ ’n persoon wat nie ’n inwoner is nie; |  
‘**tantième**’ enige bedrag wat ontvang word of toeval ten opsigte van— |  
(a) die gebruik, reg van gebruik of toestemming tot gebruik van enige | 30  
immateriële goedere soos omskryf in artikel 231; of  
(b) die mededeling van enige wetenskaplike, tegniese, industriële of |  
kommersiële kennis of inligting, of die onderneming om sodanige  
kennis of inligting mee te deel, of die lewering van diens in verband |  
met die toepassing of gebruik van sodanige kennis of inligting, of die |  
onderneming om sodanige hulp te verleen of diens te lewer. | 35

### **Heffing van terughoudingsbelasting op tantième**

**49B.** (1) Daar word gehef ten behoeve van die Nasionale Inkomstefonds |  
’n belasting, bekend te staan as die terughoudingsbelasting op tantième, |  
berekende teen die koers van 15 persent van die bedrag van enige tantième |  
wat betaal word deur ’n persoon aan of ten behoeve van enige buitelandse | 40  
persoon namate die bedrag beskou word as ontvang deur of toegeval aan  
daardie buitelandse persoon van ’n bron binne die Republiek ingevolge  
artikel 9(2)(c), (d), (e) of (f).

(2) By die toepassing van hierdie Deel word ’n tantième geag betaal te |  
wees op die vroegste van die datum waarop die tantième betaal word of | 45  
verskuldig en betaalbaar word.

(3) Die terughoudingsbelasting op tantième is ’n finale belasting.

(4) Waar ’n persoon wat betaling maak van ’n tantième aan of ten |  
behoewe van ’n buitelandse persoon ’n bedrag teruggehou het soos beoog |  
in artikel 49E(1), word daardie persoon by die toepassing van hierdie Deel | 50  
geag die bedrag aldus teruggehou aan daardie buitelandse persoon te betaal  
het.

**Liability for tax**

**49C.** (1) A foreign person to which a royalty is paid is liable for the withholding tax on royalties to the extent that the royalty is regarded as having been received by or accrued to that foreign person from a source within the Republic in terms of section 9(2)(c), (d), (e) or (f).

(2) Any amount of withholding tax on royalties that is—  
(a) withheld as contemplated in section 49E(1); and  
(b) paid as contemplated in section 49F(1),  
is a payment made on behalf of the foreign person to which the royalty is paid in respect of that foreign person's liability under subsection (1).

**Exemption from withholding tax on royalties**

**49D.** A foreign person is exempt from the withholding tax on royalties if—

- (a) that foreign person—
  - (i) is a natural person who was physically present in the Republic for a period exceeding 183 days in aggregate during the twelve-month period preceding the date on which the royalty is paid; or
  - (ii) at any time during the twelve-month period preceding the date on which the royalty is paid carried on business through a permanent establishment in the Republic; or
- (b) that royalty is paid by a headquarter company in respect of the granting of the use, right of use or permission to use intellectual property as defined in section 23I to which section 31 does not apply as a result of the exclusions contained in section 31(5)(c) or (d)."

(2) Subsection (1) comes into operation on 1 July 2013 and applies in respect of royalties that are paid or that become due and payable on or after that date, but only to the extent that the amount of the royalties was not subject to tax in terms of section 35 of the Income Tax Act, 1962.

**Amendment of section 64B of Act 58 of 1962 as inserted by section 20 of Act 95 of 1967 and amended by section 35 of Act 89 of 1969, section 20 of Act 52 of 1970, section 19 of Act 90 of 1972, section 41 of Act 85 of 1974, section 33 of Act 94 of 1983, section 7 of Act 108 of 1986, section 32 of Act 90 of 1988, section 34 of Act 113 of 1993, section 34 of Act 113 of 1993, section 12 of Act 140 of 1993, section 24 of Act 21 of 1994, section 29 of Act 21 of 1995, section 21 of Act 36 of 1996, section 13 of Act 46 of 1996, section 25 of Act 28 of 1997, section 35 of Act 53 of 1999, section 39 of Act 30 of 2000, section 42 of Act 59 of 2000, section 18 of Act 5 of 2001, section 48 of Act 60 of 2001, section 25 of Act 30 of 2002, section 36 of Act 74 of 2002, section 58 of Act 45 of 2003, section 40 of Act 32 of 2004, section 47 of Act 31 of 2005, section 32 of Act 20 of 2006, section 39 of Act 8 of 2007, section 85 of Act 35 of 2007, section 32 of Act 3 of 2008, section 55 of Act 60 of 2008, section 51 of Act 17 of 2009 and section 68 of Act 7 of 2010**

**81.** (1) Section 64B of the Income Tax Act, 1962, is hereby amended by the addition to subsection (4)(a) of the following proviso:

- “: Provided that any dividend so declared by a company—
  - (i) before the effective date as defined in section 64D; and
  - (ii) that will only accrue to shareholders in that company's share register on a date after that effective date,  
must be deemed to have accrued to such shareholders on the day immediately before that effective date.”

(2) Subsection (1) is deemed to have come into operation on 1 April 2012.



### Aanspreeklikheid vir belasting

**49C.** (1) 'n Buitelandse persoon waaraan 'n tantième betaal word, is aanspreeklik vir die terughoudingsbelasting op tantième namate die tantième beskou word ontvang deur of toegeval aan daardie buitelandse persoon van 'n bron binne die Republiek ingevolge artikel 9(2)(c), (d), (e) of (f) te wees. 5

(2) Enige bedrag van terughoudingsbelasting op tantième wat—  
(a) teruggehou word soos beoog in artikel 49E(1); en  
(b) betaal word soos beoog in artikel 49F(1),  
is 'n betaling gemaak ten behoeve van die buitelandse persoon waaraan die tantième betaal word ten opsigte van daardie buitelandse persoon se aanspreeklikheid kragtens subartikel (1). 10

### Vrystelling van terughoudingsbelasting op tantième

**49D.** 'n Buitelandse persoon word vrygestel van die terughoudingsbelasting op tantième indien— 15

(a) daardie buitelandse persoon—  
(i) 'n natuurlike persoon is wat fisies in die Republiek teenwoordig was vir 'n tydperk wat in totaal 183 dae oorskry gedurende die tydperk van twaalf maande wat die datum voorafgaan waarop die tantième betaal word; of 20  
(ii) te eniger tyd gedurende die tydperk van twaalf maande wat die datum voorafgaan waarop die tantième betaal word, deur 'n permanente saak in die Republiek sake gedryf het; of  
(b) daardie tantième betaal word deur 'n hoofkwartiermaatskappy ten opsigte van die toestaan van die gebruik, reg van gebruik of toestemming tot gebruik van immateriële goedere soos omskryf in artikel 23I waarop artikel 31 nie van toepassing is nie as gevolg van die uitsluitings vervat in artikel 31(5)(c) of (d).” 25

(2) Subartikel (1) tree op 1 Julie 2013 in werking en is van toepassing ten opsigte van tantième wat betaal word of wat verskuldig en betaalbaar word op of na daardie datum, maar slegs namate die bedrag van die tantième nie ingevolge artikel 35 van die Inkomstebelastingwet, 1962, aan belasting onderhewig was nie. 30

**Wysiging van artikel 64B van Wet 58 van 1962 soos ingevoeg deur artikel 20 van Wet 95 van 1967 en gewysig deur artikel 35 van Wet 89 van 1969, artikel 20 van Wet 52 van 1970, artikel 19 van Wet 90 van 1972, artikel 41 van Wet 85 van 1974, artikel 33 van Wet 94 van 1983, artikel 7 van Wet 108 van 1986, artikel 32 van Wet 90 van 1988, artikel 34 van Wet 113 van 1993, artikel 34 van Wet 113 van 1993, artikel 12 van Wet 140 van 1993, artikel 24 van Wet 21 van 1994, artikel 29 van Wet 21 van 1995, artikel 21 van Wet 36 van 1996, artikel 13 van Wet 46 van 1996, artikel 25 van Wet 28 van 1997, artikel 35 van Wet 53 van 1999, artikel 39 van Wet 30 van 2000, artikel 42 van Wet 59 van 2000, artikel 18 van Wet 5 van 2001, artikel 48 van Wet 60 van 2001, artikel 25 van Wet 30 van 2002, artikel 36 van Wet 74 van 2002, artikel 58 van Wet 45 van 2003, artikel 40 van Wet 32 van 2004, artikel 47 van Wet 31 van 2005, artikel 32 van Wet 20 van 2006, artikel 39 van Wet 8 van 2007, artikel 85 van Wet 35 van 2007, artikel 32 van Wet 3 van 2008, artikel 55 van Wet 60 van 2008, artikel 51 van Wet 17 van 2009 en artikel 68 van Wet 7 van 2010** 35

**81.** (1) Artikel 64B van die Inkomstebelastingwet, 1962, word hierby gewysig deur die volgende voorbehoudsbepaling tot subartikel (4)(a) by te voeg:

“: Met dien verstande dat enige dividend aldus verklaar deur 'n maatskappy—  
(i) voor die intreedatum soos omskryf in artikel 64D; en  
(ii) wat slegs sal toeval aan aandeelhouders in daardie maatskappy se aandeelregister op 'n datum na daardie effektiewe datum, geag word aan sodanige aandeelhouders toe te geval het op die dag onmiddellik voor daardie intreedatum” 50

(2) Subartikel (1) word geag op 1 April 2012 in werking te getree het. 55

**Amendment of section 64C of Act 58 of 1962, as inserted by section 20 of Act 95 of 1967 and amended by section 15 of Act 76 of 1968, section 36 of Act 89 of 1969, section 21 of Act 52 of 1970, section 26 of Act 88 of 1971, section 20 of Act 90 of 1972, section 42 of Act 85 of 1974, section 22 of Act 113 of 1977, section 14 of Act 104 of 1979, section 22 of Act 104 of 1980, section 24 of Act 96 of 1981, section 21 of Act 91 of 1982, section 34 of Act 94 of 1983, section 29 of Act 121 of 1984, section 18 of Act 65 of 1986, section 8 of Act 108 of 1986, section 22 of Act 85 of 1987, section 33 of Act 90 of 1988, section 34 of Act 113 of 1993, section 13 of Act 140 of 1993, section 25 of Act 21 of 1994, section 30 of Act 21 of 1995, section 22 of Act 36 of 1996, section 40 of Act 30 of 1998, section 36 of Act 53 of 1999, section 40 of Act 30 of 2000, section 43 of Act 59 of 2000, section 37 of Act 74 of 2002, section 38 of Act 12 of 2003, section 59 of Act 45 of 2003, section 41 of Act 32 of 2004, section 48 of Act 31 of 2005, section 60 of Act 35 of 2007, section 33 of Act 3 of 2008, section 52 of Act 17 of 2009, section 69 of Act 7 of 2010 and section 74 of Act 24 of 2011**

**82.** (1) Section 64C of the Income Tax Act, 1962, is hereby amended by the substitution in subsection (4) for paragraph (a) of the following paragraph:  
“(a) where the amount would have constituted a dividend as defined in section 1 without regard to paragraphs (i), (ii), (iii) and (iv) of that definition;”  
(2) Subsection (1) is deemed to have come into operation on 1 January 2011.

**Amendment of section 64E of Act 58 of 1962, as substituted by section 53 of Act 17 of 2009 and amended by section 71 of Act 7 of 2010, section 76 of Act 24 of 2011 and section 6 of Act 13 of 2012**

**83.** (1) Section 64E of the Income Tax Act, 1962, is hereby amended—  
(a) by the substitution for subsection (1) of the following subsection:  
“(1) [There] Subject to paragraph 3 of the Tenth Schedule, there must be levied for the benefit of the National Revenue Fund a tax, to be known as the dividends tax, calculated at the rate of 15 per cent of the amount of any dividend paid by any company other than a headquarter company.”;  
(b) by the substitution for subsection (2) of the following subsection:  
“(2) For the purposes of this Part, a dividend must, to the extent that the dividend—  
(a) does not consist of a distribution of an asset *in specie* and is declared by a company that is—  
(i) a listed company, be deemed to be paid on the date on which the dividend is paid; or  
(ii) not a listed company, be deemed to be paid on the earlier of the date on which the dividend is paid or becomes due and payable; or  
(b) consists of a distribution of an asset *in specie*, be deemed to be paid on the earlier of the date on which the dividend is paid or becomes due and payable.”;  
(c) by the substitution for subsection (3) of the following subsection:  
“(3) Where a company declares and pays a dividend and that dividend consists of a distribution of an asset *in specie*, the amount of the dividend must, for the purposes of subsection (1), be deemed—  
(a) in the case of an asset which is a financial instrument listed on a recognised exchange as defined in paragraph 1 of the Eighth Schedule and for which a price was quoted on that exchange, to be equal to the ruling price of that financial instrument on that recognised exchange at close of business on the last business day before the date that the dividend is, in terms of subsection (2), deemed to be paid; or  
(b) in the case of an asset which is not an asset contemplated in paragraph (a), to be equal to the market value of the asset on the date that the dividend is, in terms of subsection (2), deemed to be paid.”;

Wysiging van artikel 64C van Wet 58 van 1962, soos ingevoeg deur artikel 20 van Wet 95 van 1967 en gewysig deur artikel 15 van Wet 76 van 1968, artikel 36 van Wet 89 van 1969, artikel 21 van Wet 52 van 1970, artikel 26 van Wet 88 van 1971, artikel 20 van Wet 90 van 1972, artikel 42 van Wet 85 van 1974, artikel 22 van Wet 113 van 1977, artikel 14 van Wet 104 van 1979, artikel 22 van Wet 104 van 1980, artikel 24 van Wet 96 van 1981, artikel 21 van Wet 91 van 1982, artikel 34 van Wet 94 van 1983, artikel 29 van Wet 121 van 1984, artikel 18 van Wet 65 van 1986, artikel 8 van Wet 108 van 1986, artikel 22 van Wet 85 van 1987, artikel 33 van Wet 90 van 1988, artikel 34 van Wet 113 van 1993, artikel 13 van Wet 140 van 1993, artikel 25 van Wet 21 van 1994, artikel 30 van Wet 21 van 1995, artikel 22 van Wet 36 van 1996, artikel 40 van Wet 30 van 1998, artikel 36 van Wet 53 van 1999, artikel 40 van Wet 30 van 2000, artikel 43 van Wet 59 van 2000, artikel 37 van Wet 74 van 2002, artikel 38 van Wet 12 van 2003, artikel 59 van Wet 45 van 2003, artikel 41 van Wet 32 van 2004, artikel 48 van Wet 31 van 2005, artikel 60 van Wet 35 van 2007, artikel 33 van Wet 3 van 2008, artikel 52 van Wet 17 van 2009, artikel 69 van Wet 7 van 2010 en artikel 74 van Wet 24 van 2011

82. (1) Artikel 64C van die Inkomstebelastingwet, 1962, word hierby gewysig—  
(a) deur in subartikel (4) paragraaf (a) deur die volgende paragraaf te vervang:  
“(a) waar die bedrag ’n dividend soos omskryf in artikel 1 sonder inagneming van paragrawe (i), (ii), (iii) en (iv) van daardie omskrywing sou uitgemaak het.”  
(2) Subartikel (1) word geag op 1 Januarie 2011 in werking te getree het.

Wysiging van artikel 64E van Wet 58 van 1962, soos vervang deur artikel 53 van Wet 17 van 2009 en gewysig deur artikel 71 van Wet 7 van 2010, artikel 76 van Wet 24 van 2011 en artikel 6 Wet 13 van 2012 en Wysiging van Inkomstewette van 2012

83. (1) Artikel 64E van die Inkomstebelastingwet, 1962, word hierby gewysig—  
(a) deur subartikel (1) deur die volgende subartikel te vervang:  
“(1) [Daar moet] Behoudens paragraaf 3 van die Tiende Bylae moet daar ten bate van die Nasionale Inkomstefonds gehef word ’n belasting, die dividendbelasting genoem, bereken teen die koers van 15 persent van die bedrag van ’n dividend deur enige maatskappy buiten ’n hoofkwartiermaatskappy betaal.”  
(b) deur subartikel (2) deur die volgende subartikel te vervang:  
“(2) By die toepassing van hierdie Deel word ’n dividend, namate die dividend—  
(a) nie ’n uitkering van ’n bate *in specie* uitmaak nie en verklaar word deur ’n maatskappy wat—  
(i) ’n genoteerde maatskappy is, geag betaal te word op die datum waarop die dividend betaal word; of  
(ii) nie ’n genoteerde maatskappy is nie, geag betaal te word op die vroegste van die datum waarop die dividend betaal word of verskuldig en betaalbaar word; of  
(b) ’n uitkering van ’n bate *in specie* uitmaak, geag betaal te word op die vroegste van die datum waarop die dividend betaal word of verskuldig en betaalbaar word.”;  
(c) deur subartikel (3) deur die volgende subartikel te vervang:  
“(3) Waar ’n maatskappy ’n dividend verklaar en betaal en daardie dividend ’n uitkering van ’n bate *in specie* uitmaak, word die bedrag van die dividend, by die toepassing van subartikel (1),—  
(a) in die geval van ’n bate wat ’n finansiële instrument genoteer op ’n erkende beurs soos omskryf in paragraaf 1 van die Agtste Bylae is en waarvoor die prys op daardie beurs gekwoteer is geag gelykwaardig te wees aan die heersende prys van daardie finansiële instrument op daardie erkende beurs teen sluitingstyd op die laaste besigheidsdag voor die datum waarop die dividend, ingevolge subartikel (2), geag word betaal te wees; of  
(b) in die geval van ’n bate wat nie ’n bate beoog in paragraaf (a) is nie, geag gelyk te wees aan die markwaarde van die bate op die datum waarop die dividend, ingevolge subartikel (2), geag word betaal te wees.”;

- (d) by the substitution in subsection (4)(a) for the words preceding subparagraph (i) of the following words:  
“Where, during any year of assessment, any amount is owing to a company **[in respect of a loan or advance provided by the company to] by—**”;
- (e) by the substitution in subsection (4)(a) for the words following subparagraph (ii) of the following words:  
“in respect of a debt, that company must, for the purposes of this Part, be deemed to have paid a dividend if that **[loan or advance is provided by the company]** debt arises by virtue of any share held in that company by a person contemplated in subparagraph (i).”;
- (f) by the substitution in subsection (4) for paragraph (b) of the following paragraph:  
“(b) The amount of the dividend that is deemed to have been paid in terms of paragraph (a) must[,]—  
(i) be deemed to consist of a distribution of an asset in specie; and  
(ii) for the purposes of subsection (1), be deemed to be equal to the greater of—  
**[(i)(aa)** the market-related interest in respect of that loan or advance, less the amount of interest that is payable to that company in respect of that loan or advance for that year of assessment; or  
**[(ii)(bb)** nil.”;
- (g) by the substitution in subsection (4)(b) for subparagraph (i) of the following subparagraph:  
“(i) the market-related interest in respect of that **[loan or advance]** debt, less the amount of interest that is payable to that company in respect of that **[loan or advance]** debt for that year of assessment; or”;
- (h) by the substitution in subsection (4) for paragraph (d) of the following paragraph:  
“(d) For the purposes of this subsection, ‘**market-related interest**’, in relation to any **[loan or advance provided by]** debt owed to a company means the amount of interest that would be payable to that company on the amount owing to that company in respect of that **[loan or advance]** debt for a period during a year of assessment if the **[loan or advance]** debt had been **[provided]** owed for that period at the official rate of interest as defined in paragraph (1) of the Seventh Schedule.”;
- (i) by the addition to subsection (4) of the following paragraph:  
“(e) This subsection does not apply to the extent that the amount owing to a company in respect of a loan or advance contemplated in paragraph (a) was deemed to be a dividend that was subject to the secondary tax on companies.”;
- (j) by the substitution in subsection (4) for paragraph (e) of the following paragraph:  
“(e) This subsection does not apply to the extent that the amount owing to a company in respect of a **[loan or advance]** debt contemplated in paragraph (a) was deemed to be a dividend that was subject to the secondary tax on companies.”; and
- (k) by the addition after subsection (5) of the following subsection:  
“(6) Where a—  
(a) company that makes payment of a dividend to any person withholds an amount of dividends tax from that payment in terms of section 64G(1); or  
(b) regulated intermediary that makes payment of a dividend to any person withholds an amount of dividends tax from that payment in terms of section 64H(1),  
that company or regulated intermediary must, for the purposes of this Part, be deemed to have paid the amount so withheld to that person.”.
- (2) Paragraphs (a), (b), (c), (f), (i) and (k) of subsection (1) are deemed to have come into operation on 1 April 2012.

- (d) deur in subartikel (4)(a) die woorde wat subparagraaf (i) voorafgaan deur die volgende woorde te vervang:  
“Waar, gedurende enige jaar van aanslag, ’n bedrag verskuldig is aan ’n maatskappy [**ten opsigte van ’n lening of voorskot verskaf deur die maatskappy aan**] deur—”;
- (e) deur in subartikel (4)(a) die woorde wat op subparagraaf (ii) volg deur die volgende woorde te vervang:  
“ten opsigte van ’n skuld, word die maatskappy, by die toepassing van hierdie Deel, geag ’n dividend te betaal het indien daardie [**lening of voorskot deur die maatskappy verskaf word**] skuld ontstaan uit hoofde van enige aandeel in daardie maatskappy gehou deur ’n persoon in subparagraaf (i) beoog.”;
- (f) deur in subartikel (4) paragraaf (b) deur die volgende paragraaf te vervang:  
“(b) Die bedrag van die dividend wat ingevolge paragraaf (a) geag word betaal te wees[,]—  
(i) word geag ’n uitkering van ’n bate *in specie* uit te maak; en  
(ii) word, by die toepassing van subartikel (1), geag gelyk te wees aan die grootste van—  
[(i)(aa) die markverwante rente ten opsigte van daardie lening of voorskot, minus die bedrag van enige rente wat aan daardie maatskappy ten opsigte van daardie lening of voorskot vir daardie jaar van aanslag betaalbaar is; of  
[(ii)(bb) nul.”;
- (g) deur in subartikel (4)(b) subparagraaf (i) deur die volgende subparagraaf te vervang:  
“(i) die markverwante rente ten opsigte van daardie [**lening of voorskot**] skuld, minus die bedrag van enige rente wat aan daardie maatskappy ten opsigte van daardie [**lening of voorskot**] skuld vir daardie jaar van aanslag betaalbaar is; of”;
- (h) deur in subartikel (4) paragraaf (d) deur die volgende paragraaf te vervang:  
“(d) By die toepassing van hierdie subartikel beteken ‘**markverwante rente**’, met betrekking tot enige [**lening of voorskot verskaf deur**] skuld verskuldig aan ’n maatskappy, die bedrag van enige rente wat aan daardie maatskappy betaalbaar sou wees op die bedrag aan daardie maatskappy verskuldig ten opsigte van daardie [**lening of voorskot**] skuld vir ’n tydperk gedurende ’n jaar van aanslag indien die [**lening of voorskot**] skuld vir daardie tydperk teen die amptelike rentekoers soos omskryf in paragraaf (1) van die Sewende Bylae [**verskaf**] verskuldig is.”;
- (i) deur tot subartikel (4) die volgende paragraaf by te voeg:  
“(e) Hierdie subartikel is nie van toepassing nie namate die bedrag verskuldig aan ’n maatskappy ten opsigte van ’n lening of voorskot beoog in paragraaf (a) geag as ’n dividend te wees wat aan die sekondêre belasting op maatskappye onderhewig was.”;
- (j) deur in subartikel (4) paragraaf (e) deur die volgende paragraaf te vervang:  
“(e) Hierdie subartikel is nie van toepassing nie namate die bedrag verskuldig aan ’n maatskappy ten opsigte van ’n [**lening of voorskot**] skuld beoog in paragraaf (a) geag as ’n dividend te wees wat aan die sekondêre belasting op maatskappye onderhewig was.”; en
- (k) deur na subartikel (5) die volgende subartikel by te voeg:  
“(6) Waar ’n—  
(a) maatskappy wat ’n dividend aan enige persoon betaal ’n bedrag van dividendbelasting terughou van daardie betaling ingevolge artikel 64G(1); of  
(b) geregleerde tussenganger wat ’n dividend aan ’n persoon betaal ’n bedrag van dividendbelasting terughou van daardie betaling ingevolge artikel 64H(1),  
word daardie maatskappy of geregleerde tussenganger, by die toepassing van hierdie Deel, geag die bedrag aldus teruggehou aan daardie persoon te betaal het.”

(2) Paragraawe (a), (b), (c), (f), (i) en (k) van subartikel (1) word geag op 1 April 2012 in werking te getree het.

(3) Paragraphs (d), (e), (g), (h) and (j) of subsection (1) come into operation on 1 January 2013.

**Amendment of section 64EA of Act 58 of 1962, as inserted by section 77 of Act 24 of 2011**

**84.** (1) Section 64EA of the Income Tax Act, 1962, is hereby amended by the substitution for the word preceding paragraph (a) of the following words:

“[Any] Subject to section 64J(7) any—”.

(2) Subsection (1) is deemed to have come into operation on 1 April 2012.

**Insertion of section 64EB in Act 58 of 1962**

**85.** (1) The Income Tax Act, 1962, is hereby amended by the insertion after section 64EA of the following section:

**“Deemed dividends**

**64EB.** (1) For the purposes of this Part, where—

(a) a person that is a beneficial owner contemplated in section 64F acquires the right to a dividend by way of cession; and  
 (b) that dividend is either announced or declared before that acquisition, that dividend is deemed to be a dividend paid for the benefit of the person ceding that right: Provided that this subsection does not apply to any cession in respect of a share if the right to that dividend is ceded together with all of the rights attaching to that share.

(2) For the purposes of this Part, where—

(a) a person that is a beneficial owner contemplated in section 64F borrows a share in a listed company from another person; and  
 (b) a dividend is either announced or declared before that share is borrowed,  
 so much of any amount paid by the person in respect of that borrowed share as does not exceed the amount of the dividend is deemed to be a dividend paid for the benefit of that other person.

(3) For the purposes of this Part, where—

(a) a person that is a beneficial owner contemplated in section 64F acquires a share in a listed company (or any right in respect of that share) from another person after a dividend is announced or declared in respect of that share; and  
 (b) that acquisition is part of an arrangement in terms of which that share or a share of the same kind or of the same or equivalent quality must be disposed of to that other person or to any other company forming part of the same group of companies as that other person,  
 that dividend is deemed to be a dividend paid to that other person.”.

(2) Subsection (1) is deemed to have come into operation on 1 September 2012 and applies in respect of—

- (a) transactions entered into on or after that date; and
- (b) amounts paid on or after 1 October 2012 in respect of transactions entered into before 1 September 2012.

**Amendment of section 64F of Act 58 of 1962, as substituted by section 53 of Act 17 of 2009 and amended by section 72 of Act 7 of 2010 and section 78 of Act 24 of 2011**

**86.** (1) Section 64F of the Income Tax Act, 1962, is hereby amended—

- (a) by the substitution for the full-stop at the end of paragraph (j) of a semicolon;

(3) Paragrafe (d), (e), (g), (h) en (j) van subartikel (1) word geag op 1 April 2012 in werking te getree het.

**Wysiging van artikel 64EA van Wet 58 van 1962, soos ingevoeg deur artikel 77 van Wet 24 van 2011**

84. (1) Artikel 64EA van die Inkomstebelastingwet, 1962, word hierby gewysig deur die woorde wat paragraaf (a) voorafgaan deur die volgende woorde te vervang: 5  
“[Enige] Behoudens artikel 64J(7), enige—”.

(2) Subartikel (1) word geag op 1 April 2012 in werking te getree het.

**Invoeging van artikel 64EB in Wet 58 van 1962**

85. (1) Die Inkomstebelastingwet, 1962, word hierby gewysig deur na artikel 64EA 10 die volgende artikel in te voeg:

**“Geagte dividende**

**64EB.** (1) By die toepassing van hierdie Deel, waar—

(a) ’n persoon wat ’n uiteindelik geregtigde beoog in artikel 64F is die reg op ’n dividend verkry by wyse van sedering ten opsigte van ’n aandeel; en 15  
(b) daardie dividend of aangekondig word of verklaar word voor daardie verkryging, word daardie dividend geag ’n dividend betaal ten behoeve van die persoon wat daardie reg sedeer, te wees: Met dien verstande dat hierdie subartikel nie van toepassing is nie op enige sedering ten opsigte van ’n aandeel indien die reg op daardie dividend gesedeer word tesame met al die regte aan daardie aandeel geheg. 20

(2) By die toepassing van hierdie Deel, waar—

(a) ’n persoon wat ’n uiteindelik geregtigde beoog in artikel 64F is ’n aandeel in ’n genoteerde maatskappy van ’n ander persoon leen; en 25  
(b) ’n dividend of aangekondig of verklaar word voordat daardie aandeel geleen word, word daardie dividend geag ’n dividend betaal ten behoeve van daardie ander persoon te wees. 30

(3) By die toepassing van hierdie Deel, waar—

(a) ’n persoon wat ’n uiteindelik geregtigde beoog in artikel 64F is ’n aandeel in ’n genoteerde maatskappy (of ’n reg ten opsigte van daardie aandeel) vanaf ’n ander persoon verkry nadat ’n dividend aangekondig is of verklaar is ten opsigte van daardie aandeel; en 35  
(b) daardie verkryging deel is van ’n reëling ingevolge waarvan oor daardie aandeel of ’n aandeel van dieselfde soort of van dieselfde of gelykwaardige kwaliteit beskik moet word aan daardie ander persoon of aan enige ander maatskappy wat deel uitmaak van dieselfde groep van maatskappye as daardie ander persoon, 40  
word daardie dividend geag ’n dividend betaal aan daardie ander persoon te wees.”.

(2) Subartikel (1) word geag op 1 September 2012 in werking te getree het en is van toepassing ten opsigte van—

- (a) transaksies op of na daardie datum aangegaan; en 45
- (b) bedrae betaal op of na 1 Oktober 2012 ten opsigte van transaksies voor 1 September 2012 aangegaan.

**Wysiging van artikel 64F van Wet 58 van 1962, soos vervang deur artikel 53 van Wet 17 van 2009 en gewysig deur artikel 72 van Wet 7 van 2010 en artikel 78 van Wet 24 van 2011** 50

86. (1) Artikel 64F van die Inkomstebelastingwet, 1962, word hierby gewysig—

- (a) deur die punt aan die einde van paragraaf (j) deur ’n kommapunt te vervang;

- (b) by the addition of the following paragraphs:  
    “(k) a portfolio of a collective investment scheme in securities;  
    (l) any person to the extent that the dividend constitutes income of that person; or  
    (m) any person to the extent that the dividend was subject to the secondary tax on companies.”; 5
- (c) by the substitution for the full-stop at the end of paragraph (m) of the expression “; or”;
- (d) by the addition of the following paragraph:  
    “(n) any fidelity or indemnity fund contemplated in section 10(1)(d)(iii).”; and 10
- (e) by the renumbering of the present section 64F to subsection (1) and by the addition of the following subsection:  
    “(2) Any dividend paid by a REIT or a controlled property company, as defined in section 25BB, and received or accrued before 1 January 2014 is exempt from the dividends tax to the extent that the dividend does not consist of a dividend *in specie*.”. 15
- (2) Paragraphs (a) and (b) of subsection (1) are deemed to have come into operation on 1 April 2012.
- (3) Paragraphs (c) and (d) of subsection (1) come into operation on 1 January 2013 and apply in respect of dividends paid on or after that date. 20
- (4) Paragraph (e) of subsection (1) comes into operation on 1 April 2013 and applies in respect of dividends received or accrued on or after that date.

**Amendment of section 64FA of Act 58 of 1962, as inserted by section 79 of Act 24 of 2011** 25

87. (1) Section 64FA of the Income Tax Act, 1962, is hereby amended—
- (a) by the substitution in subsection (1)(a) for subparagraph (ii) of the following subparagraph:  
    “(ii) a written undertaking in such form as may be prescribed by the Commissioner to forthwith inform the company in writing should the circumstances affecting the exemption applicable to the beneficial owner referred to in subparagraph (i) change or the beneficial owner cease to be a beneficial owner.”; 30
- (b) by the deletion in subsection (1) of the word “or” at the end of paragraph (b);
- (c) by the substitution in subsection (1) for the full-stop at the end of paragraph (c) of the expression “; or”; 35
- (d) by the insertion in subsection (1) after paragraph (c) of the following paragraph:  
    “(d) the dividend constitutes a disposal as contemplated in paragraph 67B(1) of the Eighth Schedule.”; and 40
- (e) by the substitution in subsection (2) for paragraph (b) of the following paragraph:  
    “(b) a written undertaking in such form as may be prescribed by the Commissioner to forthwith inform the company in writing should the circumstances affecting the reduced rate applicable to the beneficial owner referred to in paragraph (a) change or the beneficial owner cease to be the beneficial owner.”. 45
- (2) Paragraphs (a) and (e) of subsection (1) are deemed to have come into operation on 1 April 2012.
- (3) Paragraphs (b), (c) and (d) of subsection (1) come into operation on 1 January 2013 and apply in respect of dividends paid on or after that date. 50

**Amendment of section 64G of Act 58 of 1962, as substituted by section 53 of Act 17 of 2009 and amended by section 73 of Act 7 of 2010 and section 80 of Act 24 of 2011**

88. (1) Section 64G of the Income Tax Act, 1962, is hereby amended—
- (a) by the substitution for subsection (1) of the following subsection: 55  
    “(1) Subject to subsections (2) and (3), a company that declares and pays a dividend must, to the extent that—  
    (a) the dividend does not consist of a distribution of an asset *in specie*; and



- (b) deur die volgende paragrawe by te voeg:
- “(k) ’n portefeulje van ’n kollektiewe beleggingskema in effekte;
  - (l) ’n persoon namate die dividend inkomste van daardie persoon uitmaak; of
  - (m) ’n persoon namate die dividend aan die sekondêre belasting op maatskappye onderhewig was.”;
- (c) deur die punt aan die einde van paragraaf (m) deur die uitdrukking “; of” te vervang; en
- (d) deur die volgende paragraaf by te voeg:
- “(n) enige getrouheids- of vrywaringsfonds beoog in artikel 10(1)(d)(iii).”; en
- (e) deur die huidige artikel 64F tot subartikel (1) te hernommer en deur die volgende subartikel by te voeg:
- “(2) Enige dividend betaal deur ’n EIT of ’n beheerde eiendomsmaatskappy, soos in artikel 25BB omskryf, en ontvang of toegeval voor 1 Januarie 2014 word vrygestel van die dividendbelasting namate die dividend nie bestaan uit ’n dividend *in specie* nie.”.
- (2) Paragrawe (a) en (b) van subartikel (1) word geag op 1 April 2012 in werking te getree het.
- (3) Paragrawe (c) en (d) van subartikel (1) tree op 1 Januarie 2013 in werking en is van toepassing ten opsigte van dividende op of na daardie datum betaal.
- (4) Paragraaf (e) van subartikel (1) tree op 1 April 2013 in werking en is van toepassing ten opsigte van dividende op of na daardie datum ontvang of toegeval.

**Wysiging van artikel 64FA van Wet 58 van 1962, soos ingevoeg deur artikel 79 van Wet 24 van 2011** 25

87. (1) Artikel 64FA van die Inkomstebelastingwet, 1962, word hierby gewysig—
- (a) deur in subartikel (1)(a) subparagraaf (ii) deur die volgende subparagraaf te vervang:
- “(ii) ’n skriftelike onderneming voorgelê het in die vorm deur die Kommissaris voorgeskryf om die maatskappy onmiddellik skriftelik te verwittig indien die omstandighede wat ’n invloed het op die vrystelling wat op die uiteindelik geregtigde bedoel in subparagraaf (i) van toepassing is, verander of die uiteindelik geregtigde ophou om ’n uiteindelik geregtigde te wees.”;
- (b) deur in subartikel (1) die woord “of” aan die einde van paragraaf (b) te skrap;
- (c) deur in subartikel (1) die punt aan die einde van paragraaf (c) deur die uitdrukking “; of” te vervang; en
- (d) deur in subartikel (1) na paragraaf (c) die volgende paragraaf in te voeg:
- “(d) die dividend ’n beskikking soos beoog in paragraaf 67B(1) van die Agste Bylae uitmaak.”; en
- (e) deur in subartikel (2) paragraaf (b) deur die volgende paragraaf te vervang:
- “(b) ’n skriftelike onderneming voorgelê het in die vorm deur die Kommissaris voorgeskryf om die maatskappy onmiddellik skriftelik te verwittig indien die omstandighede wat ’n invloed het op die verminderde koers wat op die uiteindelik geregtigde bedoel in paragraaf (a) van toepassing is, verander of die uiteindelik geregtigde ophou om die uiteindelik geregtigde te wees.”.
- (2) Paragrawe (a) en (e) van subartikel (1) word geag op 1 April 2012 in werking te getree het.
- (3) Paragrawe (b), (c) en (d) van subartikel (1) tree op 1 Januarie 2013 in werking en is van toepassing ten opsigte van dividende op of na daardie datum betaal.

**Wysiging van artikel 64G van Wet 58 van 1962, soos vervang deur artikel 53 van Wet 17 van 2009 en gewysig deur artikel 73 van Wet 7 van 2010 en artikel 80 van Wet 24 van 2011**

88. (1) Artikel 64G van die Inkomstebelastingwet, 1962, word hierby gewysig— 55
- (a) deur subartikel (1) deur die volgende subartikel te vervang:
- “(1) Behoudens subartikels (2) en (3) moet ’n maatskappy wat ’n dividend verklaar en betaal, namate—
- (a) die dividend nie bestaan uit ’n uitkering van ’n bate *in specie* nie; en

- (b) the dividend is not subject to the dividends tax by virtue of any STC credit contemplated in section 64J,  
**[must] withhold an amount of dividends tax from that payment [at a rate of 10 per cent of the amount of that dividend] calculated as contemplated in section 64E.”;** 5
- (b) by the substitution in subsection (2)(a) for item (bb) of the following item:  
“(bb) a written undertaking in such form as may be prescribed by the Commissioner to forthwith inform the company in writing should the circumstances affecting the exemption applicable to the beneficial owner referred to in item (aa) change or the beneficial owner cease to be the beneficial owner;”; and 10
- (c) by the substitution in subsection (3) for subparagraph (ii) of the following subparagraph:  
“(ii) a written undertaking in such form as may be prescribed by the Commissioner to forthwith inform the company in writing should the circumstances affecting the reduced rate applicable to the beneficial owner referred to in subparagraph (i) change or the beneficial owner cease to be the beneficial owner.” 15
- (2) Subsection (1) is deemed to have come into operation on 1 April 2012.

**Amendment of section 64H of Act 58 of 1962, as substituted by section 53 of Act 17 of 2009 and amended by section 74 of Act 7 of 2010 and section 81 of Act 24 of 2011** 20

89. (1) Section 64H of the Income Tax Act, 1962, is hereby amended—
- (a) by the substitution for subsection (1) of the following subsection:  
“(1) Subject to subsections (2) and (3), a regulated intermediary that pays a dividend that was declared by any other person must, to the extent that— 25
- (a) the dividend does not consist of a distribution of an asset in specie;  
and
- (b) the dividend is not subject to the dividends tax by virtue of any STC credit contemplated in section 64J,  
**[that was declared by any other person must] withhold an amount of dividends tax from that payment [at a rate of 10 per cent of the amount of that dividend] calculated as contemplated in section 64E.”;** 30
- (b) by the substitution in subsection (2)(a) for items (aa) and (bb) of the following items: 35
- “(aa) a declaration by the beneficial owner in such form as may be prescribed by the Commissioner that the dividend is exempt from the dividends tax in terms of section 64F or that the payment is made to a vesting trust of which the sole beneficiary is another regulated intermediary; and 40
- (bb) a written undertaking in such form as may be prescribed by the Commissioner to forthwith inform the regulated intermediary in writing should the circumstances affecting the exemption applicable to the beneficial owner in item (aa) change or the beneficial owner cease to be the beneficial owner; or”; and 45
- (c) by the substitution in subsection (3)(b) for subparagraph (ii) of the following subparagraph:  
“(ii) a written undertaking in such form as may be prescribed by the Commissioner to forthwith inform the regulated intermediary in writing should the circumstances affecting the reduced rate applicable to the beneficial owner referred to in subparagraph (i) change or the beneficial owner cease to be the beneficial owner.” 50
- (2) Subsection (1) is deemed to have come into operation on 1 April 2012.

- (b) die dividend nie aan die dividendbelasting onderhewig is nie uit hoofde van enige SBM-krediet beoog in artikel 64J, ’n bedrag van dividendbelasting terughou van daardie betaling [**teen ’n koers van 10 persent van die bedrag van daardie dividend**] bereken soos beoog in artikel 64E.”; 5
- (b) deur in subartikel (2)(a) item (bb) deur die volgende item te vervang “(bb) ’n skriftelike onderneming in die vorm deur die Kommissaris voorgeskryf om die maatskappy onverwyld skriftelik in te lig sou die omstandighede wat ’n invloed het op die vrystelling wat op die uiteindelik geregtigde bedoel in item (aa) van toepassing is, verander of die uiteindelik geregtigde ophou om die uiteindelik geregtigde te wees;” en 10
- (c) deur in subartikel (3) subparagraaf (ii) deur die volgende subparagraaf te vervang: 15
- “(ii) ’n skriftelike onderneming in die vorm deur die Kommissaris voorgeskryf om die maatskappy onverwyld skriftelik in te lig sou die omstandighede wat ’n invloed het op die verminderde koers wat op die uiteindelik geregtigde bedoel in subparagraaf (i) van toepassing is, verander of die uiteindelik geregtigde ophou om die uiteindelik geregtigde te wees.”. 20
- (2) Subartikel (1) word geag op 1 April 2012 in werking te getree het.

