

REPUBLIC OF SOUTH AFRICA

TAXATION LAWS AMENDMENT BILL

(As amended by the Standing Committee on Finance (National Assembly))
(The English text is the official text of the Bill)

(MINISTER OF FINANCE)

[B 13B—2014]

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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 amend, delete and insert certain definitions; to make corrections; to repeal certain provisions; to amend provisions; to make new provision; and to make textual and consequential amendments;
 - amend the Value-Added Tax Act, 1991, so as to amend certain provisions and schedules;
 - repeal the Tax on Retirements Funds Act, 1996;
 - amend the Securities Transfer Tax Act, 2007, so as to amend a provision;
 - amend the Taxation Laws Amendment Act, 2011, so as to amend a provision;
 - amend the Employment Tax Incentive Act, 2013, so as to amend certain provisions;
 - amend the Taxation Laws Amendment Act, 2013, so as to amend certain provisions;
- and to provide for matters connected therewith.

BE 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, section 7 of Act 24 of 2011, section 271 of Act 28 of 2011, read with item 23 of Schedule 1 to that Act, section 2 of Act 22 of 2012 and section 4 of Act 31 of 2013

1. (1) Section 1 of the Income Tax Act, 1962 (Act No. 58 of 1962), is hereby amended—

- (a) by the substitution in subsection (1) in paragraph (e) of the definition of “company” for subparagraph (iii) of the following subparagraph:
 - “(iii) portfolio of a collective investment scheme in property that qualifies as a REIT as defined in paragraph 13.1(x) of the JSE Limited Listing Requirements; or”;
- (b) by the substitution in subsection (1) in the definition of “contributed tax capital” for the words preceding paragraph (a) of the following words:

“‘**contributed tax capital**’, in relation to a class of shares [issued by] in a company, means—”;
- (c) by the substitution in subsection (1) in paragraph (a) of the definition of “contributed tax capital” for the words preceding subparagraph (i) of the following words:

“in relation to a class of shares issued by a company, in the case of a foreign company that becomes a resident on or after 1 January 2011, an amount equal to the sum of—”;
- (d) by the deletion in subsection (1) of the word “and” at the end of subparagraph (i) of paragraph (a) of the definition of “contributed tax capital”, the addition of the expression “; and” at the end of subparagraph (ii) of that paragraph, and the addition of the following subparagraph:
 - “(iii) if the shares of that class include or consist of shares that were converted from another class of shares of that company to that class of shares—
 - (aa) any consideration received by or accrued to that company in respect of that conversion; and
 - (bb) the amount contemplated in subparagraph (cc) that was determined in respect of shares of the other class of shares that were so converted.”;
- (e) by the substitution in subsection (1) in paragraph (a) of the definition of “contributed tax capital” for subparagraphs (aa) and (bb) of the following subparagraphs:
 - “(aa) the company has transferred on or after the date on which the company becomes a resident for the benefit of any person holding a share in that company of that class in respect of that share; [and]
 - (bb) has by the date of the transfer been determined by the directors of the company or by some other person or body of persons with comparable authority to be an amount so transferred; and
 - (cc) in the case of a convertible class of shares some of the shares of which have been converted to another class of shares, so much of the amount contemplated in this paragraph in respect of that convertible class of shares immediately prior to that conversion as bears to that amount the same ratio as the number of shares so converted bears to the total number of that convertible class of shares prior to that conversion.”;
- (f) by the substitution in subsection (1) in paragraph (b) of the definition of “contributed tax capital” for the words preceding subparagraph (i) of the following words:

“in relation to a class of shares issued by a company, in the case of any other company, an amount equal to the sum of—”;
- (g) by the deletion in subsection (1) of the word “and” at the end of subparagraph (1) of paragraph (b) of the definition of “contributed tax capital”, the addition of the expression “; and” at the end of subparagraph (ii) of that paragraph, and the addition of the following subparagraph:

- “(iii) if the shares of that class include or consist of shares that were converted from another class of shares of that company to that class of shares—
- (aa) any consideration received by or accrued to that company in respect of that conversion; and
 - (bb) the amount contemplated in subparagraph (cc) that was determined in respect of shares of the other class of shares that were so converted.”;
- (h) by the substitution in subsection (1) in paragraph (b) of the definition of “contributed tax capital” for subparagraphs (aa) and (bb) of the following subparagraphs:
- “(aa) the company has transferred on or after 1 January 2011 for the benefit of any person holding a share in that company of that class in respect of that share; **[and]**
 - (bb) has by the date of the transfer been determined by the directors of the company or by some other person or body of persons with comparable authority to be an amount so transferred; and
 - (cc) in the case of a convertible class of shares some of the shares of which have been converted to another class of shares, so much of the amount contemplated in this paragraph in respect of that convertible class of shares immediately prior to that conversion as bears to that amount the same ratio as the number of shares so converted bears to the total number of that convertible class of shares prior to that conversion.”;
- (i) by the insertion in subsection (1) after the definition of “equity share” of the following definition:
- “**‘Estate Duty Act’** means the Estate Duty Act, 1955 (Act No. 45 of 1955);”;
- (j) by the insertion in subsection (1) after the definition of “Financial Markets Act” of the following definitions:
- “**‘Financial Services Board’** means the board established by the Financial Services Board Act;
‘Financial Services Board Act’ means the Financial Services Board Act, 1990 (Act No. 97 of 1990);”;
- (k) by the deletion in subsection (1) in paragraph (cA) of the definition of “gross income” of subparagraph (i);
- (l) by the insertion in subsection (1) after paragraph (cA) of the definition of “gross income” of the following paragraph:
- “(cB) any amount received by or accrued to any natural person as consideration for any restraint of trade imposed on that person in respect or by virtue of—
- (i) employment or the holding of any office; or
 - (ii) any past or future employment or the holding of an office.”;
- (m) by the substitution in subsection (1) for the definition of “post-1990 gold mine” of the following definition:
- “**‘post-1990 gold mine’** means a gold mine—
- (a) which, in the opinion of the Director-General: Mineral and Energy Affairs, is an independent workable proposition and in respect of which a mining authorisation for gold mining was issued for the first time after 14 March 1990 in terms of the Minerals Act, 1991 (Act No. 50 of 1991); or
 - (b) for which a mining permit or mining right for gold mining (other than a mining permit or mining right issued on conversion of an old order mining right as defined in paragraph 1 of Schedule II to the Mineral and Petroleum Resources Development Act) was issued for the first time on or after 1 May 2004 in terms of that Act;”;
- (n) by the substitution in subsection (1) for the definition of “public private partnership” of the following definition:
- “**‘Public Private Partnership’** means a Public Private Partnership as defined in—
- (a) Regulation 16 of the Treasury Regulations issued in terms of section 76 of the Public Finance Management Act; or

- (b) the Municipal Public-Private Partnership Regulations made in terms of section 168 of the Local Government: Municipal Finance Management Act, 2003 (Act No. 56 of 2003);”;
- (o) by the deletion in subsection (1) of the definition of “regional electricity distributor”;
- (p) by the substitution subsection (1) in the definition of “**retirement date**” for paragraph (a) of the following paragraph:
 “(a) a member of a pension fund, pension preservation fund, provident fund, provident preservation fund or retirement annuity fund, elects to retire and in terms of the rules of that fund, becomes entitled to an annuity or a lump sum benefit contemplated in paragraph 2(1)(a)(i) of the Second Schedule on or subsequent to attaining normal retirement age; or;”;
- (q) by the substitution in subsection (1) for the definition of “retirement interest” of the following definition:
 “**‘retirement interest’** means a member’s share of the value of a pension fund, pension preservation fund, provident fund, provident preservation fund or retirement annuity fund as determined in terms of the rules of the fund [upon his or her retirement date] on the date on which he or she elects to retire;”;
- (r) by the insertion in subsection (1) after the definition of “share” of the following definition:
 “**‘Share Blocks Control Act’** means the Share Blocks Control Act, 1980 (Act No. 59 of 1980);”;
- (s) by the insertion in subsection (1) after the definition of “Short-term Insurance Act” of the following definitions:
 “**‘small business funding entity’** means any entity, approved by the Commissioner in terms of section 30C;
‘small, medium or micro-sized enterprise’ means any—
 (a) person that qualifies as a micro business as defined in paragraph 1 of the Sixth Schedule; or
 (b) any person that is a small business corporation as defined in section 12E(4);”.
- (2) Paragraph (a) of subsection (1) comes into operation on 1 January 2015.
- (3) Paragraph (m) of subsection (1) is deemed to have come into operation on 1 May 2004.
- (4) Paragraphs (k), (l), (p), (q) and (s) of subsection (1) come into operation on 1 March 2015.

Amendment of section 3 of Act 58 of 1962, as amended by section 3 of Act 141 of 1992, section 3 of Act 21 of 1994, section 3 of Act 21 of 1995, section 20 of Act 30 of 1998, section 3 of Act 59 of 2000, section 6 of Act 5 of 2001, section 4 of Act 19 of 2001, section 18 of Act 60 of 2001, section 7 of Act 74 of 2002, section 13 of Act 45 of 2003, section 4 of Act 16 of 2004, section 2 of Act 21 of 2006, section 1 of Act 9 of 2007, section 3 of Act 36 of 2007, section 1 of Act 4 of 2008, section 2 of Act 61 of 2008, section 5 of Act 60 of 2008, section 14 of Act 8 of 2010, section 271 of Act 28 of 2011, read with paragraph 25 of Schedule 1 to that Act and section 2 of Act 39 of 2013

2. Section 3 of the Income Tax Act, 1962, is hereby amended—

- (a) by the substitution in subsection (5) for the words preceding paragraph (a) of the following words:
 “The Commissioner may, in writing, and on such conditions as may be agreed upon between the Commissioner and the executive officer of the Financial Services Board appointed in terms of section 13 of the Financial Services Board Act, 1990 (Act No. 97 of 1990), delegate to that executive officer his or her power—”;
- (b) by the substitution for subsection (6) of the following subsection:
 “(6) Any person aggrieved by a decision of the executive officer to approve or to withdraw an approval of a fund in terms of subsection (5) must, notwithstanding section 26(2) of the Financial Services Board Act, [1990,] lodge his or her objection with the Commissioner in accordance with the provisions of Chapter 9 of the Tax Administration Act.”.

Amendment of section 6B of Act 58 of 1962, as inserted by section 7 of Act 22 of 2012

3. (1) Section 6B of the Income Tax Act, 1962, is hereby amended by the substitution in subsection (3) for paragraph (c) of the following paragraph:

“(c) in any other case, if the aggregate of—

- (i) the amount of the fees paid by the person to a medical scheme or fund contemplated in section 6A(2)(a) as exceeds four times the amount of the medical scheme fees tax credit to which that person is entitled under section 6A(2)(b); and
- (ii) the amount of qualifying medical expenses paid by the person, exceeds 7,5 per cent of the person’s taxable income (excluding any retirement fund lump sum benefit, retirement fund lump sum withdrawal benefit and severance benefit), 25 per cent of the excess.”.

(2) Subsection (1) is deemed to have come into operation on 1 March 2014 and applies in respect of years of assessment commencing on or after that date.

Amendment of section 7 of Act 58 of 1962, as amended by section 5 of Act 90 of 1962, section 8 of Act 88 of 1965, section 5 of Act 55 of 1966, section 7 of Act 94 of 1983, section 2 of Act 30 of 1984, section 5 of Act 90 of 1988, section 5 of Act 70 of 1989, section 4 of Act 101 of 1990, section 7 of Act 129 of 1991, section 5 of Act 141 of 1992, section 6 of Act 21 of 1995, section 23 of Act 30 of 1998, section 13 of Act 53 of 1999, section 5 of Act 59 of 2000, section 10 of Act 74 of 2002, section 17 of Act 45 of 2003, section 5 of Act 32 of 2004, section 9 of Act 31 of 2005, section 8 of Act 35 of 2007, section 4 of Act 3 of 2008, section 8 of Act 60 of 2008, section 10 of Act 17 of 2009, section 15 of Act 24 of 2011 and section 8 of Act 31 of 2013

4. (1) Section 7 of the Income Tax Act, 1962, is hereby amended by the substitution in subsection (11) for paragraph (b) of the following paragraph:

“(b) [section 37D(1)(d)(ii)] section 37D(1)(e) of the Pension Funds Act, to the extent that the deduction is a result of a deduction contemplated in paragraph (a);”.

(2) Subsection (1) is deemed to have come into operation on 28 February 2014.

Amendment of section 8 of Act 58 of 1962, as amended by section 6 of Act 90 of 1962, section 6 of Act 90 of 1964, section 9 of Act 88 of 1965, section 10 of Act 55 of 1966, section 10 of Act 89 of 1969, section 6 of Act 90 of 1972, section 8 of Act 85 of 1974, section 7 of Act 69 of 1975, section 7 of Act 113 of 1977, section 8 of Act 94 of 1983, section 5 of Act 121 of 1984, section 4 of Act 96 of 1985, section 5 of Act 65 of 1986, section 6 of Act 85 of 1987, section 6 of Act 90 of 1988, section 5 of Act 101 of 1990, section 9 of Act 129 of 1991, section 6 of Act 141 of 1992, section 4 of Act 113 of 1993, section 6 of Act 21 of 1994, section 8 of Act 21 of 1995, section 6 of Act 36 of 1996, section 6 of Act 28 of 1997, section 24 of Act 30 of 1998, section 14 of Act 53 of 1999, section 17 of Act 30 of 2000, section 6 of Act 59 of 2000, section 7 of Act 19 of 2001, section 21 of Act 60 of 2001, section 12 of Act 30 of 2002, section 11 of Act 74 of 2002, section 18 of Act 45 of 2003, section 6 of Act 32 of 2004, section 4 of Act 9 of 2005, section 21 of Act 9 of 2006, section 5 of Act 20 of 2006, section 6 of Act 8 of 2007, section 9 of Act 35 of 2007, sections 1 and 5 of Act 3 of 2008, section 9 of Act 60 of 2008, section 11 of Act 17 of 2009, section 10 of Act 7 of 2010, section 16 of Act 24 of 2011, section 271 of Act 28 of 2011, read with paragraph 30 of Schedule 1 to that Act, section 9 of Act 22 of 2012 and section 9 of Act 31 of 2013

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

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

“(i) any allowance or advance in respect of transport expenses shall, to the extent to which such allowance or advance has been expended by the recipient on private travelling (including travelling between his or her place of residence and his or her place of employment or business or any other travelling done for his or her private or domestic purposes), be deemed not to have been actually expended on travelling on business;”;

(b) by the deletion in subsection (4) of paragraphs (g), (h), (i) and (j); and

- (c) by the substitution in subsection (5) for paragraph (b) of the following paragraph:

“(b) Where any amount has been paid by any person for the right of use or occupation of any property which is thereafter acquired by that or any other person for a consideration which in the opinion of the Commissioner is not an adequate consideration or for no consideration, it shall for the purposes of paragraph (a) be deemed, unless the Commissioner having regard to the circumstances of the case otherwise decides, that the said amount, or so much thereof as does not exceed the fair market value of such property **[as determined by the Commissioner]** less the amount of the consideration, if any, for which it has been acquired as aforesaid, has been applied in reduction or towards settlement of the purchase price of such property.”

- (2) Paragraph (b) of subsection (1) is deemed to have come into operation on 12 December 2013.

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

6. Section 8C of the Income Tax Act, 1962, is hereby amended by the substitution in subsection (1)(a) for the words preceding subparagraph (i) of the following words:

“Notwithstanding sections **[9B,]** 9C and 23(m), a taxpayer must include in or deduct from his or her income for a year of assessment any gain or loss determined in terms of subsection (2) in respect of the vesting during that year of any equity instrument, if that equity instrument was acquired by that taxpayer—”

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

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

- (a) by substitution in section (1) in the definition of **“operating company”** for paragraph (a) of the following paragraph:

“(a) any company that carries on business continuously, and in the course or furtherance of that business—

- (i) provides goods or services for consideration; or
(ii) carries on exploration for natural resources;”

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

“in relation to the application of the funds derived from the issue of a preference share, means one or more of the following purposes;”

- (c) by the substitution in subsection (3)(b) for subparagraph (ii) of the following subparagraph:

“(ii) any issuer of a preference share if that preference share was issued for **[the purpose of the direct or indirect acquisition by any person of an equity share in an operating company to which that qualifying purpose relates]** a qualifying purpose;”
and

- (d) by the deletion in subsection (3)(b) of the word “or” at the end of subparagraph (v), the addition to subsection (3)(b) of the expression “; or” at the end of subparagraph (vi), and the addition to subsection (3)(b) of the following subparagraph:

“(vii) any person that holds equity shares in an issuer contemplated in subparagraph (ii) if—

- (aa) that issuer used the funds provided by that person solely for the acquisition by that issuer, other than from a company that immediately before that acquisition formed part of the same group of companies as the issuer, of equity shares in an operating company; and
(bb) the enforcement right exercisable or enforcement obligation enforceable against that person is limited to any

rights in and claims against that issuer that are held by that person.”.

(2) Subsection (1) is deemed to have come into operation on 1 January 2013 and applies in respect of any dividend or foreign dividend received or accrued during years of assessment commencing on or after that date.

Amendment of section 8F of Act 58 of 1962, as substituted by section 12 of Act 31 of 2013

8. Section 8F of the Income Tax Act, 1962, is hereby amended by the substitution in subsection (2) for paragraph (b) of the following paragraph:

“(b) accrues to a person to whom an amount is owed in respect of a hybrid debt instrument is deemed for the purposes of this Act to be a dividend in specie that [accrues] is declared and paid to that person on the last day of the year of assessment of the company contemplated in paragraph (a).”.

Amendment of section 8FA of Act 58 of 1962, as inserted by section 14 of Act 31 of 2013 and amended by section 15 of that Act.

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

“(b) accrues to a person to which an amount is owed in respect of the hybrid interest must be deemed for the purposes of this Act to be a dividend *in specie* that [accrues] is declared and paid to that person on the last day of that year of assessment of the company contemplated in paragraph (a).”.

(2) Subsection (1) is deemed to have come into operation on 1 April 2014 and applies in respect of amounts incurred on or after that date.

Amendment of section 9 of Act 58 of 1962, as substituted by section 22 of Act 24 of 2011 and amended by section 16 of Act 31 of 2013

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

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

“constitutes a lump sum, a pension or an annuity and the services in respect of which that amount is so received or accrues were rendered within the Republic”; and

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

“(3) For the purposes of paragraph (i) of subsection (2), any amount granted to a person by way of lump sum, a pension or annuity must be deemed to have been received by or to have accrued to that person in respect of services rendered by that person.”.

(2) Subsection (1) comes into operation on 1 March 2015 and applies in respect of years of assessment commencing on or after that date

Amendment of section 9C of Act 58 of 1962, as inserted by section 14 of Act 35 of 2007 and amended by section 7 of Act 3 of 2008, section 12 of Act 60 of 2008, section 15 of Act 7 of 2010, section 24 of Act 24 of 2011, section 13 of Act 22 of 2012 and section 18 of Act 31 of 2013

11. Section 9C of the Income Tax Act, 1962, is hereby amended by the substitution in subsection (1) in the definition of “qualifying share” for paragraph (a) of the following paragraph:

“(a) a share in a share block company as defined in section 1 of the Share Blocks Control Act[, 1980 (Act No. 59 of 1980)];”.

Amendment of section 9D of Act 58 of 1962, as inserted by section 9 of Act 28 of 1997 and amended by section 28 of Act 30 of 1998, section 17 of Act 53 of 1999, section 19 of Act 30 of 2000, section 10 of Act 59 of 2000, section 9 of Act 5 of 2001, section 22 of Act 60 of 2001, section 14 of Act 74 of 2002, section 22 of Act 45 of 2003, section 13 of Act 32 of 2004, section 14 of Act 31 of 2005, section 9 of Act 20 of 2006, sections 9 and 96 of Act 8 of 2007, section 15 of Act 35 of 2007, section 8 of Act 3 of 2008, section 13 of Act 60 of 2008, section 12 of Act 17 of 2009, sections 16 and 146

of Act 7 of 2010, section 25 of Act 24 of 2011, sections 14 and 156 of Act 22 of 2012 and section 19 of Act 31 of 2013

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

(a) by the deletion in subsection (1) of the definition of “**foreign financial instrument holding company**”; and

(b) by the substitution in subsection (2A) for paragraph (i) of the further proviso of the following paragraph:

“(i) the net income of a controlled foreign company in respect of a foreign tax year shall be deemed to be nil where—

(aa) the aggregate amount of **[tax]** taxes on income payable to all spheres of government of any country other than the Republic by the controlled foreign company in respect of the foreign tax year of that controlled foreign company is at least 75 per cent of the amount of normal tax that would have been payable in respect of any taxable income of the controlled foreign company had the controlled foreign company been a resident for that foreign tax year; or

(bb) all the receipts and accruals of that controlled foreign company are—

(i) attributable to any foreign business establishment of that controlled foreign company as contemplated in subsection (9)(b); and

(ii) not required to be taken into account in terms of subsection (9A); and”;

(2) Paragraph (b) of subsection (1) comes into operation on 31 December 2014 and applies in respect of years of assessment ending on or after that date.

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

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

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

“(6) This section must not apply in respect of any company that ceases to be a controlled foreign company as a result of—

(a) an amalgamation transaction as defined in section 44(1) to which section 44 applies; or

(b) a liquidation distribution as defined in section 47(1) to which section 47 applies.”; and

(b) by the addition after subsection (6) of the following subsection:

“(7) For the purposes of subsections (2) and (3), the market value of any asset must be determined in the currency of expenditure incurred to acquire that asset.”.

(2) Paragraph (a) of subsection (1) is deemed to have come into operation on 1 January 2013 and applies in respect of years of assessment commencing on or after that date.

(3) Paragraph (b) of subsection (1) comes into operation on 1 January 2015.

