

**DRAFT**  
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)

13 March 2012

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## GENERAL EXPLANATORY NOTE:

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

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

# BILL

To—

- amend the Income Tax Act, 1962, so as to effect technical corrections;
- amend the Income Tax Act, 1990 so as to effect technical corrections;
- amend the Securities Transfer Tax Act, 2007, so as to effect a consequential amendment;
- amend the Revenue Laws Amendment Act, 2008, so as to effect technical corrections;
- amend the Taxation Laws Amendment Act, 2009, so as to effect technical corrections;
- amend the Taxation Law Amendment Act, 2010, so as to effect technical corrections;
- amend the Taxation Law Amendment Act, 2011, so as to effect technical corrections;

and to provide for matters connected therewith.

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

**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 and section 7 of Act 24 of 2011**

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

(a) by the substitution in the definition of “connected person” subparagraph (ii) of paragraph (a) of the following subparagraph:

“(ii) any trust (other than a portfolio of a collective investment scheme in securities or a portfolio of a collective investment scheme in property) of which such natural person or such relative is a beneficiary;”;

(b) by the substitution 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 in property [**shares managed or carried on by any company registered as a manager under section 42 of the Collective Investment Schemes Control Act, 2002, for purposes of Part V of that Act and other than**] or a portfolio of a collective investment scheme in securities), includes any other person who is a connected person in relation to such trust;”;

(c) by the substitution in the definition of “connected person” for item (bb) of paragraph (d)(vi) of the following item:

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- “(bb) any relative of such member or any trust (other than a portfolio of a collective investment scheme in securities or a portfolio of a collective investment scheme in property) which is a connected person in relation to such member; and”;
- (d) by the substitution in the definition of “gross income” for paragraph (ii) of the following paragraph:
- “(ii) in the case of any person other than a resident, the total amount, in cash or otherwise, received by or accrued to or in favour of such person from a source within **[or deemed to be within]** the Republic,”;
- (e) by the substitution in the definition of “gross income” for paragraph (a) of the following paragraph:
- “(a) any amount received or accrued by way of annuity, including any amount contemplated in the definition of ‘living annuity’ or the definition of ‘annuity amount’ in section 10A(1), other than an amount contemplated in paragraph (d)(ii) or (iii) or (m),”;
- (f) by the substitution in paragraph (m) of the definition of “gross income” for the proviso of the following proviso:
- “: Provided that [—]
- [(i)]** any amount so received or accrued shall be reduced by the amount of any such loan or advance which is or has been included in the taxpayer’s gross income;
- [(ii) to the extent that paragraph (a) or (d) of this definition applies to an amount, this paragraph does not apply to that amount;]**”;
- (g) by the substitution in paragraph (c) of the definition of “pension preservation fund” for the words preceding the proviso of the following words:
- “with the exception of amounts transferred to any other pension fund **[or]**, pension preservation fund or retirement annuity fund, not more than one amount contemplated in paragraph 2(1)(b)(ii) of the Second Schedule is allowed to be paid to the member during the period of membership of the fund or any other pension preservation fund”;
- (h) by the substitution in paragraph (c) of the definition of “provident preservation fund” for the words preceding the proviso of the following words:
- “with the exception of amounts transferred to any pension fund, pension preservation fund, other provident fund **[or]**, provident preservation fund or retirement annuity fund, not more than one amount contemplated in paragraph 2(1)(b)(ii) of the Second Schedule is allowed to be paid to the member during the period of membership of the fund or any other pension preservation fund”;
- (i) by the substitution in the definition of “special trust” for paragraphs (a) and (b) of the following paragraphs:

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“(a) solely for the benefit of [a person who suffers from—

(i) any ‘mental illness’ as defined in section 1 of the Mental Health Care Act, 2002 (Act No. 17 of 2002); or

(ii) any serious physical disability,]

one or more persons who is or are persons with a disability as defined in section 18(3) where such [illness or] disability incapacitates such person or persons from earning sufficient income for [the] their maintenance [of such person], or from managing [his or her] their own financial affairs: Provided that—

(aa) [where the person for whose benefit the trust was so created dies,] such trust shall be deemed not to be a special trust in respect of years of assessment ending on or after the date [of such person’s death] on which all such persons are deceased; and

(bb) where such trust is created for the benefit of more than one person, all persons for whose benefit the trust is created must be relatives in relation to each other; or

(b) by or in terms of the will of a deceased person, solely for the benefit of beneficiaries who are relatives in relation to that deceased person and who are alive on the date of death of that deceased person (including any beneficiary who has been conceived but not yet born on that date), where the youngest of those beneficiaries is on the last day of the year of assessment of that trust under the age of [21] 18 years;” and

(j) by the substitution in the definition of “spouse” for the proviso of the following proviso:

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

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

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

(4) Paragraphs (e) and (f) of subsection (1) are deemed to have come into operation on 1 March 2012 and apply in respect of amounts received or accrued on or after that date.

(5) Paragraphs (g) and (h) are deemed to have come into operation on 1 March 2012.

(4) Paragraphs (i) and (j) of subsection (1) come into operation as from the commencement of years of assessment commencing on or after 1 March 2012.

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

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

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

“: Provided that—

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

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

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

“(1C) For the purpose of determining the taxable income derived by any resident from carrying on any trade, there **[shall]** may at the election of the resident be allowed as a deduction from the income of such resident so derived the sum of any taxes on income (other than taxes contemplated in subsection (1A)) proved to be payable by that resident to any sphere of government of any country other than the Republic, without any right of recovery by any person other than a right of recovery in terms of an entitlement to carry back losses arising during any year of assessment to any year of assessment prior to such year of assessment.”.

(2) Paragraph (a) of subsection (1) is deemed to have come into operation—

(a) insofar as it applies to any person that is a natural person, deceased estate, insolvent estate or trust, on 1 March 2012 and applies in respect of dividends received or accrued on or after that date; and

(b) insofar as it applies to any person that is a person other than a natural person, deceased estate, insolvent estate or trust, on 1 April 2012 and applies in respect of dividends received or accrued on or after that date.

(3) Paragraph (b) of subsection (1) is deemed to have come into operation on 1 January 2012 and applies in respect of amounts that become payable to any sphere of government of any country other than the Republic during years of assessment commencing on or after that date.

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

3. (1) Section 6quin of the Income Tax Act, 1962, is hereby amended by the addition of the following subsection:

“(5) Where, during any year of assessment, a rebate has been deducted in terms of this section from the normal tax payable by a resident as a result of any amount of tax having been—

(a) levied and withheld as contemplated in subsection (1)(a); or

(b) imposed as contemplated in subsection (1)(b),

and, in any year of assessment subsequent to that year of assessment the resident—

(i) receives any amount by way of refund in respect of the amount of tax so levied and withheld; or

(ii) is discharged from any liability in respect of the amount of tax so imposed, so much of the amount so received or the amount of that discharge as does not exceed that rebate must be deemed to be an amount of normal tax payable by that resident in respect of that subsequent year of assessment.”.

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

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

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

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

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

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

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

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period, or in respect of which the holder has a right of disposal which may be exercised within the said period; or”;

- (c) by the substitution in subsection (1) for subparagraph (i) of paragraph (b) of the definition of “hybrid equity instrument” of the following subparagraph:
  - “(i) the holder has a right of disposal in respect of such share which may be exercised within a period of three years from the date of issue thereof or at the time of issue of that share, the existence of the company issuing that share is to be terminated within a period of three years or is likely to be terminated within such period upon a reasonable consideration of all the facts at the time that share is issued; and”;
- (d) by the deletion in subsection (1) of the word “or” at the end of item (cc) of paragraph (b)(ii) of the definition of “hybrid equity instrument”;
- (e) by the deletion in subsection (1) of paragraph (c) of the definition of “hybrid equity instrument”;
- (f) by the addition in subsection (1) of the following definition after the definition of “hybrid equity instrument”:

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

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

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

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

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

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

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

5. (1) Section 8E of the Income Tax Act, 1962, is hereby substituted by the substitution for section 8E of the following section:

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## “Dividends on certain shares deemed to be interest in relation to the recipient thereof

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

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

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

**‘financial instrument’** means any—

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

**‘hybrid equity instrument’** means—

- (a) any share other than an equity share if—
  - (i) the issuer of that share is obliged to redeem that share in whole or in part; or
  - (ii) that share may at the option of the holder be redeemed in whole or in part, within a period of three years from the date of issue of that share;
- (b) any share other than a share contemplated in paragraph (a) if—
  - (i) (aa) the issuer of that share is obliged to redeem that share in whole or in part within a period of three years from the date of issue of that share ;
    - (bb) that share may at the option of the holder be redeemed in whole or in part within a period of three years from the date of issue of that share; or
    - (cc) at any time on the date of issue of that share, the existence of the company issuing that share—
      - (A) is to be terminated within a period of three years; or
      - (B) is likely to be terminated within a period of three years upon a reasonable consideration of all the facts at that time; and
  - (ii) (aa) such share does not rank *pari passu* as regards its participation in dividends or foreign dividends with all other ordinary shares in the capital of the relevant company or, where the ordinary shares in such company are divided into two or more classes, with the shares of at least one of such classes; or

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

(c) any share if—

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

(ii) such share is—

(aa) secured by a financial instrument; or

(bb) subject to an arrangement in terms of which a financial instrument may not be disposed of (other than an arrangement in terms of which that financial instrument may be distributed as a dividend or return of capital),

unless the consideration received by or accrued to the issuer of that share was applied directly or indirectly solely—

(A) for the purpose of acquiring a share in an operating company, other than a share—

(AA) in an operating company that forms part of the same group of companies as that issuer; and

(BB) that constitutes a share contemplated in paragraphs (a) or (b) without regard to any three year period requirement contemplated in those paragraphs;

(B) in partial or full settlement of any debt incurred for the purpose of directly or indirectly acquiring a share as contemplated in subparagraph (A) or in partial or full settlement of any interest accrued on such debt; or

(C) for the purpose of acquiring or redeeming any preference share as defined in section 8EA(1) if—

(AA) that preference share was issued for any purpose contemplated in subparagraph (A) or (B); and

(BB) that consideration does not exceed the amount outstanding in respect of that preference share, being—

(AAA) the capital subscribed for the issue of; and

(BBB) any amount of dividends or interest accrued in respect of

that preference share.