**Wysiging van artikel 64H van Wet 58 van 1962, soos vervang deur artikel 53 van Wet 17 van 2009 en gewysig deur artikel 74 van Wet 7 van 2010 en artikel 81 van Wet 24 van 2011**

89. (1) Artikel 64H van die Inkomstebelastingwet, 1962, word hierby gewysig— 25
- (a) deur subartikel (1) deur die volgende subartikel te vervang: 30
- “(1) Behoudens subartikels (2) en (3), moet ’n geregleerde tussenganger wat ’n dividend betaal wat deur ’n ander persoon verklaar is, namate—
- (a) die dividend nie bestaan uit ’n uitkering van ’n bate *in specie* nie; en 30
- (b) die dividend nie aan die dividendbelasting onderworpe is nie uit hoofde van enige SBM-krediet beoog in artikel 64J, ’n bedrag van dividendbelasting [**teen ’n koers van 10 persent van die bedrag van daardie dividend**] bereken soos beoog in artikel 64E van daardie betaling terughou.”; 35
- (b) deur in subartikel 2(a) items (aa) en (bb) deur die volgende items te vervang: 40
- “(aa) ’n verklaring voorgelê het deur die uiteindelik geregtigde in die vorm deur die Kommissaris voorgeskryf dat die dividend ingevolge artikel 64F van die dividendbelasting vrygestel is of dat die betaling gemaak word aan ’n vestigingstrust waarvan die enigste begunstigde ’n ander geregleerde tussenganger is; en 40
- (bb) ’n skriftelike onderneming voorgelê het in die vorm deur die Kommissaris voorgeskryf om die geregleerde tussenganger onverwyld skriftelik in te lig sou die omstandighede wat ’n invloed het op die vrystelling wat op die uiteindelik geregtigde bedoel in item (aa) van toepassing is, verander of die uiteindelik geregtigde ophou om die uiteindelik geregtigde te wees; of” en 45
- (c) deur in subartikel 3(b) subparagraaf (ii) deur die volgende subparagraaf te vervang: 50
- “(ii) ’n skriftelike onderneming voorgelê het in die vorm deur die Kommissaris voorgeskryf om die geregleerde tussenganger onverwyld skriftelik in te lig sou die omstandighede wat ’n invloed het op die verminderde koers wat op die uiteindelik geregtigde bedoel in subparagraaf (i) van toepassing is, verander of die uiteindelik geregtigde ophou om die uiteindelik geregtigde te wees.”. 55
- (2) Subartikel (1) word geag op 1 April 2012 in werking te getree het.

**Amendment of section 64J of Act 58 of 1962, as substituted by section 53 of Act 17 of 2009 and amended by section 83 of Act 24 of 2011**

90. (1) Section 64J of the Income Tax Act, 1962, is hereby amended—
- (a) by the substitution in subsection (2) for paragraphs (a) and (b) of the following paragraphs:
    - “(a) the amount by which the dividends accrued to that company as contemplated in section 64B(3) during the dividend cycle ending on the day immediately before the effective date, determined without regard to any dividend contemplated in section 64B(3A), exceed the dividends declared during that cycle by that company as contemplated in section 64B(2); and
    - (b) the dividends accrued to that company on or after the effective date—
      - (i) to the extent that the company received a notification from the person paying the dividend of the amount by which the dividend reduces the STC credit of the company that paid and declared that dividend; and
      - (ii) the notification contemplated in subparagraph (i) was received no later than the date that the dividend is paid.”;
  - (b) by the substitution in subsection (2) for the words following paragraph (b) of the following words:
    - “reduced by the dividends declared and paid by the company [**to the extent that the dividends are paid by the company**] on or after the effective date.”;
  - (c) by the substitution for subsection (5) of the following subsection:
    - “(5) The STC credit of a company [**or person**] on or after the [**fifth**] third anniversary of the effective date is deemed to be nil.”; and
  - (d) by the addition of the following subsections:
    - “(6) For the purposes of this section ‘**dividend**’ means a dividend contemplated in paragraph (a) of the definition of ‘dividend’ in section 64D.
    - (7) To the extent that any amount of dividends tax is not withheld by any person from the payment of any dividend by that person as a result of an inaccurate notification provided as contemplated in subsection (1)(b) by the company contemplated in that subsection, the company contemplated in that subsection is liable for that amount of dividends tax.”.
- (2) Subsection (1) is deemed to have come into operation on 1 April 2012.

**Amendment of paragraph 1 of Second Schedule to Act 58 of 1962, as amended by section 31 of Act 90 of 1962, section 23 of Act 90 of 1964, section 34 of Act 88 of 1971, section 34 of Act 69 of 1975, section 26 of Act 113 of 1977, section 17 of Act 104 of 1979, section 27 of Act 104 of 1980, section 28 of Act 96 of 1981, section 46 of Act 94 of 1983, section 24 of Act 65 of 1986, section 24 of Act 65 of 1986, section 43 of Act 101 of 1990, section 35 of Act 21 of 1995, section 41 of Act 28 of 1997, section 47 of Act 30 of 1998, section 82 of Act 45 of 2003, section 43 of Act 32 of 2004, section 46 of Act 8 of 2007, section 61 of Act 35 of 2007, section 36 of Act 3 of 2008, section 58 of Act 60 of 2008, section 56 of Act 17 of 2009 and section 79 of Act 7 of 2010**

91. (1) Paragraph 1 of the Second Schedule to the Income Tax Act, 1962, is hereby amended—
- (a) by the deletion of the definition of “**formula C**”;
  - (b) by the substitution in the definition of “**lump sum benefit**” for the words after paragraph (b) of the following words:
    - “whether in one amount or in instalments, [**other than**] but does not include any amount deemed to be income accrued to a person in terms of section 7(11);”;
  - (c) by the substitution for the definition of “**pension fund**” of the following definition:
    - “‘**pension fund**’, in relation to any [**taxpayer**] person, means—

**Wysiging van artikel 64J van Wet 58 van 1962, soos vervang deur artikel 53 van Wet 17 van 2009 en gewysig deur artikel 83 van Wet 24 van 2011**

90. (1) Artikel 64J van die Inkomstebelastingwet, 1962, word hierby gewysig—
- (a) deur in subartikel (2) paragrawe (a) en (b) deur die volgende paragrawe te vervang:
    - “(a) die bedrag waarmee die dividende aan daardie maatskappy toegeval soos beoog in artikel 64B(3) gedurende die dividendsiklus wat eindig op die dag onmiddellik voor die intreedatum, bepaal sonder inagneming van enige dividend beoog in artikel 64B(3A), die dividende gedurende daardie dividendsiklus verklaar deur daardie maatskappy soos beoog in artikel 64B(2), oorskry; en
    - (b) die dividende op of na die intreedatum aan daardie maatskappy toegeval—
      - (i) namate die maatskappy ’n kennisgewing ontvang het van die persoon wat die dividend betaal van die bedrag waarmee die dividend die SBM-krediet verminder van die maatskappy wat daardie dividend betaal en verklaar het; en
      - (ii) die kennisgewing beoog in subparagraaf (i) ontvang is nie later nie as die datum waarop die dividend betaal word.”;
  - (b) deur in subartikel (2) die woorde wat op paragraaf (b) volg deur die volgende woorde te vervang:
    - “verminder met die dividende verklaar en betaal deur die maatskappy **[namate die dividend]** op of na die intreedatum **[deur die maatskappy betaal word]**.”; en
  - (c) deur subartikel (5) deur die volgende subartikel te vervang:
    - “(5) Die SBM krediet van ’n maatskappy **[of persoon]** op of na die **[vyfde]** derde verjaardag van die intreedatum word geag nul te wees.”; en
  - (d) deur die volgende subartikels by te voeg:
    - “(6) By die toepassing van hierdie artikel beteken ‘dividend’ ’n dividend beoog in paragraaf (a) van die omskrywing van ‘dividend’ in artikel 64D.
    - (7) Namate enige bedrag van dividendbelasting nie teruggehou word nie deur ’n persoon van die betaling van enige dividend deur daardie persoon as gevolg van ’n onakkurate kennisgewing voorsien soos beoog in subartikel (1)(b) deur die maatskappy beoog in daardie subartikel, is die maatskappy beoog in daardie subartikel aanspreeklik vir daardie bedrag van dividendbelasting.”
- (2) Subartikel (1) word geag op 1 April 2012 in werking te getree het.

**Wysiging van paragraaf 1 van Tweede Bylae by Wet 58 van 1962, soos gewysig deur artikel 31 van Wet 90 van 1962, artikel 23 van Wet 90 van 1964, artikel 34 van Wet 88 van 1971, artikel 34 van Wet 69 van 1975, artikel 26 van Wet 113 van 1977, artikel 17 van Wet 104 van 1979, artikel 27 van Wet 104 van 1980, artikel 28 van Wet 96 van 1981, artikel 46 van Wet 94 van 1983, artikel 24 van Wet 65 van 1986, artikel 24 van Wet 65 van 1986, artikel 43 van Wet 101 van 1990, artikel 35 van Wet 21 van 1995, artikel 41 van Wet 28 van 1997, artikel 47 van Wet 30 van 1998, artikel 82 van Wet 45 van 2003, artikel 43 van Wet 32 van 2004, artikel 46 van Wet 8 van 2007, artikel 61 van Wet 35 van 2007, artikel 36 van Wet 3 van 2008, artikel 58 van Wet 60 van 2008, artikel 56 van Wet 17 van 2009 en artikel 79 van Wet 7 van 2010**

91. (1) Paragraaf 1 van die Tweede Bylae by die Inkomstebelastingwet, 1962, word hierby gewysig—
- (a) deur die omskrywing van “**formule C**” te skrap;
  - (b) deur in die omskrywing van “**enkelbedragvoordeel**” die woorde na paragraaf (b) deur die volgende woorde te vervang:
    - “hetsy in een bedrag of in paaiemente, **[buiten]** maar nie ook nie enige bedrag geag inkomste ingevolge artikel 7(11) aan ’n persoon toegeval te wees.”;
  - (c) deur die omskrywing van “**pensioenfonds**” deur die volgende omskrywing te vervang:
    - “**pensioenfonds**, met betrekking tot ’n **[belastingpligtige]** persoon—

- (a) a fund which has in respect of the year of assessment in question or any previous year of assessment been approved by the Commissioner as a pension fund under paragraph (c) of the definition of ‘pension fund’ in section 1 or a corresponding definition in any previous Income Tax Act; or 5
- (b) a public sector fund [referred to in paragraph (a) or (b) of the definition of ‘pension fund’ in section 1 this Act] (other than a fund referred to in paragraph (b) of the definition of ‘provident fund’), the rules of which wholly or mainly provide for annuities on retirement to its members, 10  
if during any such year the [taxpayer] person was a member of such fund;”;
- (d) by the substitution for the definition of “**provident fund**” of the following definition: 15  
“**‘provident fund’**, in relation to any [taxpayer] person, means—  
(a) a fund which has in respect of the year of assessment in question or any previous year of assessment been approved by the Commissioner as a provident fund as defined in section [one] 1 of this Act or the corresponding provisions of any previous Income Tax Act; or 20  
(b) a public sector fund [referred to in paragraph (a) or (b) of the definition of ‘pension fund’ in section 1], the rules of which provide for benefits in a lump sum exceeding one-third of the capitalised value of all benefits (including lump sum payments and annuities) to its members on retirement, 25  
if during any such year the [taxpayer] person was a member of such fund;”;
- (e) by the insertion after the definition of “**provident fund**” of the following definition: 30  
“**‘public sector fund’** means a fund referred to in paragraph (a) or (b) of the definition of ‘pension fund’ in section 1;”;
- (f) by the substitution for the definition of “**retire**” of the following definition: 35  
“**‘retire’**, in relation to a person who is a member of a pension fund, pension preservation fund, provident fund, provident preservation fund or retirement annuity fund, means to become entitled to the annuity or lump sum benefit contemplated in the definition of ‘retirement date’;”;  
and
- (g) by the substitution for the definition of “**retirement annuity fund**” of the following definition: 40  
“**‘retirement annuity fund’** in relation to any [taxpayer] person, means a fund which has in respect of the year of assessment in question or any previous year of assessment been approved by the Commissioner as a retirement annuity fund as defined in section [one] 1 of this Act or the corresponding provisions of any previous Income Tax Act, if during any such year the [taxpayer] person was a member of such fund.”. 45
- (2) Subsection (1) is deemed to have come into operation on 1 March 2012 and applies in respect of amounts due and payable on or after that date.

**Amendment of paragraph 2 of Second Schedule to Act 58 of 1962, as substituted by section 57 of Act 17 of 2009 and amended by section 80 of Act 7 of 2010**

92. (1) Paragraph 2 of the Second Schedule to the Income Tax Act, 1962, is hereby amended— 50
- (a) by the substitution in subparagraph (1) for the words preceding item (a) of the following words: 55  
“Subject to the provisions of section 9[(1)(g)](2)(i) and paragraphs 2A, 2B and 2C, the amount to be included in the gross income of any person in terms of paragraph (e) of the definition of ‘gross income’ in section 1 shall be—”;

- (a) 'n fonds wat ten opsigte van die betrokke jaar van aanslag of enige vorige jaar van aanslag deur die Kommissaris as 'n pensioenfonds ingevolge paragraaf (c) van die omskrywing van 'pensioenfonds' in artikel 1 of 'n ooreenstemmende omskrywing in 'n vorige Inkomstebelastingwet goedgekeur is; of 5
- (b) 'n openbare sektor fonds [in paragraaf (a) of (b) van die omskrywing van 'pensioenfonds' in artikel 1 van hierdie Wet bedoel] (behalwe 'n fonds in paragraaf (b) van die omskrywing van 'voorsorgsfonds'), waarvan die reëls geheel en al of hoofsaaklik voorsiening maak vir jaargelde aan sy lede met uittreding, indien die [belastingpligtige] persoon gedurende so 'n jaar 'n lid van bedoelde fonds was;"; 10
- (d) deur die omskrywing van "voorsorgsfonds" deur die volgende omskrywing te vervang: 15  
"voorsorgsfonds", met betrekking tot 'n [belastingpligtige] persoon—  
(a) 'n fonds wat ten opsigte van die betrokke jaar van aanslag of 'n vorige jaar van aanslag deur die Kommissaris as 'n voorsorgsfonds soos omskryf in artikel 1 van hierdie Wet of die ooreenstemmende bepalings van 'n vorige Inkomstebelastingwet goedgekeur is; of 20  
(b) 'n openbare sektor fonds [in paragraaf (a) of (b) van die omskrywing van 'pensioenfonds' in artikel 1 bedoel], waarvan die reëls voorsiening maak vir voordele in die vorm van 'n enkelbedrag wat een derde van die gekapitaliseerde waarde van alle voordele (met inbegrip van enkelbedragbetalings en jaargelde) aan sy lede met uittreding te bowe gaan, 25  
indien die [belastingpligtige] persoon gedurende so 'n jaar lid van bedoelde fonds was;";
- (e) deur voor die omskrywing van "pensioenfonds" die volgende omskrywing in te voeg: 30  
"openbare sektor fonds" 'n fonds bedoel in paragraaf (a) of (b) van die omskrywing van 'pensioenfonds' in artikel 1;";
- (f) deur die omskrywing van "uittree" deur die volgende omskrywing te vervang: 35  
"uittree", met betrekking tot 'n persoon wat 'n lid van 'n pensioenfonds, pensioenbewaringsfonds, voorsorgsfonds, voorsorgbewaringsfonds of uittredingannuïteitsfonds is, om geregtig te word op die annuïteit of enkelbedragvoordeel beoog in die omskrywing van 'uittreedatum';"; en
- (g) deur die omskrywing van "uittredingannuïteitsfonds" deur die volgende omskrywing te vervang: 40  
"uittredingannuïteitsfonds" met betrekking tot 'n [belastingpligtige] persoon, 'n fonds wat ten opsigte van die betrokke jaar van aanslag of 'n vorige jaar van aanslag deur die Kommissaris as 'n uittredingannuïteitsfonds soos omskryf in artikel [een] 1 van hierdie Wet of die ooreenstemmende bepalings van 'n vorige Inkomstebelastingwet goedgekeur is, indien die [belastingpligtige] persoon gedurende so 'n jaar 'n lid van bedoelde fonds was." 45
- (2) Subartikel (1) word geag op 1 Maart 2012 in werking te getree het en is van toepassing ten opsigte van bedrae op of na daardie datum verskuldig en betaalbaar. 50

**Wysiging van paragraaf 2 van Tweede Bylae by Wet 58 van 1962, soos vervang deur artikel 57 van Wet 17 van 2009 en gewysig deur artikel 80 van Wet 7 van 2010**

92. (1) Paragraaf 2 van die Tweede Bylae by die Inkomstebelastingwet, 1962, word hierby gewysig—

- (a) deur in subparagraaf (1) die woorde wat item (a) voorafgaan deur die volgende woorde te vervang: 55  
"Behoudens die bepalings van artikel 9[(1)(g)] (2)(i) en paragrawe 2A, 2B en 2C, is die bedrag wat ingevolge paragraaf (e) van die omskrywing van 'bruto inkomste' in artikel 1 by die bruto inkomste van enige persoon ingesluit moet word—"; 60

- (b) by the substitution in subparagraph (1) for the words preceding item (a) of the following words:  
“Subject to **[the provisions of]** section 9(2)(i) and paragraphs 2A, **2B** and 2C, the amount to be included in the gross income of any person in terms of paragraph (e) of the definition of ‘gross income’ in section 1 shall be—”;
- (c) by the substitution in subparagraph (1)(b) for subitem (iA) of the following subitem:  
“(iA) assigned in terms of a divorce order granted on or after 13 September 2007 under section 7(8)(a) of the Divorce Act, 1979 (Act No. 70 of 1979), to the extent that the amount so assigned **[is deducted from that person’s former spouse in terms of section 37D(1)(d)(i) of the Pension Funds Act, 1956 (Act No. 24 of 1956), or is so deducted in terms of section 37D(1)(d)(ii) of that Act as a result of the deduction contemplated in section 37D(1)(d)(i) of that Act]**—  
(aa) constitutes a part of a pension interest, as defined in section 1 of the Divorce Act, 1979 (Act No. 70 of 1979), of a member of a pension fund, pension preservation fund, provident fund, provident preservation fund or retirement annuity fund; and  
(bb) is due and payable on or after 1 March 2012 to a person who is the former spouse of that member by that pension fund, pension preservation fund, provident fund or provident preservation fund or retirement annuity fund;”;
- (d) by the substitution in subparagraph (2) for item (a) of the following item:  
“(a) in the case of an amount contemplated in subparagraph (1)(b)(iA), on the date on which **[an election is made as contemplated in section 37D(4)(b)(ii) of the Pension Funds Act, 1956 (Act No. 24 of 1956), or on the date on which the amount is paid in terms of section 37D(4)(b)(iv) of that Act]** the amount is due and payable as contemplated in subparagraph (1)(b)(iA)(bb); and”.
- (2) Paragraph (a) of subsection (1) is deemed to have come into operation on 1 January 2012 and applies in respect of amounts received or accrued during years of assessment commencing on or after that date.
- (3) Paragraphs (b), (c) and (d) of subsection (1) are deemed to have come into operation on 1 March 2012 and apply in respect of amounts due and payable on or after that date.

### Substitution of paragraph 2A of Second Schedule to Act 58 of 1962

93. (1) The Second Schedule to the Income Tax Act, 1962, is hereby amended by the substitution for paragraph 2A of the following paragraph:

“2A. Where any lump sum benefit is received or accrues from a public sector fund, the amount to be included in the gross income of any person in terms of paragraph (e) of the definition of ‘gross income’ in section 1 shall be deemed to be an amount equal to the amount determined in accordance with the following formula:

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

in which formula—

- (a) ‘A’ represents the amount which has to be determined;
- (b) ‘B’ represents—
- (i) where the number of completed years of employment of a person who is or was a member of a fund are in terms of the rules of that fund taken into account for the purpose of determining the amount of a benefit payable by the fund, the number of completed years of employment of the member 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—



- (b) deur in subparagraaf (1) die woorde wat item (a) voorafgaan deur die volgende woorde te vervang:  
“Behoudens [**die bepaling van**] artikel 9(2)(i) en paragrawe 2A[, **2B**] en 2C, is die bedrag wat ingevolge paragraaf (e) van die omskrywing van ‘bruto inkomste’ in artikel 1 by die bruto inkomste van enige persoon ingesluit moet word—”;
- (c) deur in subparagraaf (1)(b) subitem (iA) deur die volgende subitem te vervang:  
“(iA) toegeken ingevolge ’n egskeidingsbevel op of na 13 September 2007 kragtens artikel 7(8)(a) van die Wet op Egskeiding, 1979 (Wet No. 70 van 1979), toegestaan namate [**die bedrag aldus toegeken van die minimum individuele reserwe van daardie persoon se voormalige gade afgetrek word ingevolge artikel 37D(1)(d)(i) van die Wet op Pensioenfondse, 1956 (Wet No. 24 van 1956), of aldus afgetrek word ingevolge artikel 37D(1)(d)(ii) van daardie Wet as gevolg van die aftrekking beoog in artikel 37D(1)(d)(i) van daardie Wet**]—  
(aa) ’n deel van n pensioenbelang soos omskryf in artikel 1 van die Wet op Egskeiding, 1979 (Wet No. 70 van 1979), van ’n pensioenfonds, pensioenbewaringsfonds, voorsorgfonds, voorsorgbewaringsfonds of uittredingannuïteitsfonds uitmaak; en  
(bb) op of na 1 Maart 2012 verskuldig en betaalbaar is aan ’n persoon wat die voormalige gade van daardie lid is deur daardie pensioenfonds, pensioenbewaringsfonds, voorsorgfonds, voorsorgbewaringsfonds of uittredingannuïteitsfonds;”;
- (d) deur in subparagraaf (2) item (a) deur die volgende item te vervang:  
“(a) in die geval van ’n bedrag beoog in subparagraaf (1)(b)(iA), op die datum waarop [**’n keuse gemaak word soos beoog in artikel 37D(4)(b)(ii) van die Wet op Pensioenfondse, 1956 (Wet No. 24 van 1956), of op die datum waarop die bedrag ingevolge artikel 37D(4)(b)(iv) van daardie Wet betaal word**] die bedrag verskuldig en betaalbaar is soos in subparagraaf (1)(b)(iA)(bb) beoog; en”.
- (2) Paragraaf (a) van subartikel (1) word geag op 1 Januarie 2012 in werking te getree het en is van toepassing ten opsigte van bedrae ontvang of toegeval gedurende jare van aanslag wat op of na daardie datum begin.
- (3) Paragrawe (b), (c) en (d) van subartikel (1) word geag op 1 Maart 2012 in werking te getree het en is van toepassing ten opsigte van bedrae verskuldig en betaalbaar op of na daardie datum.

### Vervanging van paragraaf 2A van Tweede Bylae by Wet 58 van 1962

93. (1) Die Tweede Bylae by die Inkomstebelastingwet, 1962, word hierby gewysig deur paragraaf 2A deur die volgende paragraaf te vervang:

“2A. Waar enige enkelbedragvoordeel ontvang word of toeval vanaf ’n openbare sektor fonds, word die bedrag by die bruto inkomste van ’n persoon ingevolge paragraaf (e) van die omskrywing van ‘bruto inkomste’ in artikel 1 ingesluit te word, geag te wees ’n bedrag gelykwaardig aan die bedrag bepaal ooreenkomstig die volgende formule:

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

in welke formule—

- (a) ‘A’ die bedrag verteenwoordig wat vasgestel staan te word;
- (b) ‘B’—
- (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 verteenwoordig, 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) any benefit of a person who is a member of any public sector fund, which is after 1 March 1998 paid for the benefit of any person 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 5
- (bb) years of pensionable service recognised as such in terms of Rule 10.5 or 10.6 of the Rules of the Government Employees Pension Fund, contained in Schedule 1 to the Government Employees Pension Law, 1996 (Proclamation No. 21 of 1996), to the extent that those years are not taken into account under item (aa); or 10
- (ii) where the number of completed years of employment are not taken into account as contemplated in subitem (i), the number of completed years after 1 March 1998 during which the member had, until the date of accrual of any benefit, been a member of any public sector fund or funds; 15
- (c) ‘C’ represents—
- (i) where the number of completed years of employment of a person who is or was a member of a fund are in terms of the rules of that fund taken into account for the purpose of determining the amount of the benefits payable to any person by the fund, the total number of completed years of employment so taken into account; or 20
- (ii) where the number of completed years of employment are not taken into account as contemplated in subitem (i), the number of completed years during which the member had, until the date of accrual of any benefit, continuously been a member of any public sector fund or funds; and 25
- (d) ‘D’ represents the lump sum benefit payable to the person.”.
- (2) Subsection (1) is deemed to have come into operation on 1 March 2012 and applies in respect of amounts due and payable on or after that date.

#### Repeal of paragraph 2B of Second Schedule to Act 58 of 1962

94. (1) The Second Schedule to the Income Tax Act, 1962, is hereby amended by the repeal of paragraph 2B. 30
- (2) Subsection (1) is deemed to have come into operation on 1 March 2012.

#### Amendment of paragraph 3 of Second Schedule to Act 58 of 1962, as amended by section 47 of Act 94 of 1983, section 50 of Act 30 of 1998, section 50 of Act 8 of 2007, section 40 of Act 3 of 2008, section 62 of Act 60 of 2008, section 59 of Act 17 of 2009 and section 81 of Act 7 of 2010 35

95. (1) Paragraph 3 of the Second Schedule to the Income Tax Act, 1962, is hereby amended—
- (a) by the substitution for the words after subparagraph (b) and before the proviso of the following words: 40
- “in consequence of or following upon the death of a person who is or was a member [or past member] of that fund must, on the date of payment of that lump sum benefit, be deemed to have accrued to that [member or past member] person immediately prior to the death of that [member or past member] person”; and
- (b) by the substitution in the proviso for paragraphs (ii) and (iii) of the following paragraphs: 45
- “(ii) where any annuity or portion of an annuity (including a living annuity) which becomes payable on or in consequence of or following upon the death of a person who is or was a member [or past member] of any such fund has been commuted for a lump sum, such lump sum shall for the purposes of this paragraph be deemed to be a lump sum benefit which has become recoverable in consequence of or following upon the death of such [member or past member] person;
- 50

- (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 diensydperke 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 as sodanig erken word ingevolge Reël 10.5 of 10.6 van die 'Rules of the Government Employees Pension Fund', vervat in Bylae 1 by die 'Government Employees Pension Law', 1996 (Proklamasie 21 van 1996), namate daardie jare nie kragtens item (aa) in ag geneem word nie; of
- (ii) waar die aantal voltooide diensjare nie vir daardie doel in aanmerking geneem is nie, die aantal voltooide jare na 1 Maart 1998 verteenwoordig waartydens die belastingpligtige, tot die datum van toevalling van 'n voordeel, 'n lid van enige openbare sektor fonds of fondse was;
- (c) 'C'—
- (i) waar die aantal voltooide diensjare ingevolge die reglement van die betrokke fonds in aanmerking geneem word by die vasstelling van die bedrag van die voordele deur die fonds aan hom betaalbaar, die totale aantal voltooide diensjare verteenwoordig wat by die berekening van die bedrag van die voordele deur die fonds aan die belastingpligtige betaalbaar in aanmerking geneem is; of
- (ii) waar die aantal voltooide diensjare nie vir daardie doel in aanmerking geneem is nie, die aantal voltooide jare verteenwoordig waartydens die belastingpligtige, tot die datum van toevalling van 'n voordeel, deurlopend 'n lid van enige openbare sektor fonds of fondse was; en
- (d) 'D' die enkelbedragvoordeel betaalbaar aan die belastingpligtige verteenwoordig."
- (2) Subartikel (1) word geag op 1 Maart 2012 in werking te getree het en is van toepassing ten opsigte van bedrae verskuldig en betaalbaar op of na daardie datum.

#### **Herroeping van paragraaf 2B van Tweede Bylae by Wet 58 van 1962**

94. (1) Die Tweede Bylae by die Inkomstebelastingwet, 1962, word hierby gewysig deur die herroeping van paragraaf 2B.

(2) Subartikel (1) word geag op 1 Maart 2012 in werking te getree het.

#### **Wysiging van paragraaf 3 van Tweede Bylae by Wet 58 van 1962, soos gewysig deur artikel 47 van Wet 94 van 1983, artikel 50 van Wet 30 van 1998, artikel 50 van Wet 8 van 2007, artikel 40 van Wet 3 van 2008, artikel 62 van Wet 60 van 2008, artikel 59 van Wet 17 van 2009 en artikel 81 van Wet 7 van 2010**

95. (1) Paragraaf 3 van die Tweede Bylae by die Inkomstebelastingwet, 1962, word hierby gewysig—

(a) deur die woorde na subparagraaf (b) en voor die voorbehoudsbepaling deur die volgende woorde te vervang:

“as gevolg van of na die dood van 'n persoon wat 'n lid [of gewese lid] van daardie fonds is of was, moet, op die datum van betaling van daardie enkelbedragvoordeel, geag word onmiddellik voor die dood van daardie [lid of gewese lid] persoon aan daardie [lid of gewese lid] persoon toe te geval het”; en

(b) deur in die voorbehoudsbepaling paragrawe (ii) en (iii) deur die volgende paragrawe te vervang:

“(ii) waar 'n jaargeld of gedeelte van 'n jaargeld (insluitend 'n lewende annuïteit) wat op of as gevolg van of na die dood van 'n persoon wat 'n lid [of gewese lid] van so 'n fonds is of was betaalbaar word in 'n enkelbedrag omgesit is, bedoelde enkelbedrag by die toepassing van hierdie paragraaf geag word 'n enkelbedragvoordeel te wees wat as gevolg van of na die dood van bedoelde [lid of gewese lid] persoon verhaalbaar geword het;

- (iii) where any such lump sum benefit becomes payable but the dependants or nominees of that **[member or past member]** person elect an annuity (including a living annuity) that is purchased or provided by that fund, no lump sum benefit shall be deemed to have so accrued to the extent that the lump sum benefit was utilised to purchase or provide the annuity; and” 5

(2) Subsection (1) is deemed to have come into operation on 1 March 2012 and applies in respect of amounts due and payable on or after that date.

**Amendment of paragraph 3A of Second Schedule to Act 58 of 1962, as inserted by section 82 of Act 7 of 2010** 10

96. (1) Paragraph 3A of the Second Schedule to the Income Tax Act, 1962, is hereby amended—

- (a) by the substitution for the words after subparagraph (b) and before the proviso of the following words:

“in consequence of or following upon the death of any person other than a person who is or was a member **[or past member]** of that fund shall, on the date of payment of that lump sum benefit, be deemed to have accrued to **[that] the deceased** person immediately prior to the death of that person”; and 15

- (b) by the substitution in the proviso for paragraph (ii) of the following paragraph: 20

“(ii) where any annuity or portion of an annuity (including a living annuity) which becomes payable on or in consequence of or following upon the death of a person other than a person who was a member **[or past member]** of any such fund has been commuted for a lump sum, such lump sum shall for the purposes of this paragraph be deemed to be a lump sum benefit which has become recoverable in consequence of or following upon the death of such deceased person;” 25

(2) Subsection (1) is deemed to have come into operation on 1 March 2012 and applies in respect of amounts due and payable on or after that date. 30

**Amendment of paragraph 4 of Second Schedule to Act 58 of 1962, as amended by section 20 of Act 72 of 1963, section 24 of Act 90 of 1964, section 36 of Act 21 of 1995, section 41 of Act 3 of 2008, section 63 of Act 60 of 2008, section 60 of Act 17 of 2009, section 83 of Act 7 of 2010 and section 91 of Act 24 of 2011**

97. (1) Paragraph 4 of the Second Schedule to the Income Tax Act, 1962, is hereby amended— 35

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

“Notwithstanding the rules of a pension fund, pension preservation fund, provident fund, provident preservation fund or retirement annuity fund, and subject to paragraphs 3 and 3A, any lump sum benefit shall be deemed to have accrued to a person who is a member of such fund on the earliest of the date—”; 40

- (b) by the substitution for subparagraph (2)*bis* of the following subparagraph:

“(2)*bis* If a policy of insurance is ceded or otherwise made over to or in favour of a person who is a member of a pension fund, pension preservation fund, provident fund, provident preservation fund or retirement annuity fund by **[the] that fund [in question]** on or after the date of commencement of the Income Tax Act, 1964, the surrender value of such policy shall, provided such **[member] person** retired or ceased to be a member of such fund on or after the fifteenth day of March, 1961, be deemed for the purposes of this Schedule to be a lump sum benefit accruing to such **[member] person** from such fund on the date of such cession or making over.”; and 45

- (c) by the substitution for subparagraph (3) of the following subparagraph: 50

“(3) If a person who is a member of a provident fund retires from such fund before he or she reaches the age of 55 years on grounds other than ill-health, any lump sum benefits received by or accrued to such 55

- (iii) waar enige sodanige enkelbedragvoordeel betaalbaar word, maar die afhanklikes of benoemdes van daardie **[lid of voormalige lid] persoon** 'n jaargeld (insluitend 'n lewende annuïteit) kies wat deur daardie fonds gekoop of verskaf word, word geen enkelbedragvoordeel geag aldus toe te geval het nie namate die enkelbedragvoordeel gebruik is om die jaargeld te koop of te verskaf; en”.

(2) Subartikel (1) word geag op 1 Maart 2012 in werking te getree het en is van toepassing ten opsigte van bedrae verskuldig en betaalbaar op of na daardie datum.

**Wysiging van paragraaf 3A van Tweede Bylae by Wet 58 van 1962, soos ingevoeg deur artikel 82 van Wet 7 van 2010**

96. (1) Paragraaf 3A van die Tweede Bylae by die Inkomstebelastingwet, 1962, word hierby gewysig—

- (a) deur die woorde na subparagraaf (b) en voor die voorbehoudsbepaling deur die volgende woorde te vervang:

“as gevolg van of na die dood van 'n persoon buiten 'n persoon wat 'n lid **[of voormalige lid]** van daardie fonds is of was, word, op die datum van betaling van daardie enkelbedragvoordeel, geag **[daardie]** die gestorwe persoon toe te geval het onmiddellik voor die dood van daardie persoon”; en

- (b) deur in die voorbehoudsbepaling paragraaf (ii) deur die volgende paragraaf te vervang:

“(ii) waar 'n jaargeld of gedeelte van 'n jaargeld (insluitend 'n lewende annuïteit) wat betaalbaar word op of as gevolg van of na die dood van 'n persoon buiten 'n persoon wat 'n lid **[of voormalige lid]** van enige sodanige fonds was in 'n enkelbedrag omgesit is, sodanige enkelbedrag by die toepassing van hierdie paragraaf geag word 'n enkelbedragvoordeel te wees wat as gevolg van of na die dood van sodanige gestorwe persoon verhaalbaar geword het;”.

(2) Subartikel (1) word geag op 1 Maart 2012 in werking te getree het en is van toepassing ten opsigte van bedrae verskuldig en betaalbaar op of na daardie datum.

**Wysiging van paragraaf 4 van Tweede Bylae by Wet 58 van 1962, soos gewysig deur artikel 20 van Wet 72 van 1963, artikel 24 van Wet 90 van 1964, artikel 36 van Wet 21 van 1995, artikel 41 van Wet 3 van 2008, artikel 63 van Wet 60 van 2008, artikel 60 van Wet 17 van 2009, artikel 83 van Wet 7 van 2010 en artikel 91 van Wet 24 van 2011**

97. (1) Paragraaf 4 van die Tweede Bylae by die Inkomstebelastingwet, 1962, word hierby gewysig—

- (a) deur in subparagraaf (1) die woorde wat paragraaf (a) voorafgaan deur die volgende woorde te vervang:

“Ondanks die reëls van 'n pensioenfonds, pensioenbewaringsfonds, voorsorgs fonds, voorsorgbewaringsfonds of uittredingannuïteitsfonds, en behoudens paragrawe 3 en 3A, word enige enkelbedragvoordeel geag 'n persoon wat 'n lid van sodanige fonds toe te geval het op die vroegste van die datum—”;

- (b) deur subparagraaf (2)*bis* deur die volgende subparagraaf te vervang:

“(2)*bis* Indien 'n assuransiepolis op of na die datum van afkondiging van die Inkomstebelastingwet, 1964, deur 'n pensioenfonds, pensioenbewaringsfonds, voorsorgs fonds, voorsorgbewaringsfonds of uittredingannuïteitsfonds aan of ten gunste van 'n persoon wat 'n lid van die betrokke fonds is, gesedeer of op ander wyse oorgedra word, word die afkoopwaarde van bedoelde polis, mits dié **[lid]** persoon op of na die vyftiende dag van Maart 1961 uitgetree het of opgehou het om 'n lid van bedoelde fonds te wees, by die toepassing van hierdie Bylae geag 'n enkelbedragvoordeel te wees wat op die datum van sodanige sessie of oordrag uit bedoelde fonds aan bedoelde **[lid]** persoon toeval.”; en

- (c) deur subparagraaf (3) deur die volgende subparagraaf te vervang:

“(3) Indien 'n persoon wat 'n lid van 'n voorsorgs fonds is op ander gronde as slegte gesondheid uit dié fonds uittree voordat hy of sy die ouderdom van 55 jaar bereik, word enige enkelbedragvoordele wat deur

[member] person in consequence of or following upon such retirement shall, unless the Commissioner having regard to the circumstances of the case otherwise directs, be assessed to tax not in accordance with the provisions of paragraph 5 but in accordance with the provisions of paragraph 6 as though it were a lump sum benefit derived by such [member] person in consequence of or following upon such [member's] person's withdrawal or resignation from such fund.” 5

(2) Subsection (1) is deemed to have come into operation on 1 March 2012 and applies in respect of amounts due and payable on or after that date.

**Amendment of paragraph 5 of Second Schedule to Act 58 of 1962, as substituted by section 61 of Act 17 of 2009** 10

98. (1) The Second Schedule to the Income Tax Act, 1962, is hereby amended—

(a) by the substitution for the heading of the following heading:  
“BENEFITS ACCRUING UPON RETIREMENT AND BENEFITS DEEMED TO HAVE ACCRUED IMMEDIATELY PRIOR TO PERSON'S DEATH: DEDUCTIONS”;

(b) by the substitution for subparagraph (1) of the following subparagraph:

“(1) The deduction to be allowed for the purposes of paragraph 2(1)(a) is an amount equal to so much of—

(a) the [taxpayer's] person's own contributions that did not rank for a deduction against the [taxpayer's] person's income in terms of section 11(k) or (n) to any pension fund, pension preservation fund, provident fund, provident preservation fund and retirement annuity fund of which he or she is or previously was a member;

(b) any amount transferred for the benefit of the [taxpayer] person to any pension fund, pension preservation fund, provident fund, provident preservation fund or retirement annuity fund as a result of an election made in terms of section 37D(4)(b)(ii) of the Pension Funds Act, 1956 (Act No. 24 of 1956);

(c) any amount that is deemed to have accrued to the [taxpayer] person as contemplated in paragraph 2(2)(b);

(d) any amount, to the extent that that amount was paid or transferred to a pension preservation fund or provident preservation fund as an unclaimed benefit as defined in section 1 of the Pension Funds Act, 1956 (Act No. 24 of 1956), and was subject to tax prior to that transfer or payment; and

(e) any other amounts in respect of which [formula C] the formula in paragraph 2A applies, which have been paid into a pension fund, pension preservation fund, provident fund, provident preservation fund or retirement annuity fund for the [taxpayer's] person's benefit by a [pension] public sector fund [contemplated in paragraph (a) or (b) of the definition of 'pension fund' in section 1], less the amount represented by symbol A when so applying that formula,

as has not previously been allowed to the [taxpayer] person as a deduction in terms of this Schedule in determining the amount to be included in that [taxpayer's] person's gross income.”;

(c) by the substitution for the words in subparagraph (1) after item (e) of the following words:

“as has not been exempted in terms of section 10C or has not previously been allowed to the taxpayer as a deduction in terms of this Schedule in determining the amount to be included in that taxpayer's gross income.”; and

(d) by the substitution for subparagraph (3) of the following subparagraph:

“(3) For the purposes of this paragraph, the surrender value of any policy of insurance ceded or otherwise made over to the [taxpayer] person by any pension fund, pension preservation fund, provident fund, provident preservation fund or retirement annuity fund and ceded or otherwise made over by the [taxpayer] person to any other such fund, or

so 'n **[lid]** persoon ontvang is of aan hom toegeval het as gevolg van of na sodanige uittreding, tensy die Kommissaris met inagneming van die omstandighede van die geval anders gelas, nie ooreenkomstig die bepalings van paragraaf 5 nie, maar ooreenkomstig die bepalings van paragraaf 6 vir belasting aangeslaan asof dit 'n enkelbedragvoordeel is wat deur daardie **[lid]** persoon as gevolg van of na **[sy]** die persoon se onttrekking aan of bedanking uit die betrokke fonds verkry is.”

(2) Subartikel (1) word geag op 1 Maart 2012 in werking te getree het en is van toepassing ten opsigte van bedrae verskuldig en betaalbaar op of na daardie datum.

**Wysiging van paragraaf 5 van Tweede Bylae by Wet 58 van 1962, soos vervang deur artikel 61 van Wet 17 van 2009**

98. (1) Die Tweede Bylae by die Inkomstebelastingwet, 1962, word hierby gewysig—

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

“VOORDELE WAT BY UITTREDING TOEVAL EN VOORDELE WAT GEAG WORD ONMIDDELLIK VOOR PERSOON SE DOOD TOE TE GEVAL HET: AFTREKKINGS”;

(b) deur subparagraaf (1) deur die volgende subparagraaf te vervang:

“(1) Die aftrekking by die toepassing van paragraaf 2(1)(a) toegelaat te word, is 'n bedrag gelyk aan soveel van—

(a) die **[belastingpligtige]** persoon se eie bydraes wat nie vir 'n aftrekking teen die **[belastingpligtige]** persoon se inkomste ingevolge artikel 11(k) of (n) in aanmerking gekom het nie aan enige pensioenfonds, pensioenbewaringsfonds, voorsorgfonds, voorsorgbewaringsfonds en uittredingannuïteitsfonds waarvan hy of sy 'n lid is of tevore was;

(b) enige bedrag oorgedra ten gunste van die **[belastingpligtige]** persoon aan enige pensioenfonds, pensioenbewaringsfonds, voorsorgfonds, voorsorgbewaringsfonds of uittredingannuïteitsfonds as gevolg van 'n keuse ingevolge artikel 37D(4)(b)(ii) van die Wet op Pensioenfondse, 1956 (Wet No. 24 van 1956), uitgeoefen;

(c) enige bedrag wat geag word aan die **[belastingpligtige]** persoon toe te geval het soos beoog in paragraaf 2(2)(b);

(d) enige bedrag, namate daardie bedrag aan 'n pensioenbewaringsfonds of voorsorgbewaringsfonds betaal of oorgedra is as 'n onopgeëiste voordeel soos omskryf in artikel 1 van die Wet op Pensioenfondse, 1956 (Wet No. 24 van 1956), en voor daardie oordrag of betaling aan belasting onderworpe was; en

(e) enige ander bedrae ten opsigte waarvan **[formule C]** die formule in paragraaf 2A van toepassing is, wat by 'n pensioenfonds, pensioenbewaringsfonds, voorsorgfonds, voorsorgbewaringsfonds of uittredingannuïteitsfonds inbetaal is vir die **[belastingpligtige]** persoon se voordeel deur 'n **[pensioenfonds beoog in paragraaf (a) of (b) van die omskrywing van 'pensioenfonds' in artikel 1]** openbare sektor fonds, verminder met die bedrag wat by die toepassing van daardie formule deur simbool A voorgestel word, as wat nie vroeër aan die **[belastingpligtige]** persoon as 'n aftrekking ingevolge hierdie Bylae toegelaat is nie by die bepaling van die bedrag wat by daardie **[belastingpligtige]** persoon se bruto inkomste ingesluit moet word.”;

(c) deur die woorde in subparagraaf (1) na item (e) deur die volgende woorde te vervang:

“as wat nie ingevolge artikel 10C vrygestel is nie of nie vroeër aan die belastingpligtige as 'n aftrekking ingevolge hierdie Bylae toegelaat is nie by die bepaling van die bedrag wat by daardie belastingpligtige se bruto inkomste ingesluit moet word.”; en

(d) deur subparagraaf (3) deur die volgende subparagraaf te vervang:

“(3) By die toepassing van hierdie paragraaf word die afkoopwaarde van 'n assuransiepolis deur enige pensioenfonds, pensioenbewaringsfonds, voorsorgfonds, voorsorgbewaringsfonds of uittredingannuïteitsfonds aan die **[belastingpligtige]** persoon gesedeer of op ander wyse oorgedra en deur die **[belastingpligtige]** persoon aan enige ander

any amount paid by the **[taxpayer] person** into the latter fund in lieu of or as representing such surrender value or a portion thereof, shall be deemed to be an amount paid into the latter fund by the former fund for the benefit of the **[taxpayer] person**.”

