

REPUBLIC OF SOUTH AFRICA

**TAXATION LAWS
AMENDMENT BILL**

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

(MINISTER OF FINANCE)

[B 27—2017]

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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 Estate Duty Act, 1955, so as to amend a provision; to amend the Income Tax Act, 1962, to amend certain provisions; to make new provision; to repeal certain provisions; to amend the Customs and Excise Act, 1964, so as to make new provision; and to make provision for continuations; to amend the Value-Added Tax Act, 1991, so as to amend certain provisions; to amend the Skills Development Levies Act, 1999, so as to amend a provision; to amend the Unemployment Insurance Contributions Act, 2002, so as to amend a provision; to amend the Securities Transfer Tax Act, 2007, so as to amend certain provisions; to amend the Taxation Laws Amendment Act, 2013; to amend the Employment Tax Incentive Act, 2013; to amend the Taxation Laws Amendment Act, 2014, so as to amend a provision; to amend the Taxation Laws Amendment Act, 2015, so as to amend a provision; to amend the Revenue Laws Amendment Act, 2016, so as to amend a provision; to amend the Taxation Laws Amendment Act, 2016 so as to amend a provision; and to provide for matters connected therewith.

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

Part I

Taxation Laws Amendments

Amendment of section 3 of Act 45 of 1955, as amended by section 2 of Act 65 of 1960, section 8 of Act 77 of 1964, section 2 of Act 81 of 1965, section 4 of Act 92 of 1971, section 3 of Act 89 of 1972, section 3 of Act 102 of 1979, section 10 of Act 106 of 1980, section 2 of Act 92 of 1983, section 4 of Act 81 of 1985, section 9 of Act 87 of 1988, section 7 of Act 97 of 1993, section 6 of Act 27 of 1997, section 13 of Act 30 of 1998, section 7 of Act 30 of 2000, section 5 of Act 31 of 2005, section 2 of Act 60 of 2008 and section 3 of Act 25 of 2015 5 10

1. (1) Section 3 of the Estate Duty Act, 1955, is hereby amended by the substitution in subsection (2) for paragraph (bA) of the following paragraph:

“(bA) so much of the amount of any contribution made by the deceased in consequence of membership or past membership of any pension fund, provident fund, or retirement annuity fund, as was not allowed as a deduction in terms of section 11 (k) [or], section 11(n) or section 11F of the Income Tax Act, 1962 (Act No. 58 of 1962), or paragraph 2 of the Second 15

Schedule to that Act or, as was not exempt in terms of section 10C of that Act in determining the taxable income as defined in section 1 of that Act, of the deceased;”.

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

Amendment of section 1 of Act 58 of 1962, as amended by section 3 of Act 90 of 1962, section 1 of Act 6 of 1963, section 4 of Act 72 of 1963, section 4 of Act 90 of 1964, section 5 of Act 88 of 1965, section 5 of Act 55 of 1966, section 5 of Act 76 of 1968, section 6 of Act 89 of 1969, section 6 of Act 52 of 1970, section 4 of Act 88 of 1971, section 4 of Act 90 of 1972, section 4 of Act 65 of 1973, section 4 of Act 85 of 1974, section 4 of Act 69 of 1975, section 4 of Act 103 of 1976, section 4 of Act 113 of 1977, section 3 of Act 101 of 1978, section 3 of Act 104 of 1979, section 2 of Act 104 of 1980, section 2 of Act 96 of 1981, section 3 of Act 91 of 1982, section 2 of Act 94 of 1983, section 1 of Act 30 of 1984, section 2 of Act 121 of 1984, section 2 of Act 96 of 1985, section 2 of Act 65 of 1986, section 1 of Act 108 of 1986, section 2 of Act 85 of 1987, section 2 of Act 90 of 1988, section 1 of Act 99 of 1988, Government Notice R780 of 1989, section 2 of Act 70 of 1989, section 2 of Act 101 of 1990, section 2 of Act 129 of 1991, section 2 of Act 141 of 1992, section 2 of Act 113 of 1993, section 2 of Act 21 of 1994, Government Notice 46 of 1994, section 2 of Act 21 of 1995, section 2 of Act 36 of 1996, section 2 of Act 28 of 1997, section 19 of Act 30 of 1998, Government Notice 1503 of 1998, section 10 of Act 53 of 1999, section 13 of Act 30 of 2000, section 2 of Act 59 of 2000, section 5 of Act 5 of 2001, section 3 of Act 19 of 2001, section 17 of Act 60 of 2001, section 9 of Act 30 of 2002, section 6 of Act 74 of 2002, section 33 of Act 12 of 2003, section 12 of Act 45 of 2003, section 3 of Act 16 of 2004, section 3 of Act 32 of 2004, section 3 of Act 32 of 2005, section 19 of Act 9 of 2006, section 3 of Act 20 of 2006, section 3 of Act 8 of 2007, section 5 of Act 35 of 2007, section 2 of Act 3 of 2008, section 4 of Act 60 of 2008, section 7 of Act 17 of 2009, section 6 of Act 7 of 2010, section 7 of Act 24 of 2011, section 271 of Act 28 of 2011, read with item 23 of Schedule 1 to that Act, section 2 of Act 22 of 2012, section 4 of Act 31 of 2013, section 1 of Act 43 of 2014, section 3 of Act 25 of 2015 and section 5 of Act 15 of 2016

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

- (a) by the substitution in subsection (1) for the proviso to the definition of “connected person” for the following proviso:

“: Provided that for the purposes of this definition, a company includes a portfolio of a collective investment scheme **[of securities]**;”;
- (b) by the substitution in subsection (1) in paragraph (b) in the definition of “dividend” for subparagraph (iii) of the following subparagraph:

“(iii) constitutes an acquisition by the company of its own securities by way of a general repurchase of securities as contemplated in subparagraph (b) of paragraph 5.67(B) of section 5 of the JSE Limited Listings Requirements, where that acquisition complies with any applicable requirements prescribed by paragraphs 5.68 and 5.72 to **[5.84] 5.81** of section 5 of the JSE Limited Listings Requirements;”;
- (c) by the deletion in subsection (1) in the definition of “domestic treasury management company” of paragraph (a);
- (d) by the substitution in subsection (1) in paragraph (m) of the definition of “gross income” for the words preceding the proviso of the following words:

“any amount received or accrued in respect of a policy of insurance of which the taxpayer is the policyholder, where the policy relates to the death, disablement or **[severe]** illness of an employee or director (or former employee or director) of the taxpayer, including by way of any loan or advance”;
- (e) by the insertion in subsection (1) after the definition of “officer” of the following definition:

“ **‘official rate of interest’** means—

 - (a) in the case of a debt which is denominated in the currency of the Republic, a rate of interest equal to the South African repurchase rate plus 100 basis points; or
 - (b) in the case of a debt which is denominated in any other currency, a rate of interest that is the equivalent of the South African repurchase

- rate applicable in that currency plus 100 basis points: Provided that where a new repurchase rate or equivalent rate is determined, the new rate of interest applies for the purposes of this definition from the first day of the month following the date on which that new repurchase rate or equivalent rate came into operation;”;
- (f) by the substitution in subsection (1) in the proviso to paragraph (c) of the definition of “pension fund” for subparagraph (i) of the following subparagraph:
- “(i) that the fund is a permanent fund *bona fide* established for the purpose of providing annuities for employees on retirement **[from employment] date** or for the dependants or nominees of deceased employees, or mainly for the said purpose and also for the purpose of providing benefits other than annuities for the persons aforesaid or for the purpose of providing any benefit contemplated in paragraph 2C of the Second Schedule or section 15A or 15E of the Pension Funds Act; and”;
- (g) by the substitution in subsection (1) in paragraph (c)(ii) of the definition of “pension fund” for items (cc) and (dd) of the following items respectively:
- “(cc) that persons who immediately prior to the said date were employed by the employer and who on the said date fall within the said class or classes may, on application made **[within a period of not more than 12 months as from the said date]**, be permitted to become members of the fund on such conditions as may be specified in the rules;”;
- (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 R165 000, **[or]** where the employee is deceased or where the employee elects to transfer the retirement interest to a retirement annuity fund;”
- (h) by the substitution in subsection (1) for paragraph (a) of the proviso to the definition of “provident fund” of the following paragraph:
- “(a) that the fund is a permanent fund *bona fide* established solely for the purpose of providing benefits for employees on retirement **[from employment] date** or solely for the purpose of providing benefits for the dependants or nominees of deceased employees or deceased former employees or solely for a combination of such purposes or mainly for the said purpose and also for the purpose of providing any benefit contemplated in paragraph 2C of the Second Schedule or section 15A or 15E of the Pension Funds Act; and”;
- (i) by the substitution in subsection (1) for paragraph (a) of the definition of “retirement date” 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) or (c) of the Second Schedule on or subsequent to attaining normal retirement age; or”;
- (j) by the substitution in subsection (1) for the definition of “retirement fund lump sum benefit” of the following definition:
- “**‘retirement fund lump sum benefit’** means an amount determined in terms of paragraph 2(1)(a) or (c) of the Second Schedule;”;
- (k) 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 on the date on which he or she elects to retire or transfer to a retirement annuity fund;”;
- (l) by the substitution in subsection (1) in paragraph (b) of the definition of “return of capital” for subparagraph (ii) of the following subparagraph:

“(ii) an acquisition by the company of its own securities by way of a general repurchase of securities as contemplated in subparagraph (b) of paragraph 5.67(B) of section 5 of the JSE Limited Listings Requirements, where that acquisition complies with any applicable requirements prescribed by paragraphs 5.68 and 5.72 to [5.84] 5.81 of section 5 of the JSE Limited Listings Requirements;”.

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

(3) Paragraphs (f), (g), (h), (i), (j) and (k) of subsection (1) come into operation on 1 March 2018 and apply in respect of years of assessment commencing on or after that date.

Amendment of section 5 of Act 58 of 1962, as substituted by section 2 of Act 6 of 1963 and amended by section 5 of Act 90 of 1964, section 5 of Act 88 of 1971, section 5 of Act 90 of 1972, section 5 of Act 65 of 1973, section 5 of Act 103 of 1976, section 5 of Act 113 of 1977, section 3 of Act 104 of 1980, section 4 of Act 96 of 1981, section 4 of Act 91 of 1982, section 3 of Act 94 of 1983, section 3 of Act 121 of 1984, section 3 of Act 90 of 1988, section 5 of Act 21 of 1994, section 4 of Act 21 of 1995, section 7 of Act 5 of 2001, section 10 of Act 30 of 2002, section 15 of Act 45 of 2003, section 4 of Act 20 of 2006, section 4 of Act 8 of 2007, section 3 of Act 3 of 2008, section 6 of Act 60 of 2008, section 8 of Act 17 of 2009, section 7 of Act 7 of 2010, section 8 of Act 24 of 2011, section 271 of Act 28 of 2011, read with item 28 of Schedule 1 to that Act, section 5 of Act 31 of 2013 and section 6 of Act 15 of 2016

3. (1) Section 5 of the Income Tax Act, 1962, is hereby amended by the substitution in subsection (10) for paragraph (e) of the following paragraph:

“(e) ‘D’ represents an amount equal to so much of any current contribution to a pension fund, provident fund or retirement annuity fund as is allowable as a deduction in terms of section [11(k)] 11F solely by reason of the inclusion in the taxpayer’s income of any amount contemplated in paragraph (d)(i), (ii), (iii) or (iv):”.

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

Amendment of section 6quat of Act 58 of 1962, as inserted by section 9 of Act 89 of 1969 and amended by section 5 of Act 94 of 1983, section 5 of Act 85 of 1987, section 5 of Act 28 of 1997, section 12 of Act 53 of 1999, section 16 of Act 30 of 2000, section 4 of Act 59 of 2000, section 8 of Act 5 of 2001, section 20 of Act 60 of 2001, section 9 of Act 74 of 2002, section 16 of Act 45 of 2003, section 4 of Act 32 of 2004, section 8 of Act 31 of 2005, section 7 of Act 35 of 2007, section 9 of Act 17 of 2009, section 7 of Act 18 of 2009, section 11 of Act 24 of 2011, section 3 of Act 22 of 2012, section 6 of Act 25 of 2015 and section 10 of Act 15 of 2016

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

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

“(i) in determining the amount of the taxable income that is attributable to that income, proportional amount, taxable capital gain or amount, any allowable deductions contemplated in [sections 11(n), 18 and] section 18A must be deemed to have been incurred proportionately in respect of income derived from sources within and outside the Republic;”;

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

“(1D) Notwithstanding the provisions of subsection (1C), the deduction of any tax paid or proved to be payable as contemplated in that subsection shall not in aggregate exceed the total taxable income (before taking into account any such deduction) attributable to income which is subject to taxes as contemplated in that subsection, provided that in determining the amount of the taxable income that is attributable to that income, any allowable deductions contemplated in [sections 11(n), 18 and] section 18A must be deemed to have been incurred proportionately in the ratio that that income bears to total income.”.

Amendment of section 7C of Act 58 of 1962 as inserted by section 12 of Act 15 of 2016

5. (1) Section 7C of the Income Tax Act, 1962, is hereby amended—
- (a) by the substitution in subsection (1) for the words following paragraph (b) of the following: 5
- “directly or indirectly provides to—
- (i) a trust in relation to which—
- (aa) that person or company, or
- (bb) any person that is a connected person in relation to the
- person or company referred to in item (aa), 10
- is a connected person; or
- (ii) a company if at least 20 per cent of—
- (aa) the equity shares in that company are held, directly or indirectly; or
- (bb) the voting rights in that company can be exercised, 15
- by the trust referred to in subparagraph (i) or by a beneficiary of that trust.”;
- (b) by the insertion after subsection (1) of the following subsection:
- “(1A) If a person acquires a claim to an amount owing by a trust or a
- company in respect of a loan, advance or credit referred to in subsection
- (1), that person must for purposes of this section be treated as having
- provided a loan, advance or credit to that trust or company— 20
- (a) on the date on which that person acquired that claim; or
- (b) if that person was not a connected person on that date in relation
- to— 25
- (i) that trust; or
- (ii) the person who provided that loan, advance or credit to that
- trust or company,
- on the date on which that person became a connected person in
- relation to that trust or person, 30
- that is equal to the amount of the claim so acquired.”;
- (c) by the substitution for subsections (3) and (4) of the following subsections respectively:
- “(3) If a trust or company incurs— 35
- (a) no interest in respect of a loan, advance or credit referred to in
- subsection (1) or subsection (1A); or
- (b) interest at a rate lower than the official rate of interest [**as defined in**
- paragraph 1 of the Seventh Schedule**],
- an amount equal to the difference between the amount incurred by that
- trust or company during a year of assessment as interest in respect of that 40
- loan, advance or credit and the amount that would have been incurred by
- that trust or company at the official rate of interest must, for purposes of
- Part V of Chapter II, be treated as a donation made to that trust by the
- person referred to in subsection (1)(a) or subsection (1A) on the last day
- of that year of assessment of that trust. 45
- (4) If a loan, advance or credit was provided by a company to a trust
- or another company at the instance of more than one person that is a
- connected person in relation to that company as referred to in paragraph
- (b) of subsection (1), each of those persons must be treated as having
- donated, to that trust or company, the part of that amount that bears to 50
- that amount the same ratio as the equity shares or voting rights in that
- company that were held by that person during that year of assessment
- bears to the equity shares or voting rights in that company held in
- aggregate by those persons during that year of assessment.”;
- (d) by the substitution in subsection (5) for the words preceding paragraph (a) of the following words: 55
- “Subsections (2) and (3) do not apply in respect of any amount owing by
- a trust or company during a year of assessment in respect of a loan,
- advance or credit referred to in subsection (1) if”;

- (e) by the substitution in subsection (5) for paragraph (a) of the following paragraph:
 “(a) that trust or company is a public benefit organisation approved by the Commissioner in terms of section 30(3) or a small business funding entity approved by the Commissioner in terms of section 30C;”;
- (f) by the substitution in subsection (5)(d) for the words preceding subparagraph (i) of the following words:
 “that trust or company used that loan, advance or credit wholly or partly for purposes of funding the acquisition of an asset and;”
- (g) by the substitution in subsection (5)(d) for subparagraph (i) of the following subparagraph:
 “(i) the person referred to in subsection (1)(a) or the spouse of that person used that asset as a primary residence as contemplated in paragraph (b) of the definition of “primary residence” in paragraph 44 of the Eighth Schedule throughout the period during that year of assessment during which that trust or company held that asset; and”;
- (h) by the substitution in subsection (5) for paragraph (f) of the following paragraph:
 “(f) that loan, advance or credit was provided to that trust or company in terms of an arrangement that would have qualified as a sharia compliant financing arrangement as contemplated in section 24JA, had that trust or company been a bank as defined in that section; **[or]**”;
- (i) by the insertion of the word “or” at the end of paragraph (g) and the addition of the following paragraph:
 “(h) that trust was created solely for purposes of giving effect to an employee share incentive scheme in terms of which—
 (i) that loan, advance or credit was provided—
 (aa) by a company to that trust; or
 (bb) for purposes of funding the acquisition, by that trust, of shares in that company or in any other company forming part of the same group of companies as that company (hereinafter referred to as a ‘scheme company’);
 (ii) equity instruments, as defined in section 8C, that relate to or derive their value from shares in a scheme company may be offered by that trust to a person solely by virtue of that person—
 (aa) being in employment on a full-time basis with; or
 (bb) holding the office of director of, a scheme company; and
 (iii) a person that is a connected person in terms of paragraph (d)(iv) of the definition of connected person in relation to any scheme company is not entitled to participate in that scheme.”
- (2) Paragraphs (a), (b), (c), (d), (e), (f), (g) and (h) of subsection (1) are deemed to have come into operation on 19 July 2017 and apply in respect of any amount owed by a trust or a company in respect of a loan, advance or credit provided to that trust or that company before, on or after that date.
- (3) Paragraph (i) of subsection (1) is deemed to have come into operation on 1 March 2017 and applies in respect any amount owed by a trust in respect of a loan, advance or credit provided to that trust before, on or after that date.

Insertion of section 7D in Act 58 of 1962

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

“Calculation of amount of interest

7D. Where it must be determined, for the purposes of this Act, what amount would have accrued or been incurred as interest in respect of any loan, debt, advance or amount of credit provided to a person or an amount

owed by a person had that interest accrued or been incurred at a specific rate of interest, that amount must be determined without regard to any rule of the common law or provision of any Act in terms of which—

- (a) the amount of any interest, fee or similar finance charge that accrues or is incurred in respect of a debt may not in aggregate exceed the amount of that debt; or
- (b) no interest may accrue or be incurred in respect of a debt once the amount that has accrued or been incurred as interest is equal to the amount of that debt.”.

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

Insertion of section 7E in Act 58 of 1962

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

“Time of accrual of interest payable by SARS

7E. In determining the taxable income derived by any person during a year of assessment, any amount of interest to which a person becomes entitled that is payable by SARS in terms of a tax Act is deemed to accrue to that person on the date on which that amount is paid to that person.”.

(2) Subsection (1) comes into operation on 1 March 2018 and applies to amounts of interest paid by SARS on or after that date.

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, section 9 of Act 31 of 2013, section 5 of Act 42 of 2014, section 5 of Act 43 of 2014 and section 8 of Act 25 of 2015

8. (1) Section 8 of the Income Tax Act, 1962, is hereby amended by the substitution in subsection (4)(a) for the words preceding the proviso of the following words:

“There shall be included in the taxpayer’s income all amounts allowed to be deducted or set off under the provisions of sections 11 to 20, inclusive, section 24D, section 24F, section 24G, section 24I, section 24J, section 27(2)(b) and section 37B(2) of this Act, except section 11(k), 11(n), 11(p) and (q), section 11F, section 12(2) or section 12(2) as applied by section 12(3), section 12A(3), section 13(5), or section 13(5) as applied by section 13(8), or section 13bis(7), section 15(a) or section 15A, or under the corresponding provisions of any previous Income Tax Act, whether in the current or any previous year of assessment which have been recovered or recouped during the current year of assessment:”.

