

REPUBLIC OF SOUTH AFRICA

**DRAFT
TAXATION LAWS
AMENDMENT BILL**

*(As introduced in the National Assembly (proposed section 77))
(The English text is the official text of the Bill)*

(MINISTER OF FINANCE)

8 July 2016

Draft

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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BILL

To amend the Transfer Duty Act, 1949, so as to amend a provision; to amend the Estate Duty Act, 1955, so as to amend a provision; to amend the Income Tax Act, 1962, to amend certain provisions; to make new provision; to repeal certain provisions; to amend the Customs and Excise Act, 1964, so as to make new provision; and to make provision for continuations; to amend the Value-Added Tax Act, 1991, so as to amend certain provisions; to amend the Skills Development Levies Act, 1999, so as to amend a provision; to amend the Unemployment Insurance Contributions Act, 2002, so as to amend a provision; to amend the Securities Transfer Tax Act, 2007, so as to amend certain provisions; to amend the Mineral and Petroleum Resources Royalty Act, 2008 so as to amend a provision; to amend the Taxation Laws Amendment Act, 2013; to amend the Taxation Laws Amendment Act, 2014, so as to amend a provision; to amend the Taxation Laws Amendment Act, 2015, so as to amend a provision; and to provide for matters connected therewith.

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

Amendment of section 2 of Act 40 of 1949, as amended by section 1 of Act 59 of 1951, section 1 of Act 31 of 1953, section 1 of Act 32 of 1954, section 2 of Act 77 of 1964, section 1 of Act 56 of 1966, section 2 of Act 66 of 1973, section 3 of Act 88 of 1974, section 5 of Act 106 of 1980, section 3 of Act 87 of 1988, section 2 of Act 136 of 1992, section 3 of Act 97 of 1993, section 1 of Act 37 of 1995, section 9 of Act 37 of 1996, section 2 of Act 32 of 1999, section 2 of Act 30 of 2002, section 31 of Act 12 of 2003, section 1 of Act 16 of 2004, section 1 of Act 9 of 2005, section 1 of Act 31 of 2005, section 14 of Act 9 of 2006, section 2 of Act 18 of 2009, section 2 of Act 24 of 2011, section 2 of Act 13 of 2015 and section 1 of Act 25 of 2015

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

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

“The Minister of Finance may announce in the annual national budget contemplated in section 27(1) of the Public Finance Management Act, 1999 (Act No. 1 of 1999) that, with effect from a date mentioned in that announcement—”;
and

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

“(3) If the Minister makes an announcement contemplated in subsection (2), that **[reduction]** alteration or change comes into effect on the date determined by the Minister in that announcement and continues to apply for a period of 12 months from that date unless Parliament passes legislation giving effect to that announcement within that period of 12 months.”.

(2) Subsection (1) is deemed to have come into operation on 1 March 2016 and applies in respect of any property acquired or interest or restriction in any property renounced on or after that date.

Amendment of section 4A of Act 45 of 1955, as substituted by section 5 of Act 17 of 2009 and amended by section 4 of Act 7 of 2010

2. Section 4A of the Estate Duty Act, 1955, is hereby amended by the substitution for the subsection (5) of the following subsection:

“(5) Subsections (2) and (3) shall not apply unless the executor of the estate of that person submits, at the time and in the manner and form prescribed by the Commissioner, to the Commissioner a copy of a return submitted to the Commissioner in terms of section 7 or other relevant material that the Commissioner may regard as reasonable in respect of the estate of the previously deceased person.”.

Amendment of section 11 of Act 45 of 1955, as amended by the section 3 of Act 56 of 1966, section 13 of Act 87 of 1988 and section 3 of Act 37 of 1995

3. (1) Section 11 of the Estate Duty Act, 1955, is hereby amended by the deletion in paragraph (b) of subparagraph (iA).

(2) Subsection (1) is deemed to have come into operation on 1 January 2009 and applies in respect of the estate of a person who dies on or after that date.

Amendment of First Schedule to Act 45 of 1955, as substituted by section 9 of Act 92 of 1971 and amended by section 13 of Act 106 of 1980, section 3 of Act 71 of 1986, section 16 of Act 87 of 1988, section 11 of Act 37 of 1996 and section 4 of Act 5 of 2001

4. The First Schedule to the Estate Duty Act, 1955, is hereby amended –

(a) by the substitution for words preceding the proviso of the following paragraph and subparagraphs:

“1. The rate of estate duty shall be—

(a) 20 per cent of the dutiable amount of the estate; or

(b) a percentage of the dutiable amount of the estate as the Minister may announce in the annual national budget contemplated in section 27(1) of the Public Finance Management Act, 1999 (Act No. 1 of 1999), with effect from a date mentioned in that announcement.”; and

(b) by the addition after the proviso of the following paragraph:

“2. If the Minister makes an announcement contemplated in subparagraph 1(b), that rate comes into effect on the date determined by the Minister in that announcement and continues to apply for a period of 12 months from that date unless Parliament passes legislation giving effect to that announcement within that period of 12 months.”.

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 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, section 271 of Act 28 of 2011, read with item 23 of Schedule 1 to that Act, section 2 of Act 22 of 2012, section 4 of Act 31 of 2013, section 1 of Act 43 of 2014 and section 3 of Act 25 of 2015

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

(a) by the substitution in subsection (1) in the definition of “connected person” for paragraph (bA) of the following paragraph:

“(bA) in relation to a connected person in relation to a trust (other than a portfolio of a collective investment scheme), [includes] any other person who is a connected person in relation to such trust;”;

(b) by the substitution in subsection (1) in paragraph (c) of the definition of “gross income” for the words preceding the proviso of the following words:

“any amount, including any voluntary award, received or accrued in respect of services rendered or to be rendered or any amount (other than an amount referred to in section 8(1), 8B or 8C) received or accrued in respect of any employment or the holding of any office;”;

(c) by the substitution in subsection (1) in paragraph (eA) of the definition of “gross income” for subparagraphs (i), (ii) and (iii) of the following subparagraphs respectively:

“(i) any amount in a fund contemplated in paragraph (a) [or] , (b) or (d) of the definition of ‘pension fund’ or paragraph (b) or (c) of the definition of ‘provident fund’, the rules of which provide that on retirement of such member a portion of his benefit has to be taken in the form of an annuity, has been transferred to a fund, the rules of which entitle such member, or the dependants or nominees of a deceased member, to a benefit on retirement in the form of a lump sum exceeding one-third of the capitalised value of all benefits (including lump sum payments and annuities); or

(ii) a fund contemplated in paragraph (a) [or] , (b) or (d) of the definition of ‘pension fund’ or paragraph (b) or (c) of the definition of ‘provident fund’, the rules of which provide that on retirement of such member a portion of his benefit has to be taken in the form of an annuity, is wholly or partially converted by way of an amendment to its rules or otherwise, to entitle such

member, or the dependants or nominees of a deceased member, to a benefit on retirement in the form of a lump sum exceeding one-third of the capitalised value of all benefits (including lump sum payments and annuities); or

(iii) any amount in a fund contemplated in paragraph (a) **[or]** (b) or (d) of the definition of ‘pension fund’ or paragraph (b) or (c) of the definition of ‘provident fund’ has become payable to the member or is being utilised to redeem a debt.”;

(d) by the insertion in subsection (1) in the definition of “gross income” after paragraph (IA) of the following paragraph:

“(IC) any amount received by or accrued to a person by way of a government grant as contemplated in section 12P;”;

(e) by the deletion at the end of paragraph (a) of the definition of “identical share” of the word “or”, by the addition of the word “or” at the end of paragraph (b) and by the addition after paragraph (b) of the following paragraph:

“(c) that is the subject of a collateral arrangement or a securities lending arrangement, any other share that is substituted for that listed share in terms of an arrangement that is announced and released as a corporate action as contemplated in the JSE Limited Listing Requirements in the SENS (Stock Exchange News Service) as defined in the JSE Limited Listing Requirements.”;

(f) by the substitution in subsection (1) in paragraph (b) of the proviso to the definition of “pension preservation fund” for the words preceding subparagraph (i) of the following words:

“payments or transfers to the fund in respect of a member are limited to any amount contemplated in paragraph 2(1)(a)(ii) or (b) of the Second Schedule or any unclaimed benefit as defined in the Pension Funds Act[, **1956 (Act No. 24 of 1956)**,] that is paid or transferred to the fund by—”;

(g) by the substitution in subsection (1) in the definition of “remuneration proxy” for the words preceding the proviso of the following words:

“**remuneration proxy**’, in relation to a year of assessment, means the remuneration, as defined in paragraph 1 of the Fourth Schedule, derived by an employee from an employer during the year of assessment immediately preceding that year of assessment, other than the cash equivalent of the value of a taxable

benefit derived from the occupation of residential accommodation as contemplated in **[paragraph 9(3) of the Seventh schedule]** subparagraph (3) of paragraph 9 of the Seventh Schedule in the application of that subparagraph:”;
and

(h) by the substitution in subsection (1) in the definition of “retirement annuity fund” in paragraph (b)(x) of the proviso for item (dd) of the following item:

“(dd) the payment of a lump sum benefit contemplated in paragraph 2(1)(b)(ii) of the Second Schedule where that member—

(A) is a person who is or was a resident who emigrated from the Republic and that emigration is recognised by the South African Reserve Bank for purposes of exchange control; or

(B) departed from the Republic at the expiry of a visa obtained for the purposes of—

(AA) working as contemplated in paragraph (i) of the definition of ‘visa’ in section 1 of the Immigration Act, 2002 (Act No. 13 of 2002); or

(BB) a visit as contemplated in paragraph (b) of the definition of ‘visa’ in section 1 of the Immigration Act, 2002 (Act No. 13 of 2002) issued in terms of paragraph (b) to the proviso of section 11 of that Act by the Director-General, as defined in section 1 of that Act,

and is not regarded as a resident by the South African Reserve Bank for purposes of exchange control;”.

(2) Paragraph (b) of subsection (1) comes into operation on 1 March 2017 and applies in respect of years of assessment ending on or after that date.

(3) Paragraph (c) of subsection (1) comes into operation on 1 March 2018 and applies in respect of years of assessment commencing on or after that date.

(4) Paragraph (e) of subsection (1) comes into operation on 1 January 2017 and applies in respect of any collateral arrangement or securities lending arrangement entered into on or after that date.

(5) Paragraph (g) of subsection (1) comes into operation on 1 January 2017 and applies in respect of years of assessment ending on or after that date.

(6) Paragraph (h) of subsection (1) is deemed to have come into operation on 1 March 2016 and applies in respect of years of assessment commencing on or after that date.

Amendment of section 5 of Act 58 of 1962, as substituted by section 2 of Act 6 of 1963 and amended by section 5 of Act 90 of 1964, section 5 of Act 88 of 1971, section 5 of Act 90 of 1972, section 5 of Act 65 of 1973, section 5 of Act 103 of 1976, section 5 of Act 113 of 1977, section 3 of Act 104 of 1980, section 4 of Act 96 of 1981, section 4 of Act 91 of 1982, section 3 of Act 94 of 1983, section 3 of Act 121 of 1984, section 3 of Act 90 of 1988, section 5 of Act 21 of 1994, section 4 of Act 21 of 1995, section 7 of Act 5 of 2001, section 10 of Act 30 of 2002, section 15 of Act 45 of 2003, section 4 of Act 20 of 2006, section 4 of Act 8 of 2007, section 3 of Act 3 of 2008, section 6 of Act 60 of 2008, section 8 of Act 17 of 2009, section 7 of Act 7 of 2010, section 8 of Act 24 of 2011, section 271 of Act 28 of 2011, read with item 28 of Schedule 1 to that Act and section 5 of Act 31 of 2013

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

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

“(2)(a) The Minister may announce in the annual national budget contemplated in section 27(1) of the Public Finance Management Act, that, with effect from a date or dates mentioned in that announcement, the rates of tax chargeable in respect of taxable income will be altered to the extent mentioned in the announcement.

“(b) If the Minister makes an announcement contemplated in paragraph (a), that alteration comes into effect on the date determined by the Minister in that announcement and continues to apply for a period of 12 months from that date unless Parliament passes legislation giving effect to that announcement within that period of 12 months.”; and

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

Amendment of section 6 of Act 58 of 1962, as amended by section 4 of Act 90 of 1962, section 3 of Act 6 of 1963, section 5 of Act 72 of 1963, section 8 of Act 55 of 1966, section 7 of Act 95 of 1967, section 7 of Act 76 of 1968, section 8 of Act 89 of 1969, section 7 of Act 88 of 1971, section 5 of Act 104 of 1980, section 5 of Act 96 of 1981, section 5 of Act 91 of 1982, section 4 of Act 94 of 1983, section 4 of Act 121 of 1984, section 3 of Act 96 of 1985, section 4 of Act 85 of 1987, section 4 of Act 90 of 1988, section 4 of Act 70 of 1989, section 3 of Act 101 of 1990, section 4 of Act 129 of 1991, section 4 of Act 141 of 1992, section 5 of Act 21 of 1995, section 4 of Act 36 of 1996, section 3 of Act 28 of 1997, section 22 of Act 30 of 1998, section 5 of Act 32 of 1999, section 15 of Act 30 of 2000, section 6 of Act 19 of 2001, section 11 of Act 30 of 2002, section 35 of Act 12 of 2003, section 6 of Act 16 of 2004, section 3 of Act 9 of 2005, section 7 of Act 31 of 2005, section 20 of Act 9 of 2006, section 5 of Act 8 of 2007, section 1 of Act 3 of 2008, section 7 of Act 60 of 2008, section 6 of Act 17 of 2009, section 8 of Act 7 of 2010, sections 6(3) and 9 of Act 24 of 2011, section 2 of Act 13 of 2012, section 4 of Act 23 of 2013, section 3 of Act 42 of 2014 and section 4 of Act 25 of 2015

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

“(1) In determining the normal tax payable by any natural person, other than normal tax in respect of any retirement fund lump sum benefit, retirement fund lump sum withdrawal benefit or severance benefit, there [shall] must be deducted an amount equal to the sum of the amounts allowed to the natural person by way of rebates under subsection (2).”.

Amendment of section 6A of Act 58 of 1962, as substituted by section 7 of Act 31 of 2013 and amended by section 4 of Act 42 of 2014 and section 5 of Act 13 of 2015

8. Section 6A of the Income Tax Act, 1968, is hereby amended by the substitution for subsection (1) of the following subsection:

“(1) In determining the normal tax payable by any natural person there must be deducted an amount, to be known as the medical scheme fees tax credit, equal to the sum of the amounts allowed to that natural person by way of rebates under subsection (2).”.

Amendment of section 6B of Act 58 of 1962, as inserted by section 7 of Act 22 of 2012 and amended by section 3 of Act 43 of 2014 and section 5 of Act 25 of 2015

9. Section 6B of the Income Tax Act, 1962, is hereby amended by the substitution for subsection (2) of the following subsection:

“(2) In determining the normal tax payable by any natural person there must be deducted an amount, to be known as the additional medical scheme fees tax credit, equal to the sum of the amounts allowed to that natural person by way of rebates under subsection (2).”.