(2) Paragraphs (a), (b) and (d) of subsection (1) are deemed to have come into operation on 1 March 2012 and apply in respect of amounts due and payable on or after that date. 5

(3) Paragraph (c) of subsection (1) comes into operation on 1 March 2014 and applies in respect of amounts received or accrued on or after that date.

**Amendment of paragraph 6 of Second Schedule to Act 58 of 1962, as substituted by section 62 of Act 17 of 2009 and amended by section 84 of Act 7 of 2010 and section 92 of Act 24 of 2011** 10

99. (1) Paragraph 6 of the Second Schedule to the Income Tax Act, 1962, is hereby amended—

(a) by the substitution in subparagraph (1)(a)(i) for the words preceding subsubitem (aa) of the following words: 15

“a lump sum benefit contemplated in paragraph 2(1)(b)(iA), so much of the benefit as is paid or transferred for the benefit of the **[taxpayer] person** from a—”;

(b) by the substitution in subparagraph (1)(a)(ii) for the words preceding subsubitem (aa) of the following words: 20

“a lump sum benefit contemplated in paragraph 2(1)(b)(iB), so much of the benefit as is paid or transferred for the benefit of the **[taxpayer] person** from a—”;

(c) by the substitution in subparagraph (1) for item (b) of the following item: 25

“(b) in any other case, so much of the aggregate of—

(i) the **[taxpayer’s] person’s** own contributions that did not rank for a deduction against the **[taxpayer’s] person’s** income in terms of section 11(k) or (n) to any pension funds, pension preservation funds, provident funds, provident preservation funds and retirement annuity funds of which he or she is or previously was a member; 30

(ii) any amount transferred for the benefit of the **[taxpayer] person** to any pension fund, pension preservation fund, provident fund, provident preservation fund or retirement annuity fund as a result of an election made as contemplated in section 37D(4)(b)(ii)(cc) of the Pension Funds Act, 1956 (Act No. 24 of 1956); 35

(iii) any amount that is deemed to have accrued to the **[taxpayer] person** as contemplated in paragraph 2(1)(b)(iB); 40

(iv) any amount, to the extent that that amount was paid or transferred to a pension preservation fund or provident preservation fund as an unclaimed benefit as defined in section 1 of the Pension Funds Act, 1956 (Act No. 24 of 1956), and was subject to tax prior to that transfer or payment; and 45

(v) any other amounts in respect of which **[formula C]** the formula in paragraph 2A applies, which have been paid into a pension fund, pension preservation fund, provident fund, provident preservation fund or retirement annuity fund for the **[taxpayer’s] person’s** benefit by a **[pension] public sector fund [contemplated in paragraph (a) or (b) of the definition of ‘pension fund’ in section 1]**, less the amount represented by symbol A when applying that formula, 50

as has not previously been allowed to the **[taxpayer] person** as a deduction in terms of this Schedule in determining any amount to be included in that **[taxpayer’s] person’s** gross income.”; 55



sodanige fonds gesedeer of op ander wyse oorgedra, of enige bedrag deur die **[belastingpligtige] persoon** by die laasgenoemde fonds inbetaal in plaas van of as verteenwoordigend van sodanige afkoopwaarde of 'n gedeelte daarvan, geag 'n bedrag te wees wat ten gunste van die **[belastingpligtige] persoon** by die laasgenoemde fonds deur die eersgenoemde fonds inbetaal is.” 5

(2) Paragraawe (a), (b) en (d) van subartikel (1) word geag op 1 Maart 2012 in werking te getree het en is van toepassing ten opsigte van bedrae verskuldig en betaalbaar op of na daardie datum.

(3) Paragraaf (c) van subartikel (1) tree op 1 Maart 2014 in werking en is van toepassing ten opsigte van bedrae ontvang of toegeval op of na daardie datum. 10

**Wysiging van paragraaf 6 van Tweede Bylae by Wet 58 van 1962, soos vervang deur artikel 62 van Wet 17 van 2009 en gewysig deur artikel 84 van Wet 7 van 2010 en artikel 92 van Wet 24 van 2011**

99. (1) Paragraaf 6 van die Tweede Bylae by die Inkomstebelastingwet, 1962, word hierby gewysig— 15

(a) deur in subparagraaf (1)(a)(i) die woorde wat subsubitem (aa) voorafgaan deur die volgende woorde te vervang:  
“ 'n enkelbedragvoordeel beoog in paragraaf 2(1)(b)(iA), soveel van die voordeel as wat betaal of oorgedra word ten gunste van die **[belastingpligtige] persoon** van 'n—”; 20

(b) deur in subparagraaf (1)(a)(ii) die woorde wat subsubitem (aa) voorafgaan deur die volgende woorde te vervang:  
“ 'n enkelbedragvoordeel beoog in paragraaf 2(1)(b)(iB), soveel van die voordeel as wat betaal of oorgedra word ten gunste van die **[belastingpligtige] persoon** van 'n—”; 25

(c) deur in subparagraaf (1) item (b) deur die volgende item te vervang:  
“(b) in enige ander geval, soveel van die som van—  
(i) die **[belastingpligtige] persoon** se eie bydraes wat nie vir 'n aftrekking teen die **[belastingpligtige] persoon** se inkomste ingevolge artikel 11(k) of (n) toegelaat word nie aan enige pensioenfondse, pensioenbewaringsfondse, voorsorgfondse, voorsorgbewaringsfondse en uittredingannuïteitsfondse waarvan hy of sy 'n lid is of tevore was; 30

(ii) enige bedrag oorgedra ten gunste van die **[belastingpligtige] persoon** na enige pensioenfonds, pensioenbewaringsfonds, voorsorgfonds, voorsorgbewaringsfonds of uittredingannuïteitsfonds as gevolg van 'n keuse uitgeoefen soos beoog in artikel 37D(4)(b)(ii)(cc) van die Wet op Pensioenfondse, 1956 (Wet No. 24 van 1956); 35 40

(iii) enige bedrag wat geag word aan die **[belastingpligtige] persoon** toe te geval het soos beoog in paragraaf 2(1)(b)(iB);  
(iv) enige bedrag, namate daardie bedrag betaal of oorgedra is aan 'n pensioenbewaringsfonds of voorsorgbewaringsfonds as 'n onopgeëiste voordeel soos omskryf in artikel 1 van die Wet op Pensioenfondse, 1956 (Wet No. 24 van 1956), en voor daardie oordrag of betaling aan belasting onderworpe was; en; 45

(v) enige ander bedrae ten opsigte waarvan **[formule C]** die formule in paragraaf 2A van toepassing is, wat by 'n pensioenfonds, pensioenbewaringsfonds, voorsorgfonds, voorsorgbewaringsfonds of uittredingannuïteitsfonds vir die **[belastingpligtige] persoon** se voordeel deur 'n **[pensioenfonds beoog in paragraaf (a) of (b) van die omskrywing van 'pensioenfonds' in artikel 1]** openbare sektor fonds inbetaal is, verminder met die bedrag wat deur simbool A voorgestel word by die toepassing van daardie formule, 50 55

as wat nie tevore aan die **[belastingpligtige] persoon** toegestaan is nie as 'n aftrekking ingevolge hierdie Bylae by die bepaling van enige bedrag wat by daardie **[belastingpligtige] persoon** se bruto inkomste ingesluit moet word.”; 60

(d) by the substitution in subparagraph (1)(b) for the words after subitem (v) of the following words:  
“as has not been exempted in terms of section 10C or has not previously been allowed to the taxpayer as a deduction in terms of this Schedule in determining any amount to be included in that taxpayer’s gross income.”; and

(e) by the substitution for subparagraph (3) of the following subparagraph:  
“(3) For the purposes of this paragraph, the surrender value of any policy of insurance ceded or otherwise made over to the taxpayer by any pension fund, pension preservation fund, provident fund, provident preservation fund or retirement annuity fund and ceded or otherwise made over by the [taxpayer] person to any other such fund, or any amount paid by the [taxpayer] person into the latter fund *in lieu* of or as representing such surrender value or a portion thereof, shall be deemed to be an amount paid into the latter fund by the former fund for the benefit of the [taxpayer] person.”.

(2) Paragraphs (a), (b), (c) and (e) of subsection (1) are deemed to have come into operation on 1 March 2012 and apply in respect of amounts due and payable on or after that date.

(3) Paragraph (d) of subsection (1) comes into operation on 1 March 2014 and applies in respect of amounts received or accrued on or after that date.

**Amendment of paragraph 2 of Seventh Schedule to Act 58 of 1962, as inserted by section 46 of Act 121 of 1984 and amended by section 27 of Act 96 of 1985, section 56 of Act 101 of 1990, section 49 of Act 28 of 1997, section 54 of Act 30 of 1998, section 50 of Act 32 of 2004, section 55 of Act 31 of 2007, section 64 of Act 17 of 2009 and section 102 of Act 24 of 2011**

**100.** (1) Paragraph 2 of the Seventh Schedule to the Income Tax Act, 1962, is hereby amended—

(a) by the substitution for subparagraph (f) of the following subparagraph:  
“(f) a loan (other than a loan for purposes of the payment by the employee of any consideration in respect of any qualifying equity share contemplated in section 8B to comply with the minimum requirements of the Companies Act, 1973 (Act No. 61 of 1973), or the payment of any [stamp duties or uncertificated] securities transfer tax payable in respect of that share, or a loan in respect of which a subsidy is payable as contemplated in subparagraph (gA)) has been granted to the employee, whether by the employer or by any other person by arrangement with the employer or any associated institution in relation to the employer, and either no interest is payable by the employee on such loan or interest is payable by him thereon at a rate of lower than the official rate of interest; or”;

(b) by the substitution for subparagraph (f) of the following subparagraph:  
“(f) a loan (other than a loan for purposes of the payment by the employee of any consideration in respect of any qualifying equity share contemplated in section 8B to comply with the minimum requirements of the Companies Act, [1973 (Act No. 61 of 1973)] 2008 (Act No. 71 of 2008), or the payment of any securities transfer tax payable in respect of that share, or a loan in respect of which a subsidy is payable as contemplated in subparagraph (gA)) has been granted to the employee, whether by the employer or by any other person by arrangement with the employer or any associated institution in relation to the employer, and either no interest is payable by the employee on such loan or interest is payable by him thereon at a rate of lower than the official rate of interest; or”;

- (d) deur in subparagraaf (1)(b) die woorde na subitem (v) deur die volgende woorde te vervang:

“as wat nie ingevolge artikel 10C vrygestel is nie of nie tevore aan die belastingpligtige toegestaan is nie as ’n aftrekking ingevolge hierdie Bylae by die bepaling van enige bedrag wat by daardie belastingpligtige se bruto inkomste ingesluit moet word.”; en 5

- (e) deur subparagraaf (3) deur die volgende subparagraaf te vervang:

“(3) By die toepassing van hierdie paragraaf word die afkoopwaarde van ’n assuransiepolis wat deur enige pensioenfonds, pensioenbewaringsfonds, voorsorgs fonds, voorsorgbewaringsfonds of uittreding-annuïteitsfonds aan die belastingpligtige gesedeer of op ander wyse oorgedra word en deur die **[belastingpligtige] persoon** aan enige ander sodanige fonds gesedeer of op ander wyse oorgedra word, of enige bedrag deur die **[belastingpligtige] persoon** by die laasgenoemde fonds inbetaal in plaas van of verteenwoordigend van sodanige afkoopwaarde of ’n gedeelte daarvan, word geag ’n bedrag te wees wat deur die eersgenoemde fonds by die laasgenoemde fonds ten gunste van die **[belastingpligtige] persoon** inbetaal word.”. 10 15

(2) Paragraawe (a), (b), (c) en (e) van subartikel (1) word geag op 1 Maart 2012 in werking te getree het en is van toepassing ten opsigte van bedrae verskuldig en betaalbaar op of na daardie datum. 20

(3) Paragraaf (d) van subartikel (1) tree op 1 Maart 2014 in werking en is van toepassing ten opsigte van bedrae ontvang of toegeval op of na daardie datum.

**Wysiging van paragraaf 2 van Sewende Bylae by Wet 58 van 1962, soos ingevoeg deur artikel 46 van Wet 121 van 1984 en gewysig deur artikel 27 van Wet 96 van 1985, artikel 56 van Wet 101 van 1990, artikel 49 van Wet 28 van 1997, artikel 54 van Wet 30 van 1998, artikel 50 van Wet 32 van 2004, artikel 55 van Wet 31 van 2007, artikel 64 van Wet 17 van 2009 en artikel 102 van Wet 24 van 2011** 25

**100.** (1) Paragraaf 2 van die Sewende Bylae by die Inkomstebelastingwet, 1962, word hierby gewysig— 30

- (a) deur subparagraaf (f) deur die volgende subparagraaf te vervang:

“(f) ’n lening (behalwe ’n lening vir doeleindes van die betaling deur die werknemer van enige vergoeding ten opsigte van enige kwalifiserende ekwiteitsaandeel in artikel 8B bedoel ten einde aan die minimum vereistes van die Maatskappywet, 1973 (Wet No. 61 van 1973), te voldoen of vir die betaling van enige **[seëlregte of] belasting op [sertifikaatlose aandele] oordrag van sekuriteite** ten opsigte van daardie aandeel, of ’n lening ten opsigte waarvan ’n subsidie betaalbaar is soos in subparagraaf (gA) beoog) aan die werknemer verleen is, hetsy deur die werkgewer of deur ’n ander persoon volgens ’n ooreenkoms met die werkgewer of ’n verwante inrigting met betrekking tot die werkgewer, en òf geen rente deur die werknemer op daardie lening betaalbaar is nie òf rente daarop teen ’n koers laer as die amptelike rentekoers deur hom betaalbaar is; of”;

- (b) deur subparagraaf (f) deur die volgende subparagraaf te vervang:

“(f) ’n lening (behalwe ’n lening vir doeleindes van die betaling deur die werknemer van enige vergoeding ten opsigte van enige kwalifiserende ekwiteitsaandeel in artikel 8B bedoel ten einde aan die minimum vereistes van die Maatskappywet, **[1973 (Wet No. 61 van 1973)] 2008 (Wet No. 71 van 2008)**, te voldoen of vir die betaling van enige belasting op oordrag van sekuriteite ten opsigte van daardie aandeel, of ’n lening ten opsigte waarvan ’n subsidie betaalbaar is soos in subparagraaf (gA) beoog) aan die werknemer verleen is, hetsy deur die werkgewer of deur ’n ander persoon volgens ’n ooreenkoms met die werkgewer of ’n verwante inrigting met betrekking tot die werkgewer, en òf geen rente deur die werknemer op daardie lening betaalbaar is nie òf rente daarop teen ’n koers laer as die amptelike rentekoers deur hom betaalbaar is; of”;

(c) by the substitution for subparagraphs (f), (g), (gA) and (h) of the following subparagraphs:

- “(f) a **[loan]** debt (other than a **[loan]** debt for purposes of the payment by the employee of any consideration in respect of any qualifying equity share contemplated in section 8B to comply with the minimum requirements of the Companies Act, 2008 (Act No. 71 of 2008), or the payment of any securities transfer tax payable in respect of that share, or a **[loan]** debt in respect of which a subsidy is payable as contemplated in subparagraph (gA)) has been **[granted to]** incurred by the employee, whether **[by]** in favour of the employer or **[by]** in favour of any other person by arrangement with the employer or any associated institution in relation to the employer, and either—
- (i) no interest is payable by the employee **[on]** in respect of such **[loan]** debt; or
  - (ii) interest is payable by **[him thereon]** the employee in respect thereof at a rate of lower than the official rate of interest;
- (g) the employer has paid any subsidy in respect of the amount of interest or capital repayments payable by the employee in terms of any **[loan]** debt; or
- (gA) the employer has, in respect of any **[loan granted to]** debt owed by the employee **[by]** to any lender, paid to such lender any subsidy, being an amount which, together with any interest payable by the employee **[on such loan]** in respect of that debt, exceeds the amount of the interest which, if calculated at the official rate of interest, would have been payable **[on such loan]** in respect of that debt; or
- (h) the employer has, whether directly or indirectly, paid any **[amount]** debt owing by the employee to any third person (other than an amount in respect of which item (i) or (j) applies), without requiring the employee to reimburse the employer for the amount paid or the employer has released the employee from an obligation to pay any **[amount]** debt owing by the employee to the employer: Provided that where any debt owing by the employee to the employer has been extinguished by prescription the employer shall be deemed to have released the employee from his or her obligation to pay the amount of such debt if the employer could have recovered the **[amount]** debt owing or caused the running of the prescription to be interrupted, unless it is shown to the satisfaction of the Commissioner that the employer’s failure to recover the **[amount]** debt owing or to cause the running of the prescription to be interrupted was not due to any intention of the employer to confer a benefit on the employee; or”;

(d) by the addition to subparagraph (k) of the following proviso:

“: Provided that this paragraph shall not apply in respect of an insurance policy that relates to an event arising solely out of and in the course of employment of the employee”.

(2) Paragraph (a) of subsection (1) is deemed to have come into operation on 1 July 2008.

(3) Paragraph (b) of subsection (1) is deemed to have come into operation on 1 January 2011.

(4) Paragraph (c) of subsection (1) comes into operation on 1 January 2013.

(5) Paragraph (d) of subsection (1) comes into operation on 1 March 2013 and applies in respect of payments made during years of assessment commencing on or after that date.

(c) deur subparagrafe (f), (g), (gA) en (h) deur die volgende subparagrafe te vervang:

- “(f) ’n **[lening]** skuld (behalwe ’n **[lening]** skuld vir doeleindes van die betaling deur die werknemer van enige vergoeding ten opsigte van enige kwalifiserende ekwiteitsaandeel in artikel 8B bedoel ten einde aan die minimum vereistes van die Maatskappywet, 2008 (Wet No. 71 van 2008), te voldoen of vir die betaling van enige belasting op oordrag van sekuriteite ten opsigte van daardie aandeel, of ’n **[lening]** skuld ten opsigte waarvan ’n subsidie betaalbaar is soos in subparagraaf (gA) beoog) **[aan]** deur die werknemer **[verleen]** aangegaan is, hetsy **[deur]** ten behoeve van die werkgewer of **[deur]** ten behoeve van ’n ander persoon volgens ’n ooreenkoms met die werkgewer of ’n verwante inrigting met betrekking tot die werkgewer, en òf—
- (i) geen rente deur die werknemer **[op]** ten opsigte van daardie **[lening]** skuld betaalbaar is nie; òf
- (ii) rente **[daarop]** ten opsigte daarvan teen ’n koers laer as die amptelike rentekoers deur **[hom]** die werknemer betaalbaar is; of
- (g) die werkgewer ’n subsidie betaal het ten opsigte van die rentebedrae of kapitaal terugbetalings wat ingevolge ’n **[lening]** skuld deur die werknemer betaalbaar; of
- (gA) die werkgewer ten opsigte van ’n **[lening]** skuld wat **[deur]** aan ’n uitlener **[aan]** deur die werknemer **[toegestaan]** verskuldig is, ’n subsidie aan bedoelde uitlener betaal het, synde ’n bedrag wat tesame met enige rente wat deur die werknemer op **[bedoelde lening]** ten opsigte van daardie skuld betaalbaar is, meer is as die bedrag aan rente wat, indien dit teen die amptelike rentekoers bereken was, op **[bedoelde lening]** ten opsigte van daardie skuld betaalbaar sou gewees het; of
- (h) die werkgewer ’n **[bedrag]** skuld betaal het, hetsy regstreeks of onregstreeks wat deur die werknemer aan ’n derde party verskuldig is (behalwe ’n bedrag ten opsigte waarvan item (i) of (j) van toepassing is), sonder om te vereis dat die werknemer die werkgewer vir die betaalde bedrag moet vergoed, of die werkgewer die werknemer van ’n verpligting om ’n **[bedrag]** skuld verskuldig deur die werknemer aan die werkgewer te betaal, onthef het: Met dien verstande dat waar ’n skuld deur die werknemer aan die werkgewer verskuldig, by verjaring uitgewis is, die werkgewer geag word die werknemer van sy of haar verpligting om die bedrag van bedoelde skuld te betaal, te onthef het indien die werkgewer die **[bedrag]** skuld verskuldig kon verhaal het of die loop van die verjaring kon laat stuit het, tensy daar tot oortuiging van die Kommissaris bewys word dat die werkgewer se versuim om die verskuldigde **[bedrag]** skuld te verhaal of om die loop van die verjaring te laat stuit nie te wyte was aan ’n bedoeling van die werkgewer om ’n voordeel aan die werknemer te verleen nie; of”;
- en

(d) deur tot subparagraaf (k) die volgende voorbehoudsbepaling by te voeg:

“: Met dien verstande dat hierdie paragraaf nie van toepassing is nie ten opsigte van ’n versekeringspolis wat betrekking het op ’n gebeurtenis wat voortspruit slegs uit en in die loop van indiensneming van die werknemer”.

(2) Paragraaf (a) van subartikel (1) word geag op 1 Julie 2008 in werking te getree het.

(3) Paragraaf (b) van subartikel (1) word geag op 1 Januarie 2011 in werking te getree het.

(4) Paragraaf (c) van subartikel (1) tree op 1 Januarie 2013 in werking.

(5) Paragraaf (d) van subartikel (1) tree op 1 Maart 2013 in werking en is van toepassing ten opsigte van betalings gemaak gedurende jare van aanslag wat op of na daardie datum begin.

**Amendment of paragraph 7 of Seventh Schedule to Act 58 of 1962, as added by section 46 of Act 121 of 1984 and amended by section 30 of Act 96 of 1985, section 10 of Act 108 of 1986, Government Notice 956 of 11 May 1988, section 44 of Act 90 of 1988, Government Notice R.715 of 14 April 1989, section 25 of Act 70 of 1989, Government Notice R.764 of 29 March 1990, section 58 of Act 101 of 1990, section 50 of Act 129 of 1991, section 36 of Act 141 of 1992, section 32 of Act 21 of 1994, section 47 of Act 21 of 1995, section 50 of Act 28 of 1997, section 45 of Act 53 of 1999 and section 56 of Act 31 of 2005, section 91 of Act 7 of 2010 and section 103 of Act 24 of 2011**

**101.** (1) Paragraph 7 of the Seventh Schedule to the Income Tax Act, 1962, is hereby amended—

- (a) by the substitution in subparagraph (1)(b) for subitems (i) and (ii) of the following subitems:
  - “(i) is held by the employer under a lease (other than an ‘operating lease’ as defined in section 23A(1)); or
  - (ii) was held by the employer under a lease (other than an ‘operating lease’ as defined in section 23A(1)) and the ownership thereof was acquired by **[him]** the employer on the termination of the lease.”;
- (b) by the substitution in subparagraph (1) for paragraph (a) of the proviso of the following paragraph:
  - “(a) where an employee has been granted the right of use of such motor vehicle as contemplated in subparagraph (2) (other than a motor vehicle acquired under an operating lease as defined in section 23A(1)) and such vehicle, or the right of use thereof, was acquired by the employer not less than 12 months before the date on which the employee was granted such right of use, there shall be deducted from the amount determined under the foregoing provisions of this subparagraph a depreciation allowance calculated according to the reducing balance method at the rate of 15 per cent for each completed period of 12 months from the date on which the employer first obtained such vehicle or the right of use thereof to the date on which the said employee was first granted the right of use thereof; and”;
- (c) by the substitution in subparagraph (4) for items (a) and (b) of the following items:
  - “(a) as respects each such month~~],]~~
    - (i) be an amount equal to 3,5 per cent of the determined value of such motor vehicle: Provided that where the motor vehicle is the subject of a maintenance plan at the time the employer acquired the motor vehicle or the right of use thereof, that amount shall be reduced to an amount equal to 3,25 per cent of the determined value of the motor vehicle; or
    - (ii) where such vehicle is acquired by the employer under an ‘operating lease’ as defined in section 23A(1) concluded by parties transacting at arm’s length and that are not connected persons in relation to each other, be—
      - (aa) the actual cost to the employer incurred under that operating lease; and
      - (bb) the cost of fuel in respect of that vehicle; and
  - (b) as respects any such part of a month, be an amount which bears to the appropriate amount determined in accordance with item (a)(i) or (ii) for a month the same ratio as the number of days in such part of a month bears to the number of days in the month in which such part falls.”; and

Wysiging van paragraaf 7 van Sewende Bylae by Wet 58 van 1962, soos ingevoeg deur artikel 46 van Wet 121 van 1984 en gewysig deur artikel 30 van Wet 96 van 1985, artikel 10 van Wet 108 van 1986, Goewermentskennisgewing 956 van 11 Mei 1988, artikel 44 van Wet 90 van 1988, Goewermentskennisgewing R.715 van 14 April 1989, artikel 25 van Wet 70 van 1989, Goewermentskennisgewing R.764 van 29 Maart 1990, artikel 58 van Wet 101 van 1990, artikel 50 van Wet 129 van 1991, artikel 36 van Wet 141 van 1992, artikel 32 van Wet 21 van 1994, artikel 47 van Wet 21 van 1995, artikel 50 van Wet 28 van 1997, artikel 45 van Wet 53 van 1999 en artikel 56 van Wet 31 van 2005, artikel 91 van Wet 7 van 2010 en artikel 103 van Wet 24 van 2011

101. (1) Paragraaf 7 van die Sewende Bylae by die Inkomstebelastingwet, 1962, word hierby gewysig—

- (a) deur in subparagraaf (1)(b) subiteme (i) en (ii) deur die volgende subiteme te vervang:
- “(i) ingevolge ’n huurooreenkoms (buiten ’n bedryfshuur soos omskryf in artikel 23A(1)) deur die werkgewer gehou is; of
  - (ii) ingevolge ’n huurooreenkoms (buiten ’n bedryfshuur soos omskryf in artikel 23A(1)) deur die werkgewer gehou was en eiendomsreg daarvan na afloop van die huurooreenkoms deur [hom] die werkgewer verkry is;”;
- (b) deur in subparagraaf (1) paragraaf (a) van die voorbehoudsbepaling deur die volgende paragraaf te vervang:
- “(a) waar die reg aan ’n werknemer verleen is om bedoelde motorvoertuig te gebruik soos in subparagraaf (2) beoog (buiten ’n motorvoertuig verkry ingevolge ’n bedryfshuur soos omskryf in artikel 23A(1) en bedoelde voertuig, of die reg van gebruik daarvan, nie minder nie as 12 maande voor die datum waarop bedoelde reg aan die werknemer verleen is, deur die werkgewer verkry is, daarvan die bedrag wat ingevolge die voorafgaande bepalings van hierdie subparagraaf bepaal is, ’n waardeverminderingstoelae afgetrek word bereken volgens die verminderdesaldometode teen die koers van 15 persent vir elke volle tydperk van 12 maande vanaf die datum waarop die werkgewer vir die eerste maal bedoelde voertuig of die reg van gebruik daarvan verkry het tot die datum waarop die reg van gebruik daarvan vir die eerste maal aan genoemde werknemer verleen is; en”;
- (c) deur in subparagraaf (4) items (a) en (b) deur die volgende items te vervang:
- “(a) met betrekking tot elke bedoelde maand[,]—
- (i) ’n bedrag gelyk aan 3,5 persent van die vasgestelde waarde van bedoelde voertuig: Met dien verstande dat waar die motorvoertuig die onderwerp is van ’n onderhoudsplan op die tydstip dat die werkgewer die motorvoertuig of die reg van gebruik daarvan verkry het, daardie bedrag tot ’n bedrag gelyk aan 3,25 persent van die vasgestelde waarde van die motorvoertuig verminder word; of
  - (ii) waar sodanige voertuig verkry word deur die werkgewer ingevolge ’n ‘bedryfshuur’ soos omskryf in artikel 23A(1) aangegaan deur partye wat op uiterste voorwaardes beding en wat nie verbonde persone met betrekking tot mekaar is nie—
    - (aa) die werklike koste vir die werkgewer aangegaan ingevolge daardie bedryfshuur; en
    - (bb) die koste van brandstof ten opsigte van daardie voertuig; en
- (b) met betrekking tot enige bedoelde gedeelte van ’n maand, ’n bedrag wat in dieselfde verhouding tot die toepaslike bedrag vasgestel ooreenkomstig item (a)(i) of (ii) vir ’n maand staan as die verhouding waarin die aantal dae in bedoelde gedeelte van ’n maand tot die aantal dae in die maand waarin bedoelde gedeelte val, staan.”; en

- (d) by the substitution in subparagraph (8) for the words preceding item (a) of the following words:

“Where it is proved to the satisfaction of the Commissioner that accurate records of distances travelled for private purposes in such vehicle (other than a vehicle acquired as contemplated in subparagraph (4)(a)(ii)) are kept and the employee bears—”

- (2) Subsection (1) comes into operation on 1 March 2013 and applies in respect of years of assessment commencing on or after that date.

**Amendment of paragraph 1 of Eighth Schedule to Act 58 of 1962, as amended by section 65 of Act 60 of 2001, section 63 of Act 74 of 2002, section 90 of Act 45 of 2003, section 25 of Act 16 of 2004, section 51 of Act 32 of 2004, section 63 of Act 31 of 2005 and section 49 of Act 3 of 2008**

- 102.** (1) Paragraph 1 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended by the substitution for the definition of “**value shifting arrangement**” of the following definition:

“**‘value shifting arrangement’** means an arrangement by which a person retains an interest in a [**company,**] trust or partnership, but following a change in the rights or entitlements of the interests in that [**company,**] trust or partnership (other than as a result of a disposal at market value as determined before the application of paragraph 38), the market value of the interest of that person decreases and—  
 (a) the value of the interest of a connected person in relation to that person held directly or indirectly in that [**company,**] trust or partnership increases; or  
 (b) a connected person in relation to that person acquires a direct or indirect interest in that [**company,**] trust or partnership.”

- (2) Subsection (1) comes into operation on 1 January 2014 and applies in respect of disposals made on or after that date.

**Amendment of paragraph 3 of Eighth Schedule to Act 58 of 1962, as inserted by section 38 of Act 5 of 2001 and amended by section 67 of Act 60 of 2001 and section 52 of Act 32 of 2004**

- 103.** (1) Paragraph 3 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended by the substitution in subparagraph (b) for item (ii) of the following item:

“(ii) so much of the base cost of that asset that has been taken into account in determining the capital gain or capital loss in respect of that disposal as has been recovered or recouped during the current year of assessment, otherwise than by way of any reduction of any debt owed by that person, and which has not been taken into account in the redetermination of the capital gain or capital loss in terms of paragraph 25(2); or”

- (2) Subsection (1) comes into operation on 1 January 2013 and applies in respect of years of assessment commencing on or after that date.

**Amendment of paragraph 8 of Eighth Schedule to Act 58 of 1962, as substituted by section 65 of Act 31 of 2005**

- 104.** (1) Paragraph 8 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended—

- (a) by the substitution for subparagraph (b) of the following subparagraph:  
 “(b) where paragraph 64B(3) becomes applicable during that year of assessment, the amount of the capital gain which was disregarded in terms of paragraph 64B(2) or (2A) during that year or any previous year, as contemplated in paragraph 64B(3).”; and  
 (b) by the substitution for subparagraph (b) of the following paragraph:  
 “(b) where paragraph 64B(3) becomes applicable during that year of assessment, the amount of the capital gain which was disregarded in terms of paragraph 64B[(2)](1) or [(2A)](2) during that year or any previous year, as contemplated in paragraph 64B(3).”



- (d) deur in subparagraaf (8) die woorde wat item (a) voorafgaan deur die volgende woorde te vervang:

“Waar daar tot oortuiging van die Kommissaris bewys word dat akkurate aantekeninge gehou word van afstande wat vir private doeleindes in bedoelde voertuig gereis word (buiten ’n voertuig verkry soos beoog in subparagraaf (4)(a)(ii)) en die werknemer—”.

- (2) Subartikel (1) tree op 1 Maart 2013 in werking en is van toepassing ten opsigte van jare van aanslag wat op of na daardie datum begin.

**Wysiging van paragraaf 1 van Agtste Bylae by Wet 58 van 1962, soos gewysig deur artikel 65 van Wet 60 van 2001, artikel 63 van Wet 74 van 2002, artikel 90 van Wet 45 van 2003, artikel 25 van Wet 16 van 2004, artikel 51 van Wet 32 van 2004, artikel 63 van Wet 31 van 2005 en artikel 49 van Wet 3 van 2008**

102. (1) Paragraaf 1 van die Agtste Bylae by die Inkomstebelastingwet, 1962, word hierby gewysig deur die omskrywing van “**waardeverskuiwingsreëling**” deur die volgende omskrywing te vervang—

“**‘waardeverskuiwingsreëling’** ’n reëling waarvolgens ’n persoon ’n belang behou in ’n [**maatskappy,**] trust of vennootskap, maar wat na ’n verandering in die regte of aansprake van die belange van daardie [**maatskappy,**] trust of vennootskap (anders as gevolg van ’n beskikking teen markwaarde soos vasgestel voor die toepassing van paragraaf 38), die markwaarde van die belang van daardie persoon afneem en —

(a) die waarde van die belang van ’n verbonde persoon met betrekking tot daardie persoon direk of indirek gehou in daardie [**maatskappy,**] trust of vennootskap toeneem; of

(b) ’n verbonde persoon met betrekking tot daardie persoon ’n direkte of indirekte belang in daardie [**maatskappy,**] trust of vennootskap verkry;”.

- (2) Subartikel (1) tree op 1 Januarie 2014 in werking en is van toepassing ten opsigte van beskikkings op of na daardie datum gemaak.

**Wysiging van paragraaf 3 van Agtste Bylae by Wet 58 van 1962, soos ingevoeg deur artikel 38 van Wet 5 van 2001 en gewysig deur artikel 67 van Wet 60 van 2001 en artikel 52 van Wet 32 van 2004**

103. (1) Paragraaf 3 van die Agtste Bylae by die Inkomstebelastingwet, 1962, word hierby gewysig deur in subparagraaf (b) item (ii) deur die volgende item te vervang—

“(ii) soveel van die basiskoste van daardie bate wat in berekening gebring is by die vasstelling van die kapitaalwins of kapitaalverlies ten opsigte van daardie beskikking, as wat herwin of verhaal is gedurende die huidige jaar van aanslag, andersins as by wyse van enige vermindering van enige skuld verskuldig deur daardie persoon, en wat nie in berekening gebring is in die herberekening van die kapitaalwins of kapitaalverlies ingevolge paragraaf 25(2) nie; of”.

- (2) Subartikel (1) tree op 1 Januarie 2013 in werking en is van toepassing ten opsigte van jare van aanslag wat op of na daardie datum begin.

**Wysiging van paragraaf 8 van Agtste Bylae by Wet 58 van 1962, soos vervang deur artikel 65 van Wet 31 van 2005**

104. (1) Paragraaf 8 van die Agtste Bylae by die Inkomstebelastingwet, 1962, word hierby gewysig—

(a) deur subparagraaf (b) deur die volgende paragraaf te vervang:

“(b) waar paragraaf 64B(3) gedurende daardie jaar van aanslag van toepassing word, die bedrag van die kapitaalwins wat kragtens paragraaf 64B(2) of (2A) gedurende daardie jaar of enige vorige jaar verontagsaam is, soos in paragraaf 64B(3) bedoel.”; en

(b) deur subparagraaf (b) deur die volgende paragraaf te vervang:

“(b) waar paragraaf 64B(3) gedurende daardie jaar van aanslag van toepassing word, die bedrag van die kapitaalwins wat kragtens paragraaf 64B[(2)](1) of [(2A)](2) gedurende daardie jaar of enige vorige jaar verontagsaam is, soos in paragraaf 64B(3) bedoel.”.

(2) Paragraph (a) of subsection (1) is deemed to have come into operation on 1 January 2012 and applies in respect of disposals made on or after that date.

(3) Paragraph (b) of subsection (1) comes into operation on 1 January 2013 and applies in respect of disposals made on or after that date.

**Amendment of paragraph 10 of Eighth Schedule to Act 58 of 1962, as amended by section 66 of Act 74 of 2002 and section 9 of Act 13 of 2012** 5

**105.** (1) Paragraph 10 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended by the substitution for subparagraph (b) of the following subparagraph:

“(b) in the case of an insurer, in respect of its—  
(i) individual policyholder fund, [25] 33,3 per cent; [and] 10  
(ii) untaxed policyholder fund, 0 per cent; and  
(iii) company policyholder fund, 66,6 per cent; or”.

(2) Subsection (1) is—

(a) in respect of deemed disposals made by virtue of section 29B of the Income Tax Act, 1962, deemed to have come into operation on 29 February 2012 and applies in respect of those disposals; and 15

(b) in respect of any disposals other than deemed disposals contemplated in paragraph (a), deemed to have come into operation on 1 March 2012 and applies in respect of those disposals that are made on or after that date.

**Amendment of paragraph 11 of Eighth Schedule to Act 58 of 1962, as amended by section 71 of Act 60 of 2001, section 67 of Act 74 of 2002, section 92 of Act 45 of 2003, section 55 of Act 32 of 2004, section 66 of Act 31 of 2005, section 44 of Act 20 of 2006 and section 74 of Act 60 of 2008** 20

**106.** (1) Paragraph 11 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended— 25

(a) by the substitution in subparagraph (1) for item (g) of the following item:  
“(g) the decrease in value of a person’s interest in a [company,] trust or partnership as a result of a value shifting arrangement.”;

(b) by the substitution in subparagraph (2) for item (b) of the following item:  
“(b) by a company in respect of— 30  
(i) the issue or cancellation of a share or member’s interest in the company[, or by a company in respect of]; or  
(ii) the granting of an option to acquire a share[,] or member’s interest in or [debenture in] certificate acknowledging or creating a debt owed by that company;”;

(c) by the substitution in subparagraph (2) for item (d) of the following item:  
“(d) by a person in respect of the issue of any [bond, debenture, note or other borrowing of money or obtaining of credit from another] debt by or to that person;” 35

(2) Paragraph (a) of subsection (1) comes into operation on 1 January 2014 and applies in respect of disposals made on or after that date. 40

(3) Paragraphs (b) and (c) of subsection (1) come into operation on 1 January 2013.

**Amendment of paragraph 12 of Eighth Schedule to Act 58 of 1962, as amended by section 72 of Act 60 of 2001, section 68 of Act 74 of 2002, section 93 of Act 45 of 2003, section 56 of Act 32 of 2004, section 67 of Act 31 of 2005, section 71 of Act 35 of 2007, section 50 of Act 3 of 2008, section 75 of Act 60 of 2008, section 94 of Act 7 of 2010 and section 108 of Act 24 of 2011** 45

**107.** (1) Paragraph 12 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended—

(a) by the substitution in subparagraph (2)(a) for the words preceding subitem (i) of the following words: 50

“a person that commences to be a resident or a [controlled foreign] person that is a company that commences or ceases to be a [resident]

(2) Paragraaf (a) van subartikel (1) word geag op 1 Januarie 2012 in werking te getree het en is van toepassing ten opsigte van beskikkings op of na daardie datum gemaak.

(3) Paragraaf (b) van subartikel (1) tree op 1 Januarie 2013 in werking en is van toepassing ten opsigte van beskikkings op of na daardie datum gemaak.

**Wysiging van paragraaf 10 van Agtste Bylae by Wet 58 van 1962, soos gewysig deur artikel 66 van Wet 74 van 2002 en artikel 9 van Wet 13 van 2012** 5

105. (1) Paragraaf 10 van die Agtste Bylae by die Inkomstebelastingwet, 1962, word hierby gewysig deur subparagraaf (b) deur die volgende subparagraaf te vervang:

- “(b) in die geval van ’n versekeraar, ten opsigte van—
- (i) sy individuele polishouersfonds, [25] 33,3 persent; [en] 10
  - (ii) sy onbelaste polishouersfonds, 0 persent; en
  - (iii) sy maatskappypolishouersfonds, 66,6 persent; of”.