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

Amendment of section 8B of Act 58 of 1962, as inserted by section 6 of Act 104 of 1980 and amended by section 6 of Act 121 of 1984, section 6 of Act 101 of 1990, section 8 of Act 32 of 2004, section 11 of Act 31 of 2005, section 6 of Act 20 of 2006,

section 10 of Act 35 of 2007, section 10 of Act 60 of 2008, section 11 of Act 7 of 2010 and section 18 of Act 24 of 2011

9. Section 8B of the Income Tax Act, 1962, is hereby amended by the substitution in subsection (3) for paragraph (a) of the following paragraph:

“(a) equity shares in that employer, or in a company that is an associated institution as defined in the Seventh Schedule in relation to the employer are acquired by employees of that employer, for consideration which does not exceed the minimum consideration required by the Companies Act[, 1973 (Act No. 61 of 1973)];”.

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, section 7 of Act 43 of 2014 and section 15 of Act 15 of 2016

10. (1) Section 8EA of the Income Tax Act, 1962, is hereby amended by the substitution in subsection (3)(b) for subparagraph (vii) 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) comes into operation on 1 January 2018 and applies in respect of dividends or foreign dividends 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 and amended by section 8 of Act 43 of 2014, section 9 of Act 25 of 2015 and section 16 of Act 15 of 2016

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

“(2) Any amount that is incurred by a company in respect of interest on or after the date that the interest becomes hybrid interest is—
(a) deemed to be a dividend *in specie* in respect of a share that is declared and paid by that company to the person to whom that amount accrued on the last day of the year of assessment of that company during which it was incurred; and
(b) not deductible.”.

Amendment of section 8FA of Act 58 of 1962, as inserted by section 14 of Act 31 of 2013 and amended by section 15 of that Act, section 9 of Act 43 of 2014, section 10 of Act 25 of 2015 and section 17 of Act 15 of 2016

12. Section 8FA of the Income Tax Act, 1962, is hereby amended by the substitution for subsection (2) of the following subsection:

“(2) Any amount that is incurred by a company in respect of interest on or after the date that the instrument becomes a hybrid debt instrument is—
(a) deemed to be a dividend *in specie* in respect of a share that is declared and paid by that company to the person to whom that amount accrued on the last day of the year of assessment of that company during which it was incurred; and
(b) not deductible.”.

Insertion of section 8G in Act 58 of 1962

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

“Determination of contributed tax capital in respect of shares issued to a group company

8G. (1) For the purposes of this section ‘**group of companies**’ means two or more companies in which one company (hereinafter referred to as the ‘controlling group company’) directly or indirectly holds shares or voting rights in at least one other company (hereinafter referred to as the ‘controlled group company’), to the extent that—

- (a) at least 50 per cent of the equity shares or voting rights in each controlled group company are directly held by the controlling group company, one or more other controlled group companies or any combination thereof; and
- (b) the controlling group company directly holds at least 50 per cent of the equity shares or voting rights in at least one controlled group company.

(2) Where a company issues shares (hereinafter referred to as the ‘issuing company’) to any company that is not a resident (hereinafter referred to as the ‘subscribing company’) that forms, after that transaction, part of the same group of companies as the issuing company, the amount of the contributed tax capital in relation to those shares will, to the extent that the consideration for those shares—

- (a) consists of; or
- (b) is used, directly or indirectly to acquire, any shares in another company that is a resident (hereinafter referred to as the ‘target company’) and that forms part of a group of companies in relation to the subscribing company, be equal to so much of the total contributed tax capital attributable to shares of that class in that target company so acquired, determined in terms of subsection (3), as bears the same ratio that the number of shares so acquired bears to the total number of shares of that class.

(3) The contributed tax capital in relation to the shares in that target company must be determined—

- (a) in terms of paragraph (b) of the definition of ‘contributed tax capital’ in section 1; and
- (b) with reference to the date from which that target company formed part of a group of companies in relation to the subscribing company.

(4) Paragraph (a) of the definition of ‘contributed tax capital’ in section 1 does not apply in respect of any shares of a class that were issued, as contemplated in subsection (2), by an issuing company before that issuing company became a resident.”

(2) Subsection (1) is deemed to have come into operation on 19 July 2017 and applies in respect of any share issued on or after that date.

Amendment of section 9C of Act 58 of 1962, as inserted by section 14 of Act 35 of 2007 and amended by section 7 of Act 3 of 2008, section 12 of Act 60 of 2008, section 15 of Act 7 of 2010, section 24 of Act 24 of 2011, section 13 of Act 22 of 2012, section 18 of Act 31 of 2013, section 11 of Act 43 of 2014, section 12 of Act 25 of 2015 and section 19 of Act 15 of 2016

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

“(b) to expenditure in respect of equity shares in a REIT or a controlled company, as defined in section 25BB(1), that is a resident except to the extent that such amount was taken into account in determining the cost price or value of trading stock under section 11(a), 22(1) or (2).”

Amendment of section 9D of Act 58 of 1962, as inserted by section 9 of Act 28 of 1997 and amended by section 28 of Act 30 of 1998, section 17 of Act 53 of 1999, section 19 of Act 30 of 2000, section 10 of Act 59 of 2000, section 9 of Act 5 of 2001, section 22 of Act 60 of 2001, section 14 of Act 74 of 2002, section 22 of Act 45 of 2003, section 13 of Act 32 of 2004, section 14 of Act 31 of 2005, section 9 of Act 20 of 2006, sections 9 and 96 of Act 8 of 2007, section 15 of Act 35 of 2007, section 8 of Act 3 of 2008, section 13 of Act 60 of 2008, section 12 of Act 17 of 2009, sections 16 and 146 of Act 7 of 2010, section 25 of Act 24 of 2011, sections 14 and 156 of Act 22 of 2012,

section 19 of Act 31 of 2013, section 12 of Act 43 of 2014, section 13 of Act 25 of 2015 and section 20 of Act 15 of 2016

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

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

“ **‘controlled foreign company’** means—

any foreign company where more than 50 per cent of the total participation rights in that foreign company are directly or indirectly held, or more than 50 per cent of the voting rights in that foreign company are directly or indirectly exercisable, by one or more persons that are residents other than persons that are headquarter companies:

Provided that—

(a) no regard must be had to any voting rights in any foreign company—

(i) which is a listed company; or

(ii) if the voting rights in that foreign company are exercisable indirectly through a listed company;

(b) any voting rights in a foreign company which can be exercised directly by any other controlled foreign company in which that resident (together with any connected person in relation to that resident) can directly or indirectly exercise more than 50 per cent of the voting rights are deemed for purposes of this definition to be exercisable directly by that resident; and

(c) a person is deemed not to be a resident for purposes of determining whether residents directly or indirectly hold more than 50 per cent of the participation rights or voting rights in a foreign company, if—

(i) in the case of a listed company or a foreign company the participation rights of which are held by that person indirectly through a listed company, that person holds less than five per cent of the participation rights of that listed company; or

(ii) in the case of a scheme or arrangement contemplated in paragraph (e)(ii) of the definition of “company” in section 1 or a foreign company the participation rights of which are held and the voting rights of which may be exercised by that person indirectly through such a scheme or arrangement, that person—

(aa) holds less than five per cent of the participation rights of that scheme or arrangement; and

(bb) may not exercise at least five per cent of the voting rights in that scheme or arrangement, unless more than 50 per cent of the participation rights or voting rights of that foreign company or other foreign company are held by persons who are connected persons in relation to each other; and

any foreign company where the financial results of that foreign company are reflected in the consolidated financial statements, as contemplated in IFRS 10, of any company that is a resident,”; and

(b) by the addition in subsection (2) to the proviso of the following further proviso:

“: Provided further that for purposes of applying this subsection to a foreign company that is a controlled foreign company only in terms of paragraph (b) of the definition of ‘controlled foreign company’, the percentage of the participation rights of a resident in relation to that controlled foreign company is equal to the net percentage of the financial results of that foreign company that are included in the consolidated financial statements, as contemplated in IFRS 10, for the year of assessment of the resident, that is a holding company, as defined in the Companies Act,”.

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

Amendment of section 10 of Act 58 of 1962, as amended by section 8 of Act 90 of 1962, section 7 of Act 72 of 1963, section 8 of Act 90 of 1964, section 10 of Act 88 of 1965, section 11 of Act 55 of 1966, section 10 of Act 95 of 1967, section 8 of Act 76 of 1968, section 13 of Act 89 of 1969, section 9 of Act 52 of 1970, section 9 of Act 88 of 1971, section 7 of Act 90 of 1972, section 7 of Act 65 of 1973, section 10 of Act 85 of 1974, section 8 of Act 69 of 1975, section 9 of Act 103 of 1976, section 8 of Act 113 of 1977, section 4 of Act 101 of 1978, section 7 of Act 104 of 1979, section 7 of Act 104 of 1980, section 8 of Act 96 of 1981, section 6 of Act 91 of 1982, section 9 of Act 94 of 1983, section 10 of Act 121 of 1984, section 6 of Act 96 of 1985, section 7 of Act 65 of 1986, section 3 of Act 108 of 1986, section 9 of Act 85 of 1987, section 7 of Act 90 of 1988, section 36 of Act 9 of 1989, section 7 of Act 70 of 1989, section 10 of Act 101 of 1990, section 12 of Act 129 of 1991, section 10 of Act 141 of 1992, section 7 of Act 113 of 1993, section 4 of Act 140 of 1993, section 9 of Act 21 of 1994, section 10 of Act 21 of 1995, section 8 of Act 36 of 1996, section 9 of Act 46 of 1996, section 1 of Act 49 of 1996, section 10 of Act 28 of 1997, section 29 of Act 30 of 1998, section 18 of Act 53 of 1999, section 21 of Act 30 of 2000, section 13 of Act 59 of 2000, sections 9 and 78 of Act 19 of 2001, section 26 of Act 60 of 2001, section 13 of Act 30 of 2002, section 18 of Act 74 of 2002, section 36 of Act 12 of 2003, section 26 of Act 45 of 2003, sections 8 and 62 of Act 16 of 2004, section 14 of Act 32 of 2004, section 5 of Act 9 of 2005, section 16 of Act 31 of 2005, section 23 of Act 9 of 2006, sections 10 and 101 of Act 20 of 2006, sections 2, 10, 88 and 97 of Act 8 of 2007, section 2 of Act 9 of 2007, section 16 of Act 35 of 2007, sections 1 and 9 of Act 3 of 2008, section 2 of Act 4 of 2008, section 16 of Act 60 of 2008, sections 13 and 95 of Act 17 of 2009, section 18 of Act 7 of 2010, sections 28 and 160 of Act 24 of 2011, section 271 of Act 28 of 2011, read with item 31 of Schedule 1 to that Act, sections 19, 144, 157 and 166 of Act 22 of 2012, section 23 of Act 31 of 2013, section 14 of Act 43 of 2014, section 16 of Act 25 of 2015 and section 23 of Act 15 of 2016

16. (1) Section 10 of the Income Tax Act, 1962, is hereby amended—
- (a) by the addition in subsection (1) to paragraph (cP) of the following proviso: 30
- “: Provided that this paragraph does not apply where—
- (a) the constitution of a company or the instrument establishing a trust does not comply with section 37A(5)(a); and
- (b) the person contemplated in section 37A(5)(b) does not furnish the Commissioner with a written undertaking as contemplated in that section;”;
- (b) by the substitution in subsection (1)(gC) for subparagraph (ii) of the following subparagraph: 35
- “(ii) lump sum, pension or annuity received by or accrued to any resident from a source outside the Republic as consideration for past employment outside the Republic other than from any pension fund, pension preservation fund, provident fund, provident preservation fund or retirement annuity fund as defined in section 1(1) or a company that is a resident and that is registered in terms of the Long-term Insurance Act as a person carrying on long term insurance business excluding any amount transferred to that fund or that insurer from a source outside the Republic in respect of that member;”;
- (c) by the substitution in subsection (1) for paragraph (gH) of the following paragraph: 40
- “(gH) any amount received or accrued in respect of a policy of insurance where— 45
- (i) the policy relates to death, disablement or [severe] illness of an employee or director, or former employee or director, of the person that is the policyholder; and;”;
- (d) by the substitution in subsection (1)(h) for the words preceding subparagraph (i) of the following words: 55
- “any amount of the interest which is received by or accrues [**by or**] to any person that is not a resident, unless”;
- (e) by the substitution in the proviso to subsection (1)(k)(i) for item (jj) of the following item: 60
- “(jj) notwithstanding the provisions of paragraphs (dd) and (ii), to any dividend in respect of a restricted equity instrument as defined in

section 8C that was acquired in the circumstances contemplated in section 8C(1) if that dividend **[is derived directly or indirectly from, or]** constitutes—

- (A) an amount transferred or applied by a company as consideration for the acquisition or redemption of any share in that company; 5
- (B) an amount received or accrued in anticipation or in the course of the winding up, liquidation, deregistration or final termination of a company; or
- (C) an equity instrument that **[is]** does not qualify, at the time of the receipt or accrual of that dividend, as **[not]** a restricted equity instrument as defined in section 8C **[that will, on vesting be subject to that section];** or”; 10
- (f) by the addition in the proviso to subsection (1)(k)(i) after paragraph (jj) of the following paragraph: 15
- “*(kk)* notwithstanding the provisions of paragraphs (*dd*) and (*ii*), to any dividend in respect of a restricted equity instrument as defined in section 8C that was acquired in the circumstances contemplated in section 8C(1) if that dividend is derived directly or indirectly from— 20
- (A) an amount transferred or applied by a company as consideration for the acquisition or redemption of any share in that company; or
- (B) an amount received or accrued in anticipation or in the course of the winding up, liquidation, deregistration or final termination of a company;”; 25
- (g) by the substitution in subsection (1)(o)(ii) for the words preceding item (*aa*) of the following words: 30
- “to the extent to which that remuneration does not exceed one million Rand in respect of a year of assessment and is received by or [accrued] accrues to any employee during any year of assessment by way of any salary, leave pay, wage, overtime pay, bonus, gratuity, commission, fee, emolument or allowance, including any amount referred to in paragraph (i) of the definition of gross income in section 1 or an amount referred to in section 8, 8B or 8C, in respect of services rendered outside the Republic by that employee for or on behalf of any employer, if that employee was outside the Republic—”; 35
- (h) by the substitution in subsection (1) for the words preceding the proviso in paragraph (q) of the following words: 40
- “any *bona fide* scholarship or bursary, other than any scholarship or bursary contemplated in paragraph (qA), granted to enable or assist any person to study at a recognized educational or research institution.”; 45
- (i) by the insertion in subsection (1) after paragraph (qA) of the following paragraph: 45
- “*(qB)* any *bona fide* scholarship or bursary granted to enable or assist any person who is a person with a disability as defined in section 6B(1) to study at a recognised educational or research institution: Provided that if any such scholarship or bursary has been so granted by an employer or an associated institution (as respectively defined in paragraph 1 of the Seventh Schedule) to an employee (as defined in the said paragraph) who is a person with a disability as defined in section 6B(1) or to any person with a disability as defined in section 6B(1) who is a member of the family of an employee (as defined in paragraph 1 of the Seventh Schedule) in respect of whom that employee is liable for family care and support, the exemption under this paragraph shall not apply— 50
- (i) in the case of a scholarship or bursary granted to so enable or assist an employee, who is a person with a disability as defined in section 6B(1), unless that employee agrees to reimburse the employer for any scholarship or bursary granted to that employee if that employee fails to complete 60

- his or her studies for reasons other than death, ill-health or injury;
- (ii) in the case of a scholarship or bursary granted to enable or assist a person with a disability as defined in section 6B(1) who is a member of the family of an employee, as defined in paragraph 1 of the Fourth Schedule, in respect of whom that employee is liable for family care and support, to study—
- (aa) if the remuneration proxy derived by the employee in relation to a year of assessment exceeded R600 000; and
- (bb) to so much of any scholarship or bursary contemplated in this subparagraph as in the case of any such member of the family of that employee, during the year of assessment, exceeds—
- (A) R30 000 in respect of—
- (AA) grade R to grade twelve as contemplated in the definition of “school” in section 1 of the South African Schools Act, 1996 (Act No. 84 of 1996); or
- (BB) a qualification to which an NQF level from 1 up to and including 4 has been allocated in accordance with Chapter 2 of the National Qualifications Framework Act, 2008 (Act No. 67 of 2008); and
- (B) R90 000 in respect of a qualification to which an NQF level from 5 up to and including 10 has been allocated in accordance with Chapter 2 of the National Qualifications Framework Act, 2008 (Act No. 67 of 2008);”;
- (j) by the substitution in subsection (1)(yA) for item (aa) of the following item: “(aa) that amount is received or accrued in relation to projects that are approved by the Minister **[after consultation with the Minister of Foreign Affairs]** and;” and
- (k) by the deletion in subsection (1)(yA) of item (cc).
- (2) Paragraph (b) of subsection (1) comes into operation on 1 March 2018 and applies in respect of years of assessment commencing on or after that date.
- (3) Paragraph (g) of subsection (1) comes into operation on 1 March 2020 and applies in respect of years of assessment commencing on or after that date.
- (4) Paragraphs (h) and (i) of subsection (1) come into operation on 1 March 2018 and apply in respect of years of assessment commencing on or after that date.

Amendment of section 10B of Act 58 of 1962, as inserted by section 29 of Act 24 of 2011 and amended by section 4 of Act 13 of 2012, section 20 of Act 22 of 2012, section 25 of Act 31 of 2013 and section 15 of Act 43 of 2014

17. Section 10B of the Income Tax Act, 1962, is hereby amended—
- (a) by the substitution for subsection (5) of the following subsection: “(5) The exemptions from tax provided by **[subsection]** subsections (2) and (3) do not apply in respect of any portion of an annuity or extend to any payments out of any foreign dividend received by or accrued to any person.”; and
- (b) by the substitution in subsection (6) for subparagraph (ii) of paragraph (b) of the following subparagraph: “(ii) an equity instrument that **[is]** does not qualify, at the time of the receipt or accrual of that foreign dividend, as a restricted equity instrument as defined in section 8C [that will, on vesting, be subject to that section].”.

