

REPUBLIC OF SOUTH AFRICA

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# TAXATION LAWS AMENDMENT BILL

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

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(MINISTER OF FINANCE)

**[B 17—2016]**

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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.

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## **BILL**

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

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

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

1. (1) Section 2 of the Transfer Duty Act, 1949, is hereby amended—
  - (a) by the substitution in subsection (2) for the words preceding paragraph (a) of the following words:

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

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

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

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

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

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

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

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

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

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

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

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

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

“(1) The rate of estate duty shall be—

- |     |   |    |
|-----|---|----|
| (a) | 20 per cent of the dutiable amount of the estate; or  | 35 |
| (b) | a percentage of the dutiable amount of the estate as the Minister of Finance may announce in the national annual budget contemplated in section 27(1) of the Public Finance Management Act, 1999 (Act No. 1 of 1999), with effect from a date mentioned in that <u>announcement</u> .”; and | 40 |

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

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

**Amendment of section 1 of Act 58 of 1962, as amended by section 3 of Act 90 of 1962, section 1 of Act 6 of 1963, section 4 of Act 72 of 1963, section 4 of Act 90 of 1964, section 5 of Act 88 of 1965, section 5 of Act 55 of 1966, section 5 of Act 76 of 1968, section 6 of Act 89 of 1969, section 6 of Act 52 of 1970, section 4 of Act 88 of 1971, section 4 of Act 90 of 1972, section 4 of Act 65 of 1973, section 4 of Act 85 of 1974, section 4 of Act 69 of 1975, section 4 of Act 103 of 1976, section 4 of Act 113 of 1977, section 3 of Act 101 of 1978, section 3 of Act 104 of 1979, section 2 of Act 104 of 1980, section 2 of Act 96 of 1981, section 3 of Act 91 of 1982, section 2 of Act 94 of 1983, section 1 of Act 30 of 1984, section 2 of Act 121 of 1984, section 2 of Act 96 of 1985, section 2 of Act 65 of 1986, section 1 of Act 108 of 1986, section 2 of Act 85**

of 1987, section 2 of Act 90 of 1988, section 1 of Act 99 of 1988, Government Notice R780 of 1989, section 2 of Act 70 of 1989, section 2 of Act 101 of 1990, section 2 of Act 129 of 1991, section 2 of Act 141 of 1992, section 2 of Act 113 of 1993, section 2 of Act 21 of 1994, Government Notice 46 of 1994, section 2 of Act 21 of 1995, section 2 of Act 36 of 1996, section 2 of Act 28 of 1997, section 19 of Act 30 of 1998, Government Notice 1503 of 1998, section 10 of Act 53 of 1999, section 13 of Act 30 of 2000, section 2 of Act 59 of 2000, section 5 of Act 5 of 2001, section 3 of Act 19 of 2001, section 17 of Act 60 of 2001, section 9 of Act 30 of 2002, section 6 of Act 74 of 2002, section 33 of Act 12 of 2003, section 12 of Act 45 of 2003, section 3 of Act 16 of 2004, section 3 of Act 32 of 2004, section 3 of Act 32 of 2005, section 19 of Act 9 of 2006, section 3 of Act 20 of 2006, section 3 of Act 8 of 2007, section 5 of Act 35 of 2007, section 2 of Act 3 of 2008, section 4 of Act 60 of 2008, section 7 of Act 17 of 2009, section 6 of Act 7 of 2010, section 7 of Act 24 of 2011, section 271 of Act 28 of 2011, read with item 23 of Schedule 1 to that Act, section 2 of Act 22 of 2012, section 4 of Act 31 of 2013, section 1 of Act 43 of 2014 and section 3 of Act 25 of 2015