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, section 11 of Act 24 of 2011, section 3 of Act 22 of 2012 and section 6 of Act 25 of 2015

10. Section 6quat of the Income Tax Act, 1962, is hereby amended—

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

“**[there must be deducted from]** in determining the normal tax payable in respect of that taxable income there must be deducted a rebate determined in accordance with this section.”; and

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

“(b) Where, during any year of assessment, any amount was deducted in terms of this **[section]** subsection from the **[normal tax payable by]** income of a resident and, in any year of assessment subsequent to that year of assessment, that resident receives any amount by way of refund in respect of the amount so deducted or is discharged from any liability in respect of that amount, so much of the amount so received or so much of the amount of that discharge as does not exceed that amount must be **[deemed to be an amount of normal tax payable by]** included in the income of that resident in respect of that subsequent year of assessment.”.

(2) Paragraph (b) of subsection (1) is deemed to have come into operation on 1 January 2016 and applies in respect of years of assessment commencing on or after that date.

Amendment of section 7A of Act 58 of 1962, as inserted by section 6 of Act 69 of 1975 and amended by section 7 of Act 103 of 1976, section 6 of Act 96 of 1981, section 4 of Act 65 of 1986, section 8 of Act 129 of 1991, section 3 of Act 113 of 1993, section 7 of Act 21 of 1995, section 5 of Act 36 of 1996 and section 9 of Act 7 of 2010

11. Section 7A of the Income Tax Act, 1962, is hereby amended by the substitution in subsection (1) for the definition of “salary” of the following definition:

“‘**salary**’ means salary, wages or similar remuneration payable by an employer to an employee, but does not include any bonus **[or any amount referred to in subsection (4)]**.”.

Insertion of section 7C in Act 58 of 1962

12. (1) The following section is hereby inserted in the Income Tax Act, 1962, after section 7B:

“Loan or credit advanced to trust by connected person

7C. (1) This section applies if any—

(a) natural person; or

(b) any company in relation to which that person is a connected person, directly or indirectly makes or provides any loan, advance or credit to a trust in relation to which that person or company, or any person that is a connected person in relation to that person or company, is a connected person.

(2) No deduction, loss or allowance may be claimed in respect of—

(a) a disposal, including by way of a reduction or waiver; or

(b) the failure, wholly or partly, of a claim for the payment, of any amount owing in respect of a loan, advance or credit referred to in subsection (1).

(3) If—

(a) no interest is incurred by the trust in respect of a loan, advance or credit referred to in subsection (1); or

(b) interest is incurred at a rate lower than the official rate of interest contemplated in paragraph 1 of the Seventh Schedule,

an amount equal to the difference between the amount incurred by the trust in respect of a year of assessment and the amount that would have been incurred at the official rate of interest must be included in the income, in respect of that year of assessment, of the person contemplated to in paragraph (a) of subsection (1).

(4) An amount equal to the difference between the amount of normal tax that would have been payable by a person in respect of a year of assessment had subsection (3) not applied and the amount payable by that person after the inclusion of an amount in that person's income in terms of subsection (3)—

(a) may be recovered by that person from the trust; and

(b) must, to the extent to which that person does not recover it from the trust within a period ending three years after the end of that year of assessment, be treated as a donation by that person to that trust on the date on which that period ends.

(5) Section 56(2) does not apply in respect of any amount owing in respect of a loan, advance or credit contemplated in subsection (1) that is disposed of under a donation.”.

(2) Subsection (1) comes into operation on 1 March 2017 and applies in respect of years of assessment commencing on or after that date.

Amendment of section 8C of Act 58 of 1962, as inserted by section 8 of Act 32 of 2004 and amended by section 12 of Act 31 of 2005, section 7 of Act 20 of 2006, section 11 of Act 35 of 2007, section 11 of Act 60 of 2008, section 12 of Act 7 of 2010, section 19 of Act 24 of 2011, section 10 of Act 31 of 2013 and section 6 of Act 43 of 2014

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

“(1A) A taxpayer must include in his or her income any amount received by or accrued to him or her in respect of a restricted equity instrument for the year of assessment during which that amount is received or accrues if that amount is not—
(a) distributed to him or her as a return of capital or foreign return of capital by way of a distribution of a restricted equity instrument;
(b) subject to the provisions of this Act with respect to a dividend in respect of that restricted equity instrument; or
(c) taken into account in terms of this section in determining the gain or loss in respect of that restricted equity instrument.”.

(2) Subsection (1) comes into operation on 1 March 2017 and applies in respect of any amount received or accrued on or after that date.

Insertion of section 8CA in Act 58 of 1962

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

“Deduction of expenditure in respect of restricted equity instrument scheme

8CA. (1) For purposes of this section **‘restricted equity instrument scheme’** means, in relation to an employer, a scheme in terms of which—
(a) an equity instrument, as defined in section 8C, the value of which is determined directly or indirectly with reference to an equity share in that employer or in a company that is an associated institution as defined in the Seventh Schedule in relation to that employer;
(b) can be acquired by an employee or director of that employer; and
(c) that equity instrument will qualify, at the time of its acquisition by an employee or director, as a restricted equity instrument as defined in section 8C that will on vesting be subject to the provisions of section 8C(1).

(2) Any expenditure actually incurred and paid by an employer in respect of a restricted equity instrument scheme must be treated as expenditure incurred evenly over the longest period during which an equity instrument can qualify as a restricted equity instrument in terms of that scheme.

(3) An employer may deduct, in respect of a year of assessment, so much of the expenditure actually incurred and paid in respect of a restricted equity instrument scheme as is treated as having been incurred in terms of subsection (2), during the part of the period referred to in that subsection that falls within that year of assessment.”.

(2) Subsection (1) comes into operation on 1 March 2017 and applies in respect of any amount that is paid or becomes payable 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, section 20 of Act 24 of 2011 and section 10 of Act 22 of 2012

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

(a) by the insertion in subsection (1) in the definition of “hybrid equity instrument” after paragraph (b) of the following paragraph:

“(bA) any right or interest the value of which is determined directly or indirectly with reference to—

(i) a share contemplated in paragraph (a) or (b); or

(ii) any amount derived from a share contemplated in paragraph (a) or (b); and

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

“(2A) Where any share or preference share that was issued before 1 April 2012 constitutes a hybrid equity instrument solely by reason of a right of redemption or a security arrangement acquired or entered into before that date and that right or arrangement is cancelled on or after [the date of introduction of the TLAB 2016] and on or before 31 December 2017—

(a) the provisions of subsection (2) must not apply in respect of any dividend or foreign dividend that accrues in respect of that share after the date of cancellation of that right or arrangement; and

(b) the cancellation of that right or arrangement must not be treated as a disposal of that share if no consideration is payable in respect of that cancellation.

(2) Paragraph (a) of subsection (1) comes into operation on 1 January 2017 and applies in respect of years of assessment ending on or after that date.

Amendment of section 8EA of Act 58 of 1962, as inserted by section 12 of Act 22 of 2012 and amended by section 11 of Act 31 of 2013 and section 7 of Act 43 of 2014

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

(a) by the substitution in subsection (1) for the definition of “preference share” of the following definition:

“‘preference share’ means any—

(a) share other than an equity share;

(b) share that is an equity share, if an 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; or

(c) right or interest the value of which is determined directly or indirectly with reference to—

(i) a share contemplated in paragraph (a) or (b); or

(ii) any amount derived from a share contemplated in paragraph (a) or (b);”;

and

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

“(2A) Where a preference share that was issued before 1 April 2012 constitutes a third-party backed share solely by reason of an enforcement right that was acquired in respect of that share before that date and that enforcement right is cancelled on or after [the date of introduction of the TLAB 2016] and on or before 31 December 2017, the provisions of subsection (2) must not apply in respect of any dividend or foreign dividend that accrues in respect of that share after the date of cancellation of that enforcement right.”.

(2) Paragraph (a) of subsection (1) comes into operation on 1 January 2017 and applies in respect of years of assessment ending on or after that date.

Amendment of section 8F of Act 58 of 1962, as substituted by section 12 of Act 31 of 2013 and amended by section 8 of Act 43 of 2014 and section 9 of Act 25 of 2015

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

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

“(b) the obligation to pay [**an amount in respect of that instrument**] the amount owing is conditional upon the market value of the assets of that company not being less than the market value of the liabilities of that company;”;

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

“**‘instrument’** means any form of interest-bearing arrangement or debt that is issued by—

(a) a company that is a resident;

(b) a company that is not a resident if the interest incurred in respect of that instrument is attributable to a permanent establishment of that company in the Republic; or

(c) a company that is a controlled foreign company if the interest incurred in respect of that instrument must be taken into account in determining the net income of that controlled foreign company as contemplated in section 9D;”;

- (c) by the substitution in subsection (1) after the definition of “redeem” for the full stop of a semicolon and by the addition after that definition of the following definition:

“**‘third-party backed instrument’** means any instrument in respect of which an enforcement obligation or enforcement right as defined in section 8EA(1) is enforceable or exercisable by the holder of that instrument as a result of any amount relating to that instrument not being received by or accruing to any person entitled thereto.”;

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

“(2) Any amount of interest that—

(a) is incurred by a company in respect an instrument on or after the date that the instrument becomes a hybrid debt instrument—

(i) is deemed for the purposes of this Act to be a dividend *in specie* declared and paid by that company on the last day of the year of assessment of that company during which it was incurred; and

(ii) is not deductible in terms of this Act; and

- (b) is deemed for the purposes of this Act to be a dividend *in specie* that is declared and paid on the last day of the year of assessment of the company contemplated in paragraph (a) to the person to whom the amount accrued: Provided that if the person to whom that amount accrued and the company that incurred the amount in respect of that instrument form part of the same group of companies, as defined in section 41, and that instrument becomes a hybrid debt instrument solely in terms of paragraph (b) of the definition of ‘hybrid debt instrument’, the amount deemed to be a dividend *in specie* must not exceed the amount that the company could have distributed to that person in respect of that instrument had that instrument been a share in the company and had the company complied with the provisions of section 46 of the Companies Act in respect of such distribution.”;
- (e) by the substitution in subsection (3)(c) for subparagraphs (i) and (ii) of the following subparagraphs respectively:
- “(i) Short-term Insurance Act in accordance with the conditions determined in terms of section [23(a)(i)] 23(1)(a) of that Act by the Registrar defined in that Act, where an amount is owed in respect of that instrument by a short-term insurer as defined in that Act; or
 - (ii) Long-term Insurance Act in accordance with the conditions determined in terms of section [24(a)(i)] 24(1)(a) of that Act by the Registrar defined in that Act, where an amount is owed in respect of that instrument by a long-term insurer as defined in that Act; or”;
- (f) by the deletion in subsection (3) at the end of paragraph (c) of the word “or”, by the substitution at the end of paragraph (d) for the full stop of the expression “;or” and by the addition after that paragraph of the following paragraph:
- “(e) that constitutes a third-party backed instrument.” .
- (2) Paragraph (b) of subsection (1) is deemed to have come into operation on 24 February 2016 and applies in respect of amounts incurred in respect of an instrument on or after that date.
- (3) Paragraphs (c) and (f) of subsection (1) come into operation 1 January 2017 and apply in respect of years of assessment commencing on or after that date.
- (4) Paragraph (e) is deemed to have come into operation on 1 April 2014.

Amendment of section 8FA of Act 58 of 1962, as inserted by section 14 of Act 31 of 2013 and amended by section 15 of that Act, section 9 of Act 43 of 2014 and section 10 of Act 25 of 2015

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

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

“‘instrument’ means an instrument as defined in section 8F(1);”;

(b) by the substitution in subsection (3)(c) for subparagraphs (i) and (ii) of the following subparagraphs respectively:

“(i) in the Short-term Insurance Act in accordance with the conditions determined in terms of section [23(a)(i)] 23(1)(a) of that Act by the Registrar defined in that Act, where an amount is owed in respect of that instrument by a short-term insurer as defined in that Act; or

(ii) in the Long-term Insurance Act in accordance with the conditions determined in terms of section [24(a)(i)] 24(1)(a) of that Act by the Registrar defined in that Act, where an amount is owed in respect of that instrument by a long-term insurer as defined in that Act; or”;

(c) by the deletion in subsection (3) at the end of paragraph (c) of the word “or”, by the substitution at the end of paragraph (d) for the full stop of the expression “;or” and by the addition after that paragraph of the following paragraph:

“(e) that constitutes a third-party backed instrument as defined in section 8F(1).”.

(2) Paragraph (a) of subsection (1) is deemed to have come into operation on 24 February 2016 and applies in respect of amounts incurred in respect of an instrument on or after that date.

(3) Paragraph (b) of subsection (1) is deemed to have come into operation on 1 April 2014.

(4) Paragraph (c) of subsection (1) comes into operation on 1 January 2017 and applies in respect of years of assessment commencing on or after that date.

Amendment of section 9 of Act 58 of 1962, as substituted by section 22 of Act 24 of 2011 and amended by section 16 of Act 31 of 2013, section 10 of Act 43 of 2014 and section 11 of Act 25 of 2015

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

(a) by the substitution in subsection (2) for the words preceding the proviso in paragraph (i) of the following words:

“constitutes a lump sum (other than any lump sum received from any retirement annuity fund or any lump sum that constitutes a severance benefit), a pension or an annuity payable by a pension fund, pension preservation fund, provident fund or provident preservation fund and the services in respect of which that amount is so received or accrues were rendered within the Republic.”; and

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

(2) Subsection (1) comes into operation on 1 March 2017 and applies in respect of years of assessment commencing 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, section 24 of Act 24 of 2011, section 13 of Act 22 of 2012, section 18 of Act 31 of 2013, section 11 of Act 43 of 2014 and section 12 of Act 25 of 2015

20. (1) Section 9C of the Income Tax Act, 1962, is hereby amended by the substitution in subsection (5) for the proviso of the following proviso:

“: Provided that this subsection must not apply—

(a) 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; or

(b) to equity shares in a REIT or a controlled company, as defined in section 25BB(1), that is a resident.”.

(2) Subsection (1) is deemed to have come into operation on 1 January 2016 and applies in respect of years of assessment ending 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, sections 9 and 96 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, sections 16 and 146 of Act 7 of 2010, section 25 of Act 24 of 2011, sections 14 and 156 of Act 22 of 2012, section 19 of Act 31 of 2013, section 12 of Act 43 of 2014 and section 13 of Act 25 of 2015

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

- (a) by the substitution for the full stop at the end of paragraph (C) of the proviso to subsection (2) and by the addition after that paragraph of the following paragraph:

“(D) to the extent that the participation rights are held by a portfolio of a collective investment scheme in securities that is a resident directly in a scheme or arrangement contemplated in paragraph (e)(ii) of the definition of “company” in section 1; and”;

- (b) by the deletion in the further proviso to subsection (2A) of paragraph (ii)(bb); and
 (c) by the deletion in subsection (9)(d) of subparagraph (iii).

(2) Paragraphs and (a) and (b) of subsection (1) come into operation on 1 March 2017 and apply in respect of any foreign tax year commencing on or after that date.

(3) Paragraph (c) of subsection (1) comes into operation on 1 January 2017.