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 and section 16 of Act 43 of 2014

18. (1) Section 10C of the Income Tax Act, 1962, is hereby amended by the substitution in subsection (2) for the words preceding paragraph (a) of the following words:

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

(2) Subsection (1) is deemed to have come 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 13 of Act 129 of 1991, section 11 of Act 141 of 1992, section 9 of Act 113 of 1993, section 5 of Act 140 of 1993, section 10 of Act 21 of 1994, section 12 of Act 21 of 1995, section 9 of Act 36 of 1996, section 12 of Act 28 of 1997, section 30 of Act 30 of 1998, section 20 of Act 53 of 1999, section 22 of Act 30 of 2000, section 15 of Act 59 of 2000, section 10 of Act 19 of 2001, section 27 of Act 60 of 2001, section 14 of Act 30 of 2002, section 19 of Act 74 of 2002, section 27 of Act 45 of 2003, section 9 of Act 16 of 2004, section 16 of Act 32 of 2004, section 6 of Act 9 of 2005, section 18 of Act 31 of 2005, section 11 of Act 20 of 2006, section 11 of Act 8 of 2007, section 17 of Act 35 of 2007, sections 1 and 10 of Act 3 of 2008, section 18 of Act 60 of 2008, section 14 of Act 17 of 2009, section 19 of Act 7 of 2010, sections 30 and 161 of Act 24 of 2011, section 271 of Act 28 of 2011, read with item 33 of Schedule 1 to that Act, section 22 of Act 22 of 2012, section 27 of Act 31 of 2013, section 17 of Act 43 of 2014 and section 18 of Act 25 of 2015

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

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

“(jA) notwithstanding paragraph (j), an allowance equal to 25 per cent of the loss allowance relating to impairment, as contemplated in IFRS 9, other than in respect of lease receivables as defined in IFRS 9, if the person is a covered person as determined by applying the criteria in paragraphs (c)(i) to (iii) and (d) of the definition of ‘covered person’ in section 24JB(1): Provided that the allowance must be increased—

(a) to 85 per cent of so much of that loss allowance relating to impairment as is equal to the amount that is in default, as determined by applying to any credit exposure, including any retail exposure, the criteria in paragraphs (a)(ii) to (vi) and (b) of the definition of ‘default’ as defined in Regulation 67 of the regulations issued in terms of section 90 of the Banks Act (contained in Government Notice No. R.1029 published in Government *Gazette* No. 35950 of 12 December 2012); and

(b) to 40 per cent of so much of that loss allowance relating to impairment as is equal to the difference between—

(i) the amount of the loss allowance relating to impairment that is measured at an amount equal to the lifetime expected credit losses; and

- (ii) the amount that is in default as determined under paragraph (a):
 Provided further that the allowance must be included in the income of that person in the following year of assessment;”;
- (b) by the deletion of paragraph (k);
- (c) by the substitution in paragraph (w) for the words preceding subparagraph (i) of the following words:
 “expenditure incurred by a taxpayer in respect of any premiums payable under a policy of insurance (other than a policy of insurance that relates to the death, disablement or [severe] illness of an employee or director of the taxpayer arising solely out of and in the course of employment of such employee or director) of which the taxpayer is the policyholder, where”;
- (d) by the substitution in paragraph (w)(i) for item (aa) of the following item:
 “(aa) the policy relates to the death, disablement or [severe] illness of an employee or director of the taxpayer; and”;
- (e) by the substitution in paragraph (w)(ii)(aa) for item (aa) of the following item:
 “(aa) the taxpayer is insured against any loss by reason of the death, disablement or [severe] illness of an employee or director of the taxpayer;”.
- (2) Paragraph (a) of subsection (1) comes into operation on 1 January 2018 and applies in respect of years of assessment commencing on or after that date.
- (3) Paragraph (b) of subsection (1) is deemed to have come into operation on 1 March 2016.

Amendment of section 11A of Act 58 of 1962, as inserted by section 28 of Act 45 of 2003 and amended by section 12 of Act 8 of 2007 and section 15 of Act 17 of 2009

20. Section 11A of the Income Tax Act, 1962, is hereby amended by the substitution in subsection (1) for paragraph (b) of the following paragraph:
 “(b) which would have been allowed as a deduction in terms of section 11 (other than section 11(x)), [11B,] 11D or 24J, had the expenditure or losses been incurred after that person commenced carrying on that trade; and”.

Insertion of section 11F in Act 58 of 1962

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

“Deduction in respect of contributions to retirement funds

11F. (1) Notwithstanding section 23(g), for the purposes of determining the taxable income of a natural person in respect of any year of assessment there must be allowed as a deduction from the income of that person 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.

(2) The total deduction allowed in terms of subsection (1) must not in a year of assessment exceed the lesser of—

- (a) R350 000; or
- (b) 27,5 per cent of the higher of the person’s—
- (i) 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
- (ii) 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 section and section 18A.
- (c) the taxable income of that person before—
- (i) allowing any deduction under this section; and
- (ii) the inclusion of any taxable capital gain.

- (3) Any amount contributed to a pension fund, provident fund or retirement annuity fund in any previous year of assessment which has been disallowed solely by reason of the fact that the amount that was contributed exceeds the amount of the deduction allowable in respect of that year of assessment is deemed to be an amount contributed in the current year of assessment, except to the extent that the amount contributed has been—
- (a) allowed as a deduction against income in any year of assessment;
 - (b) accounted for under paragraph 5(1)(a) or 6(1)(b)(i) of the Second Schedule; or
 - (c) exempted under section 10C.
- (4) Any amount contributed by an employer of the person for the benefit of that person must be deemed—
- (a) to be equal to the amount of the cash equivalent of the value of the taxable benefit contemplated in paragraph 2(l) of the Seventh Schedule determined in accordance with paragraph 12D of that Schedule; and
 - (b) to have been contributed by that person.
- (5) For the purposes of this section—
- (a) a partner in a partnership must be deemed to be an employee of the partnership; and
 - (b) a partnership must be deemed to be the employer of the partners in that partnership.”.

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

Amendment of section 12B of Act 58 of 1962, as inserted by section 11 of Act 90 of 1988 and amended by section 13 of Act 101 of 1990, section 10 of Act 113 of 1993, section 6 of Act 140 of 1993, section 13 of Act 28 of 1997, section 17 of Act 59 of 2000, section 11 of Act 16 of 2004, section 7 of Act 9 of 2005, section 19 of Act 31 of 2005, section 21 of Act 35 of 2007, section 18 of Act 17 of 2009, section 23 of Act 22 of 2012, section 31 of Act 31 of 2013, section 19 of Act 25 of 2015 and section 28 of Act 15 of 2016

22. Section 12B 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:

“The deduction contemplated in subsection (1) shall be calculated on the cost to the taxpayer of the asset[, as referred to in subsection (3),] and the rate of the allowance shall be—”; and
- (b) by the substitution of subsection (3) of the following subsection:

“(3) For purposes of this section the cost to a taxpayer of any asset acquired by that taxpayer shall be deemed to be the lesser of the actual cost to the taxpayer or the cost which a person would, if he or she had acquired the asset under a cash transaction concluded at arm’s length on the date which the transaction for the acquisition of the asset was in fact concluded, have incurred in respect of the direct cost of acquisition of the asset, including the direct cost of the installation or erection thereof [**or, where the asset has been acquired to replace an asset which has been damaged or destroyed, such cost less any amount which has been recovered or recouped in respect of the damaged or destroyed asset and had been excluded from the taxpayer’s income in terms of section 8(4)(e), whether in the current or any previous year of assessment**].”.

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

section 19 of Act 17 of 2009, section 33 of Act 24 of 2011, section 24 of Act 22 of 2012, section 32 of Act 31 of 2013 and section 20 of Act 25 of 2015

23. Section 12C of the Income Tax Act, 1962, is hereby amended by the substitution for subsection (2) of the following subsection:

“(2) For purposes of this section the cost to a taxpayer of any asset shall be deemed to be the lesser of the actual cost to the taxpayer to acquire that asset or the cost which a person would, if he had acquired that asset under a cash transaction concluded at arm’s length on the date which the transaction for the acquisition of that asset was in fact concluded, have incurred in respect of the direct cost of acquisition of the asset, including the direct cost of the installation or erection thereof **[or, where the asset has been acquired to replace an asset which has been damaged or destroyed, such cost less any amount which has been recovered or recouped in respect of the damaged or destroyed asset and had been excluded from the taxpayer’s income in terms of section 8(4)(e), whether in the current or any previous year of assessment].**”.

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, section 33 of Act 31 of 2013 and section 19 of Act 43 of 2014

24. Section 12D of the Income Tax Act, 1962, is hereby amended by the substitution for subsection (4) of the following subsection:

“(4) For the purposes of this section the cost to a taxpayer of any affected asset shall be deemed to be the lesser of—
(a) the actual cost of the asset incurred by the taxpayer; or
(b) the cost which the taxpayer would, if the taxpayer had acquired or improved the said asset under a cash transaction concluded at arm’s length on the date on which the transaction for the acquisition or improvement of the said asset was in fact concluded, have incurred in respect of the direct cost of acquisition or improvement of the asset (including the direct cost of the installation or erection thereof).”.

Amendment of section 12DA of Act 58 of 1962, as inserted by section 24 of Act 35 of 2007 and amended by section 22 of Act 60 of 2008 and section 34 of Act 31 of 2013

25. Section 12DA of the Income Tax Act, 1962, is hereby amended by the substitution for subsection (3) of the following subsection:

“(3) For purposes of this section the cost to a taxpayer of any rolling stock shall be deemed to be the lesser of the actual cost to the taxpayer or the cost which a person would, if that person had acquired or improved the rolling stock under a cash transaction concluded at arm’s length on the date which the transaction for the acquisition or improvement of rolling stock was in fact concluded, have incurred in respect of the direct cost of acquisition or improvement of the rolling stock **[or, where the rolling stock has been acquired to replace rolling stock which has been damaged or destroyed, such cost less any amount which has been recovered or recouped in respect of the damaged or destroyed rolling stock and had been excluded from the taxpayer’s income in terms of section 8(4)(e), whether in the current or any previous year of assessment].**”.

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

section 35 of Act 31 of 2013, section 20 of Act 43 of 2014, section 21 of Act 25 of 2015 and section 29 of Act 15 of 2016

26. Section 12E of the Income Tax Act, 1962, is hereby amended—

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

“(2) For purposes of this section the cost to a taxpayer of any asset shall be deemed to be the lesser of the actual cost to the taxpayer to acquire that asset or the cost which a person would, if he had acquired the said asset under a cash transaction concluded at arm’s length on the date which the transaction for the acquisition of the asset was in fact concluded, have incurred in respect of the direct cost of acquisition of the asset, including the direct cost of the installation or erection thereof **[or, where the asset has been acquired to replace an asset which has been damaged or destroyed, such cost less any amount which has been recovered or recouped in respect of the damaged or destroyed asset and had been excluded from the taxpayer’s income in terms of section 8(4)(e), whether in the current or any previous year of assessment].**”;

(b) by the substitution in subsection (4) in paragraph (a) of the definition of “small business corporation” for the proviso to subparagraph (i) of the following proviso:

“: Provided that where the close corporation, co-operative or company during the relevant year of assessment carries on any trade, **[for purposes of which any asset contemplated in this section is used,]** for a period which is less than 12 months, that amount shall be reduced to an amount which bears to that amount, the same ratio as the number of months (in the determination of which a part of a month shall be reckoned as a full month), during which that company, co-operative or close corporation carried on that trade bears to 12 months;”;

(c) by the substitution in subsection (4) in the definition of “personal service” for paragraph (i) of the following paragraph:

“(i) that service is performed personally by any person who holds an interest in that company, co-operative or close corporation or by any person that is a connected person in relation to any person holding such an interest; and”.

Amendment of section 12I of Act 58 of 1962, as inserted by section 26 of Act 60 of 2008 and amended by section 24 of Act 17 of 2009, section 26 of Act 7 of 2010, section 37 of Act 24 of 2011, section 28 of Act 22 of 2012, section 22 of Act 43 of 2014, section 22 of Act 25 of 2015 and section 31 of Act 15 of 2016

27. (1) Section 12I of the Income Tax Act, 1962, is hereby amended by the substitution in subsection (7) for paragraph (d) of the following paragraph:

“(d) the application for approval of the project by the company is received by the Minister of Trade and Industry not later than **[31 December 2017]** 31 March 2020, in such form and containing such information as the Minister of Trade and Industry may prescribe.”.

(2) Subsection (1) is deemed to have come into operation on 31 March 2017.

Amendment of section 12J of Act 58 of 1962, as inserted by section 27 of Act 60 of 2008 and amended by section 25 of Act 17 of 2009 and section 38 of Act 24 of 2011, section 271 of Act 28 of 2011, read with item 37 of Schedule 1 to that Act, section 36 of Act 31 of 2013, section 23 of Act 43 of 2014, section 23 of Act 25 of 2015 and section 32 of Act 15 of 2016

28. (1) Section 12J of the Income Tax Act, 1962, is hereby amended by substitution for subsection (9) 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 or in respect of a return of capital 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 2018 and applies in respect of years of assessment commencing on or after that date.

Amendment of section 12Q of Act 58 of 1962, as inserted by section 41 of Act 31 of 2013 and amended by section 42 of Act 31 of 2014 and section 27 of Act 25 of 2015

29. Section 12Q of the Income Tax Act, 1962, is hereby amended by the substitution in subsection (1) for the definition of “international shipping company” of the following definition:

“‘**international shipping company**’ means a company that is a resident that **[holds a share or shares in] operates** one or more South African ships that are utilised in international shipping;”.

Amendment of section 12R of Act 58 of 1962, as inserted by section 43 of Act 31 of 2013 and amended by section 26 of Act 43 of 2014, section 28 of Act 31 of 2013 and section 34 of Act 15 of 2016

30. (1) Section 12R is hereby amended—

(a) by the substitution in subsection (1) in the definition of “qualifying company” for paragraphs (b), (c) and (d) of the following paragraphs respectively:

“(b) that carries on **[business]** a trade in 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)] this section** by notice in the *Gazette*;

(c) if the **[business or services]** trade contemplated in paragraph (b) **[are]** is carried on **[or provided]** from a fixed place of business situated within a special economic zone; and

(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]** a trade within one or more special economic zones;”;

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

“(b) 10 years after the commencement of the carrying on of **[business]** a trade in a special economic zone.”.

(2) Subsection (1) is deemed to have come into operation on 9 February 2016.

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, section 52 of Act 31 of 2013, section 29 of Act 43 of 2014, section 3 of Act 44 of 2014 and section 34 of Act 15 of 2015

31. Section 18A of the Income Tax Act, 1962, is hereby amended by the substitution in subsection (1) for paragraphs (a), (b), (bA) and (c) of the following paragraphs respectively:

“(a) any—

(i) public benefit organisation contemplated in paragraph (a)(i) of the definition of ‘public benefit organisation’ in section 30(1) approved by the Commissioner under section 30; or

(ii) institution, board or body contemplated in section 10(1)(cA)(i), which—

(aa) carries on in the Republic any public benefit activity contemplated in Part II of the Ninth Schedule, or any other activity determined from time to time by the Minister by notice in the *Gazette* for the purposes of this section; **[and]**

(bb) complies with the requirements contemplated in subsection (1C), if applicable, and any additional requirements prescribed by the Minister in terms of subsection (1A); **and**

(cc) **has been approved by the Commissioner for the purposes of this section;**

(b) any public benefit organisation contemplated in paragraph (a)(i) of the definition of ‘public benefit organisation’ in section 30(1) approved by the

Commissioner under section 30, which provides funds or assets to any public benefit organisation, institution, board or body contemplated in paragraph (a) and which has been approved by the Commissioner for the purposes of this section; or

- (bA) (i) any agency contemplated in the definition of ‘specialized agencies’ in section 1 of the Convention on the Privileges and Immunities of the Specialized Agencies, 1947, set out in Schedule 4 to the Diplomatic Immunities and Privileges Act, 2001 (Act No. 37 of 2001)[, **which—**];
- (ii) the United Nations Development Programme (UNDP);
- (iii) the United Nations Children’s Fund (UNICEF);
- (iv) the United Nations High Commissioner for Refugees (UNHCR);
- (v) the United Nations Population Fund (UNFPA);
- (vi) the United Nations Office on Drugs and Crime (UNODC);
- (vii) the United Nations Environmental Programme (UNEP);
- (viii) the United Nations Entity for Gender, Equality and the Empowerment of Women (UN Women);
- (ix) the International Organisation for Migration (IOM);
- (x) the Joint United Nations Programme on HIV/AIDS (UNAIDS);
- (xi) the Office of the High Commissioner for Human Rights (OHCHR); and
- (xii) the United Nations Office for the Coordination of Humanitarian Affairs (OCHA),
- if that agency, programme, fund, High Commissioner, office, entity or organisation—
- [i] (aa) carries on in the Republic any public benefit activity contemplated in Part II of the Ninth Schedule, or any other activity determined from time to time by the Minister by notice in the Gazette for the purposes of this section;
- [ii] (bb) furnishes the Commissioner with a written undertaking that such agency will comply with the provisions of this section; and
- [iii] (cc) waives diplomatic immunity for the purposes of subsection (5)(i); or
- (c) any department of government of the Republic in the national, provincial or local sphere as contemplated in section 10(1)(a), which has been approved by the Commissioner for the purposes of this section, to be used for purpose of any activity contemplated in Part II of the Ninth Schedule.”

Substitution of section 19 of Act 58 of 1962, as inserted by section 36 of Act 22 of 2012 and amended by 53 of Act 31 of 2013 and section 35 of Act 25 of 2015

32. (1) The following section is hereby substituted for section 19 of the Income Tax Act, 1962:

“Concession or compromise in respect of a debt

19. (1) For the purposes of this section—

‘**allowance asset**’ means a capital asset in respect of which a deduction or allowance is allowable in terms of this Act for purposes other than the determination of any capital gain or capital loss;

‘**capital asset**’ means an asset as defined in paragraph 1 of the Eighth Schedule that is not trading stock;

‘**concession or compromise**’ means any arrangement in terms of which—

(a) any—

(i) term or condition applying in respect of a debt is changed or waived; or

(ii) obligation is substituted, whether by means of novation or otherwise, for the obligation in terms of which that debt is owed; or

- (b) a debt owed by a company is settled, directly or indirectly, by—
- (i) being converted to or exchanged for shares in that company; or
 - (ii) applying the proceeds from shares issued by that company;
- ‘debt’** means any amount that is owed by a person but does not include—
- (a) a tax debt as defined in section 1 of the Tax Administration Act; or
 - (b) an amount of interest;
- ‘debt benefit’**, in respect of a debt owed by a person to another person, means any amount by which the face value of the claim held by that other person in respect of that debt, prior to the entering into of any arrangement in respect of that debt, exceeds—
- (a) in the case of an arrangement—
 - (i) described in paragraph (a) of the definition of ‘concession or compromise’, the market value of the claim in respect of that debt; or
 - (ii) described in paragraph (b) of the definition of ‘concession or compromise’, where the person who subscribed for or acquired shares in a company in terms of that arrangement did not hold shares in that company prior to the entering into of that arrangement, the market value of the shares, held or acquired by reason or as a result of the implementation of that arrangement; or
 - (b) in the case of an arrangement described in paragraph (b) of the definition of ‘concession or compromise’, where the person who subscribed for or acquired shares in a company in terms of that arrangement held shares in that company prior to the entering into of that arrangement, the amount by which the market value of the shares held by that person in that company after the implementation of that arrangement exceeds the market value of the shares held by that person in that company prior to the entering into of that arrangement; reduced, in the case of a debt owed by a company to a person who holds shares in another company that forms part of the same group of companies as that company, by so much of any increase in the market value of the shares so held by that person as is attributable solely to the implementation of that arrangement; and
- ‘group of companies’** means a group of companies as defined in section 41.
- (2) Subject to subsection (8), this section applies where—
- (a) a debt benefit in respect of a debt owed by a person arises by reason or as a result of a concession or compromise in respect of that debt; and
 - (b) the amount of that debt was used by that person to fund, directly or indirectly, any expenditure in respect of which a deduction or allowance was granted in terms of this Act.
- (3) Where—
- (a) a debt benefit arises in respect of a debt owed by a person as contemplated in subsection (2); and
 - (b) the amount of that debt was used as contemplated in paragraph (b) of that subsection to fund expenditure incurred in respect of trading stock that is held and not disposed of by that person at the time the debt benefit arises,
- the debt benefit in respect of that debt must, to the extent that an amount is taken into account by that person in respect of that trading stock in terms of section 11(a) or 22(1) or (2) for the year of assessment in which the debt benefit arises, be applied to reduce the amount so taken into account in respect of that trading stock.
- (4) Where—
- (a) a debt benefit arises in respect of a debt owed by a person as contemplated in subsection (2);
 - (b) the amount of that debt was used as contemplated in paragraph (b) of that subsection to fund expenditure incurred in respect of trading stock that is held and not disposed of by that person at the time the debt benefit arises; and

(c) subsection (3) has been applied to reduce an amount taken into account by that person in respect of trading stock as contemplated in that subsection to the full extent of that amount so taken into account, the debt benefit in respect of that debt, less any amount of that debt benefit that has been applied to reduce an amount as contemplated in subsection (3) must, to the extent that a deduction or allowance was granted in terms of this Act to that person in respect of that expenditure, be deemed, for the purposes of section 8(4)(a), to be an amount that has been recovered or recouped by that person for the year of assessment in which the debt benefit arises.

(5) Where—

(a) a debt benefit arises in respect of a debt owed by a person as contemplated in subsection (2); and
 (b) the amount of that debt was used as contemplated in paragraph (b) of that subsection to fund any expenditure other than expenditure incurred—

(i) in respect of trading stock that is held and not disposed of by that person at the time the debt benefit arises; or

(ii) in respect of an allowance asset,

the debt benefit in respect of that debt must, to the extent that a deduction or allowance was granted in terms of this Act to that person in respect of that expenditure, be deemed, for the purposes of section 8(4)(a), to be an amount that has been recovered or recouped by that person for the year of assessment in which the debt benefit arises.