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

(2) Subsection (1) comes into operation on 1 October 2012 and applies in respect of dividends and foreign dividends received or accrued during years of assessment commencing on or after that date.

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

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

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

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

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

(a) acquire the share from the holder of that share;

(b) make any payment in respect of that share in terms of a guarantee, indemnity or similar arrangement; or

(c) procure, facilitate or assist with any acquisition contemplated in paragraph (a) or the making of any payment contemplated in paragraph (b);

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

(a) acquire that share from the holder;

(b) make any payment in respect of that share in terms of a guarantee, indemnity or similar arrangement; or

(c) procure, facilitate or assist with any acquisition contemplated in paragraph (a) or the making of any payment contemplated in paragraph (b);

**‘equity share’** means an equity share as defined in section 1, other than an equity share that would have constituted a hybrid equity instrument, as defined in section 8E(1), but for any

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three-year period requirement contemplated in the definition of ‘hybrid equity instrument’ in that section:

‘operating company’ means—

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

‘preference share’ means any share other than an equity share; and

‘third-party backed share’ means any share in respect of which an enforcement right is exercisable or an enforcement obligation is enforceable as a result of any amount of any specified dividend, foreign dividend, return of capital or foreign return of capital attributable to that share not being received by or accruing to the person holding that share: Provided that, where the consideration received by or accrued to the issuer of a share (which, but for this proviso, would have constituted a third-party backed share) was applied directly or indirectly solely—

- (a) for the purpose of acquiring an equity share in an operating company, other than an equity share in an operating company that forms part of the same group of companies as that issuer;
- (b) in partial or full settlement of any—
  - (i) debt incurred for the purpose of directly or indirectly acquiring an equity share in an operating company, other than an equity share in an operating company that forms part of the same group of companies as that issuer; or
  - (ii) interest accrued on any debt contemplated in subparagraph (i); or
- (c) for the purpose of acquiring or redeeming any preference share if—
  - (i) that preference share was issued for any purpose contemplated in paragraphs (a) or (b); and
  - (ii) that consideration does not exceed the amount outstanding in respect of that preference share, being—
    - (aa) the capital subscribed for the issue of; and
    - (bb) any amount of dividends or interest accrued in respect of, that preference share,

in determining whether—

- (A) an enforcement right is exercisable in respect of that share, no regard must be had to any arrangement in terms of which the holder of that

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share has an enforcement right in respect of that share and that right is exercisable only against—

(AA) that operating company or any person that directly or indirectly holds at least 20 per cent of the equity shares in that operating company;

(BB) any person that directly or indirectly holds at least 20 per cent of the equity shares in—

(AAA) that issuer; or

(BBB) any other issuer of a preference share if the consideration received by or accrued to that other issuer as consideration for the issue of that preference share by that other issuer is applied solely for the purpose of acquiring an equity share in an operating company and that equity share in that operating company was acquired indirectly by that issuer in the circumstances contemplated in paragraph (a) or (b); or

(CC) any company that is a controlled group company in relation to—

(AAA) that operating company;

(BBB) the issuer contemplated in subparagraph (BB)(AAA);

or

(CCC) the other issuer contemplated in subparagraph

(BB)(BBB),

if other enforcement rights are exercisable against the controlling group company in relation to that controlled group company and those other enforcement rights are of equivalent or greater strength than the enforcement right against that controlled group company; and

(B) an enforcement obligation is enforceable in respect of that share, no regard must be had to any arrangement in terms of which—

(AA) that operating company or any person that directly or indirectly holds at least 20 per cent of the equity shares in that operating company is subject to an enforcement obligation in respect of that share and that obligation is enforceable by the holder of that share; or

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(BB) any person that directly or indirectly holds at least 20 per cent of the equity shares in—

(AAA) that issuer; or

(BBB) any other issuer of a preference share if the consideration received by or accrued to that other issuer as consideration for the issue of that preference share by that issuer is applied solely for the purpose of acquiring an equity share in an operating company, and that equity share in that operating company was acquired indirectly by that issuer in the circumstances contemplated in paragraph (a) or (b),

is subject to an enforcement obligation in respect of that share and that obligation is enforceable by the holder of that share; or

(CC) any company that is a controlled group company in relation to—

(AAA) that operating company;

(BBB) the issuer contemplated in subparagraph (BB)(AAA);  
or

(CCC) the other issuer contemplated in subparagraph (BB)(BBB),

is subject to an enforcement obligation in respect of that share and that obligation is enforceable by the holder of that share, and if other enforcement obligations are enforceable against the controlling group company in relation to that controlled group company and those other enforcement obligations are equally or more burdensome than the enforcement obligation against that controlled group company.

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

(2) Subsection (1) comes into operation on 1 October 2012 and applies in respect of dividends and foreign dividends received or accrued during years of assessment commencing on or after that date.

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**Amendment of section 9D of Act 58 of 1962 as inserted by section 9 of Act 28 of 1997 and amended by section 28 of Act 30 of 1998, section 17 of Act 53 of 1999, section 19 of Act 30 of 2000, section 10 of Act 59 of 2000, section 9 of Act 5 of 2001, section 22 of Act 60 of 2001, section 14 of Act 74 of 2002, section 22 of Act 45 of 2003, section 13 of Act 32 of 2004, section 14 of Act 31 of 2005, section 9 of Act 20 of 2006, section 9 of Act 8 of 2007, section 15 of Act 35 of 2007, section 8 of Act 3 of 2008, section 13 of Act 60 of 2008, section 12 of Act 17 of 2009, section 16 of Act 7 of 2010 and section 25 of Act 24 of 2011**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**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, section 8 of Act 16 of 2004, section 14 of Act 32 of 2004, section 5 of Act 9 of 2005, section 16 of Act 31 of 2005, section 23 of Act 9 of 2006, section 10 of Act 20 of 2006, section 10 of Act 8 of 2007, section 2 of Act 9 of 2007, section 16 of Act 35 of 2007, section 9 of Act 3 of 2008, section 16 of Act 60 of 2008, section 13 of Act 17 of 2009, section 18 of Act 7 of 2010 and section 28 of Act 24 of 2011**

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

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

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

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

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

(c) by the substitution in the proviso to subsection (1)(k)(i) for the words preceding subitem (A) in item (dd) of the following words:

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“to any dividend in respect of a restricted equity instrument as defined in section 8C to the extent that the restricted equity instrument was acquired in the circumstances contemplated in section 8C, unless—”

(d) by the substitution in the proviso to subsection (1)(k)(i) for paragraphs (ee), (ff) and (gg) of the following paragraphs:

“(ee) to any dividend received by or accrued to **[or in favour of]** a company in consequence of—

(A) any cession; or

(B) any right of that company acquired in consequence of any cession;

(ff) to any dividends received by or accrued to **[or in favour of]** a company in respect of a share held by that company to the extent that the aggregate of those dividends does not exceed the aggregate of any amounts incurred by that company by way of direct or indirect compensation for any distributions in respect of any share borrowed by the company where that share so borrowed constitutes an identical asset as defined in paragraph 32(2) of the Eighth Schedule in relation to the share so held; or

(gg) to any dividends received by or accrued to **[or in favour of]** a company in respect of a share borrowed by that company;”;

(e) by the deletion in subsection (1)(k)(ii) of paragraph (iii) of the proviso to item (dd).

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

(2) Paragraphs (b) and (c) of subsection (1) are deemed to have come into operation on 1 January 2011.

(4) Paragraph (d) of subsection (1) is deemed to have come into operation on 1 April 2012 and applies in respect of dividends received or accrued on or after that date.

(5) Paragraph (e) of subsection (1) is deemed to have come into operation on 1 October 2011 and applies in respect of dividends received or accrued during years of assessment commencing on or after that date.