Amendment of section 9H of Act 58 of 1962, as substituted by section 17 of Act 22 of 2012 and amended by section 21 of Act 31 of 2013 and section 13 of Act 43 of 2014

22. Section 9H of the Income Tax Act, 1962, is hereby amended—

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

“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)—”; and

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

“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)] (b)—”.

Amendment of section 9HA of Act 58 of 1962, as inserted by section 15 of Act 25 of 2015

23. Section 9HA of the Income Tax Act, 1962, is hereby amended—

- (a) by the substitution in subsection (2) in paragraph (a) for the words preceding subparagraph (i) of the following words:

“as having disposed of an asset **[to]** for the benefit of that surviving spouse if that asset is acquired by that surviving spouse—”; and

(b) by substitution in subsection (2)(b) for subparagraphs (i) and (ii) of the following subparagraphs respectively

- “(i) the amount that was allowed as a deduction in respect of that asset for purposes of determining that person’s taxable income, before the inclusion of any taxable capital gain, for the year of assessment ending on the date of that person’s death; or
- (ii) the base cost of that asset, as contemplated in the Eighth Schedule, as at the date of that person’s death.”.

(2) Subsection (1) is deemed to have come into operation on 1 March 2016 and applies in respect of a person that dies on or after that date.

Amendment of section 10 of Act 58 of 1962, as amended by section 8 of Act 90 of 1962, section 7 of Act 72 of 1963, section 8 of Act 90 of 1964, section 10 of Act 88 of 1965, section 11 of Act 55 of 1966, section 10 of Act 95 of 1967, section 8 of Act 76 of 1968, section 13 of Act 89 of 1969, section 9 of Act 52 of 1970, section 9 of Act 88 of 1971, section 7 of Act 90 of 1972, section 7 of Act 65 of 1973, section 10 of Act 85 of 1974, section 8 of Act 69 of 1975, section 9 of Act 103 of 1976, section 8 of Act 113 of 1977, section 4 of Act 101 of 1978, section 7 of Act 104 of 1979, section 7 of Act 104 of 1980, section 8 of Act 96 of 1981, section 6 of Act 91 of 1982, section 9 of Act 94 of 1983, section 10 of Act 121 of 1984, section 6 of Act 96 of 1985, section 7 of Act 65 of 1986, section 3 of Act 108 of 1986, section 9 of Act 85 of 1987, section 7 of Act 90 of 1988, section 36 of Act 9 of 1989, section 7 of Act 70 of 1989, section 10 of Act 101 of 1990, section 12 of Act 129 of 1991, section 10 of Act 141 of 1992, section 7 of Act 113 of 1993, section 4 of Act 140 of 1993, section 9 of Act 21 of 1994, section 10 of Act 21 of 1995, section 8 of Act 36 of 1996, section 9 of Act 46 of 1996, section 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, sections 8 and 62 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, sections 10 and 101 of Act 20 of 2006, sections 2, 10, 88 and 97 of Act 8 of 2007, section 2 of Act 9 of 2007, section 16 of Act 35 of 2007, sections 1 and 9 of Act 3 of 2008, section 2 of Act 4 of 2008, section 16 of Act 60 of 2008, sections 13 and 95 of Act 17 of 2009, section 18 of Act 7 of 2010, sections 28 and 160 of Act 24 of 2011, section 271 of Act 28 of 2011, read with paragraph 31 of Schedule 1 to that Act, sections 19, 144, 157 and 166 of Act 22 of 2012, section 23 of Act 31 of 2013, section 14 of Act 43 of 2014 and section 16 of Act 25 of 2015

24. Section 10 of the Income Tax Act, 1962, is hereby amended—

(a) by the insertion in subsection (1) after paragraph (bA) of the following paragraph:

- “(bB) the receipts and accruals of the—
- (i) African Development Bank established on 10 September 1964;

(ii) World Bank established on 27 December 1945 including the International Bank for Reconstruction and Development and International Development Association;

(iii) International Monetary Fund established on 27 December 1945;

(iv) African Import and Export Bank established on 8 May 1993;

(v) European Investment Bank established in 1 January 1958 under the Treaty of Rome;

(vi) New Development Bank established on 15 July 2014;”;

(b) by the substitution in subsection (1)(gC) for subparagraph (ii) of the following subparagraph:

“(ii) lump sum, pension or annuity received by or accrued to any resident from a source outside the Republic as consideration for past employment outside the Republic other than from any pension fund, pension preservation fund, provident fund, provident preservation fund or retirement annuity fund as defined in section 1(1);”;

(c) by the deletion in subsection (1) of paragraph (hB);

(d) by the deletion in the proviso to subsection (1)(k)(i) of paragraph (dd);

(e) by the substitution in the proviso to subsection (1)(k)(i) for paragraph (ii) of the following paragraph:

“(ii) to any dividend received by or accrued to a person in respect of services rendered or to be rendered or in respect of or by virtue of employment or the holding of any office, other than a dividend that accrued in respect of—

(A) an equity instrument as defined in section 8C after that equity instrument vested in that person as contemplated in that section; or

(B) a marketable security contemplated in section 8A held by that person;”;

(f) by the substitution in subsection (1)(q) in paragraph (ii) of the proviso for subparagraph (aa) of the following subparagraph

“(aa) if the remuneration proxy derived by the employee in relation to a year of assessment exceeded **[R250 000]** R400 000; and”;

(g) by the substitution in subsection (1)(q) in paragraph (ii)(bb)(A) of the proviso for the words preceding subitem (AA) of the following words:

“**[R10 000]** R15 000 in respect of—”;

(h) by the substitution in subsection (1)(q) in paragraph (ii)(bb) of the proviso for item (B) of the following item

“(B) [R30 000] R40 000 in respect of a qualification to which an NQF level from 5 up to and including 10 has been allocated in accordance with Chapter 2 of the National Qualifications Framework Act, 2008 (Act No. 67 of 2008);”;
and

(i) by the substitution in subsection (1)(t) after subparagraph (xvi) for the colon of a semi-colon and by the addition of the following subparagraph:

“(xvii) of the National Housing Finance Corporation established in 1996 by the National Department of Human Settlements:”.

(2) Paragraph (b) of subsection (1) comes into operation on 1 March 2017 and applies in respect of years of assessment commencing on or after that date.

(3) Paragraph (c) of subsection (1) comes into operation on 1 January 2017.

(4) Paragraphs (d) and (e) of subsection (1) come into operation on 1 March 2017 and apply in respect any amount received or accrued on or after that date.

(5) Paragraph (f), (g), and (h) of subsection (1) come into operation on 1 March 2016 and apply in respect of years of assessment commencing on or after that date.

(6) Paragraph (i) is deemed to have come into operation 1 April 2016 and applies in respect of receipts and accruals on or after that date.

Amendment of section 10A of Act 58 of 1962, as inserted by section 8 of Act 65 of 1973 and amended by section 11 of Act 85 of 1974, section 8 of Act 113 of 1993, section 11 of Act 21 of 1995, section 11 of Act 28 of 1997, section 19 of Act 53 of 1999, section 14 of Act 59 of 2000, section 11 of Act 5 of 2001, section 15 of Act 32 of 2004, section 17 of Act 31 of 2005, section 17 of Act 60 of 2008, section 271 of Act 28 of 2011, read with paragraph 32 of Schedule 1 to that Act, section 24 of Act 31 of 2013 and section 17 of Act 25 of 2015

25. Section 10A of the Income Tax Act, 1962, is hereby amended—

(a) by the addition to subsection (7) of the following paragraph:

“(c) Where the capital element of annuity amounts has been calculated as provided in subsection (4) or has been re-calculated as provided in subsection (6)(b), the calculation or re-calculation shall apply in respect of all annuity amounts which become due to any person under the annuity contract in question and shall also apply to any year of assessment

subsequent to the year of assessment in which the calculation or re-calculation took place.”; and

(b) by the deletion of subsection (10).

(2) Paragraph (a) of subsection (1) is deemed to have come into operation on 8 January 2016.

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, section 20 of Act 22 of 2012, section 25 of Act 31 of 2013 and section 15 of Act 43 of 2014

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

“(5) The exemptions from tax provided by subsections (2) and (3) do not—

(a) apply in respect of any portion of an annuity; or

(b) extend to any payments out of any foreign dividend received by or accrued to any person.”.

Amendment of section 11 of Act 58 of 1962, as amended by section 9 of Act 90 of 1962, section 8 of Act 72 of 1963, section 9 of Act 90 of 1964, section 11 of Act 88 of 1965, section 12 of Act 55 of 1966, section 11 of Act 95 of 1967, section 9 of Act 76 of 1968, section 14 of Act 89 of 1969, section 10 of Act 52 of 1970, section 10 of Act 88 of 1971, section 8 of Act 90 of 1972, section 9 of Act 65 of 1973, section 12 of Act 85 of 1974, section 9 of Act 69 of 1975, section 9 of Act 113 of 1977, section 5 of Act 101 of 1978, section 8 of Act 104 of 1979, section 8 of Act 104 of 1980, section 9 of Act 96 of 1981, section 7 of Act 91 of 1982, section 10 of Act 94 of 1983, section 11 of Act 121 of 1984, section 46 of Act 97 of 1986, section 10 of Act 85 of 1987, section 8 of Act 90 of 1988, section 8 of Act 70 of 1989, section 11 of Act 101 of 1990, section 13 of Act 129 of 1991, section 11 of Act 141 of 1992, section 9 of Act 113 of 1993, section 5 of Act 140 of 1993, section 10 of Act 21 of 1994, section 12 of Act 21 of 1995, section 9 of Act 36 of 1996, section 12 of Act 28 of 1997, section 30 of Act 30 of 1998, section 20 of Act 53 of 1999, section 22 of Act 30 of 2000, section 15 of Act 59 of 2000, section 10 of Act 19 of 2001, section 27 of Act 60 of 2001, section 14 of Act 30 of 2002, section 19 of Act 74 of 2002, section 27 of Act 45 of 2003, 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, sections 1 and 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, sections 30 and 161 of Act 24 of 2011, section 271 of Act 28 of 2011, read with item 33 of Schedule 1 to that Act, section 22 of Act 22 of 2012, section 27 of Act 31 of 2013, section 17 of Act 43 of 2014 and section 18 of Act 25 of 2015

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

(a) by the insertion after paragraph (i) of the following paragraph:

“(iA) the amount of any exchange difference, as defined in section 24I(1), which—
(i) is included in the taxpayer’s income in the current year of assessment
or was so included in any previous years of assessment; and
(ii) relates to a debt that has become bad, other than a debt contemplated in
paragraph (i);”;

(b) by the substitution in paragraph (i)(bb) of the proviso to paragraph (k) for item (B) of the following item:

“(B) taxable income (other than in respect of any retirement fund lump sum benefit, retirement fund lump sum withdrawal benefit and severance benefit) as determined before allowing any deduction under this paragraph and section 18A;”;

(c) by the addition in to the proviso to paragraph (k) after paragraph (iv) of the following paragraph:

“(v) any deduction in terms of this paragraph must apply for the purpose of determining the total amount of taxable income, before any deduction in terms of section 18A or the inclusion of any taxable capital gain of the person, whether derived from the carrying on of any trade or otherwise;”.

(2) Paragraph (a) of subsection (1) comes into operation on 1 January 2017 and applies in respect of years of assessment ending after that date.

(3) Paragraph (b) of subsection (1) is deemed to have come into operation on 1 March 2016.

(4) Paragraph (c) of subsection (1) is deemed to have come into operation on 1 March 2016 and applies on respect of years of assessment commencing on or after that date.

Amendment of section 11D of Act 58 of 1962, as inserted by section 13 of Act 20 of 2006 and amended by sections 13 and 99 of Act 8 of 2007, section 3 of Act 9 of 2007, section 19 of Act 35 of 2007, section 11 of Act 3 of 2008, section 19 of Act 60 of 2008, section 16 of Act 17 of 2009, section 20 of Act 7 of 2010, section 32 of Act 24 of 2011, section 1 of Act 25 of 2011, section 271 of Act 28 of 2011, read with item 34 of Schedule 1 to that Act, sections 5 and 35 of Act 21 of 2012, section 68 of Act 22 of 2012, section 29 of Act 31 of 2013 and section 18 of 43 of 2014

28. (1) Section 11D of the Income Tax Act, 1962, is hereby amended by the addition after subsection (19) of the following subsection:

“(20)(a) A taxpayer may, notwithstanding Chapter 8 of the Tax Administration Act, apply to the Commissioner to allow all deductions provided for under this section in respect of research and development if—

- (i) expenditure in respect of that research and development was incurred on or after the date of receipt of an application by the Department of Science and Technology for the approval of that research and development;
- (ii) that expenditure was not allowable in respect of a year of assessment solely by reason of the absence of approval of that research and development under subsection (9); and
- (iii) that research and development is approved in terms of subsection (9) after that year of assessment.

(b) The Commissioner may, notwithstanding the provisions of sections 99 and 100 of the Tax Administration Act, make a reduced assessment for a year of assessment where expenditure incurred during that year in respect of research and development would have been allowable as a deduction in terms of this section had the approval in terms of subsection (9) been granted during that year of assessment.”.

(2) Subsection (1) is deemed to have come into operation on 1 October 2012 and applies in respect of expenditure incurred in respect of research and development on or after that date, but before 1 October 2022.

Amendment of section 12B of Act 58 of 1962, as inserted by section 11 of Act 90 of 1988 and amended by section 13 of Act 101 of 1990, section 10 of Act 113 of 1993, section 6 of Act 140 of 1993, section 13 of Act 28 of 1997, section 17 of Act 59 of 2000, section 11 of Act 16 of 2004, section 7 of Act 9 of 2005, section 19 of Act 31 of 2005, section 21 of Act 35 of 2007, section 18 of Act 17 of 2009, section 23 of Act 22 of 2012, section 31 of Act 31 of 2013 and section 19 of Act 25 of 2015

29. (1) Section 12B of the Income Tax Act, 1962, is hereby amended by the deletion in subsection (2) of paragraph (c).

(2) Subsection (1) is deemed to have come into operation on 1 January 2016 and applies in respect of years of assessment commencing on or after that date.

Amendment of section 12E of Act 58 of 1962, as inserted by section 12 of Act 19 of 2001 and amended by section 17 of Act 30 of 2002, section 21 of Act 74 of 2002, 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, section 34 of Act 24 of 2011, section 25 of Act 22 of 2012, section 7 of Act 23 of 2013, section 35 of Act 31 of 2013, section 20 of Act 43 of 2014 and section 21 of Act 25 of 2015

30. (1) Section 12E of the Income Tax Act, 1962, is hereby amended by the substitution in subsection (4) for the words preceding paragraph (a) of the definition of “small business corporation” of the following words:

“**‘small business corporation’** means any close corporation or co-operative or any private company as defined in section 1 of the Companies Act or a personal liability company as contemplated in section 8(2)(c) of the Companies Act if at all times during the year of assessment all the holders of shares in that company, co-operative [**or**], close corporation or personal liability company are natural persons, where—”.