(6) Where—

(a) a debt benefit arises in respect of a debt owed by a person as contemplated in subsection (2); and
 (b) the amount of that debt was used as contemplated in paragraph (b) of that subsection to fund expenditure incurred in respect of an allowance asset,

the debt benefit in respect of that debt must, to the extent that—

(i) a deduction or allowance was granted in terms of this Act to that person in respect of that expenditure; and

(ii) the debt benefit has not been applied as contemplated in paragraph 12A of the Eighth Schedule to reduce the amount of expenditure as contemplated in paragraph 20 of that Schedule in respect of that allowance asset,

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

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

(a) the debt benefit in respect of that debt; and

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

(8) This section must not apply to a debt benefit in respect of any debt owed by a person—

(a) that is an heir or legatee of a deceased estate, to the extent that—

(i) the debt is owed to that deceased estate;

(ii) the debt is reduced by the deceased estate; and

(iii) the amount by which the debt is reduced by the deceased estate forms part of the property of the deceased estate for the purposes of the Estate Duty Act;

(b) to the extent that the debt is reduced by way of—

(i) a donation as defined in section 55(1); or

(ii) any transaction to which section 58 applies; or

(c) to an employer of that person, to the extent that the debt is reduced in the circumstances contemplated in paragraph 2(h) of the Seventh Schedule;

- (d) to another person where the person that owes that debt is a company if—
- (i) that company owes that debt to a company that forms part of the same group of companies as that company; and
 - (ii) that company has not carried on any trade, during the year of assessment in which that debt benefit arises as well as during the immediately preceding year of assessment: Provided that this paragraph must not apply in respect of any debt—
- (aa) incurred, directly or indirectly by that company to fund expenditure incurred in respect of any asset that was subsequently disposed of by that company by way of an asset-for-share, intra-group or amalgamation transaction or a liquidation distribution in respect of which the provisions of section 42, 44, 45 or 47, as the case may be, applied; or
 - (bb) incurred or assumed by that company in order to settle, take over, refinance or renew, directly or indirectly, any debt incurred by—
 - (A) any other company that forms part of the same group of companies; or
 - (B) any company that is a controlled foreign company in relation to any company that forms part of the same group of companies; or
- (e) to another person where the person that owes that debt is a company that—
- (i) owes that debt to a company that forms part of the same group of companies as that company; and
 - (ii) reduces or settles that debt, directly or indirectly, by means of shares issued by that company: Provided that this paragraph must not apply in respect of any debt that was incurred or assumed by that company in order to settle, take over, refinance or renew, directly or indirectly, any debt incurred by another company which—
- (aa) did not form part of that same group of companies at the time that that other company incurred that debt; or
 - (bb) does not form part of that same group of companies at the time that that company reduces or settles that debt, directly or indirectly, by means of shares issued by that company.”

(2) Subsection (1) comes into operation on 1 January 2018 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, section 55 of Act 31 of 2013, section 32 of Act 43 of 2014, section 37 of Act 25 of 2015 and section 40 of Act 15 of 2016

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

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

“For the purposes of this section the cost price of trading stock referred to in subsection (2A) shall be the sum of the cost to the taxpayer of material used by **[him] the taxpayer** in effecting the relevant improvements, and such further costs incurred by **[him] the taxpayer** as in accordance with **[generally accepted accounting practice] IFRS** are to be regarded as having been incurred directly in connection with the relevant contract, and such portion of any other costs incurred by **[him]**

the taxpayer in connection with the relevant contract and other contracts as in accordance with **[generally accepted accounting practice]** IFRS are to be regarded as having been incurred in connection with the relevant contract, less a deduction of so much of”;

- (b) by the substitution for subsection (4) of the following subsection: 5
 “(4) If any trading stock has been acquired by any person for no consideration or for a consideration which is not measurable in terms of money, other than a government grant in kind, such person shall for the purposes of subsection (3), unless subsection (3)(a)(iA) applies, be deemed to have acquired such trading stock at a cost equal to the current market price of such trading stock on the date on which it was acquired by such person.”; 10
- (c) by the substitution in subsection (9)(a) for subparagraph (i) of the following subparagraph: 15
 “(i) the trading stock of any person during any year of assessment includes any—
 (aa) security or any bond issued by the government of the Republic in the national or local sphere; or
 (bb) bond issued by any sphere of government of any country other than the Republic, 20
 if that bond is listed on a recognised exchange as defined in paragraph 1 of the Eighth Schedule;”;
- (d) by the substitution in subsection (9)(b) for subparagraph (i) of the following subparagraph: 25
 “(i) the trading stock of any other person during any year of assessment includes any—
 (aa) security or any bond issued by the government of the Republic in the national or local sphere; or
 (bb) bond issued by any sphere of government of any country other than the Republic, 30
 if that bond is listed on a recognised exchange as defined in paragraph 1 of the Eighth Schedule;
- (e) by the substitution in subsection (9)(c) for subparagraph (i) of the following subparagraph: 35
 “(i) the trading stock of any person during any year of assessment includes any—
 (aa) share or any bond issued by the government of the Republic in the national or local sphere; or
 (bb) bond issued by any sphere of government of any country other than the Republic, 40
 if that bond is listed on a recognised exchange as defined in paragraph 1 of the Eighth Schedule;”;
- (f) by the substitution in subsection (9)(d) for subparagraph (i) of the following subparagraph: 45
 “(i) the trading stock of any transferee during any year of assessment includes any—
 (aa) share or any bond issued by the government of the Republic in the national or local sphere; or
 (bb) bond issued by any sphere of government of any country other than the Republic, 50
 if that bond is listed on a recognised exchange as defined in paragraph 1 of the Eighth Schedule;”.

(2) Paragraphs (c), (d), (e) and (f) of subsection (1) come into operation on 1 January 2018 and apply in respect of collateral arrangements and lending arrangements entered into on or after that date. 55

Substitution of section 22B of Act 58 of 1962

34. (1) The following section is hereby substituted for section 22B of the Income Tax Act, 1962:

“Dividends treated as income on disposal of certain shares

22B. (1) For the purposes of this section—

‘exempt dividend’ means any dividend or foreign dividend to the extent that the dividend or foreign dividend is—

- (a) not subject to tax under Part VIII of Chapter II; and
- (b) exempt from normal tax in terms of section 10(1)(k)(i) or section 10B(2)(a) or (b);

‘extraordinary dividend’ means, in relation to—

- (a) a preference share the dividends in respect of which are determined with reference to a rate of interest, so much of the amount of any dividend received or accrued as exceeds an amount determined at a rate of 15 per cent;
- (b) any other share, so much of the amount of any dividend received or accrued:
 - (i) within a period of 18 months prior to the disposal of that share; or
 - (ii) in respect, by reason or in consequence of that disposal, as exceeds 15 per cent of the higher of the market value of that share as at the beginning of the period of 18 months and as at the date of disposal of that share; and

‘qualifying interest’ means an interest held by a company in another company, whether alone or together with any connected persons in relation to that company, that constitutes—

- (a) if that other company is not a listed company, at least—
 - (i) 50 per cent of the equity shares or voting rights in that other company; or
 - (ii) 20 per cent of the equity shares or voting rights in that other company if no other person (whether alone or together with any connected person in relation to that person) holds the majority of the equity shares or voting rights in that other company; or
- (b) if that other company is a listed company, at least 10 per cent of the equity shares or voting rights in that other company.

(2) Where a company disposes of shares in another company and that company held a qualifying interest in that other company at any time during the period of 18 months prior to that disposal, the amount of any exempt dividend received by or that accrued to that company in respect of the shares disposed of must—

- (a) to the extent that the exempt dividend constitutes an extraordinary dividend; and
- (b) if that company immediately before that disposal held the shares disposed of as trading stock, be included in the income of that company in the year of assessment in which those shares are disposed of or, where that dividend is received or accrues after that year of assessment, the year of assessment in which that dividend is received or accrues.”

(2) Subsection (1) is deemed to have come into operation on 19 July 2017 and applies in respect of any disposal on or after that date other than a disposal in terms of an agreement all the terms of which were finally agreed to before that date by all the parties to that agreement.

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, section 56 of Act 31 of 2013 and section 33 of Act 43 of 2014

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

“(i) any contributions to a pension fund, provident fund or retirement annuity fund as may be deducted from the income of that person in terms of section [11(k)] 5
11F;”.

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

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, section 48 of Act 24 of 2011, section 43 of Act 22 of 2012 and section 34 of Act 43 of 2014

36. Section 23B of the Income Tax Act, 1962, is hereby amended by the substitution for subsection (5) of the following subsection: 15

“(5) No deduction shall be allowed under section 11(a) in respect of any expenditure incurred by a person in respect of any premium paid under a policy of insurance, where the policy relates to death, disablement or [severe] illness of an employee or director, or former employee or director, of the person that is the policyholder (other than a policy that relates to death, disablement or [severe] 20
illness arising solely out of and in the course of employment of the employee or director).”.

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, section 46 of Act 22 of 2012, section 35 of Act 43 of 2014 and section 38 of Act 25 of 2015

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

“(aa) where all the goods or services are to be supplied or rendered within six 30
months after the end of the year of assessment during which the expenditure was incurred, or such person will have the full enjoyment of such benefit in respect of which the expenditure was incurred within such period, unless the expenditure is allowable as a deduction in terms of section [11D(1)] 11D(2); 35
or”.

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, section 58 of Act 31 of 2013 and section 36 of Act 43 of 2014

38. (1) Section 23I of the Income Tax Act, 1962, is hereby amended by the addition of the following subsection: 40

“(4) Subsection (2) must not apply where the aggregate amount of taxes on income payable to all spheres of government of any country other than the Republic by a controlled foreign company contemplated in that subsection in respect of the foreign tax year of that controlled foreign company is at least 75 per 45
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: Provided that the aggregate amount of tax payable by a controlled foreign company in respect of a foreign tax year of that controlled foreign company must be determined— 50
(a) after taking into account any applicable agreement for the prevention of double taxation and any credit, rebate or other right of recovery of tax from any sphere of government of any country other than the Republic; and
(b) after disregarding any loss in respect of a year other than that foreign tax year or from a company other than that controlled foreign company.”. 55

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

Amendment of section 23M of Act 58 of 1962, as inserted by section 16 of Act 31 of 2013 and amended by section 37 of Act 43 of 2014 and section 41 of Act 15 of 2016

39. Section 23M of the Income Tax Act, 1962, is hereby amended— 5
- (a) by the deletion in subsection (1) of the definition of “issue”;
 - (b) by the substitution in subsection (2)(b) for subparagraph (ii) of the following subparagraph:
 - “(ii) disallowed under section 23N,”; and
 - (c) by the substitution in subsection (6)(a) for subparagraph (ii) of the following subparagraph: 10
 - “(ii) that interest is determined with reference to a rate of interest that does not exceed the official rate of interest [as defined in paragraph 1 of the Seventh Schedule] plus 100 basis points; or”.

Amendment of section 23N of Act 58 of 1962, as inserted by section 63 of Act 31 of 2013, amended by section 38 of Act 43 of 2014, section 40 of Act 25 of 2015 and section 42 of Act 15 of 2016

40. Section 23N of the Income Tax Act, 1962, is hereby amended— 20
- (a) by the substitution in subsection (3) for paragraph (b) of the following paragraph:
 - “(b) the highest of the amounts determined by multiplying the percentage determined under subsection (4) by the adjusted taxable income of the acquiring company for each of the years of assessment— 25
 - (i) in which the acquisition transaction or reorganisation transaction is entered into;
 - (ii) in which the amount of interest is incurred by that acquiring company; or
 - (iii) immediately prior to the year of assessment contemplated in subparagraph (i),”; and 30
 - (b) by the substitution in subsection (5) for paragraph (c) of the following paragraph:
 - “(c) at the end of the previous year of assessment 80 per cent or more of the value of the assets of that acquiring company, reflected in the annual financial statements prepared in accordance with the Companies Act for the previous year of assessment, is directly or indirectly attributable to immovable property.”. 35

Amendment of section 23O of Act 58 of 1962, as inserted by section 39 of Act 43 of 2012 and amended by section 43 of Act 15 of 2016 40

41. Section 23O of the Income Tax Act, 1962, is hereby amended by the substitution in subsection (4) for paragraph (a) of the following paragraph:
- “(a) the amount so received [by] or accrued [to from a small business funding entity] that is applied for that purpose; and”.

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, 45

section 53 of Act 22 of 2012, section 68 of Act 31 of 2013, section 40 of Act 43 of 2014, section 44 of Act 25 of 2015 and section 44 of Act 15 of 2016

42. Section 24I of the Income Tax Act, 1962, is hereby amended by the substitution in subsection (1) for the definition of “affected contract” of the following definition:

- “**‘affected contract’** means any foreign currency option contract or forward exchange contract to the extent that the foreign currency option contract or forward exchange contract has been entered into by any person during any year of assessment to serve as a hedge in respect of a debt, where—
- (a) that debt—
 - (i) is to be utilised by that person for the purposes of acquiring any asset or for financing any expenditure; or
 - (ii) will arise from the sale of any asset or supply of any services, in terms of an agreement entered into by that person in the ordinary course of the person’s trade prior to the end of the current year of assessment; and
 - (b) that debt has not yet been incurred by such person or the amount payable in respect of such debt has not yet accrued during that current year of assessment;”.

Amendment of section 24J of Act 58 of 1962, as inserted by section 21 of Act 21 of 1995 and amended by section 14 of Act 36 of 1996, section 19 of Act 28 of 1997, section 27 of Act 53 of 1999, section 24 of Act 32 of 2004, section 10 of Act 9 of 2005, section 20 of Act 20 of 2006, section 53 of Act 24 of 2011, section 271 of Act 28 of 2011, read with item 40 of Schedule 1 to that Act, section 54 of Act 22 of 2012, section 69 of Act 31 of 2013, section 41 of Act 43 of 2014 and section 45 of Act 15 of 2016

43. Section 24J of the Income Tax Act, 1962, is hereby amended by the substitution in subsection (1) for the definition of “alternative method” of the following definition:

- “**‘alternative method’** means a method of calculating interest in relation to any class of instruments which—
- (a) [**conforms with generally accepted accounting practice**] is in accordance with IFRS;
 - (b) is consistently applied in respect of all such instruments [(**excluding any instrument as contemplated in subsection (9)**)] for all financial reporting purposes; and
 - (c) method achieves a result in so far as the timing of the accrual and incurral of interest is concerned which [**does not differ significantly from**] produces substantially the same result achieved by the application of the provisions of subsections (2)(a) and (3)(a);”.

Amendment of section 24JB of Act 58 of 1962, as inserted by section 56 of Act 22 of 2012, as substituted by section 71 of Act 31 of 2013 and amended by section 43 of Act 43 of 2014 and section 46 of Act 15 of 2016

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

- (a) by the addition in subsection (1) in paragraph (d) of the definition of “covered person” of the following subparagraph:
 - “(iv) any subsidiary, as defined in section 1 of the Companies Act, of a company contemplated in subparagraph (i) or (ii);”;
- (b) by the substitution in subsection (1) for the definition of “derivative” of the following definition:
 - “**‘derivative’** means a derivative as defined in and within the scope of IFRS 9;”;
- (c) by the substitution in subsection (2) for the words preceding paragraph (a) of the following words:
 - “Subject to sections 8F, 8FA and subsection (4), there must be included in or deducted from the income, as the case may be, of any covered person for any year of assessment all amounts in respect of financial assets and financial liabilities of that covered person that are recognised in profit or loss in the statement of comprehensive income in respect of financial assets and financial liabilities of that covered person that are [**recognized**] measured at fair value in profit or loss in terms of

[International Accounting Standard 39 of] IFRS 9 [or any other standard that replaces that standard] or, in the case of commodities, at fair value less cost to sell in profit or loss in terms of IFRS for that year of assessment, excluding any amount in respect of”;

- (d) by the substitution in subsection (2)(a) for the words following subparagraph (v) of the following words: 5

“if that financial asset does not constitute trading stock.”;

- (e) by the addition after subsection (2) of the following subsections:

“(2A) A covered person must include in or deduct from income for a year of assessment a realised gain or realised loss that is recognised in a statement of other comprehensive income as contemplated in IFRS if that realised gain or realised loss is attributable to a change in the credit risk of the financial liability as contemplated in IFRS. 10

(2B) Where a covered person has, during any year of assessment preceding the year of assessment commencing on or after 1 January 2018, included in or deducted from income any amount attributable to a change in the credit risk of a financial liability issued by that covered person measured at fair value through profit or loss in terms of subsection (2), such covered person must include in or deduct from income, as the case may be, any amount in respect of a change in credit risk of that financial liability recognised in other comprehensive income during any year of assessment commencing on or after 1 January 2018.”; and 15 20

- (f) by the addition of the following subsection:

“(9) Where a financial asset held by or financial liability owed by a covered person at the end of the year of assessment immediately preceding the year of assessment commencing on or after 1 January 2018 would have ceased to be subject to tax or would have become subject to tax in terms of subsection (2), had IFRS 9 applied on the last day of that immediately preceding year of assessment, that covered person is deemed to have— 25 30

(a) disposed of that financial asset or redeemed that financial liability; and

(b) immediately reacquired that financial asset or incurred that financial liability,

for an amount equal to the market value of that financial asset or financial liability on that day.”. 35

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

Amendment of section 25BB of Act 58 of 1962, as inserted by section 59 of Act 22 of 2012, substituted by section 74 of Act 31 of 2013 and amended by section 45 of Act 43 of 2014, section 50 of Act 25 of 2015 and section 48 of Act 15 of 2016 40

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

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

“**‘qualifying distribution’**, in respect of a year of assessment of a company that is a REIT or a controlled company as at the end of a year of assessment, means any dividend (other than a dividend contemplated in paragraph (b) of the definition of ‘dividend’) paid or payable, or interest incurred in respect of a debenture forming part of a linked unit in that company, if the amount thereof is determined with reference to the financial results of that company as reflected in the financial statements prepared for that year of assessment if—”; and 45 50

- (b) by the substitution in subsection (7) for paragraphs (a) and (b) of the following paragraphs, respectively:

“(a) that year of assessment of that REIT or controlled company is deemed to end on the day preceding the date on which that company ceases to be either a REIT or a controlled company; and 55

(b) the following year of assessment of that company is deemed to commence on the day on which that company ceased to be either a REIT or a controlled company.”. 60

Amendment of section 29A of Act 58 of 1962, as inserted by section 30 of Act 53 of 1999 and amended by section 36 of Act 59 of 2000, section 15 of Act 5 of 2001, section 15 of Act 19 of 2001, section 39 of Act 60 of 2001, section 30 of Act 74 of 2002, section 16 of Act 16 of 2004, section 23 of Act 20 of 2006, section 21 of Act 3 of 2008, section 52 of Act 7 of 2010, section 62 of Act 22 of 2012, section 77 of Act 31 of 2013, section 47 of Act 43 of 2014, section 53 of Act 25 of 2015 and section 50 of Act 15 of 2016