Amendment of section 10 of Act 58 of 1962, as amended by section 8 of Act 90 of 1962, section 7 of Act 72 of 1963, section 8 of Act 90 of 1964, section 10 of Act 88 of 1965, section 11 of Act 55 of 1966, section 10 of Act 95 of 1967, section 8 of Act 76 of 1968, section 13 of Act 89 of 1969, section 9 of Act 52 of 1970, section 9 of Act 88 of 1971, section 7 of Act 90 of 1972, section 7 of Act 65 of 1973, section 10 of Act 85 of 1974, section 8 of Act 69 of 1975, section 9 of Act 103 of 1976, section 8 of Act 113 of 1977, section 4 of Act 101 of 1978, section 7 of Act 104 of 1979, section 7 of Act 104 of 1980, section 8 of Act 96 of 1981, section 6 of Act 91 of 1982, section 9 of Act 94 of 1983, section 10 of Act 121 of 1984, section 6 of Act 96 of 1985, section 7 of Act 65 of 1986, section 3 of Act 108 of 1986, section 9 of Act 85 of 1987, section 7 of Act 90 of 1988, section 36 of Act 9 of 1989, section 7 of Act 70 of 1989, section 10 of Act 101 of 1990, section 12 of Act 129 of 1991, section 10 of Act 141 of 1992, section 7 of Act 113 of 1993, section 4 of Act 140 of 1993, section 9 of Act 21 of 1994, section 10 of Act 21 of 1995, section 8 of Act 36 of 1996, section 9 of Act 46 of 1996, section 1 of Act 49 of 1996, section 10 of Act 28 of 1997, section 29 of Act 30 of 1998, section 18 of

Act 53 of 1999, section 21 of Act 30 of 2000, section 13 of Act 59 of 2000, sections 9 and 78 of Act 19 of 2001, section 26 of Act 60 of 2001, section 13 of Act 30 of 2002, section 18 of Act 74 of 2002, section 36 of Act 12 of 2003, section 26 of Act 45 of 2003, sections 8 and 62 of Act 16 of 2004, section 14 of Act 32 of 2004, section 5 of Act 9 of 2005, section 16 of Act 31 of 2005, section 23 of Act 9 of 2006, sections 10 and 101 of Act 20 of 2006, sections 2, 10, 88 and 97 of Act 8 of 2007, section 2 of Act 9 of 2007, section 16 of Act 35 of 2007, sections 1 and 9 of Act 3 of 2008, section 2 of Act 4 of 2008, section 16 of Act 60 of 2008, sections 13 and 95 of Act 17 of 2009, section 18 of Act 7 of 2010, sections 28 and 160 of Act 24 of 2011, section 271 of Act 28 of 2011, read with paragraph 31 of Schedule 1 to that Act, sections 19, 144, 157 and 166 of Act 22 of 2012 and section 23 of Act 31 of 2013

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

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

“(cQ) the receipts and accruals of any small business funding entity approved by the Commissioner in terms of section 30C, to the extent that the receipts and accruals are derived—

(i) otherwise than from any business undertaking or trading activity; or

(ii) from any business undertaking or trading activity—

(aa) if the undertaking or activity—

(A) is integral and directly related to the sole or principal object of that small business funding entity;

(B) is carried out or conducted on a basis substantially the whole of which is directed towards the recovery of cost; and

(C) does not result in unfair competition in relation to taxable entities;

(bb) if the undertaking or activity is of an occasional nature and undertaken substantially with assistance on a voluntary basis without compensation;

(cc) if the undertaking or activity is approved by the Minister by notice in the *Gazette*, having regard to—

(A) the scope and benevolent nature of the undertaking or activity;

(B) the direct connection and interrelationship of the undertaking or activity with the sole or principal object of the small business funding entity;

(C) the profitability of the undertaking or activity; and

(D) the level of economic distortion that may be caused by the tax exempt status of the small business funding entity carrying out the undertaking or activity; or

(dd) other than an undertaking or activity in respect of which item (aa), (bb) or (cc) applies and do not exceed the greater of—

(A) 5 per cent of the total receipts and accruals of that small business funding entity during the relevant year of assessment; or

(B) R200 000;”;

(b) by the substitution in subsection (1)(e)(i) for item (bb) of the following item:

“(bb) a share block company as defined in the Share Blocks Control Act[, 1980 (Act No. 59 of 1980),] from the holders of shares in that share block company; or”;

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

“(ii) lump sum, pension or annuity received by or accrued to any resident from a source outside the Republic as consideration for past employment outside the Republic;”;

- (d) by the substitution in subsection (1) for subparagraph (gI) of the following subparagraph:
- “(gI) any amount received or accrued in respect of a policy of insurance relating to the death, disablement, illness or unemployment of a person who is the policyholder or an employee of the policyholder in respect of that policy of insurance to the extent to which the benefits in terms of that policy are paid as a result of death, disablement, illness or unemployment.”;
- (e) by the substitution in subsection (1)(i) for the words preceding subparagraph (i) of the following words:
- “in the case of any taxpayer who is a natural person, so much of the aggregate of any interest received by or accrued to him or her, other than interest in respect of a tax free investment as defined in section 12T(1), from a source in the Republic as does not during the year of assessment exceed—”;
- (f) by the substitution in subsection (1) for paragraph (iB) of the following paragraph:
- “(iB) any amount received by or accrued to a holder of a participatory interest in a portfolio of a collective investment scheme in securities by way of a distribution from that portfolio if that amount is deemed to have accrued to that portfolio in terms of **[section 25BA(b)]** section 25BA(1)(b) and that amount **[is] was** subject to normal tax **[at the time that the amount is deemed to accrue to]** in the hands of that portfolio **[of a collective investment scheme in securities]**.”;
- (g) by the substitution in subsection (1)(k)(i)(gg) for the words preceding the proviso of the following words:
- “to any dividends received by or accrued to a company in respect of a share held by that company to the extent that the aggregate of those dividends does not exceed an amount equal to the aggregate of any amounts incurred by that company as compensation for any distributions in respect of any other share borrowed by the company, other than a share in respect of which any dividends were received by or accrued to that company as contemplated in paragraph (ff), where the share so borrowed and the share so held are of the same kind and of the same or equivalent quality”;
- (h) by the substitution in subsection (1)(k)(i) for paragraph (hh) of the proviso of the following paragraph:
- “(hh) to any dividends received by or accrued to a company **[other than dividends taken into account for the purposes of paragraph (gg)]** in respect of a share to the extent that—
- (A) the aggregate of those dividends does not exceed an amount equal to the aggregate of any deductible expenditure incurred by that company or any amount taken into account that has the effect of reducing income in the application of section 24JB(2) [, if]; and
- (B) the amount of that expenditure or reduction is determined **[wholly or partly]** directly or indirectly with reference to [those dividends received by or accrued to that company] the dividend in respect of a share of the same kind and of the same or equivalent quality as that share;”;
- (i) by the substitution in subsection (1) for paragraph (l) of the following paragraph:
- “(l) the amount of any royalty as defined in section 49A which is received by or accrues **[by or]** to any person that is not a resident, unless **[that person]**—
- (i) that person is a natural person who was physically present in the Republic for a period exceeding 183 days in aggregate during the twelve-month period preceding the date on which the amount is received by or **[accrued by or]** accrues to that person; or
- (ii) **[at any time during the twelve-month period preceding the date on which the amount is received or accrued by or to**

that person carried on business through] the intellectual property or the knowledge or information in respect of which that royalty is paid is effectively connected with a permanent establishment of that person in the Republic;”;

(j) by the deletion in subsection (1)(t) of subparagraph (viii); 5

(k) by the substitution in subsection (1)(zI) for subparagraph (ii) of the following subparagraph:

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

(l) by the insertion in subsection (1) after paragraph (zJ) of the following paragraph:

“(zK) any amount received by or accrued to or in favour of a small, medium or micro-sized enterprise from a small business funding entity.”.

(2) Paragraphs (a), (f) and (l) of subsection (1) come into operation on 1 March 2015 and apply in respect of amounts received or accrued on or after that date.

(3) Paragraphs (c) and (d) of subsection (1) come into operation on 1 March 2015 and apply in respect of years of assessment commencing on or after that date. 20

(4) Paragraph (e) of subsection (1) comes into operation on 1 March 2015 and applies in respect of interest received or accrued on or after that date.

(5) Paragraph (g) of subsection (1) is deemed to have come into operation on 1 April 2014 and applies in respect of amounts received or accrued during years of assessment commencing on or after that date. 25

(6) Paragraph (i) of subsection (1) comes into operation on 1 January 2015 and applies in respect of royalties that are paid or become due and payable on or after that date.

(7) Paragraph (k) of subsection (1) comes into operation on 1 January 2015 and applies in respect expenditure incurred to effect improvements during any year of assessment commencing on or after that date. 30

Amendment of section 10B of Act 58 of 1962, as inserted by section 29 of Act 24 of 2011 and amended by section 4 of Act 13 of 2012, section 20 of Act 22 of 2012 and section 25 of Act 31 of 2013 35

15. (1) Section 10B of the Income Tax Act, 1962, is hereby amended by the substitution in subsection (3)(b)(ii)(bb) for subitem (B) of the following subitem:

“(B) an insurer in respect of its company policyholder fund **[and]**, corporate fund and risk policy fund.”.

(2) Subsection (1) comes into operation on 1 January 2016. 40

Amendment of section 10C of Act 58 of 1962, as inserted by section 21 of Act 22 of 2012 and amended by section 26 of Act 31 of 2013

16. (1) Section 10C of the Income Tax Act, 1962, is hereby amended by the deletion in subsection (1) in the definition of “compulsory annuity” of the word “or” at the end of paragraph (b), the insertion of that word at the end of paragraph (c) and the addition of the following paragraph: 45

“(d) paragraph (e) of the definition of provident preservation fund.”.

(2) Subsection (1) comes into operation on 1 March 2016.

Amendment of section 11 of Act 58 of 1962, as amended by section 9 of Act 90 of 1962, section 8 of Act 72 of 1963, section 9 of Act 90 of 1964, section 11 of Act 88 of 1965, section 12 of Act 55 of 1966, section 11 of Act 95 of 1967, section 9 of Act 76 of 1968, section 14 of Act 89 of 1969, section 10 of Act 52 of 1970, section 10 of Act 88 of 1971, section 8 of Act 90 of 1972, section 9 of Act 65 of 1973, section 12 of Act 85 of 1974, section 9 of Act 69 of 1975, section 9 of Act 113 of 1977, section 5 of Act 101 of 1978, section 8 of Act 104 of 1979, section 8 of Act 104 of 1980, section 9 of Act 96 of 1981, section 7 of Act 91 of 1982, section 10 of Act 94 of 1983, section 11 of Act 121 of 1984, section 46 of Act 97 of 1986, section 10 of Act 85 of 1987, section 8 of Act 90 of 1988, section 8 of Act 70 of 1989, section 11 of Act 101 of 1990, section 50 55

13 of Act 129 of 1991, section 11 of Act 141 of 1992, section 9 of Act 113 of 1993, section 5 of Act 140 of 1993, section 10 of Act 21 of 1994, section 12 of Act 21 of 1995, section 9 of Act 36 of 1996, section 12 of Act 28 of 1997, section 30 of Act 30 of 1998, section 20 of Act 53 of 1999, section 22 of Act 30 of 2000, section 15 of Act 59 of 2000, section 10 of Act 19 of 2001, section 27 of Act 60 of 2001, section 14 of Act 30 of 2002, section 19 of Act 74 of 2002, section 27 of Act 45 of 2003, section 9 of Act 16 of 2004, section 16 of Act 32 of 2004, section 6 of Act 9 of 2005, section 18 of Act 31 of 2005, section 11 of Act 20 of 2006, section 11 of Act 8 of 2007, section 17 of Act 35 of 2007, sections 1 and 10 of Act 3 of 2008, section 18 of Act 60 of 2008, section 14 of Act 17 of 2009, section 19 of Act 7 of 2010, sections 30 and 161 of Act 24 of 2011, section 271 of Act 28 of 2011, read with item 33 of Schedule 1 to that Act, section 22 of Act 22 of 2012 and section 27 of Act 31 of 2013

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

- (a) by the substitution for paragraph (i) of the following paragraph:
 - “(i) the amount of any debt due to the taxpayer which [have] has during the year of assessment become bad, provided such amount is included in the current year of assessment or was included in previous years of assessment in the taxpayer’s income;”;
- (b) by the substitution for paragraph (w)(ii)(cc) of the following paragraph:
 - “(w) (ii) (cc) the policy is not the property of any person other than the taxpayer at the time of the payment of the premium [: **Provided that any premium paid shall not be disallowed as a deduction by reason of the policy being held by a creditor of the taxpayer as a security for a debt of the taxpayer**]; and”.

(2) Paragraph (b) of subsection (1) comes into operation on 1 March 2015 and applies in respect of years of assessment commencing on or after that date.

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

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

- (a) by the substitution in subsection (1) in paragraph (b) of the definition of “research and development” for subparagraph (ii) of the following subparagraph:
 - “(ii) a functional design—
 - (aa) as defined in section 1 of the Designs Act, capable of qualifying for registration under section 14 of that Act; and
 - (bb) that is innovative in respect of the functional characteristics or intended uses of that functional design;”;
- (b) by the substitution in subsection (1) in the definition of “research and development” after the words following paragraph (c)(iv) for the colon of a semi-colon;
- (c) by the insertion in subsection (1) in the definition of “research and development” after paragraph (c) of the following paragraphs:
 - “(d) creating or developing a multisource pharmaceutical product, as defined in the World Health Organisation Technical Report Series, No. 937, 2006 Annex 7 Multisource (generic) pharmaceutical products: guidelines on registration requirements to establish interchangeability issued by the World Health Organisation, conforming to such requirements as must be prescribed by regulations made by the Minister after consultation with the Minister for Science and Technology; or
 - (e) conducting a clinical trial as defined in Appendix F of the Guidelines for good practice in the conduct of clinical trials with human participants in South Africa issued by the Department of Health (2006), conforming to such requirements as must be

prescribed by regulations made by the Minister after consultation with the Minister for Science and Technology.”;

- (d) by the substitution in subsection (1) in the definition of “research and development” for paragraph (b) of the proviso of the following paragraph:
“(b) development of internal business processes unless those internal business processes are mainly intended for sale or for granting the use or right of use or permission to use thereof to persons who are not connected **[parties]** persons in relation to the person carrying on that research and development;”;
- (e) by the substitution in subsection (2)(a) for the words preceding subparagraph (i) of the following words:
“For the purposes of determining the taxable income of a taxpayer that is a company in respect of any year of assessment there shall be allowed as a deduction from the income of that taxpayer an amount equal to 150 per cent of so much of any expenditure actually incurred by that taxpayer directly and solely in respect of the carrying on of research and development **[undertaken]** in the Republic if—”;
- (f) by the substitution for subsection (5) of the following subsection:
“(5) Where a company funds expenditure incurred by another company as contemplated in subsection (4)(c)(ii), any deduction under that subsection by the company that funds the expenditure must be limited to an amount of **[50]** 150 per cent of the actual expenditure incurred directly and solely in respect of that research and development carried on by the other company that is being funded.”;
- (g) by the substitution in subsection (6) for paragraph (b) of the following paragraph:
“(b) notwithstanding paragraph (a), certain categories of research and development designated by the Minister **[of Science and Technology]** by notice in the *Gazette* are deemed to constitute the carrying on of research and development.”; and
- (h) by the addition in subsection (11) for after (b) of the following paragraph:
“(c) If any person is appointed as an alternative in terms of paragraph (a), that person may perform the function of any other person from the Department of Science and Technology, or the South African Revenue Service in respect of which institution that person is appointed as alternative.”.

(2) Paragraphs (a) and (h) of subsection (1) come into operation on 1 January 2015 and apply in respect of expenditure incurred in respect of research and development on or after that date, but before 1 October 2022.

(3) Paragraphs (b), (c) and (g) of subsection (1) are deemed to have come into operation on 1 October 2012 and apply in respect of expenditure incurred in respect of research and development on or after that date, but before 1 October 2022.

(4) Paragraphs (e) and (f) of subsection (1) are deemed to have come into operation on 1 January 2014 and apply in respect of expenditure incurred in respect of research and development on or after that date, but before 1 October 2022.

Amendment of section 12D of Act 58 of 1962, as amended by section 23 of Act 30 of 2000, section 19 of Act 59 of 2000, section 28 of Act 60 of 2001, section 16 of Act 30 of 2002, section 23 of Act 35 of 2007, section 12 of Act 3 of 2008, section 21 of Act 60 of 2008, section 20 of Act 17 of 2009, section 22 of Act 7 of 2010 and section 33 of Act 31 of 2013

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

- (a) by the substitution in subsection (2) for the words preceding paragraph (a) of the following words:
“There shall be allowed to be deducted an allowance in respect of the cost actually incurred by the taxpayer in respect of the acquisition of **[any new and unused affected asset, which]**—”;
- (b) by the substitution in subsection (2) for paragraphs (a) and (b) of the following paragraphs:
“(a) (i) any new and unused affected asset; or
(ii) in the case of an asset contemplated in paragraph (c) of the definition of ‘affected asset’ any asset,

owned by the taxpayer that is brought into use for the first time by the taxpayer; and;

(b) the asset as contemplated in paragraph (a) which is used directly by such taxpayer for purposes contemplated in the definition of ‘affected asset’;”;

(c) by the deletion in subsection (3) at the end of paragraph (a) of the word “or”;

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

“(b) 5 per cent of the cost incurred in respect of any asset contemplated in paragraph (aA), (b)[, (c)] or (d) of the definition of affected asset; or”;

(e) by the addition in subsection (3) after paragraph (b) of the following paragraph:

“(c) 6.67 per cent of the cost incurred in respect of any asset contemplated in paragraph (c) of the definition of ‘affected asset’.”

(2) Subsection (1) comes into operation on 1 April 2015 and applies in respect of assets acquired on or after that date.

Amendment of section 12E of Act 58 of 1962, as inserted by section 12 of Act 19 of 2001 and amended by section 17 of Act 30 of 2002, section 21 of Act 74 of 2002, section 37 of Act 12 of 2003, section 31 of Act 45 of 2003, section 9 of Act 9 of 2005, section 21 of Act 31 of 2005, section 24 of Act 9 of 2006, section 14 of Act 20 of 2006, section 15 of Act 8 of 2007, section 25 of Act 35 of 2007, section 13 of Act 3 of 2008, section 23 of Act 60 of 2008, section 21 of Act 17 of 2009, section 23 of Act 7 of 2010, section 34 of Act 24 of 2011, section 25 of Act 22 of 2012 and section 35 of Act 31 of 2013

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

“[none of the shareholders or members] at any time during the year of assessment [of], no holder of shares in the company[, or member of the close corporation or co-operative holds any shares or has any interest in the equity of any other company as defined in section 1, other than—”.

Amendment of section 12H of Act 58 of 1962, as substituted by section 23 of Act 17 of 2009 and amended by section 25 of Act 7 of 2010, section 36 of Act 24 of 2011 and section 27 of Act 22 of 2012

21. (1) Section 12H of the Income Tax Act, 1962, is hereby amended by the substitution for subsection (5) of the following subsection:

“(5) Where a learner contemplated in subsection (2), (3) or (4) is a person with a disability (as defined in [section 18(3)] section 6B(1)) at the time of entering into the learnership agreement, the amounts contemplated in subsection (2), (3) or (4) must be increased by an amount of R20 000.”.

(2) Subsection (1) is deemed to have come into operation on 1 March 2014 and applies in respect of years of assessment commencing on or after that date.

Amendment of section 12I of Act 58 of 1962, as inserted by section 26 of Act 60 of 2008 and amended by section 24 of Act 17 of 2009, section 26 of Act 7 of 2010, section 37 of Act 24 of 2011 and section 28 of Act 22 of 2012

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

(a) by the substitution in subsection (1) in the definition of “industrial project” for paragraphs (a) and (b) of the following paragraphs:

“(a) is classified under ‘[Major Division 3] Section C: Manufacturing’ in [the most recent] version 7 of the Standard Industrial Classification Code (referred to as the ‘SIC Code’) issued by Statistics South Africa; or

(b) in the case of products, goods, articles or things which are not yet classified, the adjudication committee is of the view will be classified as contemplated in paragraph (a), but does not include [the manufacture of]—

- “(i) distilling, rectifying and blending of spirits (SIC Code 1101);
(ii) manufacture of wines (SIC Code 1102);
(iii) manufacture of malt liquors and malt (SIC Code 103);
(iv) manufacture of tobacco products (SIC Code 12);
(v) manufacture of weapons and ammunition (SIC Code 252);
(vi) manufacture of bio-fuels if that manufacture negatively impacts on food security in the Republic;”;
- (b) by the insertion after subsection (1A) of the following subsection:
“(1B) For the purposes of this section, if a taxpayer completes an improvement on any land not owned by that taxpayer and that improvement consists of machinery or plant as contemplated in section 12C(1)(a), that taxpayer shall be deemed to be the owner of that improvement.”;
- (c) by the substitution in subsection (2)(a) for subparagraph (ii) of the following subparagraph:
“(ii) 100 per cent of the cost of any new and unused manufacturing asset used in an industrial policy project with preferred status that is located within **[an industrial development zone]** a special economic zone; or”;
- (d) by the substitution in subsection (2)(b) for subparagraph (ii) of the following subparagraph:
“(ii) 75 per cent of the cost of any new and unused manufacturing asset used in any industrial policy project other than an industrial policy project with preferred status that is located within **[an industrial development zone]** a special economic zone;”;
- (e) by the substitution in subsection (7)(a)(i) for item (aa) of the following item:
“(aa) in the case of greenfield projects, **[R200 million]** R50 million; and”;
- (f) by the substitution in subsection (7)(a)(i)(bb) for subitem (B) of the following subitem:
“(B) the lesser of **[R200 million]** R50 million or 25 per cent of the expenditure incurred to acquire assets previously used in the project;”;
- (g) by the deletion in subsection (8) of paragraph (d);
- (h) by the substitution in subsection (8) for paragraph (f) of the following paragraph:
“(f) in the case of a greenfield project, the location of the project within **[an industrial development zone]** a special economic zone.”;
- (i) by the deletion in subsection (10) of paragraph (d); and
- (j) by the substitution in subsection (10) for paragraph (f) of the following paragraph:
“(f) the factors to be taken into account in determining the location of the project within **[an industrial development zone]** a special economic zone.”.
- (2) Paragraphs (b), (e), (f), (g) and (i) come into operation on 1 January 2015.
- (3) Paragraphs (c), (d), (h) and (j) of subsection (1) come into operation on the date on which the Special Economic Zones Act, 2014 (Act No.16 of 2014), comes into operation.

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

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

- (a) by the substitution in subsection (3)(b) for subparagraph (ii) of the following subparagraph:
“(ii) the repayment of any loan or credit **[(other than any loan or credit contemplated in paragraph (ii) of the proviso to this paragraph)]** used by the taxpayer for the payment or financing of any expenditure contemplated in subsection (2),”;

- (b) by the substitution in subsection (6A) for the words preceding paragraph (b) of the following words:
 “If, at the end of any year of assessment, after the expiry of a period of 36 months commencing on the first date [of approval by the Commissioner of a company as a venture capital company in terms of subsection (5), the Commissioner is not satisfied that] of the issue of venture capital shares—”;
- (c) by the substitution in subsection (6A) for paragraph (b) of the following paragraph:
 “(b) at least 80 per cent of the expenditure incurred by the company **[in that period]** to acquire assets held by the company was incurred to acquire qualifying shares issued to the company by qualifying companies, each of which, immediately after the issue, held assets with a book value not exceeding—
 (i) **[R300] R500** million, where the qualifying company was a junior mining company; or
 (ii) **[R20] R50** million, where the qualifying company was a company other than a junior mining company; or”;
- (d) by the substitution in subsection (6A) for paragraph (c) of the following paragraph:
 “(c) no more than 20 per cent of **[the] any amounts received in respect of the issue of shares in the company [expenditure incurred by the company] was utilised to acquire qualifying shares [held by the company was incurred for qualifying shares]** issued to the company by any one qualifying company,”; and
- (e) by the insertion after subsection (8) of the following subsection:
 “(9) Notwithstanding section 8(4), no amount shall be recovered or recouped in respect of the disposal of a venture capital share if that share has been held by the taxpayer for a period longer than five years.”.
- (2) Subsection (1) comes into operation on 1 January 2015.