(2) Subsection (1) is deemed to have come into operation on 1 March 2016 and applies in respect of years of assessment ending 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, section 37 of Act 24 of 2011, section 28 of Act 22 of 2012, section 22 of Act 43 of 2014 and section 22 of Act 25 of 2015

31. Section 12I of the Income Tax Act, 1962, is hereby amended—

(a) by the insertion after subsection (12) of the following subsection:

“(12A) Where in respect of any company carrying on an industrial policy project the Minister of Trade and Industry approved that project as an industrial policy project with preferred status in terms of subsection (8) in accordance with Regulation 4 of the Regulations (GNR.639 of 23 July 2010: (Government Gazette No. 33385) as amended) and that project did not comply with the criteria of a project with preferred status at the end of the compliance period, the Minister of Trade and Industry may, after taking into account the recommendations of the adjudication committee, withdraw the approval granted in respect of that industrial policy project as an industrial policy project with preferred status and substitute that approval with an approval of the industrial policy project as a project with qualifying status with effect from a date specified by that Minister, and must inform the Commissioner of that withdrawal, substitution and of that date.”;

- (b) by the substitution in subsection (13) for the full stop at the end of paragraph (c) of a semi-colon and by the addition after paragraph (c) of the following paragraph:

“(d) where the approval granted in respect of that industrial policy project as an industrial policy project with preferred status was withdrawn and substituted as an industrial policy project with qualifying status as contemplated in subsection (12A), make an appropriate adjustment to the taxable income of that company during the year of assessment in which that approval is substituted in relation to all deductions of the company as at the end of that year of assessment, having regard to all amounts which would have been deemed to have been incurred by that company had the provisions of this paragraph not been applicable during all years of assessment before that year of assessment and all amounts which have been deducted from the income of that company during those years of assessment.”;

- (c) by the substitution for subsection (14) of the following subsection:

“(14) The Commissioner may, notwithstanding the provisions of sections 99 and 100 of the Tax Administration Act, raise an additional assessment for any year of assessment where—

- (a) an additional investment allowance which has been allowed in any previous year must be disallowed in terms of subsection (12) or (13); or
 (d) an adjustment must be made as contemplated in subsection (13)(d).”; and

- (d) by the substitution in subsection (19) for paragraph (c) of the following paragraph:

“(a) may, after taking into account the recommendations of the adjudication committee, extend the periods contemplated in subsections (2) [and] (6)(b) and (7)(c) by a period not exceeding one year;”.

Amendment of section 12J of Act 58 of 1962, as inserted by section 27 of Act 60 of 2008 and amended by section 25 of Act 17 of 2009 and section 38 of Act 24 of 2011, section 271 of Act 28 of 2011, read with item 37 of Schedule 1 to that Act, section 36 of Act 31 of 2013, section 23 of Act 43 of 2014 and section 23 of Act 25 of 2015

32. (1) Section 12J of the Income Tax Act, 1962, is hereby amended by the substitution for subsection (3A) of the following subsection:

“(3A) If, at the end of any year of assessment, after the expiry of a period of 36 months commencing on the first date of the issue of venture capital shares a

- taxpayer has incurred expenditure as contemplated in subsection (2) and that taxpayer is a connected person in relation to that venture capital company—
- (a) no deduction must be allowed in terms of subsection (2) in respect of that year of assessment in respect of any expenditure incurred by the taxpayer in acquiring any venture capital share issued to that taxpayer by that venture capital company;
- (b) the Commissioner must after due notice to the taxpayer withdraw any approval in terms of subsection (5) with effect from the date of that approval by the Commissioner of that company as a venture capital company in terms of that subsection; and
- (c) the Commissioner must withdraw the approval of that company in terms of subsection (6) and an amount equal to the expenditure incurred by any person for the issue of shares held in the company must be included in the income of the company in the year of assessment in which the approval is withdrawn by the Commissioner.”.

(2) Subsection (1) comes into operation on 1 January 2017.

Amendment of section 12P of Act 58 of 1962, as inserted by section 33 of Act 22 of 2012 and amended by section 26 of Act 25 of 2015

- 33.** (1) Section 12P of the Income Tax Act, 1962, is hereby amended—
- (a) by the substitution in subsection (1) for the definition of “government grant” of the following definition:

“**government grant**’ means a grant-in-aid, subsidy or contribution by the government of the Republic in the national [**or**], provincial or local sphere.”;

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

“(b) [**to the extent**] that person is required in terms of that Public Private Partnership to expend an amount at least equal to that amount in respect of any improvements on land or to buildings owned by any sphere of government or over which any sphere of government holds a servitude.”.

(2) Subsection (1) is deemed to have come into operation on 1 March 2016 and applies in respect of grants received or expenditure incurred on or after that date.

Amendment of section 12R of Act 58 of 1962, as inserted by section 43 of Act 31 of 2013 and amended by section 26 of Act 43 of 2014 and section 28 of Act 31 of 2013

34. Section 12R of the Income Tax Act, 1962, is hereby amended—

- (a) by the deletion of subsection (2);
- (b) by the substitution in subsection (4)(a) for the words preceding subparagraph (i) of the following words:

“[subsection (2) and section 12S do not apply to any qualifying company that] a company is not a qualifying company if that company conducts any of the following activities classified under “Section C: Manufacturing” in the SIC Code.”;
- (c) by the substitution in subsection (4) for paragraph (b) of the following paragraph:

“[subsection (2) does not apply to any qualifying company] a company that conducts any activity classified in the SIC Code, which the Minister of Finance may designate by notice in the Gazette is not a qualifying company; or”;
- (d) by the substitution in subsection (4)(c) for the words preceding subparagraph (i) of the following words:

“a company is not a qualifying company if—”.

Amendment of section 12S of Act 58 of 1962, as inserted by section 44 of Act 31 of 2013

35. Section 12S 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, ‘**qualifying company**’ means a qualifying company as defined in section 12R, notwithstanding section 12R(4).”;
- (b) by the substitution for subsection (8) of the following subsection:

“(8) The Commissioner may, notwithstanding the provisions of [**Chapter 6**] sections 99 and 100 of the Tax Administration Act disallow all deductions otherwise provided for under this section if a qualifying company is guilty of fraud or misrepresentation or non-disclosure of material facts with regard to any tax, duty or levy administered by the Commissioner.”.

Insertion of section 12U in Act 58 of 1962

36. (1) The following section is hereby inserted in the Income Tax Act, 1962, after section 12T:

“Additional deduction in respect of roads and fences in respect of production of renewable energy

12U. (1) In addition to any other deductions allowable in terms of this Act, there must be allowed to be deducted by a person any amount actually incurred in respect of—

(a) the construction of any road or the erecting of any fence for the purpose of trade of that person of generation of electricity which exceeds 5 megawatts from—

(i) wind power;

(ii) solar energy;

(iii) hydropower to produce electricity of not more than 30 megawatts; or

(iv) biomass comprising organic wastes, landfill gas or plant material; or

(b) improvements (other than repairs) to—

(i) any road or fence contemplated in paragraph (a); or

(ii) foundation or supporting structure designed for such a fence, subject to subsection (2).

(2) For the purpose of any deduction under subsection (1)(b)(ii)—

(a) the foundation or supporting structure designed for a fence must be constructed in such manner that the foundation or supporting structure is or should be regarded as being integrated with that fence; and

(b) the useful life of the foundation or supporting structure is or will be limited to the useful life of that fence.

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

(4) Where expenditure incurred by a person during any year of assessment and ranking for deduction from income under subsection (1) exceeds the taxable income (as calculated before allowing any deduction under that subsection) derived by that person from generation of electricity as contemplated in that subsection during such year, the amount allowed to be deducted under that

subsection in respect of that said year must be limited to an amount equal to that taxable income (calculated as aforesaid), and the excess must be carried forward and be deemed for the purposes of this section to be expenditure incurred by that person during the next succeeding year of assessment in respect of generation of electricity as contemplated in subsection (1).

(5) For purposes of deduction under subsection (1) any expenditure—

- (a) actually incurred by that person prior to the commencement of and in preparation for carrying on that trade;
- (b) which would have been allowed as a deduction in terms of subsection (1) had the expenditure been incurred after that person commenced carrying on that trade; and
- (c) which was not allowed as a deduction in any previous year of assessment, shall be allowed as a deduction in terms of this section”.

(2) Subsection (1) is deemed to have come into operation on 1 April 2016 and applies in respect of years of assessment commencing on or after that date.

Amendment of section 13 of Act 58 of 1962, as amended by section 12 of Act 90 of 1962, section 5 of Act 6 of 1963, section 11 of Act 72 of 1963, section 12 of Act 90 of 1964, section 14 of Act 88 of 1965, section 17 of Act 55 of 1966, section 13 of Act 52 of 1970, section 13 of Act 88 of 1971, section 12 of Act 90 of 1972, section 13 of Act 65 of 1973, section 16 of Act 85 of 1974, section 13 of Act 69 of 1975, section 7 of Act 101 of 1978, section 10 of Act 104 of 1980, section 14 of Act 96 of 1981, section 10 of Act 96 of 1985, section 12 of Act 85 of 1987, section 12 of Act 90 of 1988, section 12 of Act 113 of 1993, section 11 of Act 46 of 1996, section 22 of Act 53 of 1999, section 20 of Act 59 of 2000, section 13 of Act 19 of 2001, section 30 of Act 60 of 2001, section 3 of Act 4 of 2008, section 30 of Act 7 of 2010, section 40 of Act 24 of 2011, section 45 of Act 31 of 2013 and section 30 of Act 25 of 2015

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

- “(f) any improvements (other than repairs) to any building, if such improvements were commenced on or after the first day of April, 1971, and such building was wholly or mainly used by the taxpayer during the year of assessment for the purpose of carrying on therein in the course of his trade (other than mining or farming) any process of manufacture or any other process which **[in the opinion of the Commissioner]** is of a similar nature, or such building was let by the taxpayer and was wholly or mainly used by a tenant or subtenant for the purpose of carrying on

therein any process as aforesaid in the course of any trade (other than mining or farming):”.

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, sections 29 and 106 of Act 17 of 2009, section 33 of Act 7 of 2010, section 41 of Act 24 of 2011, section 34 of Act 22 of 2012, section 48 of Act 31 of 2013 and section 32 of Act 25 of 2015

38. Section 13quat of the Income Tax Act, 1962, is hereby amended—

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

“(6) For the purposes of this section, one area may be demarcated by a municipality where—

(a) that area is a developed urban location within the municipality of Buffalo City, Cape Town, Ekurhuleni, Emalahleni, Emfuleni, eThekweni, Johannesburg, Mahikeng, Mangaung, Matjhabeng, Mbombela, Msunduzi, Nelson Mandela, Polokwane, Sol Plaatje or Tshwane;

(b) (i) that area is demarcated through formal resolution by the relevant municipal council;

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

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

(aa) property rates; or

(bb) assessed property values,

and where the contribution from that area is undergoing a sustained real or nominal decline; and

(iv) significant fiscal measures have been implemented by that municipality to support the regeneration of that area, including—

- (aa) the appropriation of significant funds for developing the area in the annual budget of the municipality;
- (bb) special tariffs for categories of residential, commercial or industrial users; or
- (cc) partnership arrangements with the business community for the promotion of urban development within that area; or
- (c) that area is approved by the Minister by Notice in the *Gazette*, after application by a Municipality in the form and manner and at the place and time that the Minister prescribes, if the area complies with criteria as the Minister must prescribe by Regulation.”; and
- (b) by the substitution in subsection (7) for paragraph (bA) of the following paragraph:
- “(bA) Where a municipality has a population of less than 1 million persons the Minister may by notice in the *Gazette* approve that municipality for the purposes of paragraph (b) in terms of subsection (6)(c).”.

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, section 32 of Act 17 of 2009, section 37 of Act 22 of 2012, section 54 of Act 31 of 2013 and section 31 of Act 43 of 2014

39. Section 20 of the Income Tax Act, 1962, is hereby amended—

- (a) by the substitution in subsection (1) for paragraph (a) of the following paragraph:
- “(a) any balance of assessed loss incurred by **[the taxpayer]** that person in any previous year which has been carried forward from the preceding year of assessment: Provided that no person whose estate has been voluntarily or compulsorily sequestrated shall be entitled to carry forward any assessed loss incurred prior to the date of sequestration, unless the order of sequestration has been set aside, in which case the amount to be so carried forward shall be reduced by an amount which was allowed to be set off against the income of the insolvent estate of such person from the carrying on of any trade;”;
- (b) by the substitution in subsection (1)(b) for the words preceding the proviso of the following words:

“any assessed loss incurred by **[the taxpayer]** a person during the same year of assessment in carrying on any other trade either alone or in partnership with others, otherwise than as a member of a company the capital whereof is divided into shares.”; and

(c) by the substitution for subsection (2A) of the following subsection:

“(2A) In the case of any **[taxpayer]** person other than a company—

- (a) the provisions of subsections (1) and (2) shall *mutatis mutandis* apply for the purpose of determining the taxable income derived by such **[taxpayer]** person otherwise than from carrying on any trade, the reference in subsection (1) to ‘taxable income derived by any person from carrying on any trade’ and the reference in that subsection to ‘the income so derived’ being respectively construed as including a reference to taxable income derived by **[the taxpayer]** that person otherwise than from carrying on any trade and a reference to income so derived; and
- (b) the said **[taxpayer]** person shall, subject to the provisos to subsection (1), not be prevented from carrying forward a balance of assessed loss merely by reason of the fact that he has not derived any income during any year of assessment.

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, section 45 of Act 24 of 2011, section 40 of Act 22 of 2012, section 55 of Act 31 of 2013, section 32 of Act 43 of 2014 and section 37 of Act 25 of 2015

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

(a) by the substitution in subsection (8)(b) for subparagraph (ii) of the following subparagraph:

“(ii) taxpayer has disposed of trading stock, other than in the ordinary course of his or her trade **[or has disposed of an asset to his or her surviving**

spouse as contemplated in section 9HA (2),] for a consideration less than the market value thereof;” and

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

“(c) (i) the trading stock of any person during any year of assessment includes any share or any bond issued by the government of the Republic in the national or local sphere if that bond is listed on a recognised exchange as defined in paragraph 1 of the Eighth Schedule;

(ii) that person has, during that year of assessment, transferred that share or that bond to a transferee in terms of a collateral arrangement; and

(iii) a share that is an identical share to the share contemplated in subparagraph (ii) or that same bond has not been returned by the transferee to that person at the end of that year of assessment,

such share or such bond shall, for the purposes of this section, be deemed to be trading stock held and not disposed of by that person at the end of that year of assessment; or

(d)(i) the trading stock of any transferee during any year of assessment includes any share or any bond issued by the government of the Republic in the national or local sphere if that bond is listed on a recognised exchange as defined in paragraph 1 of the Eighth Schedule;

(ii) that transferee has, during such year of assessment, acquired such share or such bond from a transferor in terms of a collateral arrangement; and

(iii) a share that is an identical share to the share contemplated in subparagraph (ii) or that same bond has not been returned by such transferee to such transferor at the end of such year of assessment,

such share or such bond shall, for the purposes of this section, be deemed not to be trading stock held and not disposed of, by such transferee at the end of such year of assessment.”.

(2) Paragraph (a) of subsection (1) is deemed to have come into operation on 1 January 2016 and applies in respect of any person who dies on or after that date.

(3) Paragraph (b) of subsection (1) comes into operation on 1 January 2017 and applies in respect of any collateral arrangement entered into on or after that date.