## **Amendment of section 10B of Act 58 of 1962, as inserted by section 29 of Act 24 of 2011**

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

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

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- “(b) if that person is a foreign company and the foreign dividend is paid or declared by another foreign company that is resident in the same country as that **[company] person**.”;
- (b) by the substitution in subsection (3)(b)(ii) for paragraphs (aa) and (bb) of the following paragraphs:
- “(aa) where the person is a natural person, deceased estate, insolvent estate or **[special]** trust, the ratio of the number 25 to the number 40; or
- (bb) where the person is a person other than a natural person, deceased estate, insolvent estate or **[special]** trust, the ratio of the number 13 to the number 28; and”;
- (c) by the substitution in subsection (4)(a)(i) for the words following item (bb) of the following words:
- “any amount paid or payable by any person to any other person; and”;
- (d) by the substitution in subsection (4) for subparagraph (ii) of the following subparagraph:
- “(ii) the amount so paid or payable is deductible from the income of [by] the person by whom it is paid and—
- (aa) is not subject to normal tax in the hands of **[that] the other person contemplated in subparagraph (i); [or] and**
- (bb) where that other person contemplated in subparagraph (i) is a controlled foreign company, is not taken into account in determining the net income, contemplated in section 9D(2A), of that controlled foreign company, unless the amount so paid or payable is paid or payable in the ordinary course of business of the person by whom it is so paid or payable as consideration for the purchase of trading stock; or”.
- (2) Subsection (1) is deemed to have come into operation—
- (a) insofar as it applies to any person that is a natural person, deceased estate, insolvent estate or trust, on 1 March 2012 and applies in respect of dividends received or accrued on or after that date; and
- (b) insofar as it applies to any person that is a person other than a natural person, deceased estate, insolvent estate or trust, on 1 April 2012 and applies in respect of dividends received or accrued 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 section 13 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 and section 1 of Act 25 of 2011**

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11. (1) Section 11D of the Income Tax Act, 1962, is hereby amended by the addition after subsection (18) of the following subsection:

“(19) 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 with respect to a deduction in respect of research and development which has been allowed, where approval has been withdrawn in terms of subsection (10).”.

(2) Subsection (1) comes into operation on 1 October 2012 and applies in respect of expenditure incurred in respect of research and development on or after 1 October 2012 but before 1 October 2022.

**Amendment of section 12C of Act 58 of 1962, as inserted by section 14 of Act 101 of 1990 and amended by section 11 of Act 113 of 1993, section 7 of Act 140 of 1993, section 11 of Act 21 of 1994, section 13 of Act 21 of 1995, section 10 of Act 46 of 1996, section 18 of Act 59 of 2000, section 11 of Act 19 of 2001, section 15 of Act 30 of 2002, section 30 of Act 45 of 2003, section 8 of Act 9 of 2005, section 20 of Act 31 of 2005, section 14 of Act 8 of 2007, section 22 of Act 35 of 2007, section 20 of Act 60 of 2008, section 19 of Act 17 of 2009 and section 33 of Act 24 of 2011**

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

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

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

**Amendment of section 12E of Act 58 of 1962, as amended by section 12 of Act 19 of 2001, section 17 of Act 30 of 2002, section 21 of Act 74 of 2002, section 37 of Act 12 of 2003, section 31 of Act 45 of 2003, section 9 of Act 9 of 2005, section 21 of Act 31 of 2005, section 24 of Act 9 of 2006, section 14 of Act 20 of 2006, section 15 of Act 8 of 2007, section 25 of Act 35 of 2007, section 13 of Act 3 of 2008, section 23 of Act 60 of 2008, section 21 of Act 17 of 2009, section 23 of Act 7 of 2010 and section 34 of Act 24 of 2011**

13. Section 12E of the Income Tax Act, 1962, is hereby amended by the substitution in subsection (4)(a)(ii) for item (ii) of the following item:

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

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

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

(2) Subsection (1) comes into operation with effect from years of assessment commencing on or after 1 January 2013.

## **Amendment of section 12O of Act 58 of 1962 as inserted by section 39 of Act 24 of 2012**

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

“(a) [A] Any—

(i) special purpose corporate vehicle; or

(ii) collection account manager that—

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

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

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

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

**Amendment of section 18 of Act 58 of 1962, as amended by section 15 of Act 95 of 1967, section 12 of Act 76 of 1968, section 17 of Act 89 of 1969, section 14 of Act 52 of 1970, section 15 of Act 88 of 1971, section 12 of Act 104 of 1980, section 15 of Act 96 of 1981, section 15 of Act 121 of 1984, section 11 of Act 96 of 1985, section 14 of Act 90 of 1988, section 11 of Act 70 of 1989, section 16 of Act 101 of 1990, section 19 of Act 129 of 1991, section 18 of Act 141 of 1992, section 16 of Act 21 of 1995, section 23 of Act 53 of 1999, section 26 of Act 59 of 2000,**

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**section 19 of Act 30 of 2002, section 25 of Act 31 of 2005, sections 2 and 17 of Act 8 of 2007, section 30 of Act 35 of 2007, section 1 of Act 3 of 2008, section 33 of Act 60 of 2008, section 31 of Act 17 of 2009, section 36 of Act 7 of 2010 and section 43 of Act 24 of 2011**

16. (1) Section 18 of the Income Tax Act, 1962, is hereby amended by the substitution in subsection (2)(c)(ii) for the words following item (bb) of the following words:

“as in the aggregate exceeds 7,5 per cent of the taxpayer’s taxable income (excluding any retirement fund lump sum benefit **[and]**, retirement fund lump sum withdrawal benefit and severance benefit) as determined before allowing any deduction under this **[subparagraph] paragraph.”.**

(2) Subsection (1) is deemed to have come into operation on 1 March 2011.

**Amendment of section 22 of Act 58 of 1962, as amended by section 8 of Act 6 of 1963, section 14 of Act 90 of 1964, section 21 of Act 89 of 1969, section 23 of Act 85 of 1974, section 20 of Act 69 of 1975, section 15 of Act 103 of 1976, section 20 of Act 94 of 1983, section 19 of Act 121 of 1984, section 14 of Act 65 of 1986, section 5 of Act 108 of 1986, section 21 of Act 101 of 1990, section 22 of Act 129 of 1991, section 17 of Act 113 of 1993, section 1 of Act 168 of 1993, section 19 of Act 21 of 1995, section 12 of Act 36 of 1996, section 25 of Act 53 of 1999, section 27 of Act 30 of 2000, section 12 of Act 5 of 2001, section 24 of Act 74 of 2002, section 37 of Act 45 of 2003, section 16 of Act 3 of 2008, section 36 of Act 60 of 2008, section 39 of Act 7 of 2010 and section 45 of Act 24 of 2011**

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

“(B) where such trading stock has been applied, disposed of or distributed in a manner contemplated in paragraph (b) (otherwise than in the manner contemplated in **[item] paragraph** (C)) or ceases to be held as trading stock, an amount equal to the market value of such trading stock; or”.

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

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

18. (1) Section 22B of the Income Tax Act, 1962, is hereby amended by the substitution for subsections (2) and (3) of the following subsections:

“(2) Where a taxpayer that is a company disposes of shares in another company, the amount of any exempt dividend received by or accrued to the taxpayer in respect of any share held by the taxpayer in that other company must be included in the income of the taxpayer—  
(a) to the extent that the exempt dividend is received by or accrues to the taxpayer within a period of 18 months prior to or as part of the disposal;

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- (b) if the taxpayer immediately before the disposal—
- (i) held the shares disposed of as trading stock; and
  - (ii) held more than 50 per cent of the equity shares in the other company; and
- (c) if the other company (or any company in which that other company directly or indirectly holds more than 50 per cent of the equity shares) has, within a period of 18 months prior to that disposal, by reason of or in consequence of that disposal, obtained any loan or advance or incurred any debt—
- (i) owing to the person acquiring the shares or any connected person in relation to that person; or
  - (ii) that is guaranteed or otherwise secured by the person acquiring the shares or any connected person in relation to that person.

(3) For the purposes of subsection (2), the amount that must be included in the income of the taxpayer is limited to the amount of the loan, advance or debt contemplated in paragraph (c) of that subsection.”

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

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

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

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

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

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

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

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

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## **Amendment of section 25BA of Act 58 of 1962, as inserted by section 39 of Act 17 of 2009 and amended by section 49 of Act 7 of 2010 and section 55 of Act 24 of 2011**

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

(a) by the substitution in paragraph (a) for subparagraph (ii) of the following subparagraph:

“(ii) [**within**] not later than 12 months [**of its receipt by**] after its accrual to that portfolio.”;  
and

(b) by the substitution for paragraph (b) of the following paragraph:

“(b) to the extent that the amount is not distributed as contemplated in paragraph (a) [**within**] not later than 12 months of its [**receipt by**] accrual to that portfolio, be deemed to have accrued to that portfolio on the last day of the period of 12 months commencing on the date of its [**receipt by**] accrual to that portfolio.”.

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

## **Amendment of section 37B of Act 58 of 1962, as inserted by section 48 of Act 35 of 2007 and amended by section 45 of Act 60 of 2008 and section 44 of Act 17 of 2009**

**21.** (1) Section 37B of the Income Tax Act, 1962, is hereby amended by the substitution in subsection (2) for paragraphs (a) and (b) of the following subparagraphs:

“(a) in the case of a new and unused environmental treatment and recycling asset owned by the taxpayer or acquired by the taxpayer as purchaser in terms of an agreement contemplated in paragraph (a) of the definition of an ‘instalment credit agreement’ in section 1 of the Value-Added Tax Act, 1991 (Act No. 89 of 1991), 40 per cent of the cost to the taxpayer to acquire the asset in the year of assessment that it is brought into use for the first time by that taxpayer, and 20 per cent in each succeeding year of assessment; and

(b) in the case of a new and unused environmental waste disposal asset owned by the taxpayer or acquired by the taxpayer as purchaser in terms of an agreement contemplated in paragraph (a) of the definition of an ‘instalment credit agreement’ in section 1 of the Value-Added Tax Act, 1991 (Act No. 89 of 1991), five per cent of the cost to the taxpayer to acquire the asset in the year of assessment that it is brought into use for the first time by that taxpayer, and five per cent in each succeeding year of assessment.”.