Amendment of section 12N of Act 58 of 1962, as inserted by section 29 of Act 7 of 2010 and amended by section 31 of Act 31 of 2013

- 24.** (1) Section 12N of the Income Tax Act, 1962, is hereby amended by the substitution in subsection 1 for the words following paragraph (e) of the following words:
 “the taxpayer must, for the purposes of any deduction contemplated in section 11D, 12B, 12C, 12D, 12F, 12I, 12S, 13, *13bis*, *13ter*, *13quat*, *13quin*, *13sex* or 36, and for the purposes of the Eighth Schedule, be deemed to be the owner of the improvement so completed.”.
- (2) Subsection (1) is deemed to have come into operation on 1 January 2013 and applies in respect expenditure incurred to effect improvements during any year of assessment commencing on or after that date.

Insertion of section 12NA in Act 58 of 1962

- 25.** (1) The following section is hereby inserted in the Income Tax Act, 1962, after section 12N:

“Deductions in respect of improvements on property in respect of which government holds a right of use or occupation

- 12NA.** (1) There shall be allowed to be deducted from the income of a person, expenditure actually incurred by that person to effect an improvement to land or to a building in terms of an obligation to effect those improvements to that land or to that building in terms of a Public Private Partnership if the government of the Republic in the national, provincial or local sphere holds the right of use or occupation of that land or building.
- (2) The amount allowed to be deducted in terms of this section in respect of any year of assessment shall be equal to the amount of expenditure contemplated in subsection (1) that has not been allowed to be deducted in terms of this section, divided by the number of years (including that year of

assessment) for which the taxpayer will derive income in respect of the Public Private Partnership in terms of the agreement or 25 years, whichever is the lesser.

(3) Where any amount as contemplated in section (10)(1)(zI) is received by or accrues to a person from the government of the Republic in the national, provincial or local sphere for the purpose of effecting an improvement to land or a building or in respect of the defraying of the cost of any improvements in terms of the Public Private Partnership contemplated in subsection (1), the expenditure to be deducted in terms of this section shall be reduced in an amount equal to an amount that is exempt in terms of that section.

(4) This section shall not apply if the person effecting an improvement to land or to a building is a person carrying on any banking, financial services or insurance business.”.

(2) Subsection (1) is deemed to have come into operation on 1 January 2013 and applies in respect expenditure incurred to effect improvements during any year of assessment commencing on or after that date.

Amendment of section 12R of Act 58 of 1962, as inserted by section 43 of Act 31 of 2013

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

(a) by the insertion in subsection (1) after the definition of **“qualifying company”** of the following definition:

“**‘SIC Code’** means version 7 of the Standard Industrial Classification Code issued by Statistics South Africa;”;

(b) by the substitution in subsection (1) in the definition of **“qualifying company”** for paragraph (b) of the following paragraph:

“(b)[(i)] that carries on business in **[a category of]** a special economic zone designated by the Minister of Trade and Industry in terms of the Special Economic Zones Act and approved by the Minister of Finance after consultation with the Minister of Trade and Industry for the purposes of subsection (2) **by notice in the Gazette; [or**

(ii) that carries on a type of business or provision of services that may be located in a special economic zone prescribed by the Minister of Trade and Industry in terms of the Special Economic Zones Act and approved by the Minister of Finance after consultation with the Minister of Trade and Industry for the purposes of this section in terms of subsection (2);]”;

(c) by the substitution in subsection (1) in the definition of **“qualifying company”** for paragraph (d) of the following paragraph:

“(d) if not less than 90 per cent of the income of that company is derived from the carrying on of business or provision of services within **[that] one or more special economic [zone] zones;**”;

(d) by the substitution in subsection (1) for the definition of **“Special Economic Zones Act”** of the following definition:

“**‘Special Economic Zones Act’** means **[an Act of Parliament that makes provision for special economic zones]** the Special Economic Zones Act, 2014 (Act No.16 of 2014.”;

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

“(2) The rate of tax on taxable income attributable to income derived by a qualifying company within a special economic zone must be 15 cents on each rand of taxable income **[derived in respect of business activities within that special economic zone].**”;

(f) by the substitution in subsection (4)(a) for the words preceding subparagraph (i) of the following words:

“subsection (2) and section 12S do not apply to any qualifying company **[in respect of]** that conducts any of the following activities classified under **‘[Major Division 3] Section C: Manufacturing’** in the **[most recent Standard Industrial Classification Code (referred to as the ‘SIC Code’) issued by Statistics South Africa] SIC Code;**”;

- (g) by the substitution in subsection (4)(a) for subparagraphs (i), (ii) and (iii) of the following subparagraphs:
- | | |
|--|---|
| “(i) Distilling, rectifying and blending of spirits (SIC Code 1101); | |
| (ii) Manufacture of wines (SIC Code 1102); | |
| (iii) Manufacture of malt liquors and malt (SIC Code 103); | 5 |
| (iv) Manufacture of tobacco products (SIC Code 12); | |
| (v) Manufacture of weapons and ammunition (SIC Code 252); | |
| (vi) Manufacture of bio-fuels if that manufacture negatively impacts on food security in the Republic; and”; | |
- (h) by the substitution in subsection (4) for paragraph (b) of the following paragraph:
- “(b) subsection (2) does not apply to any qualifying company **[in respect of activities]** that conducts any activity classified in the **[most recent]** SIC Code **[issued by Statistics South Africa]**, which the Minister of Finance may designate by notice in the *Gazette*.”.
- (i) by the substitution for subsection (5) of the following subsection:
- “(5) This provision ceases to apply in respect of any year of assessment commencing **[on]** the later of—
- | | |
|--|----|
| (a) on or after 1 January 2024; or | |
| (b) 10 years after the commencement of the carrying on of business in a special economic zone.”. | 20 |
- (2) Subsection (1) comes into operation on the date on which the Special Economic Zones Act, 2014 (Act No.16 of 2014), comes into operation.

Amendment of section 12S of Act 58 of 1962, as inserted by section 43 of Act 31 of 2013

27. (1) Section 12S of the Income Tax Act, 1962, is hereby amended by the substitution for subsection (2) of the following subsection:
- “(2) A qualifying company may deduct from the income of that qualifying company an allowance equal to ten per cent of the cost to the qualifying company of any new and unused building owned by the qualifying company, or any new and unused improvement to any building owned by the qualifying company, if that building or improvement is wholly or mainly used by the qualifying company during the year of assessment for purposes of producing income within a special economic zone, as defined in section 12R(1), in the course of the taxpayer’s trade, other than the provision of residential accommodation.”.
- (2) Subsection (1) comes into operation on the date on which the Special Economic Zones Act, 2014 (Act No.16 of 2014), comes into operation.

Insertion of section 12T in Act 58 of 1962

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

“Exemption of amounts received or accrued in respect of tax free investments

- 12T.** (1) For the purposes of this section—
- | | |
|---|----|
| ‘tax free investment’ means any financial instrument or policy as defined in section 29A— | |
| (a) administered by a person or entity designated by notice by the Minister in the <i>Gazette</i> ; | |
| (b) owned by— | |
| (i) a natural person; or | |
| (ii) the deceased estate or insolvent estate of a natural person that is deemed to be one and the same person as that natural person in respect of the contributions made by that person; and | 50 |
| (c) that complies with the requirements of the Regulations contemplated in subsection (8). | |
| (2) There shall be exempt from normal tax any amount received by or accrued to a natural person in respect of a tax free investment. | 55 |

(3) In determining the aggregate capital gain or aggregate capital loss of a person in respect of any year of assessment, any capital gain or capital loss in respect of the disposal of a tax free investment shall be disregarded.

(4) Contributions in respect of tax free investments shall be—

(a) limited to an amount of R30 000 in aggregate during any year of assessment;

(b) an amount in cash; and

(c) limited to an amount of R500 000 in aggregate.

(5) Any amount contemplated in subsection (2) shall not be taken into account in determining whether a person contributed in excess in respect of the amounts contemplated in subsections (4)(a) and (c).

(6) Any—

(a) transfer of an amount in respect of a tax free investment of a person to another tax free investment of that person; or

(b) amount received by or accrued in respect of a tax free investment, shall not be taken into account in determining whether that person contributed in excess of the amounts contemplated in subsections (4)(a) and (c) as a contribution in respect of that other tax free investment.

(7) (a) If during any year of assessment any person contributes in excess of the amount of R30 000 in respect of tax free investments, an amount equal to 40 per cent of that excess is deemed to be an amount of normal tax payable by that person in respect of that year of assessment.

(b) If any person contributes in excess of R500 000 in aggregate in respect of tax free investments, an amount equal to 40 per cent of so much of that excess as has not previously been taken into account in terms of this subsection shall be deemed to be an amount of normal tax payable in respect of the year of assessment in which that excess is contributed.

(8) The Minister shall make regulations prescribing the requirements—

(a) to which any financial instrument or policy as defined in section 29A shall conform for the purposes of constituting a tax free investment;

(b) that must be complied with when a tax free investment is transferred; and

(c) in respect of disclosure by any person contemplated in paragraph (a) of the definition of 'tax free investment' in subsection (1) in respect of a tax free investment.

(9) (a) The Financial Services Board established under the Financial Services Board Act (hereafter Financial Services Board) shall be responsible for supervising and enforcing compliance with any regulations made by the Minister in terms of subsection (8).

(b) The supervising and enforcing compliance contemplated in paragraph (a) shall form part of the legislative mandate of the Financial Services Board.

(c) The Financial Services Board, acting through the Registrar, as defined in section 1 of the Financial Institutions (Protection of Funds) Act, 2001 (Act No. 28 of 2001), in supervising and enforcing compliance as contemplated in paragraph (a), shall exercise any power afforded to the Registrar as defined in section 1 of that Act and in any of the Acts contemplated in the definition of 'law' in section 1 of that Act."

(2) Subsection (1) comes into operation on 1 March 2015.

Amendment of section 18A of Act 58 of 1962, as substituted by section 24 of Act 30 of 2000 and amended by section 72 of Act 59 of 2000, section 20 of Act 30 of 2002, section 34 of Act 45 of 2003, section 26 of Act 31 of 2005, section 16 of Act 20 of 2006, section 18 of Act 8 of 2007, section 31 of Act 35 of 2007, section 1 of Act 3 of 2008, section 6 of Act 4 of 2008, section 34 of Act 60 of 2008, section 37 of Act 7 of 2010, section 44 of Act 24 of 2011, section 7 of Act 21 of 2012 and section 52 of Act 31 of 2013

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

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

"that organisation will within 12 months after the end of the relevant year of assessment distribute or incur the obligation to distribute at least

[75] 50 per cent of all funds received by way of donation during that year in respect of which receipts were issued.”;

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

“(2D) Any public benefit organisation contemplated in subsection (1)(b), in respect of any amount that is not distributed referred to in subsection (2A)(b)(i), shall distribute or incur the obligation to distribute all amounts received in respect of investment assets held by it, other than amounts received in respect of disposals of those investment assets to any public benefit organisation, institution, board or body contemplated in subsection (1)(a), no later than six months after—

(a) every five years from the date on which the Commissioner issued a reference number referred to in subsection (2)(a)(i) to that public benefit organisation referred to in subsection (1)(b), if that public benefit organisation is incorporated, formed or established on or after 1 March 2015; or

(b) every five years from 1 March 2015, if that public benefit organisation referred to in subsection (1)(b) was incorporated, formed or established and issued with a reference number referred to in subsection (2)(a)(i) prior to 1 March 2015.”;

(c) by the substitution in subsection (3B) for paragraph (b) of the following paragraph:

“(b) issued by a financial institution as defined in section 1 of the Financial Services Board Act[, 1990 (Act No. 97 of 1990)];”;

(d) by the insertion after subsection (5B) of the following subsection:

“(5C) If the Commissioner has reasonable grounds for believing that any public benefit organisation contemplated in subsection (1)(b), has not distributed amounts as contemplated in subsection (2D), or has not incurred the obligation to distribute those amounts received in respect of investment assets held by it, those amounts shall be deemed to be taxable income of that public benefit organisation in that year of assessment.”.

(2) Subsection (1) comes into operation on 1 March 2015.

Amendment of section 19 of Act 58 of 1962, as inserted by section 36 of Act 22 of 2012 and amended by section 53 of Act 31 of 2013

30. Section 19 of the Income Tax Act, 1962, is hereby amended by the substitution in subsection (8)(a) for subparagraph (iii) of the following subparagraph:

“(iii) the amount by which the debt is reduced by the deceased estate forms part of the property of the deceased estate for the purposes of the Estate Duty Act[, 1955 (Act No. 45 of 1955)];”.

Amendment of section 20 of Act 58 of 1962, as amended by section 13 of Act 90 of 1964, section 18 of Act 88 of 1965, section 13 of Act 76 of 1968, section 18 of Act 89 of 1969, section 15 of Act 65 of 1973, section 8 of Act 101 of 1978, section 18 of Act 94 of 1983, section 19 of Act 101 of 1990, section 16 of Act 113 of 1993, section 17 of Act 21 of 1995, section 15 of Act 28 of 1997, section 26 of Act 30 of 2000, section 27 of Act 59 of 2000, section 23 of Act 74 of 2002, section 35 of Act 45 of 2003, section 19 of Act 8 of 2007, section 32 of Act 35 of 2007, section 15 of Act 3 of 2008, section 35 of Act 60 of 2008, section 32 of Act 17 of 2009, section 37 of Act 22 of 2012 and section 54 of Act 31 of 2013

31. (1) Section 20 of the Income Tax Act, 1962, is hereby amended by the addition in subsection (1) to paragraph (a) of the following proviso:

“:Provided that no person whose estate has been voluntarily or compulsorily sequestrated shall be entitled to carry forward any assessed loss incurred prior to the date of sequestration, unless the order of sequestration has been set aside, in which case the amount to be so carried forward shall be reduced by an amount which was allowed to be set off against the income of the insolvent estate of such person from the carrying on of any trade;”.

(2) Subsection (1) is deemed to have come into operation on 1 January 2013 and applies in respect of years of assessment commencing on or after that date.

Amendment of section 22 of Act 58 of 1962, as amended by section 8 of Act 6 of 1963, section 14 of Act 90 of 1964, section 21 of Act 89 of 1969, section 23 of Act 85 of 1974, section 20 of Act 69 of 1975, section 15 of Act 103 of 1976, section 20 of Act 94 of 1983, section 19 of Act 121 of 1984, section 14 of Act 65 of 1986, section 5 of Act 108 of 1986, section 21 of Act 101 of 1990, section 22 of Act 129 of 1991, section 17 of Act 113 of 1993, section 1 of Act 168 of 1993, section 19 of Act 21 of 1995, section 12 of Act 36 of 1996, section 25 of Act 53 of 1999, section 27 of Act 30 of 2000, section 12 of Act 5 of 2001, section 24 of Act 74 of 2002, section 37 of Act 45 of 2003, section 16 of Act 3 of 2008, section 36 of Act 60 of 2008, section 39 of Act 7 of 2010, section 45 of Act 24 of 2011, section 40 of Act 22 of 2012 and section 55 of Act 31 of 2013

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

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

“(i) subject to subparagraphs (iA) and (ii), be the cost incurred by such person, whether in the current or any previous year of assessment in acquiring such trading stock, plus[, **subject to the provisions of paragraph (b),**] any further costs incurred by [him] such person, in terms of IFRS (in the case of a company), up to and including the said date in getting such trading stock into its then existing condition and location, but excluding any exchange difference as defined in section 24I (1) relating to the acquisition of such trading stock;”; and

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

Amendment of section 23 of Act 58 of 1962, as amended by section 18 of Act 65 of 1973, section 20 of Act 121 of 1984, section 23 of Act 129 of 1991, section 20 of Act 141 of 1992, section 18 of Act 113 of 1993, section 15 of Act 21 of 1994, section 28 of Act 30 of 2000, section 21 of Act 30 of 2002, section 38 of Act 45 of 2003, section 13 of Act 16 of 2004, section 28 of Act 31 of 2005, section 17 of Act 20 of 2006, section 20 of Act 8 of 2007, section 37 of Act 60 of 2008, section 41 of Act 7 of 2010, sections 47 and 162 of Act 24 of 2011, section 271 of Act 28 of 2011, read with item 38 of Schedule 1 to that Act, section 42 of Act 22 of 2012 and section 56 of Act 31 of 2013

33. (1) Section 23 of the Income Tax Act, 1962, is hereby amended by the substitution for paragraph (r) of the following paragraph:

“(r) any deduction in respect of any premium paid by a person in terms of an insurance policy if that insurance policy covers that person against illness, injury, disability, unemployment or death of that person.”.

(2) Subsection (1) comes into operation on 1 March 2015 and applies in respect of years of assessment commencing on or after that date.

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

34. (1) Section 23B of the Income Tax Act, 1962, is hereby amended by the deletion of subsection (4).

(2) Subsection (1) is deemed to have come into operation on 1 January 2014 and applies in respect of expenditure incurred in respect of research and development on or after that date, but before 1 October 2022.

Amendment of section 23H of Act 58 of 1962, as inserted by section 31 of Act 30 of 2000 and amended by section 29 of Act 59 of 2000, section 34 of Act 60 of 2001, section 36 of Act 35 of 2007, section 19 of Act 3 of 2008, section 43 of Act 7 of 2010 and section 46 of Act 22 of 2012

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

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

(2) Subsection (1) is deemed to have come into operation on 1 October 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, section 44 of Act 7 of 2010, section 47 of Act 22 of 2012 and section 58 of Act 31 of 2013

36. Section 23I of the Income Tax Act, 1962, is hereby amended— 5

(a) by the substitution in section (1) for the definition of “end user” of the following definition:

“**‘end user’** means a taxable person or a person with a permanent establishment within the Republic that uses intellectual property or any corresponding invention during a year of assessment to derive income, other than a person that derives income mainly by virtue of the grant of use[,] or right of use or permission to use intellectual property or any corresponding invention;”;

(b) by the substitution in subsection (1) in paragraph (d) of the definition of “tainted intellectual property” for subparagraphs (i) and (ii) of the following subparagraphs: 15

“(i) by virtue of the grant of use[,] or right of use or permission to use that property; or
(ii) where that receipt, accrual or amount is determined directly or indirectly with reference to expenditure incurred for the use[,] or right of use or permission to use that property;”;

(c) by the substitution in subsection (2) for paragraph (b) of the following paragraph: 20

“(b) expenditure the incurral or amount of which is determined directly or indirectly with reference to expenditure incurred for the use or, right of use of or permission to use tainted intellectual property.”. 25

Amendment of section 23M of Act 58 of 1962, as inserted by section 16 of Act 31 of 2013

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

(a) by the deletion in subsection (1) in the definition of “adjusted taxable income” at the end of paragraph (b)(i) of the word “and” and the addition of the expression “and” at the end of subparagraph (ii) of that paragraph; 30

(b) by the addition in subsection (1) to the definition of “adjusted taxable income” after paragraph (b)(ii) of the following paragraph:

“(iii) any assessed loss or balance of assessed loss allowed to be set off against income in terms of section 20;”;

(c) by the substitution in subsection (1) for the definition of “controlling relationship” of the following definition:

“**‘controlling relationship’** means a relationship where a person directly or indirectly holds at least 50 per cent of the equity shares in a company or at least 50 per cent of the voting rights in a company is exercisable by a person;”;

(d) by the substitution in subsection (1) for the definition of “debtor” of the following definition:

“**‘debtor’** means a debtor who is— 45

(a) a person that is a resident; or

(b) any other person who is not a resident that has a permanent establishment in the Republic in respect of any debt claim that is effectively connected with that permanent establishment;”;

(e) by the substitution for subsection (2) of the following subsection: 50

“(2) Where an amount of interest is incurred by a debtor during a year of assessment in respect of a debt owed to—

(a) a creditor that is in a controlling relationship with that debtor; or

(b) a creditor that is not in a controlling relationship with that debtor, if that creditor obtained the funding for the debt advanced to the debtor from a person that is in a controlling relationship with that debtor, 55

and the amount of interest so incurred is not during that year of assessment—

- (i) (aa) subject to tax in the hands of the person to which the interest accrues; or
 (bb) included in the net income of a controlled foreign company as contemplated in section 9D in the foreign tax year of the controlled foreign company commencing or ending within that year of assessment; and 5
- (ii) disallowed under 23N,
 the amount of interest allowed to be deducted may not exceed the amount determined in accordance with subsection (3).”;
- (f) by the substitution in subsection (3) for paragraph (b) of the following paragraph: 10
- “(b) a percentage of that adjusted taxable income of that debtor to be determined in accordance with the formula—

$$A = B \times C/D$$

 in which formula— 15
- (a) ‘A’ represents the percentage to be determined;
 (b) ‘B’ represents the number 40;
 (c) ‘C’ represents the average repo rate plus 400 basis points; and
 (d) ‘D’ represents the number 10,
 but not exceeding 60 per cent of the adjusted taxable income of that debtor, 20
- reduced by so much of any amount of interest incurred by the debtor in respect of debts other than debts contemplated in subsection (2) as exceeds any amount not allowed to be deducted in terms of section 23N.”; and 25
- (g) by the substitution for subsection (5) of the following subsection:
 “(5) Where an amount of interest is to be taken into account in terms of this section and in terms of section 23N, that amount of interest shall only be taken into account in terms of this section after section 23N has been applied.”. 30
- (2) Subsection (1) comes into operation on 1 January 2015 and applies in respect of interest incurred on or after that date.