Amendment of section 23M of Act 58 of 1962, as inserted by section 16 of Act 31 of 2013 and amended by section 37 of Act 43 of 2014

41. Section 23M of the Income Tax Act, 1962, is hereby amended by the substitution for the heading of the following heading:

“Limitation of interest deductions in respect of debts owed to persons not subject to tax”.

Amendment of section 23N of Act 58 of 1962, as inserted by section 63 of Act 31 of 2013, amended by section 38 of Act 43 of 2014 and section 40 of Act 25 of 2015

42. (1) Section 23N of the Income Tax Act, 1962, is hereby amended by the insertion after subsection (4) of the following subsection:

“(5) This section does not apply to any interest incurred by an acquiring company in respect of any debt contemplated in subsection (2) where that interest is incurred in respect of a linked unit in the acquiring company and that interest accrues to a long-term insurer as defined in the Long-term Insurance Act, a pension fund, a provident fund, a REIT or a short-term insurer as defined in the Short-term Insurance Act, if—

- (a) the long-term insurer, pension fund, provident fund, REIT or short-term insurer holds at least 20 per cent of the linked units in that acquiring company;
- (b) the long-term insurer, pension fund, provident fund, REIT or short-term insurer acquired those linked units before 1 January 2013; and
- (c) at the end of the previous year of assessment 80 per cent or more of the value of the assets of that acquiring company, reflected in the annual financial statements prepared in accordance with the Companies Act for the previous year of assessment, is directly or indirectly attributable to immovable.”

(2) Subsection (1) is deemed to have come into operation on 31 December 2015 and applies in respect of amounts of interest incurred on or after that date.

Amendment of section 23O of Act 58 of 1962, as inserted by section 39 of Act 43 of 2012

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

- (a) by the substitution in subsection (1) for the full stop at the end of the definition of “allowance asset” of a semi colon and by the addition after that definition of the following definition:

“**‘base cost’** means base cost as defined in paragraph 1 of the Eighth Schedule.”;

and

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

“(ii) subsection (2), (3) [or], (4) or (5) does not apply to that amount.”.

(2) Paragraph (b) of subsection (1) is deemed to have come into operation on 1 March 2015 and applies in respect of amounts received or accrued 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, section 53 of Act 24 of 2011, section 271 of Act 28 of 2011, read with item 40 of Schedule 1 to that Act, section 54 of Act 22 of 2012, section 69 of Act 31 of 2013 and section 41 of Act 43 of 2014

44. Section 24J of the Income Tax Act, 1962, is hereby amended by the substitution in subsection (1) for paragraph (a) of the definition on “interest” of the following paragraph:

“(a) gross amount of any interest or [**related**] similar finance charges, discount or premium payable or receivable in terms of or in respect of a financial arrangement;”.

Amendment of section 24JB of Act 58 of 1962, as substituted by section 71 of Act 31 of 2013 and amended by section 43 of Act 43 of 2012

45. (1) Section 24JB of the Income Tax Act, 1962, is hereby amended by the substitution in subsection (1) in the definition of “covered person” for paragraph (a) of the following paragraph:

“(a) any authorised user as defined in section 1 of the Financial Markets Act that is a company, other than any company of which the principal trading activities constitute the activities of a treasury operation;”.

(2) Subsection (1) comes into operation 1 January 2017 and applies in respect of years of assessment ending on or after that date.

Amendment of section 25 of Act 58 of 1962, as substituted by section 48 of Act 25 of 2015

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

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

“(a) other than an asset contemplated in section 9HA (2), be treated as having acquired that asset for an amount of expenditure incurred equal to the **[market value of that asset as at the date of the death of that deceased person]** amount contemplated in section 9HA(1); and”;

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

“(4)(a) This subsection must be applied in respect of an asset acquired by a surviving spouse of a deceased person as contemplated in section 9HA(2) for purposes of determining the amount of any—

(i) allowance or deduction to which that spouse may be entitled or that is to be recovered or recouped by or included in the income of that spouse in respect of that asset; or

(ii) the amount of any capital gain or capital loss in respect of a disposal of that asset by that spouse.

(b) The surviving spouse contemplated in paragraph (a) must be treated as one and the same person as the deceased person and deceased estate with respect to—

(i) the date of acquisition of that asset by that deceased person;

(ii) any valuation of that asset effected by that deceased person as contemplated in paragraph 29(4) of the Eighth Schedule;

(iii) the amount of any expenditure and the date on which and the currency in which that expenditure was incurred in respect of that asset—

(aa) by that deceased person as contemplated in section 9HA(2)(b); and

(bb) by that deceased estate, other than the expenditure contemplated in section 9HA(2)(b);

(iv) the manner in which that asset had been used by the deceased person and the deceased estate; and

(v) any allowance or deduction allowable in respect of that asset to the deceased person and the deceased estate.”.

(2) Subsection (1) is deemed to have come into operation on 1 March 2016 and applies in respect of a person who dies on or after that date

Amendment of section 25BB of Act 58 of 1962, as substituted by section 74 of Act 31 of 2013 and amended by section 54 of Act 43 of 2014

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

- (a) by the substitution in subsection (1) in the definition of “qualifying distribution for the words preceding paragraph (a) of the following words:

“**‘qualifying distribution’**, in respect of a year of assessment of a company that is a REIT or a controlled company as at the end of a year of assessment, means any dividend (other than a dividend contemplated in paragraph (b) of the definition of “dividend”) paid or payable, or interest incurred in respect of a debenture forming part of a linked unit in that company, if the amount thereof is determined with reference to the financial results of that company as reflected in the financial statements prepared for that year of assessment if—”;

- (b) by the deletion in the definition of “rental income” at the end of paragraph (c) of the word “or”, by the substitution at the end of paragraph (d) for the full stop of the expression “;or” and by the addition after paragraph (d) of the following paragraph:

“(e) any amount recovered or recouped in terms of section 8(4) in respect of an amount of an allowance previously deducted in terms of section 11(g), 13, 13bis, 13ter, 13quat, 13quin or 13sex.”;

- (c) by the substitution in subsection (2A) for the words following paragraph (a)(ii) of the following words:

“so much of any amount of tax on income proved to be payable by that trust to the government of a country other than the Republic as is attributable to the interest of that REIT or controlled company in that trust, without any right of recovery of that tax by any person, must be allowed to be deducted by that REIT or controlled company before taking into account any deduction in terms of subsection (2)(a);”;

- (d) by the substitution in subsection (2A) for paragraph (b) of the following paragraph:

“(b) there must be allowed as a deduction from the income of that REIT or that controlled company the sum of any taxes on income proved to be payable, limited to the amount of the normal tax which is attributable to those amounts, by that REIT or that controlled company 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 before taking into account any deduction in terms of subsection (2)(a); and”;

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

“(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 linked unit held by that person in a [company that is a] REIT or a controlled company shall if that [company or] controlled company is a resident be deemed to be a dividend received by or accrued to that person or if that [company or] controlled company is a foreign company be deemed to be a foreign dividend received or accrued to that person, during that year of assessment;”;

(f) by the substitution in subsection (6)(c) for subparagraph (i) of the following subparagraph:

“(i) to be a dividend paid by that REIT or that controlled company that is a resident for the purposes of the dividends tax contemplated in Part VIII of this Chapter; and”.

(2) Paragraph (b) of subsection (1) is deemed to have come into operation on 1 January 2016 and applies in respect of years of assessment ending on or after that date.

(3) Paragraph (c) and (d) of subsection (1) are deemed to have come into operation on 1 January 2016 and apply in respect of years of assessment commencing on or after that date.

(4) Paragraph (f) of subsection (1) comes into operation on 1 January 2017 and applies in respect of amounts paid 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, section 21 of Act 3 of 2008, section 52 of Act 7 of 2010, section 62 of Act 22 of 2012, section 77 of Act 31 of 2013, section 47 of Act 43 of 2014 and section 53 of Act 25 of 2015

48. (1) Section 29A of the Income Tax Act, 1962, is hereby amended—

(a) by the substitution in subsection (1) for the definition of “adjusted IFRS value” of the following definition:

“**‘adjusted IFRS value’** means in respect of a policyholder fund or the risk policy fund the aggregate of—

(a) (i) the amount of the liabilities in respect of policies of the insurer, net of amounts recognised as recoverable under policies of reinsurance,

determined in accordance with IFRS as annually reported by the insurer to shareholders in the audited annual financial statements in respect of policies allocated to that fund;

(ii) for a policyholder fund the amount of deferred tax liabilities, determined in accordance with IFRS as annually reported by the insurer to shareholders in the audited annual financial statements, in respect of assets allocated to that policyholder fund;

(iii) the amount calculated in terms of subsection (14) if a phasing-in amount is determined in terms of subsection 15(a); and

(b) if the phasing-in amount is determined in terms of subsection (15)(b), reduced by the amount calculated in terms of subsection (14);”;

(b) by the substitution in subsection (1) for the definition of “value of liabilities” of the following definition:

“**value of liabilities**’ means, in respect of policyholder fund or a risk policy fund an amount equal to the value of the liabilities of the insurer in respect of the business conducted by it in the fund concerned calculated on the basis as shall be determined by the chief actuary of the Financial Services Board, appointed in terms of section 13 of the Financial Services Board Act, in consultation with the Commissioner;”;

(c) by the substitution in subsection (11)(a)(iii) for the proviso of the following proviso:

“:Provided that the amount of this deduction in terms of this subparagraph shall not exceed the balance of the amount of the taxable income of the policyholder fund remaining after taking into account any other amounts allowed to be deducted from the income of such fund in terms of this section;”;

(d) by the substitution in subsection (11) for paragraph (h) of the following paragraph:

“(h) no amount may be deducted other than in the corporate fund or risk policy fund, by way of an allowance in respect of an asset as defined in the Eighth Schedule other than a financial instrument.”;

(e) by the substitution for subsection (12) of the following subsection:

“(12) In the allocation of any receipt, accrual, asset, expenditure [or], liability or payment to any fund contemplated in subsection (4), an insurer shall, when establishing such fund and at all times thereafter—

(a) to the extent to which such receipt, accrual, asset, expenditure [or], liability or payment relates exclusively to business conducted by it in

any one fund, allocate such receipt, accrual, asset, expenditure or liability to that fund; and

- (b) to the extent to which such receipt, accrual, asset, expenditure [or], liability or payment does not relate exclusively to business conducted by it in any one fund, allocate such receipt, accrual, asset, expenditure or liability in a manner which is consistent with and appropriate to the manner in which its business is conducted.”;

- (f) by the substitution in subsection (13B)(d)(ii) for the words preceding item (aa) of the following words:

“the policyholder fund that disposes of that asset and [that] the risk policy fund that acquires that asset must, for purposes of determining any capital gain or capital loss by the risk policy fund that acquires that asset in respect of a disposal of that asset, be deemed to be one and the same person with respect to—”;

- (g) by the insertion after subsection (13B) of the following subsections:

“(14) The amount referred to in the definition of adjusted IFRS value in respect of the phasing-in amount is in respect of —

- (a) the first year of assessment ending on or after the date on which the Insurance Act, 2016 comes into operation, 83.3 per cent;
 (b) the second year of assessment ending on or after the date on which the Insurance Act, 2016 comes into operation, 66.7 per cent;
 (c) the third year of assessment ending on or after the date on which the Insurance Act, 2016 comes into operation, 50 per cent;
 (d) the fourth year of assessment ending on or after the date on which the Insurance Act, 2016 comes into operation, 33.3 per cent; and
 (e) the fifth year of assessment ending on or after the date on which the Insurance Act, 2016 comes into operation, 16.7 per cent,
of the phasing-in amount.

(15) For the purposes of subsection (14) ‘phasing-in amount’ in relation to a policyholder fund or the risk policy fund means—

- (a) if the amount of negative liabilities that has been recognised in accordance with IFRS as reported by the insurer to shareholders in the audited annual financial statements relating to policies allocated to that fund exceeds the amount of negative liabilities that has been recognised in determining the value of liabilities relating to policies allocated to that fund in respect of the

year of assessment of the insurer ending during 2016, the amount of that excess; or

(b) if the amount of negative liabilities that has been recognised in determining the value of liabilities relating to policies allocated to that fund exceeds the amount of negative liabilities that has been recognised in accordance with IFRS as reported by the insurer to shareholders in the audited annual financial statements relating to policies allocated to that fund in respect of the year of assessment of the insurer ending during 2016, the amount of that excess.”.

(2) Paragraphs (a) and (g) of subsection (1) come into operation on the date on which the Insurance Act, 2016 comes into operation and apply in respect of years of assessment ending on or after that date.

(3) Paragraphs (b), (c) and (d) of subsection (1) are deemed to have come into operation on 1 January 2016 and applies in respect of years of assessment commencing on or after that date.

Amendment of section 30 of Act 58 of 1962, as inserted by section 35 of Act 30 of 2000 and amended by sections 36 and 73 of Act 59 of 2000, section 16 of Act 19 of 2001, section 22 of Act 30 of 2002, section 31 of Act 74 of 2002, section 45 of Act 45 of 2003, section 16 of Act 16 of 2004, section 28 of Act 32 of 2004, section 36 of Act 31 of 2005, section 24 of Act 20 of 2006, section 25 of Act 8 of 2007, section 43 of Act 35 of 2007, section 22 of Act 3 of 2008, section 41 of Act 60 of 2008, section 41 of Act 17 of 2009, section 53 of Act 7 of 2010, section 8 of Act 21 of 2012, section 79 of Act 31 of 2013, section 48 of Act 43 of 2014 and section 54 of Act 25 of 2015

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

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

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

(b) by the deletion in subsection (3)(b)(iii) at the end of item (bb) of the word “or”, by the substitution at the end of item (cc) for the comma of the expression “;or” and by the addition after item (cc) of the following item:

“(dd) the National Finance Housing Corporation contemplated in section 10(1)(t)(xvii)”.

(2) Paragraph (b) of subsection (1) is deemed to have come into operation on 1 April 2016 and applies in respect of years of assessment commencing on or after that date.