46. (1) Section 29A of the Income Tax Act, 1962, is hereby amended—
- (a) by the substitution in subsection (1) for the definition of “adjusted IFRS value” of the following definition:
- “**adjusted IFRS value**”, in respect of a policyholder fund or the risk policy fund, means an amount, which may not be less than zero, and which must be calculated in accordance with the formula—
- $$I = (L + DL + PF) - PT - DC - DR$$
- in which formula—
- (a) ‘I’ represents the amount to be determined;
- (b) ‘L’ represents the amount of the liabilities in respect of policies of the insurer, net of amounts recognised as—
- (i) recoverable under policies of reinsurance; and
- (ii) negative liabilities,
- the amounts of which are determined in accordance with IFRS as annually reported by the insurer to shareholders in the audited annual financial statements in respect of policies allocated to that fund;
- (c) ‘DL’ represents for a policyholder fund the amount of deferred tax liabilities, determined in accordance with IFRS as annually reported by the insurer to shareholders in the audited annual financial statements, in respect of assets allocated to that policyholder fund;
- (d) ‘PF’ represents the amount calculated in terms of subsection (14) if a phasing-in amount is determined in terms of subsection (15)(a);
- (e) ‘PT’ represents the amount calculated in terms of subsection (14) if a phasing-in amount is determined in terms of subsection (15)(b);
- (f) ‘DC’ represents for a policyholder fund the amount of deferred acquisition costs determined in accordance with IFRS as annually reported by the insurer to shareholders in the audited financial statements; and
- (g) ‘DR’ represents for a policyholder fund the amount of deferred revenue determined in accordance with IFRS as annually reported by the insurer to shareholders in the audited financial statements;”;
- (b) by the substitution in subsection (1) for the definition of “negative liability” of the following definition:
- “**negative liability**”, in respect of a long-term policy, means the amount by which the expected present value of future premiums exceeds the expected present value of future benefits to policyholders and expenses;”;
- (c) by the substitution in subsection (11) for paragraph (bA) of the following paragraph:
- “(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]** taxable income before allowing a deduction under this paragraph: Provided that the risk policy fund is deemed not to have incurred any assessed loss during the year of assessment;”;
- (d) by the substitution in subsection (13A) for paragraph (a) of the following paragraph:
- “(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 of liabilities for the year of assessment in respect of risk policies.”;

(e) by the substitution for subsection (15) of the following subsection:

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

(a) if the amount of negative liabilities that has been recognised in accordance with IFRS as reported by the insurer to shareholders in the audited annual financial statements relating to policies allocated to that fund, reduced by negative liabilities recognised as an asset (adjusted to the manner in which negative liabilities were taken into account for purposes of determining assets and liabilities as recognised in the audited annual financial statements for 2015), exceeds the amount of negative liabilities that has been recognised in determining the value of liabilities (adjusted to the manner of recognition of policy liabilities for tax purposes for 2015 years of assessment) relating to policies allocated to that fund in respect of the year of assessment of the insurer ending during 2017, the amount of that excess; or

(b) if the amount of negative liabilities that has been recognised in determining the value of liabilities (adjusted to the manner in which negative liabilities were taken into account for purposes of determining assets and liabilities as recognised for tax purposes for 2015 years of assessment) relating to policies allocated to that fund exceeds the amount of negative liabilities that has been recognised in accordance with IFRS as reported by the insurer to shareholders in the audited annual financial statements relating to policies allocated to that fund in respect of the year of assessment of the insurer ending during 2017, reduced by negative liabilities recognised as an asset (adjusted to the manner of recognition of policy liabilities and assets in the audited annual financial statements for 2015), the amount of that excess:

Provided that the reduction of negative liabilities recognised as an asset must only apply where the positive liabilities reduced by the negative liabilities result in a net asset which is disclosed for financial reporting purposes.”; and

(f) by the deletion in subsection (16) after paragraph (c) of the word “or”, the substitution after paragraph (d) for the comma of the expression “;or” and the addition of the following paragraph:

“(e) any amount of deferred acquisition costs determined in accordance with IFRS as annually reported by the insurer to shareholders in the audited financial statements.”.

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

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

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

Amendment of section 35A of Act 58 of 1962, as inserted by section 30 of Act 32 of 2004 and amended by section 5 of Act 32 of 2005, section 59 of Act 24 of 2011, section 271 of Act 28 of 2011 read with paragraph 43 of Schedule 1 to that Act, section 2 of Act 23 of 2015 and section 2 of Act 16 of 2016

47. Section 35A of the Income Tax Act, 1962, is hereby amended—

(a) by the deletion in subsection (1) of the word “and” at the end of paragraph (b), the insertion of the word “and” at the end of paragraph (c) and the addition of the following paragraph:

“(d) a percentage of the amount so payable as the Minister may announce in the national annual budget contemplated in section 27(1) of the Public Finance Management Act, with effect from a date mentioned in that Announcement.”; and

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

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

Amendment of section 36 of Act 58 of 1962, as amended by section 12 of Act 72 of 1963, section 15 of Act 90 of 1964, section 20 of Act 88 of 1965, section 23 of Act 55 of 1966, section 16 of Act 95 of 1967, section 14 of Act 76 of 1968, section 26 of Act 89 of 1969, section 21 of Act 65 of 1973, section 28 of Act 85 of 1974, section 20 of Act 104 of 1980, section 25 of Act 94 of 1983, section 16 of Act 96 of 1985, section 14 of Act 70 of 1989, section 26 of Act 101 of 1990, section 30 of Act 129 of 1991, section 24 of Act 141 of 1992, section 29 of Act 113 of 1993, section 17 of Act 36 of 1996, section 41 of Act 60 of 2001, section 31 of Act 32 of 2004, section 26 of Act 20 of 2006, section 46 of Act 35 of 2007, section 23 of Act 3 of 2008, section 44 of Act 60 of 2008, section 43 of Act 17 of 2009, section 57 of Act 7 of 2010, section 60 of Act 24 of 2011, section 83 of Act 31 of 2013, section 51 of Act 43 of 2014 and section 52 of Act 15 of 2016

48. (1) Section 36 of the Income Tax Act, 1962, is hereby amended by the insertion after subsection (7E) of the following subsection:

“(7EA) Subject to paragraph 12A(6)(a) to (d) and (f) of the Eighth Schedule, where a debt benefit, as defined in section 19, arises in respect of a debt that is owed by a person and that debt was used directly or indirectly to fund any amount of capital expenditure incurred, the debt benefit in respect of that debt must be applied to reduce any amount of capital expenditure incurred in the year of assessment that the debt benefit arises: Provided that any amount of the debt benefit that exceeds the capital expenditure incurred in the year of assessment that the debt benefit arises, must be treated as an amount received by or accrued to that person carrying on mining operations during that year of assessment in respect of a disposal of assets the cost of which has been included in capital expenditure incurred in respect of the mine to which that capital expenditure relates.”.

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

Amendment of section 37A of Act 58 of 1962, as inserted by section 27 of Act 20 of 2006 and amended by section 28 of Act 8 of 2007, section 47 of Act 35 of 2007 and section 84 of Act 31 of 2013

49. Section 37A of the Income Tax Act, 1962, is hereby amended by the substitution for subsections (6), (7) and (8) of the following subsections:

“(6) If a company or trust holds a financial instrument or investment during any year of assessment—

(a) other than a financial instrument contemplated in subsection (2); or
 (b) any investment other than an investment contemplated in subsection (2)(d), an amount equal to 50 per cent of the highest market value of that other financial instrument or other investment during that year of assessment must be deemed to be an amount of normal tax payable by the person contemplated in subsection (1)(d), subject to subsection (8), to the extent that the financial instrument or investment is directly or indirectly derived from any amount in cash paid by that person to that company or that trust.

(7) If a company or trust contemplated in subsection (1) during any year of assessment—

(a) distributes property from that company or trust for a purpose other than—
 (i) rehabilitation upon premature closure;
 (ii) decommissioning and final closure;
 (iii) post closure coverage of any latent or residual environmental impacts; or
 (iv) transfer to another company, trust, or account established for the purposes contemplated in subsection (1)(a); or
 (b) uses property from that company or trust as security for any debt for a purpose other than a purpose contemplated in paragraph (a)(i) or (ii),

an amount equal to 50 per cent of the highest market value during that year of assessment of the property so distributed or used as security must be deemed to be an amount of normal tax payable by the person contemplated in subsection (1)(d), subject to subsection (8), in respect of that year of assessment.

(8) Any amount deemed to be an amount of normal tax payable by the person contemplated in subsection (1)(d) in terms of subsection (6) or (7) must, to the extent that the amount cannot be recovered from that person, be recovered from the trust or company contemplated in this section.

(9) Subsection (7) does not apply in respect of any amount deemed to be an amount of normal tax that is paid to the Commissioner by a company or trust contemplated in this section.

(10) A company or trust contemplated in this section must—

- (a) within three months after the end of any year of assessment submit a report to the Director-General of the National Treasury in respect of that year of assessment providing the Director-General of the National Treasury with information comprising—
- (i) the total amount of contributions to the company or the trust;
 - (ii) the total amount of withdrawals from the company or the trust; and
 - (iii) the purposes for which any amount of those withdrawals were applied; and
- (b) within seven days after receiving a request from the Director-General of the National Treasury provide such information as the Director-General may require.”.

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, section 48 of Act 60 of 2008, section 47 of Act 17 of 2009, section 61 of Act 7 of 2010, section 67 of Act 24 of 2011, section 73 of Act 22 of 2012, section 90 of Act 31 of 2013, section 54 of Act 43 of 2014, section 61 of Act 25 of 2015 and section 54 of Act 15 of 2016

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

- (a) by the insertion in subsection (1) after the definition of “date of acquisition” of the following definition:

“**‘debt’ includes any contingent liability;**”;

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

“(2) The provisions of this Part must, subject to subsection (3), apply in respect of an asset-for-share transaction, a substitutive share-for-share transaction, an amalgamation transaction, an intra-group transaction, an unbundling transaction and a liquidation distribution as contemplated in sections 42, 43, 44, 45, 46 and 47, respectively, notwithstanding any provision to the contrary contained in the Act, other than sections 22B, 24BA and 103, Part IIA of Chapter III and **[paragraph] paragraphs 11(1)(g) and 43A** of the Eighth Schedule.”; and

- (c) by the addition of the following subsection:

“(10) **For the purposes of this Part, a contingent liability is deemed to be a debt actually incurred.**”.

Amendment of section 42 of Act 58 of 1962, as substituted by section 34 of Act 74 of 2002 and amended by section 50 of Act 45 of 2003, section 33 of Act 32 of 2004, section 38 of Act 31 of 2005, section 29 of Act 20 of 2006, section 33 of Act 8 of 2007, section 53 of Act 35 of 2007, section 26 of Act 3 of 2008, section 49 of Act 60 of 2008, section 48 of Act 17 of 2009, section 62 of Act 7 of 2010, section 68 of Act 24 of 2011, section 74 of Act 22 of 2012, section 91 of Act 31 of 2013, section 55 of Act 43 of 2014 and section 62 of Act 25 of 2015

51. Section 42 of the Income Tax Act, 1962, is hereby amended—

- (a) by the substitution in subsection (2)(a)(ii) for the words preceding item (aa) of the following words:

“acquired the equity shares in that company on the date that such person acquired that asset (other than for purposes of determining whether that **[share is a ‘qualifying share’ as defined in]** asset had been held for at

least three years for purposes of section 9C(2) where that asset is not an equity share) and for a cost equal to—”;

- (b) by the substitution in subsection (3)(a) for the words preceding subparagraph (i) of the following words:
- “an asset that constitutes an allowance asset in that person’s hands to a company as part of an asset-for-share transaction and that company acquires that asset as an allowance asset or that company is a REIT or a controlled company, as defined in section 25BB(1), that acquires that asset as a capital asset—”;
- (c) by the substitution in subsection (3)(a)(ii) for item (bb) of the following item:
- “(bb) that is to be recovered or recouped by or included in the income of that company, other than a company that is a REIT or a controlled company, as defined in section 25BB(1), in respect of that asset;”;
- (d) by the substitution in subsection (3)(c) for the words preceding paragraph (i) of the following words:
- “a contract to a company as part of a disposal of a business as a going concern in terms of an asset-for-share transaction and an allowance in terms of section 24 [or], 24C or 24P was allowable to that person in respect of that contract for the year preceding that in which that contract is transferred or would have been allowable to that person for the year of that transfer had that contract not been so transferred—”;
- (e) by the substitution in subsection (7)(b) for subparagraph (ii) of the following subparagraph:
- “(ii) an allowance asset in the hands of that company, other than a company that is a REIT or a controlled company, as defined in section 25BB(1), so much of any allowance in respect of that asset that is recovered or recouped by or included in the income of that company as a result of that disposal as does not exceed the amount that would have been recovered had that asset been disposed of at the beginning of that period of 18 months for an amount equal to the market value of that asset as at that date.”.
- (2) Paragraph (a) of subsection (1) is deemed to have come into operation on 1 January 2016 and applies in respect of years of assessment commencing on or after that date.

Amendment of section 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, section 50 of Act 60 of 2008, section 49 of Act 17 of 2009, section 63 of Act 7 of 2010, section 69 of Act 24 of 2011, section 76 of Act 22 of 2012, section 93 of Act 31 of 2013, section 57 of Act 43 of 2014, section 63 of Act 25 of 2015 and section 55 of Act 15 of 2016

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

- (a) by the substitution in subsection (3)(a) for the words preceding subparagraph (i) of the following words:
- “an asset that constitutes an allowance asset in that amalgamated company’s hands to a resultant company as part of an amalgamation transaction and that resultant company acquires that asset as an allowance asset or that resultant company is a REIT or a controlled company, as defined in section 25BB(1), that acquires that asset as a capital asset—”;
- (b) by the substitution in subsection (3)(a)(ii) for item (bb) of the following item:
- “(bb) that is to be recovered or recouped by or included in the income of that resultant company, other than a resultant company that is a REIT or a controlled company, as defined in section 25BB(1), in respect of that asset;”;
- (c) by the substitution in subsection (3)(b) for the words preceding subparagraph (i) of the following words:
- “a contract to a resultant company as part of a disposal of a business as a going concern in terms of an amalgamation transaction and an allowance in terms of section 24 [or], 24C or 24P was allowable to that amalgamated company in respect of that contract for the year preceding

that in which that contract is transferred or would have been allowable to that amalgamated company for the year of that transfer had that contract not been so transferred—”; and

- (d) by the substitution in subsection (5)(b) for subparagraph (ii) of the following subparagraph: 5
- “(ii) an allowance asset in the hands of that resultant company other than a resultant company that is a REIT or a controlled company, as defined in section 25BB(1), so much of any allowance in respect of that asset that is recovered or recouped by or included in the income of that resultant company as a result of that disposal as does not exceed the amount that would have been recovered had that asset been disposed of at the beginning of that period of 18 months for an amount equal to the market value of that asset as at that date.”. 10

Amendment of section 45 of Act 58 of 1962, as substituted by section 34 of Act 74 of 2002 and amended by section 53 of Act 45 of 2003, section 35 of Act 32 of 2004, section 41 of Act 31 of 2005, section 35 of Act 8 of 2007, section 56 of Act 35 of 2007, section 28 of Act 3 of 2008, section 51 of Act 60 of 2008, section 64 of Act 7 of 2010, section 70 of Act 24 of 2011, section 77 of Act 22 of 2012, section 94 of Act 31 of 2013 and section 64 of Act 25 of 2015 15 20

53. Section 45 of the Income Tax Act, 1962, is hereby amended—

- (a) by the substitution in subsection (3)(a)(ii) for item (bb) of the following item: 25
- “(bb) that is to be recovered or recouped by or included in the income of that transferee company in respect of that asset other than a transferee company that is a REIT or a controlled company, as defined in section 25BB(1).”;
- (b) by the substitution in subsection (3)(b) for the words preceding subparagraph (i) of the following words: 30
- “a contract to a transferee company as part of a disposal of a business as a going concern in terms of an intra-group transaction contemplated in paragraph (a) of the definition of ‘intra-group transaction’ and an allowance in terms of section 24 [or], 24C or 24P was allowable to that transferor company in respect of that contract for the year preceding that in which that contract is transferred or would have been allowable to that transferor company for the year of that transfer had that contract not been so transferred—”; and 35
- (c) by the substitution in subsection (5)(b) for subparagraph (ii) of the following subparagraph: 40
- “(ii) an allowance asset in the hands of that transferee company other than a transferee company that is a REIT or a controlled company, as defined in section 25BB(1), so much of any allowance in respect of that asset that is recovered or recouped by or included in the income of that transferee company as a result of that disposal as does not exceed the amount that would have been recovered had that asset been disposed of at the beginning of that period of 18 months for an amount equal to the market value of that asset as at that date.”. 45

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, section 95 of Act 31 of 2013, section 58 of Act 43 of 2014 and section 65 of Act 25 of 2015 50

54. (1) Section 46 of the Income Tax Act, 1962, is hereby amended by substitution in subsection (3)(a) for subparagraph (ii) of the following subparagraph: 55

- “(ii) the unbundled shares must, other than for purposes of determining whether a share [is a ‘qualifying share’ as defined in] has been held for at least three years for the purposes of section 9C(2), be deemed to have been acquired on the same date as the unbundling shares;”.

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

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, section 96 of Act 31 of 2013, section 59 of Act 43 of 2012 and section 66 of Act 25 of 2015

55. Section 47 of the Income Tax Act, 1962, is hereby amended—

- (a) by the substitution in subsection (3)(a)(ii) for item (bb) of the following item: 10
 “(bb) that is to be recovered or recouped by or included in the income of that holding company, other than a holding company that is a REIT or a controlled company, as defined in section 25BB(1), in respect of that asset; or”; and
- (b) by the substitution in subsection (4)(b) for subparagraph (ii) of the following 15
 subparagraph:
 “(ii) an allowance asset in the hands of that holding company, so much of any allowance in respect of that asset that is recovered or recouped by or included in the income of that holding company, other than a holding company that is a REIT or a controlled 20
company, as defined in section 25BB(1), as a result of that disposal as does not exceed the amount that would have been recovered had that asset been disposed of at the beginning of that period of 18 months for an amount equal to the market value of that asset as at that date,”. 25

Amendment of section 47B of Act 58 of 1962, as inserted by section 44 of Act 31 of 2005

56. Section 47B of the Income Tax Act, 1962, is hereby amended by the substitution for subsection (2) of the following subsection:

- “(2) (a) The tax on foreign entertainers and sportspersons is a final tax and is 30
 levied—
 (i) at a rate of 15 [%] per cent; or
 (ii) at such a rate as the Minister may announce in the national annual budget 35
 contemplated in section 27(1) of the Public Finance Management Act, with effect from a date mentioned in that Announcement,
 on all amounts received by or accrued to a taxpayer as contemplated in subsection (1).
 (b) If the Minister makes an announcement contemplated in paragraph (a)(ii), that rate comes into effect on the date determined by the Minister in that announcement and continues to apply for a period of 12 months from that date 40
 subject to Parliament passing legislation giving effect to that announcement within that period of 12 months.”.

Amendment of section 49B of Act 58 of 1962, as inserted by section 80 of Act 22 of 2012 and amended by section 97 of Act 31 of 2013

57. Section 49B of the Income Tax Act, 1962, is hereby amended by the substitution 45
 for subsection (1) of the following subsection:

- “(1) (a) There must be levied for the benefit of the National Revenue Fund a tax, to be known as the withholding tax on royalties, calculated—
 (i) at the rate of 15 per cent; or
 (ii) at such rate as the Minister may announce in the national annual budget 50
 contemplated in section 27(1) of the Public Finance Management Act, with effect from a date mentioned in that Announcement,
 of the amount of any royalty that is paid by any person to or for the benefit of any foreign person to the extent that the amount is regarded as having been received by or accrued to that foreign person from a source within the Republic in terms of 55
 section 9(2)(c), (d), (e) or (f).

(b) If the Minister makes an announcement contemplated in paragraph *(a)(ii)*, that rate comes into effect on the date determined by the Minister in that announcement and continues to apply for a period of 12 months from that date subject to Parliament passing legislation giving effect to that announcement within that period of 12 months.”

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

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

“(1) *(a)* There must be levied for the benefit of the National Revenue Fund a tax, to be known as the withholding tax on interest, calculated—

- (i)* at the rate of 15 per cent; or
- (ii)* at such rate as the Minister may announce in the national annual budget contemplated in section 27(1) of the Public Finance Management Act, with effect from a date mentioned in that Announcement,

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of the amount of any interest that is paid by any person to or for the benefit of any foreign person to the extent that the amount is regarded as having been received or accrued from a source within the Republic in terms of section 9(2)(b).