Amendment of section 23N of Act 58 of 1962, as inserted by section 63 of Act 31 of 2013 35

- 38.** (1) Section 23N of the Income Tax Act, 1962, is hereby amended—
- (a) by the insertion in subsection (1) in the definition of “adjusted taxable income” at the end of paragraph (a)(iii) of the word “and”;
- (b) by the deletion in subsection (1) in the definition of “adjusted taxable income” at the end of paragraph (b)(ii) of the word “and”; 40
- (c) by the insertion in subsection (1) in the definition of “adjusted taxable income” at the end of paragraph (b)(iii) of the word “and”;
- (d) by the addition in subsection (1) to the definition of “adjusted taxable income” after paragraph (b)(iii) of the following subparagraph:
 “(iv) any assessed loss or balance of assessed loss allowed to be set off against income in terms of section 20.”; 45
- (e) by the substitution in subsection (2) for the words preceding paragraph (a) of the following words:
 “[Subject to section 23M, where] Where an amount of interest is incurred by an acquiring company in terms of a debt—”; 50
- (f) by the substitution in subsection (3) for paragraph (b) of the following paragraph:
 “(b) [subject to subsection (4), 40 percent of] a percentage calculated in terms of the amount of the adjusted taxable income of that acquiring company [determined] in accordance with the formula contemplated in subsection (4) determined in respect of the year of assessment [in which]— 55
- (i) in which the acquisition transaction or reorganisation transaction is entered into; or
- (ii) in which the amount of interest is incurred by that acquiring company; or 60

(iii) prior to the year of assessment contemplated in subparagraph (i),

whichever is the highest,
reduced by any amount of interest incurred by the acquiring company in
respect of debts **[not] other than debts** contemplated in subsection (2).”; 5
and

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

“(4) The percentage contemplated in subsection (3)(b) must be
determined in accordance with the formula—

$$A = B \times C/D$$

in which formula—

(a) ‘A’ represents the percentage to be determined;

(b) ‘B’ represents the number 40;

(c) ‘C’ represents the average repo rate plus 400 basis points; and

(d) ‘D’ represents the number 10,

but not exceeding 60 per cent of the adjusted taxable income of that
acquiring company.”. 10 15

(2) Subsection (1) comes into operation on 1 January 2015 and applies in respect of
years of assessment commencing on or after that date.

Insertion of section 23O in Act 58 of 1962

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39. (1) The following section is hereby inserted in the Income Tax Act, 1962, after
section 23N:

“Limitation of deductions by small, medium or micro-sized enterprises in respect of amounts received or accrued from small business funding entities

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

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

(2) Where during any year of assessment any amount is received by or
accrues to a small, medium or micro-sized enterprise from a small business
funding entity for the acquisition, creation or improvement, or as a
reimbursement for expenditure incurred in respect of the acquisition,
creation or improvement of trading stock, any expenditure incurred in
respect of that trading stock allowed as a deduction in terms of section 11(a)
or any amount taken into account in respect of the value of trading stock as
contemplated in section 22(1) or (2) must be reduced to the extent that the
amount received or accrued from the small business funding entity is
applied for that purpose. 35 40

(3) Where during any year of assessment any amount is received by or
accrues to a small, medium or micro-sized enterprise from a small business
funding entity for the acquisition, creation or improvement, or as a
reimbursement for expenditure incurred in respect of the acquisition,
creation or improvement of an allowance asset, the base cost of that
allowance asset must be reduced to the extent that the amount received or
accrued from the small business funding entity is applied for that purpose. 45

(4) Where during any year of assessment any amount is received by or
accrues to a small, medium or micro-sized enterprise from a small business
funding entity for the acquisition, creation or improvement of an allowance
asset or as a reimbursement for expenditure incurred in respect of that
acquisition, creation or improvement, the aggregate amount of the
deductions or allowances allowable to that person in respect of that
allowance asset may not exceed an amount equal to the aggregate of the
expenditure incurred in the acquisition, creation or improvement of that
allowance asset, reduced by an amount equal to the sum of— 50 55

(a) the amount received by or accrued to from a small business funding
entity that is applied for that purpose; and

- (b) the aggregate amount of all deductions and allowances previously allowed to that person in respect of that allowance asset.
- (5) Where during any year of assessment any amount is received by or accrues to a small, medium or micro-sized enterprise from a small business funding entity—
- (a) for the purpose of the acquisition, creation or improvement of an asset other than an asset contemplated in subsection (2) or (3); or
- (b) as a reimbursement for expenditure incurred for the acquisition, creation or improvement of an asset other than an asset contemplated in subsection (2) or (3),
- the base cost of that asset must be reduced to the extent that the amount received by or accrued from the small business funding entity is applied for that acquisition, creation or improvement.
- (6) (a) Where during any year of assessment—
- (i) any amount is received by or accrues to a small, medium or micro-sized enterprise from a small business funding entity; and
- (ii) subsection (2), (3) or (4) does not apply to that amount, any amount allowed to be deducted from the income of that small, medium or micro-sized enterprise in terms of section 11 for that year of assessment must be reduced to the extent of the amount received or accrued from a small business funding entity.
- (b) To the extent that the amount received or accrued from a small business funding entity exceeds the amount allowed to be deducted as contemplated in paragraph (a), that excess is deemed to be an amount received or accrued from a small business funding entity during the following year of assessment for the purposes of paragraph (a).”.
- (2) Subsection (1) comes into operation on 1 March 2015 and applies in respect of amounts received on or after that date.

Amendment of section 24I of Act 58 of 1962, as inserted by section 21 of Act 113 of 1993 and amended by section 11 of Act 140 of 1993, section 18 of Act 21 of 1994, section 13 of Act 36 of 1996, section 18 of Act 28 of 1997, section 35 of Act 30 of 1998, section 26 of Act 53 of 1999, section 31 of Act 59 of 2000, section 36 of Act 60 of 2001, section 27 of Act 74 of 2002, section 42 of Act 45 of 2003, section 23 of Act 32 of 2004, section 33 of Act 31 of 2005, section 26 of Act 9 of 2006, section 19 of Act 20 of 2006, section 23 of Act 8 of 2007, section 40 of Act 35 of 2007, section 20 of Act 3 of 2008, section 38 of Act 17 of 2009, section 47 of Act 7 of 2010, section 52 of Act 24 of 2011, section 53 of Act 22 of 2012 and section 68 of Act 31 of 2013

40. Section 24I of the Income Tax Act, 1962, is hereby amended by the substitution in subsection (10A) for paragraph (a) of the following paragraph:

- “(a) Subject to [subsection (7A) and] paragraph (b), no exchange difference arising during any year of assessment in respect of an exchange item contemplated in paragraph (b) of the definition of ‘exchange item’ shall be included in or deducted from the income of a person in terms of this section [if, at the end of that year of assessment]—
- (i) if, at the end of that year of assessment—
- (aa) that person and the other party to the contractual provisions of that exchange item—
- [(aa)](A) form part of the same group of companies; or
- [(bb)](B) are connected persons in relation to each other;
- and
- (bb) no forward exchange contract and no foreign currency option contract has been entered into by that person to serve as a hedge in respect of that exchange item; and
- (ii) that exchange item—
- (aa) or any portion thereof does not represent for that person a current asset or a current liability for the purposes of financial reporting pursuant to IFRS; [or] and
- (bb) is not directly or indirectly funded by any debt owed to any person that—
- (A) does not form part of the same group of companies as; or
- (B) is not a connected person in relation to,

- that person or the other party to the contractual provisions of that exchange item[; and
- (iii) **no forward exchange contract and no foreign currency option contract has been entered into by that person to serve as a hedge in respect of that exchange item].”.**

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Amendment of section 24J of Act 58 of 1962, as inserted by section 21 of Act 21 of 1995 and amended by section 14 of Act 36 of 1996, section 19 of Act 28 of 1997, section 27 of Act 53 of 1999, section 24 of Act 32 of 2004, section 10 of Act 9 of 2005, section 20 of Act 20 of 2006, section 53 of Act 24 of 2011, section 271 of Act 28 of 2011, read with item 40 of Schedule 1 to that Act, section 54 of Act 22 of 2012 and section 69 of Act 31 of 2013

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

- (a) by the substitution in subsection (1) in the definition of “instrument” for the words following paragraph (e)(iii) of the following words:

“but excluding any lease agreement (other than a sale and leaseback arrangement as contemplated in section 23G) or any policy issued by an insurer as defined in section 29A;”;

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- (b) by the substitution in subsection (9)(g) for subparagraph (i) of the following subparagraph:

“(i) in respect of a company that is a covered person as defined in section 24JB, during any year of assessment ending on or after **[1 April 2014]** 1 January 2014; and”;

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- (c) by the substitution in subsection (9A)(b) for subparagraph (i) of the following subparagraph:

“(i) in the case of a company that is a covered person as defined in section 24JB, in respect of the year of assessment of that covered person immediately preceding the year of assessment ending on or after **[1 April 2014]** 1 January 2014; and”.

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(2) Paragraph (a) of subsection (1) is deemed to have come into operation 1 January 1996 and applies in respect of years of assessment commencing on or after that date.

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(3) Paragraphs (b) and (c) of subsection (1) are deemed to have come into operation 1 January 2014 and apply in respect of years of assessment commencing on or after that date.

Amendment of section 24JA of Act 58 of 1962, as inserted by section 48 of Act 7 of 2010 and amended by sections 54, 159 and 172 of Act 24 of 2011, section 55 of Act 22 of 2012 and section 70 of Act 31 of 2013

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

- (a) by the substitution in subsection (1) in the definition of “sukuk” for paragraphs (a) and (b) of the following paragraphs:

“(a) the government of the Republic or any public entity that is listed in Schedule 2 to the Public Finance Management Act disposes of an interest in an asset to a trust; and

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(b) the disposal of the interest in the asset to the trust by the government or the public entity contemplated in paragraph (a) is subject to an agreement in terms of which the government or that public entity undertakes to reacquire on a future date from that trust the interest in the asset disposed of at a cost equal to the cost paid by the trust to the government or to that public entity to obtain the asset.”; and

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- (b) by the substitution for subsection (7) of the following subsection:

“(7) Where any sukuk is entered into—

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(a) the trust is deemed not to have acquired the asset from the government of the Republic or the public entity that is listed in Schedule 2 to the Public Finance Management Act under the sharia arrangement;

(b) the government or that public entity is deemed not to have disposed of or reacquired the asset; and

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(c) any consideration paid by the government or that public entity in respect of the use of the asset held by the trust is deemed to be interest as defined in section 24J(1).”.

(2) Subsection (1) comes into operation on 1 April 2015.

Amendment of section 24JB of Act 58 of 1962, as substituted by section 71 of Act 31 of 2013

43. (1) Section 24JB of the Income Tax Act, 1962, is hereby amended—
- (a) by the substitution for the heading of the following heading: 5
“[Fair value taxation] Taxation in respect of financial [instruments] assets and liabilities of certain persons”;
 - (b) by the deletion in subsection (1) of the definition of “financial instrument”;
 - (c) by the deletion in subsection (2)(a) of the word “or” at the end of subparagraph (iii); 10
 - (d) by the substitution in subsection (2)(a) at the end of subparagraph (iv) for the comma of the expression “; or”;
 - (e) by the addition in subsection (2)(a) after subparagraph (iv) of the following subparagraph:
“(v) an interest in a partnership.”; 15
 - (f) by the substitution for subsection (3) of the following subsection:
“(3) Any amount required to be taken into account in determining the taxable income in terms of any provision of Part I of Chapter II, or in determining any assessed capital loss of a covered person in respect of a financial asset or a financial liability contemplated in subsection (2) must only be taken into account in terms of [that subsection] this section.”; 20
 - (g) by the substitution in subsection (4) for paragraph (a) of the following paragraph:
“(a) a covered person and another person that is not a covered person, are parties to an agreement in respect of a financial [instrument] asset or financial liability; and;”; 25
 - (h) by the substitution in subsection (6)(a) for subparagraphs (i) and (ii) of the following subparagraphs:
 - “(i) the financial reporting values of all financial assets **[taken into account under]** of a nature as described in subsection (2) held by that person as at the end of the realisation year of that person exceed the tax base amount attributed to those financial assets as at the end of the realisation year of that person; or 30
 - (ii) the tax base amount attributed to all financial liabilities **[taken into account under]** of a nature as described in subsection (2) held by that person as at the end of the realisation year of that person exceeds the financial reporting values of those financial liabilities as at the end of the realisation year of that person,”; and 35
 - (i) by the substitution in subsection (6)(b) for subparagraphs (i) and (ii) of the following subparagraphs: 40
 - “(i) the tax base amount attributed to all financial assets **[taken into account under]** of a nature as described in subsection (2) held by that person as at the end of the realisation year of that person exceeds the financial reporting values of those financial assets as at the end of the realisation year of that person; or 45
 - (ii) the financial reporting values of all financial liabilities **[taken into account under]** of a nature as described in subsection (2) held by that person as at the end of the realisation year of that person exceed the tax base amount attributed to those financial liabilities as at the end of the realisation year of that person,”. 50
- (2) Subsection (1) is deemed to have come into operation on 1 January 2014 and applies in respect of years of assessment ending on or after that date.

Insertion of section 24P in Act 58 of 1962

44. (1) The following section is hereby inserted in the Income Tax Act, 1962, after section 24O: 55

“Allowance in respect of future repairs to certain ships

24P. (1) There must be allowed to be deducted from the income of any

person an amount of expenditure on repairs to any ship as, notwithstanding section 23(e), the Commissioner allows in respect of each year of assessment if that person—

- (a) is a resident;
- (b) carries on any business as owner or charterer of any ship; and
- (c) satisfies the Commissioner that within five years of that year of assessment, that person is likely to incur an amount of expenditure on repairs to any ship used by that person for the purposes of that person's trade,

(2) In determining the amount of the deduction under subsection (1) the Commissioner must have regard to—

- (a) the estimated cost of those repairs; and
- (b) the date on which those costs are likely to be incurred.

(3) The amount of the deduction allowed to a person under subsection (1) in respect of any year of assessment must be included in the income of that person in the following year of assessment.”.

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

Amendment of section 25BB of Act 58 of 1962, as substituted by section 74 of Act 31 of 2013

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

- (a) by the substitution in subsection (1) in the definition of “property company” for paragraph (b) of the following paragraph:

“(b) of which at the end of the previous year of assessment 80 per cent or more of the value of the assets, reflected in the annual financial statements prepared in accordance with the Companies Act or IFRS for the previous year of assessment, is directly or indirectly attributable to immovable property:”;

- (b) by the substitution in subsection (5) for the words preceding paragraph (a) of the following words:

“(5) In determining the aggregate capital gain or aggregate capital loss of a company that is a REIT or a controlled company on the last day of a year of assessment for purposes of the Eighth Schedule, any capital gain or capital loss determined in respect of the disposal of—”;

- (c) by the substitution in subsection (5) for paragraph (a) of the following paragraph:

“(a) immovable property of a company that is a REIT or controlled company at the time of the disposal:”;

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

“(a) Any amount of interest received by or accrued to a person during a year of assessment in respect of a debenture forming part of a linked unit held by that person in a company that is a REIT or a controlled company must be deemed to be a dividend received by or accrued to that person during that year of assessment.”;

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

“(b) Any amount of interest received by or accrued to a company that is a REIT or a controlled company that is a resident during a year of assessment in respect of a debenture forming part of a linked unit held by that company in a property company must be deemed to be a dividend if the property company is a resident or foreign dividend if the property company is a foreign company received by or accrued to that company during that year of assessment if that company is a REIT or a controlled company that is a resident at the time of that receipt or accrual.”; and

- (f) by the substitution in subsection (8) for paragraph (b) of the following paragraph:

“(b) expenditure incurred by the [shareholder of] holder of a share in the REIT or controlled company in respect of the shares is deemed to be equal to the amount of the expenditure incurred in respect of the acquisition of that linked unit; and”.

(2) Paragraphs (a), (b), (d), (e) and (f) of subsection (1) are deemed to have come into operation on 1 April 2013 and apply in respect of years of assessment commencing on or after that date.

(3) Paragraph (c) of subsection (1) comes into operation on the date of promulgation of this Act and applies in respect of years of assessment ending on or after that date. 5

Amendment of section 25D of Act 58 of 1962, as substituted by section 35 of Act 31 of 2005, and amended by section 41 of Act 35 of 2007, section 50 of Act 7 of 2010 and section 75 of Act 31 of 2013

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

(a) by the substitution for subsection (6) of the following subsection: 10

“(6) Where, during any year of assessment—

- | | |
|--|----|
| (a) any amount— | |
| (i) is received by or accrues to; or | |
| (ii) of expenditure is incurred by, | |
| an international shipping company in any currency other than the | 15 |
| functional currency of the international shipping company; and | |
| (b) the functional currency of that international shipping company is a | |
| currency other than the currency of the Republic, | |
| that amount must be determined in the functional currency of the | 20 |
| international shipping company and must be translated to the currency of | |
| the Republic by applying the average exchange rate for that year of | |
| assessment.”; and | |

(b) by the addition after subsection (6) of the following subsection:

- | | |
|--|----|
| “(7) Any amounts received by or accrued to, or expenditure incurred | |
| by— | 25 |
| (a) a headquarter company contemplated in subsection (4); | |
| (b) a domestic treasury management company contemplated in subsection | |
| (5); or | |
| (c) an international shipping company contemplated in subsection (6), | |
| during any year of assessment in a functional currency that is a currency | 30 |
| other than the currency of the Republic must be translated to the currency | |
| of the Republic by applying the average exchange rate for the relevant | |
| year of assessment.”. | |

(2) Paragraph (a) of subsection (1) is deemed to have come into operation on 1 April 2014 and applies in respect of years of assessment commencing on or after that date. 35

Amendment of section 29A of Act 58 of 1962, as inserted by section 30 of Act 53 of 1999 and amended by section 36 of Act 59 of 2000, section 15 of Act 5 of 2001, section 15 of Act 19 of 2001, section 39 of Act 60 of 2001, section 30 of Act 74 of 2002, section 16 of Act 16 of 2004, section 23 of Act 20 of 2006, section 21 of Act 3 of 2008, section 52 of Act 7 of 2010, section 62 of Act 22 of 2012 and section 77 of Act 31 of 2013 40

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

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

“**‘adjusted IFRS value’** means the amount of the insurance liabilities of the insurer determined in accordance with IFRS as annually reported by the insurer to shareholders in the audited annual financial statements, adjusted so that no policy has a liability of less than zero;”;

(b) by the insertion in subsection (1) after the definition of “policyholder fund” of the following definitions: 50

“**‘risk policy’** means any policy issued by the insurer during any year of assessment of that insurer commencing on or after 1 January 2016 under which the benefits payable cannot exceed the amount of premiums receivable, except where the policy benefits are solely payable due to death, disablement, illness or unemployment and excludes a contract of insurance in terms of which annuities are being paid; 55

‘risk policy fund’ means the fund contemplated in subsection 4(e);”;

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

- “‘**value of liabilities**’[,], means, in respect of—
- (a) a policyholder fund, an amount equal to the value of the liabilities of the insurer in respect of the business conducted by it in the fund concerned calculated on the basis as shall be determined by the [Chief Actuary] chief actuary of the Financial Services Board, appointed in terms of section 13 of the Financial Services Board Act, in consultation with the Commissioner; and 5
 - (b) the risk policy fund, the adjusted IFRS value plus expenditure allocated to the risk policy fund that has not been paid in relation to that fund by the last day of the year of assessment;”; 10
- (d) by the substitution for subsection (3) of the following subsection:
 “(3) Every insurer shall establish **[four]** five separate funds as contemplated in subsection (4), and shall thereafter maintain such funds in accordance with the provisions of this section and section 29B.”;
- (e) by the substitution in subsection (4)(a) for subparagraph (i) of the following subparagraph: 15
- “(i) (aa) business other than business relating to a risk policy carried on by the insurer with [,]; and
 - (bb) any policy other than a risk policy, of which the owner is, any pension fund, pension preservation fund, provident fund, provident preservation fund, retirement annuity fund or benefit fund;”; 20
- (f) by the substitution in subsection (4)(a)(ii) for the words preceding the proviso of the following words: 25
- “any policy, other than a risk policy, of which the owner is a person where any amount constituting gross income of whatever nature would be exempt from tax in terms of section 10 were it to be received by or accrue to that person”;
- (g) by the addition to subsection (4)(a) after subparagraph (iii) of the following subparagraph: 30
- “(iv) any policy that is a tax free investment as contemplated in section 12T;”;
- (h) by the substitution in subsection (4) for paragraphs (b), (c) and (d) of the following paragraphs: 35
- “(b) a fund, to be known as the individual policyholder fund, in which shall be placed assets having a market value equal to the value of liabilities determined in relation to any policy, (other than a policy contemplated in **[paragraph]** paragraphs (a) or (e)) of which the owner is any person other than a company; 40
 - (c) a fund, to be known as the company policyholder fund, in which shall be placed assets having a market value equal to the value of liabilities determined in relation to any policy (other than a policy contemplated in **[paragraph]** paragraphs (a) or (e)) of which the owner is a company; **[and]** 45
 - (d) a fund, to be known as a corporate fund in which shall be placed all the assets **[(if any)]** held by the insurer and all liabilities owned by it, other than **[those]** assets and liabilities contemplated in paragraph (a), (b) **[and]**, (c) and (e); and”;
- (i) by the addition to subsection (4) after paragraph (d) of the following paragraph: 50
- “(e) a fund, to be known as a risk policy fund, in which shall be placed assets having a market value equal to the value of liabilities determined in relation to any risk policy.”;
- (j) by the substitution for subsection (6) of the following subsection: 55
- “(6) An insurer who becomes aware that, in consequence of—
- (a) a change of ownership of any policy issued by it; **[or]**
 - (b) any change affecting the status of the owner of any policy; or
 - (c) an annuity becoming payable in terms of a policy,
- the assets held by it in relation to such policy should in terms of the provisions of subsection (4) be held in a **[policyholder]** fund other than the **[policyholder]** fund in which such assets are actually held, shall forthwith transfer from such last-mentioned fund to such first-mentioned 60

fund assets having a market value equal to the value of liabilities determined on the date of such transfer in relation to the said policy.