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

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## Repeal of section 37H of Act 58 of 1962

22. (1) The Income Tax Act, 1962, is hereby amended by the repeal of section 37H.

(2) Subsection (1) comes into operation with effect from years of assessment commencing on or after 1 January 2013.

## Amendment of section 37N of Act 58 of 1962, as inserted by section 66 of Act 24 of 2011

23. (1) Section 37N of the Income Tax Act, 1962, is hereby amended by the substitution for subsection (2) of the following subsection:

“(2) **[Subject to subsection (3), if]** If any amount is refundable to any person in terms of subsection (1), the person to whom the interest was paid as contemplated in subsection (1) may recover the refundable amount from the Commissioner.”.

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

**Amendment of section 42 of Act 58 of 1962, as amended by section 21 of Act 88 of 1965, section 17 of Act 95 of 1967, section 29 of Act 89 of 1969, section 19 of Act 52 of 1970, section 23 of Act 88 of 1971, section 18 of Act 90 of 1972, section 22 of Act 65 of 1973, section 32 of Act 85 of 1974, section 22 of Act 69 of 1975, section 18 of Act 103 of 1976, section 19 of Act 113 of 1977, section 20 of Act 91 of 1982, section 28 of Act 94 of 1983, section 31 of Act 129 of 1991, section 27 of Act 141 of 1992, section 23 of Act 21 of 1994, section 25 of Act 21 of 1995, section 44 of Act 60 of 2001, section 34 of Act 74 of 2002, section 50 of Act 45 of 2003, section 33 of Act 32 of 2004, section 38 of Act 31 of 2005, section 29 of Act 20 of 2006, section 34 of Act 8 of 2007, section 53 of Act 35 of 2007, section 26 of Act 3 of 2008, section 49 of Act 60 of 2008, section 48 of Act 17 of 2009, section 62 of Act 7 of 2010 and section 68 of Act 24 of 2011**

24. (1) Section 42 of the Income Tax Act, 1962, is hereby amended by the substitution in subsection (8) for the words following paragraph (b) of the following words:

“that person must, upon the disposal of any equity share acquired in terms of that asset-for-share transaction and notwithstanding the fact that that person may be liable as surety for the payment of the debt referred to in subparagraph (a) or (b), treat so much of the face value of that debt as relates to that equity share—

**[(aa)](A)** where that equity share is held as a capital asset, as a return of capital by way of a distribution of cash in respect of that equity share that accrues to that person immediately after the **[acquisition]** disposal by that person of that equity share **[in terms of that asset-for-share transaction]**; or

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~~[(bb)](B)~~ where that equity share is held as trading stock, as income to be included in that person's income for the year of assessment during which that equity share is **[acquired] disposed of** by that person **[in terms of that asset-for-share transaction]**.”.

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

**Amendment of section 44 of Act 58 of 1962, as inserted by section 44 of Act 60 of 2001 and amended by section 34 of Act 74 of 2002, section 52 of Act 45 of 2003, section 40 of Act 31 of 2005, section 34 of Act 8 of 2007, section 55 of Act 35 of 2007, section 27 of Act 3 of 2008, section 50 of Act 60 of 2008, section 49 of Act 17 of 2009, section 63 of Act 7 of 2010 and section 69 of Act 24 of 2011**

**25.** (1) Section 44 of the Income Tax Act, 1962, is hereby amended—

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

“(4) The provisions of subsections (2) and (3) will not apply to a disposal of an asset by an amalgamated company to a resultant company as part of an amalgamation transaction to the extent that such asset is so disposed of in exchange for consideration other than—

(a) an equity share or shares in that resultant company; or

(b) the assumption by that resultant company of a debt of that amalgamated company, **[unless] that [debt]—**

(i) was incurred by that amalgamated company—

(aa) more than 18 months before that disposal; or

(bb) within a period of 18 months before that disposal, to the extent that the debt—

(A) constitutes the refinancing of any debt incurred as contemplated in subparagraph (aa); or

(B) is attributable to and arose in the **[normal] ordinary** course of **[the disposal, as a going concern, of]** a business undertaking disposed of, as a going concern, to that resultant company as part of that amalgamation transaction; and

(ii) was not incurred by that amalgamated company for the purpose of procuring, enabling, facilitating or funding the acquisition by that resultant company of any asset in terms of that amalgamation transaction.”; and

(b) by the substitution in subsection (9) for paragraph (a) of the following paragraph:

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“(a) the disposal by that amalgamated company of those shares must be **[deemed not to be a dividend for purposes of Part VIII of Chapter II]** disregarded in determining any liability for dividends tax; and”.

(2) Paragraph (a) of subsection (1) is deemed to have come into operation on 1 January 2012 and applies in respect of transactions entered into on or after that date.

(3) Paragraph (b) of subsection (1) is deemed to have come into operation on 1 April 2012 and applies in respect of disposals made on or after that date.

**Amendment of section 45 of Act 58 of 1962, as amended by section 24 of Act 55 of 1966, section 18 of Act 95 of 1967, section 25 of Act 21 of 1995, section 44 of Act 60 of 2001, section 34 of Act 74 of 2002, section 53 of Act 45 of 2003, section 35 of Act 32 of 2004, section 41 of Act 31 of 2005, section 35 of Act 8 of 2007, section 56 of Act 35 of 2007, section 28 of Act 3 of 2008 and section 51 of Act 60 of 2008, section 64 of Act 7 of 2010 and section 70 of Act 24 of 2011**

26. (1) Section 45 of the Income Tax Act, 1962, is hereby amended by the substitution in subsection (3A) for paragraph (c) of the following paragraph:

“(c) Where an amount, other than an amount of interest, is received by or accrued to a holder in respect of a debt instrument contemplated in paragraph (a) from any company that forms part of the same group of companies as that holder and that amount is applied by the holder in settlement of the amount outstanding in respect of that debt instrument, that amount must be disregarded in determining the aggregate capital gain or the taxable income of that holder to the extent that that amount reduces the liability of that holder to the issuer of that debt instrument.”.

(2) Subsection (1) is deemed to have come into operation on 30 August 2011 and applies in respect of debt instruments issued on or after that date.

**Amendment of section 46 of Act 58 of 1962, as amended by section 25 of Act 21 of 1995, section 44 of Act 60 of 2001, section 34 of Act 74 of 2002, section 54 of Act 45 of 2003, section 36 of Act 32 of 2004, section 42 of Act 31 of 2005, section 36 of Act 8 of 2007, section 57 of Act 35 of 2007, section 29 of Act 3 of 2008, section 52 of Act 60 of 2008, section 65 of Act 7 of 2010 and section 71 of Act 24 of 2011**

27. (1) Section 46 of the Income Tax Act, 1962, is hereby amended by the substitution for subsection (5) of the following subsection:

“(5) Where shares are distributed by an unbundling company to a shareholder in terms of an unbundling transaction, the distribution by that unbundling company of the shares must **[, for the purposes of the definition of ‘dividend’ and the definition of ‘return of capital’ in section 1, be deemed not to be an amount transferred by that unbundling company**

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**for the purposes of Part VIII of Chapter II] be disregarded in determining any liability for dividends tax.**”.

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

**Amendment of section 47 of Act 58 of 1962, as amended by section 25 of Act 21 of 1995, section 34 of Act 74 of 2002, section 55 of Act 45 of 2003, section 37 of Act 32 of 2004, section 43 of Act 31 of 2005, section 31 of Act 20 of 2006, section 37 of Act 8 of 2007, section 58 of Act 35 of 2007, section 31 of Act 3 of 2008, section 53 of Act 60 of 2008, section 50 of Act 17 of 2009, section 66 of Act 7 of 2010 and section 72 of Act 24 of 2011**

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

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

“(ii) forms part of the same group of companies as defined in section 1 as the liquidating company [(without regard to paragraph (i)(ee) of the proviso to the definition of ‘group of companies’ in section 41)] immediately before that distribution; and”;

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

**Amendment of section 61 of Act 58 of 1962, as amended by section 25 of Act 90 of 1988 and section 57 of Act 45 of 2003**

**29.** (1) Section 61 of the Income Tax Act, 1962, is hereby amended by the substitution for paragraph (d) of the following paragraph:

“(d) the reference in paragraphs (b) and (c) of the definition of ‘representative taxpayer’ in section *one* to the income under the management, disposition or control of an agent or to income which is the subject of any trust, as the case may be, shall be deemed to include a reference to any property disposed of under a donation which is under the management, disposition or control of the agent or to property disposed of under a donation which is the subject of the trust, as the case may be;”.