(2) Subartikel (1) word—

- (a) ten opsigte van geagte beskikkings gemaak uit hoofde van artikel 29B van die Inkomstebelastingwet, 1962, geag op 29 Februarie 2012 in werking te getree het en is van toepassing ten opsigte van daardie beskikkings; en 15
- (b) ten opsigte van enige ander beskikkings as geagte beskikkings beoog in paragraaf (a) geag op 1 Maart 2012 in werking te getree het en is van toepassing ten opsigte van daardie beskikkings wat op of na daardie datum gemaak word. 20

**Wysiging van paragraaf 11 van Agtste Bylae by Wet 58 van 1962, soos gewysig deur artikel 71 van Wet 60 van 2001, artikel 67 van Wet 74 van 2002, artikel 92 van Wet 45 van 2003, artikel 55 van Wet 32 van 2004, artikel 66 van Wet 31 van 2005, artikel 44 van Wet 20 van 2006 en artikel 74 van Wet 60 van 2008**

106. (1) Paragraaf 11 van die Agtste Bylae by die Inkomstebelastingwet, 1962, word hierby gewysig 25

(a) deur in subparagraaf (1) item (g) deur die volgende item te vervang:

“(g) die afname in waarde van ’n persoon se belang in ’n [maatskappy,] trust of vennootskap as gevolg van ’n waardeverskuiwingsreëling.”; en 30

(b) deur in subparagraaf (2) item (b) deur die volgende item te vervang:

“(b) deur ’n maatskappy ten opsigte van—

- (i) die uitreiking of kansellasië van ’n aandeel of ledebelang in die maatskappy [of deur ’n maatskappy ten opsigte van]; of 35
- (ii) die verlening van ’n opsie om ’n aandeel[, of ledebelang in of [skuldbrief in] sertifikaat wat ’n skuld verskuldig deur daardie maatskappy erken of skeep, te verkry;”]; en

(c) deur in subparagraaf (2) item (d) deur die volgende item te vervang:

“(d) deur ’n persoon ten opsigte van die uitreiking van enige [verband, skuldbrief, nota of ander leen van geld of die verkryging van krediet van ’n ander] skuld deur of aan daardie persoon;”.

(2) Paragraaf (a) van subartikel (1) tree op 1 Januarie 2014 in werking en is van toepassing ten opsigte van beskikkings op of na daardie datum gemaak.

(3) Paragraaf (b) en (c) van subartikel (1) tree op 1 Januarie 2013 in werking. 45

**Wysiging van paragraaf 12 van Agtste Bylae by Wet 58 van 1962, soos gewysig deur artikel 72 van Wet 60 van 2001, artikel 68 van Wet 74 van 2002, artikel 93 van Wet 45 van 2003, artikel 56 van Wet 32 van 2004, artikel 67 van Wet 31 van 2005, artikel 71 van Wet 35 van 2007, artikel 50 van Wet 3 van 2008, artikel 75 van Wet 60 van 2008, artikel 94 van Wet 7 van 2010 en artikel 108 van Wet 24 van 2011** 50

107. (1) Paragraaf 12 van die Agtste Bylae by die Inkomstebelastingwet, 1962, word hierby gewysig—

(a) deur in subparagraaf (2)(a) die woorde wat subitem (i) voorafgaan deur die volgende woorde te vervang:

“’n persoon wat begin om ’n inwoner te wees of ’n [beheerde buitelandse] persoon wat ’n maatskappy is wat begin of ophou om ’n

controlled foreign company, in respect of all assets of that person other than—”;

(b) by the substitution in subparagraph (2) for item (a) of the following item:

“(a) a person—

(i) that commences to be a resident; 5

(ii) [or a person] that is a foreign company that commences [or ceases] to be a controlled foreign company; or

(iii) that is a controlled foreign company in relation to any resident that ceases to be a controlled foreign company as a result of becoming a resident, 10

in respect of all assets of that person other than—

[(i)](aa) assets in the Republic listed in paragraph 2(1)(b)(i) and (ii);

[(iv)](bb) any right to acquire any marketable security contemplated in section 8A;” and

(c) by the deletion of subparagraph (5). 15

(2) Paragraph (a) of subsection (1) is deemed to have come into operation on 1 April 2012 and applies in respect of disposals made on or after that date.

(3) Paragraph (b) of subsection (1) is deemed to have come into operation on 8 May 2012 and applies in respect of disposals made on or after that date.

(4) Paragraph (c) of subsection (1) comes into operation on 1 January 2013 and applies in respect of years of assessment commencing on or after that date. 20

#### Insertion of paragraph 12A in Eighth Schedule to Act 58 of 1962

108. (1) The Eighth Schedule to the Income Tax Act, 1962, is hereby amended by the insertion after paragraph 12 of the following paragraph:

#### “Reduction or cancellation of debt 25

12A. (1) For the purposes of this section—

‘allowance asset’ means a capital asset in respect of which a deduction or allowance is allowable in terms of this Act for purposes other than the determination of any capital gain or capital loss;

‘capital asset’ means an asset that is not trading stock; 30

‘debt’ does not include a tax debt as defined in section 1 of the Tax Administration Act;

‘reduction amount’, in relation to a debt owed by a person, means any amount by which that debt is reduced less any amount applied by that person as consideration for that reduction. 35

(2) Subject to subparagraph (6), this paragraph applies where a debt that is owed by a person is reduced by any amount and—

(a) the amount of that debt was used, directly or indirectly, to fund any expenditure—

(i) other than expenditure in respect of which a deduction or allowance was granted in terms of this Act; or 40

(ii) incurred in the acquisition, creation or improvement of an allowance asset; and

(b) the amount of that reduction exceeds any amount applied by that person as consideration for that reduction. 45

(3) Where—

(a) a debt owed by a person is reduced as contemplated in subparagraph (2); and

(b) the amount of that debt was used as contemplated in item (a) of that subparagraph to fund expenditure incurred in the acquisition, creation or improvement of an asset that is held by that person at the time of the reduction of the debt, 50

the amount of expenditure so incurred in respect of that asset must, for the purposes of paragraph 20, be reduced by the reduction amount in respect of that debt. 55

(4) Where—

[inwoner] beheerde buitelandse maatskappy te wees, ten opsigte van alle bates van daardie persoon behalwe—”;

(b) deur in subparagraaf (2) item (a) deur die volgende item te vervang:

“(a) ’n persoon—

(i) wat begin om ’n inwoner te wees; 5

(ii) [of ’n persoon] wat ’n buitelandse maatskappy is wat begin [of ophou] om ’n beheerde buitelandse maatskappy te wees; of

(iii) wat ’n beheerde buitelandse maatskappy is met betrekking tot enige inwoner wat ophou om ’n beheerde buitelandse maatskappy te wees as gevolg daarvan dat dit ’n inwoner word, 10

ten opsigte van alle bates van daardie persoon behalwe—

[(i)](aa) bates in die Republiek in paragraaf 2(1)(b)(i) en (ii) gelys;

[(iv)](bb) enige reg om ’n handelseffek in artikel 8A beoog, te verkry;”;

en

(c) deur subparagraaf (5) te skrap. 15

(2) Paragraaf (a) van subartikel (1) word geag op 1 April 2012 in werking te getree het en is van toepassing ten opsigte van beskikkings op of na daardie datum gemaak.

(3) Paragraaf (b) van subartikel (1) word geag op 8 Mei 2012 in werking te getree het en is van toepassing ten opsigte van beskikkings op of na daardie datum gemaak.

(4) Paragraaf (c) van subartikel (1) tree op 1 Januarie 2013 in werking en is van toepassing ten opsigte van jare van aanslag wat op of na daardie datum begin. 20

#### **Invoeging van paragraaf 12A in Agtste Bylae by Wet 58 van 1962**

108. (1) Die Agtste Bylae by die Inkomstebelastingwet, 1962, word hierby gewysig deur die volgende paragraaf na paragraaf 12 in te voeg:

#### **“Vermindering of kansellasië van skuld 25**

12A. (1) By die toepassing van hierdie artikel beteken—

‘afskryfbare bate’ ’n kapitaalbate ten opsigte waarvan ’n aftrekking of toelaag toelaatbaar is ingevolge hierdie Wet vir doeleindes buiten die bepaling van enige kapitaalwins of kapitaalverlies; 30

‘kapitaalbate’ ’n bate wat nie handelsvoorraad is nie;

‘skuld’ nie ook nie ’n belastingskuld soos omskryf in artikel 1 van die Wet op Belastingadministrasie;

‘verminderingsbedrag’, met betrekking tot ’n skuld verskuldig deur ’n persoon, enige bedrag waarmee daardie skuld verminder word minus enige bedrag toegepas deur daardie persoon as vergoeding vir daardie vermindering. 35

(2) Behoudens subparagraaf (6) is hierdie paragraaf van toepassing waar ’n skuld wat verskuldig is deur ’n persoon verminder word deur enige bedrag en—

(a) die bedrag van daardie skuld regstreeks of onregstreeks gebruik is om enige uitgawes te befonds— 40

(i) buiten uitgawes ten opsigte waarvan ’n aftrekking of toelae ingevolge hierdie Wet toegestaan is; of

(ii) aangegaan in die verkryging, skepping of verbetering van ’n afskryfbare bate; en 45

(b) die bedrag van daardie vermindering enige bedrag toegepas deur daardie persoon as vergoeding vir daardie vermindering oorskry.

(3) Waar—

(a) ’n skuld verskuldig deur ’n persoon verminder word soos beoog in subparagraaf (2); en 50

(b) die bedrag van daardie skuld gebruik is soos beoog in item (a) van daardie subparagraaf om uitgawes aangegaan in die verkryging, skepping of verbetering van ’n bate wat gehou word deur daardie persoon op die tydstip van die vermindering van die skuld te befonds, word die bedrag van uitgawes aldus aangegaan ten opsigte van daardie bate by die toepassing van paragraaf 20 verminder deur die verminderingsbedrag ten opsigte van daardie skuld te verminder. 55

(4) Waar—

- (a) a debt owed by a person is reduced as contemplated in subparagraph (2); and
  - (b) the amount of that debt was used as contemplated in item (a) of that subparagraph to fund—
    - (i) expenditure incurred in the acquisition, creation or improvement of an asset (other than an allowance asset) that is held by that person at the time of the reduction of the debt, and subparagraph (3) has been applied to reduce any expenditure in respect of that asset to the full extent of that expenditure; or
    - (ii) expenditure incurred in the acquisition, creation or improvement of an asset (other than an allowance asset) that is no longer held by that person at the time of the reduction of that debt,  
the reduction amount in respect of that debt, less any amount that has been applied to reduce any amount of expenditure as contemplated in subparagraph (3), must be applied to reduce any assessed capital loss of that person for the year of assessment in which the reduction takes place.
- (5) Where subparagraph (3) or (4) applies in respect of a debt that was used to fund expenditure incurred in respect of a pre-valuation date asset of a person, for the purposes of determining the date of acquisition of that asset and the expenditure incurred in respect of the cost of acquisition, creation or improvement of that asset, that person must be treated as having—
- (a) disposed of that asset at a time immediately before that debt is reduced as contemplated in subparagraph (3)(a) or (4)(a), as the case may be, for an amount equal to the market value of that asset at that time; and
  - (b) immediately reacquired that asset at that time at an expenditure equal to that market value—
    - (i) less any capital gain, and
    - (ii) increased by any capital loss,that would have been determined had the asset been disposed of at market value at that time,  
which expenditure must be treated as an amount of expenditure actually incurred at that time for the purposes of paragraph 20(1)(a).
- (6) This paragraph must not apply to any debt owed by a person—
- (a) that is an heir or legatee of a deceased estate, to the extent that—
    - (i) the debt is owed to that deceased estate;
    - (ii) the debt is reduced by the deceased estate; and
    - (iii) the amount by which the debt is reduced by the deceased estate forms part of the property of the deceased estate for the purposes of the Estate Duty Act, 1955 (Act No. 45 of 1955);
  - (b) to the extent that the debt is reduced by way of—
    - (i) donation as defined in section 55(1); or
    - (ii) any transaction to which section 58 applies;
  - (c) to an employer of that person, to the extent that the debt is reduced in the circumstances contemplated in paragraph 2(h) of the Seventh Schedule;
  - (d) to another person where that person and that other person are companies that form part of the same group of companies as defined in section 41, unless, as part of any transaction, operation or scheme entered into to avoid any tax imposed by this Act—
    - (i) that debt (or any debt issued in substitution for that debt) was acquired directly or indirectly from a person who does not form part of that group of companies; or
    - (ii) that company or that other company became part of that group

- (a) 'n skuld verskuldig deur 'n persoon verminder word soos beoog in subparagraaf (2); en
- (b) die bedrag van daardie skuld gebruik is soos beoog in item (a) van daardie subparagraaf om—
- (i) uitgawes te befonds wat aangegaan is in die verkryging, skepping of verbetering van 'n bate (buiten 'n afskryfbare bate) wat gehou word deur daardie persoon op die tydstip van die vermindering van die skuld, en subparagraaf (3) is toegepas om enige uitgawes ten opsigte van daardie bate te verminder tot die volle bedrag van daardie uitgawes; of
  - (ii) uitgawes te befonds wat aangegaan is in die verkryging, skepping of verbetering van 'n bate (buiten 'n afskryfbare bate) wat nie meer deur daardie persoon gehou word nie op die tydstip van die vermindering van daardie skuld, word die verminderingsbedrag ten opsigte van daardie skuld, minus enige bedrag wat toegepas is om enige bedrag van uitgawes te verminder soos beoog in subparagraaf (3), toegepas om enige aangeslane kapitaalverlies van daardie persoon te verminder vir die jaar van aanslag waarin die vermindering plaasvind.
- (5) Waar subparagraaf (3) of (4) van toepassing is ten opsigte van 'n skuld wat gebruik is om uitgawes te befonds wat aangegaan is ten opsigte van 'n voor-waardasiedatumbate van 'n persoon met die doel om die datum van verkryging van daardie bate te bepaal en die uitgawes aangegaan ten opsigte van die koste van verkryging, skepping of verbetering van daardie bate, word daardie persoon behandel asof—
- (a) die persoon oor daardie bate beskik het op 'n tydstip onmiddellik voor daardie skuld verminder word soos beoog in subparagraaf (3)(a) of (4)(a), na gelang van die geval, vir 'n bedrag gelyk aan die markwaarde van daardie bate op daardie tydstip; en
  - (b) die persoon daardie bate onmiddellik herverkry het op daardie tydstip teen 'n uitgawe gelyk aan daardie markwaarde—
    - (i) minus enige kapitaalwins; en
    - (ii) vermeerder deur enige kapitaalverlies, wat bepaal sou gewees het indien oor die bate beskik is teen markwaarde op daardie tydstip,welke uitgawe behandel word as 'n bedrag van uitgawes werklik aangegaan op daardie tydstip by die toepassing van paragraaf 20(1)(a).
- (6) Hierdie paragraaf is nie van toepassing nie op enige skuld verskuldig deur 'n persoon—
- (a) wat 'n erfgenaam of legataris is van 'n bestorwe boedel, namate—
    - (i) die skuld aan daardie bestorwe boedel verskuldig is;
    - (ii) die skuld verminder word deur die bestorwe boedel; en
    - (iii) die bedrag waarmee die skuld verminder word deur die bestorwe boedel deel uitmaak van die eiendom van die bestorwe boedel by die toepassing van die Boedelbelastingwet, 1955 (Wet No. 45 van 1955);
  - (b) namate die skuld verminder word by wyse van—
    - (i) skenking soos omskryf in artikel 55(1); of
    - (ii) enige transaksie waarop artikel 58 van toepassing is;
  - (c) aan 'n werkgewer van daardie persoon, namate die skuld verminder word in die omstandighede beoog in paragraaf 2(h) van die Sewende Bylae;
  - (d) aan 'n ander persoon waar daardie persoon en daardie ander persoon maatskappye is wat deel uitmaak van dieselfde groep van maatskappye soos omskryf in artikel 41, tensy, as deel van enige transaksie, handeling of skema aangegaan om enige belasting deur hierdie Wet opgelê, te vermy—
    - (i) daardie skuld (of enige skuld uitgereik ter vervanging van daardie skuld) regstreeks of onregstreeks verkry is van 'n persoon wat nie deel van daardie groep van maatskappye uitmaak nie; of
    - (ii) daardie maatskappy of daardie ander maatskappy deel van daardie groep van maatskappye word nadat daardie skuld (of

- of companies after that debt (or any debt issued in substitution for that debt) arose; or
- (e) that is a company, where—
- (i) that debt is reduced in the course, or in anticipation, of the liquidation, winding up, deregistration or final termination of the existence of that company; and
  - (ii) the person to whom the debt is owed is a connected person in relation to that company,
- to the extent that reduction amount in respect of that debt does not, at the time that the debt is reduced, exceed the amount of expenditure contemplated in paragraph 20 incurred in respect of that debt by the connected person: Provided that this subitem must not apply—
- (aa) if—
- (A) the debt was reduced as part of any transaction, operation or scheme entered into to avoid any tax imposed by this Act; and
  - (B) that company became a connected person in relation to the person to whom the debt is owed after the debt (or any debt issued in substitution of that debt) arose; or
- (bb) if that company—
- (A) has not, within 36 months of the date on which the debt is reduced or such further period as the Commissioner may allow, taken the steps contemplated in section 41(4) to liquidate, wind up, deregister or finally terminate its existence;
  - (B) has at any stage withdrawn any step taken to liquidate, wind up deregister or finally terminate its corporate existence; or
  - (C) does anything to invalidate any step contemplated in subparagraph (A), with the result that the company is or will not be liquidated, wound up, deregistered or finally terminate its existence.
- (7) Any tax which becomes payable as a result of the application of paragraph (bb) of the proviso to subparagraph (6)(e) must be recovered from the company and the connected person contemplated in that subparagraph who must be jointly and severally liable for that tax.”

(2) Subsection (1) comes into operation on 1 January 2013 and applies in respect of years of assessment commencing on or after that date.

**Amendment of paragraph 13 of Eighth Schedule to Act 58 of 1962, as amended by section 69 of Act 74 of 2002, section 57 of Act 32 of 2004, section 51 of Act 3 of 2008, section 76 of Act 60 of 2008 and section 68 of Act 17 of 2009**

**109.** (1) Paragraph 13 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended—

- (a) by the substitution in subparagraph (1) for item (f) of the following item:
- “(f) the decrease of a person’s interest in a [company,] trust or partnership as a result of a value shifting arrangement, is the date on which the value of that person’s interest decreases; or”; and
- (b) by the substitution in subparagraph (1)(g) for subitem (ii) of the following subitem:
- “(ii) paragraph 12(2)(f) [or 12(5)], is the date that that event occurs.”

(2) Paragraph (a) of subsection (1) comes into operation on 1 January 2014 and applies in respect of disposals made on or after that date.

(3) Paragraph (b) of subsection (1) comes into operation on 1 January 2013 and applies in respect of years of assessment commencing on or after that date.



- enige skuld uitgereik ter vervanging van daardie skuld) ontstaan het; of
- (e) wat 'n maatskappy is, waar—
- (i) daardie skuld verminder word in die loop van, of in afwagting op, die likwidering, deregistrasie of finale beëindiging van die bestaan van daardie maatskappy; en
  - (ii) die persoon waaraan die skuld verskuldig is 'n verbonde persoon met betrekking tot daardie maatskappy is, namate die verminderingsbedrag ten opsigte van daardie skuld nie, op die tydstip waarop die skuld verminder word, die bedrag oorskry van uitgawes beoog in paragraaf 20 aangegaan ten opsigte van daardie skuld deur die verbonde persoon: Met dien verstande dat hierdie subitem nie van toepassing is nie—
- (aa) indien—
- (A) die skuld verminder is as deel van enige transaksie, handeling of skema aangegaan om enige belasting deur hierdie Wet opgelê, te vermy; en
  - (B) daardie maatskappy 'n verbonde persoon met betrekking tot die persoon waaraan die skuld verskuldig is, geword het nadat die skuld (of enige skuld uitgereik ter vervanging van daardie skuld) ontstaan het; of
- (bb) indien daardie maatskappy—
- (A) nie binne 36 maande van die datum waarop die skuld verminder word of die verdere tydperk wat die Kommissaris toelaat, die stappe beoog in artikel 41(4) gedoen het om te likwideer, deregistreer of finaal sy bestaan te beëindig nie;
  - (B) op enige stadium enige stap geneem om te likwideer, deregistreer of finaal sy korporatiewe bestaan te beëindig; of
  - (C) enigiets doen om enige stap beoog in subparagraaf (A) ongeldig te maak, met die gevolg dat die maatskappy nie gelikwideer of gederegistreer is of sal word nie of sy bestaan finaal beëindig is of sal word nie.
- (7) Enige belasting wat betaalbaar word as gevolg van die toepassing van paragraaf (bb) van die voorbehoudsbepaling tot subparagraaf (6)(e) moet verhaal word van die maatskappy en die verbonde persoon beoog in daardie subparagraaf, wat gesamentlik en afsonderlik vir daardie belasting aanspreeklik is.”
- (2) Subartikel (1) tree op 1 Januarie 2013 in werking en is van toepassing ten opsigte van jare van aanslag wat op of na daardie datum begin.

**Wysiging van paragraaf 13 van Agtste Bylae by Wet 58 van 1962, soos gewysig deur artikel 69 van Wet 74 van 2002, artikel 57 van Wet 32 van 2004, artikel 51 van Wet 3 van 2008, artikel 76 van Wet 60 van 2008 en artikel 68 van Wet 17 van 2009**

109. (1) Paragraaf 13 van die Agtste Bylae by die Inkomstebelastingwet, 1962, word hierby gewysig—
- (a) deur in subparagraaf (1) item (f) deur die volgende item te vervang:  
“(f) die afname van 'n persoon se belang in die [maatskappy,] trust of vennootskap as gevolg van 'n waardeverskuiwingsreëling, is die datum waarop die waarde van daardie persoon se belang afneem; of”;
  - (b) deur in subparagraaf (1)(g) subitem (ii) deur die volgende subitem te vervang:  
“(ii) paragraaf 12(2)(f) [of 12(5)], is die datum waarop daardie gebeurtenis plaasvind.”
- (2) Paragraaf (a) van subartikel (1) tree op 1 Januarie 2014 in werking en is van toepassing ten opsigte van beskikkings op of na daardie datum gemaak.
- (3) Paragraaf (b) van subartikel (1) tree op 1 Januarie 2013 in werking en is van toepassing ten opsigte van jare van aanslag wat op of na daardie datum begin.

**Amendment of paragraph 19 of Eighth Schedule to Act 58 of 1962, as amended by section 94 of Act 45 of 2003, section 72 of Act 35 of 2007, section 69 of Act 17 of 2009 and section 109 of Act 24 of 2011**

**110.** (1) Paragraph 19 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended by the substitution in subparagraph (1) for item (b) of the following item: 5

“(b) in circumstances other than those contemplated in item (a), that person must disregard so much of any capital loss resulting from the disposal (other than a disposal deemed to have taken place in terms of section 29B) as does not exceed any extraordinary exempt dividends.”.

(2) Subsection (1) is deemed to have come into operation on 29 February 2012 and applies in respect of disposals made on or after that date. 10

**Amendment of paragraph 20 of Eighth Schedule to Act 58 of 1962, as amended by section 26 of Act 19 of 2001, section 75 of Act 60 of 2001, section 71 of Act 74 of 2002, section 95 of Act 45 of 2003, section 58 of Act 32 of 2004, section 68 of Act 31 of 2005, section 45 of Act 20 of 2006, section 60 of Act 8 of 2007, section 73 of Act 35 of 2007, section 52 of Act 3 of 2008, section 77 of Act 60 of 2008, section 95 of Act 7 of 2010 and section 110 of Act 24 of 2011** 15

**111.** (1) Paragraph 20 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended—

(a) by the substitution in subparagraph (3) for items (b) and (c) of the following items: 20

“(b) has for any reason been reduced or recovered or become recoverable from or has been paid by any other person (whether prior to or after the incurral of the expense to which it relates), to the extent **[which]** that such amount is not— 25

(i) taken into account as a recoupment in terms of section 8(4)(a) or paragraph (j) of the definition of ‘gross income’ **[of an amount contemplated in item (a)];**

(ii) reduced in terms of section 12P; or

(iii) applied to reduce an amount taken into account in respect of trading stock as contemplated in section 19; or 30

(c) is exempt from tax in terms of section **[10(1)(y) or (yA)] 10(1)(yA)** and is granted or paid for purposes of the acquisition of that asset[:].”; and

(b) by the deletion of the proviso to subparagraph (3). 35

(2) Subsection (1) comes into operation on 1 January 2013 and applies in respect of years of assessment commencing on or after that date.

**Amendment of paragraph 23 of Eighth Schedule to Act 58 of 1962, as inserted by section 38 of Act 5 of 2001 and amended by section 27 of Act 19 of 2001**

**112.** (1) Paragraph 23 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended by the substitution in item (b) for subitem (ii) of the following subitem: 40

“(ii) who acquires a direct or indirect interest in the **[company,]** trust or partnership, is that proportion of the proceeds of disposal contemplated in paragraph 35(2) in respect of the value shifting arrangement which resulted in the acquisition of that interest.”. 45

(2) Subsection (1) comes into operation on 1 January 2014 and applies in respect of disposals made on or after that date.

**Amendment of paragraph 32 of Eighth Schedule to Act 58 of 1962, as inserted by section 38 of Act 5 of 2001 and amended by section 28 of Act 19 of 2001, section 84 of Act 60 of 2001, section 39 of Act 30 of 2002 and section 79 of Act 74 of 2002** 50

**113.** (1) Paragraph 32 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended—

(a) by the substitution in subparagraph (3) for the words preceding item (a) of the following words:

**Wysiging van paragraaf 19 van Agtste Bylae by Wet 58 van 1962, soos gewysig deur artikel 94 van Wet 45 van 2003, artikel 72 van Wet 35 van 2007, artikel 69 van Wet 17 van 2009 en artikel 109 van Wet 24 van 2011**

110. (1) Paragraaf 19 van die Agtste Bylae by die Inkomstebelastingwet, 1962, word hierby gewysig deur in subparagraaf (1) item (b) deur die volgende item te vervang: 5  
“(b) in ander omstandighede as beoog in item (a), moet daardie persoon soveel van enige kapitaalverlies wat uit die beskikking (behalwe ’n beskikking geag ingevolge artikel 29B plaas te gevind het) voortvloei as wat nie enige buitengewone vrygestelde dividende.”.
- (2) Subartikel (1) word geag op 29 Februarie 2012 in werking te getree het en is van toepassing ten opsigte van beskikkings op of na daardie datum gemaak. 10

**Wysiging van paragraaf 20 van Agtste Bylae by Wet 58 van 1962, soos gewysig deur artikel 26 van Wet 19 van 2001, artikel 75 van Wet 60 van 2001, artikel 71 van Wet 74 van 2002, artikel 95 van Wet 45 van 2003, artikel 58 van Wet 32 van 2004, artikel 68 van Wet 31 van 2005, artikel 45 van Wet 20 van 2006, artikel 60 van Wet 8 van 2007, artikel 73 van Wet 35 van 2007, artikel 52 van Wet 3 van 2008, artikel 77 van Wet 60 van 2008, artikel 95 van Wet 7 van 2010 en artikel 110 van Wet 24 van 2011** 15

111. (1) Paragraaf 20 van die Agtste Bylae by die Inkomstebelastingwet, 1962, word hierby gewysig—
- (a) deur in subparagraaf (3) items (b) en (c) deur die volgende items te vervang: 20  
“(b) wat vir enige rede verminder of verhaal is of verhaalbaar geword het van of wat betaal is deur enige ander persoon (hetsy voor of na die aangaan van die onkoste waarmee dit verband hou), tot die mate wat daardie bedrag nie—  
(i) in berekening gebring is nie as ’n verhaling ingevolge artikel 8(4)(a) of paragraaf (j) van die omskrywing van ‘bruto inkomste’ [**van ’n bedrag in item (a) bedoel**]; 25  
(ii) ingevolge artikel 12P verminder word nie; of  
(iii) toegepas word nie om ’n bedrag wat ten opsigte van handelsvoorraad in berekening gebring word soos beoog in artikel 19 te verminder; of 30  
(c) ingevolge artikel [**10(1)(y) of (yA)**] 10(1)(yA) van belasting vrygestel is en toegestaan of betaal is vir doeleindes van die verkryging van daardie bate[.];” en  
(b) deur die voorbehoudsbepaling tot subparagraaf (3) te skrap. 35
- (2) Subartikel (1) tree op 1 Januarie 2013 in werking en is van toepassing ten opsigte van jare van aanslag wat op of na daardie datum begin.

**Wysiging van paragraaf 23 van Agtste Bylae by Wet 58 van 1962, soos ingevoeg deur artikel 38 van Wet 5 van 2001 en gewysig deur artikel 27 van Wet 19 van 2001**

112. (1) Paragraaf 23 van die Agtste Bylae by die Inkomstebelastingwet, 1962, word hierby gewysig deur in item (b) subitem (ii) deur die volgende subitem te vervang: 40  
“(ii) wat ’n direkte of indirekte belang in die [**maatskappy,**] trust of vennootskap verkry, bepaal as daardie gedeelte van die opbrengs van die beskikking in paragraaf 35(2) beoog ten opsigte van die waardeverskuiwingsreëling wat die verkryging van daardie belang tot gevolg gehad het.”. 45
- (2) Subartikel (1) tree op 1 Januarie 2014 in werking en is van toepassing ten opsigte van beskikkings op of na daardie datum gemaak.

**Wysiging van paragraaf 32 van Agtste Bylae by Wet 58 van 1962, soos ingevoeg deur artikel 38 van Wet 5 van 2001 en gewysig deur artikel 28 van Wet 19 van 2001, artikel 84 van Wet 60 van 2001, artikel 39 van Wet 30 van 2002 en artikel 79 van Wet 74 van 2002** 50

113. (1) Paragraaf 32 van die Agtste Bylae by die Inkomstebelastingwet, 1962, word hierby gewysig—
- (a) deur in subparagraaf (3) die woorde wat item (a) voorafgaan deur die volgende woorde te vervang: 55

“Subject to **[subparagraph]** subparagraphs (3A) and (3B), the base cost of identical assets must be determined by using one of the following methods—”;

- (b) by the substitution in subparagraph (3A) for the words preceding item (a) of the following words:

“**[Despite the provisions of subparagraph (3), the]** The weighted average method of determining base cost of assets, as contemplated in subparagraph (4), may be used for identical assets that do not constitute assets contemplated in subparagraph (3B) and which—”;

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

“(3B) The weighted average method of determining base cost of assets, as contemplated in subparagraph (4), must be used for identical assets that are, in terms of section 29A, allocated to all the policyholder funds of an insurer as defined in that section: Provided that this subparagraph must not apply to any asset—

(a) that constitutes—

- (i) an instrument as defined in section 24J(1);
- (ii) an interest rate agreement as defined in section 24K(1);
- (iii) a contractual right or obligation the value of which is determined directly or indirectly with reference to—
  - (aa) an instrument contemplated in subparagraph (i);
  - (bb) an interest rate agreement contemplated in subparagraph (ii); or
  - (cc) any specified rate of interest;
- (iv) trading stock; or
- (v) a policy of reinsurance; or

(b) held by an insurer if that insurer is a Category III Financial Services Provider as defined in section 29B(1) and that asset is held by that insurer in its capacity as a Category III Financial Services Provider.”.

(2) Subsection (1) is deemed to have come into operation on 29 February 2012 and applies in respect of disposals made on or after that date.

**Amendment of paragraph 38 of Eighth Schedule to Act 58 of 1962, as inserted by section 38 of Act 5 of 2001 and amended by section 87 of Act 60 of 2001, section 81 of Act 74 of 2002 and section 63 of Act 32 of 2004**

114. (1) Paragraph 38 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended by the substitution in subparagraph (1) for the words preceding item (a) of the following words:

“Subject to subparagraph (2) and **[paragraphs 12(5) and]** paragraph 67, where a person disposed of an asset by means of a donation or for a consideration not measurable in money or to a person who is a connected person in relation to that person for a consideration which does not reflect an arm’s length price—”.

(2) Subsection (1) comes into operation on 1 January 2013 and applies in respect of years of assessment commencing on or after that date.

**Amendment of paragraph 40 of Eighth Schedule to Act 58 of 1962, as amended by section 89 of Act 60 of 2001, section 82 of Act 74 of 2002, section 50 of Act 20 of 2006, section 54 of Act 3 of 2008, section 79 of Act 60 of 2008 and section 71 of Act 17 of 2009**

115. (1) Paragraph 40 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended by the substitution in subparagraph (2) for the words preceding item (a) of the following words:

“**[Subject to paragraph 12(5), where]** Where an asset is disposed of by a deceased estate to an heir or legatee (other than the surviving spouse of the deceased person as contemplated in paragraph 67(2)(a)—”.

“Behoudens **[subparagraaf]** subparagraawe (3A) en (3B), moet die basiskoste van identiese bates vasgestel word deur die gebruik van een van die volgende metodes—”;

- (b) deur in subparagraaf (3A) die woorde wat item (a) voorafgaan deur die volgende woorde te vervang: 5

“**[Ondanks die bepaling van subparagraaf (3), mag die]** Die geweege gemiddelde metode van vasstelling van die basiskoste van bates mag gebruik word, soos in subparagraaf (4) bedoel, vir identiese bates wat nie bates beoog in subparagraaf (3B) uitmaak nie—”;

- (c) deur na subartikel (3A) die volgende subartikel in te voeg: 10

“(3B) Die geweege gemiddelde metode van die vasstelling van die basiskoste van bates, soos beoog in subparagraaf (4), moet gebruik word vir identiese bates wat, ingevolge artikel 29A, toegewys word aan al die polishouerfondse van ’n versekeraar soos omskryf in daardie artikel: Met dien verstande dat hierdie subparagraaf nie van toepassing is nie op ’n bate—

(a) wat—

- (i) ’n instrument soos omskryf in artikel 24J(1) uitmaak;  
(ii) ’n rentekoersooreenkoms soos omskryf in artikel 24K(1) uitmaak; 20

(iii) ’n kontraktuele reg of verpligting uitmaak waarvan die waarde bepaal word regstreeks of onregstreeks met verwysing na—

(aa) ’n instrument beoog in subparagraaf (i);

(bb) ’n rentekoersooreenkoms beoog in subparagraaf (ii); 25  
of

(cc) enige spesifieke rentekoers;

(iv) handelsvoorraad uitmaak; of

(v) ’n herversekeringspolis uitmaak; of

(b) gehou deur ’n versekeraar indien daardie versekeraar ’n Kategorie III Verskaffer van Finansiële Dienste soos omskryf in artikel 29B(1) is en daardie bate gehou word deur daardie versekeraar in die versekeraar se hoedanigheid as ’n Kategorie III Verskaffer van Finansiële Dienste.” 30

(2) Subartikel (1) word geag op 29 Februarie 2012 in werking te getree het en is van toepassing ten opsigte van beskikkings op of na daardie datum gemaak. 35

**Wysiging van paragraaf 38 van Agtste Bylae by Wet 58 van 1962, soos ingevoeg deur artikel 38 van Wet 5 van 2001 en gewysig deur artikel 87 van Wet 60 van 2001, artikel 81 van Wet 74 van 2002 en artikel 63 van Wet 32 van 2004**

114. (1) Paragraaf 38 van die Agtste Bylae by die Inkomstebelastingwet, 1962, word hierby gewysig deur in subparagraaf (1) die woorde wat item (a) voorafgaan deur die volgende woorde te vervang: 40

“Behoudens subparagraaf (2) en **[paragraawe 12(5) en]** paragraaf 67, waar ’n persoon oor ’n bate beskik het by wyse van ’n skenking of teen vergoeding wat nie in geld meetbaar is nie of aan ’n persoon wat ’n verbonde persoon is met betrekking tot daardie persoon teen vergoeding wat nie onder uiterste voorwaardes in ’n ope mark beding is nie—” 45

(2) Subartikel (1) tree op 1 Januarie 2013 in werking en is van toepassing ten opsigte van jare van aanslag wat op of na daardie datum begin.

**Wysiging van paragraaf 40 van Agtste Bylae by Wet 58 van 1962, soos gewysig deur artikel 89 van Wet 60 van 2001, artikel 82 van Wet 74 van 2002, artikel 50 van Wet 20 van 2006, artikel 54 van Wet 3 van 2008, artikel 79 van Wet 60 van 2008 en artikel 71 van Wet 17 van 2009** 50

115. (1) Paragraaf 40 van die Agtste Bylae by die Inkomstebelastingwet, 1962, word hierby gewysig deur in subparagraaf (2) die woorde wat item (a) voorafgaan deur die volgende woorde te vervang: 55

“**[Behoudens paragraaf 12(5), waar]** Waar ’n bestorwe boedel oor ’n bate aan ’n erfgenaam of legataris beskik (behalwe die langsliewende gade van daardie oorlede persoon soos in paragraaf 67(2)(a) beoog), moet—”.

(2) Subsection (1) comes into operation on 1 January 2013 and applies in respect of years of assessment commencing on or after that date.

**Amendment of paragraph 42 of Eighth Schedule to Act 58 of 1962, as amended by section 90 of Act 60 of 2001, section 74 of Act 31 of 2005, section 74 of Act 35 of 2007, section 55 of Act 3 of 2008 and section 99 of Act 7 of 2010**

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116. (1) Paragraph 42 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended—

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

“Where a capital loss is determined in respect of the disposal by a person of a financial instrument, other than a disposal contemplated in section 29B, and within a period beginning 45 days before the date of disposal and ending 45 days after that date, that person or a connected person in relation to that person, subject to subparagraph (3), acquires or has entered into a contract to acquire a financial instrument of the same kind and of the same or equivalent quality—”; and

(b) by the addition after subparagraph (3) of the following subparagraph:

“(4) This paragraph must not apply to any asset—

(a) in respect of which the weighted average method of determining base cost of assets, as contemplated in paragraph 32(4), is used; and  
(b) if that asset is, in terms of section 29A, allocated to any policyholder fund of an insurer as defined in that section.”

(2) Subsection (1) is deemed to have come into operation on 29 February 2012 and applies in respect of disposals made on or after that date.

**Amendment of paragraph 43 of Eighth Schedule to Act 58 of 1962, as amended by section 91 of Act 60 of 2001, section 84 of Act 74 of 2002, section 101 of Act 45 of 2003, section 75 of Act 31 of 2005, section 51 of Act 33 of 2006, section 76 of Act 35 of 2007, section 100 of Act 7 of 2010 and section 111 of Act 24 of 2011**

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117. (1) Paragraph 43 of the Eighth Schedule to the Income Tax Act, 1962 is hereby amended—

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

“(1) [Subject to subparagraph (4), where] Where, during any year of assessment, a person [during any year of assessment] that is a natural person or a trust that is not carrying on a trade disposes of an asset for proceeds in a currency other than the 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 currency and that capital gain or capital loss must be translated to the currency of the Republic by applying the average exchange rate for the year of assessment in which that asset was disposed of or by applying the spot rate on the date of disposal of that asset.”;

(b) by the insertion after subparagraph (1) of the following subparagraph:

“(1A) Where, during any year of assessment, a person that is a company or a trust carrying on a trade disposes of an asset for proceeds in a currency other than the currency of the Republic after having incurred expenditure in respect of that asset in the same currency, that person must, for the purposes of determining the capital gain or capital loss on the disposal of that asset, translate—

(a) the proceeds into the currency of the Republic at the average exchange rate for the year of assessment in which that asset was disposed of or at the spot rate on the date of disposal of that asset; and

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(2) Subartikel (1) tree op 1 Januarie 2013 in werking en is van toepassing ten opsigte van jare van aanslag wat op of na daardie datum begin.

**Wysiging van paragraaf 42 van Agtste Bylae by Wet 58 van 1962, soos gewysig deur artikel 90 van Wet 60 van 2001, artikel 74 van Wet 31 van 2005, artikel 74 van Wet 35 van 2007, artikel 55 van Wet 3 van 2008 en artikel 99 van Wet 7 van 2010** 5

116. (1) Paragraaf 42 van die Agtste Bylae by die Inkomstebelastingwet, 1962, word hierby gewysig—

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

“Waar ’n kapitaalverlies vasgestel word ten opsigte van die beskikking, behalwe ’n beskikking beoog in artikel 29B, deur ’n persoon oor ’n finansiële instrument en daardie persoon of ’n verbonde persoon met betrekking tot daardie persoon, behoudens subparagraaf (3), binne ’n tydperk wat 45 dae voor die datum van daardie beskikking begin en 45 dae na daardie datum eindig, ’n finansiële instrument van dieselfde soort of van dieselfde of gelyke gehalte verkry of ’n ooreenkoms aangaan om te verkry—”; en 10

(b) deur na subparagraaf (3) die volgende subparagraaf by te voeg:

“(4) Hierdie paragraaf is nie van toepassing nie op enige bate—

(a) ten opsigte waarvan die geweegde gemiddelde metode van die vasstelling van die basiskoste van bates soos beoog in paragraaf 32(4), gebruik word; en 20

(b) indien daardie bate, ingevolge artikel 29A, toegewys word aan enige polishouerfonds van ’n versekeraar soos omskryf in daardie artikel.”. 25

(2) Subartikel (1) word geag op 29 Februarie 2012 in werking te getree het en is van toepassing ten opsigte van beskikkings op of na daardie datum gemaak.

**Wysiging van paragraaf 43 van Agtste Bylae by Wet 58 van 1962, soos gewysig deur artikel 91 van Wet 60 van 2001, artikel 84 van Wet 74 van 2002, artikel 101 van Wet 45 of 2003, artikel 75 van Wet 31 van 2005, artikel 51 van Wet 33 van 2006, artikel 76 van Wet 35 of 2007, artikel 100 van Wet 7 van 2010 en artikel 111 van Wet 24 van 2011** 30

117. (1) Paragraaf 43 van die Agtste Bylae by die Inkomstebelastingwet, 1962 word hierby gewysig—

(a) deur subparagraaf (1) deur die volgende subparagraaf te vervang: 35

“(1) [Behoudens subparagraaf (4), waar] Waar, gedurende enige jaar van aanslag, ’n persoon [gedurende enige jaar van aanslag] wat ’n natuurlike persoon is of ’n trust is wat nie ’n bedryf beoefen nie oor ’n bate beskik vir ’n opbrengs in ’n geldeenheid anders as die geldeenheid van die Republiek 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 geldeenheid en daardie kapitaalwins of kapitaalverlies moet na die geldeenheid van die Republiek, omgeskakel word, teen die gemiddelde wisselkoers vir die betrokke jaar van aanslag waarin oor daardie bate beskik is of teen die kontantkoers op die datum waarop oor daardie bate beskik is.”; 40 45

(b) deur na subparagraaf (1) die volgende subparagraaf in te voeg:

“(1A) Waar, gedurende enige jaar van aanslag, ’n persoon wat ’n maatskappy is of ’n trust wat ’n bedryf beoefen, beskik oor ’n bate vir opbrengs in ’n ander valuta as die valuta van die Republiek nadat die persoon uitgawes ten opsigte van daardie bate in dieselfde valuta aangegaan het, moet daardie persoon met die doel om die kapitaalwins of kapitaalverlies op die beskikking oor daardie bate te bepaal— 50

(a) die opbrengs omskakel na die valuta van die Republiek teen die gemiddelde wisselkoers vir die jaar van aanslag waarin oor daardie bate beskik is of teen die sluitingskontantkoers op die datum van beskikking oor daardie bate; en 55

- (b) the expenditure incurred in respect of that asset into the currency of the Republic at the average exchange rate for the year of assessment during which that expenditure was incurred or at the spot rate on the date on which that expenditure was incurred.”;
- (c) by the deletion of subparagraph (4); and
- (d) by the insertion after subparagraph (6) of the following subparagraph:
  - “(6A) This paragraph must not apply in respect of the disposal by a person of—
    - (a) any asset that constitutes a unit of currency acquired and not disposed of by that person;
    - (b) any amount in any currency owing to that person in respect of a debt owed to that person; or
    - (c) any right of that person arising from any contractual agreement or arrangement to which that person and another party are parties where—
      - (i) that contractual agreement or arrangement gives rise to that right and to a corresponding obligation of the other party; and
      - (ii) the value of that right and the amount of that obligation are determined directly or indirectly with reference to an asset contemplated in item (a) or an amount contemplated in item (b).”.