- (k) by the substitution for subsection (7) of the following subsection:

“(7) Every insurer shall within a period of **[four]** three months after the end of every year of assessment redetermine the value of liabilities in relation to each of its policyholder funds and its risk policy fund as at the last day of **[such year]** that year of assessment, and—

- (a) where the market value of the assets actually held by it in any such fund exceeds the value of liabilities in relation to such fund on such last day, it shall within **[the said]** that period transfer from such fund to its corporate fund assets having a market value equal to such excess; or
- (b) where the market value of the assets actually held by it in any such fund is less than the value of liabilities in relation to such fund on such last day, it shall within **[the said]** that period transfer from its corporate fund to such fund assets having a market value equal to the shortfall,

and such transfer shall be made with effect from that day and for the purposes of this section **[and section 29B]** be deemed to have been made on such last day.”;

- (l) by the substitution for subsection (10) of the following subsection:

“(10) The taxable income derived by an insurer in respect of its individual policyholder fund, its company policyholder fund **[and]**, its corporate fund and its risk policy fund shall be determined separately in accordance with the provisions of this Act as if each such fund had been a separate taxpayer and the individual policyholder fund, company policyholder fund, untaxed policyholder fund **[and]**, corporate fund[,] and its risk policy fund shall be deemed to be separate companies which are connected persons in relation to each other for the purposes of subsections (6), (7) and (8) and sections **[9B]**, 20, 24I, 24J, 24K, 24L, 26A and 29B and the Eighth Schedule to this Act.”;

- (m) by the substitution in subsection (11) for the words preceding paragraph (a) of the following words:

“In the determination of the taxable income derived by an insurer in respect of its individual policyholder fund, its company policyholder fund **[and]**, its corporate fund and its risk policy fund in respect of any year of assessment—”;

- (n) by the substitution in subsection (11)(a)(ii) for item (bb) and the words following that item of the following item and words:

“(bb) all expenses and allowances allocated to such fund which are not included in subparagraph (i), but excluding any expenses directly attributable to any amounts received or accrued which do not constitute income as defined in section 1,

which percentage shall be determined in accordance with the formula

$$Y = \frac{X + U}{Z}$$

in which formula—

- (A) “Y” represents the percentage to be applied to such amount;
- (B) “X” represents an amount which would have been equal to the taxable income calculated in respect of such fund in respect of such year of assessment before taking into account any deduction during such year of—
- (AA) any amount incurred in respect of the selling and administration of policies;
- (BB) any indirect expenses allocated to such fund;
- (CC) the balance of assessed losses as contemplated in section 20(1)(a); and
- (DD) any amount determined in terms of subparagraph (iii);
- (C) “U” represents the amount determined under subitem (DD) multiplied by 0,333 in the case of the individual policyholder fund and 0,666 in the case of the company policyholder fund; and

- (D) “Z” represents an amount equal to the amount represented by X in the formula, plus—
- (AA) the aggregate amount of all dividends that are exempt from normal tax and that are received in respect of such fund during such year; 5
 - (BB) the aggregate amount of all foreign dividends received in respect of such fund during such year, less any amount of that aggregate amount that is included in taxable income;
 - (CC) any portion of the aggregate capital gain in respect of such fund and in respect of such year that is not, by virtue of paragraph 10 of the Eighth Schedule, included in the taxable income in respect of such fund and in respect of such year; and 10
 - (DD) the difference between the market value as defined in section 29B and the expenditure incurred in respect of any asset held at the end of the year of assessment, reduced by the amount determined in terms of this subparagraph for the immediately preceding year of assessment: Provided that if the resultant amount is negative the amount shall be deemed to be nil; and;” ; 15
- (o) by the insertion in subsection (11) after paragraph (a) of the following paragraph: 20
- “(bA) a deduction is allowed in determining the taxable income of the risk policy fund of an amount equal to the amount of the transfer from the risk policy fund to the corporate fund in respect of that year of assessment, but not exceeding the taxable income of the risk policy fund before deducting an amount in terms of this paragraph;”;
- (p) by the substitution in subsection (11) for the words following paragraph (d)(ii) of the following words: 30
- “for purposes of determining the taxable income of such fund for the year of assessment in respect of which the value of liabilities in relation to its policyholder funds or risk policy fund was redetermined in terms of that subsection: Provided that where any amount is transferred from the corporate fund to any policyholder fund or risk policy fund as contemplated in subparagraph (ii), any subsequent transfers from the policyholder fund or risk policy fund to the corporate fund of any amounts which in the aggregate do not exceed the total amount of such transfer, shall not be included in the income of the corporate fund in terms of the provisions of subparagraph (i) of this paragraph;”;
- (q) by the substitution in subsection (11) for paragraph (e) of the following paragraph: 35
- “(e) subject to the provisions of **[paragraph]** paragraphs (a)(iii) and (bA), no amount transferred to or from the corporate fund in terms of the provisions of subsection (7) shall be deducted from or included in the income of the policyholder fund or risk policy fund from or to which such amount was transferred, as the case may be;”;
- (r) by the substitution in subsection (11) for paragraph (g) of the following paragraph: 45
- “(g) premiums and reinsurance claims received and claims and reinsurance premiums paid in respect of policies, other than risk policies, shall be disregarded; and”;
- (s) by the addition in subsection (11) to subparagraph (g) of the following proviso: 55
- “: Provided that where a reinsurance claim is received by or accrues to an insurer in respect of a reinsurance policy (other than a policy that would have constituted a risk policy had it been concluded on 1 January 2016) entered into between that insurer and a person other than a resident, there must be included in the gross income of the policyholder fund associated with that reinsurance policy an amount equal to that reinsurance claim less the aggregate amount of reinsurance premiums incurred or paid in terms of that reinsurance policy which relates to that reinsurance claim;”;
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(t) by the substitution for subsection (12) of the following subsection:

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

(a) to the extent to which such receipt, accrual, asset, expenditure or liability relates exclusively to business conducted by it in any one fund, allocate such receipt, accrual, asset, expenditure or liability to that fund; and

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

(u) by the addition after subsection (12) of the following subsection:

“(13A) (a) Notwithstanding section 23(e), in the determination of the taxable income derived by an insurer in respect of its risk policy fund in respect of any year of assessment, there shall be allowed as a deduction from the income of the risk policy fund an amount equal to the adjusted IFRS value for the year of assessment in respect of risk policies.

(b) Any amount deducted in terms of paragraph (a) during any year of assessment shall be included in the income of the risk policy fund in the following year of assessment.”;

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

(3) Paragraph (g) of subsection (1) comes into operation on 1 March 2015.

(4) Paragraph (n) of subsection (1) is deemed to have come into operation on 1 January 2013 and applies in respect of years of assessment commencing on or after that date.

(5) Paragraph (s) of subsection (1) comes into operation on 1 December 2014 and applies in respect of reinsurance claims received or accrued on or after that date.

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

48. Section 30 of the Income Tax Act, 1962, is hereby amended by the substitution for subsection (4) of the following subsection:

“(4) Where the constitution, will or other written instrument does not comply with the provisions of subsection (3)(b), it shall be deemed to so comply if the [person] persons contemplated in subsection (3)(b)(i) responsible in a fiduciary capacity for the funds and assets of [such organisation] a branch contemplated in paragraph (a)(ii) of the definition of ‘public benefit organisation’ in subsection (1) or any trust established in terms of a will of any person furnishes the Commissioner with a written undertaking that such organisation will be administered in compliance with the provisions of this section.”.

Insertion of section 30C in Act 58 of 1962

49. (1) The following section is hereby inserted in the Income Tax Act, 1962, after section 30B:

“Small business funding entities

30C. (1) The Commissioner must approve a small business funding entity for the purposes of section 10(1)(cQ) if—

(a) that entity is a trust or an association of persons that has been incorporated, formed or established in the Republic;

- (b) (i) the sole or principal object of that entity is the provision of funding for small, medium and micro-sized enterprises; and
- (ii) the funding contemplated in subparagraph (i) is—
 - (aa) provided by that small business funding entity for the benefit of, or is widely accessible to small, medium and micro-sized enterprises; 5
 - (bb) provided on a non-profit basis and with an altruistic or philanthropic intent; and
 - (cc) not intended to directly or indirectly promote the economic self-interest of any fiduciary or employee of that entity, otherwise than by way of reasonable remuneration payable to that fiduciary or employee; 10
- (c) that small business funding entity has submitted to the Commissioner a copy of the constitution or written instrument under which that small business funding entity has been established; 15
- (d) the constitution or written instrument contemplated in paragraph (c) provides that—
 - (i) (aa) the small business funding entity must have a committee, a board of management or similar governing body consisting of at least three natural persons who are not connected persons in relation to each other to accept the fiduciary responsibility of that small business funding entity; 20
 - (bb) not more than fifty per cent of the members of the committee or a board of management contemplated in item (aa) may be employees or directors of any entity providing funding to that small business funding entity or persons who are connected persons in relation to any such employee or director; 25
 - (ii) any single person may not directly or indirectly control the decision-making powers relating to that small business funding entity; 30
 - (iii) the small business funding entity may not directly or indirectly distribute any of its funds or assets to any person other than in the course of furthering its sole or principal object; 35
 - (iv) the small business funding entity may not directly or indirectly distribute any of its funds or assets to any employee in relation to that entity or a person that is a connected person in relation to any such employee or to a person contemplated in subparagraph (i); 40
 - (v) the small business funding entity is required to utilise substantially the whole of its funds for its sole or principal object for which it has been established;
 - (vi) the small business funding entity must during any year of assessment distribute or incur the obligation to distribute at least 25 per cent of all amounts received or accrued in respect of assets held, other than any amount received or accrued in respect of the disposal of any of those assets, during that year of assessment; 45
 - (vii) a member of a committee, a board of management or similar governing body of the small business funding entity may not directly or indirectly have any personal or private interest in that small business funding entity; 50
 - (viii) substantially the whole of the activities of the small business funding entity must be directed to the furtherance of the sole or principal object of that small business funding entity; 55
 - (ix) the small business funding entity may not pay to any employee, office bearer, member or other person any remuneration, as defined in the Fourth Schedule, which is excessive, having regard to what is generally considered reasonable in the sector and in relation to the service rendered; 60
 - (x) the small business funding entity must as part of its dissolution transfer its assets to—

- (aa) another small business funding entity approved by the Commissioner in terms of this section;
 - (bb) a public benefit organisation contemplated in paragraph (a)(i) of the definition of public benefit organisation in section 30(1) that is approved by the Commissioner as a public benefit organisation in terms of that section; 5
 - (cc) an institution, board or body which is exempt from tax under section 10(1)(cA)(i); or
 - (dd) the government of the Republic in the national, provincial or local sphere; 10
 - (xi) the persons contemplated in paragraph (d)(i) will submit any amendment of the constitution or written instrument of the small business funding entity to the Commissioner within 30 days of its amendment;
 - (xii) the small business funding entity will comply with such reporting requirements as may be determined by the Commissioner from time to time; and 15
 - (xiii) the small business funding entity is not knowingly and will not knowingly become a party to, and does not knowingly and will not knowingly permit itself to be used as part of, an impermissible avoidance arrangement contemplated in Part IIA of Chapter III, or a transaction, operation or scheme contemplated in section 103(5). 20
- (2) Where the Commissioner is—
- (a) satisfied that any small business funding entity approved in terms of subsection (1) has during any year of assessment in any material respect; or 25
 - (b) during any year of assessment satisfied that any small business funding entity approved in terms of subsection (1) has on a continuous or repetitive basis, 30
- failed to comply with this section, or the constitution or written instrument under which that small business funding entity was established to the extent that it relates to this section, the Commissioner must notify the small business funding entity that the Commissioner intends to withdraw approval of the small business funding entity if corrective steps are not taken by the small business funding entity within the period stated in the notice. 35
- (3) If no corrective steps are taken by the small business funding entity as contemplated in subsection (2), the Commissioner must withdraw approval of that small business funding entity with effect from the commencement of the year of assessment contemplated in subsection (2). 40
- (4) If the Commissioner has withdrawn the approval of a small business funding entity as contemplated in subsection (3) the small business funding entity must within six months after the date of the withdrawal of approval (or such longer period as the Commissioner may allow) transfer, or take reasonable steps to transfer, its remaining assets to any small business funding entity, public benefit organisation, institution, board or body or the government of the Republic, as contemplated in subsection (1)(d)(x). 45
- (5) If a small business funding entity is wound up or liquidated, the small business funding entity must, as part of the winding-up or liquidation, transfer its assets remaining after the satisfaction of its liabilities to any small business funding entity, public benefit organisation, institution, board or body or the government of the Republic, as contemplated in subsection (1)(d)(x). 50
- (6) If a small business funding entity fails to transfer, or to take reasonable steps to transfer, its assets as contemplated in subsection (4) or (5), an amount equal to the market value of those assets which have not been transferred less an amount equal to the *bona fide* liabilities of that small business funding entity must for the purposes of this Act be deemed to be an amount of taxable income which accrued to that small business funding entity during the year of assessment in which the withdrawal of approval in terms of subsection (4) or the winding-up or liquidation contemplated in subsection (5) took place. 55 60

(7) Any person who is in a fiduciary capacity responsible for the management of any small business funding entity and who intentionally fails to comply with any provision of this section or of the constitution, or other written instrument under which that small business funding entity is established to the extent that it relates to the provisions of this section, shall be guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding 24 months.” 5

(2) Subsection (1) comes into operation on 1 March 2015.

Amendment of section 31 of Act 58 of 1962, as substituted by section 57 of Act 24 of 2011, amended by section 64 of Act 22 of 2012 and section 82 of Act 31 of 2013 10

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

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

“the amount of that difference must, if that person is a resident and the other person to the affected transaction is a person as contemplated in paragraph (a)(i)(bb) or (a)(iii)(bb) of the definition of ‘affected transaction’— 15

(i) if that resident is a company, be deemed to be a dividend consisting of a distribution of an asset *in specie* declared and paid by that resident to that other person; or 20

(ii) if that resident is a person other than a company, be deemed, for purposes of Part V, to be donation made by that resident to that other person,

on the last day of the period of six months following the end of the year of assessment in respect of which that adjustment is made: 25

Provided that where the amount of that difference was prior to 1 January 2015 deemed to be a loan that constitutes an affected transaction, so much of that loan as has not been repaid before 1 January 2015 must—

(a) if that resident is a company, be deemed to be a dividend consisting of a distribution of an asset *in specie* that was declared and paid by that resident to that other person; or 30

(b) if that resident is a person other than a company, be deemed, for purposes of Part V, to be a donation made by that resident to that other person,

on 1 January 2015.”; and 35

(b) by the deletion in subsection (7) at the end of paragraph (b) of the word “and”, insertion of that word at the end of paragraph (c) and addition of the following paragraph:

“(d) no interest accrued in respect of the debt during the year of assessment.”. 40

(2) Paragraph (a) of subsection (1) comes into operation on 1 January 2015.

Amendment of section 36 of Act 58 of 1962, as amended by section 12 of Act 72 of 1963, section 15 of Act 90 of 1964, section 20 of Act 88 of 1965, section 23 of Act 55 of 1966, section 16 of Act 95 of 1967, section 14 of Act 76 of 1968, section 26 of Act 89 of 1969, section 21 of Act 65 of 1973, section 28 of Act 85 of 1974, section 20 of Act 104 of 1980, section 25 of Act 94 of 1983, section 16 of Act 96 of 1985, section 14 of Act 70 of 1989, section 26 of Act 101 of 1990, section 30 of Act 129 of 1991, section 24 of Act 141 of 1992, section 29 of Act 113 of 1993, section 17 of Act 36 of 1996, section 41 of Act 60 of 2001, section 31 of Act 32 of 2004, section 26 of Act 20 of 2006, section 46 of Act 35 of 2007, section 23 of Act 3 of 2008, section 44 of Act 60 of 2008, section 43 of Act 17 of 2009, section 57 of Act 7 of 2010, section 60 of Act 24 of 2011 and section 83 of Act 31 of 2013 45

51. (1) Section 36 of the Income Tax Act, 1962, is hereby amended by the substitution in subsection (11) for subparagraph (B) of paragraph (c)(aa) of the definition of “capital expenditure” of the following subparagraph: 55

“(B)[**prospecting right, mining right, exploration right or production right,**] mining right or mining permit [**or retention permit**] issued in terms of the Mineral and Petroleum Resources Development Act;”.

(2) Subsection (1) is deemed to have come into operation on 1 May 2004.

Amendment of section 37C of Act 58 of 1962, as inserted by section 46 of Act 60 of 2008 and amended by section 86 of Act 31 of 2013

52. (1) Section 37C of the Income Tax Act, 1962, is hereby amended by the deletion of subsections (5), (6) and (7).

(2) Subsection (1) comes into operation on 1 March 2015 and applies in respect of years of assessment commencing on or after that date. 5

Insertion of section 37D in Act 58 of 1962

53. (1) The following section is hereby inserted in the Income Tax Act, 1962, after section 37C:

“Allowance in respect of land conservation in respect of nature reserves or national parks 10

37D. (1) For the purposes of this section, ‘declared land’ means—

- (a) land owned by a person and that is declared a national park or nature reserve in terms of an agreement entered into with that person under section 20 or 23 of the National Environmental Management: Protected Areas Act, 2003 (Act No. 57 of 2003); and 15
- (b) an endorsement is effected to the title deed of that land that reflects the declaration contemplated in paragraph (a) and has a duration of at least 99 years.

(2) There must be allowed to be deducted from the income of any person in respect of declared land, in the year of assessment during which that land becomes declared land and in each subsequent year of assessment, an amount equal to four per cent of— 20

- (a) the expenditure incurred in respect of—
 - (i) the acquisition of the declared land; and 25
 - (ii) improvements effected to the declared land (other than borrowing or finance costs),

if that expenditure is not less than the market value or municipal value of that declared land; or

- (b) an amount determined in accordance with the formula 30

$$A = B + (C \times D)$$

in which formula—

- (i) ‘A’ represents the amount to be determined;
- (ii) ‘B’ represents the cost of acquisition of the declared land and of any improvements to that land; 35
- (iii) ‘C’ represents the amount of a capital gain (if any), that would have been determined in terms of the Eighth Schedule had the declared land been disposed of for an amount equal to the lower of the market value or municipal value of that land on the date of the agreement; and 40
- (iv) ‘D’ represents 66,6 per cent in the case of a natural person or special trust or 33,3 per cent in any other case, if the market value of the declared land or municipal value of that declared land exceeds the expenditure contemplated in paragraph (a). 45

(3) If a person retains a right of use of the declared land, the deduction to be allowed in terms of this section must be limited to an amount that bears the amount determined as contemplated in subsection (2) the same ratio as the market value of the declared land subject to the right of use bears to the market value of the declared land had that declared land not been subject to that right use. 50

(4) The deductions which may be allowed in terms of this section in respect of declared land must not in aggregate exceed the expenditure incurred as referred to in subsection (2)(a) or the amount referred to in symbol ‘A’ under subsection (2)(b), as the case may be.

(5) If the agreement in respect of which the land that becomes declared land is terminated by the person with which the agreement is entered into, an amount equal to the aggregate of the deductions allowed in terms of this section in the five years of assessment preceding the termination must be 55

included in the income of that person in the year of assessment that the agreement is terminated.”.

(2) Subsection (1) comes into operation on 1 March 2015 and applies in respect of years of assessment commencing on or after that date.

Amendment of section 41 of Act 58 of 1962, as substituted by section 34 of Act 74 of 2002 and amended by section 49 of Act 45 of 2003, section 32 of Act 32 of 2004, section 37 of Act 31 of 2005, section 28 of Act 20 of 2006, sections 32 and 103 of Act 8 of 2007, section 52 of Act 35 of 2007, section 25 of Act 3 of 2008, sections 48 and 128 of Act 60 of 2008, section 47 of Act 17 of 2009, section 61 of Act 7 of 2010, section 67 of Act 24 of 2011, section 73 of Act 22 of 2012 and section 90 of Act 31 of 2013

54. Section 41 of the Income Tax Act, 1962, is hereby amended—

- (a) by the deletion in subsection (1) of the definitions of “associated group of companies”, “domestic financial instrument holding company”, “foreign financial instrument holding company”, “prescribed proportion” and “shareholder”; and
- (b) by the substitution for the definition of “trading stock” of the following definition:

“ ‘trading stock’[—

- (a)] for purposes of sections 42, 44, 45 and 47, includes any livestock or produce contemplated in the First Schedule and any reference **[in section 11(a) or 22(1) or (2)]** to an amount taken into account in respect of an asset **in terms of section 11(a) or 22(1) or (2)** shall, in the case of such livestock or produce, be construed as a reference to the amount taken into account in respect thereof in terms of paragraph 5(1) or 9 of the First Schedule, as the case may be;”.

Amendment of section 42 of Act 58 of 1962, as substituted by section 34 of Act 74 of 2002 and amended by section 50 of Act 45 of 2003, section 33 of Act 32 of 2004, section 38 of Act 31 of 2005, section 29 of Act 20 of 2006, section 33 of Act 8 of 2007, section 53 of Act 35 of 2007, section 26 of Act 3 of 2008, section 49 of Act 60 of 2008, section 48 of Act 17 of 2009, section 62 of Act 7 of 2010, section 68 of Act 24 of 2011, section 74 of Act 22 of 2012 and section 91 of Act 31 of 2013

55. (1) Section 42 of the Income Tax Act, 1962, is hereby amended—

- (a) by the substitution in subsection (6)(a) for subparagraph (i) of the following subparagraph:
 - “(i) to hold a qualifying interest in that company, as contemplated in **[paragraph (a)(iii) and (iv)]** paragraphs (c) and (d) of the definition of ‘qualifying interest’ (whether or not as a result of the disposal of shares in that company); or”;

- (b) by the substitution in subsection (7)(b) for subparagraph (i) of the following subparagraph:

“(i) trading stock in the hands of that company, other than an asset that constitutes trading stock that is regularly and continuously disposed of by that company, so much of the amount received or accrued in respect of the disposal of that trading stock as does not exceed the market value of that trading stock as at the beginning of that period of 18 months and so much of the amount taken into account in respect of that trading stock in terms of section 11(a) or 22(1) or (2) as is equal to the amount so taken into account in terms of subsection (2)(b)[**: Provided that this subparagraph does not apply to any asset that constitutes trading stock that is regularly and continuously disposed of by that company**]; or”.

(2) Paragraph (a) of subsection (1) is deemed to have come into operation on 1 January 2013 and applies in respect of transactions entered into on or after that date.

Amendment of section 43 of Act 58 of 1962, as inserted by section 75 of Act 22 of 2012 and amended by section 92 of Act 31 of 2013

56. Section 43 of the Income Tax Act, 1962, is hereby amended by the substitution in subsection (4)(b) for subparagraph (i) of the following subparagraph:

- “(i) [subsections (2) and (3)] subsection (2) must not apply to the part of the equity share so disposed of that relates to that consideration; and”.