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

**Amendment of section 64B of Act 58 of 1962 as inserted by section 20 of Act 95 of 1967 and amended by section 35 of Act 89 of 1969, section 20 of Act 52 of 1970, section 19 of Act 90 of 1972, section 41 of Act 85 of 1974, section 33 of Act 94 of 1983, section 7 of Act 108 of 1986, section 32 of Act 90 of 1988, section 34 of Act 113 of 1993, section 34 of Act 113 of 1993, section 12 of Act 140 of 1993, section 24 of Act 21 of 1994, section 29 of Act 21 of 1995, section 21 of Act 36 of 1996, section 13 of Act 46 of 1996, section 25 of Act 28 of 1997, section 35 of Act**

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53 of 1999, section 39 of Act 30 of 2000, section 42 of Act 59 of 2000, section 18 of Act 5 of 2001, section 48 of Act 60 of 2001, section 25 of Act 30 of 2002, section 36 of Act 74 of 2002, section 58 of Act 45 of 2003, section 40 of Act 32 of 2004, section 47 of Act 31 of 2005, section 32 of Act 20 of 2006, section 39 of Act 8 of 2007, section 85 of Act 35 of 2007, section 32 of Act 3 of 2008, section 55 of Act 60 of 2008, section 51 of Act 17 of 2009 and section 68 of Act 7 of 2010

30. (1) Section 64B of the Income Tax Act, 1962, is hereby amended by the addition to subsection (4)(a) of the following proviso:

“: Provided that any dividend so declared by a company—

(i) before the effective date as defined in section 64D; and

(ii) that will only accrue to shareholders in that company’s share register on a date after that effective date.

must be deemed to have accrued to such shareholders on the day immediately before that effective date”.

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

**Amendment of section 64C of Act 58 of 1962, as inserted by section 20 of Act 95 of 1967 and amended by section 15 of Act 76 of 1968, section 36 of Act 89 of 1969, section 21 of Act 52 of 1970, section 26 of Act 88 of 1971, section 20 of Act 90 of 1972, section 42 of Act 85 of 1974, section 22 of Act 113 of 1977, section 14 of Act 104 of 1979, section 22 of Act 104 of 1980, section 24 of Act 96 of 1981, section 21 of Act 91 of 1982, section 34 of Act 94 of 1983, section 29 of Act 121 of 1984, section 18 of Act 65 of 1986, section 8 of Act 108 of 1986, section 22 of Act 85 of 1987, section 33 of Act 90 of 1988, section 34 of Act 113 of 1993, section 13 of Act 140 of 1993, section 25 of Act 21 of 1994, section 30 of Act 21 of 1995, section 22 of Act 36 of 1996, section 40 of Act 30 of 1998, section 36 of Act 53 of 1999, section 40 of Act 30 of 2000, section 43 of Act 59 of 2000, section 37 of Act 74 of 2002, section 38 of Act 12 of 2003, section 59 of Act 45 of 2003, section 41 of Act 32 of 2004, section 48 of Act 31 of 2005, section 60 of Act 35 of 2007, section 33 of Act 3 of 2008, section 52 of Act 17 of 2009, section 69 of Act 7 of 2010 and section 74 of Act 24 of 2011**

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

(a) by the insertion in subsection (4) of the following paragraph:

“(a) where the amount would have constituted a dividend as defined in section 1 without regard to paragraphs (i), (ii), (iii) and (iv) of that definition;”.

(2) Subsection (1) is deemed to have come into operation on 1 January 2011.

**Amendment of section 64E of Act 58 of 1962, as substituted by section 53 of Act 17 of 2009 and amended by section 71 of Act 7 of 2010 and section 76 of Act 24 of 2011**

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

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

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“(2) For the purposes of this Part, a dividend is deemed to be paid—

(a) where the company that declared the dividend is a listed company, on the date on which the dividend is paid; or

(b) where the company that declared the company is not a listed company, on the earlier of the date on which the dividend is paid or becomes payable [by the company that declared the dividend].”;

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

“(b) The amount of the dividend that is deemed to have been paid in terms of paragraph (a) must[,]—

(i) be deemed to consist of a distribution of an asset in *in specie*; and

(ii) for the purposes of subsection (1), be deemed to be equal to the greater of—

[(i)](aa) the market-related interest in respect of that loan or advance, less the amount of interest that is payable to that company in respect of that loan or advance for that year of assessment; or

[(ii)](bb) nil.”.

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

## **Amendment of section 64F of Act 58 of 1962, as substituted by section 53 of Act 17 of 2009 and amended by section 72 of Act 7 of 2010 and section 78 of Act 24 of 2011**

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

(a) by the deletion of the word “or” at the end of paragraphs (iA) and (i);

(b) by the substitution of the full-stop at the end of paragraph (j) of the expression “; or”;

(c) by the insertion of the following paragraphs:

“(k) a portfolio of a collective investment scheme in securities;

(l) any person to the extent that the dividend is not exempt from normal tax; or

(m) any person to the extent that the dividend was subject to the secondary tax on companies.”.

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

## **Amendment of section 64H of Act 58 of 1962, as substituted by section 53 of Act 17 of 2009 and amended by section 74 of Act 7 of 2010 and by section 81 of Act 24 of 2011**

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

(a) by the deletion in subsection (2)(a) of the word “or” at the end of subparagraph (bb);

(b) by the substitution in subsection (2) for the full stop at the end of paragraph (b) of the expression “; or”; and

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

“(c) the payment is made to a vesting trust and the sole beneficiary of that vesting trust is another regulated intermediary.”.

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

## **Amendment of section 64J of Act 58 of 1962, as substituted by section 53 of Act 17 of 2009 and amended by section 82 of Act 24 of 2011**

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

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

“reduced by the dividends declared and paid by the company [**to the extent that the dividends are paid by the company**] on or after the effective date.”; and

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

“(5) The STC credit of a company [**or person**] on or after the [**fifth**] third anniversary of the effective date is deemed to be nil.”.

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

## **Amendment of section 64K of Act 58 of 1962, as substituted by section 53 of Act 17 of 2009 and amended by section 84 of Act 24 of 2011**

36. (1) Section 64K of the Income Tax Act, 1962, is hereby amended by the deletion in subsection (1) of paragraph (d).

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

## **Amendment of section 64L of Act 58 of 1962, as substituted by section 53 of Act 17 of 2009**

37. (1) Section 64L of the Income Tax Act, 1962, is hereby amended by the substitution in subsection (1) for paragraph (c) of the following paragraph:

“(c) [**a**] both the declaration and the written undertaking contemplated in section 64G(2)(a) or (3) [**is**] are submitted to the company within three years after the payment of the dividend in respect of which it is made.”.

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

## **Amendment of section 64M of Act 58 of 1962, as substituted by section 53 of Act 17 of 2009**

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38. (1) Section 64M of the Income Tax Act, 1962, is hereby amended by the substitution in subsection (1) for paragraph (c) of the following paragraph:

“(c) [a] both the declaration and the written undertaking contemplated in section 64H(2)(a) or (3) [is] are submitted to the regulated intermediary within three years after the payment of the dividend in respect of which it is made.”.

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

## **Amendment of paragraph 12C of Seventh Schedule to Act 58 of 1962, as inserted by section 106 of Act 24 of 2011**

39. (1) Paragraph 12C of the Seventh Schedule to the Income Tax Act, 1962, is hereby amended by the addition after subparagraph (3) of the following subparagraph:

“(4) If the Commissioner is in any case satisfied that the apportionment of the contribution or payment amongst all employees does not reasonably represent a fair apportionment of that contribution or payment amongst the employees, he or she may direct that the apportionment be made in such other manner as to him or her appears fair and reasonable.”.

(2) Subsection (1) is deemed to have come into operation on 1 March 2012 and applies in respect of premiums incurred on or after that date..

## **Amendment of paragraph 8 of Eighth Schedule to Act 58 of 1962, as substituted by section 65 of Act 31 of 2005**

40. (1) Paragraph 8 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended by the substitution for subparagraph (b) of the following paragraph:

“(b) where paragraph 64B(3) becomes applicable during that year of assessment, the amount of the capital gain which was disregarded in terms of paragraph 64B(2) or 64B(2A) during that year or any previous year, as contemplated in paragraph 64B(3).”.

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

## **Amendment of paragraph 12 of Eighth Schedule to Act 58 of 1962, as amended by section 72 of Act 60 of 2001, section 68 of Act 74 of 2002, section 93 of Act 45 of 2003, section 56 of Act 32 of 2004, section 67 of Act 31 of 2005, section 71 of Act 35 of 2007, section 50 of Act 3 of 2008, section 75 of Act 60 of 2008, section 94 of Act 7 of 2010 and section 108 of Act 24 of 2011**

41. (1) Paragraph 12 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended by the substitution in subparagraph (2)(a) for the words preceding subitem (i) of the following words:

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“a person that commences to be a resident or a [controlled foreign] person that is a company that commences or ceases to be a [resident] controlled foreign company, in respect of all assets of that person other than—”.

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

## **Amendment of paragraph 42A of Eighth Schedule to Act 58 of 1962**

**42.** (1) Paragraph 42A of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended by the substitution for the words preceding subparagraph (a) of the following words:

“If a capital gain is determined in respect of the disposal by a person of a listed share in terms of an arrangement between a company and its shareholders, or any class of them, which has been sanctioned by the court in terms of section 311 of the Companies Act, 1973 (Act No. 61 of 1973) or in terms of section 114 of the Companies Act, 2008 (Act No. 71 of 2008), and within a period of 90 days after the disposal that person acquires a share of the same kind and of the same or equivalent quality (hereinafter referred to as the “replacement share”)—”.