(2) Subsection (1) comes into operation on 1 January 2013 and applies in respect of disposals made on or after that date.

**Amendment of paragraph 43A of Eighth Schedule to Act 58 of 1962, as substituted by section 112 of Act 24 of 2011**

**118.** (1) Paragraph 43A of the Income Tax Act, 1962, is hereby amended—

- (a) by the substitution for subparagraphs (2) and (3) of the following subparagraphs:
  - “(2) The proceeds from the disposal by a taxpayer that is a company of shares in another company must be increased by an amount equal to the amount of any exempt dividend received by or accrued to that taxpayer in respect of any share held by the taxpayer in that other company—
    - (a) to the extent that the exempt dividend is received by or accrues to the taxpayer within a period of 18 months prior to or as part of the disposal;
    - (b) if the taxpayer immediately before the disposal—
      - (i) held the shares disposed of as a capital asset (as defined in section 41); and
      - (ii) held more than 50 per cent of the equity shares in the other company; and
    - (c) if the other company (or any company in which that other company directly or indirectly holds more than 50 per cent of the equity shares) has, within a period of 18 months prior to that disposal, by reason of or in consequence of the disposal, obtained any loan or advance or incurred any debt—
      - (i) owing to the person acquiring the shares or any connected person in relation to that person; or
      - (ii) that is guaranteed or otherwise secured by the person acquiring the shares or any connected person in relation to that person.
  - (3) For the purposes of subparagraph (2), the amount by which the proceeds must be increased is limited to the amount of the loan, advance or debt contemplated in item (c) of that subparagraph.”;
- (b) by the substitution in subparagraph (2)(c) for the words preceding subitem (i) of the following words:
  - “if the other company (or any company in which that other company directly or indirectly holds more than 50 per cent of the equity shares) has, within a period of 18 months prior to that disposal, by reason of or



- (b) die uitgawes aangegaan ten opsigte van daardie bate omskakel na die valuta van die Republiek teen die gemiddelde wisselkoers vir die jaar van aanslag waartydens daardie uitgawes aangegaan is of teen die sluitingskontantkoers op die datum waarop daardie uitgawes aangegaan is.”;
- (c) deur subparagraaf (4) te skrap; en
- (d) deur na subparagraaf (6) die volgende subparagraaf in te voeg:
- “(6A) Hierdie paragraaf is nie van toepassing nie ten opsigte van die beskikking deur ’n persoon oor—
- (a) ’n bate wat ’n valuta-eenheid uitmaak deur daardie persoon verkry en nie oor beskik nie;
- (b) enige bedrag in enige valuta verskuldig aan daardie persoon ten opsigte van ’n skuld verskuldig aan daardie persoon; of
- (c) ’n reg van daardie persoon wat voortspruit uit enige kontraktuele ooreenkoms of reëling waarby daardie persoon en ’n ander party partye is, waar—
- (i) daardie kontraktuele ooreenkoms of reëling aanleiding gee tot daardie reg en tot ’n ooreenstemmende verpligting van die ander party; en
- (ii) die waarde van daardie reg en die bedrag van daardie verpligting bepaal word regstreeks of onregstreeks met verwysing na ’n bate beoog in item (a) of ’n bedrag beoog in item (b).”.
- (2) Subartikel (1) tree op 1 Januarie 2013 in werking en is van toepassing ten opsigte van beskikkings op of na daardie datum gemaak.

**Wysiging van paragraaf 43A van Agtste Bylae by Wet 58 van 1962, soos vervang deur artikel 112 van Wet 24 van 2011**

118. (1) Paragraaf 43A van die Inkomstebelastingwet, 1962, word hierby gewysig—
- (a) deur subparagrafe (2) en (3) deur die volgende subparagrafe te vervang:
- “(2) Die opbrengs uit die beskikking deur ’n belastingpligtige wat ’n maatskappy is oor aandele in ’n ander maatskappy moet verhoog word deur ’n bedrag gelyk aan die bedrag van enige vrygestelde dividend ontvang deur of toegeval aan daardie belastingpligtige ten opsigte van ’n aandeel gehou deur die belastingpligtige in daardie ander maatskappy—
- (a) namate die vrygestelde dividend ontvang word deur of toeval aan die belastingpligtige binne ’n tydperk van 18 maande voor of as deel van die beskikking;
- (b) indien die belastingpligtige onmiddellik voor die beskikking—
- (i) die aandele oor beskik as ’n kapitaalbate (soos omskryf in artikel 41) gehou het; en
- (ii) meer as 50 persent van die ekwiteitsaandele in die ander maatskappy gehou het; en
- (c) indien die ander maatskappy (of ’n maatskappy waarin daardie ander maatskappy regstreeks of onregstreeks meer as 50 persent van die ekwiteitsaandele hou) binne ’n tydperk van 18 maande voor daardie beskikking, as gevolg of ten gevolge van die beskikking, enige lening of voorskot verkry het of enige skuld aangegaan het—
- (i) verskuldig aan die persoon wat die aandele verkry of enige verbonde persoon met betrekking tot daardie persoon; of
- (ii) wat gewaarborg of andersins gesekureer word deur die persoon wat die aandele verkry of enige verbonde persoon met betrekking tot daardie persoon.
- (3) By die toepassing van subparagraaf (2) word die bedrag waarmee die opbrengs verhoog moet word, beperk tot die bedrag van die lening, voorskot of skuld beoog in item (c) van daardie subparagraaf.”;
- (b) deur in subparagraaf (2)(c) die woorde wat subitem (i) voorafgaan deur die volgende woorde te vervang:
- “indien die ander maatskappy (of ’n maatskappy waarin daardie ander maatskappy regstreeks of onregstreeks meer as 50 persent van die ekwiteitsaandele hou) binne ’n tydperk van 18 maande voor daardie

in consequence of the disposal, **[obtained any loan or advance or]** incurred any debt—”; and

(c) by the substitution for subparagraph (3) of the following subparagraph:

“(3) For the purposes of subparagraph (2), the amount by which the proceeds must be increased is limited to the amount of the **[loan, advance or]** debt contemplated in item (c) of that subparagraph.”. 5

(2) Paragraph (a) of subsection (1) is deemed to have come into operation on 1 April 2012.

(3) Paragraphs (b) and (c) of subsection (1) come into operation on 1 January 2013.

**Amendment of paragraph 56 of Eighth Schedule to Act 58 of 1962, as inserted by section 38 of Act 5 of 2001, substituted by section 99 of Act 60 of 2001 and amended by section 88 of Act 74 of 2002 and section 65 of Act 32 of 2004** 10

**119.** (1) Paragraph 56 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended—

(a) by the substitution for subparagraph (1) of the following subparagraph: 15

“(1) Where a creditor disposes of a **[claim] debt** owed by a debtor, who is a connected person in relation to that creditor, that creditor must disregard any capital loss determined in consequence of that disposal.”;

(b) by the substitution in subparagraph (2) for the words preceding item (a) of the following words: 20

“Despite paragraph 39, subparagraph (1) does not apply in respect of any capital loss determined in consequence of the disposal by a creditor of a **[claim] debt** owed by a debtor, to the extent that the amount of that **[claim] debt** so disposed of represents—”;

(c) by the substitution in subparagraph (2) for item (a) of the following item: 25

“(a) an amount which is applied to reduce—  
(i) the base cost of an asset of the debtor in terms of paragraph 12A; or  
(ii) any aggregate capital loss of the debtor in terms of paragraph 12A.”; 30

(d) by the substitution in subparagraph (2) for item (b) of the following item:

“(b) an amount which the creditor proves must be or was included in the gross income of any acquirer of that **[claim] debt**.”; and

(e) by the substitution in subparagraph (2) for item (d) of the following item:

“(d) a capital gain which the creditor proves must be or was included in the determination of the aggregate capital gain or aggregate capital loss of any acquirer of the **[claim] debt**.”. 35

(2) Paragraphs (a), (b), (d) and (e) of subsection (1) come into operation on 1 January 2013.

(3) Paragraph (c) of subsection (1) comes into operation on 1 January 2013 and applies in respect of years of assessment commencing on or after that date. 40

**Amendment of paragraph 61 of Eighth Schedule to Act 58 of 1962, as substituted by section 75 of Act 17 of 2009 and amended by section 106 of Act 7 of 2010**

**120.** (1) Paragraph 61 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended by the addition of the following subparagraph after subparagraph (2): 45

“(3) Any capital gain or capital loss in respect of a disposal by a portfolio of a collective investment scheme must be disregarded.”.

(2) Subsection (1) is deemed to have come into operation on 1 January 2010 and applies in respect of years of assessment commencing on or after that date.

**Amendment of paragraph 64A of Eighth Schedule to Act 58 of 1962, as inserted by section 92 of Act 74 of 2002 and amended by section 55 of Act 20 of 2006** 50

**121.** (1) Paragraph 64A of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended—

beskikking, as gevolg of ten gevolge van die beskikking, [enige lening of voorskot verkry het of] enige skuld aangegaan het—”; en

(c) deur subparagraaf (3) deur die volgende subparagraaf te vervang:

“(3) By die toepassing van subparagraaf (2)(a) word die bedrag waarmee die opbrengs verhoog moet word, beperk tot die bedrag van die [lening, voorskot of] skuld in subitem (iii) van daardie subparagraaf beoog.”

(2) Paragraaf (a) van subartikel (1) word geag op 1 April 2012 in werking te getree het.

(3) Paragrafe (b) en (c) van subartikel (1) tree op 1 Januarie 2013 in werking.

**Wysiging van paragraaf 56 van Agtste Bylae by Wet 58 van 1962, soos ingevoeg deur artikel 38 van Wet 5 van 2001, vervang deur artikel 99 van Wet 60 van 2001 en gewysig deur artikel 88 van Wet 74 van 2002 en artikel 65 van Wet 32 van 2004**

**119.** (1) Paragraaf 56 van die Agtste Bylae by die Inkomstebelastingwet, 1962, word hierby gewysig—

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

“(1) Waar ’n skuldeiser oor ’n [eis] skuld wat deur ’n skuldenaar, wat ’n verbonde persoon met betrekking tot daardie skuldeiser is, verskuldig is beskik, moet daardie skuldeiser enige kapitaalverlies ten gevolge van daardie beskikking verontagsaam.”;

(b) deur in subparagraaf (2) die woorde wat item (a) voorafgaan deur die volgende woorde te vervang:

“Ondanks paragraaf 39, is subparagraaf (1) nie van toepassing nie ten opsigte van enige kapitaalverlies vasgestel vanweë die beskikking deur ’n skuldeiser van ’n [eis] skuld deur ’n skuldenaar verskuldig, tot die mate wat die bedrag van daardie [eis] skuld aldus oor beskik—”;

(c) deur in subparagraaf (2) item (a) deur die volgende item te vervang:

“(a) ’n bedrag wat toegepas word om—

(i) die basiskoste van ’n bate van die skuldenaar ingevolge paragraaf 12A te verminder; of

(ii) enige totale kapitaal verlies van die skuldenaar ingevolge paragraaf 12A te verminder.”;

(d) deur in subparagraaf (2) item (b) deur die volgende item te vervang:

“(b) ’n bedrag daarstel wat die skuldeiser bewys by die bruto inkomste van enige verkryger van daardie [eis] skuld, ingesluit moet of moes word;”; en

(e) deur in subparagraaf (2) item (d) deur die volgende item te vervang:

“(d) ’n kapitaalwins wat die skuldeiser bewys ingesluit was of moet word by die vasstelling van die totale kapitaalwins of totale kapitaalverlies van enige persoon wat die [eis] skuld verkry.”.

(2) Paragrafe (a), (b), (d) en (e) van subartikel (1) tree op 1 Januarie 2013 in werking.

(3) Paragraaf (c) van subartikel (1) tree op 1 Januarie 2013 in werking en is van toepassing ten opsigte van jare van aanslag wat op of na daardie datum begin.

**Wysiging van paragraaf 61 van Agtste Bylae by Wet 58 van 1962, soos vervang deur artikel 75 van Wet 17 van 2009 en gewysig deur artikel 106 van Wet 7 van 2010**

**120.** (1) Paragraaf 61 van die Agtste Bylae by die Inkomstebelastingwet, 1962, word hierby gewysig deur die volgende subparagraaf na subparagraaf (2) in te voeg:

“(3) Enige kapitaalwins of kapitaalverlies ten opsigte van ’n beskikking deur ’n portefeulje van ’n kollektiewe beleggingskema moet buite rekening gelaat word.”.

(2) Subartikel (1) word geag op 1 Januarie 2010 in werking te getree het en is van toepassing ten opsigte van jare van aanslag wat op of na daardie datum begin.

**Wysiging van paragraaf 64A van Agtste Bylae by Wet 58 van 1962, soos ingevoeg deur artikel 92 van Wet 74 van 2002 en gewysig deur artikel 55 van Wet 20 van 2006**

**121.** (1) Paragraaf 64A van die Agtste Bylae by die Inkomstebelastingwet, 1962, word hierby gewysig—

- (a) by the substitution for the heading of the following heading:  
“**Awards in terms of the Restitution of Land Rights Act**”; and
- (b) by the deletion of subparagraph (b).

(2) Subsection (1) comes into operation on 1 January 2013 and applies in respect of years of assessment commencing on or after that date. 5

**Amendment of paragraph 64B of Eighth Schedule to Act 58 of 1962, as inserted by section 105 of Act 45 of 2003 and amended by section 79 of Act 31 of 2005, section 35 of Act 9 of 2006, section 65 of Act 8 of 2007, section 77 of Act 35 of 2007, section 58 of Act 3 of 2008, section 81 of Act 60 of 2008, section 108 of Act 7 of 2010 and section 116 of Act 24 of 2011** 10

122. (1) Paragraph 64B of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended—

- (a) by the substitution in subparagraph (2) for the words preceding item (a) of the following words:

“Subject to subparagraph (5), a person other than a headquarter company must disregard any capital gain or capital loss determined in respect of the disposal of any equity share in any foreign company (other than a foreign financial instrument holding company or an interest contemplated in paragraph 2(2)), if—”;

- (b) by the substitution in subparagraph (2)(a) for subitem (i) of the following subitem:

“(i) held at least 10 per cent of the equity shares and voting rights in that **[controlled]** foreign company; and”;

- (c) by the insertion in subparagraph (2)(b) of the word “or” at the end of subitem (ii); 25

- (d) by the substitution in subparagraph (2)(b) for the expression “; or” at the end of subitem (iii) of a full stop; or

- (e) by the deletion in subparagraph (2)(b) of subitem (iv);

- (f) by the insertion after subparagraph (2) of the following subparagraph:

“(2A) Subject to subparagraph (5), a headquarter company must disregard any capital gain or capital loss determined in respect of the disposal of any equity share in any foreign company (other than an interest contemplated in paragraph 2(2)) if that headquarter company (whether alone or together with any other person forming part of the same group of companies as that headquarter company) immediately before that disposal held at least 10 per cent of the equity shares and voting rights in that foreign company: Provided that in determining the total equity shares in a foreign company, there must not be taken into account any share which would have constituted a hybrid equity instrument, as defined in section 8E, but for the three year period requirement contemplated in that definition.”;

- (g) by the substitution in subparagraph (3) for item (d) of the following item:

“(d) that foreign company ceased in terms of any transaction, operation or scheme of which the disposal of the equity share **[capital]** forms part, to be a controlled foreign company in relation to that person or other company in the same group of companies as that person (having regard solely to any rights contemplated in paragraph (a) of the definition of ‘participation rights’ in section 9D and without having regard to any election exercised in terms of section 9D(13)).”;

- (h) by the substitution for subparagraphs (3) and (4) of the following subparagraphs:

“(3) Paragraph 8(b) applies in respect of any capital gain determined in respect of any disposal of any equity share in any foreign company—

- (a) by a person which is or was disregarded in terms of subparagraphs (2) and (5); or

- (b) by a headquarter company which is or was disregarded in terms of subparagraphs (2A) and (5),

in any year of assessment, if—

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

“**Toekennings ingevolge die Wet op Herstel van Grondregte**”; en

(b) deur subparagraaf (b) te skrap.

(2) Subartikel (1) tree op 1 Januarie 2013 in werking en is van toepassing ten opsigte van jare van aanslag wat op of na daardie datum begin. 5

**Wysiging van paragraaf 64B van Agtste Bylae by Wet 58 van 1962, soos ingevoeg deur artikel 105 van Wet 45 van 2003 en gewysig deur artikel 79 van Wet 31 van 2005, artikel 35 van Wet 9 van 2006, artikel 65 van Wet 8 van 2007, artikel 77 van Wet 35 van 2007, artikel 58 van Wet 3 van 2008, artikel 81 van Wet 60 van 2008, artikel 108 van Wet 7 van 2010 en artikel 116 van Wet 24 van 2011** 10

122. (1) Paragraaf 64B van die Agtste Bylae by die Inkomstebelastingwet, 1962, word hierby gewysig—

(a) deur in subparagraaf (2) die woorde wat item (a) voorafgaan deur die volgende woorde te vervang:

“Behoudens subparagraaf (5) moet ’n persoon behalwe ’n hoofkwartiermaatskappy enige kapitaalwins of kapitaalverlies vasgestel ten opsigte van ’n beskikking oor enige ekwiteitsaandeel in enige buitelandse maatskappy (behalwe ’n buitelandse finansiële instrumenthouermaatskappy of ’n belang in paragraaf 2(2) beoog) verontagsaam indien—” 15

(b) deur in subparagraaf (2)(a) subitem (i) deur die volgende subitem te vervang: 20

“(i) minstens 10 persent van die ekwiteitsaandeel en stemregte in daardie **[beheerde]** buitelandse maatskappy gehou het; en”;

(c) deur in subparagraaf (2)(b) die woord “of” aan die einde van subitem (ii) in te voeg;

(d) deur in subparagraaf (2)(b) die uitdrukking “; of” aan die einde van subitem (iii) met ’n punt te vervang; 25

(e) deur in subparagraaf (2)(b) subitem (iv) te skrap;

(f) deur na subparagraaf (2) die volgende subparagraaf in te voeg:

“(2A) Behoudens subparagraaf (5) moet ’n hoofkwartiermaatskappy enige kapitaalwins of kapitaalverlies bepaal ten opsigte van die beskikking oor enige ekwiteitsaandeel in enige buitelandse maatskappy (buiten ’n belang beoog in paragraaf 2(2)) verontagsaam indien daardie hoofkwartiermaatskappy (hetsy alleen of tesame met enige ander persoon wat deel uitmaak van dieselfde groep van maatskappye as daardie hoofkwartiermaatskappy) onmiddellik voor daardie beskikking minstens 10 persent van die ekwiteitsaandeel en stemregte in daardie buitelandse maatskappy gehou het: Met dien verstande dat by die bepaling van die totale ekwiteitsaandeel in ’n buitelandse maatskappy daar nie in berekening gebring word nie ’n aandeel wat ’n hibriede ekwiteitsinstrument, soos omskryf in artikel 8E, by ontstentenis van die vereiste tydperk van drie jaar beoog in daardie omskrywing sou uitgemaak het.”; 30 35 40

(g) deur in subparagraaf (3) item (d) deur die volgende item te vervang:

“(d) daardie buitelandse maatskappy ingevolge enige transaksie, handeling of skema waarvan die beskikking oor die **[ekwiteitsaandelekapitaal]** ekwiteitsaandeel deel gevorm het, ophou om ’n beheerde buitelandse maatskappy met betrekking tot daardie persoon of ander maatskappy in dieselfde groep van maatskappye as daardie persoon te wees (met inagneming slegs van die regte in paragraaf (a) van die omskrywing van ‘deelnemende regte’ in artikel 9D beoog en sonder inagneming van enige keuse ingevolge artikel 9D(13) uitgeoefen).”;

(h) deur subparagraaf (3) en (4) deur die volgende subparagraaf te vervang:

“(3) Paragraaf 8(b) is van toepassing ten opsigte van enige kapitaalwins vasgestel ten opsigte van enige beskikking oor enige ekwiteitsaandeel in ’n buitelandse maatskappy— 55

(a) deur ’n persoon wat kragtens subparagraaf (2) en (5); of

(b) deur ’n hoofkwartiermaatskappy wat kragtens subparagraaf (2A) en (5),

in enige jaar van aanslag verontagsaam is of was, indien— 60

- [(a)](i)** the foreign company prior to that disposal was a controlled foreign company in relation to that person or headquarter company or any other company in the same group of companies as that person or headquarter company;
- [(b)](ii)** the equity share in that foreign company was disposed of to a connected person in relation to that person or headquarter company either before or after that disposal; 5
- [(c)](iii)** that person or headquarter company—
- [(i)](aa)** disposed of that equity share for no consideration or for consideration which does not reflect an arm's length price, other than a distribution contemplated in **[subitem (ii)]** subsubitem (bb); 10
- [(ii)](bb)** disposed of that equity share by means of a distribution unless the full amount of that distribution— 15
- [(aa)](A)** was subject to or would, but for the provisions of section 64B(5)(f), have been subject to secondary tax on companies; or
- [(bb)](B)** was included in the income of a shareholder of that foreign company or would but for the provisions of section 10(1)(k)(ii)(dd) have been so included; or 20
- [(iii)](cc)** disposed of any consideration received or accrued from the disposal of that equity share (or any amount received or accrued in exchange therefor) in terms of any transaction, operation or scheme of which the disposal of the equity share forms part— 25
- [(aa)](A)** for no consideration or for consideration which does not reflect an arm's length price (other than a distribution contemplated in **[(bb)]** subsubitem (B)); 30
- [(bb)](B)** by means of a distribution by a company, unless the full amount of that distribution—
- [(A)](AA)** was subject to or would, but for the provisions of section 64B(5)(f), have been subject to secondary tax on companies; or 35
- [(B)](BB)** was included in the income of a shareholder of that company or would but for the provisions of section 10(1)(k)(ii)(dd) have been so included; and 40
- [(d)](iv)** that foreign company ceased in terms of any transaction, operation or scheme of which the disposal of the equity share forms part, to be a controlled foreign company in relation to that person or other company in the same group of companies as that person (having regard solely to any rights contemplated in paragraph (a) of the definition of 'participation rights' in section 9D **[and without having regard to any election exercised in terms of section 9D(13)]**). 45 50

- [(a)](i)** die buitelandse maatskappy voor daardie beskikking 'n beheerde buitelandse maatskappy met betrekking tot daardie persoon of hoofkwartiermaatskappy of enige ander maatskappy in dieselfde groep van **[maatskappy]** maatskappye as daardie persoon of hoofkwartiermaatskappy was; 5
- [(b)](ii)** die ekwiteitsaandeel in daardie buitelandse maatskappy oor beskik is aan 'n verbonde persoon met betrekking tot daardie persoon of hoofkwartiermaatskappy voor of na daardie beskikking;
- [(c)](iii)** daardie persoon of hoofkwartiermaatskappy— 10
- [(i)](aa)** oor daardie ekwiteitsaandeel beskik het vir geen vergoeding of vir vergoeding wat nie 'n prys onder uiterste voorwaardes beding uitmaak nie, behalwe 'n uitkering in **[subitem (ii)]** subsubitem **(bb)** bedoel;
- [(ii)](bb)** oor daardie ekwiteitsaandeel beskik het by wyse van 'n uitkering tensy die volle bedrag van daardie uitkering— 15
- [(aa)](A)** onderhewig was of, by ontstentenis van artikel 64B(5)(f) onderhewig sou wees, aan sekondêre belasting op maatskappye; 20
- of
- [(bb)](B)** by die inkomste van 'n aandeelhouer van daardie buitelandse maatskappy ingesluit was of by ontstentenis van die bepaling van artikel 10B(2)(a) of (b) aldus ingesluit sou gewees het; of 25
- [(iii)](cc)** oor enige vergoeding ontvang of toegeval uit daardie beskikking oor die ekwiteitsaandeel (of enige bedrag in ruil daarvoor ontvang) beskik het ingevolge 'n transaksie, handeling of skema waarvan die beskikking oor die ekwiteitsaandeel deel gevorm het— 30
- [(aa)](A)** vir geen vergoeding of vir vergoeding wat nie 'n prys onder uiterste voorwaardes beding uitmaak nie (behalwe 'n uitkering in sub-subitem **[(bb)]** subsubitem (B)) beoog; 35
- [(bb)](B)** by wyse van 'n uitkering deur 'n maatskappy, tensy die volle bedrag van daardie uitkering— 40
- [(A)](AA)** onderhewig was, of by **[onstentenis]** ontstentenis van die bepaling van artikel 64B(5)(f) onderhewig sou wees aan sekondêre belasting op maatskappye; of 45
- [(B)](BB)** by die inkomste van 'n aandeelhouer van daardie maatskappy ingesluit was of by ontstentenis van die bepaling van artikel 10B(2)(a) of (b) aldus ingesluit sou wees; en 50
- [(d)](iv)** daardie buitelandse maatskappy ingevolge enige transaksie, handeling of skema waarvan die beskikking oor die ekwiteitsaandelekapitaal deel gevorm het, ophou om 'n beheerde buitelandse maatskappy met betrekking tot daardie persoon of ander maatskappy in dieselfde groep van maatskappye as daardie persoon te wees (met inagneming slegs van die regte in paragraaf (a) van die omskrywing van 'deelnemende regte' in artikel 9D beoog **[en sonder inagneming van enige keuse ingevolge artikel 9D(13) uitgeoefen]**). 55 60

- (4) Where subparagraph (3) does not apply due to the fact that any distribution as provided for in subparagraph [(3)(c)] (3)(iii)—
- (a) would have been subject to secondary tax on companies but for section 64B(5)(f); or
  - (b) would have been included in the income of the company to which that distribution was made but for section 10(1)(k)(ii)(dd), and the company to which that distribution was made, disposes of any amount of that distribution in the circumstances contemplated in subparagraph [(3)(c)(i), (ii) or (iii)] (3)(iii)(aa), (bb) or (cc), that company must be treated as having disposed of the equity share in that foreign company by means of a disposal which is or was disregarded in terms of subparagraph (2).”;
- (i) by the substitution in subparagraph (3)(iii)(bb) for subsubitem (B) of the following subsubitem:

“(B) was included in the income of a shareholder of that foreign company or would but for the provisions of section [10(1)(k)(ii)(dd)] 10B(2)(a) or (b) have been so included; or”;
  - (j) by the substitution in subparagraph (3)(iii)(cc)(B) for unit (BB) of the following unit:

“(BB) was included in the income of a shareholder of that company or would but for the provisions of section [10(1)(k)(ii)(dd)] 10B(2)(a) or (b) have been so included; and”;
  - (k) by the substitution in subparagraph (4) for item (b) of the following item:

“(b) would have been included in the income of the company to which that distribution was made but for section [10(1)(k)(ii)(dd)] 10B(2)(a) or (b);”;
  - (l) by the substitution in subparagraph (5) for the words preceding the proviso of the following words:

“A person must disregard any capital gain [or capital loss] determined in respect of any [capital distribution contemplated in paragraph 67A, 76, 76A or 77] foreign return of capital received by or accrued to that person from a ‘foreign company’ (other than a foreign financial instrument holding company or an interest contemplated in paragraph 2(2)) where that person (whether alone or together with any other person forming part of the same group of companies as that person) holds at least [20] 10 per cent of the total equity shares and voting rights in that company”.

(2) Paragraphs (a), (b) (c), (d), (e), (f), (h) and (l) of subsection (1) are deemed to have come into operation on 1 January 2012 and apply in respect of disposals made on or after that date.

(3) Paragraph (g) of subsection (1) is deemed to have come into operation on 1 January 2011.

(4) Paragraphs (i), (j) and (k) of subsection (1) are deemed to have come into operation on 1 April 2012 and apply in respect of disposals made on or after that date.

#### **Substitution of paragraph 64B of Eighth Schedule to Act 58 of 1962**

**123.** (1) The Eighth Schedule to the Income Tax Act, 1962, is hereby amended by the substitution for paragraph 64B of the following paragraph:

#### **“Disposal of equity shares in foreign companies**

**64B.** (1) Subject to subparagraph (4), a person other than a headquarter company must disregard any capital gain or capital loss determined in respect of the disposal of any equity share in any foreign company (other than an interest contemplated in paragraph 2(2)), if—

- (a) that person (whether alone or together with any other person forming part of the same group of companies as that person) immediately before that disposal—

- (i) held an interest of at least 10 per cent of the equity shares and voting rights in that foreign company; and



- (4) Waar subparagraaf (3) nie van toepassing is nie weens die feit dat enige uitkering soos voorsien in subparagraaf [(3)(c)] (3)(iii)—
- (a) aan sekondêre belasting op maatskappye onderhewig sou wees by [onstentenis] ontstentenis van artikel 64B(5)(f); of
- (b) by die inkomste van die maatskappy aan wie die uitkering gemaak is, ingesluit sou word by ontstentenis van artikel 10B(2)(a) of (b), en die maatskappy aan wie die uitkering gemaak was oor enige bedrag van daardie uitkering beskik in die omstandighede in subparagraaf [(3)(c)(i), (ii) of (iii)] (3)(iii)(aa), (bb) of (cc) beoog, word daardie maatskappy geag as oor die ekwiteitsaandeel in daardie buitelandse maatskappy te beskik het by wyse van 'n beskikking wat ingevolge subparagraaf (2) verontagsaam word of is.”;
- (i) deur in subparagraaf (3)(iii)(bb) subsubitem (B) deur die volgende subsubitem te vervang:  
“(B) by die inkomste van 'n aandeelhouer van daardie maatskappy ingesluit was of by ontstentenis van die bepalings van artikel [10(1)(k)(ii)(dd)] 10B(2)(a) of (b) aldus ingesluit sou wees; of”;
- (j) deur in subparagraaf (3)(iii)(cc)(B) eenheid (BB) deur die volgende eenheid te vervang:  
“(BB) by die inkomste van 'n aandeelhouer van daardie maatskappy ingesluit was of by ontstentenis van die bepalings van artikel [10(1)(k)(ii)(dd)] 10B(2)(a) of (b) aldus ingesluit sou wees; en”;
- (k) deur in subparagraaf (4) item (b) deur die volgende item te vervang:  
“(b) by die inkomste van die maatskappy aan wie die uitkering gemaak is, ingesluit sou word by ontstentenis van artikel [10(1)(k)(ii)(dd)] 10B(2)(a) of (b);” en
- (l) deur in subparagraaf (5) die woorde wat die voorbehoudsbepaling voorafgaan deur die volgende woorde te vervang:  
“ 'n Persoon moet enige kapitaalwins [of kapitaalverlies], vasgestel ten opsigte van enige [kapitaaluitkering beoog in paragraaf 67A, 76, 76A of 77] buitelandse teruggawe van kapitaal ontvang deur of toegeval aan daardie persoon van 'n 'buitelandse maatskappy' (buiten 'n buitelandse finansiële instrumenthouermaatskappy of 'n belang beoog in paragraaf 2(2)), verontagsaam, waar daardie persoon (hetsy alleen of tesame met enige ander persoon wat deel vorm van dieselfde groep van maatskappye as daardie persoon) minstens [20] 10 persent van die totale ekwiteitsaandeel en stemregte in daardie maatskappy hou”.
- (2) Paragrafe (a), (b), (c), (d), (e), (f), (h) en (l) van subartikel (1) word geag op 1 Januarie 2012 in werking te getree het en is van toepassing ten opsigte van beskikkings op of na daardie datum gemaak.
- (3) Paragraaf (g) van subartikel (1) word geag op 1 Januarie 2011 in werking te getree het.
- (4) Paragrafe (i), (j) en (k) van subartikel (1) word geag op 1 April 2012 in werking te getree het en is van toepassing ten opsigte van beskikkings op of na daardie datum gemaak.

### Vervanging van paragraaf 64B van Agtste Bylae by Wet 58 van 1962

123. (1) Die Agtste Bylae by die Inkomstebelastingwet, 1962, word hierby gewysig deur paragraaf 64B deur die volgende paragraaf te vervang:

#### “Beskikking oor ekwiteitsaandeel in buitelandse maatskappye

64B. (1) Behoudens subparagraaf (4) moet 'n persoon buiten 'n hoofkwartiermaatskappy enige kapitaalwins of kapitaalverlies bepaal ten opsigte van die beskikking oor enige ekwiteitsaandeel in enige buitelandse maatskappy (buiten 'n belang beoog in paragraaf 2(2)) verontagsaam, indien—

- (a) daardie persoon (hetsy alleen of tesame met enige ander persoon wat deel uitmaak van dieselfde groep van maatskappye as daardie persoon) onmiddellik voor daardie beskikking—
- (i) minstens 10 persent van die ekwiteitsaandeel en stemregte in daardie buitelandse maatskappy gehou het; en

- (ii) held the interest contemplated in subitem (i) for a period of at least 18 months prior to that disposal, unless—
    - (aa) that person is a company;
    - (bb) that interest was acquired by that person from any other company that forms part of the same group of companies as that person; and
    - (cc) that person and that other company in aggregate held that interest for more than 18 months; and
  - (b) that interest is disposed of to any person that is not a resident (other than a controlled foreign company) for an amount that is equal to or exceeds the market value of the interest.
- (2) Subject to subparagraph (4), a headquarter company must disregard any capital gain or capital loss determined in respect of the disposal of any equity share in any foreign company (other than an interest contemplated in paragraph 2(2)) if that headquarter company (whether alone or together with any other person forming part of the same group of companies as that headquarter company) immediately before that disposal held at least 10 per cent of the equity shares and voting rights in that foreign company.
- (3) Paragraph 8(b) applies in respect of any capital gain determined in respect of any disposal of any equity share in any foreign company on or before 31 December 2012 by a person which is or was disregarded in terms of subparagraphs (1) and (4) in any year of assessment, if—
- (a) the foreign company prior to that disposal was a controlled foreign company in relation to that person or in relation to any other company in the same group of companies as that person;
  - (b) the equity share in that foreign company was disposed of to a connected person in relation to that person either before or after that disposal;
  - (c) that person—
    - (i) disposed of that equity share for no consideration or for consideration which does not reflect an arm's length price, other than a distribution contemplated in subitem (ii);
    - (ii) disposed of that equity share by means of a distribution made unless—
      - (aa) that distribution was made to a company that forms part of the same group of companies as that person; or
      - (bb) the full amount of that distribution was included in the income of a shareholder of that foreign company or would, but for the provisions of section 10B(2)(a) or (b), have been so included; or
    - (iii) disposed of any consideration where that consideration was received or accrued from the disposal of that equity share (or any amount received in exchange therefor) in terms of any transaction, operation or scheme of which the disposal of the equity share forms part—
      - (aa) for no consideration or for consideration which does not reflect an arm's length price (other than a distribution contemplated in subsubitem (bb)); or
      - (bb) by means of a distribution by a company, unless the full amount of that distribution—
        - (A) was subject to or would, but for the provisions of section 64B(5)(f), have been subject to secondary tax on companies; or
        - (B) was included in the income of a shareholder of that company or would, but for the provisions of section 10B(2)(a) or (b), have been so included; and

- (ii) die belang beoog in subitem (i) gehou het vir 'n tydperk van minstens 18 maande voor daardie beskikking, tensy—
    - (aa) daardie persoon 'n maatskappy is;
    - (bb) daardie belang deur daardie persoon verkry is vanaf enige ander maatskappy wat deel uitmaak van dieselfde groep van maatskappye as daardie persoon; en
    - (cc) daardie persoon en daardie ander maatskappy in totaal daardie belang vir meer as 18 maande gehou het; en
  - (b) oor daardie belang beskik is aan 'n persoon wat nie 'n inwoner (buiten 'n beheerde buitelandse maatskappy) is nie vir 'n bedrag wat gelyk is aan die markwaarde van die belang of dit oorskry.
- (2) Behoudens subparagraaf (4) moet 'n hoofkwartiermaatskappy enige kapitaalwins of kapitaalverlies bepaal ten opsigte van die beskikking oor enige ekwiteitsaandeel in enige buitelandse maatskappy (buiten 'n belang beoog in paragraaf 2(2)) verontagsaam indien daardie hoofkwartiermaatskappy (hetsy alleen of tesame met enige ander persoon wat deel uitmaak van dieselfde groep van maatskappye as daardie hoofkwartiermaatskappy) onmiddellik voor daardie beskikking minstens 10 persent van die ekwiteitsaandeel en stemregte in daardie buitelandse maatskappy gehou het.
- (3) Paragraaf 8(b) is van toepassing ten opsigte van enige kapitaalwins bepaal ten opsigte van 'n beskikking oor enige ekwiteitsaandeel in enige buitelandse maatskappy op of voor 31 Desember 2012 deur 'n persoon wat verontagsaam is of was ingevolge subparagrafe (1) en (4) in enige jaar van aanslag, indien—
- (a) die buitelandse maatskappy voor daardie beskikking 'n beheerde buitelandse maatskappy met betrekking tot daardie persoon of met betrekking tot enige ander maatskappy in dieselfde groep van maatskappye as daardie persoon was;
  - (b) oor die ekwiteitsaandeel in daardie buitelandse maatskappy beskik is aan 'n verbonde persoon met betrekking tot daardie persoon of voor of na daardie beskikking;
  - (c) daardie persoon—
    - (i) oor daardie ekwiteitsaandeel beskik het teen geen vergoeding of teen vergoeding wat nie 'n prys beding op uiterste voorwaardes weerspieël nie, buiten 'n uitkering beoog in subitem (ii);
    - (ii) oor daardie ekwiteitsaandeel beskik het deur middel van 'n uitkering gemaak tensy—
      - (aa) daardie uitkering gemaak is aan 'n maatskappy wat deel uitmaak van dieselfde groep van maatskappye as daardie persoon; of
      - (bb) die volle bedrag van daardie uitkering by die inkomste van 'n aandeelhouer van daardie buitelandse maatskappy ingesluit is of, by ontstentenis van die bepalings van artikel 10B(2)(a) of (b), aldus ingesluit sou wees; of
    - (iii) oor enige vergoeding beskik het waar daardie vergoeding ontvang is of toegeval het vanaf die beskikking oor daardie ekwiteitsaandeel (of enige bedrag ontvang in ruil daarvoor) ingevolge enige transaksie, handeling of skema waarvan die beskikking oor die ekwiteitsaandeel deel uitmaak—
      - (aa) teen geen vergoeding of teen vergoeding wat nie 'n prys beding op uiterste voorwaardes weerspieël nie (buiten 'n uitkering beoog in subsubitem (bb)); of
      - (bb) deur middel van 'n uitkering deur 'n maatskappy, tensy die volle bedrag van daardie uitkering—
        - (A) aan sekondêre belasting op maatskappye onderhewig was of, by ontstentenis van die bepalings van artikel 64B(5)(f), onderhewig sou wees; of
        - (B) by die inkomste van 'n aandeelhouer van daardie maatskappy ingesluit is of, by ontstentenis van die bepalings van artikel 10B(2)(a) of (b), aldus ingesluit sou wees; en

(d) that foreign company ceased, in terms of any transaction, operation or scheme of which the disposal of the equity share forms part, to be a controlled foreign company in relation to that person or other company in the same group of companies as that person (having regard solely to any rights contemplated in paragraph (a) of the definition of ‘participation rights’ in section 9D). 5

(4) A person must disregard any capital gain determined in respect of any foreign return of capital received by or accrued to that person from a ‘foreign company’ as defined in section 9D (other than an interest contemplated in paragraph 2(2)) where that person (whether alone or together with any other person forming part of the same group of companies as that person) holds at least 10 per cent of the total equity shares and voting rights in that company. 10

(5) The provisions of this paragraph do not apply in respect of any capital gain or capital loss determined in respect of— 15

(a) the disposal of any equity share in any portfolio contemplated in paragraph (e) of the definition of ‘company’ in section 1; and

(b) any distribution contemplated in subparagraph (4) by any portfolio contemplated in item (a).”.

(2) Subsection (1) comes into operation on 1 January 2013 and applies in respect of disposals made on or after that date. 20

**Amendment of paragraph 65 of Eighth Schedule to Act 58 of 1962, as amended by section 103 of Act 60 of 2001, section 106 of Act 45 of 2003, section 27 of Act 16 of 2004 and section 78 of Act 35 of 2007**

124. (1) Paragraph 65 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended— 25

(a) by the substitution in subparagraph (1)(d) for subitem (ii) of the following subitem:

“(ii) all the replacement assets constitute assets contemplated in section 9(2)(b);” and 30

(b) by the substitution in subparagraph (1)(d) for subitem (ii) of the following subitem:

“(ii) all the replacement assets constitute assets contemplated in section 9(2)(b)(k);”.

(2) Paragraph (a) of subsection (1) is deemed to have come into operation on 22 December 2003 and applies in respect of disposals made on or after that date. 35

(3) Paragraph (b) of subsection (1) is deemed to have come into operation on 1 January 2012 and applies in respect of disposals made during years of assessment commencing on or after that date.

**Amendment of paragraph 66 of Eighth Schedule to Act 58 of 1962, as amended by section 33 of Act 9 of 2001, section 107 of Act 45 of 2003, section 67 of Act 8 of 2007 and section 79 of Act 35 of 2007** 40

125. (1) Paragraph 66 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended by the substitution in subparagraph (1) for item (d) of the following item:

“(d) all the replacement assets constitute assets contemplated in section 9(2)(b)(k);”.

(2) Subsection (1) is deemed to have come into operation on 1 January 2012 and applies in respect of disposals made during years of assessment commencing on or after that date.