(b) If the Minister makes an announcement contemplated in paragraph *(a)(ii)*, that rate comes into effect on the date determined by the Minister in that announcement and continues to apply for a period of 12 months from that date subject to Parliament passing legislation giving effect to that announcement within that period of 12 months.”

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Substitution of section 64 of Act 58 of 1962, as substituted by section 30 of Act 90 of 1988 and amended by section 19 of Act 36 of 1996 and section 17 of Act 5 of 2001

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59. The following section is hereby substituted for section 64 of the Income Tax Act, 1962:

“Rate of donations tax

64. (1) The rate of the donations tax chargeable under section 54 in respect of the value of any property disposed of under a donation shall be—

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- (a)* 20 per cent of such value; or
- (b)* such percentage of such value as the Minister may announce in the national annual budget contemplated in section 27(1) of the Public Finance Management Act, with effect from a date mentioned in that Announcement.

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

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Amendment of section 64D of Act 58 of 1962, as substituted by section 53 of Act 17 of 2009 and amended by section 70 of Act 7 of 2010, section 75 of Act 24 of 2011, section 102 of Act 31 of 2013 and section 73 of Act 25 of 2015

60. Section 64D of the Income Tax Act, 1962, is hereby amended by the substitution in the definition of “regulated intermediary” after paragraph *(g)* for the expression “; or” of a full stop.

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Amendment of section 64E of Act 58 of 1962, as substituted by section 53 of Act 17 of 2009 and amended by section 71 of Act 7 of 2010, section 76 of Act 24 of 2011, section 6 of Act 13 of 2012 and section 83 of Act 22 of 2012

61. Section 64E of the Income Tax Act, 1962, is hereby amended—

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

“(1) *(a)* Subject to paragraph 3 of the Tenth Schedule, there must be levied for the benefit of the National Revenue Fund a tax, to be known as the dividends tax, calculated—

- (i) at the rate of 20 per cent; or
- (ii) at such rate as the Minister may announce in the national annual budget contemplated in section 27(1) of the Public Finance Management Act, with effect from a date mentioned in that Announcement,

of the amount of any dividend paid by any company other than a headquarter company.

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

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

“(d) For the purposes of this subsection, ‘**market-related interest**’, in relation to any debt owed to a company means the amount of interest that would be payable to that company on the amount owing to that company in respect of that debt for a period during a year of assessment if the debt had been owed for that period at the official rate of interest [as defined in **paragraph (1) of the Seventh Schedule**].”.

Amendment of paragraph 2 of Second Schedule to Act 58 of 1962, as substituted by section 57 of Act 17 of 2009 and amended by section 80 of Act 7 of 2010 and section 92 of Act 22 of 2012

62. (1) Paragraph 2 of the Second Schedule to the Income Tax Act, 1962, is hereby amended by the deletion in subparagraph (1) of the word “and” at the end of item (a), the insertion of the word “and” at the end item (b) and the addition of the following subparagraph:

“(c) any amount transferred for the benefit of that person on or after normal retirement age, as defined in the rules of the fund, but before retirement date, less any deductions permitted under the provisions of paragraph 6A.”.

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

Amendment of paragraph 5 of Second Schedule to Act 58 of 1962, as substituted by section 61 of Act 17 of 2009 and amended by section 98 of Act 22 of 2012, section 112 of Act 31 of 2013 and section 86 of Act 25 of 2015

63. (1) Paragraph 5 of the Second Schedule to the Income Tax Act, 1962, is hereby amended—

- (a) by the substitution in subparagraph (1) for item (a) of the following item:
 - “(a) the person’s own contributions that did not rank for a deduction against the person’s income in terms of section [11(k)] 11F to any pension fund, pension preservation fund, provident fund, provident preservation fund and retirement annuity fund of which he or she is or previously was a member;”;

- (b) by the substitution in subparagraph (1) for item (e) of the following item:
 - “(e) any other amounts in respect of which the formula in paragraph 2A applies, which have been—

- (i) paid into a pension fund, pension preservation fund, provident fund, provident preservation fund or retirement annuity fund for the person’s benefit by a public sector fund; and
- (ii) transferred into a pension fund, pension preservation fund, provident fund, provident preservation fund or retirement annuity fund directly from a fund contemplated in subitem (i) for the person’s benefit,

less the amount represented by symbol A when so applying that formula.”.

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

(3) Paragraph (b) of subsection (1) comes into operation on 1 March 2018.

Amendment of paragraph 6 of Second Schedule to Act 58 of 1962, as substituted by section 62 of Act 17 of 2009 and amended by section 84 of Act 7 of 2010, section 92 of Act 24 of 2011, section 99 of Act 22 of 2012, section 113 of Act 31 of 2013 and section 87 of Act 25 of 2015

64. (1) Paragraph 6 of the Second Schedule to the Income Tax Act, 1962, is hereby amended— 5

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

“(i) the person’s own contributions that did not rank for a deduction against the person’s income in terms of section [11(k)] 11F to any pension funds, pension preservation funds, provident funds, provident preservation funds and retirement annuity funds of which he or she is or previously was a member;”;

(b) by the substitution in subparagraph (1)(b) for subitem (v) of the following subitem: 15

“(v) any other amounts in respect of which the formula in paragraph 2A applies, which have been—

(aa) paid into a pension fund, pension preservation fund, provident fund, provident preservation fund or retirement annuity fund for the person’s benefit by a public sector fund; and 20

(bb) transferred into a pension fund, pension preservation fund, provident fund, provident preservation fund or retirement annuity fund from a fund contemplated in subitem (aa) for the person’s benefit, 25

less the amount represented by symbol A when applying that formula.”.

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

(3) Paragraph (b) of subsection (1) comes into operation on 1 March 2018. 30

Addition of paragraph 6A to Second Schedule to Act 58 of 1962

65. (1) The following paragraph is hereby added to the Second Schedule to the Income Tax Act, 1962:

“TRANSFER ON OR AFTER NORMAL RETIREMENT AGE BUT BEFORE RETIREMENT DATE: DEDUCTIONS 35

6A. The deduction to be made from a lump sum benefit contemplated in paragraph 2(1)(c) is equal to so much of that lump sum benefit as is transferred for the benefit of a person from a—

(a) pension fund; or 40

(b) provident fund, into any retirement annuity fund.”.

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

Amendment of paragraph 2 of Fourth Schedule to Act 58 of 1962, as added by section 19 of Act 6 of 1963 and amended by section 23 of Act 72 of 1963, section 29 of Act 55 of 1966, section 38 of Act 88 of 1971, section 48 of Act 85 of 1974, section 30 of Act 103 of 1976, section 28 of Act 113 of 1977, section 29 of Act 104 of 1980, section 40 of Act 90 of 1988, section 21 of Act 70 of 1989, section 45 of Act 101 of 1990, section 45 of Act 129 of 1991, section 38 of Act 21 of 1995, section 45 of Act 28 of 1997, section 53 of Act 30 of 2000, section 54 of Act 59 of 2000, section 20 of Act 19 of 2001, section 21 of Act 16 of 2004, section 50 of Act 31 of 2005, section 40 of Act 20 of 2006, section 55 of Act 8 of 2007, section 65 of Act 35 of 2007, section 18 of Act 18 of 2009, section 94 of Act 24 of 2011, section 19 of Act 21 of 2012, 45 50

section 13 of Act 26 of 2013, section 8 of Act 39 of 2013, section 68 of Act 44 of 2014 and section 6 of Act 16 of 2016

66. (1) Paragraph 2 of the Fourth Schedule to the Income Tax Act, 1962, is hereby amended by the substitution in subparagraph (4) for items (a), (b) and (bA) of the following items, respectively: 5

- “(a) any contribution by the employee concerned to any pension fund or provident fund which the employer is entitled or required to deduct from that remuneration, but limited to the deduction to which the employee is entitled under section [11(k)] 11F having regard to the remuneration and the period in respect of which it is payable; 10
 - (b) at the option of the employer, any contribution to a retirement annuity fund by the employee in respect of which proof of payment has been furnished to the employer, but limited to the deduction to which the employee is entitled under section [11(k)] 11F having regard to the remuneration and the period in respect of which it is payable; 15
 - (bA) any contribution made by the employer to any retirement annuity fund for the benefit of the employee, but limited to the deduction to which the employee is entitled under section [11(k)] 11F having regard to the remuneration and the period in respect of which it is payable;” 20
- (2) Subsection (1) is deemed to have come into operation on 1 March 2016. 20

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, section 117 of Act 31 of 2013, section 73 of Act 43 of 2014 and section 93 of Act 25 of 2015 25

67. Paragraph 1 of the Seventh Schedule to the Income Tax Act, 1962, is hereby amended by the deletion of the definition of “official rate of interest”. 30

Amendment of paragraph 6 of Seventh Schedule to Act 58 of 1962, as amended by section 29 of Act 96 of 1985, section 72 of Act 60 of 2008 and section 95 of Act 25 of 2015

68. (1) Paragraph 6 of the Seventh Schedule to the Income Tax Act, 1962, is hereby amended by the addition to subparagraph (4)(a) of the following proviso: 35

“: Provided that this item shall not apply in respect of clothing”.

(2) Subsection 1 comes into operation on 1 March 2018.

Amendment of paragraph 12D of Seventh Schedule to Act 58 of 1962, as substituted by section 77 of Act 43 of 2014 and amended by section 101 of Act 25 of 2015 and section 69 of Act 15 of 2016 40

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

- (a) by the substitution in subparagraph (1) for the definition of “fund member category factor” of the following definition: 45
 - “‘**fund member category factor**’ means the fund member category factor contemplated in subparagraph [(4)] (5)(a);”;
- (b) by the substitution for subparagraph (2) of the following subparagraph: 50
 - “(2) The cash equivalent of the value of the taxable benefit contemplated in paragraph 2(l), 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.”; and
- (c) by the substitution in subparagraph (3) for the words preceding the formula of the following words: 55

“Where the taxable 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 taxable benefit contemplated in paragraph 2(l) is an amount that must be determined in accordance with the formula”.

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

Substitution 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, section 82 of Act 43 of 2014 and section 106 of Act 25 of 2015

70. (1) The following paragraph is hereby substituted for paragraph 12A of the Eighth Schedule to the Income Tax Act, 1962:

“Concession or compromise in respect of a debt

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

‘allowance asset’ means a capital asset in respect of which a deduction or allowance is allowable in terms of this Act for purposes other than the determination of any capital gain or capital loss;

‘capital asset’ means an asset that is not trading stock;

‘concession or compromise’ means any arrangement in terms of which—

(a) any—

(i) term or condition applying in respect of any debt is changed or waived; or

(ii) obligation is substituted, whether by means of novation or otherwise, for the obligation in terms of which that debt is owed; or

(b) a debt owed by a company is settled, directly or indirectly, by—

(i) being converted to or exchanged for shares in that company; or

(ii) applying the proceeds from shares issued by that company;

‘debt’ means any amount that is owed by a person but does not include—

(a) a tax debt as defined in section 1 of the Tax Administration Act; or

(b) an amount of interest;

‘debt benefit’, in respect of a debt owed by a person to another person, means any amount by which the face value of the claim held by that other person in respect of that debt, prior to the entering into of any arrangement in respect of that debt, exceeds—

(a) in the case of an arrangement—

(i) described in paragraph (a) of the definition of ‘concession or compromise’, the market value of the claim in respect of that debt; or

(ii) described in paragraph (b) of the definition of ‘concession or compromise’, where the person who subscribed for or acquired shares in a company in terms of that arrangement did not hold shares in that company prior to the entering into of that arrangement, the market value of the shares, held or acquired by reason or as a result of the implementation of that arrangement; or

(b) in the case of an arrangement described in paragraph (b) of the definition of ‘concession or compromise’, where the person who subscribed for or acquired shares in a company in terms of that arrangement held shares in that company prior to the entering into of that arrangement, the amount by which the market value of the shares held by that person in that company after the implementation of that arrangement exceeds the market value of the shares held by that person in that company prior to the entering into of that arrangement, reduced, in the case of a debt owed by a company to a person who holds shares in another company that forms part of the same group of companies as that company, by so much of any increase in the market value of the shares so held by that person as is attributable solely to the implementation of that arrangement; and

‘group of companies’ means a group of companies as defined in section 41.

(2) Subject to subparagraph (6), this paragraph applies where—

- (a) a debt benefit in respect of a debt owed by a person arises by reason or as a result of a concession or compromise in respect of that debt; and 5
- (b) the amount of that debt was used by that person to fund, directly or indirectly, any expenditure—
 - (i) other than expenditure in respect of which a deduction or allowance was granted in terms of this Act; or
 - (ii) incurred in respect of an allowance asset. 10

(3) Where—

- (a) a debt benefit arises in respect of a debt owed by a person as contemplated in subparagraph (2); and
- (b) the amount of that debt was used as contemplated in item (b) of that subparagraph to fund expenditure incurred in respect of an asset that is held by that person at the time the debt benefit arises, 15

the amount of expenditure so incurred in respect of that asset must, for the purposes of paragraph 20, be reduced by the debt benefit in respect of that debt.

(4) Where— 20

- (a) a debt benefit arises in respect of a debt owed by a person as contemplated in subparagraph (2); and
- (b) the amount of that debt was used as contemplated in item (b) of that subparagraph to fund expenditure incurred in respect of an asset (other than an allowance asset) that is— 25

- (i) held by that person at the time the debt benefit arises 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 the debt benefit arises, the debt benefit 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 debt benefit arises. 30

(5) Where subparagraph (3) or (4) applies in respect of a debt that was used to fund expenditure in respect of a pre-valuation date asset of a person, for the purposes of determining the date of acquisition of that asset and the expenditure incurred in respect of that asset, that person must be treated as having— 35

- (a) disposed of that asset at a time immediately before that debt benefit arose as contemplated in subparagraph (3)(a) or (4)(a), as the case may be, for an amount equal to the market value of that asset at that time; and 40
- (b) immediately reacquired that asset at that time at an expenditure equal to that market value— 45
 - (i) less any capital gain, and
 - (ii) increased by any capital loss,

that would have been determined had the asset been disposed of at market value at that time, which expenditure must be treated as an amount of expenditure actually incurred at that time for the purposes of paragraph 20(1)(a). 50

(6) This paragraph must not apply to a debt benefit in respect of any debt owed by a person—

- (a) that is an heir or legatee of a deceased estate, to the extent that—
 - (i) the debt is owed to that deceased estate;
 - (ii) the debt is reduced by the deceased estate; and 55
 - (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;
- (b) to the extent that the debt is reduced by way of—
 - (i) donation as defined in section 55(1); or 60
 - (ii) any transaction to which section 58 applies;

- (c) to an employer of that person, to the extent that the debt is reduced in the circumstances contemplated in paragraph 2(h) of the Seventh Schedule;
- (d) to another person where the person that owes that debt is a company, if—
- (i) that company owes that debt to a company that forms part of the same group of companies as that company; and
 - (ii) that company has not carried on any trade, during the year of assessment during which that debt benefit arises and the immediately preceding year of assessment: Provided that this subitem must not apply in respect of any debt—
- (a) incurred, directly or indirectly, by that company to fund expenditure incurred in respect of any asset that was subsequently disposed of by that company by way of an asset-for-share, intra-group or amalgamation transaction or a liquidation distribution in respect of which the provisions of section 42, 44, 45 or 47, as the case may be, applied; or
 - (b) incurred or assumed by that company in order to settle, take over, refinance or renew, directly or indirectly, any debt incurred by—
- (i) any other company that forms part of the same group of companies; or
 - (ii) any company that is a controlled foreign company in relation to any company that forms part of the same group of companies;
- (e) that is a company, where—
- (i) that debt is reduced in the course, or in anticipation, of the liquidation, winding up, deregistration or final termination of the existence of that company; and
 - (ii) the person to whom the debt is owed is a connected person in relation to that company,
- to the extent that debt benefit in respect of that debt does not, at the time that the debt benefit arises, exceed the amount of expenditure contemplated in paragraph 20 incurred in respect of that debt by the connected person: Provided that this subitem must not apply—
- (a) if—
- (i) the debt was reduced as part of any transaction, operation or scheme entered into to avoid any tax imposed by this Act; and
 - (ii) that company became a connected person in relation to the person to whom the debt is owed after the debt (or any debt issued in substitution of that debt) arose; or
- (b) if that company—
- (i) has not, within 36 months of the date on which the debt is reduced or such further period as the Commissioner may allow, taken the steps contemplated in section 41(4) to liquidate, wind up, deregister or finally terminate its existence;
 - (ii) has at any stage withdrawn any step taken to liquidate, wind up, deregister or finally terminate its corporate existence; or
 - (iii) does anything to invalidate any step contemplated in subparagraph (A), with the result that the company is or will not be liquidated, wound up, deregistered or finally terminate its existence; or
- (f) to another person where the person that owes that debt is a company that—
- (i) owes that debt to a company that forms part of the same group of companies as that company; and
 - (ii) reduces or settles that debt, directly or indirectly, by means of shares issued by that company:
- Provided that this subitem must not apply in respect of any debt that was incurred or assumed by that company in order to settle, take over,

refinance or renew, directly or indirectly, any debt incurred by another company which—

- (a) did not form part of that same group of companies at the time that that other company incurred that debt; or
- (b) does not form part of that same group of companies at the time that company reduces or settles that debt, directly or indirectly, by means of shares issued by that company.

(7) Any tax which becomes payable as a result of the application of paragraph (b) of the proviso to subparagraph (6)(e) must be recovered from the company and the connected person contemplated in that subparagraph who must be jointly and severally liable for that tax.”

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

Amendment of paragraph 35A of Eighth Schedule to Act 58 of 1962, as inserted by section 62 of Act 32 of 2004

71. Paragraph 35A of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended by the substitution for subparagraph (2) of the following subparagraph:

“(2) So much of any consideration received by or [accrues] accrued to a person from the disposal of a claim contemplated in subparagraph (1)(b) as is attributable to any amount which has not yet accrued to that person as contemplated in subparagraph (1)(c), must be treated as an amount of consideration which accrues to that person in respect of the disposal of the asset contemplated in subparagraph (1)(a).”

Substitution of paragraph 43A of Eighth Schedule to Act 58 of 1962, as substituted by section 112 of Act 24 of 2011 and amended by section 118 of Act 22 of 2012

72. (1) The following paragraph is hereby substituted for paragraph 43A of the Income Tax Act, 1962:

“Dividends treated as proceeds on disposal of certain shares

43A. (1) For the purposes of this section—

‘exempt dividend’ means any dividend or foreign dividend to the extent that the dividend or foreign dividend is—

- (a) not subject to tax under Part VIII of Chapter II; and
- (b) exempt from normal tax in terms of section 10(1)(k)(i) or section 10B(2)(a) or (b);

‘extraordinary dividend’, in relation to—

- (a) a preference share the dividends in respect of which are determined with reference to a rate of interest, means so much of the amount of any dividend received or accrued as exceeds an amount determined at a rate of 15 per cent;
- (b) any other share, means so much of the amount of any dividend received or accrued—
 - (i) within a period of 18 months prior to the disposal of that share; or
 - (ii) in respect, by reason or in consequence of that disposal, as exceeds 15 per cent of the higher of the market value of that share as at the beginning of the period of 18 months and as at the date of disposal of that share; and

‘qualifying interest’ means an interest held by a company in another company, whether alone or together with any connected persons in relation to that company, that constitutes—

- (a) if that other company is not a listed company, at least—
 - (i) 50 per cent of the equity shares or voting rights in that other company; or
 - (ii) 20 per cent of the equity shares or voting rights in that other company if no other person (whether alone or together with any connected person in relation to that person) holds the

- majority of the equity shares or voting rights in that other company; or
- (b) if that other company is a listed company, at least 10 per cent of the equity shares or voting rights in that other company.
- (2) Where a company disposes of shares in another company and that company held a qualifying interest in that other company at any time during the period of 18 months prior to that disposal, the amount of any exempt dividend received by or that accrued to that company in respect of the shares disposed of must—
- (a) to the extent that the exempt dividend constitutes an extraordinary dividend; and
- (b) if that company immediately before that disposal held the shares disposed of as a capital asset (as defined in section 41), be taken into account, in the year of assessment in which those shares are disposed of or, where that dividend is received or accrues after that year of assessment, the year of assessment in which that dividend is received or accrues as part of the proceeds from the disposal of those shares.”.
- (2) Subsection (1) is deemed to have come into operation on 19 July 2017 and applies in respect of any disposal on or after that date other than a disposal in terms of an agreement all the terms of which were finally agreed to before that date by all the parties to that agreement.