(2) Subsection (1) is deemed to have come into operation on 1 May 2011 and applies in respect of disposals made on or after that date.

## **Amendment of paragraph 43A of Eighth Schedule to Act 58 of 1962, as substituted by section 112 of Act 24 of 2011**

**43.** (1) Paragraph 43A of the Income Tax Act, 1962, is hereby amended by the substitution for subparagraphs (2) and (3) of the following subparagraphs:

“(2) The proceeds from the disposal by a taxpayer that is a company of shares in another company must be increased by an amount equal to the amount of any exempt dividend received by or accrued to that taxpayer in respect of any share held by the taxpayer in that other company—

(a) to the extent that the exempt dividend is received by or accrues to the taxpayer within a period of 18 months prior to or as part of the disposal;

(b) if the taxpayer immediately before the disposal—

(i) held the shares disposed of as a capital asset (as defined in section 41); and

(ii) held more than 50 per cent of the equity shares in the other company; and

(c) if the other company (or any company in which that other company directly or indirectly holds more than 50 per cent of the equity shares) has, within a period of 18

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months prior to that disposal, by reason of or in consequence of the disposal, obtained any loan or advance or incurred any debt—

(i) owing to the person acquiring the shares or any connected person in relation to that person; or

(ii) that is guaranteed or otherwise secured by the person acquiring the shares or any connected person in relation to that person.

(3) For the purposes of subparagraph (2), the amount by which the proceeds must be increased is limited to the amount of the loan, advance or debt contemplated in item (c) of that subparagraph.”

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

**Amendment of paragraph 64B of Eighth Schedule to Act 58 of 1962, as inserted by section 105 of Act 45 of 2003 and amended by section 79 of Act 31 of 2005, section 35 of Act 9 of 2006, section 65 of Act 8 of 2007, section 77 of Act 35 of 2007, section 58 of Act 3 of 2008, section 81 of Act 60 of 2008, section 108 of Act 7 of 2010 and section 116 of Act 24 of 2011**

44. (1) Paragraph 64B of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended—

(a) by the substitution in subparagraph (2) for the words preceding item (a) of the following words:

“Subject to subparagraph (5), a person other than a headquarter company must disregard any capital gain or capital loss determined in respect of the disposal of any equity share in any foreign company (other than a foreign financial instrument holding company or an interest contemplated in paragraph 2(2)), if—”

(b) by the substitution in subparagraph (2)(a) for subitem (i) of the following subitem:

“(i) held at least 10 per cent of the equity shares and voting rights in that **[controlled]** foreign company; and”;

(c) by the insertion in subparagraph (2)(b) of the word “or” at the end of subitem (ii);

(d) by the substitution in subparagraph (2)(b) for the expression “; or” at the end of subitem (iii) of a full stop;

(e) by the deletion in subparagraph (2)(b) of subitem (iv);

(f) by the insertion of the following subparagraph:

“(2A) Subject to subparagraph (5), a headquarter company must disregard any capital gain or capital loss determined in respect of the disposal of any equity share in any foreign company if that headquarter company (whether alone or together with any other person forming part of the same group of companies as that headquarter company) immediately before that disposal held at least 10 per cent of the equity shares and voting rights in that

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foreign company: Provided that in determining the total equity shares in a foreign company, there must not be taken into account any share which would have constituted a hybrid equity instrument, as contemplated in section 8E, but for the three year period requirement contemplated in that section.”;

(g) by the substitution in subparagraph (3) for item (d) of the following item:

“(d) that foreign company ceased in terms of any transaction, operation or scheme of which the disposal of the equity share **[capital]** forms part, to be a controlled foreign company in relation to that person or other company in the same group of companies as that person (having regard solely to any rights contemplated in paragraph (a) of the definition of ‘participation rights’ in section 9D and without having regard to any election exercised in terms of section 9D(13)).”;

(h) by the substitution for subparagraphs (3) and (4) of the following subparagraphs:

“(3) Paragraph 8(b) applies in respect of any capital gain determined in respect of any disposal of any equity share in any foreign company—

(a) by a person which is or was disregarded in terms of subparagraphs (2) and (5), or

(b) by a headquarter company which is or was disregarded in terms of subparagraphs (2A) and (5).

in any year of assessment, if—

[(a)](i) the foreign company prior to that disposal was a controlled foreign company in relation to that person or headquarter company or any other company in the same group of companies as that person or headquarter company;

[(b)](ii) the equity share in that foreign company was disposed of to a connected person in relation to that person or headquarter company either before or after that disposal;

[(c)](iii) that person or headquarter company—

[(i)](aa) disposed of that equity share for no consideration or for consideration which does not reflect an arm’s length price, other than a distribution contemplated in **[subitem (ii)]** subsubitem (bb);

[(ii)](bb) disposed of that equity share by means of a distribution unless the full amount of that distribution—

[(aa)](A) was subject to or would, but for the provisions of section 64B(5)(f), have been subject to secondary tax on companies; or

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~~[(bb)](B)~~ was included in the income of a shareholder of that foreign company or would but for the provisions of section 10(1)(k)(ii)(dd) have been so included; or

~~[(iii)](cc)~~ disposed of any consideration received or accrued from the disposal of that equity share (or any amount received or accrued in exchange therefor) in terms of any transaction, operation or scheme of which the disposal of the equity share forms part—

~~[(aa)](A)~~ for no consideration or for consideration which does not reflect an arm's length price (other than a distribution contemplated in ~~[(bb)]~~ subsubitem (B));

~~[(bb)](B)~~ by means of a distribution by a company, unless the full amount of that distribution—

~~[(A)](AA)~~ was subject to or would, but for the provisions of section 64B(5)(f), have been subject to secondary tax on companies; or

~~[(B)](BB)~~ was included in the income of a shareholder of that company or would but for the provisions of section 10(1)(k)(ii)(dd) have been so included; and

~~[(d)](iv)~~ that foreign company ceased in terms of any transaction, operation or scheme of which the disposal of the equity share forms part, to be a controlled foreign company in relation to that person or other company in the same group of companies as that person (having regard solely to any rights contemplated in paragraph (a) of the definition of 'participation rights' in section 9D and without having regard to any election exercised in terms of section 9D(13)).

(4) Where subparagraph (3) does not apply due to the fact that any distribution as provided for in subparagraph ~~[(3)(c)]~~ (3)(iii)—

- (a) would have been subject to secondary tax on companies but for section 64B(5)(f); or
- (b) would have been included in the income of the company to which that distribution was made but for section 10(1)(k)(ii)(dd),

and the company to which that distribution was made, disposes of any amount of that distribution in the circumstances contemplated in subparagraph ~~[(3)(c)(i), (ii) or (iii)]~~

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(3)(iii)(aa), (bb) or (cc), that company must be treated as having disposed of the equity share in that foreign company by means of a disposal which is or was disregarded in terms of subparagraph (2).”;

- (i) by the substitution in subparagraph (3)(iii)(bb) for subsubitem (B) of the following subsubitem:

“(B) was included in the income of a shareholder of that foreign company or would but for the provisions of section **[10(1)(k)(ii)(dd)]** 10B(2)(a) or (b) have been so included; or”;

- (j) by the substitution in subparagraph (3)(iii)(cc)(B) for subsubitem (BB) of the following subsubitem:

“(BB) was included in the income of a shareholder of that company or would but for the provisions of section **[10(1)(k)(ii)(dd)]** 10B(2)(a) or (b) have been so included; and”;

- (k) by the substitution in subparagraph (3)(iv) for the words following subsubitem (bb) of the following words:

“(having regard solely to any rights contemplated in paragraph (a) of the definition of ‘participation rights’ in section 9D **[and without having regard to any election exercised in terms of section 9D(13)]**).”;

- (l) by the substitution in subparagraph (4) for item (b) of the following item:

“(b) would have been included in the income of the company to which that distribution was made but for section **[10(1)(k)(ii)(dd)]** 10B(2)(a) or (b).”; and

- (m) by the substitution in subparagraph (5) for the words preceding the proviso of the following words:

“A person must disregard any capital gain **[or capital loss]** determined in respect of any **[capital distribution contemplated in paragraph 67A, 76, 76A or 77]** foreign return of capital received by or accrued to that person from a ‘foreign company’ (other than a foreign financial instrument holding company or an interest contemplated in paragraph 2(2)) where that person (whether alone or together with any other person forming part of the same group of companies as that person) holds at least **[20]** 10 per cent of the total equity shares and voting rights in that company”.

(2) Paragraphs (a), (b) (c), (d), (e), (f), (h) and (m) of subsection (1) are deemed to have come into operation on 1 January 2012 and apply in respect of disposals made on or after that date.

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

(4) Paragraphs (i), (j), (k) and (l) of subsection (1) are deemed to have come into operation on 1 April 2012 and apply in respect of disposals made on or after that date.

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**Amendment of paragraph 74 of Eighth Schedule to Act 58 of 1962, as amended by section 106 of Act 60 of 2001, section 95 of Act 74 of 2002, section 113 of Act 45 of 2003, section 83 of Act 35 of 2007, section 59 of Act 3 of 2008, section 78 of Act 17 of 2009, section 110 of Act 7 of 2010 and section 117 of Act 24 of 2011**

45. (1) Paragraph 74 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended by the substitution in the definition of “date of distribution” for the words preceding subparagraph (a) of the following words:

“**‘date of distribution’**, in relation to any distribution, means the date of payment of the distribution, except where the distribution is made—”.