**Amendment of paragraph 67A of Eighth Schedule to Act 58 of 1962, as substituted by section 93 of Act 74 of 2002 and amended by section 109 of Act 45 of 2003, section 81 of Act 35 of 2007, section 82 of Act 60 of 2008 and section 109 of Act 7 of 2010** 50

126. (1) Paragraph 67A of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended by the deletion of subparagraphs (3), (3A) and (4). 55

(2) Subsection (1) is deemed to have come into operation on 29 February 2012 and applies in respect of disposals made on or after that date.

(d) daardie buitelandse maatskappy opgehou het, ingevolge enige transaksie, handeling of skema waarvan die beskikking oor die ekwiteitsaandeel deel uitmaak, om 'n beheerde buitelandse maatskappy met betrekking tot daardie persoon of ander maatskappy in dieselfde groep van maatskappye as daardie persoon (met inagneming slegs van enige belang beoog in paragraaf (a) van die omskrywing van 'deelnemende regte' in artikel 9D) te wees. 5

(4) 'n Persoon moet enige kapitaalwins bepaal ten opsigte van enige buitelandse teruggawe van kapitaal ontvang deur of toegeval aan daardie persoon vanaf 'n 'buitelandse maatskappy' soos omskryf in artikel 9D (buiten 'n belang beoog in paragraaf 2(2)) verontagsaam waar daardie persoon (hetsy alleen of tesame met enige ander persoon wat deel uitmaak van dieselfde groep van maatskappye as daardie persoon) minstens 10 persent van die totale ekwiteitsaandele en stemregte in daardie maatskappy hou. 10 15

(5) Die bepalings van hierdie paragraaf is nie van toepassing nie ten opsigte van enige kapitaalwins of kapitaalverlies bepaal ten opsigte van—  
(a) die beskikking oor enige ekwiteitsaandeel in enige portefeulje beoog in paragraaf (e) van die omskrywing van 'maatskappy' in artikel 1; en  
(b) enige uitkering beoog in subparagraaf (4) deur enige portefeulje beoog in item (a).” 20

(2) Subartikel (1) tree op 1 Januarie 2013 in werking en is van toepassing ten opsigte van beskikkings op of na daardie datum gemaak.

**Wysiging van paragraaf 65 van Agtste Bylae by Wet 58 van 1962, soos gewysig deur artikel 103 van Wet 60 van 2001, artikel 106 van Wet 45 van 2003, artikel 27 van Wet 16 van 2004 en artikel 78 van Wet 35 van 2007** 25

124. (1) Paragraaf 65 van die Agtste Bylae by die Inkomstebelastingwet, 1962, word hierby gewysig—

- (a) deur in subparagraaf (1)(d) subitem (ii) deur die volgende subitem te vervang: “(ii) al die vervangende bates bates is soos beoog in artikel 9(2)(b);” en 30
- (b) deur in subparagraaf (1)(d) subitem (ii) deur die volgende subitem te vervang: “(ii) al die vervangende bates bates is soos beoog in artikel 9(2)(b)(k);”

(2) Paragraaf (a) van subartikel (1) word geag op 22 Desember 2003 in werking te getree het en is van toepassing ten opsigte van beskikkings op of na daardie datum gemaak. 35

(3) Paragraaf (b) van subartikel (1) word geag op 1 Januarie 2012 in werking te getree het en is van toepassing ten opsigte van beskikkings gemaak gedurende jare van aanslag wat op of na daardie datum begin.

**Wysiging van paragraaf 66 van Agtste Bylae by Wet 58 van 1962, soos gewysig deur artikel 33 van Wet 9 van 2001, artikel 107 van Wet 45 van 2003, artikel 67 van Wet 8 van 2007 en artikel 79 van Wet 35 van 2007** 40

125. (1) Paragraaf 66 van die Agtste Bylae by die Inkomstebelastingwet, 1962, word hierby gewysig deur in subparagraaf (1) item (d) deur die volgende item te vervang: “(d) al die vervangende bates bates is soos beoog in artikel 9(2)(b)(k);” 45

(2) Subartikel (1) word geag op 1 Januarie 2012 in werking te getree het en is van toepassing ten opsigte van beskikkings gemaak gedurende jare van aanslag wat op of na daardie datum begin.

**Wysiging van paragraaf 67A van Agtste Bylae by Wet 58 van 1962, soos vervang deur artikel 93 van Wet 74 van 2002 en gewysig deur artikel 109 van Wet 45 van 2003, artikel 81 van Wet 35 van 2007, artikel 82 van Wet 60 van 2008 en artikel 109 van Wet 7 van 2010** 50

126. (1) Paragraaf 67A van die Agtste Bylae by die Inkomstebelastingwet, 1962, word hierby gewysig deur subparagraawe (3), (3A) en (4) te skrap.

(2) Subartikel (1) word geag op 29 Februarie 2012 in werking te getree het en is van toepassing ten opsigte van beskikkings op of na daardie datum gemaak. 55

**Repeal of paragraph 67A of Eighth Schedule to Act 58 of 1962**

127. (1) The Eighth Schedule to the Income Tax Act, 1962, is hereby amended by the repeal of paragraph 67A.

(2) Subsection (1) comes into operation on 1 April 2013 and applies in respect of years of assessment commencing on or after that date. 5

**Repeal of paragraph 67AB of Eighth Schedule to Act 58 of 1962**

128. (1) The Eighth Schedule to the Income Tax Act, 1962, is hereby amended by the repeal of paragraph 67AB.

(2) Subsection (1) is deemed to have come into operation on 1 April 2012 and applies in respect of years of assessment commencing on or after that date. 10

**Amendment of paragraph 67B of Eighth Schedule to Act 58 of 1962, as inserted by section 110 of Act 45 of 2003**

129. (1) The Eighth Schedule to the Income Tax Act, 1962, is hereby amended by the substitution for paragraph 67B of the following paragraph:

**“Disposal of immovable property by share block company”** 15

**67B.** (1) For the purposes of this paragraph—

‘share’ means a share as defined in section 1 of the Share Blocks Control Act;

‘share block company’ means a share block company as defined in section 1 of the Share Blocks Control Act; and 20

‘Share Blocks Control Act’ means the Share Blocks Control Act, 1980 (Act No. 59 of 1980).

(2) This paragraph applies where a person who holds a right of use of a part of the immovable property of a share block company, which right is conferred by reason of the ownership of a share by that person in that share block company, acquires ownership of that part of immovable property from that share block company as part of any transaction in terms of which a disposal of that part of immovable property is made by that share block company. 25

(3) Where a person who owns a share in a share block company acquires ownership of immovable property as part of any transaction in terms of which a disposal is made by that share block company as contemplated in subparagraph (2)— 30

(a) the share block company must disregard any capital gain or capital loss determined in respect of that disposal; and 35

(b) that person must—

(i) disregard any capital gain or capital loss determined in respect of any disposal of that share as a result of that disposal; and

(ii) be treated as having—

(aa) acquired that immovable property for an amount equal to the expenditure contemplated in paragraph 20 incurred by the person in acquiring that share; 40

(bb) incurred the expenditure contemplated in subsubitem (aa) on the same date that the expenditure was incurred by the person in acquiring that share; 45

(cc) effected improvements to that immovable property for an amount equal to the expenditure contemplated in paragraph 20 incurred by that person in effecting improvements to the part of the immovable property of the share block company in respect of which the person had a right of use as a result of the ownership of that share; 50

**Herroeping van paragraaf 67A van Agtste Bylae by Wet 58 van 1962**

127. (1) Die Agtste Bylae word hierby gewysig deur paragraaf 67A te herroep.  
(2) Subartikel (1) tree op 1 April 2013 in werking en is van toepassing ten opsigte van jare van aanslag wat op of na daardie datum begin.

**Herroeping van paragraaf 67AB van Agtste Bylae by Wet 58 van 1962**

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128. (1) Die Agtste Bylae by die Inkomstebelastingwet, 1962, word hierby gewysig deur paragraaf 67AB te herroep.  
(2) Subartikel (1) word geag op 1 April 2012 in werking te getree het en is van toepassing ten opsigte van jare van aanslag wat op of na daardie datum begin.

**Wysiging van paragraaf 67B van Agtste Bylae by Wet 58 van 1962, soos ingevoeg deur artikel 110 van Wet 45 van 2003**

129. (1) Die Agtste Bylae by die Inkomstebelastingwet, 1962, word hierby gewysig deur paragraaf 67B deur die volgende paragraaf te vervang:

**“Beskikking oor onroerende eiendom deur aandeelblokkmaatskappy**

**67B.** (1) By die toepassing van hierdie paragraaf beteken—

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‘aandeel’ ’n aandeel soos omskryf in artikel 1 van die Wet op die Beheer van Aandeelblokkmaatskappye;

‘aandeelblokkmaatskappy’ ’n aandeelblokkmaatskappy soos omskryf in artikel 1 van die Wet op die Beheer van Aandeelblokkmaatskappye;

‘Wet op die Beheer van Aandeelblokkmaatskappye’ die Wet op die Beheer van Aandeelblokkmaatskappye, 1980 (Wet No. 59 van 1980).

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(2) Hierdie paragraaf is van toepassing waar ’n persoon wat ’n gebruiksreg van ’n deel van die onroerende eiendom van ’n aandeelblokkmaatskappy hou, welke reg oorgedra is ten gevolge van die eienaarskap van ’n aandeel deur daardie persoon in daardie aandeelblokkmaatskappy, eienaarskap verkry van daardie deel van onroerende eiendom vanaf daardie aandeelblokkmaatskappy as deel van enige transaksie ingevolge waarvan ’n beskikking oor daardie deel van onroerende eiendom deur daardie aandeelblokkmaatskappy gemaak word.

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(3) Waar ’n persoon wat ’n aandeel in ’n aandeelblokkmaatskappy besit eienaarskap verkry van onroerende eiendom as deel van enige transaksie ingevolge waarvan ’n beskikking gemaak word deur daardie aandeelblokkmaatskappy soos beoog in subparagraaf (2)—

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(a) moet die aandeelblokkmaatskappy enige kapitaalwins of kapitaalverlies bepaal ten opsigte van daardie beskikking verontagsaam; en

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(b) moet daardie persoon—

(i) enige kapitaalwins of kapitaalverlies bepaal ten opsigte van ’n beskikking oor daardie aandeel as gevolg van daardie beskikking verontagsaam;

(ii) behandel word asof—

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(aa) daardie persoon daardie onroerende eiendom verkry het vir ’n bedrag gelyk aan die uitgawes beoog in paragraaf 20 aangegaan deur die persoon in die verkryging van daardie aandeel;

(bb) daardie persoon die uitgawes beoog in subsubitem (aa) aangegaan het op dieselfde datum as wat die uitgawes deur die persoon in die verkryging van daardie aandeel aangegaan is;

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(cc) daardie persoon verbeterings aan daardie onroerende eiendom aangebring het vir ’n bedrag gelyk aan die uitgawes beoog in paragraaf 20 aangegaan deur daardie persoon in die aanbring van verbeterings aan die deel van die onroerende eiendom van die aandeelblokkmaatskappy ten opsigte waarvan die persoon ’n gebruiksreg gehad het as gevolg van die eienaarskap van daardie aandeel;

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- (dd) incurred the expenditure contemplated in subsubitem (cc) on the same date that the expenditure was incurred by the person in effecting the improvements to the part of the immovable property of the share block company in respect of which the person had a right of use as a result of the ownership of that share; 5
  - (ee) acquired that immovable property on the date that the share was acquired by the person; and
  - (ff) used that immovable property in the same manner as the person used the immovable property in respect of which the person had a right of use as a result of the ownership of that share; and 10
- (c) any valuation of that share which was done by that person within the period prescribed by paragraph 29(4) must be deemed to have been done by that person in respect of that immovable property.” 15
- (2) Subsection (1) comes into operation on 1 January 2013 and applies in respect of disposals made on or after that date.

**Amendment of paragraph 74 of Eighth Schedule to Act 58 of 1962, as amended by section 106 of Act 60 of 2001, section 95 of Act 74 of 2002, section 113 of Act 45 of 2003, section 83 of Act 35 of 2007, section 59 of Act 3 of 2008, section 78 of Act 17 of 2009, section 110 of Act 7 of 2010 and section 117 of Act 24 of 2011** 20

130. (1) Paragraph 74 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended by the substitution for the definition of “**date of distribution**” of the following definition:
- “**‘date of distribution’**, in relation to any distribution, means— 25
- (a) to the extent that the distribution does not consist of a distribution of an asset *in specie*—
    - (i) where the company that makes the distribution is a listed company, the date on which the distribution is paid; or
    - (ii) where the company that makes the distribution is not a listed company, the earlier of the date on which the distribution is paid or becomes due and payable; or 30
  - (b) to the extent that the distribution consists of a distribution of an asset *in specie*, the earlier of the date on which the distribution is paid or becomes due and payable.” 35
- (2) Subsection (1) is deemed to have come into operation on 1 April 2012 and applies in respect of distributions made 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 and amended by section 114 of Act 45 of 2003, section 29 of Act 16 of 2004, section 79 of Act 17 of 2009 and section 118 of Act 24 of 2011** 40

131. (1) Paragraph 75 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended by the substitution for subsection (1) of the following subsection:
- “(1) Where a company makes a distribution of an asset *in specie* to a person holding a share in that company[,]—
- (a) that company must be treated as having disposed of that asset to that shareholder on the date of distribution for an amount received or accrued equal to the market value of that asset on that date; and 45
  - (b) that person must be treated as having acquired that asset on the date of distribution and for expenditure equal to the market value of that asset on that date, which expenditure must be treated as an amount of expenditure actually incurred for the purposes of paragraph 20(1)(a).” 50
- (2) Subsection (1) is deemed to have come into operation on 1 April 2012 and applies in respect of distributions made on or after that date.



- (dd) daardie persoon die uitgawes beoog in subsubitem (cc) aangegaan het op dieselfde datum as wat daardie uitgawes deur die persoon aangegaan is in die aanbring van die verbeterings aan die deel van die onroerende eiendom van die aandeelbloksmaatskappy ten opsigte waarvan die persoon 'n gebruiksreg gehad het as gevolg van die eienaarskap van daardie aandeel; 5
- (ee) daardie persoon daardie onroerende eiendom verkry het op die datum waarop die aandeel deur die persoon verkry is; en 10
- (ff) daardie persoon daardie onroerende eiendom gebruik het op dieselfde wyse as wat die persoon die onroerende eiendom gebruik het ten opsigte waarvan die persoon 'n gebruiksreg gehad het as gevolg van die eienaarskap van daardie aandeel; en 15
- (c) moet enige waardasie van daardie aandeel wat gedoen is deur daardie persoon binne die tydperk voorgeskryf deur paragraaf 29(4) geag word deur daardie persoon ten opsigte van daardie onroerende eiendom gedoen te gewees het.”.
- (2) Subartikel (1) tree op 1 Januarie 2013 in werking en is van toepassing ten opsigte van beskikkings op of na daardie datum gemaak. 20

**Wysiging van paragraaf 74 van Agtste Bylae by Wet 58 van 1962, soos gewysig deur artikel 106 van Wet 60 van 2001, artikel 95 van Wet 74 van 2002, artikel 113 van Wet 45 van 2003, artikel 83 van Wet 35 van 2007, artikel 59 van Wet 3 van 2008, artikel 78 van Wet 17 van 2009, artikel 110 van Wet 7 van 2010 en artikel 117 van Wet 24 van 2011** 25

- 130.** (1) Paragraaf 74 van die Agtste Bylae by die Inkomstebelastingwet, 1962, word hierby gewysig deur die omskrywing van “**datum van uitkering**” deur die volgende omskrywing te vervang: 30
- “ ‘**datum van uitkering**’, met betrekking tot enige uitkering, beteken—
- (a) namate die uitkering nie 'n uitkering van 'n bate *in specie* uitmaak nie—
- (i) waar die maatskappy wat die uitkering maak 'n genoteerde maatskappy is, die datum waarop die uitkering betaal word; of
- (ii) waar die maatskappy wat die uitkering maak nie 'n genoteerde maatskappy is nie, die vroegste van die datum waarop die uitkering betaal word of verskuldig en betaalbaar word; of 35
- (b) namate die uitkering 'n uitkering van 'n bate *in specie* uitmaak, die vroegste van die datum waarop die uitkering betaal word of verskuldig en betaalbaar word.”.
- (2) Subartikel (1) word geag op 1 April 2012 in werking te getree het en is van toepassing ten opsigte van uitkerings op of na daardie datum gemaak. 40

**Wysiging van paragraaf 75 van Agtste Bylae by Wet 58 van 1962, soos ingevoeg deur artikel 38 van Wet 5 van 2001 en gewysig deur artikel 114 van Wet 45 van 2003, artikel 29 van Wet 16 van 2004, artikel 79 van Wet 17 van 2009 en artikel 118 van Wet 24 van 2011** 45

- 131.** (1) Paragraaf 75 van die Agtste Bylae by die Inkomstebelastingwet, 1962, word hierby gewysig deur subartikel (1) deur die volgende subartikel te vervang:
- “(1) Waar 'n maatskappy 'n uitkering van 'n bate *in specie* maak aan 'n persoon wat 'n aandeel in daardie maatskappy hou,]—
- (a) moet daardie maatskappy geag word oor daardie bate te beskik het aan daardie aandeelhouer op die datum van uitkering vir 'n bedrag ontvang of toegeval gelyk aan die markwaarde van daardie bate op daardie datum; en 50
- (b) moet daardie persoon geag word daardie bate te verkry het op die datum van uitkering en vir uitgawes gelyk aan die markwaarde van daardie bate op daardie datum, welke uitgawes geag moet word 'n bedrag van uitgawe werklik aangegaan by die toepassing van paragraaf 20(1)(a) te wees.”. 55
- (2) Subartikel (1) word geag op 1 April 2012 in werking te getree het en is van toepassing ten opsigte van uitkerings op of na daardie datum gemaak.

**Amendment of paragraph 76 of Eighth Schedule to Act 58 of 1962, as amended by section 107 of Act 60 of 2001, section 96 of Act 74 of 2002, section 115 of Act 45 of 2003, section 30 of Act 16 of 2004, section 81 of Act 31 of 2005, section 84 of Act 35 of 2007, section 60 of Act 3 of 2008, section 84 of Act 60 of 2008 and section 119 of Act 24 of 2011**

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132. (1) Paragraph 76 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended—

- (a) by the substitution for the heading of the following heading:  
“**Returns of capital and foreign returns of capital by way of distributions of cash or assets *in specie***”;
- (b) by the substitution in subparagraph (1) for the words preceding item (a) of the following words:  
“Subject to subparagraph (2), where a return of capital or foreign return of capital by way of a distribution of cash or an asset *in specie* (other than a distribution of a share in terms of an unbundling transaction contemplated in section 46(1)) is received by or accrues to a shareholder in respect of a share, that shareholder must where the date of distribution of that cash or asset occurs—”;
- (c) by the substitution in subparagraph (1) for item (b) of the following item:  
“(b) on or after valuation date but before 1 October 2007 and that share is disposed of by the shareholder on or before **[31 December 2011]** 31 March 2012, treat the amount of that cash or the market value of that asset as proceeds when that share is disposed of;”;
- (d) by the substitution for subparagraph (2) of the following subparagraph:  
“(2) Where a shareholder uses the weighted average method in respect of shares that are identical assets as contemplated in paragraph 32(3A)(a) and a return of capital or foreign return of capital by way of a distribution of cash or an asset *in specie* (other than a distribution of a share in terms of an unbundling transaction contemplated in section 46(1)) is received by or accrues to that shareholder in respect of those shares on or after valuation date but before 1 October 2007, the weighted average base cost of those shares must be determined by—  
(a) deducting the amount of that cash or the market value of that asset from the base cost of those shares held when that return of capital or foreign return of capital was received or accrued; and  
(b) dividing the result by the number of those shares held when that return of capital or foreign return of capital was received or accrued.”;
- (e) by the deletion of subparagraph (3); and
- (f) by the substitution for subparagraph (4) of the following subparagraph:  
“(4) Every—  
(a) company that makes a distribution to any other person; and  
(b) **[every]** person that pays a distribution to any other person on behalf of a company,  
on or after 1 April 2012 must, by the time of the distribution or payment, notify that other person in writing of the extent to which the distribution or payment constitutes a return of capital.”.

(2) Subsection (1) is deemed to have come into operation on 1 January 2011.

**Amendment of paragraph 76A of Eighth Schedule to Act 58 of 1962, as inserted by section 85 of Act 35 of 2007 and amended by section 61 of Act 3 of 2008 and section 120 of Act 24 of 2011**

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133. (1) Paragraph 76A 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—

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**Wysiging van paragraaf 76 van Agtste Bylae by Wet 58 van 1962, soos gewysig deur artikel 107 van Wet 60 van 2001, artikel 96 van Wet 74 van 2002, artikel 115 van Wet 45 van 2003, artikel 30 van Wet 16 van 2004, artikel 81 van Wet 31 van 2005, artikel 84 van Wet 35 van 2007, artikel 60 van Wet 3 van 2008, artikel 84 van Wet 60 van 2008 en artikel 119 van Wet 24 van 2011**

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132. (1) Paragraaf 76 van die Agtste Bylae by die Inkomstebelastingwet, 1962, word hierby gewysig—

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

“**Teruggawes van kapitaal en buitelandse teruggawes van kapitaal by wyse van uitkerings van kontant of bates *in specie***”;

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(b) deur in subparagraaf (1) die woorde wat item (a) voorafgaan deur die volgende woorde te vervang:

“Behoudens subparagraaf (2), waar ’n teruggawe van kapitaal of buitelandse teruggawe van kapitaal by wyse van ’n uitkering van kontant of ’n bate *in specie* (behalwe ’n uitkering van ’n aandeel ingevolge ’n ontbondelingstransaksie in artikel 46(1) beoog) ontvang word deur of toeval aan ’n aandeelhouer ten opsigte van ’n aandeel, moet daardie aandeelhouer waar die datum van uitkering van daardie kontant of bate plaasvind—”;

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(c) deur in subparagraaf (1) item (b) deur die volgende item te vervang:

“(b) op of na waardasiedatum, maar voor 1 Oktober 2007, en daar word op of voor **[31 Desember 2011]** 31 Maart 2012 deur die aandeelhouer oor daardie aandeel beskik, die bedrag van daardie kontant of die markwaarde van daardie bate as opbrengs hanteer wanneer oor daardie aandeel beskik word;”;

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(d) deur subparagraaf (2) deur die volgende subparagraaf te vervang:

“(2) Waar ’n aandeelhouer die geweegde gemiddelde metode ten opsigte van aandele wat identiese bates is soos in paragraaf 32(3A)(a) bedoel gebruik, en ’n teruggawe van kapitaal of buitelandse teruggawe van kapitaal by wyse van ’n uitkering van kontant of ’n bate *in specie* (behalwe ’n uitkering van ’n aandeel kragtens ’n ontbondelings-transaksie in artikel 46(1) beoog uitgekeer) op of na waardasiedatum maar voor 1 Oktober 2007, ontvang word deur of toeval aan daardie aandeelhouer ten opsigte van daardie aandele, moet die geweegde gemiddelde basiskoste van daardie aandele bereken word deur—

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(a) die bedrag van daardie kontant of die markwaarde van daardie bate van die basiskoste van daardie aandele wat gehou is toe daardie teruggawe van kapitaal of buitelandse teruggawe van kapitaal ontvang is of toegeval het; en

(b) die resultaat te deel deur die aantal aandele wat gehou is toe daardie teruggawe van kapitaal of buitelandse teruggawe van kapitaal ontvang was of toegeval het.”;

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(e) deur subparagraaf (3) te skrap; en

(f) deur subparagraaf (4) deur die volgende subparagraaf te vervang:

“(4) Elke—

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(a) maatskappy wat ’n uitkering maak aan enige ander persoon; en

(b) [elke] persoon wat ’n uitkering namens ’n maatskappy aan enige ander persoon betaal;

op of na 1 April 2012 moet, teen die tyd van die uitkering of betaling, daardie ander persoon skriftelik in kennis stel van die mate waartoe die uitkering of betaling ’n teruggawe van kapitaal uitmaak.”.

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(2) Subartikel (1) word geag op 1 Januarie 2011 in werking te getree het.

**Wysiging van paragraaf 76A van Agtste Bylae by Wet 58 van 1962, soos ingevoeg deur artikel 85 van Wet 35 van 2007 en gewysig deur artikel 61 van Wet 3 van 2008 en artikel 120 van Wet 24 van 2011**

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133. (1) Paragraaf 76A van die Agtste Bylae by die Inkomstebelastingwet, 1962, word hierby gewysig—

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

“(1) Waar—

- (a) a return of capital or foreign return of capital by way of a distribution of cash or an asset *in specie* (other than a share distributed in terms of an unbundling transaction contemplated in section 46(1)) is received by or accrues to a shareholder in respect of a share; and 5
- (b) that return of capital or foreign return of capital is received by or accrues to that shareholder on or after 1 October 2007 and before 1 April 2012, that shareholder must be deemed to have disposed of part of that share on the date that the return of capital or foreign return of capital is received by or accrues to the shareholder.”; 10
- (b) by the substitution for subparagraph (1A) of the following subparagraph:  
“(1A) Subject to paragraph 76(2), where—
- (a) a return of capital or foreign return of capital by way of a distribution of cash or an asset *in specie* (other than a share distributed in terms of an unbundling transaction contemplated in section 46(1)) is received by or accrues to a shareholder in respect of a share; 15
- (b) that return of capital or foreign return of capital is received by or accrues to that shareholder on or after valuation date but before 1 October 2007; and 20
- (c) that share is not disposed of before 1 April 2012, that return of capital or foreign return of capital must be treated as having been distributed on 1 April 2012.”; and 25
- (c) by the substitution for subparagraph (3) of the following subparagraph: 30  
“(3) For purposes of paragraph 33(1) the market value of the part disposed of under this paragraph must be treated as being equal to the amount of the cash or the market value of the asset received or accrued by way of a return of capital or foreign return of capital.”.
- (2) Subsection (1) is deemed to have come into operation on 1 January 2011. 30

**Amendment of paragraph 76B of Eighth Schedule to Act 58 of 1962, as inserted by section 121 of Act 24 of 2011**

134. (1) Paragraph 76B of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended—

- (a) by the substitution in subparagraph (1) for the words preceding subitem (i) of the following words: 35  
“Where—
- (a) a return of capital or foreign return of capital by way of a distribution of cash or an asset *in specie* is received by or accrues to a [shareholder] holder of a share in respect of [a] that share; 40
- (b) that return of capital or foreign return of capital is received by or accrues to [that shareholder] the holder of that share on or after 1 April 2012 and prior to the disposal of that share; and
- (c) that share constitutes a pre-valuation date asset in relation to [that shareholder] the holder of that share, 45  
for purposes of determining the date of acquisition of that share and the expenditure in respect of the cost of acquisition of that share, [that shareholder] the holder of that share must be treated as—”; and
- (b) by the substitution for subparagraphs (2) and (3) of the following subparagraphs: 50  
“(2) Where—
- (a) a return of capital or foreign return of capital by way of a distribution of cash or an asset *in specie* is received by or accrues to a [shareholder] holder of a share in respect of [a] that share; and
- (b) that return of capital or foreign return of capital is received by or 55

- (a) 'n teruggawe van kapitaal of buitelandse teruggawe van kapitaal by wyse van 'n uitkering van kontant of 'n bate *in specie* (behalwe 'n aandeel ingevolge 'n ontbondelingstransaksie beoog in artikel 46(1) uitgekeer) ontvang word deur of toeval aan 'n aandeelhouer ten opsigte van 'n aandeel; en 5
- (b) daardie teruggawe van kapitaal of buitelandse teruggawe van kapitaal ontvang word deur of toeval aan daardie aandeelhouer op of na 1 Oktober 2007 en voor 1 April 2012, word daardie aandeelhouer geag oor 'n gedeelte van daardie aandeel te beskik het op die datum waarop die teruggawe van kapitaal of buitelandse teruggawe van kapitaal ontvang word deur of toeval aan die aandeelhouer.”; 10
- (b) deur subparagraaf (1A) deur die volgende subparagraaf te vervang:  
“(1A) Behoudens paragraaf 76(2), waar—
- (a) 'n teruggawe van kapitaal of buitelandse teruggawe van kapitaal by wyse van 'n uitkering van kontant of 'n bate *in specie* (behalwe 'n aandeel ingevolge 'n ontbondelingstransaksie beoog in artikel 46(1) uitgekeer) ontvang word deur of toeval aan 'n aandeelhouer ten opsigte van 'n aandeel; 15
- (b) daardie teruggawe van kapitaal of buitelandse teruggawe van kapitaal ontvang word deur of toeval aan daardie aandeelhouer op of na die waardasiedatum maar voor 1 Oktober 2007; en 20
- (c) daar nie oor daardie aandeel beskik word voor 1 April 2012 nie, word daardie teruggawe van kapitaal of buitelandse teruggawe van kapitaal behandel asof dit op 1 April 2012 uitgekeer is.”; en 25
- (c) deur subparagraaf (3) deur die volgende subparagraaf te vervang:  
“(3) By die toepassing van paragraaf 33(1) word die markwaarde van die gedeelte waaroor beskik is ingevolge hierdie paragraaf, gelykstaande te wees aan die bedrag van die kontant of die markwaarde van die bate ontvang of toegeval by wyse van 'n teruggawe van kapitaal of buitelandse teruggawe van kapitaal.”. 30
- (2) Subartikel (1) word geag op 1 Januarie 2011 in werking te getree het.

**Wysiging van paragraaf 76B van Agtste Bylae by Wet 58 van 1962, soos ingevoeg deur artikel 121 van Wet 24 van 2011**

134. (1) Paragraaf 76B van die Agtste Bylae by die Inkomstebelastingwet, 1962, word hierby gewysig— 35
- (a) deur in subparagraaf (1) die woorde wat subitem (i) voorafgaan deur die volgende woorde te vervang:  
“Waar—
- (a) 'n teruggawe van kapitaal of buitelandse teruggawe van kapitaal by wyse van 'n uitkering van kontant of 'n bate *in specie* ontvang word deur of toeval aan 'n [aandeelhouer] houer van 'n aandeel ten opsigte van [’n] daardie aandeel; 40
- (b) daardie teruggawe van kapitaal of buitelandse teruggawe van kapitaal ontvang word deur of toeval aan [daardie aandeelhouer] die houer van daardie aandeel op of na 1 April 2012 en voor die beskikking oor daardie aandeel; en 45
- (c) daardie aandeel 'n voor-waardasiedatumbate met betrekking tot [daardie aandeelhouer] die houer van daardie aandeel uitmaak, moet daardie aandeelhouer by die bepaling van die verkrygingsdatum van daardie aandeel en die uitgawes ten opsigte van die koste van verkryging van daardie aandeel, [daardie aandeelhouer] die houer van daardie aandeel behandel word asof die aandeelhouer—”; en 50
- (b) deur subparagraaf (2) en (3) deur die volgende subparagraaf te vervang:  
“(2) Waar— 55
- (a) 'n teruggawe van kapitaal of buitelandse teruggawe van kapitaal by wyse van 'n uitkering van kontant of 'n bate *in specie* ontvang word deur of toeval aan 'n [aandeelhouer] houer van 'n aandeel ten opsigte van [’n] daardie aandeel; en
- (b) daardie teruggawe van kapitaal of buitelandse teruggawe van kapitaal word ontvang deur of val toe aan [daardie aandeelhouer] 60

accrues to **[that shareholder]** the holder of that share on or after 1 April 2012 and prior to the disposal of that share, the **[shareholder]** holder of that share must reduce the expenditure in respect of the share by the amount of that cash or the market value of that asset on the date that the asset is received by or accrues to **[that shareholder]** the holder of that share. 5

(3) Where the amount of a return of capital or foreign return of capital contemplated in subparagraph (2) exceeds the expenditure in respect of the share in respect of which that return of capital or foreign return of capital is received or accrues, the amount of the excess must be treated as a capital gain in determining **[that shareholder's]** the aggregate capital gain or aggregate capital loss of the holder of that share for the year of assessment in which that return of capital or foreign return of capital is received by or accrues to the **[shareholder]** holder of that share.”. 10

(2) Subsection (1) is deemed to have come into operation on 1 April 2012 and applies in respect of years of assessment commencing on or after that date. 15

**Amendment of paragraph 78 of Eighth Schedule to Act 58 of 1962, as amended by section 97 of Act 74 of 2002, section 116 of Act 45 of 2003, section 31 of Act 16 of 2004, section 85 of Act 60 of 2008, section 111 of Act 7 of 2010 and section 123 of Act 24 of 2011** 20

**135.** (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 makes a distribution of shares for no consideration, those shares must be treated as having been acquired on the date of distribution for expenditure incurred and paid of nil, except to the extent that the distribution of those shares constitutes a dividend or foreign 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 or foreign dividend.”; 25 30

(b) by the insertion after subparagraph (1) of the following subparagraph:  
“(2) Subject to paragraphs 11(1)(g), 23 and 35(2), where a company issues shares in substitution of previously held shares in that company by reason of a subdivision or consolidation or a conversion or incorporation contemplated in section 40A or 40B— 35

(a) the shareholder must disregard any capital gain or capital loss determined in respect of that substitution; and

(b) those newly issued shares must be treated as—  
(i) having been acquired for an amount of expenditure equal to the aggregate expenditure allowable in terms of paragraph 20 incurred in respect of 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; 40

(ii) having been acquired on the same date as those previously held shares; and 45

(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 50

(c) by the substitution for subparagraph (3) of the following subparagraph:  
“(3) Where a company issues shares in substitution of previously held shares as contemplated in subparagraph (2) and also effects a return of capital or foreign return of capital by way of a distribution of cash or assets *in specie* with respect to those previously held shares— 55

die houer van daardie aandeel op of na 1 April 2012 en voor die beskikking [van] oor daardie aandeel, moet die [aandeelhouer] houer van daardie aandeel die uitgawes ten opsigte van die aandeel verminder deur die bedrag van daardie kontant of die markwaarde van daardie bate op die datum waarop die bate deur of aan [daardie aandeelhouer] die houer van daardie aandeel ontvang word of toeval.

(3) Waar die bedrag van 'n teruggawe van kapitaal of buitelandse teruggawe van kapitaal beoog in subparagraaf (2) die uitgawes ten opsigte van die aandeel ten opsigte waarvan daardie teruggawe van kapitaal of buitelandse teruggawe van kapitaal ontvang word of toeval, oorskry, word die bedrag van die oorskryding behandel asof dit 'n kapitaalwins is by die bepaling van [daardie aandeelhouer se] die totale kapitaalwins of totale kapitaalverlies van die houer van daardie aandeel vir die jaar van aanslag waarin daardie teruggawe van kapitaal of buitelandse teruggawe van kapitaal deur of aan die [aandeelhouer] houer van daardie aandeel ontvang word of toeval.”

(2) Subartikel (1) word geag op 1 April 2012 in werking te getree het en is van toepassing ten opsigte van jare van aanslag wat op of na daardie datum begin.

**Wysiging van paragraaf 78 van die Agtste Bylae by Wet 58 van 1962, soos gewysig deur artikel 97 van Wet 74 van 2002, artikel 116 van Wet 45 van 2003, artikel 31 van Wet 16 van 2004, artikel 85 van Wet 60 van 2008, artikel 111 van Wet 7 van 2010 en artikel 123 van Wet 24 van 2011**

**135.** (1) 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 'n uitkering maak van aandele teen geen vergoeding, word daardie aandele behandel asof hulle verkry is op die datum van uitkering vir uitgawes aangegaan en betaal van nul, behalwe namate die uitkering van daardie aandele 'n dividend of buitelandse dividend uitmaak, in welke geval hulle behandel word asof hulle verkry is op die datum van uitkering vir uitgawes aangegaan en betaal gelyk aan die bedrag van daardie dividend of buitelandse dividend.”;

(b) deur na subparagraaf (1) die volgende paragraaf in te voeg:

“(2) Behoudens paragrawe 11(1)(g), 23 en 35(2), waar 'n maatskappy aandele uitreik ter vervanging van aandele in daardie maatskappy tevore gehou ten gevolge van onderverdeling of konsolidasie of omskepping of inlywing beoog in artikel 40A of 40B—

(a) moet die aandeelhouer enige kapitaalwins of kapitaalverlies bepaal ten opsigte van daardie vervanging verontagsaam; en

(b) moet daardie nuut uitgereikte aandele behandel word asof—

(i) die aandele verkry is vir 'n bedrag van uitgawe gelyk aan die totale uitgawes toelaatbaar ingevolge paragraaf 20 aangegaan ten opsigte van daardie aandele wat tevore gehou is, welke uitgawe behandel moet word asof dit aangegaan is op dieselfde datum as die uitgawes aangegaan ten opsigte van daardie aandele wat tevore gehou is;

(ii) die aandele verkry is op dieselfde datum as daardie aandele wat tevore gehou is; en

(iii) die aandele 'n markwaarde het gelyk aan enige markwaarde aanvaar of bepaal ten opsigte van daardie aandele wat tevore gehou is ingevolge paragraaf 29(4),

met die totale uitgawe of markwaarde na gelang van die geval toegeken tussen al daardie nuut uitgereikte aandele in verhouding tot hul relatiewe markwaardes.”; en

(c) deur subparagraaf (3) deur die volgende subparagraaf te vervang:

“(3) Waar 'n maatskappy aandele uitreik ter vervanging van aandele voorheen gehou soos in subparagraaf (2) beoog en daarbenewens 'n teruggawe van kapitaal of buitelandse teruggawe van kapitaal by wyse van 'n uitkering van kontant of bates *in specie* bewerkstellig ten opsigte van daardie aandeel voorheen gehou—

- (a) the shareholder must disregard any capital gain or capital loss determined in respect of that substitution but not in respect of the transfer of those previously held shares exchanged for that return of capital or foreign return of capital; and
- (b) both the substitution and that return of capital or foreign return of capital must be treated as separate transactions with the 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 return of capital or foreign return of capital received in exchange therefor.”

(2) Paragraphs (a) and (c) of subsection (1) are deemed to have come into operation on 1 April 2012.

(3) Paragraph (b) of subsection (1) is deemed to have come into operation on 1 January 2011.

### Repeal of paragraph 78 of Eighth Schedule to Act 58 of 1962

136. (1) The Eighth Schedule to the Income Tax Act, 1962, is hereby amended by the repeal of paragraph 78.

(2) Subsection (1) comes into operation on 1 January 2013.

### Substitution of paragraph 2 of Tenth Schedule to Act 58 of 1962

137. (1) The Tenth Schedule to the Income Tax Act, 1962, is hereby amended by the substitution for paragraph 2 of the following paragraph:

“RATE

2. The rate of tax on taxable income attributable to oil and gas income of any oil and gas company will not exceed 28 cents on each rand of taxable income.”

(2) Subsection (1) comes into operation on 31 March 2013 and applies in respect of—

- (a) years of assessment ending during the period of 12 months ending on that date; and
- (b) all years of assessment subsequent to any year of assessment contemplated in paragraph (a).

### Amendment of paragraph 3 of Tenth Schedule to Act 58 of 1962, as amended by section 72 of Act 8 of 2007 and section 85 of Act 17 of 2009

138. (1) The Tenth Schedule to the Income Tax Act, 1962, is hereby amended by the substitution for paragraph 3 of the following paragraph:

“DIVIDENDS TAX

3. (1) The rate of dividends tax will not exceed 5 per cent [on] of the [net] amount of any dividend [declared as determined in terms of section 64B(3)], as defined in section 64D, that is paid as contemplated in section 64E(2) by an oil and gas company out of [the profits of] amounts attributable to its oil and gas income.

(2) Notwithstanding subparagraph (1), the rate of dividends tax may not exceed 0 per cent [on] of the [net] amount of any dividend [declared], as defined in section 64D, that is paid by any oil and gas company [derived from the profits of] out of amounts attributable to its oil and gas income if all of its oil and gas rights are solely derived (directly or indirectly) by virtue of an OP26 right as defined in Schedule II of the Mineral and Petroleum Resources Development Act, 2002 (Act No. 28 of 2002), previously held by that company.”

(2) Subsection (1) is deemed to have come into operation on 1 April 2012.



- (a) moet die aandeelhouer enige kapitaalwins of kapitaalverlies vasgestel ten opsigte van daardie vervanging verontagsaam, maar nie ten opsigte van die oordrag van daardie aandele voorheen gehou nie wat vir daardie teruggawe van kapitaal of buitelandse teruggawe van kapitaal verruil is; en 5
- (b) moet beide die vervanging en daardie teruggawe van kapitaal of buitelandse teruggawe van kapitaal geag word aparte transaksies te wees met die onkoste ingevolge paragraaf 20 toelaatbaar en enige markwaarde aangeneem of vasgestel ingevolge paragraaf 29(4) ten opsigte van daardie aandele voorheen gehou toegedeel tussen 10 beide transaksies gebaseer op die relatiewe markwaardes van die nuutuitgereikte aandele op die datum van uitkering en daardie teruggawe van kapitaal of buitelandse teruggawe van kapitaal in ruil daarvoor ontvang.”.

(2) Paragrafe (a) en (c) van subartikel (1) word geag op 1 April 2012 in werking te getree het. 15

(3) Paragraaf (b) van subartikel (1) word geag op 1 Januarie 2011 in werking te getree het.

### **Herroeping van paragraaf 78 van Agtste Bylae by Wet 58 van 1962**

**136.** (1) Die Agtste Bylae by die Inkomstebelastingwet, 1962, word hierby gewysig deur paragraaf 78 te herroep. 20

(2) Subartikel (1) tree op 1 Januarie 2013 in werking.

### **Vervanging van paragraaf 2 van Tiende Bylae by Wet 58 van 1962**

**137.** (1) Die Tiende Bylae by die Inkomstebelastingwet, 1962, word hierby gewysig deur paragraaf 2 deur die volgende paragraaf te vervang: 25

“KOERS

2. Die koers van belasting op belasbare inkomste toeskryfbaar aan olie en gas inkomste van enige olie en gas maatskappy sal nie 28 sent op elke rand van belasbare inkomste oorskry nie.”.

(2) Subartikel (1) tree op 31 Maart 2013 in werking en is van toepassing ten opsigte van— 30

- (a) jare van aanslag wat eindig gedurende die tydperk van 12 maande wat op daardie datum eindig; en
- (b) alle jare van aanslag wat volg op enige jaar van aanslag beoog in paragraaf (a).