Amendment of paragraph 55 of Eighth Schedule to Act 58 of 1962, as amended by section 31 of Act 19 of 2001, section 98 of Act 60 of 2001, section 87 of Act 74 of 2002, section 102 of Act 45 of 2003, section 76 of Act 31 of 2005, section 57 of Act 3 of 2008, section 114 of Act 24 of 2011 and section 115 of Act 25 of 2015

73. Paragraph 55 of Eighth Schedule to the Income Tax Act, 1962, is hereby amended by the substitution in subparagraph (1)(c) for the words preceding subitem (i) of the following words:

“in respect of a policy that was taken out to insure against the death, disability or [severe] illness of that person by any other person who was a partner of that person, or held any shares or similar interest in a company in which that person held any share or similar interest, for the purpose of enabling that other person to acquire, upon the death, disability or severe illness of that person, the whole or part of—;”.

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

74. (1) The following paragraph is hereby inserted in the Eighth Schedule to the Income Tax Act, 1962, after paragraph 64D:

“Disposal by trust in terms of share incentive scheme

64E. Where a capital gain is determined in respect of the disposal of an asset by a trust and a trust beneficiary has a vested right to an amount derived from that capital gain, that trust must disregard so much of that capital gain as is equal to that amount if that amount must in terms of section 8C be—

(a) included in the income of that trust beneficiary as an amount received or accrued in respect of a restricted equity instrument; or

(b) taken into account in determining the gain or loss in the hands of that trust beneficiary in respect of the vesting of a restricted equity instrument.”.

(2) Subsection (1) is deemed to have come into operation on 1 March 2017 and applies in respect of amounts received or accrued on or after that date.

Amendment of paragraph 80 of Eighth Schedule to Act 58 of 1962, as inserted by section 38 of Act 5 of 2001 and amended by section 108 of Act 60 of 2001, section 58 of Act 20 of 2006, section 62 of Act 3 of 2008, section 86 of Act 60 of 2008, section 80 of Act 17 of 2009, section 150 of Act 31 of 2013 and section 123 of Act 25 of 2015

75. (1) Paragraph 80 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended—

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

“(2) Subject to paragraphs 64E, 68, 69[,] and 71 [and 72], where a capital gain is determined in respect of the disposal of an asset by a trust in a year of assessment during which a trust beneficiary (other than any person contemplated in paragraph 62 (a) to (e)) who is a resident has a vested **[interest] right** or acquires a vested **[interest] right** (including **[an interest caused] a right created** by the exercise of a discretion) **[in] to an amount derived from** that capital gain but not **[in] to** the asset, the disposal of which gave rise to the capital gain, **[the whole or the portion] so much of the capital gain [so vested]** as is equal to the amount to which that trust beneficiary is entitled in terms of that right—

(a) must be disregarded for the purpose of calculating the aggregate capital gain or aggregate capital loss of the trust; and

(b) must be taken into account for the purpose of calculating the aggregate capital gain or aggregate capital loss of the beneficiary **[in whom the gain vests]** who is entitled to that amount.”; and

(b) by the deletion of subparagraph (2A).

(2) Subsection (1) is deemed to have come into operation on 1 March 2017 and applies in respect of amounts received or accrued on or after that date.

Continuation of certain amendments of Schedules to Act 91 of 1964 20

76. 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 2016 up to and including 30 September 2017, 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. 25

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, section 165 of Act 31 of 2013, section 95 of Act 43 of 2014, section 128 of Act 25 of 2015 and section 83 of Act 15 of 2016 40

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

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

“(b) a payment contemplated in section 8(23);”;

(b) by the insertion in subsection (1) after the definition of “imported services” of the following definition: 45

“**‘inbound insurance policy’** means a travel policy which provides insurance cover in respect of a passenger transported from an export country to South Africa or between two places in South Africa as part of an international journey;”;

(c) by the insertion in subsection (1) after the definition of “insurance” of the following definition: 50

“**‘international journey’** means a journey commencing from the ‘point of departure’ in South Africa to a destination outside South Africa (and vice versa), including (where applicable) stopovers en route to the destination, time spent in the destination country and the return journey;”;

(d) by the insertion in subsection (1) after the definition of “open market value” of the following definition: 55

“ **‘outbound insurance policy’** means a travel policy which provides insurance cover in respect of a passenger transported from South Africa to a destination in an export country or from a place outside South Africa to another destination outside South Africa as part of an international journey.”

(2) Paragraph (a) of subsection (1) is deemed to have come into operation on 1 April 2017.

(3) Paragraphs (b), (c) and (d) of subsection (1) come into operation on 1 April 2018.

Amendment of section 8 of Act 89 of 1991, as amended by section 24 of Act 136 of 1991, paragraph 4 of Government Notice 2695 of 8 November 1991, section 15 of Act 136 of 1992, section 24 of Act 97 of 1993, section 11 of Act 20 of 1994, section 20 of Act 46 of 1996, section 25 of Act 27 of 1997, section 83 of Act 53 of 1999, section 67 of Act 19 of 2001, section 151 of Act 60 of 2001, section 166 of Act 45 of 2003, section 95 of Act 32 of 2004, section 102 of Act 31 of 2005, section 172 of Act 34 of 2005, section 42 of Act 9 of 2006, section 79 of Act 20 of 2006, section 27 of Act 36 of 2007, section 106 of Act 60 of 2008, section 91 of Act 17 of 2009, section 120 of Act 7 of 2010, section 131 of Act 24 of 2011, section 146 of Act 22 of 2012, section 166 of Act 31 of 2013, section 21 of Act 44 of 2014 and section 129 of Act 25 of 2015

78. (1) Section 8 of the Value-Added Tax Act, 1991, is hereby amended—

(a) by the insertion after subsection (22) of the following subsection:

“(23) For the purposes of this Act a vendor shall be deemed to supply services to any public authority or municipality to the extent of any payment made to or on behalf of that vendor in terms of a national housing programme contemplated in the Housing Act, 1997 (Act No. 107 of 1997).”; and

(b) by the addition of the following subsections:

“(28) Where a municipality transfers any assets, liabilities, rights and obligations to another municipality pursuant to the merger, creation, adjustment or disestablishment of municipalities as a result of any municipal boundary change as envisaged under the Local Government: Municipal Structures Act, 1998 (Act No.117 of 1998)—

(a) the transferring municipality and the recipient municipality shall be regarded as being one and the same person if such municipalities are merged into a single municipality; and

(b) the transferring municipality shall not be deemed to have made a supply to the recipient municipality if both municipalities continue to exist after such municipal boundary change.

(29) For the purposes of this Act, a supply of leasehold improvements by a vendor, being a lessee, shall be deemed to be a supply of goods in the course or furtherance of the lessee’s enterprise to the extent that the leasehold improvements are made for no consideration: Provided that this subsection shall not apply where such leasehold improvements are wholly for consumption, use or supply in the course of making other than taxable supplies by the lessee.”

(2) Paragraph (a) of subsection (1) is deemed to have come into operation on 1 April 2017.

(3) Paragraph (b) of subsection (1) comes into operation on 1 April 2018.

Amendment of section 9 of Act 89 of 1991, as amended by section 25 of Act 136 of 1991, section 25 of Act 97 of 1993, section 21 of Act 46 of 1996, section 26 of Act 27 of 1997, section 167 of Act 45 of 2003, section 96 of Act 32 of 2004, section 103 of Act 31 of 2005, section 172 of Act 34 of 2005, section 28 of Act 36 of 2007, section 27 of Act 8 of 2010, section 167 of Act 39 of 2013 and section 130 of Act 25 of 2015

79. (1) Section 9 of the Value-Added Tax Act, 1991, is hereby amended by the addition of the following subsection:

“(12) Where any supply of goods is deemed to be made as contemplated in section 8 (29), that supply shall be deemed to take place at the time the leasehold improvements are completed.”

(2) Subsection (1) comes into operation on 1 April 2018.

Amendment of section 10 of Act 89 of 1991, as amended by section 26 of Act 136 of 1991, paragraph 5 of Government Notice 2695 of 8 November 1991, section 16 of Act 136 of 1992, section 26 of Act 97 of 1993, section 12 of Act 20 of 1994, section 21 of Act 37 of 1996, section 22 of Act 46 of 1996, section 27 of Act 27 of 1997, section 84 of Act 53 of 1999, section 68 of Act 19 of 2001, section 152 of Act 60 of 2001, section 168 of Act 45 of 2003, section 97 of Act 32 of 2004, section 104 of Act 31 of 2005, section 43 of Act 9 of 2006, section 80 of Act 20 of 2006, section 82 of Act 8 of 2007, section 107 of Act 60 of 2008, section 122 of Act 7 of 2010, section 133 of Act 24 of 2011, section 168 of Act 39 of 2013 and section 131 of Act 25 of 2015

80. (1) Section 10 of the Value-Added Tax Act, 1991, is hereby amended by the addition of the following subsection:

“(28) Where a supply of goods is deemed to be made as contemplated in section 8(29), the value of such supply shall be deemed to be nil.”

(2) Subsection (1) comes into operation on 1 April 2018.

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, section 169 of Act 31 of 2013, section 96 of Act 43 of 2014 and section 132 of Act 25 of 2015

81. (1) Section 11 of the Value-Added Tax Act, 1991, is hereby amended—

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

“the goods have been supplied in the course of repairing, renovating, modifying, [or] treating, processing, cleaning, reconditioning or manufacture of any goods to which subsection (2)(g) (ii) or (iv) refers and the goods supplied—”;

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

“(d) (i) the services comprise the—

(aa) insuring;
(bb) arranging of the insurance; or
(cc) arranging of the transport, of passengers or goods to which any provisions of paragraph (a), (b) or (c) apply; or

(ii) insuring or the arranging of the insurance of passengers on an international journey, where the insurance of those passengers is provided under a single inbound or outbound insurance policy in respect of which a single premium is levied; or”;

(c) by the substitution in subsection (2)(g) for subparagraph (i) of the following subparagraph:

“(i) movable property (excluding debt securities, equity securities or participatory securities, as respectively defined in section 2(2), listed on an exchange as defined in section 1 of the Financial Markets Act, 2012 (Act No. 19 of 2012) and licensed under section 9 of that Act) situated in any export country at the time the services are rendered; or”;

(d) by the insertion in subsection (2) after paragraph (r) of the following paragraph:

“(s) the services are deemed to be supplied to a public authority or municipality in terms of section 8 (23); or”.

(2) Paragraphs (a), (b) and (c) of subsection (1) come into operation on 1 April 2018.

(3) Paragraph (d) of subsection (1) is deemed to have come into operation on 1 April 2017.

Amendment of section 13 of Act 89 of 1991, as amended by section 29 of Act 136 of 1991, section 19 of Act 136 of 1992, section 15 of Act 20 of 1994, section 30 of Act 27 of 1997, section 34 of Act 34 of 1997, section 86 of Act 53 of 1999, section 70 of Act 19 of 2001, section 155 of Act 60 of 2001, section 170 of Act 45 of 2003, section 100 of Act 32 of 2004, section 106 of Act 31 of 2005, section 110 of Act 60 of 2008, section 135 of Act 24 of 2011, section 271 of Act 28 of 2011, read with item 112 of Schedule 1 to that Act and section 171 of Act 31 of 2013 5

82. (1) Section 13 of the Value-Added Tax Act, 1991, is hereby amended by the deletion of subsection (2A).
 (2) Subsection (1) is deemed to have come into operation on 10 January 2012. 10

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, section 173 of Act 31 of 2013 and section 98 of Act 43 of 2014 15 20

83. Section 16 of the Value-Added Tax Act, 1991, is hereby amended by the substitution in subsection (3) for paragraph (k) of the following paragraph:
 “(k) an amount of input tax as determined by the Commissioner paid by a vendor to a supplier of pastoral, agricultural or other farming products who is not a vendor, in terms of a scheme operated by the controlling body of an industry for the development of small-scale farmers approved by the Minister with the concurrence of the [Minister of Agriculture and Land Affairs] Cabinet member responsible for agriculture to compensate that supplier for tax incurred in the production of such goods;” 25

Insertion of section 18C in Act 89 of 1991 30

84. (1) The following section is hereby inserted in the Value-Added Tax Act, 1991, after section 18B:

“Adjustments for leasehold improvements

18C. Where goods have been supplied to a vendor, being a lessor, as contemplated in section 8(29), the lessor shall be deemed to have made a taxable supply in the course or furtherance of the lessor’s enterprise, and where a deduction of input tax would have been denied in terms of section 17(2), or to the extent that such goods are not wholly for consumption, use or supply in the course of making taxable supplies by that lessor, those goods shall be deemed to be supplied by the lessor at the time the leasehold improvements are completed, in accordance with the formula 35 40

$$A \times B \times C$$

in which formula—

- ‘A’ represents the tax fraction;
- ‘B’ represents the amount stipulated in the agreement or if no amount is stipulated, the open market value as stipulated in section 3 applies, and
- ‘C’ represents the percentage of the use or application of the goods for the purposes of making other than taxable supplies at the time the leasehold improvements are completed.” 45

(2) Subsection (1) comes into operation on 1 April 2018. 50

Insertion of section 40D in Act 89 of 1991

85. (1) The following section is hereby inserted in the Value-Added Tax Act, 1991, after section 40C:

“Liability for tax and limitation of refunds in respect of National Housing Programmes

40D. (1) This section applies in respect of the supply of services deemed to be made by the vendor in terms of section 8(23) which services were supplied before 1 April 2017. 5

(2) Where the Commissioner issued any assessment relating to tax periods ending before 1 April 2017 for an amount of tax or additional tax in respect of any supply of services as contemplated in subsection (1) in respect of application of the provisions as contemplated in section 11(2)(s) in respect of that supply, the Commissioner must, on written application by the vendor, amend that assessment to the extent that the amount of tax, additional tax, penalty or interest that arose as a result of that assessment has not yet been paid on that date: Provided that the assessment does not result in a refund to the vendor. 10

(3) The Commissioner may not make any assessment for tax periods ending before 1 April 2017 in respect of the deemed supply of services contemplated in subsection (1). 15

(4) If the vendor has charged tax at the rate referred to in section 7(1) instead of the rate of tax in terms of section 11(2)(s) in respect of the supply contemplated in subsection (1), the Commissioner may not refund any such tax or any penalty or interest that arose as a result of the late payment of such tax, paid by the vendor to the Commissioner.” 20

(2) Subsection (1) is deemed to have come into operation on 1 April 2017.

Amendment of section 68 of Act 89 of 1991, as amended by section 39 of Act 136 of 1992, section 26 of Act 20 of 1994 and section 107 of Act 32 of 2004 25

86. Section 68 of the Value-Added Tax Act, 1991, is hereby amended by the substitution in subsection (1) for the words preceding paragraph (a) of the following words:

“The Minister may, with the concurrence of the [**Minister of Foreign Affairs**] Cabinet member responsible for international relations and cooperation, authorize the granting of relief, by way of a refund, in respect of value-added tax paid or borne—;” 30

Amendment of Schedule 2 to Act 89 of 1991, as amended by section 49 of Act 136 of 1991, paragraph 25 of Government Notice 2695 of 8 November 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 of Act 16 of 2004 and section 108 of Act 43 of 2014 35

87. Schedule 2 to the Value-Added Tax Act, 1991, is hereby amended by the substitution in Part B for Item 1 of the following Item:

“Item 1 Brown bread as defined in Regulation 1 of the Regulations in terms of Government Notice [**No. R.577**] 405 published in Government *Gazette* No. [**13074 of 15 March 1991**] 40828 of 5 May 2017;” 40

Substitution of section 3 of Act 9 of 1999, as substituted by section 88 of Act 15 of 2016

88. (1) The following section is hereby substituted for section 3 of the Skills Development Levies Act, 1999: 45

“Imposition of levy

3. (1) Every employer must pay a skills development levy—

- (a) (i) from 1 April 2000, at a rate of 0,5 per cent of the leviable amount; and 50
 (ii) from 1 April 2001, at a rate of one per cent of the leviable amount; or
 (b) at such a rate as the Minister may announce in the national annual budget contemplated in section 27(1) of the Public Finance Manage-

ment Act, 1999 (Act No. 1 of 1999), with effect from a date mentioned in that Announcement.

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

(3) For the purposes of subsections (1) and (2), but subject to subsection (4), the leviable amount means the total amount of remuneration, paid or payable, or deemed to be paid or payable, by an employer to its employees during any month, as determined in accordance with the provisions of the Fourth Schedule to the Income Tax Act for the purposes of determining the employer's liability for any employees' tax in terms of that Schedule, whether or not such employer is liable to deduct or withhold such employees' tax.

(4) The amount of remuneration referred to in subsection (3) does not include any amount—

- (a) paid or payable to any person contemplated in paragraphs (c) and (d) of the definition of 'employee' in paragraph 1 of the Fourth Schedule to the Income Tax Act, to whom a certificate of exemption has been issued in terms of paragraph 2(5)(a) of that Schedule;
- (b) paid or payable to any person by way of any pension, superannuation allowance or retiring allowance;
- (c) contemplated in paragraph (a), (d), (e) or (eA) of the definition of 'gross income' in section 1 of the Income Tax Act;
- (d) payable to a learner in terms of a contract of employment contemplated in section 18(3) of the Skills Development Act.

(5) Despite subsection (1), on the request of a SETA, the Minister may, in consultation with the Minister of Finance and by notice in the *Gazette*, determine from time to time a rate and basis for the calculation of a levy payable by employers within the jurisdiction or a part of the jurisdiction of a SETA, different from the rate and basis contemplated in subsection (1)(a) or (b), but subject to subsection (7).

(6) The rate and basis determined in a notice in terms of subsection (5) may not have the result that the amount of the levies collected by virtue of such notice is less than the amount of the levies which would have been collected, based on the rate and basis contemplated in subsection (1)(a) or (b).

(7) The Minister may, in consultation with the Minister of Finance, determine criteria for purposes of any determination contemplated in subsection (5).

(8) The notice referred to in subsection (5) must contain—

- (a) the rate and basis for the calculation of the levy;
- (b) the date on which the levy becomes payable;
- (c) a description of the employers falling within the jurisdiction of the SETA or part of the jurisdiction of the SETA in respect of which the levy is payable; and
- (d) any other matter necessary to ensure the effective collection of the levy.”.

(2) Subsection (1) is deemed to have come into operation on 19 January 2017.

Amendment of section 4 of Act 4 of 2002, as amended by section 208 of Act 45 of 2003, section 144 of Act 24 of 2011 and section 152 of Act 22 of 2012

89. (1) The Unemployment Insurance Contribution Act, 2002, is hereby amended by the deletion in section 4 of paragraphs (b) and (d).

(2) Subsection (1) comes into operation on 1 March 2018.