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

- (a) by the substitution in subsection (1) in the definition of “connected person” for paragraph (bA) of the following paragraph:  
“(bA) in relation to a connected person in relation to a trust (other than a portfolio of a collective investment scheme), [includes] any other person who is a connected person in relation to such trust;”;
- (b) by the substitution in subsection (1) in paragraph (c) of the definition of “gross income” for the words preceding the proviso of the following words:  
“any amount, including any voluntary award, received or accrued in respect of services rendered or to be rendered or any amount (other than an amount referred to in section 8(1), 8B or 8C) received or accrued in respect of any employment or the holding of any office;”;
- (c) by the substitution in subsection (1) in paragraph (eA) of the definition of “gross income” for subparagraphs (i), (ii) and (iii) of the following subparagraphs, respectively:
- (i) any amount in a fund contemplated in paragraph (a) [or], (b) or (d) of the definition of ‘pension fund’ or paragraph (b) or (c) of the definition of ‘provident fund’, the rules of which provide that on retirement of such member a portion of his benefit has to be taken in the form of an annuity, has been transferred to a fund, the rules of which entitle such member, or the dependents or nominees of a deceased member, to a benefit on retirement in the form of a lump sum exceeding one-third of the capitalised value of all benefits (including lump sum payments and annuities); or
- (ii) a fund contemplated in paragraph (a) [or], (b) or (d) of the definition of ‘pension fund’ or paragraph (b) or (c) of the definition of ‘provident fund’, the rules of which provide that on retirement of such member a portion of his benefit has to be taken in the form of an annuity, is wholly or partially converted by way of an amendment to its rules or otherwise, to entitle such member, or the dependents or nominees of a deceased member, to a benefit on retirement in the form of a lump sum exceeding one-third of the capitalised value of all benefits (including lump sum payments and annuities); or
- (iii) any amount in a fund contemplated in paragraph (a) [or], (b) or (d) of the definition of ‘pension fund’ or paragraph (b) or (c) of the definition of ‘provident fund’ has become payable to the member or is being utilised to redeem a debt;”;
- (d) by the insertion in subsection (1) in the definition of “gross income” after paragraph (IA) of the following paragraph:  
“(IC) any amount received by or accrued to a person by way of a government grant as defined in section 12P;”;
- (e) by the substitution in the definition of “identical security” for paragraph (b) of the following paragraph:  
“(b) any other security that is substituted for that listed security in terms of arrangement that is announced and released as a corporate action as contemplated in the JSE Limited Listing Requirements in

- the SENS (Stock Exchange News Service) as defined in the JSE Limited Listing Requirements.”;
- (f) by the substitution in the definition of “identical share” for paragraph (b) of the following paragraph:
- “(b) 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.”;
- (g) by the substitution in subsection (1) in paragraph (b) of the proviso to the definition of “pension preservation fund” for the words preceding subparagraph (i) of the following words:
- “payments or transfers to the fund in respect of a member are limited to any amount contemplated in paragraph 2(1)(a)(ii) or (b) of the Second Schedule or any unclaimed benefit as defined in the Pension Funds Act, 1956 (Act No. 24 of 1956),] that is paid or transferred to the fund by—”;
- (h) by the substitution in subsection (1) in the definition of “remuneration proxy” for the words preceding the proviso of the following words:
- “**‘remuneration proxy’**, in relation to a year of assessment, means the remuneration, as defined in paragraph 1 of the Fourth Schedule, derived by an employee from an employer during the year of assessment immediately preceding that year of assessment, other than the cash equivalent of the value of a taxable benefit derived from the occupation of residential accommodation as contemplated in **[paragraph 9(3) of the Seventh schedule]** subparagraph (3) of paragraph 9 of the Seventh Schedule in the application of that subparagraph.”; and
- (i) by the substitution in subsection (1) in the definition of “retirement annuity fund” in paragraph (b)(x) of the proviso for item (dd) of the following item:
- “(dd) the payment of a lump sum benefit contemplated in paragraph 2(1)(b)(ii) of the Second Schedule where that member—
- (A) is a person who is or was a resident who emigrated from the Republic and that emigration is recognised by the South African Reserve Bank for purposes of exchange control; or
- (B) departed from the Republic at the expiry of a visa obtained for the purposes of—
- (AA) working as contemplated in paragraph (i) of the definition of ‘visa’ in section 1 of the Immigration Act, 2002 (Act No. 13 of 2002); or
- (BB) a visit as contemplated in paragraph (b) of the definition of ‘visa’ in section 1 of the Immigration Act, 2002 (Act No. 13 of 2002), issued in terms of paragraph (b) of the proviso to section 11 of that Act by the Director-General, as defined in section 1 of that Act,
- and is not regarded as a resident by the South African Reserve Bank for purposes of exchange control;”.
- (2) Paragraph (b) of subsection (1) comes into operation on 1 March 2017 and applies in respect of years of assessment ending on or after that date.
- (3) Paragraph (c) of subsection (1) comes into operation on 1 March 2018 and applies in respect of years of assessment commencing on or after that date.
- (4) Paragraphs (e) and (f) of subsection (1) come into operation on 1 January 2017 and apply in respect of any collateral arrangement or securities lending arrangement entered into on or after that date.
- (5) Paragraph (h) of subsection (1) comes into operation on 1 March 2017 and applies in respect of years of assessment ending on or after that date.
- (6) Paragraph (i) of subsection (1) is deemed to have come into operation on 1 March 2016 and applies in respect of years of assessment commencing on or after that date.