Amendment of section 44 of Act 58 of 1962, as substituted by section 34 of Act 74 of 2002 and amended by section 52 of Act 45 of 2003, section 40 of Act 31 of 2005, section 34 of Act 8 of 2007, section 55 of Act 35 of 2007, section 27 of Act 3 of 2008, sections 50 and 129 of Act 60 of 2008, section 49 of Act 17 of 2009, section 63 of Act 7 of 2010, section 69 of Act 24 of 2011, section 76 of Act 22 of 2012 and section 93 of Act 31 of 2013

57. Section 44 of the Income Tax Act, 1962, is hereby amended—

- (a) by the substitution in subsection (1) in paragraph (a) of the definition of “amalgamation transaction” for subparagraph (i) of the following subparagraph:

“(i) in terms of which any company (hereinafter referred to as the ‘amalgamated company’) which is a resident disposes of all of its assets (other than assets it elects to use to settle any debts incurred by it in the ordinary course of its trade and other than assets required to satisfy any reasonably anticipated liabilities to any sphere of government of any country and costs of administration relating to the liquidation or winding-up) to another company (hereinafter referred to as the ‘resultant company’) which is a resident, by means of an amalgamation, conversion or merger; and”;

- (b) by the substitution in subsection (1) in paragraph (b) of the definition of “amalgamation transaction” for subparagraph (i) of the following subparagraph:

“(i) in terms of which an amalgamated company which is a foreign company disposes of all of its assets (other than assets it elects to use to settle any debts incurred by it in the ordinary course of its trade and other than assets required to satisfy any reasonably anticipated liabilities to any sphere of government of any country and costs of administration relating to the liquidation or winding-up) to a resultant company which is a resident, by means of an amalgamation, conversion or merger;”.

Amendment of section 46 of Act 58 of 1962, as substituted by section 34 of Act 74 of 2002 and amended by 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, section 71 of Act 24 of 2011, section 78 of Act 22 of 2012 and section 95 of Act 31 of 2013

58. Section 46 of the Income Tax Act, 1962, is hereby amended by the addition after subsection (5A) of the following subsection:

“(6A) This section does not apply in respect of an unbundling transaction where the unbundling company is a REIT or a controlled company as defined in section 25BB.”.

Amendment of section 47 of Act 58 of 1962, as substituted by section 34 of Act 74 of 2002 and amended by 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, section 72 of Act 24 of 2011, section 79 of Act 22 of 2012 and section 96 of Act 31 of 2013

59. Section 47 of the Income Tax Act, 1962, is hereby amended by the substitution in subsection (1) for paragraph (a) of the definition of “liquidation transaction” of the following paragraph:

“(a) in terms of which any company (hereinafter referred to as the ‘liquidating company’) which is a resident disposes of all of its assets (other than assets it elects to use to settle any debts incurred by it in the ordinary course of its trade) to its shareholders in anticipation of or in the course of the liquidation, winding up or deregistration of that company and other than assets required to

satisfy any reasonably anticipated liabilities to any sphere of government of any country and costs of administration relating to the liquidation or winding up, 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 on the date of that disposal forms part of the same group of companies as the liquidating company; or”.

Substitution of section 49D of Act 58 of 1962, as inserted by section 80 of Act 22 of 2012

60. (1) The following section is hereby substituted for section 49D of the Income Tax Act, 1962:

“Exemption from withholding tax on royalties

49D. A foreign person is exempt from the royalties if—

- (a) that foreign person is a natural person who was physically present in the Republic for a period exceeding 183 days in aggregate during the twelve-month period preceding the date on which the royalty is paid;
- (b) the property in respect of which that royalty is paid is effectively connected with a permanent establishment of that foreign person in the Republic if that foreign person is registered as a taxpayer for the purposes of this Act; or
- (c) that royalty is paid by a headquarter company in respect of the granting of the use or right of use of or permission to use intellectual property as defined in section 23I to which section 31 does not apply as a result of the exclusions contained in section 31(5)(c) or (d).”.

(2) Subsection (1) is deemed to have come into operation on 1 July 2013 and applies in respect of royalties that are paid or that become due and payable on or after that date and in respect of which an exemption under section 49D has not been granted.

Amendment of section 49E of Act 58 of 1962, as inserted by section 12 of Act 21 of 2012

61. (1) Section 49E of the Income Tax Act, 1962, is hereby amended by the substitution for subsections (1) and (2) of the following subsections, respectively:

“(1) Subject to subsections (2) and (3), any person making payment of any **[royalty]** amount of royalties to or for the benefit of a foreign person must withhold an amount **[as contemplated in section 49B]** of withholding tax on royalties from that payment.

(2) A person must not withhold any amount from any payment contemplated in subsection (1)—

(a) to the extent that the royalty is exempt from the withholding tax on royalties in terms of section 49D(c); or

(b) if the foreign person to or for the benefit of which that payment is to be made has—

- [(a)]** (i) by a date determined by the person making the payment; or
- [(b)]** (ii) if the person making the payment did not determine a date as contemplated in **[paragraph (a)]** subparagraph (i), by the date of the payment, submitted to the person making the payment a declaration in such form as may be prescribed by the Commissioner that the foreign person is, in terms of section 49D(a) or (b), exempt from the withholding tax on royalties in respect of that payment.”.

(2) Subsection (1) is deemed to have come into operation on 1 July 2013 and applies in respect of royalties that are paid or that become due and payable on or after that date and in respect of which withholding tax on royalties has not been withheld under section 49E.

Amendment of section 49F of Act 58 of 1962, as inserted by section 12 of Act 21 of 2012

62. (1) Section 49F of the Income Tax Act, 1962, is hereby amended by the substitution for subsections (1) and (2) of the following subsections, respectively:

“(1) If, in terms of section 49C, a foreign person is liable for any amount of withholding tax on royalties in respect of any **[royalty]** amount of royalties that is paid to or for the benefit of the foreign person, that foreign person must pay that amount of withholding tax by the last day of the month following the month during which the royalty is paid, unless the tax has been paid by any other person. 5

(2) Any person that withholds any withholding tax on royalties in terms of section 49E must submit a return and pay the tax to the Commissioner by the last day of the month following the month during which the royalty is paid.”. 10

(2) Subsection (1) is comes into operation on 1 January 2015 and applies in respect of royalties that are paid or that become due and payable on or after the date on which this Act comes into operation. 15

Insertion of section 49H in Act 58 of 1962

63. (1) The following section is hereby inserted in the Income Tax Act, 1962, after section 49G:

“Currency of payments made to Commissioner

49H. If an amount withheld by a person in terms of section 49E(1) is denominated in any currency other than the currency of the Republic, the amount so withheld must, for the purposes of determining the amount to be paid to the Commissioner in terms of section 49F(2), be translated to the currency of the Republic at the spot rate on the date on which the amount was so withheld.”. 20 25

(2) Subsection (1) is deemed to have come into operation on 1 July 2013 and applies in respect of royalties that are paid or that become due and payable on or after the date on which this Act comes into operation.

Amendment of section 50A of Act 58 of 1962, as inserted by section 98 of Act 31 of 2013 30

64. Section 50A of the Income Tax Act, 1962, is hereby amended by the substitution in subsection (1) for paragraph (a) of the definition of “bank” of the following paragraph:

“(a) any bank or branch as defined in section 1 of the Banks Act respectively;”.

Amendment of section 50E of Act 58 of 1962, as inserted by section 98 of Act 31 of 2013 35

65. (1) Section 50E of the Income Tax Act, 1962, is hereby amended by the substitution for subsection (1) of the following subsection:

“(1) Subject to subsections (2) and (3), any person who makes payment of any amount of interest to or for the benefit of a foreign person must withhold an amount of withholding tax on interest calculated at the rate contemplated in section 50B(1) from that payment.”. 40

(2) Subsection (1) comes into operation on 1 January 2015 and applies in respect of interest that is paid or that becomes due and payable on or after that date.

Amendment of section 51A of Act 58 of 1962, as inserted by section 99 of Act 31 of 2013 45

66. (1) Section 51A of the Income Tax Act, 1962, is hereby amended by the substitution for the definition of “service fees” of the following definition:

“‘**service fees**’ means any amount that is received or **[accrued]** accrues in respect of technical services, managerial services and consultancy services but does not include services incidental to the imparting of or the undertaking to impart any scientific, technical, industrial or commercial knowledge or information, or the 50

rendering of or the undertaking to render any assistance or service in connection with the application or utilisation of such knowledge or information.”.

(2) Subsection (1) comes into operation on 1 January 2016 and applies in respect of service fees that are paid or become due and payable on or after that date.

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

67. (1) Section 56 of the Income Tax Act, 1962, is hereby amended by the substitution in subsection (1) for paragraph (h) of the following paragraph:

“(h) by or to any person (including any sphere of government) referred to in section 10(1)(a), (cA), (cE), (cN), (cO), (cQ), (d) or (e);”.

(2) Subsection (1) comes into operation on 1 March 2015 and applies in respect of donations made on or after that date.

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

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

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

Amendment of section 64EB of Act 58 of 1962, as inserted by section 85 of Act 22 of 2012 and amended by section 103 of Act 31 of 2013

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

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

“(ii) the government of the Republic in the national, provincial or local sphere;”;

(b) by the deletion in subsection (2)(a) of the word “or” at the end of subparagraph (xii), insertion of that word at the end of subparagraph (xiii) and addition of the following subparagraph:

“(xiv) a small business funding entity as contemplated in section 10(1)(cQ);” and

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

“any amount paid by that person to that other person not exceeding that dividend in respect of that borrowed share is deemed to be a dividend paid by that person for the benefit of that other person.”.

(2) Subsection (1) is deemed to have come into operation on 4 July 2013 and applies in respect of amounts paid on or after that date.

Amendment of section 64F of Act 58 of 1962, as substituted by section 53 of Act 17 of 2009 and amended by sections 72 and 148 of Act 7 of 2010, section 78 of Act 24 of 2011, section 86 of Act 22 of 2012 and section 104 of Act 31 of 2013

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

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

“(b) the government of the Republic in the national, provincial or local sphere;”;

(b) by the insertion after paragraph (h) of the following paragraph:

“(i) a small business funding entity as contemplated in section 10(1)(cQ);” and

- (c) by the deletion in subsection (1) of the word “or” at the end of paragraph (m), insertion of that word at the end of paragraph (n) and addition of the following paragraph:

“(o) a natural person in respect of a dividend paid in respect of a tax free investment as contemplated in section 12T(1).”.

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- (2) Paragraph (b) of subsection (1) comes into operation on 1 March 2015.

- (3) Paragraph (c) of subsection (1) comes into operation on 1 March 2015 and applies in respect of dividends paid on or after that date.

Amendment of paragraph 4 of Second Schedule to Act 58 of 1962, as amended by section 20 of Act 72 of 1963, section 24 of Act 90 of 1964, section 36 of Act 21 of 1995, section 41 of Act 3 of 2008, section 63 of Act 60 of 2008, section 60 of Act 17 of 2009, section 83 of Act 7 of 2010, section 91 of Act 24 of 2011 and section 97 of Act 22 of 2012

- 71.** (1) Paragraph 4 of the Second Schedule to the Income Tax Act, 1962, is hereby amended by the deletion in subparagraph (1) of item (d).

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- (2) Subsection (1) comes into operation on 1 March 2015.

Amendment of paragraph 9 of Sixth Schedule to Act 58 of 1962, as inserted by section 71 of Act 60 of 2008

- 72.** (1) Paragraph 9 of the Sixth Schedule to the Income Tax Act, 1962, is hereby amended by the deletion of subparagraph (3).

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- (2) Subsection (1) comes into operation on 1 January 2016 and applies in respect of years of assessment commencing on or after that date.

Amendment of paragraph 1 of Seventh Schedule to Act 58 of 1962, as amended by section 26 of Act 96 of 1985, section 33 of Act 65 of 1986, section 28 of Act 85 of 1987, section 24 of Act 70 of 1989, section 55 of Act 101 of 1990, section 49 of Act 129 of 1991, section 35 of Act 141 of 1992, section 52 of Act 113 of 1993, section 30 of Act 21 of 1994, section 40 of Act 36 of 1996, section 54 of Act 30 of 2000, section 59 of Act 59 of 2000, section 62 of Act 74 of 2002, section 47 of Act 3 of 2008, section 90 of Act 7 of 2010, section 101 of Act 24 of 2011 and section 117 of Act 31 of 2013

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- 73.** (1) Paragraph 1 of the Seventh Schedule to the Income Tax Act, 1962, is hereby amended by the deletion of the definitions of “defined benefit component”, “defined contribution component” and “retirement funding income”.

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- (2) Subsection (1) comes into operation on 1 March 2016.

Amendment of paragraph 5 of Seventh Schedule to Act 58 of 1962, as amended by section 28 of Act 96 of 1985, section 57 of Act 101 of 1990, by section 31 of Act 21 of 1994, section 46 of Act 21 of 1995, section 35 of Act 30 of 2002 and section 119 of Act 31 of 2013

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- 74.** (1) Paragraph 5 of the Seventh Schedule to the Income Tax Act, 1962, is hereby amended by the substitution in subparagraph (3A) for the word “and” at the end of item (b) of the word “or”.

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- (2) Subsection (1) is deemed to have come into operation on 1 March 2014 and applies in respect of immovable property acquired on or after that date.

Amendment of paragraph 7 of Seventh Schedule to Act 58 of 1962, as added by section 46 of Act 121 of 1984 and amended by section 30 of Act 96 of 1985, section 10 of Act 108 of 1986, Government Notice 956 of 11 May 1988, section 44 of Act 90 of 1988, Government Notice R.715 of 14 April 1989, section 25 of Act 70 of 1989, Government Notice R.764 of 29 March 1990, section 58 of Act 101 of 1990, section 50 of Act 129 of 1991, section 36 of Act 141 of 1992, section 32 of Act 21 of 1994, section 47 of Act 21 of 1995, section 50 of Act 28 of 1997, section 45 of Act 53 of 1999, section 56 of Act 31 of 2005, section 91 of Act 7 of 2010, section 103 of Act 24 of 2011 and section 101 of Act 22 of 2012

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- 75.** (1) Paragraph 7 of the Seventh Schedule to the Income Tax Act, 1962, is hereby amended—

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

“(a) where such motor vehicle (not being a vehicle in respect of which paragraph (b)(ii) of this definition applies) was acquired by the employer **[under a bona fide agreement of sale or exchange concluded by parties acting at arm’s length]**, the **[original cost]** the retail market value thereof **[to the employer]** as determined by the Minister by Regulation (excluding any finance charge or interest payable by the employer in respect of the employer’s acquisition thereof); or”; and

- (b) by the substitution in subparagraph (1)(c) for the words preceding the proviso of the following words:

“in any other case, the retail market value, as determined by the Minister by Regulation, of such motor vehicle at the time when the employer first obtained the vehicle or right of use thereof or manufactured the vehicle:”.

(2) Paragraph (a) of subsection (1) comes into operation on 1 March 2015 and applies in respect of vehicles acquired on or after that date.

(3) Paragraph (b) of subsection (1) comes into operation on 1 March 2015 and applies in respect of vehicles acquired or manufactured on or after that date.

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

76. (1) Paragraph 9 of the Seventh Schedule to the Income Tax Act, 1962, is hereby amended—

- (a) by the substitution in subparagraph (3) for the words preceding the formula of the following words:

“Subject to the provisions of subparagraph (3A), (3C) and (4), the rental value to be placed on such accommodation **[(other than accommodation referred to in subparagraph (4))]** for any year of assessment shall be **[the greater of—**

(a)] an amount determined in accordance with the formula”;

- (b) by the substitution of the end of subparagraph (3)(a) for the expression “; or” of a full stop;

- (c) by the deletion in subparagraph (3) of item (b); and

- (d) by the insertion after subparagraph (3B) of the following subparagraph:

“(3C) Where the employer or associated institution in relation to the employer supplies accommodation, obtained in terms of a transaction at arm’s length with a person that is not a connected person in relation to that employer or associated institution and the full ownership does not vest in the employer or associated institution, the value to be placed on such accommodation shall be the lower of—

- (a) the amount determined in accordance with subparagraph (3); and
(b) the amount of the expenditure incurred in respect of that accommodation by that employer or associated institution.”.

(2) Subsection (1) comes into operation on 1 March 2015 and applies in respect of years of assessment commencing on or after that date.

Substitution of paragraph 12D of Seventh Schedule to Act 58 of 1962, as inserted by section 125 of Act 31 of 2013

77. (1) The following paragraph is hereby substituted for paragraph 12D of the Seventh Schedule to the Income Tax Act, 1962:

**“VALUATION OF CONTRIBUTIONS MADE BY EMPLOYERS TO
CERTAIN RETIREMENT FUNDS**

12D. (1) For the purposes of this paragraph—

- ‘benefit’** in relation to an employee that is a member of a pension fund, provident fund or retirement annuity fund, means any amount payable to that member or a dependant or nominee of that member by that fund in terms of the rules of the fund; 5
- ‘contribution certificate’** means the certificate contemplated in subparagraph (4);
- ‘defined benefit component’** means a benefit or part of a benefit receivable from a pension fund, provident fund or retirement annuity fund by a member of that fund or a dependant or nominee of that member other than a defined contribution component or underpin component of a fund;” 10
- ‘defined contribution component’** means a benefit or part of a benefit receivable from a pension fund, provident fund or retirement annuity fund— 15
- (a) where the interest of each member in the fund in respect of that benefit has a value equal to the value of—
- (i) the contributions paid by the member and by the employer in terms of the rules of the fund that determine the rates of both their contributions at a fixed rate; 20
 - (ii) less such expenses as the board of that fund determines should be deducted from the contributions paid;
 - (iii) plus any amount credited to the member’s individual account upon— 25
 - (A) the commencement of the member’s membership of the fund;
 - (B) the conversion of the component of the fund to which the member belongs from a defined benefit component to a defined contribution component; or 30
 - (C) the amalgamation of that fund with any other fund, if any, other than amounts taken into account in terms of subparagraph (iv);
 - (iv) plus any other amounts lawfully permitted, credited to or debited from the member’s individual account, if any, as increased or decreased by fund return; or 35
- (b) which consists of a risk benefit provided by the fund directly or indirectly for the benefit of a member of the fund if the risk benefit is provided solely by means of a policy of insurance; 40
- ‘fund member category’** in relation to members of a pension fund, provident fund or retirement annuity fund, means any group of members in respect of whom, in terms of the rules of the fund—
- (a) the employers of those members and those members must respectively make a contribution to that fund in an amount in respect of retirement funding income at the same fixed rate; and 45
 - (b) the determination of the value of the benefits of the members referred to in paragraph (a) and the determination of the entitlement of those members to those benefits are made according to the same method;
- ‘fund member category factor’** means the fund member category factor contemplated in subparagraph (4); 50
- ‘fund return’**, in relation to—
- (a) the assets of a fund, means any income (received or accrued) and capital gains and losses (realised or unrealised) earned on the assets of the fund, net of expenses and tax charges, associated with the acquisition, holding or disposal of assets; or 55
 - (b) any portion of the assets of a fund if the assets are separately identifiable, means any income (received or accrued) and capital gains and losses (realised or unrealised) earned on those assets, net of expenses and tax charges associated with the acquisition, holding or disposal of assets; or 60
 - (c) the assets of a fund, to the extent that those assets consist of long-term policies which are “fund member policies” as defined in Part 5 of the

Regulations under the Long-term Insurance Act means the “growth rate” (as defined in those Regulations) applicable to those policies, as determined in accordance with those Regulations;

‘member’ means in relation to a pension, provident or retirement annuity fund, any member or former member of that fund but does not include any member or former member or person who has received all the benefits which may be due to them from the fund and whose membership has thereafter been terminated in accordance with rules of the fund;

‘retirement-funding income’ means—

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

(b) in relation to a partner in a partnership (other than a partner contemplated in paragraph (a)) that part of the partner’s income from the partnership in the form of the partner’s share of profits as is taken into account in the determination of the contributions made by the partnership for the benefit of the partner to a pension fund or provident fund in terms of the rules of the fund: Provided that for the purposes of this definition a partner in a partnership must be deemed to be an employee of the partnership and a partnership must be deemed to be the employer of the partners in that partnership;

‘risk benefit’ means a benefit payable by the fund in respect of the death or permanent disablement of a member to that member or to a dependant or nominee of that member; and

‘underpin component’ means a benefit receivable from a pension fund, provident fund or retirement annuity fund the value of which benefit, in terms of the rules of the fund, is the greater of the amount of a defined contribution component or a defined benefit component other than a risk benefit;

(2) The cash equivalent of the value of the benefit contemplated in paragraph 2(1), where the benefits payable to members in respect of a fund member category of a pension, provident or retirement annuity fund consists solely of defined contribution components, is the value of the amount contributed by the employer for the benefit of an employee who is a member of that fund.

(3) Where the benefits payable to members in respect of a fund member category of a pension, provident or retirement annuity fund consists of components other than only defined contribution components, the cash equivalent of the value of the benefit contemplated in paragraph 2(1) is an amount that must be determined in accordance with the formula

$$X = (A \times B) - C$$

in which formula—

- (a) ‘X’ represents the amount to be determined;
- (b) ‘A’ represents the fund member category factor in respect of the fund member category of which the employee is a member;
- (c) ‘B’ represents the amount of the retirement funding employment income of the employee;
- (d) ‘C’ represents the sum of the amounts contributed by the employee to the fund in terms of the rules of the fund, excluding any additional voluntary contributions contributed to the fund by the employee, and buyback, in respect of that year of assessment.

(4) The board of a fund must provide to the employer of the employees who are members of a fund a contribution certificate in respect of the benefit contemplated in subparagraph (3)—

- (a) no later than one month before the commencement of the year of

- assessment in respect of which the contribution certificate is issued: Provided that the board of the fund must not provide a contribution certificate in respect of any year of assessment in respect of which those benefits remain unaltered subsequent to the issue of that contribution certificate; or
- (b) where the rules of the fund are amended and those amendments or for any reason affect the value of or entitlement to any benefit payable to a member of that fund or a dependant or nominee of that member, the contribution certificate must be supplied to the employer no later than one month after the day on which those amendments become effective.
- (5) The Minister must make regulations prescribing—
- (a) the manner in which a fund must determine all fund member category factors; and
- (b) the information that the contribution certificate contemplated in subparagraph (4) must contain.
- (6) No value must be placed in terms of this paragraph on the taxable benefit derived from any contribution made by an employer to a fund—
- (a) for the benefit of a member of that fund who has retired from that fund; or
- (b) in respect of the dependants or nominees of a deceased member of that fund.”.

(2) Subsection (1) comes into operation on 1 March 2016.

Amendment of paragraph 1 of Eighth Schedule to Act 58 of 1962, as amended by section 65 of Act 60 of 2001, section 63 of Act 74 of 2002, section 90 of Act 45 of 2003, section 25 of Act 16 of 2004, section 51 of Act 32 of 2004, section 63 of Act 31 of 2005, section 49 of Act 3 of 2008 and section 102 of Act 22 of 2012

78. (1) Paragraph 1 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended by the substitution for paragraph (a) of the definition of “recognised exchange” of the following paragraph:

“(a) an exchange licensed under the [Securities Services Act, 2004] Financial Markets Act; or”.

(2) Subsection (1) is deemed to have come into operation on 3 June 2013.