Amendment of section 36 of Act 58 of 1962, as amended by section 12 of Act 72 of 1963, section 15 of Act 90 of 1964, section 20 of Act 88 of 1965, section 23 of Act 55 of 1966, section 16 of Act 95 of 1967, section 14 of Act 76 of 1968, section 26 of Act 89 of 1969, section 21 of Act 65 of 1973, section 28 of Act 85 of 1974, section 20 of Act 104 of 1980, section 25 of Act 94 of 1983, section 16 of Act 96 of 1985, section 14 of Act 70 of 1989, section 26 of Act 101 of 1990, section 30 of Act 129 of 1991, section 24 of Act 141 of 1992, section 29 of Act 113 of 1993, section 17 of Act 36 of 1996, section 41 of Act 60 of 2001, section 31 of Act 32 of 2004, section 26 of Act 20 of 2006, section 46 of Act 35 of 2007, section 23 of Act 3 of 2008, section 44 of Act 60 of 2008, section 43 of Act 17 of 2009, section 57 of Act 7 of 2010, section 60 of Act 24 of 2011, section 83 of Act 31 of 2013 and section 51 of Act 43 of 2014

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

(a) by the insertion in subsection (11) in the definition of “capital expenditure” after paragraph (e) of the following paragraph:

“(eA) expenditure (excluding the cost of land, surface rights and servitudes) actually incurred and paid during a year of assessment in respect of a social and labour plan for the purposes of the contributions by holders of mining rights towards the socio-economic development of the areas in which those holders are operating and that expenditure is in respect of the acquisition, erection, construction, improvement or laying out of—

(i) housing for residential occupation (other than housing intended for sale) and furniture for such housing;

(ii) infrastructure in respect of residential areas developed;

(iii) any hospital, school, shop or similar amenity (including furniture and equipment);

(iv) recreational buildings and facilities;

Provided that—

(aa) such expenditure shall for the purposes of this definition be deemed to be paid in ten successive equal annual instalments, the first of which shall be deemed to be paid on the date on which payment of the relevant expenditure was made and the succeeding instalments on the

appropriate anniversaries of that date, but if any such anniversary falls on a date after the asset to which such expenditure relates has been sold, disposed of or scrapped by the taxpayer, the instalment of such expenditure so deemed to be paid on such anniversary shall be disregarded;

(bb) where it is shown to the satisfaction of the Commissioner that the life of the relevant mine will extend over a period which is shorter than the period during which the said instalments are so deemed to be paid, the Commissioner may reduce the number of instalments relating to the expenditure not yet redeemed and the amount of each instalment shall be determined by dividing the amount of the expenditure remaining to be redeemed by the number of years in the remainder of the life of the mine;

(cc) where any asset the expenditure in respect of which has qualified as capital expenditure under this paragraph is sold, disposed of or scrapped by the taxpayer during any year of assessment, an allowance shall be made in respect of that asset, equal to the amount by which the full amount of the expenditure paid by the taxpayer in respect of that asset, as contemplated in this paragraph, exceeds the total amount of all the instalments of such expenditure which are deemed by paragraph (aa) of this proviso to be paid before the asset was sold, disposed of or scrapped, and in such case the amount of the said allowance shall be deemed to be the final instalment of the said expenditure made on the date on which the asset was sold, disposed of or scrapped;” ; and

(b) by the substitution in subsection (11) at the end of the definition of “expenditure” of the full stop of a semi-colon and by the addition of the following definition:

“**social and labour plan**’ means social and labour plan as contemplated in Part II of the Mineral and Petroleum Resources Development Regulation, 2004 (Government Notice R. 527 published in *Government Gazette* No 26275 of 23 April 2004), made by the Minister of Minerals and Energy in terms of section 107(1) of the Mineral and Petroleum Resources Development Act.”.

(2) Subsection (1) comes into operation on 1 April 2017 and applies in respect of expenditure incurred during years of assessment commencing on or after that date.

Amendment of section 37D of Act 58 of 1962, as inserted by section 53 of Act 43 of 2014

51. (1) Section 37D of the Income Tax Act, 1962, is hereby amended—

(a) by the substitution in subsection (2)(b) for the words and paragraphs following the formula of the following words and paragraphs:

“in which formula—

(i) ‘A’ represents the amount to be determined;

(ii) ‘B’ represents the cost of acquisition of the declared land and of any improvements to that land;

(iii) ‘C’ represents the amount of a capital gain (if any), that would have been determined in terms of the Eighth Schedule had the declared land been disposed of for an amount equal to the lower of the market value or municipal value of that land on the date of the agreement; and

(iv) ‘D’ represents 66,6 per cent in the case of a natural person or special trust or 33,3 per cent in any other case,

if the market value of the declared land or municipal value of that declared land exceeds the expenditure contemplated in paragraph (a).”; and

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

“(iv) ‘D’ represents [66,6] 60 per cent in the case of a natural person or special trust or [33,3] 20 per cent in any other case.”.

(2) Paragraph (a) of subsection (1) is deemed to have come into operation on 1 March 2015 and applies in respect of 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 2016 and applies in respect of years of assessment commencing 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, sections 32 and 103 of Act 8 of 2007, section 52 of Act 35 of 2007, section 25 of Act 3 of 2008, sections 48 and 128 of Act 60 of 2008, section 47 of Act 17 of 2009, section 61 of Act 7 of 2010, section 67 of Act 24 of 2011, section 73 of Act 22 of 2012, section 90 of Act 31 of 2013, section 54 of Act 43 of 2014 and section 61 of Act 25 of 2015

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

(a) by the deletion in subsection (1) of the definition of “hold”; and

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

“(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 24BA, 24I(10A) and 103, Part IIA of Chapter III and paragraph 11(1)(g) of the Eighth Schedule.”.

(2) Paragraph (b) of subsection (1) comes into operation 1 January 2017 and applies in respect of transactions entered into on or after that date.

Amendment of section 42 of Act 58 of 1962, as substituted by section 34 of Act 74 of 2002 and amended by 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 33 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, section 68 of Act 24 of 2011, section 74 of Act 22 of 2012, section 91 of Act 31 of 2013, section 55 of Act 43 of 2014 and section 62 of Act 25 of 2015

53. (1) Section 42 of the Income Tax Act, 1962, is hereby amended by the substitution in subsection (1) in the definition of “asset-for-share transaction” in paragraph (a)(i)(bb) for subitem (B) of the following subitem:

“(B) is a natural person who will be engaged on a full-time basis in the business of that company of rendering a service if that company is a personal liability company as contemplated in section 8(2)(c) of the Companies Act, or a controlled group company in relation to that company; and”.

(2) Subsection (1) is deemed to have come into operation on 1 January 2017 and applies in respect of years of assessment commencing on or after that date.

Amendment of section 44 of Act 58 of 1962, as substituted by section 34 of Act 74 of 2002 and amended by 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, sections 50 and 129 of Act 60 of 2008, section 49 of Act 17 of 2009, section 63 of Act 7 of 2010, section 69 of Act 24 of 2011, section 76 of Act 22 of 2012, section 93 of Act 31 of 2013, section 57 of Act 43 of 2014 and section 63 of Act 25 of 2015

54. Section 44 of the Income Tax Act, 1962, is here by amended by the substitution in subsection (1) in the definition of “amalgamation transaction” for paragraph (c)(i) of the following paragraph:

- “(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 and other than assets required to satisfy any reasonably anticipated liabilities to any sphere of government of any country and costs of administration relating to the liquidation or winding-up) to a resultant company which is a foreign company, by means of an amalgamation, conversion or merger;”.

Amendment of section 50D of Act 58 of 1962, as inserted by section 98 of Act 31 of 2013 and amended by section 65 of Act 25 of 2015

55. (1) Section 50D of the Income Tax Act, 1962, is hereby amended by the substitution by the insertion in subsection (1) after paragraph (c) of the following paragraph:

- “(d) if that amount of interest is paid to—
- (i) African Development Bank established on 10 September 1964;
 - (ii) World Bank established on 27 December 1945 including the International Bank for Reconstruction and Development and International Development Association;
 - (iii) International Monetary Fund established on 27 December 1945;
 - (iv) African Import and Export Bank established on 8 May 1993;
 - (v) European Investment Bank established in 1 January 1958 under the Treaty of Rome;
 - (vi) New Development Bank established on 15 July 2014;”.

(2) Subsection (1) is deemed to have come into operation on is deemed to have come into operation on 1 March 2015 and applies in respect of interest that is paid or becomes due and payable on or after that date.

Amendment of section 50E of Act 58 of 1962, as inserted by section 98 of Act 31 of 2013 and amended by section 65 of Act 43 of 2014

56. Section 50E of the Income Tax Act, 1962, is hereby amended by the substitution in subsection (2)(b) for the words following subparagraph (ii) of the following words:

“submitted to the person making the payment a declaration in such form as may be prescribed by the Commissioner that the foreign person is, in terms of section 50D(3) or an agreement for the prevention of double taxation, exempt from the withholding tax on interest in respect of that payment.”.

Amendment of section 50F of Act 58 of 1962, as substituted by section 125 of Act 43 of 2014

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

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

“(1) If, in terms of section 50C, a foreign person is liable for any amount of withholding tax on interest in respect of any amount of interest that is paid to or for the benefit of the foreign person, that foreign person must pay that amount of withholding tax and submit a return by the last day of the month following the month during which the interest is paid, unless the tax has been paid by any other person.”, and

(b) by the addition after subsection (2) of the following subsection :

“(3) Any person that pays withholding tax on interest in terms of section 50E in respect of interest due and payable but not paid, must submit a return by the last day of the month following the month during which the interest became due and payable.”.

(2) Subsection is deemed to have come into operation on 1 March 2015.

Substitution of section 50G of Act 58 of 1962

58. (1) The following section is hereby substituted for section 50G of the Income Tax Act, 1962:

“Refund of withholding tax on interest

50G. (1) Notwithstanding Chapter 13 of the Tax Administration Act, if—

(a) an amount is withheld from a payment of an amount of interest as contemplated in section 50E(1);

(b) a declaration contemplated in section 50E(2)(b) or (3) in respect of that interest is not submitted to the person paying that interest by the date of the payment of that interest; and

(c) a declaration contemplated in section 50E(2)(b) or (3) is submitted to the Commissioner within three years after the payment of the interest in respect of which the declaration is made,

so much of that amount as would not have been withheld had that declaration been submitted by the date contemplated in the relevant subsection is refundable by the Commissioner to the person to which the interest was paid.

(2) Notwithstanding Chapter 13 of the Tax Administration Act, if—

(a) an amount of withholding tax on interest is paid as contemplated in section 50E(1) in respect of an amount of interest that became due and payable; and

(b) the amount of interest subsequently becomes irrecoverable,

so much of that amount as would not have been paid had the interest not become due and payable is refundable by the Commissioner to the person who paid the tax.”.

(2) Subsection is deemed to have come into operation on 1 March 2015.

Repeal of Part IVC of Chapter II of Act 58 of 1962

59. (1) Part IVC of Chapter II of the Income Tax Act, 1962, is hereby repealed.

(2) Subsection (1) comes into operation on 1 January 2017.

Amendment of section 56 of Act 58 of 1962, as amended by section 18 of Act 90 of 1964, section 25 of Act 55 of 1966, section 33 of Act 89 of 1969, section 38 of Act 85 of 1974, section 21 of Act 113 of 1977, section 13 of Act 101 of 1978, section 23 of Act 96 of 1981, section 31 of Act 94 of 1983, section 4 of Act 30 of 1984, section 28 of Act 121 of 1984, section 18 of Act 96 of 1985, section 21 of Act 85 of 1987, section 26 of Act 90 of 1988, section 28 of Act 141 of 1992, section 32 of Act 113 of 1993, section 18 of Act 36 of 1996, section 39 of Act 30 of 1998, section 38 of Act 30 of 2000, section 41 of Act 59 of 2000, section 45 of Act 60 of 2001, section 24 of Act 30 of 2002, section 35 of Act 74 of 2002, section 56 of Act 45 of 2003, section 38 of Act 32 of 2004, section 45 of Act 31 of 2005, section 27 of Act 9 of 2006, section 38 of Act 8 of 2007, section 67 of Act 7 of 2010, section 67 of Act 43 of 2014 and section 72 of Act 25 of 2015

60. Section 56 of the Income Tax Act, 1962, is hereby amended by the substitution in subsection (1)(o) for subparagraphs (i) and (ii) of the following subparagraphs respectively:

- “(i) *(aa)* such immovable property was acquired by any beneficiary entitled to any grant or services in terms of the Land Reform Programme, as contemplated in the White Paper on South African Land Policy, 1997; and
- (bb)* the Minister of Land Affairs or a person designated by him has, on such terms and conditions as such Minister may in consultation with the Commissioner prescribe, approved the particular project in terms of which such immovable property is so acquired; or
- (ii) such immovable property was acquired by a person in terms of land reform initiatives by virtue of the measures as contemplated in Chapter 6 of the National Development Plan: Vision 2030 of 11 November 2011 released by the National Planning Commission, Presidency of the Republic of South Africa;”.

(2) Subsection (1) is deemed to have come into operation on 1 March 2016 and applies in respect of any donation made on or after that date.

Amendment of paragraph 1 of Second Schedule to Act 58 of 1962, as amended by section 31 of Act 90 of 1962, section 23 of Act 90 of 1964, section 34 of Act 88 of 1971, section 34 of Act 69 of 1975, section 26 of Act 113 of 1977, section 17 of Act 104 of 1979, section 27 of Act 104 of 1980, section 28 of Act 96 of 1981, section 46 of Act 94 of 1983, section 24 of Act 65 of 1986, section 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, section 79 of Act 7 of 2010 and section 91 of Act 22 of 2012

61. (1) Paragraph 1 of the Second Schedule to the Income Tax Act, 1962, is hereby amended by the substitution for the definition of “public sector fund” of the following definition:

“‘**public sector fund**’ means a fund referred to in paragraph (a) [or], (b) or (d) of the definition of ‘pension fund’ or paragraph (b) or (c) of the definition of ‘provident fund’ in section 1(1);”.

(2) Subsection (1) comes into operation on 1 March 2018 and applies in respect of years of assessment commencing on or after that date.

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, section 91 of Act 24 of 2011, and section 97 of Act 22 of 2012, section 71 of Act 44 of 2014

62. (1) Paragraph 4 of the Second Schedule to the Income Tax Act, 1962, is hereby amended by the substitution for subparagraph (3) of the following subparagraph:

“(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 person in consequence of or following upon such retirement shall, unless the Commissioner on application by the **[person]** fund and 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 person in consequence of or following upon such person’s withdrawal or resignation from such fund.”.

(2) Subsection (1) comes into operation on [date of introduction].

Amendment of paragraph 1 of Sixth Schedule to Act 58 of 1962, as inserted by section 71 of Act 60 of 2008 and amended by section 85 of Act 7 of 2010

63. Paragraph 1 of the Sixth Schedule to the Income Tax Act, 1962, is hereby amended by the substitution in subparagraph (1) in the definition of “qualifying turnover” for paragraph (b) of the following paragraph:

“(b) amount exempt from normal tax in terms of section 10(1)(zK) or 12P;”.

Amendment of paragraph 7 of Sixth Schedule to Act 58 of 1962, as inserted by section 71 of Act 60 of 2008 and amended by section 89 of Act 7 of 2010 and section 115 of Act 31 of 2013

64. Paragraph 7 of the Sixth Schedule to the Income Tax Act, 1962, is hereby amended by the substitution for subparagraph (b) of the following subparagraph:

“(b) any amount exempt from normal tax in terms of section 10(1)(zK) or 12P ;”.

Insertion of paragraph 2A in Seventh Schedule to Act 58 of 1962

65. The following paragraph is hereby inserted in the Seventh Schedule to Act 58 of 1962 after paragraph 2:

“(2A) For the purposes of paragraph 2, a partner is deemed to be an employee of the partnership.”.

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, section 56 of Act 31 of 2005, section 91 of Act 7 of 2010, section 103 of Act 24 of 2011, section 101 of Act 22 of 2012, section 75 of Act 43 of 2014 and section 96 of Act 25 of 2015

66. Paragraph 7 of the Seventh Schedule to the Income Tax Act, 1962, is hereby amended by the substitution in subparagraph (4) for the words preceding paragraph (a) of the following words:

“Subject to subparagraph (10), the value to be placed on the private use of such vehicle shall be determined for each month or part of a month during which the employee was entitled to use the vehicle for private purposes (including travelling between the employee’s place of residence and his or her place of employment or any other travelling done for his or her private or domestic purposes) and the said value shall—”.