Amendment of section 1 of Act 25 of 2007, as amended by section 145 of Act 24 of 2011, section 153 of Act 22 of 2012, section 110 of Act 43 of 2014, section 137 of Act 25 of 2015 and section 90 of Act 15 of 2016

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

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

“**‘collateral arrangement’** means any arrangement in terms of which—

- (a) a person (hereafter the transferor) transfers a listed share or any bond issued by the government of the Republic in the national or local sphere or any sphere of government of any country other than the Republic if that bond is listed on a recognised exchange as defined in paragraph 1 of the Eighth Schedule to the Income Tax Act to another person (hereafter the transferee) for the purposes of providing security in respect of an amount owed by the transferor to the transferee; 5 10
- (b) the transferor can demonstrate that the arrangement was not entered into for the purposes of the avoidance of tax and was not entered into for the purposes of keeping any position open for more than 24 months; 15
- (c) that transferee in return contractually agrees in writing to deliver an identical share, as defined in section 1 of the Income Tax Act, or any bond issued by the government of the Republic in the national or local sphere or any sphere of government of any country other than the Republic that is listed on a recognised exchange as defined in paragraph 1 of the Eighth Schedule to the Income Tax Act to that transferor within a period of 24 months from the date of transfer of that listed share or bond from the transferor to the transferee; 20
- (d) that transferee is contractually required to compensate that transferor for any distributions in respect of the listed share (or any other share that is substituted for that listed share in terms of an arrangement that is announced and released as a corporate action as contemplated in the JSE Limited Listing Requirements in the SENS (Stock Exchange News Service) as defined in the JSE Limited Listing Requirements) or any bond issued by the government of the Republic in the national or local sphere or any sphere of government of any country other than the Republic that is listed on a recognised exchange as defined in paragraph 1 of the Eighth Schedule to the Income Tax Act, which that transferor would have been entitled to receive during that period had that arrangement not been entered into; and 25 30 35
- (e) that arrangement does not affect the transferor’s benefits or risks arising from fluctuations in the market value of that listed share (or any other share that is substituted for that listed share in terms of an arrangement that is announced and released as a corporate action as contemplated in the JSE Limited Listing Requirements in the SENS (Stock Exchange News Service) as defined in the JSE Limited Listing Requirements) or any bond issued by the government of the Republic in the national or local sphere or any sphere of government of any country other than the Republic that is listed on a recognised exchange as defined in paragraph 1 of the Eighth Schedule to the Income Tax Act, 40 45

but does not include an arrangement where the transferee has not transferred the identical share or bond contemplated in paragraph (b) to the transferor within the period referred to in that paragraph unless such failure to return such identical share or bond is due to an arrangement that is announced and released as a corporate action as contemplated in the JSE Limited Listing Requirements in the Stock Exchange News Service as defined in the JSE Limited Listing Requirements;” and 50 55

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

“**‘lending arrangement’** means any arrangement in terms of which—

- (a) a person (hereinafter referred to as the lender) lends a listed security or any bond issued by the government of the Republic in the national or local sphere or any sphere of government of any country other than the Republic if that bond is listed on a recognised exchange as defined in paragraph 1 of the Eighth Schedule to the 60

Income Tax Act to another person (hereinafter referred to as the borrower) in order to enable that borrower to effect delivery (other than to any lender in relation to that borrower, unless the borrower can demonstrate that the arrangement was not entered into for the purposes of the avoidance of tax and was not entered into for the purposes of keeping any position open for more than 12 months) of that security or bond within 10 business days after the date of transfer of that security from the lender to the borrower in terms of that arrangement; 5

(b) that borrower in return contractually agrees in writing to deliver an identical security or any bond issued by the government of the Republic in the national or local sphere or any sphere of government of any country other than the Republic if that bond is listed on a recognised exchange as defined in paragraph 1 of the Eighth Schedule to the Income Tax Act, as defined in section 1 of the Income Tax Act, to that lender within a period of 12 months from the date of transfer of that listed security or bond from the lender to the borrower; 10 15

(c) that borrower is contractually required to compensate that lender for any distributions in respect of the listed security (or any other security that is substituted for that listed security in terms of an arrangement that is announced and released as a corporate action as contemplated in the JSE Limited Listing Requirements in the SENS (Stock Exchange News Service) as defined in the JSE Limited Listing Requirements) or any bond issued by the government of the Republic in the national or local sphere or any sphere of government of any country other than the Republic if that bond is listed on a recognised exchange as defined in paragraph 1 of the Eighth Schedule to the Income Tax Act which that lender would have been entitled to receive during that period had that arrangement not been entered into; and 20 25 30

(d) that arrangement does not affect the lender's benefits or risks arising from fluctuations in the market value of the listed security (or any other security that is substituted for that listed security in terms of an arrangement that is announced and released as a corporate action as contemplated in the JSE Limited Listing Requirements in the Stock Exchange News Service as defined in the JSE Limited Listing Requirements) or any bond issued by the government of the Republic in the national or local sphere or any sphere of government of any country other than the Republic if that bond is listed on a recognised exchange as defined in paragraph 1 of the Eighth Schedule to the Income Tax Act, 35 40

but does not include an arrangement where the borrower has not—

- (i) on-delivered the listed security or bond within the period referred to in paragraph (a); or 45
- (ii) returned the identical security or bond contemplated in paragraph (b) to the lender within the period referred to in that paragraph other than if such failure to return such identical security or bond is due to an arrangement that is announced and released as a corporate action as contemplated in the JSE Limited Listing Requirements in the Stock Exchange News Service as defined in the JSE Limited Listing Requirements;". 50

(2) Subsection (1) comes into operation on 1 January 2018 and applies in respect of collateral arrangements and lending arrangements entered into on or after that date.

Amendment of section 4 of Act 26 of 2013, as amended by section 113 of Act 43 of 2014 and section 94 of Act 15 of 2016 55

91. (1) Section 4 of the Employment Tax Incentive Act, 2013, is hereby amended—

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

- “(ii) where the employee is employed and paid remuneration for less than 160 hours in a month, an amount that bears to the amount of 60

R2 000 the same ratio as 160 hours bears to the number of hours that the employee was employed for and paid remuneration by that employer in that month.”; and

(b) by the addition of the following subsection:

“(4) For the purposes of this section, ‘hours’ means ‘ordinary hours’ as defined in section 1 of the Basic Conditions of Employment Act, 1997 (Act No. 75 of 1997).”.

(2) Subsection (1) comes into operation on 1 March 2018.

Amendment of section 7 of Act 26 of 2013, as amended by section 116 of Act 43 of 2014 and section 95 of Act 15 of 2016 10

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

“(1) During each month, commencing from 1 January 2014, that an employer employs a qualifying employee, the amount of the employment tax incentive available to that employer is the sum of the amounts determined in respect of each qualifying employee of that employer stipulated in subsections (2) and (3) and section 9[, **subject to subsection (6)**].”.

(2) Subsection (1) is deemed to have come into operation on 1 March 2017.

Amendment of section 13 of Act 31 of 2013

93. (1) Section 13 of the Taxation Laws Amendment Act, 2013, is hereby amended by the substitution for subsection (2) of the following subsection: 20

“(2) Subsection (1) comes into operation on 1 January 2019 and applies in respect of amounts incurred on or after that date.”.

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

Amendment of section 15 of Act 31 of 2013 25

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

“(2) Subsection (1) comes into operation on 1 January 2019 and applies in respect of amounts incurred on or after that date.”.

(2) Subsection (1) is deemed to have come into operation on 12 December 2013. 30

Amendment of section 150 of Act 25 of 2015, as amended by section 4 of Act 2 of 2016

95. (1) Section 150 of the Taxation Laws Amendment Act, 2015, is hereby amended by the substitution for subsection (1) of the following subsection:

“(1) The following section is hereby substituted for section 150 of the Taxation Laws Amendment Act, 2015: 35

‘Amendment of section 16 of Act 43 of 2014

150. (1) Section 16 of the Taxation Laws Amendment Act, 2014, is hereby amended by the substitution for subsection (2) of the following subsection: 40

“(2) Subsection (1) comes into operation on 1 March 2019 and applies in respect of amounts received on or after that date.”

(2) Subsection (1) is deemed to have come into operation on 20 January 2014.”.

(2) Subsection (1) is deemed to have come into operation on 20 May 2016. 45

Amendment of section 159 of Act 25 of 2015, as amended by section 5 of Act 2 of 2016

96. (1) Section 159 of the Taxation Laws Amendment Act, 2015, is hereby amended by the substitution for subsection (1) of the following subsection:

“(1) The following section is hereby substituted for section 159 of the Taxation Laws Amendment Act, [2015] 2014: 50

‘Substitution of section 128 of Act 43 of 2014

159. (1) The following section is hereby substituted for section 128 of the Taxation Laws Amendment Act, 2014:

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

‘(2) Paragraph (a) of subsection (1) comes into operation on 1 March 2019 and applies in respect of contributions made on or after that date.’

(2) Subsection (1) is deemed to have come into operation on 20 January 2014.”. 10

(2) Subsection (1) is deemed to have come into operation on 20 May 2016.

Amendment of section 1 of Act 2 of 2016

97. (1) Section 1 of the Revenue Laws Amendment Act, 2016, is hereby amended—

(a) by the substitution for subsection (1) of the following subsection: 15

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

(a) by the addition in subsection (1) to the definition of ‘pension fund’ of the following proviso:

‘: Provided that in respect of any fund contemplated in paragraph (a) or (b)— 20

(a) the fund is a permanent fund *bona fide* established for the purpose of providing annuities for employees on retirement date or for the dependants or nominees of deceased employees, or mainly for the said purpose and also for the purpose of providing benefits other than annuities for the persons aforesaid or for the purpose of providing any benefit contemplated in paragraph 2C of the Second Schedule or section 15A or 15E of the Pension Funds Act; and 25

(b) the rules of the fund provide— 30

(i) that all annual contributions of a recurrent nature to the fund shall be in accordance with specified scales; 35

(ii) that membership of the fund throughout the period of employment shall be a condition of the employment by the employer of all persons of the class or classes specified therein who enter his employment on or after the date upon which—

(aa) the fund comes into operation; or 40

(bb) the employer becomes a participant in that fund;

(iii) 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 R165 000 or where the employee is deceased: Provided that in determining the value of the retirement interest an amount calculated as follows must not be taken into account: 45

(aa) 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 2019— 50

(A) any amount contributed to a provident fund of which that person is a member on 1 March 2019; 55

(B) with addition of any other amounts credited to the member’s individual account of the provident fund prior to 1 March 2019; and

- (C) any fund return, as defined in the Pension Funds Act, in relation to the contributions contemplated in subitem (A) or amounts credited contemplated in subitem (B); or
- (bb) in any other case of a person who is a member of a provident fund—
- (A) any amount contributed to a provident fund prior to 1 March 2019;
- (B) with addition of any other amounts credited to the member's individual account of the provident fund prior to 1 March 2019; and
- (C) any fund return, as defined in the Pension Funds Act, in relation to the contributions contemplated in subitem (A) or amounts credited contemplated in subitem (B), reduced by any amounts permitted in terms of any law to be deducted from the member's individual account of the provident fund;
- (iv) that a partner is regarded as an employee of the partnership; and
- (c) that the rules of the fund have been complied with;;
- (b) 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 R165 000 or where the member is deceased: Provided that in determining the value of the retirement interest an amount calculated as follows must not be taken into account:
- (a) 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 2019—
- (i) any amount contributed to a provident fund of which that person is a member on 1 March 2019;
- (ii) with addition of any other amounts credited to the member's individual account of the provident fund prior to 1 March 2019; and
- (iii) any fund return, as defined in the Pension Funds Act, in relation to the contributions contemplated in subparagraph (i) or amounts credited contemplated in subparagraph (ii); or
- (b) in any other case of a person who is a member of a provident fund—
- (i) any amount contributed to a provident fund prior to 1 March 2019;
- (ii) with addition of any other amounts credited to the member's individual account of the provident fund prior to 1 March 2019; and
- (iii) any fund return, as defined in the Pension Funds Act, in relation to the contributions contemplated in subparagraph (i) or amounts credited contemplated in subparagraph (ii), reduced by any amounts permitted in terms of any law to be deducted from the member's individual account of the provident fund;';
- (c) by the substitution in subsection (1) in the definition of 'provident fund' for paragraph (b) of the proviso of the following paragraph:

(b) that the rules of the fund provide—

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| (i) | that all annual contributions of a recurrent nature to the fund shall be in accordance with specified scales; | |
| (ii) | that membership of the fund throughout the period of employment shall be a condition of the employment by the employer of all persons of the class or classes specified therein who enter his employment on or after the date upon which—
(aa) the fund comes into operation; or
(bb) the employer becomes a participant in that fund; | 5
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| (iii) | that persons who immediately prior to the said date were employed by the employer and who on the said date fall within the said class or classes may, on application made, be permitted to become members of the fund on such conditions as may be specified in the rules; | 15 |
| (iv) | 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 R165 000 or where the employee is deceased: Provided that in determining the value of the retirement interest an amount calculated as follows must not be taken into account—
(aa) 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 2019—
(A) any amount contributed to a provident fund of which that person is a member on 1 March 2019;
(B) with addition of any other amounts credited to the member's individual account of the provident fund prior to 1 March 2019; and
(C) any fund return, as defined in the Pension Funds Act, in relation to the contributions contemplated in subitem (A) or amounts credited contemplated in subitem (B); or
(bb) in any other case of a person who is a member of a provident fund—
(A) any amount contributed to a provident fund prior to 1 March 2019;
(B) with addition of any other amounts credited to the member's individual account of the provident fund prior to 1 March 2019; and
(C) any fund return, as defined in the Pension Funds Act, in relation to the contributions contemplated in subitem (A) or amounts credited contemplated in subitem (B),
reduced by any amounts permitted in terms of any law to be deducted from the member's individual account of the provident fund; and | 20
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| (v) | that a partner is regarded as an employee of the partnership;' | |

- (d) by the addition in subsection (1) to the proviso to the definition of 'provident preservation fund' 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 R165 000 or where the member is deceased: Provided that in determining the value of the retirement interest an amount calculated as follows must not be taken into account:
- (a) 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 2019—
- (i) any amount contributed to a provident fund of which that person is a member on 1 March 2019;
- (ii) with addition of any other amounts credited to the member's individual account of the provident fund prior to 1 March 2019; and
- (iii) any fund return, as defined in the Pension Funds Act, in relation to the contributions contemplated in subparagraph (i) or amounts credited contemplated in subparagraph (ii); or
- (b) in any other case of a person who is a member of a provident fund—
- (i) any amount contributed to a provident fund prior to 1 March 2019;
- (ii) with addition of any other amounts credited to the member's individual account of the provident fund prior to 1 March 2019; and
- (iii) any fund return, as defined in the Pension Funds Act, in relation to the contributions contemplated in subparagraph (i) or amounts credited contemplated in subparagraph (ii), reduced by any amounts permitted in terms of any law to be deducted from the member's individual account of the provident fund;';
- (e) by the substitution in subsection (1) in paragraph (b) of the proviso to the definition of 'retirement annuity fund' for subparagraph (ii) of the following subparagraph:
- '(ii) 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 R165 000 or where the member is deceased: Provided that in determining the value of the retirement interest an amount calculated as follows must not be taken into account:
- (a) 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 2019—
- (i) any amount contributed to a provident fund of which that person is a member on 1 March 2019;
- (ii) with addition of any other amounts credited to the member's individual account of the provident fund prior to 1 March 2019; and
- (iii) any fund return, as defined in the Pension Funds Act, in relation to the contributions contemplated in subparagraph (i) or amounts credited contemplated in subparagraph (ii); or

- (b) in any other case of a person who is a member of a provident fund—
- (i) any amount contributed to a provident fund prior to 1 March 2019;
 - (ii) with addition of any other amounts credited to the member's individual account of the provident fund prior to 1 March 2019; and
 - (iii) any fund return, as defined in the Pension Funds Act, in relation to the contributions contemplated in subparagraph (i) or amounts credited contemplated in subparagraph (ii),
- reduced by any amounts permitted in terms of any law to be deducted from the member's individual account of the provident fund;”;
- (b) by the substitution for subsection (2) of the following subsection:
“(2) Subsection (1) comes into operation on 1 March ~~[2018]~~ 2019 and applies in respect of years of assessment commencing on or after that date.”; and
- (c) by the substitution in subsection (3) for paragraph (c) of the following paragraph:
“(c) The Minister of Finance shall table a report in the National Assembly, not later than 31 August ~~[2017]~~ 2018, in respect of the results of the deliberations contemplated in paragraph (a).”.
- (2) Subsection (1) is deemed to have come into operation on 1 April 2016.

Amendment of section 3 of Act 2 of 2016

- 98.** (1) Section 3 of the Taxation Laws Amendment Act, 2015, is hereby amended by the substitution in subsection (1) for paragraph (b) of the following paragraph:
“(b) by the substitution for subsection (7) of the following subsection:
“(7) Paragraphs (k), (l), (o), (q), (r), (u), (w), (x) and (y) of subsection (1) come into operation on 1 March 2019 and apply in respect of years of assessment commencing on or after that date”. and”.
- (2) Subsection (1) is deemed to have come into operation on 20 May 2016.

Amendment of section 21 of Act 15 of 2016

- 99.** (1) Section 21 of the Taxation Laws Amendment Act, 2016 is hereby amended—
- (a) by the substitution in paragraph (a) for the instruction of the following instruction:
“(a) by the substitution in subsection (3)(c) for the words preceding subparagraph (i) of the following words:”; and
 - (b) by the substitution in paragraph (a) for the instruction of the following instruction:
“(b) by the substitution in subsection (3)(d) for the words preceding subparagraph (i) of the following words:”.
- (2) Subsection (1) is deemed to have come into operation on 19 January 2017.

Part II

Bargaining council tax relief

Definitions

- 100.** For purposes of this Part, unless the context indicates otherwise, any meaning ascribed to a word or expression in the Income Tax Act, bears the meaning so ascribed, and—
- “**bargaining council**” means a bargaining council that is established in terms of section 27 of the Labour Relations Act;
 - “**bargaining council levy**” means the bargaining council levy imposed by section 97;
 - “**Income Tax Act**” means the Income Tax Act, 1962 (Act No. 58 of 1962);
 - “**investment income**” means—

- (i) any income in the form of dividends, foreign dividends, royalties, rental derived in respect of immovable property, annuities or income of a similar nature;
 - (ii) any interest as contemplated in section 24J of the Income Tax Act (other than any interest received by or accrued to any co-operative bank as contemplated in paragraph (a)(ii)(ff)), any amount contemplated in section 24K of the Income Tax Act and any other income which, by the laws of the Republic administered by the Commissioner, is subject to the same treatment as income from money lent; and 5
 - (iii) any proceeds derived from investment or trading in financial instruments (including futures, options and other derivatives), marketable securities or immovable property; 10
- “Labour Relations Act”** means the Labour Relations Act, 1995 (Act No. 66 of 1995);
“member” means a member of a bargaining council; and
“qualifying period” means any year of assessment commencing on or after 1 March 2012 and ending on or before 28 February 2017. 15

Exemptions

- 101.** There must be exempt from normal tax any amount received by or accrued to—
- (a) any member during the qualifying period as sick pay or holiday pay from a scheme or fund as contemplated in section 28(1)(g) of the Labour Relations Act; and 20
 - (b) a bargaining council as investment income during the qualifying period.

Bargaining council levy

- 102.** There must be levied, paid and collected for the benefit of the National Revenue Fund a levy, to be known as the bargaining council levy, in respect of any amount of income exempt in terms of section 96, calculated in terms of section 98. 25

Amount of bargaining council levy

- 103.** The amount of the bargaining council levy must be calculated at a rate of 10 per cent on the sum of—
- (a) any amount that should have been deducted or withheld by that bargaining council by way of employees’ tax in respect of an amount contemplated in section 96(a) in respect of the liability for normal tax of that member as contemplated in paragraph 2 of the Fourth Schedule to the Income Tax Act. 30
 - (b) any amount contemplated in section 96(b).

Payment of bargaining council levy

- 104.** A bargaining council must submit a return and pay the bargaining council levy to the Commissioner on or before 1 September 2018. 35

Circumstances in which bargaining council tax relief does not apply

- 105.** (1) The exemption contemplated in section 96 and the bargaining council levy contemplated in section 97 do not apply in respect of any amount to the extent that tax in respect of that amount was— 40
- (a) withheld from an amount received by or accrued to a member;
 - (b) assessed by the Commissioner on or before 22 February 2017; or
 - (c) paid in respect of the qualifying period.
- (2) The exemption contemplated in section 96 does not apply if the bargaining council levy is not paid on or before 1 September 2018. 45

Short title

- 106.** This Act is called the Taxation Laws Amendment Act, 2017.

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