Amendment of paragraph 10 of Eighth Schedule to Act 58 of 1962, as amended by section 66 of Act 74 of 2002, section 9 of Act 13 of 2012 and section 105 of Act 22 of 2012

79. (1) Paragraph 10 of the Eighth Schedule to the Income Tax Act, is hereby amended—

- (a) by the deletion in subparagraph (b) of the word “and” at the end of item (ii);
- (b) by the substitution in subparagraph (b) at the end of item (iii) for the word “or” of the word “and”; and
- (c) by the addition in subparagraph (b) of the following item:
- “(iv) risk policy fund, 66,6 per cent; or”.

(2) Subsection (1) comes into operation on 1 January 2016.

Amendment of paragraph 11 of Eighth Schedule to Act 58 of 1962, as amended by section 71 of Act 60 of 2001, section 67 of Act 74 of 2002, section 92 of Act 45 of 2003, section 55 of Act 32 of 2004, section 66 of Act 31 of 2005, section 44 of Act 20 of 2006, section 74 of Act 60 of 2008, section 106 of Act 22 of 2012 and section 126 of Act 31 of 2013

80. Paragraph 11 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended—

- (a) by the substitution in subparagraph (2) at the end of item (l) for the full stop of a semi-colon; and
- (b) by the addition to subparagraph (2) of the following item:
- “(m) by a person where that person exchanges a qualifying equity share for another qualifying equity share as contemplated in section 8B(2).”.

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

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81. Paragraph 12 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended—

- (a) by the substitution for subparagraph (1) of the following subparagraph:
 - “(1) [**Unless subparagraph (4) applies, where**] Where an event described in subparagraph (2) occurs, a person must, subject to paragraph 24, be treated for the purposes of this Schedule as having disposed of an asset described in subparagraph (2) for an amount received or accrued equal to the market value of the asset at the time of the event and to have immediately reacquired the asset at an expenditure equal to that market value, which expenditure must be treated as an amount of expenditure actually incurred [**and paid**] for the purposes of paragraph 20(1)(a).”;
- (b) by the substitution in subparagraph (2)(a) for items (i) and (ii) of the following items, respectively:
 - “(i) that commences to be a resident; or
 - (ii) that is a foreign company that commences to be a controlled foreign company[; **or**].”;
- (c) by the deletion in subparagraph (2)(a) of subitem (iii).

Amendment of paragraph 12A of Eighth Schedule to Act 58 of 1962, as inserted by section 108 of Act 22 of 2012 and amended by section 127 of Act 31 of 2013

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82. (1) Paragraph 12A of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended—

- (a) by the substitution in subparagraph (1) for the words preceding the definition of “allowance asset” of the following words:
 - “For the purposes of this [**section**] paragraph—”;
- (b) by the substitution for subparagraph (4) of the following subparagraph:
 - “(4) Where—
 - (a) a debt owed by a person is reduced as contemplated in subparagraph (2); and
 - (b) the amount of that debt was used as contemplated in item (a) of that subparagraph to fund expenditure incurred in the acquisition, creation or improvement of an asset (other than an allowance asset) that is—
 - (i) held by that person at the time of the reduction of the debt, and subparagraph (3) has been applied to reduce any expenditure in respect of that asset to the full extent of that expenditure; or
 - (ii) no longer held by that person at the time of the reduction of that debt,

the reduction amount in respect of that debt, less any amount that has been applied to reduce any amount of expenditure as contemplated in subparagraph (3), must be applied to reduce any assessed capital loss of that person for the year of assessment in which the reduction takes place.”.

(2) Subsection (1) is deemed to have come into operation on 1 January 2013 and applies in respect of years of assessment commencing on or after that date.

Amendment of paragraph 15 of Eighth Schedule to Act 58 of 1962, as amended by section 73 of Act 60 of 2001

83. Paragraph 15 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended by the substitution in subparagraph (e) for item (ii) of the following item:

- “(ii) share in a share block company, as defined in section 1 of the Share Blocks Control Act[, **1980 (Act No. 59 of 1980)**],”.

Amendment of paragraph 20 of Eighth Schedule to Act 58 of 1962, as inserted by section 38 of Act 5 of 2001 and amended by section 26 of Act 19 of 2001, section 75 of Act 60 of 2001, section 71 of Act 74 of 2002, section 95 of Act 45 of 2003, section 58 of Act 32 of 2004, section 68 of Act 31 of 2005, section 45 of Act 20 of 2006, section 60 of Act 8 of 2007, section 73 of Act 35 of 2007, section 52 of Act 3 of 2008, section 77 of Act 60 of 2008, section 95 of Act 7 of 2010, section 110 of Act 24 of 2011, section 111 of Act 22 of 2012 and section 130 of Act 31 of 2013 5

84. (1) Paragraph 20 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended by the substitution in subparagraph (1)(h) for subitem (vi) of the following subitem: 10

“(vi) **[subject to paragraph 12(5),]** an asset which was acquired on or after the valuation date by a person from a person who at the time of that acquisition was not a resident **[by way of a disposal contemplated in paragraph 38(1)]** by means of a donation or for a consideration not measurable in money or where the person acquiring the asset is a connected person in relation to the person that is not a resident, for a consideration which does not reflect an arm’s length price, the market value of that asset on the date of its acquisition”. 15

(2) Subsection (1) comes into operation on the date of promulgation of this Act and applies in respect of acquisitions during any year of assessment ending on or after that date. 20

Amendment of paragraph 29 of Eighth Schedule to Act 58 of 1962, as inserted by section 38 of Act 5 of 2001 and amended by section 81 of Act 60 of 2001, section 38 of Act 30 of 2002, section 76 of Act 74 of 2002, section 47 of Act 20 of 2006, section 61 of Act 8 of 2007 and section 96 of Act 7 of 2010 25

85. Paragraph 29 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended by the substitution in subparagraph (2A) for the words following subitem (iii) of the following words:

“the Commissioner must, after consultation with the recognised exchange and the Financial Services Board **[established in terms of the Financial Services Board Act, 1990 (Act No. 97 of 1990)]**, determine the market value of that financial instrument having regard to the value of the financial instrument, circumstances surrounding the suspension of that financial instrument or reasons for the increase in the value of that financial instrument.”. 30

Amendment of paragraph 31 of Eighth Schedule to Act 58 of 1962, as inserted by section 38 of Act 5 of 2001 and amended by section 83 of Act 60 of 2001, section 78 of Act 74 of 2002, section 49 of Act 20 of 2006, section 62 of Act 8 of 2007, section 97 of Act 7 of 2010 and section 131 of Act 31 of 2013 35

86. Paragraph 31 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended— 40

(a) by the substitution in subparagraph (1)(f) for subitem (i) of the following subitem:

“(i) the value of that property determined as contemplated in paragraph (b) of the definition of ‘fair market value’ in section 1 of the Estate Duty Act[, **1955 (Act No. 45 of 1955)]**; or”; and 45

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

“(i) in the case of a natural person, must be determined in accordance with the provisions applicable in determining the expectation of life of a person for estate duty purposes, as contemplated in the regulations issued in terms of section 29 of the Estate Duty Act[, **1955, (Act No. 45 of 1955)]**; and”. 50

Amendment of paragraph 41 of Eighth Schedule to Act 58 of 1962, as inserted by section 38 of Act 5 of 2001 and amended by section 83 of Act 74 of 2002

87. Paragraph 41 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended by the substitution in subparagraph (1) for item (a) of the following item: 55

“(a) the tax determined in terms of this Act, which relates to the taxable capital gain of a deceased person, exceeds 50 per cent of the net value of the estate determined for purposes of the Estate Duty Act[, 1955 (Act No. 45 of 1955)], before taking into account the amount of that tax so determined; and”.

Amendment of paragraph 43 of Eighth Schedule to Act 58 of 1962, as inserted by section 38 of Act 5 of 2001 and amended by section 91 of Act 60 of 2001, section 84 of Act 74 of 2002, section 101 of Act 45 of 2003, section 75 of Act 31 of 2005, section 51 of Act 20 of 2006, section 76 of Act 35 of 2007, section 100 of Act 7 of 2010, section 111 of Act 24 of 2011, section 117 of Act 22 of 2012 and section 136 of Act 31 of 2013

88. (1) Paragraph 43 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended—

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

“(5) Where a person is treated as having derived an amount of proceeds from the disposal of any asset and the **[base cost of]** expenditure incurred to acquire that asset is determined in any foreign currency—

(a) the amount of those proceeds must be treated as being denominated in the currency of the **[base cost]** expenditure incurred to acquire that asset; and

(b) the **[base cost of the person acquiring]** expenditure incurred by that person to acquire that asset must for purposes of paragraphs 12, 38 and 40 be treated as being denominated in that currency.”; and

(b) by the substitution for subparagraph (6) of the following subparagraph:

“(6) Where a person has adopted the market value as the valuation date value of any asset contemplated in this paragraph, that market value must be determined in the currency of the expenditure **[of]** incurred to acquire that asset and translated to the local currency by applying the spot rate on valuation date.”.

(2) Subsection (1) comes into operation on 1 January 2015.

Amendment of paragraph 44 of Eighth Schedule to Act 58 of 1962, as inserted by section 38 of Act 5 of 2001 and amended by section 92 of Act 60 of 2001

89. Paragraph 44 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended by the substitution in the definition of “an interest” for paragraph (b) of the following paragraph:

“(b) a share owned directly in a share block company as defined in the Share Blocks Control Act[, 1980 (Act No. 59 of 1980)] or a share or interest in a similar entity which is not a resident; or”.

Insertion of paragraph 63B in Eighth Schedule to Act 58 of 1962, as inserted by section 38 of Act 5 of 2001

90. (1) The Eighth Schedule to the Income Tax Act, 1962, is hereby amended by the insertion after paragraph 63A of the following paragraph:

“Small business funding entities

63B. (1) A small business funding entity approved by the Commissioner in terms of section 30C must disregard any capital gain or capital loss determined in respect of the disposal of an asset if—

(a) that small business funding entity did not use that asset in carrying on any business undertaking or trading activity; or

(b) substantially the whole of the use of that asset by that small business funding entity was directed at—

(i) a purpose other than carrying on a business undertaking or trading activity; or

(ii) carrying on a business undertaking or trading activity contemplated in section 10(1)(cQ)(ii)(aa), (bb) or (cc).”.

(2) Subsection (1) comes into operation on 1 March 2015.

Amendment of paragraph 67B of Eighth Schedule to Act 58 of 1962, as substituted by section 129 of Act 22 of 2012

91. Paragraph 67B of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended by the deletion in subparagraph (1) of the definition of “Share Blocks Control Act”.

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Amendment of paragraph 77 of Eighth Schedule to Act 58 of 1962, as inserted by section 38 of Act 5 of 2001 and amended by section 122 of Act 24 of 2011 and section 149 of Act 31 of 2013

92. Paragraph 77 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended by the substitution for the heading of the following heading:

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“Distribution in liquidation or deregistration received by [shareholder] holders of shares”.

Amendment of paragraph 8 of Tenth Schedule to Act 58 of 1962, as substituted by section 89 of Act 35 of 2007 and amended by section 125 of Act 24 of 2011 and section 160 of Act 31 of 2013

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93. (1) Paragraph 8 of the Tenth Schedule to the Income Tax Act, 1962, is hereby amended by the addition to subparagraph (1) of the following item:

“(c) If an oil and gas company jointly holds with another oil and gas company an exploration right, as defined in section 1 of the Mineral and Petroleum Resources Development Act, and any one of those oil and gas companies has concluded an agreement as contemplated in subparagraph (1) in respect of that right, all of the fiscal stability rights in terms of that agreement relating to that exploration apply in respect of both of those companies.”.

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(2) Subsection (1) comes into operation on 1 April 2015.

Continuation of certain amendments of Schedules to Act 91 of 1964

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94. Every amendment or withdrawal of or insertion in Schedules No. 1 to 6, 8 and 10 to the Customs and Excise Act, 1964, made under section 48, 49, 56, 56A, 57, 60 or 75(15) of that Act during the period 1 September 2013 up to and including 30 September 2014, shall not lapse by virtue of section 48(6), 49(5A), 56(3), 56A(3), 57(3), 60(4) or 75(16) of that Act.

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Amendment of section 1 of Act 89 of 1991, as amended by section 21 of Act 136 of 1991, paragraph 1 of Government Notice 2695 of 8 November 1991, section 12 of Act 136 of 1992, section 1 of Act 61 of 1993, section 22 of Act 97 of 1993, section 9 of Act 20 of 1994, section 18 of Act 37 of 1996, section 23 of Act 27 of 1997, section 34 of Act 34 of 1997, section 81 of Act 53 of 1999, section 76 of Act 30 of 2000, section 64 of Act 59 of 2000, section 65 of Act 19 of 2001, section 148 of Act 60 of 2001, section 114 of Act 74 of 2002, section 47 of Act 12 of 2003, section 164 of Act 45 of 2003, section 43 of Act 16 of 2004, section 92 of Act 32 of 2004, section 8 of Act 10 of 2005, section 101 of Act 31 of 2005, section 40 of Act 9 of 2006, section 77 of Act 20 of 2006, sections 81 and 108 of Act 8 of 2007, section 104 of Act 35 of 2007, section 68 of Act 3 of 2008, section 104 of Act 60 of 2008, section 33 of Act 18 of 2009, section 119 of Act 7 of 2010, section 26 of Act 8 of 2010, section 129 of Act 24 of 2011, section 271 of Act 28 of 2011, read with item 108 of Schedule 1 to that Act, section 145 of Act 22 of 2012 and section 165 of Act 31 of 2013

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95. (1) Section 1 of the Value-Added Tax Act, 1991 (Act No. 89 of 1991), is hereby amended—

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

“(vi) the supply of electronic services by a person from a place in an export country[—], where at least two of the following circumstances are present:

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(aa) [to a] The recipient of those electronic services [that] is a resident of the Republic; [or]

- (bb) [where] any payment to that person in respect of such electronic services originates from a bank registered or authorised in terms of the Banks Act, 1990 (Act No. 94 of 1990);
 - (cc) the recipient of those electronic services has a business address, residential address or postal address in the Republic;; and
 - (b) by the substitution in subsection (1) in the definition of “second hand goods” for paragraph (ii) of the following paragraph:
 - “(ii) gold, gold coins contemplated in section 11(1)(k) and goods containing gold;”.
- (2) Subsection (1) comes into operation on 1 April 2015.

Amendment of section 11 of Act 89 of 1991, as amended by section 27 of Act 136 of 1991, Government Notice 2695 of 8 November 1991, section 17 of Act 136 of 1992, section 27 of Act 97 of 1993, section 13 of Act 20 of 1994, section 28 of Act 27 of 1997, section 89 of Act 30 of 1998, section 85 of Act 53 of 1999, section 77 of Act 30 of 2000, section 43 of Act 5 of 2001, section 153 of Act 60 of 2001, section 169 of Act 45 of 2003, section 46 of Act 16 of 2004, section 98 of Act 32 of 2004, section 21 of Act 9 of 2005, section 105 of Act 31 of 2005, section 44 of Act 9 of 2006, section 81 of Act 20 of 2006, section 105 of Act 35 of 2007, section 29 of Act 36 of 2007, Government Notice R.1024 in *Government Gazette* 32664 of 30 October 2009, section 134 of Act 24 of 2011 and section 169 of Act 31 of 2013

- 96.** (1) Section 11 of the Value-Added Tax Act, 1991, is hereby amended—
- (a) by the deletion in subsection (1) of paragraph (g); and
 - (b) by the substitution in subsection (2) for the words preceding paragraph (a) of the following words:
 - “Where, but for this section, a supply of services, other than services contemplated in section 11(2)(k) that are electronic services, would be charged with tax at the rate referred to in section 7(1), such supply of services shall, subject to compliance with subsection (3) of this section, be charged with tax at the rate of zero per cent where—”.
- (2) Paragraph (a) of subsection (1) comes into operation on a date determined by the Minister by notice in the *Gazette* which notice may not be published earlier than 12 months after the promulgation of this Act.
- (3) Paragraph (b) of subsection (1) comes into operation on 1 April 2015.

Amendment of section 12 of Act 89 of 1991, as amended by section 18 of Act 136 of 1992, section 14 of Act 20 of 1994, section 22 of Act 37 of 1996, section 69 of Act 19 of 2001 section 154 of Act 60 of 2001, section 117 of Act 74 of 2002, section 99 of Act 32 of 2004, section 45 of Act 9 of 2006, section 82 of Act 20 of 2006, section 109 of Act 60 of 2008, section 147 of Act 22 of 2012 and section 170 of Act 31 of 2013

- 97.** (1) Section 12 of the Value-Added Tax Act, 1991, is hereby amended by the substitution for paragraph (l) of the following paragraph:
- “(l) the supply of any goods or services by a bargaining council that is established in terms of section 27 of the Labour Relations Act, 1995 (Act No. 66 of 1995), to any of its members **[to the extent that the consideration for such supply consists of membership contributions]** in terms of section 28(1) of that Act;”.
- (2) Subsection (1) comes into operation on 1 April 2015.

Amendment of section 16 of Act 89 of 1991, as amended by section 30 of Act 136 of 1991, section 21 of Act 136 of 1992, section 30 of Act 97 of 1993, section 16 of Act 20 of 1994, section 23 of Act 37 of 1996, section 32 of Act 27 of 1997, section 91 of Act 30 of 1998, section 87 of Act 53 of 1999, section 71 of Act 19 of 2001, section 156 of Act 60 of 2001, section 172 of Act 45 of 2003, section 107 of Act 31 of 2005, section 47 of Act 9 of 2006, section 83 of Act 20 of 2006, section 83 of Act 8 of 2007, section 106 of Act 35 of 2007, section 30 of Act 36 of 2007, section 29 of Act 8 of 2010, section 137 of Act 24 of 2011, section 271 of Act 28 of 2011, read with item 115 of Schedule 1 to that Act, section 148 of Act 22 of 2012 and section 173 of Act 31 of 2013

98. (1) Section 16 of the Value-Added Tax Act, 1991, is hereby amended— 10

(a) by the substitution in subsection (3)(a) for subparagraph (iii) of the following subparagraph:

“(iii) charged in terms of section 7(1)(b) in respect of goods imported into the Republic by the vendor and **[paid]** released in terms of the Customs and Excise Act during that tax period;” and 15

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

“(ii) charged in terms of section 7(1)(b) in respect of goods imported into the Republic by the vendor and released in terms of the Customs and Excise Act or in terms of section 7(3)(a) in respect of goods subject to excise duty or environmental levy as contemplated in that section and paid by the vendor during **[the]** that tax period;” 20

(2) Subsection (1) comes into operation on 1 April 2015.

Amendment of section 20 of Act 89 of 1991, as amended by section 25 of Act 136 of 1992, section 33 of Act 97 of 1993, section 35 of Act 27 of 1997, section 94 of Act 30 of 1998, section 91 of Act 53 of 1999, section 157 of Act 60 of 2001, section 175 of Act 45 of 2003, section 47 of Act 16 of 2004, section 104 of Act 32 of 2004, section 38 of Act 21 of 2006, section 14 of Act 9 of 2007, section 1 of Act 3 of 2008, section 35 of Act 18 of 2009, section 30 of Act 8 of 2010, section 29 of Act 21 of 2012 and section 176 of Act 31 of 2013 25 30

99. (1) Section 20 of the Value-Added Tax Act, 1991, is hereby amended by the substitution for subsection (5B) of the following subsection:

“(5B) Notwithstanding any other provision of this Act, if the supply by a vendor relates to any enterprise contemplated in paragraph (b)(vi) of the definition of ‘enterprise’ in section 1, the vendor shall be required to provide a tax invoice **[as contemplated in subsection (5)]** containing such particulars as must be prescribed by the Minister by regulation.” 35

(2) Subsection (1) comes into operation on 1 April 2015.

Repeal of section 40A of Act 89 of 1991

100. Section 40A of the Value-Added Tax Act, 1991, is hereby repealed. 40

Repeal of section 40B of Act 89 of 1991

101. Section 40B of the Value-Added Tax Act, 1991, is hereby repealed.

Amendment of section 54 of Act 89 of 1991, as amended by section 40 of Act 136 of 1991, section 34 of Act 136 of 1992, section 25 of Act 20 of 1994, section 46 of Act 27 of 1997, section 100 of Act 53 of 1999 and section 51 of Act 16 of 2004 45

102. (1) Section 54 of the Value-Added Tax Act, 1991, is hereby amended—

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

“: Provided further that where an agent issues a tax invoice on behalf of a principal, such tax invoice must be issued within 21 days of the date of that supply by that agent.” and 50

(b) by the substitution in subsection (3) for the words following paragraph (b) of the following words and subparagraphs:

“the agent shall maintain sufficient records to enable the name, **[and]** address and VAT registration number of the principal to be ascertained, and in respect of all—

- (i) supplies made on or after 1 January 2000 by or to the agent on behalf of the principal, the agent shall notify the principal in writing by means of a statement within 21 days of the end of the calendar month during which the supply was made or received[,], of the particulars contemplated in paragraphs (e), (f) and (g) of section 20 (4) in relation to such supplies; or
- (ii) goods imported by the agent on behalf of the principal, the agent shall notify the principal in writing by means of a statement within 21 days of the end of the calendar month during which the goods were imported of the full and proper description of the goods, the quantity or volume of the goods, the value of the goods imported and the amount of tax paid on importation of the goods, together with the receipt number of the payment of such tax.”.

(2) Subsection (1) comes into operation on 1 April 2015.

Amendment of section 65 of Act 89 of 1991, as amended by section 37 of Act 136 of 1992 and section 174 of Act 60 of 2001

103. (1) Section 65 of the Value-Added Tax Act, 1991, is hereby amended by the substitution for paragraph (iii) of the proviso of the following paragraph:

- “(iii) the Commissioner may in the case of any vendor or class of vendors approve any other method of displaying prices of goods or services by such vendor or class of vendors **[during a period approved by the Commissioner which commences before and ends after the commencement date]** or, where the rate of tax is increased or reduced, the date on which the increased or reduced rate of tax takes effect;”.

(2) Subsection (1) comes into operation on 1 April 2015.

Amendment of section 67 of Act 89 of 1991, as amended by section 43 of Act 136 of 1991, section 38 of Act 136 of 1992 and section 30 of Act 37 of 1996

104. (1) Section 67 of the Value-Added Tax Act, 1991, is hereby amended—

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

“(1) Whenever the value-added tax is imposed for the first time in terms of this Act or the rate of tax applicable under section 7(1) is increased in respect of any supply of goods or services in relation to which any agreement was entered into by the acceptance of an offer made before the tax was imposed for the first time in terms of this Act or the rate of tax applicable under section 7(1) was increased, as the case may be, the vendor may, unless agreed to the contrary in any agreement in writing and notwithstanding anything to the contrary contained in any law, recover from the recipient, as an addition to the amounts payable by the recipient to the vendor, a sum equal to any amount payable by the vendor by way of the said tax or increase, as the case may be, and any amount so recoverable by the vendor shall, whether it is recovered or not, be accounted for by the vendor under the provisions of this Act as part of the consideration in respect of the said supply.