Amendment of paragraph 9 of Seventh Schedule to Act 58 of 1962, as amended by section 31 of Act 96 of 1985, section 34 of Act 65 of 1986, section 29 of Act 85 of 1987, section 59 of Act 101 of 1990, section 53 of Act 113 of 1993, section 33 of Act 21 of 1994, section 51 of Act 28 of 1997, section 55 of Act 30 of 1998, section 55 of Act 30 of 2000, section 57 of Act 31 of 2005, section 29 of Act 9 of 2006, section 2 of Act 8 of 2007, section 68 of Act 35 of 2007, sections 1 and 48 of Act 3 of 2008, section 65 of Act 17 of 2009, section 104 of Act 24 of 2011, section 7 of Act 13 of 2012, section 121 of Act 31 of 2013 and section 97 of Act 25 of 2015

67. Paragraph 9 of the Seventh Schedule to the Income Tax Act, 1962, is hereby amended—

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

“(2) The cash equivalent of the value of the taxable benefit derived from the occupation of residential accommodation as contemplated in paragraph 2(d) shall be the rental value of such accommodation (as determined under subparagraph (3), (3C), (4) or (5) of this paragraph in respect of the year of assessment) less any rental consideration given by the employee for such accommodation in respect of such year, any rental consideration given by him in respect of household goods supplied with such accommodation and any charge

made to the employee by the employer in respect of power or fuel provided with the accommodation.”;

(b) by the substitution for subparagraph (5) of the following subparagraph:

“(5) Where, by reason of the situation, nature or condition of the accommodation or any other factor, the Commissioner is satisfied that the rental value of such accommodation is less than the rental value thereof determined in accordance with the formula contemplated in subparagraph [(3)(a)] (3) or the rental value determinable under subparagraph (4), he or she may determine such rental value at such lower amount as to him or her appears fair and reasonable.”.

Amendment of paragraph 12D of Seventh Schedule to Act 58 of 1962, as substituted by section 77 of Act 43 of 2014 and amended by section 101 of Act 25 of 2015

68. (1) Paragraph 12D of the Seventh Schedule to the Income Tax Act, 1962, is hereby amended—

(a) by the substitution in subparagraph (1) in the definition of “retirement funding income” for paragraph (a) of the following paragraph:

“(a) in relation to any employee or the holder of an office (including a member of a body of persons whether or not established by or in terms of any law) who in respect of his or her employment derives any income constituting remuneration as defined in paragraph 1 of the Fourth Schedule and who is a member of or, as an employee, contributes to a pension fund or provident fund established for the benefit of employees of the employer from whom such income is derived, that part of the employee’s said income as is taken into account in the determination of the contributions made by the employer or the pension fund or provident fund for the benefit of the employee to such pension fund or provident fund in terms of the rules of the fund; or”;

(b) by the substitution in subparagraph (1) in the definition of “retirement funding income” for paragraph (a) of the following paragraph:

“(a) in relation to any employee or the holder of an office (including a member of a body of persons whether or not established by or in terms of any law) who in respect of his or her employment derives any income constituting remuneration as defined in paragraph 1 of the Fourth Schedule and who is a member of or, as an employee, contributes to a pension fund or provident fund established for the benefit of employees of the employer, from whom

such income is derived, **[that part of the employee's said income as]** the income that is taken into account in the determination of the contributions made by the employer or the pension fund or provident fund for the benefit of the employee to such pension fund or provident fund in terms of the rules of the fund; or”.

(2) Paragraph (a) of subsection (1) is deemed to have come into operation on 1 March 2016 and applies in respect contributions made on or after that date.

(3) Paragraph (b) of subsection (1) comes into operation on 1 March 2017 and applies in respect contributions 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, section 74 of Act 60 of 2008, section 106 of Act 22 of 2012, section 126 of Act 31 of 2013, section 80 of Act 43 of 2014 and section 105 of Act 25 of 2015

69. (1) Paragraph 11 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended by the substitution in subparagraph (2) for item (n) of the following item:

“(n) by a transferor to a transferee or by a transferee to a transferor where any share or bond has been transferred in terms of a collateral arrangement;”.

(2) Subsection (1) comes into operation on 1 January 2017 and applies in respect of any collateral arrangement entered into 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, section 63 of Act 32 of 2004, section 72 of Act 31 of 2005, section 98 of Act 7 of 2010, section 114 of Act 22 of 2012 and section 134 of Act 31 of 2013

70. (1) Paragraph 38 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended by the substitution in subparagraph (2) for the full stop at the end of item (e) of a semi-colon and by the addition after item (e) of the following item:

“(f) any land from the date on which that land becomes declared land as defined in section 37D(1).”.

(2) Subsection (1) is deemed to have come into operation on 1 March 2015 and applies in respect of years of assessment commencing on or after that date.

Amendment of paragraph 43 of Eighth Schedule to Act 58 of 1962, as inserted by section 38 of Act 5 of 2001 and amended by section 91 of Act 60 of 2001, 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 20 of 2006, section 76 of Act 35 of 2007, section 100 of Act 7 of 2010, section 111 of Act 24 of 2011, section 117 of Act 22 of 2012, section 136 of Act 31 of 2013, section 88 of Act 43 of 2014 and section 114 of Act 25 of 2015

71. (1) Paragraph 43 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended by the substitution in subparagraph (5) for item (b) of the following item:

“(b) the expenditure incurred by ~~the~~ a person acquiring that asset must for purposes of section 9HA and paragraphs 12, 38 and 40 be treated as being denominated in that currency.”.

(2) Subsection (1) is deemed to have come into operation on 1 March 2016 and applies in respect of any person who dies on or after that date.

Amendment of paragraph 47 of Eighth Schedule to Act 58 of 1962, as substituted by section 94 of Act 60 of 2001

72. Paragraph 47 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended by the substitution for the words following subparagraph (b) of the following words:

“then paragraph 45(1)(a) must apply only in respect of the portion of the capital gain or capital loss on disposal of the primary residence that is attributable to any period on or after the valuation date during which that person, beneficiary or spouse was so ordinarily resident.”.

Amendment of paragraph 49 of Eighth Schedule to Act 58 of 1962, as inserted by section 38 of Act 5 of 2001 substituted by s. 95 (1) (a) of Act No. 60 of 2001

73. Paragraph 49 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended by the substitution for the words following subparagraph (b) of the following words:

“then paragraph 45(1)(a) must apply only in respect of the portion of the capital gain or capital loss on disposal of the primary residence that is attributable to any period on or after the valuation date during which that person, beneficiary or spouse used that residence for domestic purposes as well as to the part of that residence used by that

person, spouse or beneficiary mainly for purposes other than the carrying on of a trade.”.

Amendment of paragraph 50 of Eighth Schedule to Act 58 of 1962, as inserted by section 38 of Act 5 of 2001

74. Paragraph 50 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended by the substitution for subparagraph (b) of the following subparagraph:

“(b) no other residence was treated as the primary residence of that person or **[beneficiary]** special trust during any such period; and”.

Substitution of paragraph 64A of Eighth Schedule to Act 58 of 1962

75. (1) The following paragraph is hereby substituted for paragraph 64A of the Eighth Schedule to the Income Tax Act, 1962:

“Awards in terms of land restitution programmes and land reform measures

64A. A person must disregard any capital gain or capital loss in respect of the disposal that resulted in that person receiving—

- (a) restitution of a right to land, an award or compensation in terms of the Restitution of Land Rights Act, 1994 (Act No. 22 of 1994); or**
- (b) land or right to land by virtue of the measures as contemplated in Chapter 6 of the National Development Plan: Vision 2030 of 11 November 2011 released by the National Planning Commission, Presidency of the Republic of South Africa.”.**

(2) Subsection (1) is deemed to have come into operation on 1 March 2016 and applies in respect of years of assessment ending on or after that date.

Insertion of paragraph 64D in Eighth Schedule to Act 58 of 1962

76. (1) The Eighth Schedule to the Income Tax Act, 1962, is hereby amended by the insertion after paragraph 64C of the following paragraph:

“Land donated in terms of land reform measures

64D. A person must disregard any capital gain or capital loss in respect of the disposal by way of a donation of land or right to land by virtue of the measures as contemplated in Chapter 6 of the National Development Plan: Vision 2030 of 11 November 2011 released by the National Planning Commission, Presidency of the Republic of South Africa.” .

(2) Subsection (1) is deemed to have come into operation on 1 March 2016 and applies in respect of years of assessment ending on or after that date.

Amendment of paragraph 66 of Eighth Schedule to Act 58 of 1962, as amended by section 33 of Act 17 of 2001, section 107 of Act 45 of 2003, section 67 of Act 8 of 2007, section 79 of Act 35 of 2007, section 125 of Act 22 of 2012 and section 120 of Act 25 of 2015

77. (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)(j) or (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 76B of Eighth Schedule to Act 58 of 1962, as inserted by section 12I of Act 24 of 2011 and amended by section 134 of Act 22 of 2012 and section 122 of Act 25 of 2015

78. Paragraph 76B of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended by the substitution for the full stop at the end of subparagraph (1) of a colon; and by the addition to subparagraph (1) of the following proviso:

“: Provided that the market value of a share listed on a recognised exchange and for which a price was quoted on that exchange is equal to the sum of—

- (i) the ruling price of that share at the close of business on the last business day before the accrual of the return of capital or foreign return of capital; and
- (ii) the amount of the return of capital or foreign return of capital.”.

Amendment of paragraph 4 of Part I of Ninth Schedule to Act 58 of 1962, as inserted by section 41 of Act 30 of 2002 and amended by section 125 of Act 45 of 2003, section 82 of Act 31 of 2005, section 60 of Act 20 of 2006, section 63 of Act 3 of 2008, section 87 of Act

60 of 2008, section 82 of Act 17 of 2009, section 12 of Act 13 of 2012 and section 151 of Act 31 of 2013

79. Paragraph 4 of Part I of the Ninth Schedule to the Income Tax Act, 1962, is hereby amended—

(a) by the substitution for subparagraphs (c) and (d) of the following subparagraphs:

“(c) ‘Adult [**basic**] education and training’, as defined in the Adult [**Basic**] Education and Training Act, 2000, (Act No. 52 of 2000), including literacy and numeracy education.

(d) ‘[**Further**] Continuing education and training’ provided by a ‘public college’ or ‘private college’ as defined in the [**Further**] Continuing Education and Training Colleges Act, 2006 (Act No. 16 of 2006), which is registered in terms of that Act.”; and

(b) by the addition after paragraph (p) of the following paragraphs:

“(q) The provision, to the general public, of education and training programmes and courses that are administered and accredited by entities contemplated in paragraph (r);

(r) The administration, provision and publication of qualification and certification services by industry organisations recognised by an industry specific organisation and its qualifications accredited by the Quality Council for Trades and Occupations established in 2010 in terms of the Skills Development Act, 1998 (Act No. 97 of 1998);”.

Insertion of section 119B in Act 91 of 1964

80. (1) Chapter XII of the Customs and Excise Act, 1964, is hereby amended by the addition after section 119A of the following section:

“Arrangements for obtaining undue tax benefits

119B. (1) Notwithstanding anything in this Act, whenever the Commissioner is satisfied that any arrangement—

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

(b) having regard to the substance of the arrangement—

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

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

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

the Commissioner may determine the liability for duty imposed under this Act, and the amount thereof, as if the arrangement had not been entered into or carried out, or in such manner as in the circumstances of the case the Commissioner deems appropriate for the prevention or diminution of that tax benefit.

(2) For the purposes of this section—

'dealing at arm's length' means a transaction in the open market in which two or more independent persons acting in good faith, without regard to the liability for any tax, duty or levy, would freely and without conflict of interest agree to transact in the ordinary course of business;

'arrangement' includes any transaction, operation, scheme or understanding, whether enforceable or not, including all steps and transactions by which it is carried into effect; and

'tax benefit' includes—

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

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

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

(3) An arrangement is presumed to have been entered into or carried out for the sole or main purpose of obtaining a tax benefit unless and until the party obtaining a tax benefit proves that, reasonably considered in light of the relevant facts and circumstances, obtaining a tax benefit was not the sole or main purpose of the arrangement."

(2) Subsection (1) takes effect on the date of promulgation of this Act.

Continuation of certain amendments of Schedules to Act 91 of 1964

81. Every amendment or withdrawal of or insertion in Schedules No. 1 to 6, 8 and 10 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 September 2015 up to and including 30 September 2016, 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 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 20 of 2006, sections 81 and 108 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 33 of Act 18 of 2009, section 119 of Act 7 of 2010, section 26 of Act 8 of 2010, section 129 of Act 24 of 2011, section 271 of Act 28 of 2011, read with item 108 of Schedule 1 to that Act, section 145 of Act 22 of 2012, section 165 of Act 31 of 2013, section 95 of Act 43 of 2014 and section 128 of Act 25 of 2015

82. (1) Section 1 of the Value-Added Tax Act, 1991, is hereby amended—

(a) by the substitution in subsection (1) in the definition of “enterprise” for subparagraph (ix) of the following subparagraph:

“(ix) where a person carries on or intends carrying on an enterprise or activity supplying commercial accommodation as contemplated in paragraph (a) of the definition of “commercial accommodation” in section 1, and the total value of taxable supplies made by that person in respect of that enterprise or activity in the preceding period of 12 months or which it can reasonably be expected that that person will make in a period of 12 months, as the case may be, will not exceed[,] R120 000, shall be deemed not to be the carrying on of that enterprise;”;

(b) by the substitution in subsection (1) in the definition of “second-hand goods” for subparagraph (ii) of the following paragraph:

“(ii) (aa) goods consisting solely of gold;

(bb) gold coins contemplated in section 11(1)(k); or

(cc) any other goods containing gold unless those goods are acquired for the sole purpose of supplying those goods in the same or substantially the same state to another person;”.

(2) Subsection (1) comes into operation on 1 April 2017.

Amendment of section 7 of Act 89 of 1991, as amended by section 23 of Act 136 of 1991, section 14 of Act 136 of 1992, section 23 of Act 97 of 1993, section 33 of Act 37 of 1996, section 165 of Act 45 of 2003, section 94 of Act 32 of 2004 and section 20 of Act 44 of 2014

83. Section 7 of the Value-Added Tax Act, 1991, is hereby amended by addition after subsection (3) of the following subsection:

“(4) If the Minister makes an announcement in the annual national budget contemplated in section 27(1) of the Public Finance Management, 1999 (Act No. 1 of 1999) that the VAT rate specified in this section is to be altered, that alteration will be effective from a date determined by the Minister in that announcement, and continues to apply for a period of 12 months from that date unless Parliament passes legislation giving effect to that announcement within that period of 12 months.”.