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

**Amendment of paragraph 75 of Eighth Schedule to Act 58 of 1962, as inserted by section 38 of Act 5 of 2001 and amended by section 114 of Act 45 of 2003, section 29 of Act 16 of 2004, section 79 of Act 17 of 2009 and section 118 of Act 24 of 2011**

46. (1) Paragraph 75 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended by the substitution for subsection (1) of the following subsection:

“(1) Where a company makes a distribution of an asset *in specie* to a person holding a share in that company[,]—

(a) that company must be treated as having disposed of that asset to that shareholder on the date of distribution for an amount received or accrued equal to the market value of that asset on that date; and

(b) that person must be treated as having acquired that asset on the date of distribution and for expenditure equal to the market value of that asset on that date, which expenditure must be treated as an amount of expenditure actually incurred for the purposes of paragraph 20(1)(a).”

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

**Amendment of paragraph 76 of Eighth Schedule to Act 58 of 1962, as amended by section 107 of Act 60 of 2001, section 96 of Act 74 of 2002, section 115 of Act 45 of 2003, section 30 of Act 16 of 2004, section 81 of Act 31 of 2005, section 84 of Act 35 of 2007, section 60 of Act 3 of 2008, section 84 of Act 60 of 2008 and section 119 of Act 24 of 2011**

47. (1) Paragraph 76 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended—  
(a) by the substitution for the heading of the following heading:

“**Foreign returns of capital and returns of capital by way of distributions of cash or assets *in specie***”;

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(b) by the substitution in subparagraph (1) for the words preceding item (a) of the following words:

“Subject to subparagraph (2), where a foreign return of capital or return of capital by way of a distribution of cash or an asset *in specie* (other than a distribution of a share in terms of an unbundling transaction contemplated in section 46(1)) is received by or accrues to a shareholder in respect of a share, that shareholder must where the date of distribution of that cash or asset occurs—”;

(c) by the substitution in subparagraph (1) for item (b) of the following item:

“(b) on or after valuation date but before 1 October 2007 and that share is disposed of by the shareholder on or before **[31 December 2011]** 31 March 2012, treat the amount of that cash or the market value of that asset as proceeds when that share is disposed of;”;

(d) by the substitution for subparagraphs (2), (3) and (4) of the following subparagraphs:

“(2) Where a shareholder uses the weighted average method in respect of shares that are identical assets as contemplated in paragraph 32(3A)(a) and a return of capital or foreign return of capital by way of a distribution of cash or an asset *in specie* (other than a distribution of a share in terms of an unbundling transaction contemplated in section 46(1)) is received by or accrues to that shareholder in respect of those shares on or after valuation date but before 1 October 2007, the weighted average base cost of those shares must be determined by—

(a) deducting the amount of that cash or the market value of that asset from the base cost of those shares held when that return of capital or foreign return of capital was received or accrued; and

(b) dividing the result by the number of those shares held when that return of capital or foreign return of capital was received or accrued.

(3) Where a return of capital or foreign return of capital is effected by way of a distribution of an asset *in specie*, that asset must be treated as having been acquired by the person to whom the distribution is made on the date of distribution and for expenditure equal to the market value of that asset on that date, which expenditure must be treated as an amount of expenditure actually incurred for the purposes of paragraph 20(1)(a).

(4) Every—

(a) company that makes a distribution to any other person; and

(b) **[every]** person that pays a distribution to any other person on behalf of a company, on or after 1 April 2012 must, by the time of the distribution or payment, notify that other person in writing of the extent to which the distribution or payment constitutes a return of capital.”.

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(2) Subsection (1) is deemed to have come into operation on 1 January 2011.

## **Amendment of paragraph 76A of Eighth Schedule to Act 58 of 1962, as inserted by section 85 of Act 35 of 2007 and amended by section 61 of Act 3 of 2008 and section 120 of Act 24 of 2011**

48. (1) Paragraph 76A of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended—

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

“(1) Where—

- (a) a return of capital or foreign return of capital by way of a distribution of cash or an asset *in specie* (other than a share distributed in terms of an unbundling transaction contemplated in section 46(1)) is received by or accrues to a shareholder in respect of a share; and
- (b) that return of capital or foreign return of capital is received by or accrues to that shareholder on or after 1 October 2007 and before 1 April 2012,

that shareholder must be deemed to have disposed of part of that share on the date that the return of capital or foreign return of capital is received by or accrues to the shareholder.”;

(b) by the substitution for subparagraph (1A) of the following subparagraph:

“(1A) Subject to paragraph 76(2), where—

- (a) a return of capital or foreign return of capital by way of a distribution of a cash or an asset *in specie* (other than a share distributed in terms of an unbundling transaction contemplated in section 46(1)) is received by or accrues to a shareholder in respect of a share;
- (b) that return of capital or foreign return of capital is received by or accrues to that shareholder on or after valuation date but before 1 October 2007; and
- (c) that share is not disposed of before 1 April 2012,

that return of capital or foreign return of capital must be treated as having been distributed on 1 April 2012.”; and

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

“(3) For purposes of paragraph 33(1) the market value of the part disposed of under this paragraph must be treated as being equal to the amount of the cash or the market value of the asset received or accrued by way of a return of capital or a foreign return of capital.”.

(2) Subsection (1) is deemed to have come into operation on 1 January 2011.

## **Amendment of paragraph 78 of Eighth Schedule to Act 58 of 1962, as amended by section 97 of Act 74 of 2002, section 116 of Act 45 of 2003, section 31 of Act 16 of 2004, section 85 of Act 60 of 2008, section 111 of Act 7 of 2010 and section 123 of Act 24 of 2011**

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49. (1) Paragraph 78 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended—

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

“(1) Where a company makes a distribution of shares for no consideration, those shares must be treated as having been acquired on the date of distribution for expenditure incurred and paid of nil, except to the extent that the distribution of those shares constitutes a dividend or foreign dividend, in which case they must be treated as having been acquired on the date of distribution for expenditure incurred and paid equal to the amount of that dividend or foreign dividend.”;

(b) by the insertion of the following subparagraph:

“(2) Subject to paragraphs 11(1)(g), 23 and 35(2), where a company issues shares in substitution of previously held shares in that company by reason of a subdivision or consolidation or a conversion contemplated in section 40A or 40B—

(a) the shareholder must disregard any capital gain or capital loss determined in respect of that substitution; and

(b) those newly issued shares must be treated as—

(i) having been acquired for an amount of expenditure equal to the aggregate expenditure allowable in terms of paragraph 20 incurred in respect of those previously held shares which expenditure must be treated as having been incurred on the same date as the expenditure incurred in respect of those previously held shares;

(ii) having been acquired on the same date as those previously held shares; and

(iii) having a market value equal to any market value adopted or determined in respect of those previously held shares in terms of paragraph 29(4),

with the aggregate expenditure or market value as the case may be allocated among all those newly issued shares in proportion to their relative market values.”; and

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

“(3) Where a company issues shares in substitution of previously held shares as contemplated in subparagraph (2) and also effects a return of capital or foreign return of capital by way of a distribution of cash or assets *in specie* with respect to those previously held shares—

(a) the shareholder must disregard any capital gain or capital loss determined in respect of that substitution but not in respect of the transfer of those previously held shares exchanged for that return of capital or foreign return of capital; and

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(b) both the substitution and that return of capital or foreign return of capital must be treated as separate transactions with the expenditure allowable in terms of paragraph 20 and any market value adopted or determined in terms of paragraph 29(4) in respect of those previously held shares allocated between both transactions based on the relative market values of the newly issued shares on the date of distribution and that return of capital or foreign return of capital received in exchange therefor.”.

(2) Paragraphs (a) and (c) of subsection (1) are deemed to have come into operation on 1 April 2012.

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

## **Amendment of paragraph 2 of Tenth Schedule to Act 58 of 1962, as inserted by section 63 of Act 20 of 2006, amended by section 71 of Act 8 of 2007 and section 90 of Act 60 of 2008**

**50.** (1) The Tenth Schedule to the Income Tax Act, 1962, is hereby amended by the substitution for paragraph 2 of the following paragraph:

“2. The rate of tax on taxable income derived from oil or gas income of any oil and gas company will not exceed 28 cents on each rand of taxable income.”.

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

## **Amendment of section 10 of Act 101 of 1990**

**51.** (1) Section 10 of the Income Tax Act, 1990 (Act No. 101 of 1990), is hereby amended—

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

(b) by the repeal in subsection (2) of paragraph (b).

(2) Subsection (1) is deemed to have come into operation on 11 July 1990.

## **Amendment of section 8 of Act 25 of 2007, as amended by section 127 of Act 60 of 2008, section 97 of Act 17 of 2009, section 127 of Act 7 of 2010 and section 148 of Act 24 of 2011**

**52.** (1) Section 8 of the Securities Transfer Tax Act, 2007, is hereby amended—

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

“(q) if—

(i) the person to whom that security is transferred is a member who has purchased the security in that member’s capacity as principal; or

(ii) the transaction is one in which the person to whom that security is transferred is a member who has purchased the security to provide an equity hedging facility to a third party, or where such member makes the security available for reward to a

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non-member, by means of a derivative instrument, to enable that non-member to provide an equity hedging facility to a third party; [or]”;

(b) by the substitution in subsection (1) for the full-stop at the end of paragraph (r) of the expression “; or”; and

(c) by the insertion in subsection (1) of the following paragraph:

“(s) if that security constitutes a share in a headquarter company as defined in section 1 of that Act.”.