(2) Whenever the value-added tax is withdrawn or the rate of tax applicable under section 7(1) is decreased in respect of any supply of goods or services in relation to which any agreement was entered into by the acceptance of an offer made before the tax was withdrawn or the rate of tax applicable under section 7(1) was decreased, as the case may be, the vendor shall, unless agreed to the contrary in any agreement in writing and notwithstanding anything to the contrary contained in any law, reduce the amount payable to **[him]** the vendor by the recipient by way of any consideration in which the amount of such tax was included, by a sum equal to the amount of the tax withdrawn or the amount by which the rate of tax applicable under section 7(1) was decreased, as the case may be.”; and

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

“Whenever the value-added tax is imposed for the first time in terms of this Act or withdrawn or the rate of tax applicable under section 7(1) is increased[, or withdrawn] or decreased, as the case may be, in respect of any supply of goods or services subject to any fee, charge or other amount (whether it is a fixed, maximum or minimum fee, charge or other amount) prescribed by, or determined pursuant to, any Act or by any regulation or measure having the force of law, that fee, charge or other amount may be increased or shall be decreased, as the case may be, by the amount of tax or additional tax charged or chargeable or the amount of tax no longer charged or chargeable, as the case may be: Provided that this subsection shall not apply to any fee, charge or other amount if such fee, charge or other amount has been altered in any Act, regulation or measure prescribing or determining such fee, charge or other amount to take account of any imposition [, increase, decrease] of tax for the first time in terms of this Act or withdrawal of such tax or increase or decrease in the rate of tax applicable under section 7(1)”.

- (2) Subsection (1) comes into operation on 1 April 2015.

Amendment of section 74 of Act 89 of 1991, as amended by section 188 of Act 45 of 2003

105. (1) Section 74 of the Value-Added Tax Act, 1991, is hereby amended by the substitution for subsection (3) of the following subsection:

“(3) (a) Whenever the Minister amends any [Schedule] Customs Tariff or Excise Tariff under any provision of the Customs [and] Duty Act or the Excise Duty Act[, 1964 (Act No. 91 of 1964),] by notice in the *Gazette* and it is necessary to amend in consequence thereof Schedule 1 of this Act, the Minister, may by like notice amend the said Schedule 1.

(b) The provisions of section [48(6)] 14 of the Customs [and] Duty Act or section 48(6) of the Excise Duty Act[, 1964], shall apply *mutatis mutandis* in respect of any amendment by the Minister under this subsection.”.

- (2) Subsection (1) comes into operation on the date on which the Customs Control Act, 2014, takes effect.

Substitution of section 86A of Act 89 of 1991, as inserted by section 176 of Act 60 of 2001

106. (1) The following section is hereby substituted for section 86A of the Value-Added Tax Act, 1991:

“Provisions relating to [industrial development zones] IDZs

86A. Where a provision of the Customs [and Excise] Control Act, [or] the Manufacturing Development Act, 1993 (Act No. 187 of 1993), or the Special Economic Zones Act, or a regulation made thereunder governing the administration of [industrial development zones] IDZs or SEZs including a matter relating to the liability for or levying of value-added tax or a refund thereof or a supply of goods or services subject to tax at the zero-rate is inconsistent or in conflict with a provision of this Act, the provision of this Act will prevail.”.

- (2) Subsection (1) comes into operation on the date on which the Customs Control Act, 2014, takes effect.

Amendment of Schedule 1 to Act 89 of 1991, as substituted by section 177 of Act 60 of 2001 and amended by section 58 of Act 30 of 2002, section 121 of Act 74 of 2002, Government Notice R.111 in *Government Gazette* 24274 of 17 January 2003, section 189 of Act 45 of 2003, section 52 of Act 16 of 2004, section 53 of Act 16 of 2004, section 54 of Act 16 of 2004, section 55 of Act 16 of 2004, section 108 of Act 32 of 2004, section 111 of Act 31 of 2005, section 112 of Act 31 of 2005, section 113 of Act 31 of 2005, section 114 of Act 31 of 2005, section 115 of Act 31 of 2005, section 116 of Act 31 of 2005, section 117 of Act 31 of 2005, section 118 of Act 31 of 2005, section

119 of Act 31 of 2005, section 120 of Act 31 of 2005, section 121 of Act 31 of 2005, section 122 of Act 31 of 2005, section 123 of Act 31 of 2005, section 52 of Act 9 of 2006, section 53 of Act 9 of 2006, section 89 of Act 20 of 2006, section 85 of Act 8 of 2007, Government Notice R.958 in *Government Gazette* 30370 of 12 October 2007, section 107 of Act 35 of 2007, Government Notice R.766 in *Government Gazette* 32416 of 24 July 2009, section 143 of Act 24 of 2011 and section 181 of Act 31 of 2013 5

107. (1) Schedule 1 to the Value-Added Tax Act, 1991, is hereby amended by the substitution in paragraph 7 for subparagraph (a) of the following subparagraph:

“(a) [goods and] foodstuffs set forth in [Part A and] Part B of Schedule 2 to this Act, but subject to such conditions as may be prescribed in the said Part; or” 10

(2) Subsection (1) comes into operation on a date determined by the Minister by notice in the *Gazette* which notice may not be published earlier than 12 months after the promulgation of this Act.

Amendment of Schedule 2 to Act 89 of 1991, as amended by section 49 of Act 136 of 1991, section 44 of Act 136 of 1992, section 45 of Act 97 of 1993, section 33 of Act 20 of 1994, section 104 of Act 30 of 1998, section 73 of Act 19 of 2001, section 56 (1) of Act 16 of 2004 and section 108 of Act 35 of 2007 15

108. (1) Schedule 2 to the Value-Added Tax Act, 1991, is hereby amended by the repeal of Part A.

(2) Subsection (1) comes into operation on a date determined by the Minister by notice in the *Gazette* which notice may not be published earlier than 12 months after the promulgation of this Act. 20

Repeal of Act 38 of 1996

109. (1) The Tax on Retirement Funds Act, 1996, is hereby repealed.

(2) Subsection (1) comes into operation on 1 January 2015. 25

Amendment of section 1 of Act 25 of 2007, as amended by section 145 of Act 24 of 2011 and section 153 of Act 22 of 2012

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

(a) by the substitution for the definition of “exchange” of the following definition: 30

“‘exchange’ means an ‘exchange’ as defined in section 1 of the [Securities Services Act, 2004 (Act No. 36 of 2004),] Financial Markets Act and licensed under section [10] 9 of that Act;”;

(b) by the substitution for the definition of “exchange rules” of the following definition: 35

“‘exchange rules’ means the exchange rules as defined in section 1 of the [Securities Services Act, 2004 (Act No. 36 of 2004),] Financial Markets Act or [a] an exchange directive [issued in accordance with section 11(1)(c)] contemplated in section 17(2)(z) of that Act;”;

(c) by the insertion in subsection (1) after the definition of “financial instrument” of the following definition: 40

“‘**Financial Markets Act**’ means the Financial Markets Act, 2012 (Act No. 19 of 2012);”;

(d) by the substitution for the definition of “member” of the following definition: 45

“‘member’ means any person who is an ‘authorised user’ as defined in section 1 of the [Securities Services Act, 2004 (Act No. 36 of 2004),] Financial Markets Act providing such security services as the rules of the exchange permit including services in respect of the buying and selling of a listed security;”;

(e) by the substitution for the definition of “participant” of the following definition: 50

“‘participant’ means a person that holds in custody and administers a listed security or an interest in a listed security and that has been [accepted] authorised in [terms of] accordance with section [34] 31 of the [Securities Services Act, 2004 (Act No. 36 of 2004),] Financial 55

Markets Act by a central securities depository as a participant in that central securities depository;”.

(2) Subsection (1) is deemed to have come into operation on 3 June 2013.

Amendment of section 139 of Act 24 of 2011

111. (1) Section 139 of the Taxation Laws Amendment Act, 2011, is hereby amended 5
by the substitution for subsection (2) of the following subsection:

“(2) Subsection (1) comes into operation on the date of promulgation of this Act and ceases to apply on 1 January **[2015] 2018.**”.

(2) Subsection (1) is deemed to have come into operation on 10 January 2012.

Amendment of section 1 of Act 26 of 2013

10

112. (1) Section 1 of the Employment Tax Incentive Act, 2013, is hereby amended by the substitution for the definition of “monthly remuneration” of the following definition:

“**‘monthly remuneration’**—

- (a) where an employer employs a qualifying employee for more than 160 hours in a month, means the amount paid or payable to the qualifying employee by the employer in respect of [that] a month; or 15
- (b) where an employer employs a qualifying employee for **[part of] less than 160 hours in a month, means [the] an amount [that would have been payable in respect of that month had that employer employed that employee for the entire month] calculated in terms of section 7(5);**” 20

(2) Subsection (1) comes into operation on 1 March 2015.

Amendment of section 4 of Act 26 of 2013

113. (1) Section 4 of the Employment Tax Incentive Act, 2013, is hereby amended by the substitution in subsection (1)(b) for subparagraphs (i) and (ii) of the following subparagraphs, respectively: 25

- “(i) where the employee is employed for more than 160 hours in a month, the amount of R2 000 in respect of a month; or
- (ii) where the employee is employed for less than 160 hours in a month, an amount that bears to the amount of R2 000 the same ratio as [the number of days that the employee worked during that month bears to the number of days that the employee would have worked had the employee been employed for a full month] 160 hours bears to the number of hours that the employee was employed for by that employer in that month.” 30

(2) Subsection (1) comes into operation on 1 March 2015. 35

Amendment of section 5 of Act 26 of 2013

114. (1) Section 5 of the Employment Tax Incentive Act, 2013, is hereby amended by the substitution in subsection (2) for paragraph (a) of the following paragraph:

“(a) the resolution of a dispute, whether by agreement, order of court or otherwise, reveals that the dismissal of that employee constitutes an automatically unfair dismissal in terms of section **[187(f)] 187(1)(f)** of the Labour Relations Act; and” 40

(2) Subsection (1) is deemed to have come into operation on 1 January 2014.

Amendment of section 6 of Act 26 of 2013

115. (1) Section 6 of the Employment Tax Incentive Act, 2013, is hereby amended— 45

- (a) by the deletion in paragraph (b) of the word “or” at the end of subparagraph (i), by the insertion in that paragraph of the word “or” at the end of subparagraph (ii) and by the addition to that paragraph of the following subparagraph:

“(iii) is in possession of an identity document issued in terms of section 30 of the Refugees Act, 1998 (Act No. 130 of 1998);” 50

- (b) by the deletion of the word “and” at the end of paragraph (e), the insertion of the expression “; and”; at the end of paragraph (f) and the addition of the following subparagraph:

“(g) receives remuneration in an amount less than R6 000 in respect of a month.”.

- (2) Subsection (1) is deemed to have come into operation on 1 January 2014.

Amendment of section 7 of Act 26 of 2013

116. (1) Section 7 of the Employment Tax Incentive Act, 2013, is hereby amended by the substitution for subsection (5) of the following subsection:

“(5) If an employer employs a qualifying employee for less than 160 hours in a month, the employment tax incentive to be received in respect of that month in respect of that qualifying employee must be an amount that bears to the total amount calculated in terms of subsection (2) or (3) the same ratio as the number of hours that the qualifying employee was employed by that employer in that month bears to the number 160.”.

- (2) Subsection (1) comes into operation on 1 March 2015.

Amendment of section 9 of Act 26 of 2013

117. (1) Section 9 of the Employment Tax Incentive Act, 2013, is hereby amended by the deletion of subsection (4).

- (2) Subsection (1) is deemed to have come into operation on 1 January 2014.

Amendment of section 10 of Act 26 of 2013

118. (1) Section 10 of the Employment Tax Incentive Act, 2013, is hereby amended by the addition of the following subsections:

“(5) Where—

- (a) an employer has claimed payment in terms of subsection (1); and
(b) the amount contemplated in subsection (2) was not paid in terms of subsection (4),

that amount must be paid to an employer during any month in the period for which the employer is required to render a return in terms of paragraph 14(3)(a) of the Fourth Schedule to the Income Tax Act subsequent to the period contemplated in subsection (1) in the first month during that period in which the employer is not subject to subsection (4).

(6) Where an amount contemplated in subsection (2) is not paid by virtue of subsection (4) and (5) that amount must be deemed to be nil at the end of the period contemplated in subsection (5).”.

- (2) Subsection (1) is deemed to have come into operation on 1 January 2014.

Amendment of section 4 of Act 31 of 2013

119. (1) Section 4 of the Taxation Laws Amendment Act, 2013, is hereby amended—

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

“(zE) by the substitution in subsection (1) in paragraph (ii) of the proviso to paragraph (c) of the definition of ‘pension fund’ for subparagraph (dd) of the following subparagraph:

“(dd) that not more than one-third of the total value of the retirement interest may be commuted for a single payment, and that the remainder must be paid in the form of an annuity (including a living annuity) except where two-thirds of the total value does not exceed [R50 000] R100 000 or where the employee is deceased: Provided that in determining the value of the retirement interest the aggregate of the value of—

- (A) any contributions made to a provident fund prior to 1 March 2016;
(B) in the case of a person who is a member of a provident fund and who is 55 years of age or older

- on 1 March 2016, any contributions made after 1 March 2016 to the provident fund of which that person is a member on 1 March 2016; and
 (C) any fund return, as defined in the Pension Funds Act, in relation to the contributions contemplated in items (A) and (B),
 must not be taken into account;”;
- (b) by the substitution for paragraph (zJ) of the following paragraph:
 “(zJ) by the substitution in subsection (1) in the definition of ‘pension preservation fund’ for paragraph (e) of the proviso of the following paragraph:
 ‘(e) not more than one-third of the total value of the retirement interest may be commuted for a single payment, and that the remainder must be paid in the form of an annuity (including a living annuity) except where two-thirds of the total value does not exceed [R50 000] R100 000 or where the member is deceased: Provided that in determining the value of the retirement interest the aggregate of the value of—
 (A) any contributions made to a provident fund prior to 1 March 2016;
 (B) in the case of a person who is a member of a provident fund and who is 55 years of age or older on 1 March 2016, any contributions made after 1 March 2016 to the provident fund of which that person is a member on 1 March 2016; and
 (C) any fund return, as defined in the Pension Funds Act, in relation to the contributions contemplated in items (A) and (B),
 must not be taken into account;”;
- (c) by the substitution for paragraph (zV) of the following paragraph:
 “(zV) by the addition in subsection (1) to the definition of ‘provident preservation fund’ after paragraph (d) of the proviso of the following paragraph:
 ‘(e) that not more than one-third of the total value of the retirement interest may be commuted for a single payment, and that the remainder must be paid in the form of an annuity (including a living annuity) except where two-thirds of the total value does not exceed R100 000 or where the employee is deceased: Provided that in determining the value of the retirement interest the aggregate of the value of—
 (A) any contributions made to a provident fund prior to 1 March 2016;
 (B) in the case of a person who is a member of a provident fund and who is 55 years of age or older on 1 March 2016, any contributions made after 1 March 2016 to the provident fund of which that person is a member on 1 March 2016; and
 (C) any fund return, as defined in the Pension Funds Act, in relation to the contributions contemplated in items (A) and (B),
 must not be taken into account;”;
- (d) by the addition after subsection (14) of the following subsection:
 “(15) Paragraphs (zE), (zJ), (zO), (zV), (zZc) and (zZe) of subsection (1) come into operation on 1 March 2016.”
- (2) Subsection (1) is deemed to have come into operation on 12 December 2013.

Amendment of section 5 of Act 31 of 2013

120. (1) Section 5 of the Taxation Laws Amendment Act, 2013, is hereby amended by the substitution for subsection (2) of the following subsection:

“(2) Subsection (1) comes into operation on 1 March ~~[2015]~~ 2016 and applies in respect of contributions made on or after that date.”.

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

Amendment of section 26 of Act 31 of 2013

121. (1) Section 26 of the Taxation Laws Amendment Act, 2013, is hereby amended by the substitution for subsection (2) of the following subsection:

“(2) Subsection (1) comes into operation on 1 March ~~[2015]~~ 2016 and applies in respect of contributions made during years of assessment commencing on or after that date.”.

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

Amendment of section 27 of Act 31 of 2013

122. (1) Section 27 of the Taxation Laws Amendment Act, 2013, is hereby amended—

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

“(k) by the substitution for paragraph (k) of the following paragraph:

‘(k) any amount contributed during a year of assessment to any pension fund, provident fund or retirement annuity fund in terms of the rules of that fund by a person that is a member of that fund: Provided that—

(i) the total deduction to be allowed in terms of this paragraph must not in the year of assessment exceed the lesser of—

(aa) R350 000; or

(bb) 27,5 per cent of the higher of the person’s—

(A) remuneration (other than in respect of any retirement fund lump sum benefit, retirement fund lump sum withdrawal benefit and severance benefit) as defined in paragraph 1 of the Fourth Schedule; or

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

(ii) any amount so contributed in any previous year of assessment which has been disallowed solely by reason of the fact that it exceeds the amount of the deduction allowable in respect of that year of assessment is deemed to be an amount so contributed in the current year of assessment, except to the extent that the amount so contributed has been—

(aa) allowed as a deduction against income in any year of assessment;

(bb) accounted for under paragraph 5(1)(a) or 6(1)(b)(i) of the Second Schedule; or

(cc) exempted under section 10C;

(iii) any amount so contributed by an employer of the person for the benefit of the person must, to the extent that the amount has been included in the income of the person as a taxable benefit in terms of the Seventh Schedule, be deemed to have been contributed by the person; and

(iv) for the purposes of this paragraph, a partner in a partnership must be deemed to be an employee of the partnership and a partnership must be deemed to be the employer of the partners in that partnership;”;

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

“(3) Paragraphs (k), (l) and (m) of subsection (1) come into operation on 1 March ~~[2015]~~ 2016 and apply in respect of amounts contributed on or after that date.”.

(2) Paragraph (a) of subsection (1) comes into operation on 1 March 2016.

(3) Paragraph (b) of subsection (1) is deemed to have come into operation on 12 December 2013.

Amendment of section 29 of Act 31 of 2013

123. (1) Section 29 of the Taxation Laws Amendment Act, 2013, is hereby amended by the substitution in subsection (1) for paragraph (p) of the following paragraph:

“(p) by the substitution for subsection (14) of the following subsection:

‘(14) [(a)] Notwithstanding Chapter 6 of the Tax Administration Act, the Commissioner may disclose to the Minister of Science and Technology information in relation to research and development—

(a) as may be required by that Minister for the purposes of submitting a report to Parliament in terms of subsection (17); and

(b) if that information is material in respect of the granting of approval under subsection (9) or a withdrawal of that approval in terms of subsection (10).’ ”.

(2) Subsection (1) is deemed to have come into operation on 1 January 2014 and applies in respect of expenditure incurred in respect of research and development on or after that date, but before 1 October 2022.

Amendment of section 92 of Act 31 of 2013

124. (1) Section 92 of the Taxation laws Amendment Act, 2013, is hereby amended by the substitution for subsection (3) of the following subsection:

“(3) Paragraphs (b), (c), (d), (f), (g), (h), (j), (k), (l) and (m) of subsection (1) are deemed to have come into operation on ~~[4 July]~~ 24 October 2013 and apply in respect of transactions entered into on or after that date.”.

(2) Subsection (1) is deemed to have come into operation on 4 July 2013.

Amendment of section 98 of Act 31 of 2013

125. Section 98 of the Taxation Laws Amendment Act, 2013, is hereby amended by the substitution for subsection (2) of the following subsection:

“(2) Subsection (1) comes into operation on ~~[1 January 2015]~~ 1 March 2015 and applies in respect of interest that is paid or that becomes due and payable on or after that date.”

Amendment of section 108 of Act 31 of 2013

126. (1) Section 108 of the Taxation Laws Amendment Act, 2013, is hereby amended by the substitution in subsection (1) for paragraph (a) of the following paragraph:

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

‘(b) the dividends accrued to that company on or after the effective date—

(i) **[to the extent that]** in respect of which the company received a notification from the person paying the dividend of the amount by which the dividend reduces the STC credit of the company that paid and declared that dividend; and

(ii) if the notification contemplated in subparagraph (i) was received no later than the date that the dividend is paid; and”.

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

Amendment of section 112 of Act 31 of 2013

127. (1) Section 112 of the Taxation Laws Amendment Act, 2013, is hereby amended by the substitution for subsection (2) of the following subsection:

“(2) Subsection (1) come into operation on 1 March ~~[2015]~~ 2016 and applies in respect of amounts received or accrued on or after that date.”.

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

Amendment of section 113 of Act 31 of 2013

128. (1) Section 113 of the Taxation Laws Amendment Act, 2013, is hereby amended 5
by the substitution for subsection (2) of the following subsection:

“(2) Paragraphs (a) and (b) of subsection (1) come into operation on 1 March ~~[2015]~~ 2016 and apply in respect of amounts received or accrued on or after that date.”.

(2) Subsection (1) is deemed to have come into operation on 12 December 2013. 10

Amendment of section 117 of Act 31 of 2013

129. (1) Section 117 of the Taxation Laws Amendment Act, 2013, is hereby amended
by the substitution for subsection (2) of the following subsection:

“(2) Paragraphs (a) and (c) of subsection (1) come into operation on 1 March ~~[2015]~~ 2016 and apply in respect of contributions made on or after that date.”. 15

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

Amendment of section 118 of Act 31 of 2013

130. (1) Section 118 of the Taxation Laws Amendment Act, 2013, is hereby amended
by the substitution for subsection (3) of the following subsection:

“(3) Paragraphs (c) and (d) of subsection (1) come into operation on 1 March ~~[2015]~~ 2016 and apply in respect of contributions made on or after that date.”. 20

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

Amendment of section 125 of Act 31 of 2013

131. (1) Section 125 of the Taxation Laws Amendment Act, 2013, is hereby amended
by the substitution for subsection (2) of the following subsection: 25

“(2) Subsection (1) comes into operation on 1 March ~~[2015]~~ 2016 and applies in respect of contributions made on or after that date.”.

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

Amendment of section 171 of Act 31 of 2013

132. Section 171 of the Taxation Laws Amendment Act, 2013, is hereby amended by 30
the substitution for subsection (2) of the following subsection:

“(2) Subsection (1) comes into operation on 1 ~~[April]~~ January 2014.”.

Short title

133. This Act is called the Taxation Laws Amendment Act, 2014.