Amendment of section 15 of Act 89 of 1991, as amended by paragraph 8 of Government Notice 2695 of 8 November 1991, section 20 of Act 136 of 1992, section 31 of Act 27 of 1997, section 90 of Act 30 of 1998, section 46 of Act 9 of 2006, section 37 of Act 21 of 2006, section 13 of Act 9 of 2007, section 271 read with paragraph 114 of Schedule 1 of Act 28 of 2011, section 172 of Act 31 of 2013 and section 134 of Act 25 of 2015

84. (1) Section 15 of the Value-Added Tax Act, 1991, is hereby amended by the substitution for subsection (2A) of the following subsection:

“(2A) Any vendor, other than—

- (i) a public authority;
- (ii) a municipal entity as defined in section 1 of the Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000), where that municipal entity supplies—
 - (aa) electricity, gas or water; or
 - (bb) the services consisting of the drainage, removal or disposal of sewage or garbage; or
- (iii) a municipality.

that in terms of subsection (2) accounts for tax payable on a payments basis shall, in respect of any supply of goods (other than fixed property) or services in respect of which the consideration in money is R100 000 or more, account for the tax payable on an invoice basis.”

(2) Subsection (1) comes into operation on 1 April 2017.

Repeal of section 77 of Act 89 of 1991

85. Section 77 of the Value-Added Tax Act, 1991, is hereby repealed.

Amendment of Schedule 1 of Act 91 of 1989 amended by Amendment of Schedule 1 to Act 89 of 1991 as amended by section 48 of Act 136 of 1991, section 43 of Act 136 of 1992, Government Notice 2244 of 31 July, 1992, section 44 of Act 97 of 1993, Government Notice 1955 of 7 October 1993, section 32 of Act 20 of 1994, section 32 of Act 37 of 1996, section 53 of Act 27 of 1997, substituted by section 177 of Act 60 of 2001, amended by section 58 of Act 30 of 2002, section 121 of Act 74 of 2002, Government Notice R.111 in *Government Gazette* 24274 of 17 January 2003, section 189 of Act 45 of 2003, section 52 of Act 16 of 2004, section 53 of Act 16 of 2004, section 54 of Act 16 of 2004, section 55 of Act 16 of 2004, section 108 of Act 32 of 2004, section 111 of Act 31 of 2005, section 112 of Act 31 of 2005, section 113 of Act 31 of 2005, section 114 of Act 31 of 2005, section 115 of Act 31 of 2005, section 116 of Act 31 of 2005, section 117 of Act 31 of 2005, section 118 of Act 31 of 2005, section 119 of Act 31 of 2005, section 120 of Act 31 of 2005, section 121 of Act 31 of 2005, section 122 of Act 31 of 2005, section 123 of Act 31 of 2005, section 52 of Act 9 of 2006, section 53 of Act 9 of 2006, section 89 of Act No. 20 of 2006, section 85 of Act 8 of 2007, Government Notice R.958 in *Government Gazette* 30370 of 12 October 2007, section 107 of Act 35 of 2007 and Government Notice R.766 in *Government Gazette* 32416 of 24 July 2009, by Government Notice No. R.154 and R.157 in *Government Gazette* 34046 of 1 March, 2011, by section 143 (1) of Act No. 24 of 2011, by Government notice No Government Notice No. R.187 in *Government Gazette* 35102 of 2 March, 2012, by Government Notice No. R.506 in *Government Gazette* 35481 of 6 July, 2012, by Government Notice No. 995 in *Government Gazette* 35932 of 7 December, 2012, by Government Notice No. R.1072 in *Government Gazette* 36002 of 14 December, 2012, by s. 181 (1) of Act No. 31 of 2013, by Government Notice No. R.288 in *Government Gazette* 37554 of 17 April, 2014 and by Government Notice No. R.723 in *Government Gazette* 39100 of 14 August, 2015 with effect from date the regulations to be published in terms of the Special Economic Zones Act, 2014 (Act No. 16 of 2014) come into operation: 9 February, 2016 (Proclamation R.6 in *Government Gazette* 39667 of 8 February, 2016)

86. Schedule 1 to the Value Added Tax Act, 1989, is hereby amended by the insertion after item number 412.07 of the following item numbers and description:

“412.09 Goods Lost, Destroyed or Damaged

412.09/00.00/01.00/00 Goods in respect of which the customs duty, together with the fuel levy (where applicable), amounts to not less than R2 500, proved to have been lost, destroyed or damaged on any single occasion in circumstances of VIS MAJOR or in such other circumstances as the Commissioner deems exceptional while such goods are—

(a) in any customs and excise warehouse or in any appointed transit shed or under control of the Commissioner;

(b) being removed with deferment of payment of duty or under rebate of duty from a place in the Republic to any other place in terms of the provisions of the Customs and Excise Act; or

(c) being stored in any rebate storeroom:

Provided that—

(i) no compensation in respect of the customs duty, fuel levy or VAT on such goods has been paid or is due to the owner by any other person;

(ii) such loss, destruction or damage was not due to any negligence or fraud on the part of the person liable for the duty or VAT; and

(iii) such goods did not enter into consumption and the importer of those goods was not liable for the tax imposed in terms of section 7(1)(b) when those goods were initially imported.” .

Amendment of section 3 of Act 9 of 1999, as amended by section 111 of Act 53 of 1999

87. The following section is hereby substituted for Section 3 of the Skills Development Levies Act, 1999:

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“3. (1) Every employer must pay a skills development levy from—
(a) (i) 1 April 2000, at a rate of 0,5 per cent of the leviable amount; and
(ii) 1 April 2001, at a rate of one per cent of the leviable amount; or
(b) at a rate as the Minister may announce in the annual national budget
contemplated in section 27(1) of the Public Finance Management Act, 1999 (Act
No. 1 of 1999), announce, with effect from a date mentioned in that
announcement.

(2) If the Minister makes an announcement contemplated in subsection (1)(b),
that rate comes into effect on the date determined by the Minister in that
announcement and continues to apply for a period of 12 months from that date unless
Parliament passes legislation giving effect to that announcement within that period of
12 months.”.

Amendment of section 6 of Act 4 of 2002

88. Section 6 of the Unemployment Insurance Contributions Act, 2002 is hereby amended—

(a) by the substitution in section 6 for subsection (1) of the following subsection:

“(1) Subject to subsection (2), the amount of the contribution payable in terms of
section 5—

(a) (i) by an employee, must be one per cent of the remuneration paid or payable
to that employee by his or her employer during any month; and

(ii) by an employer in respect of any one of its employees, must be equal to one
per cent of the remuneration paid or payable by that employer to that
employee during any month.

(b) a percentage as the Minister may announce in the annual national budget
contemplated in section 27(1) of the Public Finance Management Act, 1999 (Act
No. 1 of 1999), with effect from a date mentioned in that announcement.”; and

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

“(1A) If the Minister makes an announcement contemplated in subsection
(1)(b), that percentage comes into effect on the date determined by the Minister in
that announcement and continues to apply for a period of 12 months from that date
unless Parliament passes legislation giving effect to that announcement within that
period of 12 months.”.

Amendment of section 1 of Act 25 of 2007, as amended by section 145 of Act 24 of 2011, section 153 of Act 22 of 2012, section 110 of Act 43 of 2014 and section 137 of Act 25 of 2015

89. (1) Section 1 of the Securities Transfer Tax Act, 2007, is hereby amended by the substitution in subsection (1) for the definition of “collateral arrangement” of the following definition:

- “collateral arrangement” means any arrangement in terms of which—**
- (a) a person (hereafter the transferor) transfers a listed share or any bond issued by the government of the Republic in the national or local sphere if that bond is listed on a recognised exchange as defined in paragraph 1 of the Eighth Schedule to the Income Tax Act, 1962 (Act No. 58 of 1962) to another person (hereafter the transferee) for the purposes of providing security in respect of an amount owed by the transferor to the transferee;**
 - (b) the transferor can demonstrate that the arrangement was not entered into for the purposes of the avoidance of tax and was not entered into for the purposes of keeping any position open for more than 24 months;**
 - (c) that transferee in return contractually agrees in writing to deliver an identical share, as defined in section 1 of the Income Tax Act, or any bond issued by the government of the Republic in the national or local sphere that is listed on a recognised exchange as defined in paragraph 1 of the Eighth Schedule to the Income Tax Act, 1962 (Act No. 58 of 1962) to that transferor within a period of 24 months from the date of transfer of that listed share or bond from the transferor to the transferee;**
 - (d) that transferee is contractually required to compensate that transferor for any distributions in respect of the listed share (or a share in a resultant company acquired by virtue of a listed share held in an amalgamated company as contemplated in section 44(6) of the Income Tax Act) or any bond issued by the government of the Republic in the national or local sphere that is listed on a recognised exchange as defined in paragraph 1 of the Eighth Schedule to the Income Tax Act, 1962 (Act No. 58 of 1962) which that transferor would have been entitled to receive during that period had that arrangement not been entered into; and**

(e) that arrangement does not affect the transferor's benefits or risks arising from fluctuations in the market value of that listed share (or a share in a resultant company acquired by virtue of a listed share held in an amalgamated company as contemplated in section 44(6) of the Income Tax Act) or any bond issued by the government of the Republic in the national, provincial or local sphere that is listed on a recognised exchange as defined in paragraph 1 of the Eighth Schedule to the Income Tax Act, 1962 (Act No. 58 of 1962);

but does not include an arrangement where the transferee has not transferred the identical share or bond contemplated in paragraph (b) to the transferor within the period referred to in that paragraph.”.

(2) Subsection (1) comes into operation on 1 January 2017 and applies in respect of any collateral arrangement 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 and section 154 of Act 22 of 2012

90. Section 2 of the Securities Transfer Tax Act, 2007, is hereby amended by the substitution for subsections (2) and (3) of the following subsections:

“(2) The Minister of Finance may announce in the annual national budget contemplated in section 27(1) of the Public Finance Management Act, 1999 (Act No. 1 of 1999) that, with effect from the date mentioned in that announcement—

(a) the rate of securities transfer tax referred to in subsection (1) is altered to the extent mentioned in the announcement; or

(b) there is a change in the provisions of this Act to the effect that the transfer of any security is no longer subjected to securities transfer tax.

(3) If the Minister makes an announcement referred to in subsection (2), that alteration comes into effect on the date announced and continues to apply for a period of 12 months from that date, unless Parliament passes legislation giving effect to that announcement within that period of 12 months.”.

Amendment of section 3 of Act 28 of 2008

91. Section 3 of the Mineral and Petroleum Resources Royalty Act, 2008 is hereby amended—

(a) by the substitution in section 3 for subsection (2) of the following subsection:

“(2) The royalty mentioned in section 2 in respect of the transfer of an unrefined mineral resource is determined by multiplying the gross sales of the extractor in respect of that mineral resource during the year of assessment—

(a) by the percentage determined in accordance with the formula in section 4(2);

or

(b) by the percentage determined in accordance with the formula as the Minister may announce in the annual national budget contemplated in section 27(1) of the Public Finance Management Act, 1999 (Act No. 1 of 1999) with effect from a date mentioned in that announcement.”; and

(b) by the addition in section 3 after subsection (2) of the following subsection:

“(3) If the Minister makes an announcement contemplated in subsection (2)(b), that percentage determined in accordance with the formula comes into effect on the date determined by the Minister in that announcement and continues to apply for a period of 12 months from that date unless Parliament passes legislation giving effect to that announcement within that period of 12 months.”.

Amendment of section 13 of Act 31 of 2013

92. (1) Section 13 of the Taxation Laws Amendment Act, 2013, is hereby amended by the substitution for subsection (2) of the following subsection:

“(2) Subsection (1) comes into operation on 1 January 2018 and applies in respect of amounts incurred on or after that date.”.

(2) Subsection (1) is deemed to have come into operation on 12 December 2013.

Amendment of section 15 of Act 31 of 2013

93. (1) Section 15 of the Taxation Laws Amendment Act, 2013, is hereby amended by the substitution for subsection (2) of the following subsection:

“(2) Subsection (1) comes into operation on 1 January 2018 and applies in respect of amounts incurred on or after that date.”.

(2) Subsection (1) is deemed to have come into operation on 12 December 2013.

Amendment of section 62 of Act 31 of 2013

94. (1) Section 62 of the Taxation Laws Amendment Act, 2013, is hereby amended by the substitution for subsection (2) of the following subsection:

“(2) Subsection (1) comes into operation on 1 January ~~[2016]~~ 2018 and applies in respect of amounts of interest incurred on or after that date.”.

(2) Subsection (1) is deemed to have come into operation on 12 December 2013.

Amendment of section 47 of Act 43 of 2014

95. (1) Section 47 of the Taxation Laws Amendment Act, 2014, is hereby amended—
 (a) by the deletion of paragraph (a) of subsection (1); and
 (b) by the substitution for subsection (2) of the following subsection:

“(2) Paragraphs ~~[(a),]~~ (b), (c), (d), (e), (f), (h), (i), (j), (k), (l), (m), (o), (p), (q), (r), (s), (t) and (u) of subsection (1) come into operation on 1 January 2016 and apply in respect of years of assessment commencing on or after that date.”.

(2) Subsection (1) is deemed to have come into operation on 20 January 2015.

Amendment of section 63 of Act 25 of 2015

96. (1) Section 63 of the Taxation Laws Amendment Act, 2015, is hereby amended by the substitution for subsection (2) of the following subsection:

“(2)(a) Paragraph (a) of subsection (1) comes into operation on 1 January 2016 and applies in respect of years of assessment ending on or after that date.

(b) Paragraph (b) of subsection (1) is deemed to have come into operation on 1 April 2015.”.

(2) Subsection (1) is deemed to have come into operation on 8 January 2016.

Amendment of section 103 of Act 25 of 2015

97. (1) Section 103 of the Taxation Laws Amendment Act, 2015, is hereby amended by the substitution for subsection (2) of the following subsection:

“(2) Subsection (1) comes into operation on 1 January 2016 and applies in respect of **[disposals]** any asset reacquired as a result of the cancellation or termination of an agreement during any year of assessment commencing on or after that date.”.

(2) Subsection (1) is deemed to have come into operation on 8 January 2016.

Amendment of section 104 of Act 25 of 2015

98. (1) Section 104 of the Taxation Laws Amendment Act, 2015, is hereby amended by the substitution for subsection (2) of the following subsection:

“(2) Subsection (1) comes into operation on 1 January 2016 and applies in respect of **[disposals]** any asset reacquired as a result of the cancellation or termination of an agreement during any year of assessment commencing on or after that date.”.

(2) Subsection (1) is deemed to have come into operation on 8 January 2016.

Amendment of section 108 of Act 25 of 2015

99. (1) Section 108 of the Taxation Laws Amendment Act, 2015 is hereby amended by the substitution for subsection (2) of the following subsection:

“(2) Paragraph (c) of subsection (1) comes into operation on 1 January 2016 and applies in respect of **[disposals]** any asset reacquired as a result of the cancellation or termination of an agreement during any year of assessment commencing on or after that date.”.

(2) Subsection (1) is deemed to have come into operation on 8 January 2016.

Amendment of section 128 of Act 25 of 2015

100. (1) Section 128 of the Taxation Laws Amendment Act of 2015 is hereby amended by the substitution for subsection 4 of the following subsection:

“(4) Paragraphs (b) and (h) of subsection (1) are deemed to have come into operation on 1 April **[2016]** 2012.”.

(2) Subsection (1) is deemed to have come into operation on 8 January 2016.

Short title

101. This Act is called the Taxation Laws Amendment Act, 2016.