### **Wysiging van paragraaf 3 van Tiende Bylae by Wet 58 van 1962, soos gewysig deur artikel 72 van Wet 8 van 2007 en artikel 85 van Wet 17 van 2009** 35

**138.** (1) Die Tiende Bylae by die Inkomstebelastingwet, 1962, word hierby gewysig deur paragraaf 3 deur die volgende paragraaf te vervang:

“DIVIDENDBELASTING

3. (1) Die skaal van **[belasting]** dividendbelasting is nie meer nie as 5 40 persent **[op]** van die **[netto]** bedrag van enige dividend **[soos bepaal ingevolge artikel 64B(3)]**, soos omskryf in artikel 64D, wat betaal word soos beoog in artikel 64E(2) deur ’n olie en gas maatskappy **[verklaar uit die winste van]** uit bedrae toeskryfbaar aan sy olie en gas inkomste.

(2) Ondanks subparagraaf (1), is die skaal van **[belasting]** dividendbelasting nie meer nie as 0 persent **[op]** van die **[netto]** bedrag van enige dividend, soos omskryf in artikel 64D, wat betaal word deur ’n olie en gas maatskappy **[verklaar wat verkry is uit die winste van]** uit bedrae toeskryfbaar aan sy olie en gas inkomste, indien al sy olie en gasregte uitsluitlik (direk of indirek) verkry is uit hoofde van ’n **[‘OP26’ right]** 50 **[‘OP26 right’]** soos in Bylae II by die ‘Mineral and Petroleum Resources Development Act, 2002’ (Wet No. 28 van 2002), omskryf, voorheen deur daardie maatskappy gehou.”.

(2) Subartikel (1) word geag op 1 April 2012 in werking te getree het.

**Substitution of paragraph 6 of Tenth Schedule to Act 58 of 1962**

**139.** (1) The Tenth Schedule to the Income Tax Act, 1962, is hereby amended by the substitution for paragraph 6 of the following paragraph:

“THIN CAPITALISATION

6. Where any financial assistance as defined in section 31(1) that is provided to an oil and gas company—  
(a) constitutes an affected transaction as defined in that section; or  
(b) forms part of a transaction, operation, scheme, agreement or understanding that constitutes an affected transaction as defined in that section,  
the Commissioner may, for the purposes of section 31(2), deem any transaction, operation, scheme, agreement or understanding associated with the provision of that financial assistance to have been entered into on the terms and conditions that would have existed had the parties to that transaction, operation, scheme, agreement or understanding been independent persons dealing at arm’s length.”

(2) Subsection (1) comes into operation on 1 January 2014 and applies in respect of years of assessment commencing on or after that date.

**Insertion of Eleventh Schedule in Act 58 of 1962**

**140.** (1) The Income Tax Act, 1962, is hereby amended by the addition after the Tenth Schedule of the following Schedule:

“ELEVENTH SCHEDULE

GOVERNMENT GRANTS EXEMPT FROM NORMAL TAX

(Section 12P)

Automotive Production and Development Programme received or accrued from the Department of Trade and Industry;  
Automotive Incentive Scheme received or accrued from the Department of Trade and Industry;  
Black Business Supplier Development Programme received or accrued from the Department of Trade and Industry;  
Business Process Services received or accrued from the Department of Trade and Industry;  
Capital Projects Feasibility Programme received or accrued from the Department of Trade and Industry;  
Capital Restructuring Grant received or accrued from the Department of Housing;  
Clothing and Textiles Competitiveness Programme received or accrued from the Department of Trade and Industry;  
Co-operative Incentive Scheme received or accrued from the Department of Trade and Industry;  
Critical Infrastructure Programme received or accrued from the Department of Trade and Industry;  
Eastern Cape Jobs Stimulus Fund received or accrued from the Department of Economic Development, Environmental Affairs and Tourism of the Eastern Cape;  
Enterprise Investment Programme received or accrued from the Department of Trade and Industry;  
Equity Fund received or accrued from the Department of Science and Technology;  
Export Marketing and Investment Assistance received or accrued from the Department of Trade and Industry;  
Film Production Incentive received or accrued from the Department of Trade and Industry;

**Vervanging van paragraaf 6 van Tiende Bylae by Wet 58 van 1962**

**139.** (1) Die Tiende Bylae by die Inkomstebelastingwet, 1962, word hierby gewysig deur paragraaf 6 deur die volgende paragraaf te vervang:

“DUN KAPITALISERING

6. Waar enige finansiële bystand soos omskryf in artikel 31(1) wat aan ’n 5  
olie en gas maatskappy verleen word—  
(a) ’n geaffekteerde transaksie soos omskryf in daardie artikel uitmaak; of  
(b) deel uitmaak van ’n transaksie, handeling, skema, ooreenkoms of 10  
verstandhouding wat ’n geaffekteerde transaksie soos omskryf in  
daardie artikel uitmaak,  
mag die Kommissaris, by die toepassing van artikel 31(2), enige transaksie,  
handeling, skema, ooreenkoms of verstandhouding wat verband hou met  
die verlening van daardie finansiële bystand ag aangegaan te wees op die  
bedinge en voorwaardes wat sou gegeld het indien die partye by daardie 15  
transaksie, handeling, skema, ooreenkoms of verstandhouding onafhank-  
like persone was wat op uiterste voorwaardes beding het.”.

(2) Subartikel (1) tree op 1 Januarie 2014 in werking en is van toepassing ten opsigte van jare van aanslag wat op of na daardie datum begin.

**Invoeging van Elfde Bylae in Wet 58 van 1962**

**140.** (1) Die Inkomstebelastingwet, 1962, word hierby gewysig deur na die Tiende 20  
Bylae die volgende Bylae by te voeg:

“ELFDE BYLAE

STAATSTOEKENINGS VRYGESTEL VAN NORMALE BELASTING

(Artikel 12P)

25  
‘Automotive Production and Development Programme’ ontvang of  
toegeval van die Departement van Handel en Nywerheid;  
‘Automotive Incentive Scheme’ ontvang of toegeval van die Departement  
van Handel en Nywerheid;  
‘Black Business Supplier Development Programme’ betaal deur die 30  
Departement van Handel en Nywerheid;  
‘Business Process Services’ ontvang of toegeval van die Departement van  
Handel en Nywerheid;  
‘Capital Projects Feasibility Programme’ betaal deur die Departement van  
Handel en Nywerheid; 35  
‘Capital Restructuring Grant’ ontvang of toegeval van die Departement van  
Behuising;  
‘Clothing and Textiles Competitiveness Programme’ betaal deur die  
Departement van Handel en Nywerheid;  
‘Co-operative Incentive Scheme’ ontvang of toegeval van die Departement 40  
van Handel en Nywerheid;  
‘Critical Infrastructure Programme’ betaal deur die Departement van  
Handel en Nywerheid;  
‘Eastern Cape Jobs Stimulus Fund’ ontvang of toegeval van die  
Departement van Ekonomiese Ontwikkeling, Omgewingsake en Toerisme 45  
van die Ooskaap;  
‘Enterprise Investment Programme’ betaal deur die Departement van  
Handel en Nywerheid;  
‘Equity Fund’ ontvang of toegeval van die Departement van Wetenskap en 50  
Tegnologie;  
‘Export Marketing and Investment Assistance’ betaal deur die Departement  
van Handel en Nywerheid;  
‘Film Production Incentive’ ontvang of toegeval van die Departement van  
Handel en Nywerheid;

Food Fortification Grant received or accrued from the Department of Health;

Idea Development Fund received or accrued from the Department of Science and Technology;

Industrial Development Zone Programme received or accrued from the Department of Trade and Industry; 5

Industry Matching Fund received or accrued from the Department of Science and Technology;

Integrated National Electrification Programme Grant: Non-grid electrification service providers received or accrued from the Department of Energy; 10

Integrated National Electrification Programme: Electricity connection to households received or accrued from the Department of Energy;

Jobs Fund received or accrued from the National Treasury;

Manufacturing Competitiveness Enhancement Programme received or accrued from the Department of Trade and Industry; 15

Sector Specific Assistance Scheme received or accrued from the Department of Trade and Industry;

Small, Medium Enterprise Development Programme received or accrued from the Department of Trade and Industry;

Small/Medium Manufacturing Development Programme received or accrued from the Department of Trade and Industry; 20

South African Research Chairs Initiative received or accrued from the Department of Science and Technology;

Support Programme for Industrial Innovation received or accrued from the Department of Trade and Industry; 25

Taxi Recapitalisation Programme received or accrued from the Department of Transport;

Technology Development Fund received or accrued from the Department of Science and Technology;

Technology and Human Resources for Industry Programme received or accrued from the Department of Trade and Industry; 30

Transfers to the South African National Taxi Council received or accrued from the Department of Transport;

Transfers to the University of Pretoria, University of KwaZulu-Natal and University of Stellenbosch received or accrued from the Department of Transport; 35

Youth Technology Innovation Fund received or accrued from the Department of Science and Technology.”.

(2) Subsection (1) comes into operation on 1 January 2013 and applies in respect of years of assessment commencing on or after that date. 40

**Amendment of section 47B of Act 91 of 1964, as inserted by section 59 of Act 30 of 2000 and amended by section 40 of Act 12 of 2003, section 13 of Act 9 of 2005, section 92 of Act 35 of 2007, section 87 of Act 17 of 2009 and section 126 of Act 24 of 2011**

141. Section 47B of the Customs and Excise Act, 1964 (Act No. 91 of 1964), is hereby amended by the substitution in subsection (2) for paragraph (b) of the following paragraph: 45

- “(b) (i) (aa) The tax shall be charged [at the rate of R190] on the carriage of each chargeable passenger departing on a flight[: **Provided that the Minister may by notice in the *Gazette* lower the rate, and by like notice amend any rate so lowered, in respect of any flight of which the final destination is any country in Africa**]. 50
- (bb) A lower rate of tax may be levied in respect of any flight of which the final destination is any country in Africa.
- (cc) The rates of tax shall be the rates in force when this section comes into operation until amended as contemplated in subparagraph (ii). 55
- (ii) The Minister may by notice in the *Gazette* amend the rates of tax from a date specified in that notice.

- ‘Food Fortification Grant’ ontvang of toegeval van die Departement van Gesondheid;
- ‘Idea Development Fund’ ontvang of toegeval van die Departement van Wetenskap en Tegnologie;
- ‘Industrial Development Zone Programme’ ontvang of toegeval van die Departement van Handel en Nywerheid; 5
- ‘Industry Matching Fund’ ontvang of toegeval van die Departement van Wetenskap en Tegnologie;
- ‘Integrated National Electrification Programme Grant: Non-grid electrification service providers’ ontvang of toegeval van die Departement van Energie; 10
- ‘Integrated National Electrification Programme: Electricity connection to households’ ontvang of toegeval van die Departement van Energie;
- ‘Jobs Fund’ ontvang of toegeval van die Nasionale Tesourie;
- ‘Manufacturing Competitiveness Enhancement Programme’ ontvang of toegeval van die Departement van Handel en Nywerheid; 15
- ‘Sector Specific Assistance Scheme’ ontvang of toegeval van die Departement van Handel en Nywerheid;
- ‘Small, Medium Enterprise Development Programme’ ontvang of toegeval van die Departement van Handel en Nywerheid; 20
- ‘Small/Medium Manufacturing Development Programme’ ontvang of toegeval van die Departement van Handel en Nywerheid;
- ‘South African Research Chairs Initiative’ ontvang of toegeval van die Departement van Wetenskap en Tegnologie;
- ‘Support Programme for Industrial Innovation’ ontvang of toegeval van die Departement van Handel en Nywerheid; 25
- ‘Taxi Recapitalisation Programme’ ontvang of toegeval van die Departement van Vervoer;
- ‘Technology Development Fund’ ontvang of toegeval van die Departement van Wetenskap en Tegnologie; 30
- ‘Technology and Human Resources for Industry Programme’ ontvang of toegeval van die Departement van Handel en Nywerheid;
- Oordragte aan die ‘South African National Taxi Council’ ontvang of toegeval van die Departement van Vervoer;
- Oordragte aan die Universiteit van Pretoria, Universiteit van KwaZulu-Natal en Universiteit van Stellenbosch ontvang of toegeval van die Departement van Vervoer; 35
- ‘Youth Technology Innovation Fund’ ontvang of toegeval van die Departement van Wetenskap en Tegnologie.”
- (2) Subartikel (1) tree op 1 Januarie 2013 in werking en is van toepassing ten opsigte van jare van aanslag wat op of na daardie datum begin. 40

**Wysiging van artikel 47B van Wet 91 van 1964, soos ingevoeg deur artikel 59 van Wet 30 van 2000 en gewysig deur artikel 40 van Wet 12 van 2003, artikel 13 van Wet 9 van 2005, artikel 92 van Wet 35 van 2007, artikel 87 van Wet 17 van 2009 en artikel 126 van Wet 24 van 2011** 45

141. Artikel 47B van die Doeane- en Aksynswet, 1964 (Wet No. 91 van 1964), word hierby gewysig deur in subartikel (2) paragraaf (b) deur die volgende paragraaf te vervang:

- “(b) (i) (aa) Die belasting word [teen die koers van R190] gevorder op die vervoer van elke belasbare passasier wat op ’n vlug vertrek]: **Met dien verstande dat die Minister by kennisgewing in die Staatskoerant die koers kan verlaag, en by dergelike kennisgewing enige koers aldus verlaag kan wysig, ten opsigte van enige vlug waarvan die finale bestemming enige land in Afrika is].** 50 55
- (bb) ’n Laer koers van belasting kan ten opsigte van enige vlug waarvan die finale bestemming enige land in Afrika is, gehef word.
- (cc) Die belastingkoerse is die koerse van krag wanneer hierdie artikel in werking tree totdat gewysig soos in subparagraaf (ii) beoog word.
- (ii) Die Minister kan by kennisgewing in die *Staatskoerant* die belastingkoerse wysig vanaf ’n datum in daardie kennisgewing vermeld. 60

- [(ii)](iii)** In considering [**the lowering or amendment of the rate,**] the imposition of a lower rate as contemplated in subparagraph (i)(bb) the Minister shall take into account—
- (aa) the distance between an airport in a country concerned and an airport in the Republic; 5
  - (bb) any agreement existing between the Republic and any of the countries concerned;
  - (cc) the price of the flight ticket; and
  - (dd) any other ground which may be regarded as reasonable in the circumstances. 10
- [(iii)](iv)** The provisions of section 48(6) shall apply [*mutatis mutandis*] with the necessary changes to any notice referred to in [the proviso to subparagraph (i)] subparagraph (ii).”. 15

**Amendment of section 116 of Act 91 of 1964, as substituted by section 18 of Act 95 of 1965 and amended by section 72(b) of Act 45 of 1995 and section 27 of Act 32 of 2005** 15

142. Section 116 of the Customs and Excise Act, 1964, is hereby amended—
- (a) by the substitution in subsection (1) for the words preceding paragraph (a) of the following words:  
“Notwithstanding anything to the contrary contained in this Act 20  
**[contained]**, the Commissioner may, in respect of any excisable goods manufactured by natural persons or institutions for their own use and not for sale or disposal in any manner—”; and
  - (b) by the addition after subsection (4) of the following subsection: 25  
“(5) The Commissioner may make rules—  
(a) specifying any requirement to qualify for any exemption contemplated in subsection (1);  
(b) regarding any matter which is required or permitted in terms of this section to be prescribed by rules;  
(c) in respect of any other matter which the Commissioner may reasonably consider to be necessary and useful to achieve the efficient and effective administration of the provisions of this section.”. 30

**Continuation of certain amendments of Schedules to Act 91 of 1964**

143. Every amendment or withdrawal of or insertion in Schedule No. 1 to 6, 8 and 10 35  
to the Customs and Excise Act, 1964, made under section 48, 49, 56, 56A, 57, 60 or 75(15) of that Act during the period 1 August 2011 up to and including 31 July 2012, shall not lapse by virtue of section 48(6), 49(5A), 56(3), 56A(3), 57(3), 60(4) or 75(16) of that Act.

**Amendment of section 10 of Act 101 of 1990** 40

144. (1) Section 10 of the Income Tax Act, 1990 (Act No. 101 of 1990), is hereby amended—
- (a) by the repeal in subsection (1) of paragraph (b); and
  - (b) by the repeal in subsection (2) of paragraph (b).
- (2) Subsection (1) is deemed to have come into operation on 11 July 1990. 45

**Amendment of section 1 of Act 89 of 1991, as amended by section 21 of Act 136 of 1991, paragraph 1 of Government Notice 2695 of 8 November 1991, section 12 of Act 136 of 1992, section 1 of Act 61 of 1993, section 22 of Act 97 of 1993, section 9 of Act 20 of 1994, section 18 of Act 37 of 1996, section 23 of Act 27 of 1997, section 34 of Act 34 of 1997, section 81 of Act 53 of 1999, section 76 of Act 30 of 2000, section 64 of Act 59 of 2000, section 65 of Act 19 of 2001, section 148 of Act 60 of 2001, section 114 of Act 74 of 2002, section 47 of Act 12 of 2003, section 164 of Act 45 of 2003, section 43 of Act 16 of 2004, section 92 of Act 32 of 2004, section 8 of Act 10 of 2005, section 101 of Act 31 of 2005, section 40 of Act 9 of 2006, section 77 of Act** 50

- [(ii)](iii)** By oorweging van **[die verlaging of wysiging van die koers,] die heffing van 'n laer koers soos beoog in subparagraaf (i)(bb)** moet die Minister in aanmerking neem—
- (aa) die afstand tussen 'n lughawe in 'n betrokke land en 'n lughawe in die Republiek;
  - (bb) enige bestaande ooreenkoms tussen die Republiek en enige van die betrokke lande;
  - (cc) die prys van die vliegkaartjie; en
  - (dd) enige ander grond wat in die omstandighede as redelik beskou kan word.
- [(iii)](iv)** Die bepalings van artikel 48(6) is **[mutatis mutandis]** met die nodige veranderinge van toepassing op enige kennisgewing in **[die voorbehoudsbepaling tot subparagraaf (i)] subparagraaf (ii)** bedoel.”.

**Wysiging van artikel 116 van Wet 91 van 1964, soos vervang deur artikel 18 van Wet 95 van 1965 en gewysig deur artikel 72(b) van Wet 45 van 1995 en artikel 27 van Wet 32 van 2005**

- 142.** Artikel 116 van die Doeane- en Aksynswet, 1964, word hierby gewysig—
- (a) deur in subartikel (1) die woorde wat paragraaf (a) voorafgaan deur die volgende woorde te vervang:  
“Ondanks andersluidende bepalings van hierdie Wet, kan die Kommissaris ten opsigte van enige sinsbare goedere deur natuurlike persone of instellings vervaardig vir hulle eie gebruik en nie vir verkoop of van die hand sit op enige wyse nie—”; en
  - (b) deur na subartikel (4) die volgende subartikel by te voeg:  
“(5) Die Kommissaris kan reëls uitvaardig—
    - (a) wat enige vereiste bepaal om vir enige vrystelling in subartikel (1) beoog, te kwalifiseer;
    - (b) aangaande enige aangeleentheid wat ingevolge hierdie artikel by reël voorgeskryf moet of kan word;
    - (c) ten opsigte van enige ander aangeleentheid wat die Kommissaris redelikerwys nodig of nuttig ag om die doeltreffende en effektiewe administrasie van die bepalings van hierdie artikel te bewerkstellig.”.

**Voortdoring van sekere wysigings van Bylaes by Wet 91 van 1964**

**143.** Geen wysiging aan of intrekking van of invoeging in Bylae No. 1 tot 6, 8 en 10 by die Doeane- en Aksynswet, 1964, wat aangebring is kragtens artikel 48, 49, 56, 56A, 57, 60 of 75(15) van daardie Wet gedurende die tydperk 1 Augustus 2011 tot en met 31 Julie 2012, verval uit hoofde van artikel 48(6), 49(5A), 56(3), 56A(3), 57(3), 60(4) of 75(16) van daardie Wet nie.

**Wysiging van artikel 10 van Wet 101 van 1990**

- 144.** (1) Artikel 10 van die Inkomstebelastingwet, 1990 (Wet No. 101 van 1990), word hierby gewysig—
- (a) deur in subartikel (1) paragraaf (b) te herroep; en
  - (b) deur in subartikel (2) paragraaf (b) te herroep.
- (2) Subartikel (1) word geag op 11 Julie 1990 in werking te getree het.

**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 1 van Wet 61 van 1993, 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 34 van Wet 34 van 1997, artikel 81 van Wet 53 van 1999, artikel 76 van Wet 30 van 2000, artikel 64 van Wet 59 van 2000, artikel 65 van Wet 19 van 2001, artikel 148 van Wet 60 van 2001, artikel 114 van Wet 74 van 2002, artikel 47 van Wet 12 van 2003, artikel 164 van Wet 45 van 2003, artikel 43 van Wet 16 van 2004, artikel 92 van Wet 32 van 2004, artikel 8 van Wet 10 van 2005, artikel 101 van Wet 31 van 2005, artikel 40 van Wet 9 van 2006, artikel 77 van**

**20 of 2006, section 81 of Act 8 of 2007, section 104 of Act 35 of 2007, section 68 of Act 3 of 2008, section 104 of Act 60 of 2008, section 119 of Act 7 of 2010 and section 129 of Act 24 of 2011**

**145.** (1) Section 1 of the Value-Added Tax Act, 1991 (Act No. 89 of 1991), is hereby amended— 5

(a) by the substitution in paragraph (b) of the definition of “**instalment credit agreement**” for subparagraph (ii) of the following subparagraph:

“(ii) such sum of money includes finance charges, including any amount determined with reference to the time value of money, stipulated in the lease; and”; and 10

(b) by the substitution in paragraph (b) of the definition of “**instalment credit agreement**” for subparagraph (v) of the following subparagraph:

“(v) (aa) the lessee accepts the full risk of destruction or loss of, or other disadvantage to, those goods and assumes all obligations of whatever nature arising in connection with the insurance, maintenance and repair of those goods while the agreement remains in force; or 15

(bb) (A) the lessor accepts the full risk of destruction or loss of, or other disadvantage to those goods and assumes all obligations of whatever nature arising in connection with the insurance of those goods; and 20

(B) the lessee accepts the full risk of maintenance and repair of those goods and reimburses the lessor for the insurance of those goods, while the agreement remains in force;” 25

(2) Subsection (1) comes into operation on 1 January 2013 and applies in respect of goods supplied on or after that date.

**Amendment of section 8 of Act 89 of 1991, as amended by section 24 of Act 136 of 1991, paragraph 4 of Government Notice 2695 of 8 November 1991, section 15 of Act 136 of 1992, section 24 of Act 97 of 1993, section 11 of Act 20 of 1994, section 20 of Act 46 of 1996, section 25 of Act 27 of 1997, section 83 of Act 53 of 1999, section 67 of Act 19 of 2001, section 151 of Act 60 of 2001, section 166 of Act 45 of 2003, section 95 of Act 32 of 2004, section 102 of Act 31 of 2005, section 172 of Act 34 of 2005, section 42 of Act 9 of 2006, section 79 of Act 20 of 2006, section 27 of Act 36 of 2007, section 106 of Act 60 of 2008, section 91 of Act 17 of 2009, section 120 of Act 7 of 2010 and section 131 of Act 24 of 2011** 30 35

**146.** (1) Section 8 of the Value-Added Tax Act, 1991, is hereby amended—

(a) by the insertion after subsection (2E) of the following subsection:

“(2F) Where a supply is deemed to have been made by a vendor in terms of subsection (2) and the vendor ceases on or after 1 January 2013 to be a vendor solely by reason of the supply of goods or services being exempt under section 12(l) or (m), the value of that deemed supply shall be deemed to be nil.”; 40

(b) by the substitution for subsection (19) of the following subsection:

“(19) For the purposes of this Act, where any supply of— 45

(a) goods consisting of [**a unit**] immovable property is made by a share block company—

(i) in the circumstances referred to in Item 8 of Schedule 1 to the Share Blocks Control Act; or 50

(ii) as a result of a sale by that share block company of that immovable property to a person who held a right of exclusive use of that immovable property, which right was conferred by reason of the ownership of a share by that person in that share block company; or 50

(b) services comprising the waiving of rights against a share block company is made to that share block company[,]— 55



**Wet 20 van 2006, artikel 81 van Wet 8 van 2007, artikel 104 van Wet 35 van 2007, artikel 68 van Wet 3 van 2008, artikel 104 van Wet 60 van 2008, artikel 119 van Wet 7 van 2010 en artikel 129 van Wet 24 van 2011**

- 145.** (1) Artikel 1 van die Wet op Belasting op Toegevoegde Waarde, 1991 (Wet No. 89 van 1991), word hierby gewysig— 5
- (a) deur in paragraaf (b) van die omskrywing van “**paaientkredietooreenkoms**” subparagraaf (ii) deur die volgende subparagraaf te vervang: 5
- “(ii) bedoelde som geld finansieringskoste, insluitend enige bedrag bepaal met verwysing na die tydwaarde van geld, wat in die ooreenkoms gestipuleer word, insluit; en”;
- (b) deur in paragraaf (b) van die omskrywing van “**paaientkredietooreenkoms**” subparagraaf (v) deur die volgende subparagraaf te vervang: 10
- “(v) (aa) die huurder die volle risiko van vernietiging of verlies van, of ander benadeling van, bedoelde goed en alle verpligtinge van welke aard ook al met betrekking tot die versekering, instandhouding en herstel van daardie goed terwyl die ooreenkoms van krag bly, op hom neem; of 15
- (bb) (A) die huurder die volle risiko van vernietiging of verlies van, of ander benadeling van, bedoelde goed en alle verpligtinge van welke aard ook al met betrekking tot die versekering van daardie goed op hom neem; en 20
- (B) die huurder die volle risiko van instandhouding en herstel van daardie goed op hom neem, terwyl die ooreenkoms van krag bly;”.
- (2) Subartikel (1) tree op 1 Januarie 2013 in werking en is van toepassing ten opsigte van goed op of na daardie datum voorsien. 25

**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, artikel 151 van Wet 60 van 2001, artikel 166 van Wet 45 van 2003, artikel 95 van Wet 32 van 2004, artikel 102 van Wet 31 van 2005, artikel 172 van Wet 34 van 2005, artikel 42 van Wet 9 van 2006, artikel 79 van Wet 20 van 2006, artikel 27 van Wet 36 van 2007, artikel 106 van Wet 60 van 2008, artikel 91 van Wet 17 van 2009, artikel 120 van Wet 7 van 2010 en artikel 131 van Wet 24 van 2011** 30 35

- 146.** (1) Artikel 8 van die Wet op Belasting op Toegevoegde Waarde, 1991, word hierby gewysig—
- (a) deur na subartikel (2E) die volgende subartikel in te voeg: 40
- “(2F) Waar ’n lewering geag word gedoen te wees deur ’n ondernemer ingevolge subartikel (2) en die ondernemer op of na 1 Januarie 2013 ophou om ’n ondernemer te wees slegs ten gevolge van die lewering van goed of dienste wat kragtens artikel 12(l) of (m) vrygestel is, word die waarde van daardie geagte lewering geag nul te wees.”;
- (b) deur subartikel (19) deur die volgende subartikel te vervang: 45
- “(19) By die toepassing van hierdie Wet, waar ’n lewering van—
- (a) goed bestaande uit [**’n eenheid**] vasgoed deur ’n aandeelblokmaatskappy gedoen word—
- (i) in die omstandighede bedoel in Item 8 van Bylae 1 by die Wet op die Beheer van Aandeelblokke; of 50
- (ii) as gevolg van ’n verkoop deur daardie aandeelblokmaatskappy van daardie vasgoed aan ’n persoon wat ’n reg van uitsluitlike gebruik van daardie vasgoed gehou het, welke reg verleen is ten gevolge van die eienaarskap van ’n aandeel deur daardie persoon in daardie aandeelblokmaatskappy; of 55
- (b) dienste bestaande uit die afstanddoening van regte teenoor ’n aandeelblokmaatskappy aan daardie aandeelblokmaatskappy gedoen word[,]—

- (i) in the circumstances referred to in Item 8 of Schedule 1 to the Share Blocks Control Act; or
  - (ii) by a person as part of a sale contemplated in paragraph (a)(ii), such supply shall be deemed to have been made otherwise than in the course or furtherance of an enterprise.”; and
  - (c) by the addition to subsection (24) of the following further proviso:  
“: Provided further that this subsection shall not apply to—
    - (a) goods that are deemed to have been imported under paragraph (i) of the proviso to section 13(1); or
    - (b) goods to which section 18(10) previously applied”.
- (2) Paragraphs (a) and (b) of subsection (1) come into operation on 1 January 2013 and apply in respect of goods or services supplied on or after that date.
- (3) Paragraph (c) of subsection (1) comes into operation on 1 January 2013 and applies in respect of goods supplied on or after that date.

**Amendment of section 12 of Act 89 of 1991, as amended by section 18 of Act 136 of 1992, section 14 of Act 20 of 1994, section 22 of Act 37 of 1996, section 69 of Act 19 of 2001 section 154 of Act 60 of 2001, section 117 of Act 74 of 2002, section 99 of Act 32 of 2004, section 45 of Act 9 of 2006, section 82 of Act 20 of 2006 and section 109 of Act 60 of 2008**

147. (1) Section 12 of the Value-Added Tax Act, 1991, is hereby amended—
- (a) by the substitution for paragraph (k) of the following paragraph:  
“(k) the supply of goods in the Republic by any person that is not a resident of the Republic and that is not a vendor, other than the supply of goods by an inbound duty and tax free shop, which have **[been imported and entered for storage in a licensed Customs and Excise storage warehouse but have]** not been entered for home consumption: Provided that this paragraph shall not apply where such person applies in writing to the Commissioner, and the Commissioner, having regard to the circumstances of the case, directs that the provisions of this paragraph shall not apply to such person[.]”; and
  - (b) by the addition after paragraph (k) of the following paragraphs:
    - “(l) the supply of any goods or services by a bargaining council that is established in terms of section 27 of the Labour Relations Act, 1995 (Act No. 66 of 1995), to any of its members to the extent that the consideration for such supply consists of membership contributions;
    - (m) the supply of any goods or services by a political party registered in terms of section 15 of the Electoral Commission Act, 1996 (Act No. 51 of 1996), to any of its members to the extent that the consideration for such supply consists of membership contributions.”.
- (2) Subsection (1) comes into operation on 1 January 2013 and applies in respect of goods or services supplied on or after that date.

**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, section 156 of Act 60 of 2001, section 172 of Act 45 of 2003, section 107 of Act 31 of 2005, section 47 of Act 9 of 2006, section 83 of Act 20 of 2006, section 83 of Act 8 of 2007, section 106 of Act 35 of 2007, section 30 of Act 36 of 2007, section 29 of Act 8 of 2010 and section 137 of Act 24 of 2011**

148. (1) Section 16 of the Value-Added Tax Act, 1991, is hereby amended—

- (i) in die omstandighede waarna in Item 8 van Bylae 1 by die Wet op die Beheer van Aandeleblokke verwys word; of
- (ii) deur 'n persoon as deel van 'n verkoop beoog in paragraaf (a)(ii),  
word daardie lewering geag anders as in die loop of ter bevordering van 'n onderneming gedoen te gewees het.”; en
- (c) deur na subartikel (24) die volgende verdere voorbehoudsbepaling by te voeg:  
“: Met dien verstande voorts dat hierdie subartikel nie van toepassing is nie op—  
(a) goed wat kragtens paragraaf (i) van die voorbehoudsbepaling tot artikel 13(1) geag word ingevoer te wees; of  
(b) goed waarop artikel 18(10) tevore van toepassing was.”.
- (2) Paragrafe (a) en (b) van subartikel (1) tree op 1 Januarie 2013 in werking en is van toepassing ten opsigte van goed of dienste op of na daardie datum voorsien.
- (3) Paragraaf (c) van subartikel (1) tree op 1 Januarie 2013 in werking en is van toepassing ten opsigte van goed op of na daardie datum voorsien.

**Wysiging van artikel 12 van Wet 89 van 1991, soos gewysig deur artikel 18 van Wet 136 van 1992, artikel 14 van Wet 20 van 1994, artikel 22 van Wet 37 van 1996, artikel 69 van Wet 19 van 2001, artikel 154 van Wet 60 van 2001, artikel 117 van Wet 74 van 2002, artikel 99 van Wet 32 van 2004, artikel 45 van Wet 9 van 2006, artikel 82 van Wet 20 van 2006 en artikel 109 van Wet 60 van 2008**

147. (1) Artikel 12 van die Wet op Belasting op Toegevoegde Waarde, 1991, word hierby gewysig—

- (a) deur paragraaf (k) deur die volgende paragraaf te vervang:  
“(k) die lewering van goed in die Republiek deur enige persoon wat nie 'n inwoner van die Republiek is nie en wat nie 'n ondernemer is nie, behalwe die lewering van goed deur 'n inkomend reg- en belastingvrye winkel, wat [ingevoer is en vir stoor in 'n gelisensieerde Doecane- en Aksynsbergingsstoor geklaar is maar] nie vir tuisverbruik geklaar is nie: Met dien verstande dat hierdie paragraaf nie van toepassing is nie waar sodanige persoon skriftelik by die Kommissaris aansoek doen, en die Kommissaris, met inagneming van die omstandighede van die saak, bepaal dat die bepaling van hierdie paragraaf nie op sodanige persoon van toepassing is nie[.]”;
- (b) deur na paragraaf (k) die volgende paragrafe by te voeg:  
“(l) die lewering van enige goed of dienste deur 'n bedingsraad wat opgerig is ingevolge artikel 27 van die Wet op Arbeidsverhoudinge, 1995 (Wet No. 66 of 1995), aan enige van sy lede namate die vergoeding vir sodanige lewering uit lidmaatskapbydraes bestaan;  
(m) die lewering van enige goed of dienste deur 'n politieke party geregistreer ingevolge artikel 15 van die Wet op die Verkiesingskommissie, 1996 (Wet No. 51 of 1996), aan enige van sy lede namate die vergoeding vir sodanige lewering uit lidmaatskapbydraes bestaan.”.

(2) Subartikel (1) tree op 1 Januarie 2013 in werking en is van toepassing ten opsigte van goed of dienste op of na daardie datum voorsien.

**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, artikel 156 van Wet 60 van 2001, artikel 172 van Wet 45 van 2003, artikel 107 van Wet 31 van 2005, artikel 47 van Wet 9 van 2006, artikel 83 van Wet 20 van 2006, artikel 83 van Wet 8 van 2007, artikel 106 van Wet 35 van 2007, artikel 30 van Wet 36 van 2007, artikel 29 van Wet 8 van 2010 en artikel 137 van Wet 24 van 2011**

148. (1) Artikel 16 van die Wet op Belasting op Toegevoegde Waarde, 1991, word hierby gewysig—

- (a) by the deletion in subsection (3)(b) of the proviso to subparagraph (i); and
- (b) by the deletion in subsection (3)(h) of paragraph (i) of the proviso.

(2) Subsection (1) is deemed to have come into operation on 10 January 2012 and applies in respect of supplies made on or after that date.

**Amendment of section 18 of Act 89 of 1991, as amended by section 32 of Act 136 of 1991, section 23 of Act 136 of 1992, section 32 of Act 97 of 1993, section 18 of Act 20 of 1994, section 34 of Act 27 of 1997, section 93 of Act 30 of 1998, section 89 of Act 53 of 1999, section 174 of Act 45 of 2003, section 103 of Act 32 of 2004, section 109 of Act 31 of 2005, section 49 of Act 9 of 2006, section 85 of Act 20 of 2006, section 112 of Act 60 of 2008, section 123 of Act 7 of 2010 and section 138 of Act 24 of 2011**

149. (1) Section 18 of the Value-Added Tax Act, 1991, is hereby amended—

- (a) by the deletion in subsection (4) of paragraphs (ii) and (iii) of the proviso;
- (b) by the deletion in subsection (5) of paragraph (ii) of the proviso; and
- (c) by the substitution in subsection (10) for the words following paragraph (b) and preceding the formula of the following words:

“and where a deduction of input tax would have been denied in terms of section 17(2), [and] or to the extent that such goods or services are not wholly for consumption, use or supply within a customs controlled area in the course of making taxable supplies by that vendor, that is a customs controlled area enterprise or an IDZ operator, those goods or services shall be deemed to be supplied by the vendor concerned in the same tax period in which they were so acquired, in accordance with the formula:”.

(2) Subsection (1) is deemed to have come into operation on 10 January 2012 and applies in respect of supplies 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, section 34 of Act 97 of 1993, section 176 of Act 45 of 2003, section 48 of Act 16 of 2004 and section 36 of Act 18 of 2009**

150. (1) Section 21 of the Value-Added Tax Act, 1991, is hereby amended—

- (a) by the substitution in subsection (1) for the comma following paragraph (d) of the expression “; or”; and
- (b) by the addition to subsection (1) after paragraph (d) of the following paragraph:

“(e) an error has occurred in stipulating the amount of consideration agreed upon for that supply,”.

(2) Subsection (1) comes into operation on 1 January 2013 and applies in respect of supplies made on or after that date.

**Insertion of section 40C in Act 89 of 1991**

151. (1) The Value-Added Tax Act, 1991, is hereby amended by the insertion after section 40B of the following section:

**“Liability of bargaining councils or political parties for tax and limitation of refunds**

**40C.** (1) This section applies in respect of the supply of goods or services contemplated in section 12(l) or (m) before 1 January 2013, by any bargaining council or political party, as the case may be.

(2) Where the Commissioner before 1 January 2013, issued an assessment to levy tax at the rate referred to in section 7(1) in respect of any supply of goods or services contemplated in subsection (1), the Commissioner must, on written application, reduce that assessment to the extent that the amount of tax, additional tax, penalty or interest in respect of that assessment was not yet paid on that date: Provided that the reduced

- (a) deur in subartikel (3)(b) die voorbehoudsbepaling tot subparagraaf (i) te skrap;
- (b) deur in subartikel (3)(h) paragraaf (i) van die voorbehoudsbepaling te skrap.
- (2) Subartikel (1) word geag op 10 Januarie 2012 in werking te getree het en is van toepassing ten opsigte van lewerings op of na daardie datum gemaak. 5

**Wysiging van artikel 18 van Wet 89 van 1991, soos gewysig deur artikel 32 van Wet 136 van 1991, artikel 23 van Wet 136 van 1992, artikel 32 van Wet 97 van 1993, artikel 18 van Wet 20 van 1994, artikel 34 van Wet 27 van 1997, artikel 93 van Wet 30 van 1998, artikel 89 van Wet 53 van 1999, artikel 174 van Wet 45 van 2003, artikel 103 van Wet 32 van 2004, artikel 109 van Wet 31 van 2005, artikel 49 van Wet 9 van 2006, artikel 85 van Wet 20 van 2006, artikel 112 van Wet 60 van 2008, artikel 123 van Wet 7 van 2010 en artikel 138 van Wet 24 van 2011** 10

- 149.** (1) Artikel 18 van die Wet op Belasting op Toegevoegde Waarde, 1991, word hierby gewysig—
- (a) deur in subartikel (4) paragrafe (ii) en (iii) van die voorbehoudsbepaling te skrap; 15
- (b) deur in subartikel (5) paragraaf (ii) van die voorbehoudsbepaling te skrap; en
- (c) deur in subartikel (10) die woorde wat op paragraaf (b) volg en wat die formule voorafgaan deur die volgende woorde te vervang: 20
- “en waar ’n aftrekking van insetbelasting ingevolge artikel 17(2) ontsê sou gewees het, [en] of tot die mate dat daardie goed of dienste nie geheel en al verbruik, gebruik of gelewer word binne ’n doeanebeheerdegebied in die loop van die maak van belasbare lewerings deur daardie ondernemer, synde ’n doeanebeheerdegebied-onderneming of ’n nywerheidsontwikkelingsone operateur nie, sal daardie goed of dienste geag gelewer te wees deur die betrokke ondernemer in dieselfde belastingtydperk waarin dit verkry was, ooreenkomstig die formule:”. 25
- (2) Subartikel (1) word geag op 10 Januarie 2012 in werking te getree het en is van toepassing ten opsigte van lewerings op of na daardie datum gemaak.

**Wysiging van artikel 21 van Wet 89 van 1991, soos gewysig deur artikel 26 van Wet 136 of 1992, artikel 34 van Wet 97 van 1993, artikel 176 van Wet 45 van 2003, artikel 48 van Wet 16 van 2004 en artikel 36 van Wet No. 18 van 2009** 30

- 150.** (1) Artikel 21 van die Wet op Belasting op Toegevoegde Waarde, 1991, word hierby gewysig—
- (a) deur in subartikel (1) die komma wat op paragraaf (d) volg deur die uitdrukking “; of”; te vervang; en 35
- (b) deur tot subartikel (1) na paragraaf (d) die volgende paragraaf by te voeg: 40
- “(e) ’n fout voorgekom het by die stipulering van die bedrag van vergoeding waarop vir daardie lewering ooreengekom is.”
- (2) Subartikel (1) tree op 1 Januarie 2013 in werking en is van toepassing ten opsigte van lewerings op of na daardie datum gemaak.

#### **Invoeging van artikel 40C in Wet 89 van 1991**

- 151.** (1) Die Wet op Belasting op Toegevoegde Waarde, 1991, word hierby gewysig deur na artikel 40B die volgende artikel in te voeg:

#### **“Aanspreeklikheid van bedingingsrade of politieke partye vir belasting en beperking van terugbetalings** 45

- 40C.** (1) Hierdie artikel is van toepassing ten opsigte van die lewering van goed of dienste beoog in artikel 12(l) of (m) voor 1 Januarie 2013, deur enige bedingingsraad of politieke party, na gelang van die geval.
- (2) Waar die Kommissaris voor 1 Januarie 2013, ’n aanslag uitgereik het om belasting te hef teen die koers bedoel in artikel 7(1) ten opsigte van enige lewering van goed of dienste beoog in subartikel (1), moet die Kommissaris, by skriftelike aansoek, daardie aanslag verminder namate die bedrag van belasting, addisionele belasting, boete of rente ten opsigte van daardie aanslag nog nie op daardie datum betaal is nie: Met dien verstande 55

assessment will not result in a refund to that bargaining council or political party.

(3) The Commissioner may not after 1 January 2013 make any assessment in respect of any supply of goods or services contemplated in subsection (1).