**Amendment of section 5 of Act 58 of 1962, as substituted by section 2 of Act 6 of 1963 and amended by section 5 of Act 90 of 1964, section 5 of Act 88 of 1971, section 5 of Act 90 of 1972, section 5 of Act 65 of 1973, section 5 of Act 103 of 1976, section 5 of Act 113 of 1977, section 3 of Act 104 of 1980, section 4 of Act 96 of 1981, section**

4 of Act 91 of 1982, section 3 of Act 94 of 1983, section 3 of Act 121 of 1984, section 3 of Act 90 of 1988, section 5 of Act 21 of 1994, section 4 of Act 21 of 1995, section 7 of Act 5 of 2001, section 10 of Act 30 of 2002, section 15 of Act 45 of 2003, section 4 of Act 20 of 2006, section 4 of Act 8 of 2007, section 3 of Act 3 of 2008, section 6 of Act 60 of 2008, section 8 of Act 17 of 2009, section 7 of Act 7 of 2010, section 8 of Act 24 of 2011, section 271 of Act 28 of 2011, read with item 28 of Schedule 1 to that Act and section 5 of Act 31 of 2013 5

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

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

“(2) (a) The Minister may announce in the national annual budget contemplated in section 27(1) of the Public Finance Management Act, that, with effect from a date or dates mentioned in that announcement, the rates of tax chargeable in respect of taxable income will be altered to the extent mentioned in the announcement. 10

(b) If the Minister makes an announcement of an alteration contemplated in paragraph (a), that alteration comes into effect on the date or dates 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 15

(b) by the deletion of subsection (7). 20

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

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

“(1) In determining the normal tax payable by any natural person, other than normal tax in respect of any retirement fund lump sum benefit, retirement fund lump sum withdrawal benefit or severance benefit, there [shall] must be deducted an amount equal to the sum of the amounts allowed to the natural person by way of rebates under subsection (2).” 40

**Amendment of section 6A of Act 58 of 1962, as substituted by section 7 of Act 31 of 2013 and amended by section 4 of Act 42 of 2014 and section 5 of Act 13 of 2015 45**

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

“(1) In determining the normal tax payable by any natural person there must be deducted an amount, to be known as the medical scheme fees tax credit, equal to the sum of the amounts allowed to that natural person by way of rebates under subsection (2).” 50

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

9. Section 6B of the Income Tax Act, 1962, is hereby amended by the substitution for subsection (2) of the following subsection: 55

“(2) In determining the normal tax payable by any natural person there must be deducted an amount, to be known as the additional medical scheme fees tax credit, equal to the sum of the amounts allowed to that natural person by way of rebates under subsection (3).”.

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

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

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

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

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

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

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

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

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

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

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

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

**“Loan or credit advanced to a trust by a connected person**

**7C.** (1) This section applies in respect of any loan, advance or credit that—

(a) a natural person; or  
(b) at the instance of that person, a company in relation to which that person is a connected person in terms of paragraph (d)(iv) of the definition of connected person,

directly or indirectly provides to a trust in relation to which that person or company, or any person that is a connected person in relation to that person or company, is a connected person.