(2) Paragraph (a) of subsection (1) is deemed to have come into operation on 1 January 2011 and applies in respect of transactions entered into—

(a) on or after that date; and

(b) on or before 31 December 2012.

(2) Paragraphs (b) and (c) are deemed to have come into operation on 1 January 2011.

## **Amendment of section 13 of Act 60 of 2008**

53. (1) Section 13 of the Revenue Laws Amendment Act, 2008, is hereby amended—

(a) by the deletion in subsection (1) of paragraphs (a); and

(b) by the deletion of subsection (2).

(2) Subsection (1) is deemed to have come into operation on 8 January 2009.

## **Amendment of section 13 of Act 17 of 2009**

54. (1) Section 13 of the Taxation Laws Amendment Act, 2009, is hereby amended—

(a) by the deletion in subsection (1) of paragraphs (h) and (i); and

(b) by the deletion of subsection (6).

(2) Subsection (1) is deemed to have come into operation on 30 September 2009.

## **Repeal of section 12 of Act 18 of 2009**

55. (1) Section 12 of the Taxation Laws Second Amendment Act, 2009, is hereby repealed.

(2) Subsection (1) is deemed to have come into operation on 30 September 2009.

## **Repeal of section 111 of Act 7 of 2010**

56. (1) Section 111 of the Taxation Laws Amendment Act, 2010, is hereby repealed.

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(2) Subsection (1) is deemed to have come into operation on 2 November 2010.

## **Amendment of section 7 of Act 24 of 2011**

**57.** (1) Section 7 of the Taxation Laws Amendment Act, 2011, is hereby amended by the substitution for subsections (3) and (4) of the following subsections—

“(3) Paragraphs *(b)*, *(d)*, *(e)*, *(f)*, *(h)*, *(k)*, *(m)*, *(u)* and *(zJ)* of subsection (1) are deemed to have come into operation on 1 January 2011.

(4) Paragraphs *(c)*, *(g)*, *(i)*, [***(u)***], *(w)*, *(zL)*, *(zN)* and *(zO)* of subsection (1) come into operation on 1 April 2012.”

(2) Subsection (1) is deemed to have come into operation on 28 December 2011.

## **Repeal of section 21 of Act 24 of 2011**

**58.** (1) Section 21 of the Taxation Laws Amendment Act, 2011, is hereby repealed.

(2) Subsection (1) is deemed to have come into operation on 28 December 2011.

## **Amendment of section 28 of Act 24 of 2011**

**59.** (1) Section 28 of the Taxation Laws Amendment Act, 2011, is hereby amended—

(a) by the substitution for subsection (3) of the following subsection—

“(3) Paragraphs *(b)*, *(c)*, *(f)* and *(j)* of subsection (1) are deemed to have come into operation on 1 March 2011 and apply in respect of amounts received or accrued during years of assessment commencing on or after that date.”; and

(a) by the substitution for subsection (8) of the following subsection—

“(8) Paragraph *(p)* of subsection (1) comes into operation on 1 April 2012 and applies in respect of dividends received or accrued on or after that date”.

(2) Subsection (1) is deemed to have come into operation on 28 December 2011.

## **Amendment of section 29 of Act 24 of 2011**

**60.** (1) Section 29 of the Taxation Laws Amendment Act, 2011, is hereby amended by the substitution for subsection (2) of the following subsection—

“(2) Subsection (1) comes into operation—

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- (a) insofar as it applies to any person that is a natural person, deceased estate, insolvent estate or **[special]** trust, on 1 March 2012 and applies in respect of dividends received or accrued on or after that date; and
- (b) insofar as it applies to any person that is a person other than a natural person, deceased estate, insolvent estate or **[special]** trust, on 1 April 2012 and applies in respect of dividends received or accrued on or after that date.”.

(2) Subsection (1) is deemed to have come into operation on 28 December 2011.

## **Amendment of section 32 of Act 24 of 2011**

**61.** (1) Section 32 of the Taxation Laws Amendment Bill, 2011, is hereby amended by the substitution for subsection (2) of the following subsection:

“(2) Subsection (1) comes into operation on **[1 April 2012]** 1 October 2012 **[unless a later date is determined by the Minister by notice in the *Gazette*]** and applies in respect of expenditure incurred in respect of research and development on or after **[1 April 2012]** 1 October 2012 **[or such later date determined by the Minister by notice in the *Gazette*]** but before 1 **[April]** October 2022.”.

(2) Subsection (1) is deemed to have come into operation on 28 December 2011.

## **Amendment of section 43 of Act 24 of 2011**

**62.** (1) Section 43 of the Taxation Laws Amendment Bill, 2011, is hereby amended by the substitution for subsection (3) of the following subsections:

“(3) **[Paragraphs]** Paragraph (c) **[and (f)]** of subsection (1) **[are]** is deemed to have come into operation on 1 March 2011 and **[apply]** applies in respect of the year of assessment commencing on or after that date.

(4) Paragraph (f) of subsection (1) is deemed to have come into operation on 1 March 2011 and applies in respect of years of assessment commencing on or after that date.”.

(2) Subsection (1) is deemed to have come into operation on 1 March 2011.

## **Amendment of section 49 of Act 24 of 2011**

**63.** (1) Section 49 of the Taxation Laws Amendment Act, 2011, is hereby amended by the substitution for subsection (2) of the following subsection—

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

(a) on or after that date; and

(b) on or before 31 December 2012.”.

(2) Subsection (1) is deemed to have come into operation on 28 December 2011.

## **Amendment of section 50 of Act 24 of 2011**

**64.** (1) Section 49 of the Taxation Laws Amendment Act, 2011, is hereby amended by the substitution for subsection (2) of the following subsection—

“(2) Subsection (1) is deemed to have come into operation on 3 August 2011 and applies in respect of any amount of interest incurred in terms of a debt instrument where that debt instrument was issued or used for the purpose of procuring, enabling, facilitating or funding the acquisition by an acquiring company of an asset in terms of a reorganisation transaction entered into—

(a) on or after that date; and

(b) on or before 31 December 2012.”.

(2) Subsection (1) is deemed to have come into operation on 28 December 2011.

## **Amendment of section 70 of Act 24 of 2011**

**65.** (1) Section 70 of the Taxation Laws Amendment Act, 2011, is hereby amended by the substitution for subsections (2) and (3) of the following subsections—

“(2) Paragraphs (a) and (c) of subsection (1) come into operation on 30 August 2011 and apply in respect of debt instruments and shares issued on or after that date.

“(3) Paragraph (b) of subsection (1) comes into operation on 1 January 2012 and applies in respect of years of assessment commencing on or after that date.”.

(2) Subsection (1) is deemed to have come into operation on 28 December 2011.

## **Amendment of section 72 of Act 24 of 2011**

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**66.** (1) Section 72 of the Taxation Laws Amendment Act, 2011, is hereby amended by the substitution in subsection (1) for paragraph (a) of the following paragraph—

“(a) by the substitution in subsection (1)(a) for **[paragraph (a)]** the words preceding subparagraph (i) of the following **[paragraph] words**:

‘**[(a)]** in terms of which any company (hereinafter referred to as the ‘liquidating company’) distributes all its assets (other than assets it elects to use to settle any debts incurred by it in the ordinary course of its trade) to its shareholders in anticipation of or in the course of the liquidation, winding up or deregistration of that company, but only to the extent to which those assets are so disposed of to another company (hereinafter referred to as the ‘holding company’) which is a resident and which—’;”.

(2) Subsection (1) is deemed to have come into operation on 28 December 2011.

## **Amendment of section 116 of Act 24 of 2011**

**67.** (1) Section 116 of the Taxation Laws Amendment Act, 2011, is hereby amended—

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

“(d) by the substitution in subparagraph (2)(b) for the full stop at the end of subitem **[(ii)]** **(iii)** of the expression ‘; or’;”;

(b) by the deletion in subsection (1) of paragraphs (f), (g), (h), (i) and (j); and

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

“(3) **[Paragraphs] Paragraph (b) [, (f), (g), (h), (i) and (j)]** of subsection (1) **[come] comes** into operation on 1 April 2012 and **[apply] applies** in respect of disposals made on or after that date.

(2) Subsection (1) is deemed to have come into operation on 28 December 2011.

## **Amendment of section 119 of Act 24 of 2011**

**68.** (1) Section 119 of the Taxation Laws Amendment Act, 2011, is hereby amended by the substitution for subsection (2) of the following subsection—

“(2) Subsection (1) **[comes] is deemed to have come** into operation on **[1 April 2012] 1 January 2011.**”

(2) Subsection (1) is deemed to have come into operation on 28 December 2011.

## **Amendment of section 121 of Act 24 of 2011**

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**69.** (1) Section 121 of the Taxation Laws Amendment Act, 2011, is hereby amended by the substitution for subsection (2) of the following subsection—

“(2) Subsection (1) comes into operation on 1 January 2012 and applies in respect of returns of capital and foreign returns of capital received or accrued on or after that date.”

(2) Subsection (1) is deemed to have come into operation on 28 December 2011.