(4) If a bargaining council or political party charged tax at the rate referred to in section 7(1) in respect of any supply contemplated in subsection (1), the Commissioner may not refund any such tax or any penalty or interest that arose as a result of the late payment of such tax, received or accrued from that bargaining council or political party to the Commissioner.”

(2) Subsection (1) comes into operation on 1 January 2013.

**Amendment of section 4 of Act 4 of 2002**

**152.** (1) Section 4 of the Unemployment Insurance Contributions Act, 2002 (Act No. 4 of 2002), is hereby amended—

- (a) by the deletion in subsection (1) of the word “and” at the end of paragraph (c);
- (b) by the deletion in subsection (1) of the full stop at the end of paragraph (d) and the insertion of a semi-colon at the end of that paragraph; and
- (c) by the addition to subsection (1) after paragraph (d) of the following paragraphs:

- “(e) the President, Deputy President, a Minister, Deputy Minister, a member of the National Assembly, a permanent delegate to the National Council of Provinces, a Premier, a member of an Executive Council or a member of a provincial legislature; and
- (f) any member of a municipal council, a traditional leader, a member of a provincial House of Traditional Leaders and a member of the Council of Traditional Leaders.”

(2) Subsection (1) is deemed to have come into operation on 1 April 2002.

**Amendment of section 1 of Act 25 of 2007, as amended by section 145 of Act 24 of 2011**

**153.** (1) Section 1 of the Securities Transfer Tax Act, 2007 (Act No. 25 of 2007), is hereby amended—

- (a) by the insertion before the definition of “close corporation” of the following definition:

“**bank restricted stock account** means a bank restricted stock account as defined in the exchange rules;”

- (b) by the insertion after the definition of “exchange” of the following definitions:

“**exchange rules** means the exchange rules as defined in section 1 of the Securities Services Act, 2004 (Act No. 36 of 2004), or a directive issued in accordance with section 11(1)(c) of that Act;

**general restricted stock account** means a general restricted stock account as defined in the exchange rules;”

- (c) by the substitution for the full stop at the end of the definition of “**unlisted security**” of a semicolon; and

- (d) by the insertion after the definition of “**unlisted security**” of the following definition:

“**unrestricted and security restricted stock account** means an unrestricted and security restricted stock account as defined in the exchange rules.”

(2) Subsection (1) comes into operation on 1 January 2013 and applies in respect of transactions entered into on or after that date.

**Amendment of section 2 of Act 25 of 2007, as amended by section 60 of Act 18 of 2009**

**154.** (1) Section 2 of the Securities Transfer Tax Act, 2007, is hereby amended by the substitution for subsection (1) of the following subsection—

dat die verminderde aanslag nie 'n terugbetaling aan daardie bedingingsraad of politieke party tot gevolg sal hê nie.

(3) Die Kommissaris mag nie na 1 Januarie 2013 enige aanslag ten opsigte van enige lewering van goed of dienste beoog in subartikel (1) maak nie.

(4) Indien 'n bedingingsraad of politieke party belasting gevra het teen die koers bedoel in artikel 7(1) ten opsigte van enige lewering beoog in subartikel (1), mag die Kommissaris nie enige sodanige belasting of enige boete of rente wat ontstaan het as gevolg van die laat betaling van sodanige belasting, ontvang of toegeval van daardie bedingingsraad of politieke party aan die Kommissaris, terugbetaal nie.”

(2) Subartikel (1) tree op 1 Januarie 2013 in werking.

#### Khwinifhadzo ya sekisheni 4 ya Mulayo 4 wa 2002

152. (1) Sekisheni 4 ya Mulayo wa Mbadelo dza Inshorentsi ya Vhuyashamushumo, 2002 (Mulayo No. 4 wa 2002), i khou khwinifhadzwa—

(a) nga u thuthiwa ha ipfi “na” mafhedziseloni a pharagirafu (c) ha sekisheni thuku ya (1);

(b) nga u thuthiwa ha tshithoma mafhedziseloni a pharagirafu (d) ha sekisheni thuku ya (1) na u dzhenisiwa ha semikhojoni mafhedziseloni a pharagirafu; na

(c) nga u engedziwa nga murahu ha pharagirafu (d) ha sekisheni thukhu ya (1) ya pharagirafu zwi tevhelaho:

“(e) Phuresidennde, Mufarisa Phuresidennde, Minisiṭa, Mufarisa Minisiṭa, murado wa Guvhangano la Lushaka, murumelwa wa tshoṭhe wa Khantsele ya Lushaka ya Mavunḑu, Muphirimia, muraḑo wa Khantsele ya Vhulanguli kana muraḑo wa phalamennde ya vunḑu;

(f) khantsenle inwe na inwe ya masipala, murangaphanḑa wa sialala, muraḑo wa Nnḑu ya Vhurangaphanḑa ha Sialala na muraḑo wa Khantsele ya Vharangaphanḑa vha Sialala.”

(2) Sekisheni thukhu ya (1) i dzhiwa sa yo thomaho u shuma nga dzi 1 Lambamai 2002.

#### Wysiging van artikel 1 van Wet 25 van 2007, soos gewysig deur artikel 145 van Wet 24 van 2011

153. (1) Artikel 1 van die Wet op Belasting op Oordrag van Sekuriteite, 2007 (Wet No. 25 van 2007), word hierby gewysig—

(a) deur voor die omskrywing van “**beslote korporasie**” die volgende omskrywings in te voeg:

“**algemeen beperkte effekterekening**’ ’n algemeen beperkte effekterekening soos omskryf in die beursreëls;

**bank beperkte effekterekening**’ ’n bank beperkte effekterekening soos omskryf in die beursreëls;”;

(b) deur na die omskrywing van “**beurs**” die volgende omskrywing in te voeg:

“**beursreëls**’ die beursreëls soos omskryf in artikel 1 van die ‘Securities Services Act, 2004’ (Wet No. 36 van 2004), of ’n voorskrif uitgereik ooreenkomstig artikel 11(1)(c) van daardie Wet;”;

(c) deur voor die omskrywing van “**ongenoteerde sekuriteit**” die volgende omskrywing in te voeg:

“**onbeperkte en sekuriteit beperkte effekterekening**’ ’n onbeperkte en sekuriteit beperkte effekterekening soos omskryf in die beursreëls.”

(2) Subartikel (1) tree op 1 Januarie 2013 in werking en is van toepassing ten opsigte van transaksies op of na daardie datum aangegaan.

#### Wysiging van artikel 2 van Wet 25 van 2007, soos gewysig deur artikel 60 van Wet 18 van 2009

154. (1) Artikel 2 van die Wet op Belasting op Oordrag van Sekuriteite, 2007, word hierby gewysig deur subartikel (1) deur die volgende subartikel te vervang—

“(1) There must be levied and paid for the benefit of the National Revenue Fund a tax, to be known as the securities transfer tax, in respect of—

- (a) every transfer of any security issued by—
    - (i) a close corporation or company incorporated, established or formed inside the Republic; or
    - (ii) a company incorporated, established or formed outside the Republic and listed on an exchange; and
  - (b) any reallocation of securities from a member’s bank restricted stock account or a member’s unrestricted and security restricted stock account to a member’s general restricted stock account,
- at the rate of 0,25 per cent of the taxable amount of that security determined in terms of this Act.”.

(2) Subsection (1) comes into operation on 1 January 2013 and applies in respect of transactions entered into on or after that date.

**Amendment of section 8 of Act 25 of 2007, as amended by section 73 of Act 3 of 2008, section 127 of Act 60 of 2008, section 97 of Act 17 of 2009, section 127 of Act 7 of 2010 and section 148 of Act 24 of 2011**

155. (1) Section 8 of the Securities Transfer Tax Act, 2007, is hereby amended—

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

“(q) if—

- (i) the person to whom that security is transferred is a member who has purchased the security in that member’s capacity as principal; or
- (ii) the transaction is one in which—

- (aa) the person to whom that security is transferred is a member who has purchased the security to provide an equity hedging facility to a third party; or

- (bb) such member makes the security available for reward to a non-member, by means of a derivative instrument, to enable that non-member to provide an equity hedging facility to a third party;”;

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

“(q) if the person to whom that security is transferred is a member who acquires that security and allocates it to that member’s bank restricted stock account or that member’s unrestricted and security restricted stock account; or”;

- (c) by the substitution in subsection (1) for the full-stop at the end of paragraph (r) of the expression “; or”;

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

“(s) if that security constitutes a share in a headquarter company as defined in section 1 of the Income Tax Act, 1962 (Act No. 58 of 1962).”;

- (e) by the deletion in subsection (1) of the word “or” at the end of paragraph (r);

- (f) by the substitution in subsection (1) for the full-stop at the end of paragraph (s) of the expression “; or”; and

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

“(t) if that security constitutes a share in a REIT as defined in section 1 of the Income Tax Act.”.

(2) Paragraph (a) of subsection (1) is deemed to have come into operation on 1 July 2008 and applies in respect of transactions entered into—

- (a) on or after that date; and
- (b) on or before 31 December 2012,

in respect of which no securities transfer tax has been paid.

(3) Paragraph (b) of subsection (1) comes into operation on 1 January 2013 and applies in respect of transactions entered into on or after that date.

(4) Paragraphs (c) and (d) are deemed to have come into operation on 1 January 2011.

(5) Paragraphs (e), (f) and (g) come into operation on 1 April 2013 and apply in respect of transfers of securities on or after that date.



“(1) Daar moet ten bate van die Nasionale Inkomstefonds ’n belasting, bekend as die belasting op oordrag van sekuriteite, gehef en betaal word ten opsigte van—

- (a) elke oordrag van ’n sekuriteit uitgereik deur—
    - (i) ’n beslote korporasie of maatskappy binne die Republiek ingelyf, ingestel of opgerig; of
    - (ii) ’n maatskappy buite die Republiek ingelyf, ingestel of opgerig en op ’n beurs genoteer; en
  - (b) enige hertoewysing van sekuriteite vanaf ’n lid se bank beperkte effekterekening of ’n lid se onbeperkte en sekuriteit beperkte effekterekening na ’n lid se algemeen beperkte effekterekening,
- teen die koers van 0,25 persent van die belasbare bedrag van daardie sekuriteit ingevolge hierdie Wet bepaal.”

(2) Subartikel (1) tree op 1 Januarie 2013 in werking en is van toepassing ten opsigte van transaksies op of na daardie datum aangegaan.

**Wysiging van artikel 8 van Wet 25 van 2007, soos gewysig deur artikel 127 van Wet 60 van 2008, artikel 97 van Wet 17 van 2009, artikel 127 van Wet 7 van 2010 en artikel 148 van Wet 24 van 2011**

155. (1) Artikel 8 van die Wet op Belasting op Oordrag van Sekuriteite, 2007, word hierby gewysig—

- (a) deur in subartikel (1) paragraaf (q) deur die volgende paragraaf te vervang:
  - “(q) indien—
    - (i) die persoon aan wie daardie sekuriteit oorgedra word ’n lid is wat die sekuriteit in daardie lid se hoedanigheid as prinsipaal gekoop het; of
    - (ii) die transaksie een is waarin—
      - (aa) die persoon waaraan daardie sekuriteit oorgeplaas word ’n lid is wat die sekuriteit aangekoop het om ’n ekwiteitsdaaldekingsfasiliteit aan ’n derde party te voorsien; of
      - (bb) sodanige lid die sekuriteit beskikbaar stel vir beloning aan ’n nie-lid, deur middel van ’n afgeleide instrument, om daardie nie-lid in staat te stel om ’n ekwiteitsdaaldekingsfasiliteit aan ’n derde party te voorsien;”;
- (b) deur in subartikel (1) paragraaf (q) deur die volgende paragraaf te vervang:
  - “(q) indien die persoon waaraan daardie sekuriteit oorgedra word ’n lid is wat daardie sekuriteit verkry en dit toeken aan daardie lid se bank beperkte effekterekening of daardie lid se onbeperkte en sekuriteit beperkte effekterekening; of”;
- (c) deur in subartikel (1) die punt aan die einde van paragraaf (r) deur die uitdrukking “; of” te vervang;
- (d) deur tot subartikel (1) die volgende paragraaf by te voeg:
  - “(s) indien daardie sekuriteit ’n aandeel in ’n hoofkwartiermaatskappy soos omskryf in artikel 1 van die Inkomstebelastingwet, 1962 (Wet No. 58 van 1962), uitmaak.”;
- (e) deur in subartikel (1) die uitdrukking “; of” aan die einde van paragraaf (r) deur ’n kommapunt te vervang;
- (f) deur in subartikel (1) die punt aan die einde van paragraaf (s) deur die uitdrukking “; of” te vervang; en
- (g) deur tot subartikel (1) die volgende paragraaf by te voeg:
  - “(t) indien daardie sekuriteit ’n aandeel in ’n EIT soos omskryf in artikel 1 van die Inkomstebelastingwet uitmaak.”.

(2) Paragraaf (a) van subartikel (1) word geag op 1 Julie 2008 in werking te getree het en is van toepassing ten opsigte van transaksies aangegaan—

- (a) op of na daardie datum; en
- (b) op of voor 31 Desember 2012,

ten opsigte waarvan geen belasting op oordrag van sekuriteite betaal is nie.

(3) Paragraaf (b) van subartikel (1) tree op 1 Januarie 2013 in werking en is van toepassing ten opsigte van transaksies op of na daardie datum aangegaan.

(4) Paragrawe (c) en (d) word geag op 1 Januarie 2011 in werking te getree het.

(5) Paragrawe (e), (f) en (g) tree op 1 April 2013 in werking en is van toepassing ten opsigte van oordragte van sekuriteite op of na daardie datum.

**Amendment of section 13 of Act 60 of 2008**

**156.** (1) Section 13 of the Revenue Laws Amendment Act, 2008 (Act No. 60 of 2008), is hereby amended—

- (a) by the deletion in subsection (1) of paragraph (a); and
- (b) by the deletion of subsection (2).

(2) Subsection (1) is deemed to have come into operation on 8 January 2009.

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**Amendment of section 13 of Act 17 of 2009**

**157.** (1) Section 13 of the Taxation Laws Amendment Act, 2009 (Act No. 17 of 2009), is hereby amended—

- (a) by the deletion in subsection (1) of paragraphs (h) and (i); and
- (b) by the deletion of subsection (6).

(2) Subsection (1) is deemed to have come into operation on 30 September 2009.

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**Amendment of section 2 of Act 7 of 2010**

**158.** (1) Section 2 of the Taxation Laws Amendment Act, 2010 (Act No. 7 of 2010), is hereby amended by the substitution for subsection (2) of the following subsection:

“(2) Subsection (1) comes into operation on **[a date determined by the Minister of Finance by notice in the *Gazette*]** 1 January 2013.”

(2) Subsection (1) is deemed to have come into operation on 2 November 2010.

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**Amendment of section 48 of Act 7 of 2010**

**159.** (1) Section 48 of the Taxation Laws Amendment Act, 2010, is hereby amended by the substitution for subsection (2) of the following subsection:

“(2) Subsection (1) comes into operation on **[a date determined by the Minister of Finance by notice in the *Gazette*]** 1 January 2013.”

(2) Subsection (1) is deemed to have come into operation on 2 November 2010.

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**Repeal of section 111 of Act 7 of 2010**

**160.** (1) Section 111 of the Taxation Laws Amendment Act, 2010, is hereby repealed.  
(2) Subsection (1) is deemed to have come into operation on 2 November 2010.

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**Amendment of section 121 of Act 7 of 2010**

**161.** (1) Section 121 of the Taxation Laws Amendment Act, 2010, is hereby amended by the substitution for subsection (2) of the following subsection:

“(2) Subsection (1) comes into operation on **[a date determined by the Minister of Finance by notice in the *Gazette*]** 1 January 2013.”

(2) Subsection (1) is deemed to have come into operation on 2 November 2010.

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**Amendment of section 128 of Act 7 of 2010**

**162.** (1) Section 128 of the Taxation Laws Amendment Act, 2010, is hereby amended by the substitution for subsection (2) of the following subsection:

“(2) Subsection (1) comes into operation on **[a date determined by the Minister of Finance by notice in the *Gazette*]** 1 January 2013.”

(2) Subsection (1) is deemed to have come into operation on 2 November 2010.

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**Amendment of section 3 of Act 24 of 2011**

**163.** (1) Section 3 of the Taxation Laws Amendment Act, 2011 (Act No. 24 of 2011), is hereby amended by the substitution for subsection (2) of the following subsection:

“(2) Subsection (1) comes into operation on **[a date determined by the Minister of Finance by notice in the *Gazette*]** 1 January 2013.”

(2) Subsection (1) is deemed to have come into operation on 10 January 2012.

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**Wysiging van artikel 13 van Wet 60 van 2008**

156. (1) Artikel 13 van die Wysigingswet op Inkomstewette, 2008 (Wet No. 60 van 2008), word hierby gewysig—
- (a) deur in subartikel (1) paragraaf (a) te skrap; en
  - (b) deur subartikel (2) te skrap. 5
- (2) Subartikel (1) word geag op 8 Januarie 2009 in werking te getree het.

**Wysiging van artikel 13 van Wet 17 van 2009**

157. (1) Artikel 13 van die Wysigingswet op Belastingwette, 2009, word hierby gewysig—
- (a) deur in subartikel (1) paragrawe (h) en (i) te skrap; en 10
  - (b) deur subartikel (6) te skrap.
- (2) Subartikel (1) word geag op 30 September 2009 in werking te getree het.

**Wysiging van artikel 2 van Wet 7 van 2010**

158. (1) Artikel 2 van die Wysigingswet op Belastingwette, 2010 (Wet No. 7 van 2010), word hierby gewysig deur subartikel (2) deur die volgende subartikel te vervang: 15
- “(2) Subartikel (1) tree in werking op [’n datum deur die Minister van Finansies by kennisgewing in die *Staatskoerant* bepaal] 1 Januarie 2013.”.
- (2) Subartikel (1) word geag op 2 November 2010 in werking te getree het.

**Wysiging van artikel 48 van Wet 7 van 2010**

159. (1) Artikel 48 van die Wysigingswet op Belastingwette, 2010, word hierby 20 gewysig deur subartikel (2) deur die volgende subartikel te vervang:
- “(2) Subartikel (1) tree in werking op [’n datum deur die Minister van Finansies by kennisgewing in die *Staatskoerant* bepaal] 1 Januarie 2013.”.
- (2) Subartikel (1) word geag op 2 November 2010 in werking te getree het.

**Herroeping van artikel 111 van Wet 7 van 2010** 25

160. (1) Artikel 111 van die Wysigingswet op Belastingwette, 2010, word hierby herroep.
- (2) Subartikel (1) word geag op 2 November 2010 in werking te getree het.

**Wysiging van artikel 121 van Wet 7 van 2010**

161. (1) Artikel 121 van die Wysigingswet op Belastingwette, 2010, word hierby 30 gewysig deur subartikel (2) deur die volgende subartikel te vervang:
- “(2) Subartikel (1) tree in werking op [’n datum deur die Minister van Finansies by kennisgewing in die *Staatskoerant* bepaal] 1 Januarie 2013.”.
- (2) Subartikel (1) word geag op 2 November 2010 in werking te getree het.

**Wysiging van artikel 128 van Wet 7 van 2010** 35

162. (1) Artikel 128 van die Wysigingswet op Belastingwette, 2010, word hierby gewysig deur subartikel (2) deur die volgende subartikel te vervang:
- “(2) Subartikel (1) tree in werking op [’n datum deur by die Minister van Finansies by kennisgewing in die *Staatskoerant* bepaal] 1 Januarie 2013.”.
- (2) Subartikel (1) word geag op 2 November 2010 in werking te getree het. 40

**Wysiging van artikel 3 van Wet 24 van 2011**

163. (1) Artikel 3 van die Wysigingswet op Belastingwette, 2011 (Wet No. 24 van 2011), word hierby gewysig deur subartikel (2) deur die volgende subartikel te vervang:
- “(2) Subartikel (1) tree in werking op [’n datum deur die Minister van Finansies by kennisgewing in die *Staatskoerant* bepaal] 1 Januarie 2013.”. 45
- (2) Subartikel (1) word geag op 10 Januarie 2012 in werking te getree het.

**Amendment of section 7 of Act 24 of 2011**

**164.** (1) Section 7 of the Taxation Laws Amendment Act, 2011, is hereby amended by the substitution for subsections (3) and (4) of the following subsections:

“(3) Paragraphs (b), (d), (e), (f), (h), (k), (m), (u) and (zJ) of subsection (1) are deemed to have come into operation on 1 January 2011. 5

(4) Paragraphs (c), (g), (i), [(u),] (w), (zL), (zN) and (zO) of subsection (1) come into operation on 1 April 2012.”.

(2) Subsection (1) is deemed to have come into operation on 10 January 2012.

**Repeal of section 21 of Act 24 of 2011**

**165.** (1) Section 21 of the Taxation Laws Amendment Act, 2011, is hereby repealed. 10

(2) Subsection (1) is deemed to have come into operation on 10 January 2012.

**Amendment of section 28 of Act 24 of 2011**

**166.** (1) Section 28 of the Taxation Laws Amendment Act, 2011, is hereby amended—

(a) by the repeal in subsection (1) of paragraph (o); 15

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

“(3) Paragraphs (b), (c), (f) and (j) of subsection (1) are deemed to have come into operation on 1 March 2011 and apply in respect of amounts received or accrued during years of assessment commencing on or after that date.”; 20

(c) by the substitution for subsection (7) of the following subsection:

“(7) Paragraphs (m)[, (o)] and (q) of subsection (1) come into operation on 1 April 2012.”; and

(d) by the substitution for subsection (8) of the following subsection:

“(8) Paragraph (p) of subsection (1) is deemed to have come into operation on 1 April 2012 and applies in respect of dividends received or accrued on or after that date.”. 25

(2) Subsection (1) is deemed to have come into operation on 10 January 2012.

**Amendment of section 29 of Act 24 of 2011**

**167.** (1) Section 29 of the Taxation Laws Amendment Act, 2011, is hereby amended 30 by the substitution for subsection (2) of the following subsection—

“(2) Subsection (1) comes into operation—

(a) insofar as it applies to any person that is a natural person, deceased estate, insolvent estate or [special] trust, on 1 March 2012 and applies in respect of dividends and foreign dividends received or accrued on or after that date; and 35

(b) insofar as it applies to any person that is a person other than a natural person, deceased estate, insolvent estate or [special] trust, on 1 April 2012 and applies in respect of dividends and foreign dividends received or accrued on or after that date.”.

(2) Subsection (1) is deemed to have come into operation on 10 January 2012. 40

**Amendment of section 32 of Act 24 of 2011**

**168.** (1) Section 32 of the Taxation Laws Amendment Bill, 2011, is hereby amended by the substitution for subsection (2) of the following subsection:

“(2) Subsection (1) is deemed to have come into operation on 1 [April] October 2012 [unless a later date is determined by the Minister by notice in the Gazette] 45 and applies in respect of expenditure incurred in respect of research and development on or after 1 [April] October 2012 [or such later date determined by the Minister by notice in the Gazette] but before 1 [April] October 2022.”.

(2) Subsection (1) is deemed to have come into operation on 10 January 2012.

### Wysiging van artikel 7 van Wet 24 van 2011

164. (1) Artikel 7 van die Wysigingswet op Belastingwette, 2011, word hierby gewysig deur subartikels (2) en (5) deur die volgende subartikels te vervang—

“(2) Paragrafe (a), (b), [(j), (r), (t), (v), (zF), en (zJ) tree op 1 April 2012 in werking.

(5) Paragrafe (j), (l), (m), (o), (p), (q), (s), (zH) en (zI) word geag op 1 Januarie 2011 in werking te getree het.”

(2) Subartikel (1) word geag op 10 Januarie 2012 in werking te getree het.

### Herroeping van artikel 21 van Wet 24 van 2011

165. (1) Artikel 21 van die Wysigingswet op Belastingwette, 2011, word hierby herroep.

(2) Subartikel (1) word geag op 10 Januarie 2012 in werking te getree het.

### Wysiging van artikel 28 van Wet 24 van 2011

166. (1) Artikel 28 van die Wysigingswet op Belastingwette, 2011, word hierby gewysig—

(a) deur in subartikel (1) paragraaf (o) te herroep;

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

“(3) Paragrafe (b), (c), (f) en (j) van subartikel (1) word geag op 1 Maart 2011 in werking te getree het en is van toepassing ten opsigte van bedrae ontvang of toegeval gedurende jare van aanslag wat op of na daardie datum [ontvang of toegeval] begin.”;

(c) deur subartikel (7) deur die volgende subartikel te vervang:

“(7) Paragrafe (m), (o) en (q) van subartikel (1) tree op 1 April 2012 in werking.”; en

(d) deur subartikel (8) deur die volgende subartikel te vervang:

“(8) Paragraaf (p) van subartikel (1) word geag op 1 April 2012 in werking te getree het en is van toepassing ten opsigte van dividende op of na daardie datum ontvang of toegeval.”

(2) Subartikel (1) word geag op 10 Januarie 2012 in werking te getree het.

### Wysiging van artikel 29 van Wet 24 van 2011

167. (1) Artikel 29 van die Wysigingswet op Belastingwette, 2011, word hierby gewysig deur subartikel (2) deur die volgende subartikel te vervang—

“(2) Subartikel (1) tree in werking—

(a) wat betref ’n persoon wat ’n natuurlike persoon, gestorwe boedel, insolvente boedel of [spesiale] trust is, op 1 Maart 2012 en is van toepassing ten opsigte van dividende en buitelandse dividende op of na daardie datum ontvang of toegeval; en

(b) wat betref ’n persoon wat ’n persoon behalwe ’n natuurlike persoon, gestorwe boedel, insolvente boedel of [spesiale] trust is, op 1 April 2012 en is van toepassing ten opsigte van dividende en buitelandse dividende op of na daardie datum ontvang of toegeval.”

(2) Subartikel (1) word geag op 10 Januarie 2012 in werking te getree het.

### Wysiging van artikel 32 van Wet 24 van 2011

168. (1) Artikel 32 van die Wysigingswet op Belastingwette, 2011, word hierby gewysig deur subartikel (2) deur die volgende subartikel te vervang:

“(2) Subartikel (1) tree op 1 [April] Oktober 2012 in werking, [tensy ’n later datum deur die Minister by kennisgewing in die Staatskoerant bepaal word,] en is van toepassing ten opsigte van uitgawes aangegaan ten opsigte van daardie navorsing en ontwikkeling op of na 1 [April] Oktober 2012 [of die latere datum deur die Minister by kennisgewing in die Staatskoerant bepaal], maar voor 1 [April] Oktober 2022.”

(2) Subartikel (1) word geag op 10 Januarie 2012 in werking te getree het.

**Amendment of section 43 of Act 24 of 2011**

- 169.** (1) Section 43 of the Taxation Laws Amendment Bill, 2011, is hereby amended—
- (a) by the substitution for subsection (3) of the following subsection:  
“(3) [Paragraphs] Paragraph (c) [and (f)] of subsection (1) [are] is 5  
deemed to have come into operation on 1 March 2011 and [apply]  
applies in respect of the year of assessment commencing on or after that  
date.”; and
  - (b) by the addition after subsection (3) of the following subsection:  
(4) Paragraph (f) of subsection (1) is deemed to have come into 10  
operation on 1 March 2011 and applies in respect of years of assessment  
commencing on or after that date.”.
- (2) Subsection (1) is deemed to have come into operation on 1 March 2011.

**Amendment of section 49 of Act 24 of 2011**

- 170.** (1) Section 49 of the Taxation Laws Amendment Act, 2011, is hereby amended 15  
by the substitution for subsection (2) of the following subsection:
- “(2) Subsection (1) is deemed to have come into operation on 3 June 2011 and  
applies in respect of any amount of interest incurred in terms of a debt instrument  
where that debt instrument was issued or used for the purpose of procuring,  
enabling, facilitating or funding the acquisition by an acquiring company of an  
asset in terms of a reorganisation transaction entered into— 20  
(a) on or after that date; and  
(b) on or before 31 December 2013.”.
- (2) Subsection (1) is deemed to have come into operation on 10 January 2012.

**Amendment of section 50 of Act 24 of 2011**

- 171.** (1) Section 50 of the Taxation Laws Amendment Act, 2011, is hereby amended 25  
by the substitution for subsection (2) of the following subsection:
- “(2) Subsection (1) is deemed to have come into operation on 3 August 2011 and  
applies in respect of any amount of interest incurred in terms of a debt instrument  
where that debt instrument was issued or used for the purpose of procuring,  
enabling, facilitating or funding the acquisition by an acquiring company of an 30  
asset in terms of a reorganisation transaction entered into—  
(a) on or after that date; and  
(b) on or before 31 December 2013.”.
- (2) Subsection (1) is deemed to have come into operation on 10 January 2012.

**Amendment of section 54 of Act 24 of 2011** 35

- 172.** (1) Section 54 of the Taxation Laws Amendment Act, 2011, is hereby amended  
by the substitution for subsection (2) of the following subsection:  
“(2) Subsection (1) comes into operation on **[a date determined by the**  
**Minister of Finance by notice in the Gazette] 1 January 2013.”.**
- (2) Subsection (1) is deemed to have come into operation on 10 January 2012. 40

**Amendment of section 70 of Act 24 of 2011**

- 173.** (1) Section 70 of the Taxation Laws Amendment Act, 2011, is hereby amended  
by the substitution for subsections (2) and (3) of the following subsections:
- “(2) Paragraphs (a) and (c) of subsection (1) are deemed to have come into  
operation on 30 August 2011 and apply in respect of debt instruments and shares 45  
issued on or after that date, other than debt instruments and shares issued in terms  
of intra-group transactions which, but for any suspensive conditions contained in  
such agreements, would have been entered into on or after that date.  
(3) Paragraph (b) of subsection (1) comes into operation on 1 January 2012 and  
applies in respect of years of assessment commencing on or after that date.”. 50
- (2) Subsection (1) is deemed to have come into operation on 10 January 2012.

### Wysiging van artikel 43 van Wet 24 van 2011

169. (1) Artikel 43 van die Wysigingswet op Belastingwette, 2011, word hierby gewysig—

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

“(3) [Paragraaf] Paragraaf (c) [en (f)] van subartikel (1) word geag op 1 Maart 2011 in werking te getree het en is van toepassing ten opsigte van [jare] die jaar van aanslag wat op of na daardie datum begin.”; en

(b) deur na subartikel (3) die volgende subartikel by te voeg—

“(4) Paragraaf (f) van subartikel (1) word geag op 1 Maart 2011 in werking te getree het en is van toepassing ten opsigte van jare van aanslag wat op of na daardie datum begin.”

(2) Subartikel (1) word geag op 1 Maart 2011 in werking te getree het.

### Wysiging van artikel 49 van Wet 24 van 2011

170. (1) Artikel 49 van die Wysigingswet op Belastingwette, 2011, word hierby gewysig deur subartikel (2) deur die volgende subartikel te vervang:

“(2) Subartikel (1) word geag op 3 Junie 2011 in werking te getree het en is van toepassing ten opsigte van enige bedrag van rente aangegaan ingevolge ’n skuldinstrument waar daardie skuldinstrument uitgereik of gebruik is met die doel om die verkryging van ’n bate deur ’n verkrygende maatskappy te bewerkstellig, in staat te stel, te fasiliteer of te befonds ingevolge ’n reorganisasietransaksie—

(a) op of na daardie datum aangegaan; en

(b) op of voor 31 Desember 2013 aangegaan.”.

(2) Subartikel (1) word geag op 10 Januarie 2012 in werking te getree het.

### Wysiging van artikel 50 van Wet 24 van 2011

171. (1) Artikel 50 van die Wysigingswet op Belastingwette, 2011, word hierby gewysig deur subartikel (2) deur die volgende subartikel te vervang:

“(2) Subartikel (1) word geag op 3 Augustus 2011 in werking te getree het en is van toepassing ten opsigte van enige bedrag van rente aangegaan ingevolge ’n skuldinstrument waar daardie skuldinstrument uitgereik of gebruik is met die doel om die verkryging van ’n bate deur ’n verkrygende maatskappy te bewerkstellig, in staat te stel, te fasiliteer of te befonds ingevolge ’n reorganisasietransaksie—

(a) op of na daardie datum aangegaan; en

(b) op of voor 31 Desember 2013 aangegaan.”.

(2) Subartikel (1) word geag op 10 Januarie 2012 in werking te getree het.

### Wysiging van artikel 54 van Wet 24 van 2011

172. (1) Artikel 54 van die Wysigingswet op Belastingwette, 2011, word hierby gewysig deur subartikel (2) deur die volgende subartikel te vervang:

“(2) Subartikel (1) tree in werking op [’n datum deur die Minister van Finansies by kennisgewing in die Staatskoerant bepaal] 1 Januarie 2013.”.

(2) Subartikel (1) word geag op 10 Januarie 2012 in werking te getree het.

### Wysiging van artikel 70 van Wet 24 van 2011

173. (1) Artikel 70 van die Wysigingswet op Belastingwette, 2011, word hierby gewysig deur subartikels (2) en (3) deur die volgende subartikels te vervang:

“(2) Paragrafe (a) en (c) van subartikel (1) word geag op 30 Augustus 2011 in werking te getree het en is van toepassing ten opsigte van skuldinstrumente en aandele uitgereik op of na daardie datum, behalwe skuldinstrumente en aandele uitgereik ingevolge intragroeptransaksies wat, by ontstentenis van enige opskortende voorwaardes vervat in sodanige ooreenkomste, op of na daardie datum aangegaan sou gewees het.

(3) Paragraaf (b) van subartikel (1) tree op 1 Januarie 2012 in werking en is van toepassing ten opsigte van jare van aanslag wat op of na daardie datum begin.”.

(2) Subartikel (1) word geag op 10 Januarie 2012 in werking te getree het.

**Amendment of section 72 of Act 24 of 2011**

**174.** (1) Section 72 of the Taxation Laws Amendment Act, 2011, is hereby amended by the substitution in subsection (1) for paragraph (a) of the following paragraph:

“(a) by the substitution in subsection (1)(a) for **[paragraph (a)]** the words preceding subparagraph (i) of the following **[paragraph] words:** 5  
‘**[(a)]** in terms of which any company (hereinafter referred to as the ‘liquidating company’) distributes all its assets (other than assets it elects to use to settle any debts incurred by it in the ordinary course of its trade) to its shareholders in anticipation of or in the course of the liquidation, winding up or deregistration of that company, but 10 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—’;”.

(2) Subsection (1) is deemed to have come into operation on 10 January 2012.

**Amendment of section 116 of Act 24 of 2011**

**175.** (1) Section 116 of the Taxation Laws Amendment Act, 2011, is hereby amended—

(a) by the substitution in subsection (1) for paragraph (d) of the following paragraph:  
“(d) by the substitution in subparagraph (2)(b) for the full stop at the end 20 of subitem **[(ii)] (iii)** of the expression ‘; or’;”;

(b) by the deletion in subsection (1) of paragraphs (f), (g), (h), (i) and (j); and

(c) by the substitution for subsection (3) of the following subsection:  
“(3) **[Paragraphs] Paragraph (b) [, (f), (g), (h), (i) and (j)]** of subsection (1) **[come] comes** into operation on 1 April 2012 and **[apply] 25 applies** in respect of disposals made on or after that date.

(2) Subsection (1) is deemed to have come into operation on 10 January 2012.

**Amendment of section 119 of Act 24 of 2011**

**176.** (1) Section 119 of the Taxation Laws Amendment Act, 2011, is hereby amended by the substitution for subsection (2) of the following subsection: 30

“(2) Subsection (1) **[comes] is deemed to have come** into operation on **[1 April 2012] 1 January 2011**.”.

(2) Subsection (1) is deemed to have come into operation on 10 January 2012.

**Amendment of section 121 of Act 24 of 2011**

**177.** (1) Section 121 of the Taxation Laws Amendment Act, 2011, is hereby amended 35 by the substitution for subsection (2) of the following subsection:

“(2) Subsection (1) comes into operation on 1 January 2012 and applies in respect of returns of capital and foreign returns of capital received or accrued on or after that date.”.

(2) Subsection (1) is deemed to have come into operation on 10 January 2012. 40

**Amendment of section 129 of Act 24 of 2011**

**178.** (1) Section 129 of the Taxation Laws Amendment Act, 2011, is hereby amended by the substitution for subsection (3) of the following subsection:

“(3) Paragraph (b) of subsection (1) comes into operation on **[a date determined by the Minister of Finance by notice in the Gazette] 1 January 45 2013**.”.

(2) Subsection (1) is deemed to have come into operation on 10 January 2012.

**Amendment of section 132 of Act 24 of 2011**

**179.** (1) Section 132 of the Taxation Laws Amendment Act, 2011, is hereby amended 50 by the substitution for subsection (2) of the following subsection:

“(2) Subsection (1) comes into operation on **[a date determined by the Minister of Finance by notice in the Gazette] 1 January 2013**.”.

(2) Subsection (1) is deemed to have come into operation on 10 January 2012.



### Wysiging van artikel 72 van Wet 24 van 2011

174. (1) Artikel 72 van die Wysigingswet op Belastingwette, 2011, word hierby gewysig deur in subartikel (1) paragraaf (a) deur die volgende paragraaf te vervang:  
“(a) deur in subartikel (1)(a) [**paragraaf (a)**] die woorde wat subparagraaf (i) voorafgaan deur die volgende [**paragraaf**] woorde te vervang: 5  
‘**[(a)]** ingevolge waarvan ’n maatskappy (hierna die ‘likwiderende maatskappy’ genoem) al sy bates (behalwe bates wat dit na keuse wil aanwend ter delging van skulde in die gewone loop van besigheid aangegaan) aan sy aandeelhouders uitkeer in afwagting van of in die loop van die likwidasië of deregistrasie van daardie maatskappy, maar slegs tot die mate waarin daar oor daardie bates so beskik word aan ’n ander maatskappy (hierna die ‘houermaatskappy’ genoem) wat ’n inwoner is en wat—’.”  
(2) Subartikel (1) word geag op 10 Januarie 2012 in werking te getree het. 10

### Wysiging van artikel 116 van Wet 24 van 2011

175. (1) Artikel 116 van die Wysigingswet op Belastingwette, 2011, word hierby gewysig:  
(a) deur in subartikel (1) paragraaf (d) deur die volgende paragraaf te vervang:  
“(d) deur in subparagraaf (2)(b) die punt aan die einde van subitem [(ii)] (iii) deur die uitdrukking ‘; of’ te vervang;” 20  
(b) deur in subartikel (1) paragrawe (f), (g), (h), (i) en (j) te skrap; en  
(c) deur subartikel (3) deur die volgende subartikel te vervang:  
“(3) [**Paragraaf**] Paragraaf (b), (f), (g), (h), (i) en (j)] van subartikel (1) tree op 1 April 2012 in werking en is van toepassing ten opsigte van beskikkings op of na daardie datum gemaak.” 25  
(2) Subartikel (1) word geag op 10 Januarie 2012 in werking te getree het.

### Wysiging van artikel 119 van Wet 24 van 2011

176. (1) Artikel 119 van die Wysigingswet op Belastingwette, 2011, word hierby gewysig deur subartikel (2) deur die volgende subartikel te vervang:  
“(2) Subartikel (1) [**tree**] word geag op [**1 April 2012**] 1 Januarie 2011 in werking te getree het.” 30  
(2) Subartikel (1) word geag op 10 Januarie 2012 in werking te getree het.

### Wysiging van artikel 121 van Wet 24 van 2011

177. (1) Artikel 121 van die Wysigingswet op Belastingwette, 2011, word hierby gewysig deur subartikel (2) deur die volgende subartikel te vervang: 35  
“(2) Subartikel (1) tree op 1 Januarie 2012 in werking en is van toepassing ten opsigte van teruggawes van kapitaal en buitelandse teruggawes van kapitaal op of na daardie datum ontvang of toegeval.”  
(2) Subartikel (1) word geag op 10 Januarie 2012 in werking te getree het.

### Wysiging van artikel 129 van Wet 24 van 2011

178. (1) Artikel 129 van die Wysigingswet op Belastingwette, 2011, word hierby gewysig deur subartikel (3) deur die volgende subartikel te vervang:  
“(3) Paragraaf (b) van subartikel (1) tree in werking op [**’n datum deur die Minister van Finansies by kennisgewing in die Staatskoerant afgekondig**] 1 Januarie 2013.” 45  
(2) Subartikel (1) word geag op 10 Januarie 2012 in werking te getree het.

### Wysiging van artikel 132 van Wet 24 van 2011

179. (1) Artikel 132 van die Wysigingswet op Belastingwette, 2011, word hierby gewysig deur subartikel (2) deur die volgende subartikel te vervang:  
“(2) Subartikel (1) tree in werking op [**’n datum deur die Minister van Finansies by kennisgewing in die Staatskoerant bepaal**] 1 Januarie 2013.” 50  
(2) Subartikel (1) word geag op 10 Januarie 2012 in werking te getree het.

**Amendment of section 149 of Act 24 of 2011**

**180.** (1) Section 149 of the Taxation Laws Amendment Act, 2011, is hereby amended by the substitution for subsection (2) of the following subsection:

“(2) Subsection (1) comes into operation on [a date determined by the Minister of Finance by notice in the *Gazette*] 1 January 2013.”

(2) Subsection (1) is deemed to have come into operation on 10 January 2012.

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**Short title and commencement**

**181.** (1) This Act is called the Taxation Laws Amendment Act, 2012.

(2) Except insofar as otherwise provided for in this Act or the context otherwise indicates, the amendments effected to the Income Tax Act, 1962, by this Act shall for the purposes of assessment 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 2013.

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### **Wysiging van artikel 149 van Wet 24 van 2011**

**180.** (1) Artikel 149 van die Wysigingswet op Belastingwette, 2011, word hierby gewysig deur subartikel (2) deur die volgende subartikel te vervang:

“(2) Subartikel (1) tree in werking op [**’n datum deur die Minister van Finansies by kennisgewing in die *Staatskoerant* bepaal**] 1 Januarie 2013.”.

(2) Subartikel (1) word geag op 10 Januarie 2012 in werking te getree het.

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### **Kort titel en inwerkingtreding**

**181.** (1) Hierdie Wet heet die Wysigingswet op Belastingwette, 2012.

(2) Tensy in hierdie Wet anders bepaal of dit uit die samehang anders blyk, word die wysigings aan die Inkomstebelastingwet, 1962, by hierdie Wet aangebring vir die doeleindes van aanslae ten opsigte van normale belasting kragtens die Inkomstebelastingwet, 1962, geag in werking te getree het met ingang van jare van aanslag wat op of na 1 Januarie 2013 eindig.

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