- (2) No deduction, loss, allowance or capital loss may be claimed in respect of—
- (a) a disposal, including by way of a reduction or waiver; or
  - (b) the failure, wholly or partly, of a claim for the payment, of any amount owing in respect of a loan, advance or credit referred to in subsection (3). 5
- (3) If a trust incurs—
- (a) no interest in respect of a loan, advance or credit referred to in subsection (1); or
  - (b) interest at a rate lower than the official rate of interest as defined in paragraph 1 of the Seventh Schedule, 10
- an amount equal to the difference between the amount incurred by that trust, during a year of assessment as interest in respect of that loan, advance or credit and the amount that would have been incurred by that trust 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) on the last day of that year of assessment of that trust. 15
- (4) If a loan, advance or credit was provided by a company to a trust 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, the part of that amount that bears to 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. 20 25
- (5) Subsections (2) and (3) do not apply in respect of any amount owing by a trust during a year of assessment in respect of a loan, advance or credit referred to in subsection (1) if—
- (a) that trust 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; 30
  - (b) that loan, advance or credit was provided to that trust by a person by reason of or in return for a vested interest held by that person in the receipts and accruals and assets of that trust and—
    - (i) the beneficiaries of that trust hold, in aggregate, a vested interest in all the receipts and accruals and assets of that trust; 35
    - (ii) no beneficiary of that trust can, in terms of the trust deed governing that trust, hold or acquire an interest in that trust other than a vested interest in the receipts and accruals and assets of that trust; 40
    - (iii) the vested interest of each beneficiary of that trust is determined solely with reference and in proportion to the assets, services or funding contributed by that beneficiary to that trust; and
    - (iv) none of the vested interests held by the beneficiaries of that trust is subject to a discretionary power conferred on any person in terms of which that interest can be varied or revoked; 45
  - (c) that trust is a special trust as defined in paragraph (a) of the definition of a special trust; 50
  - (d) that trust used that loan, advance or credit wholly or partly for purposes of funding the acquisition of an asset and—
    - (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 that year of assessment; and 55
    - (ii) the amount owed relates to the part of that loan, advance or credit that funded the acquisition of that asset;
  - (e) that loan, advance or credit constitutes an affected transaction as defined in section 31(1) that is subject to the provisions of that section; 60
  - (f) that loan, advance or credit was provided to that trust in terms of an arrangement that would have qualified as a sharia compliant financing



- arrangement as contemplated in section 24JA, had that trust been a bank as defined in that section; or  
 (g) that loan, advance or credit is subject to the provisions of section 64E(4).”.

(2) Subsection (1) comes into operation on 1 March 2017 and apply in respect of any amount owed by a trust in respect of a loan, advance or credit provided to that trust before, on or after that date.

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

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

- “(1A) A taxpayer must include any amount received by or accrued to him or her during a year of assessment in respect of a restricted equity instrument in his or her income for that year of assessment if that amount does not constitute—  
 (a) a return of capital or foreign return of capital by way of a distribution of a restricted equity instrument;  
 (b) a dividend or foreign dividend in respect of that restricted equity instrument;  
 or  
 (c) an amount that must be taken into account in determining the gain or loss, in terms of this section, in respect of that restricted equity instrument.”.

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

**Amendment of section 8E of Act 58 of 1962, as inserted by section 6 of Act 70 of 1989 and amended by section 19 of Act 45 of 2003, section 9 of Act 32 of 2004, section 7 of Act 8 of 2007, section 13 of Act 7 of 2010, section 20 of Act 24 of 2011 and section 10 of Act 22 of 2012**

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

- (a) by the substitution for the heading of the following heading:  
**“Dividends derived from certain shares and equity instruments deemed to be income in relation to recipients thereof.”;**  
 (b) by the insertion in subsection (1) after the definition of “date of issue” of the following definition:  
**“equity instrument”** means any right or interest the value of which is determined directly or indirectly with reference to—  
 (a) a share; or  
 (b) an amount derived from a share;”;  
 (c) by the deletion in subsection (1) in the definition of “hybrid equity instrument” of the word “or” at the end of paragraph (b);  
 (d) by the addition in subsection (1) in the definition of “hybrid equity instrument” after paragraph (c) of the following paragraphs:  
 “(d) any equity instrument the value of which is determined directly or indirectly with reference to—  
 (i) a share contemplated in paragraph (a) or (b) or a preference share contemplated in paragraph (c) ; or  
 (ii) an amount derived from a share or preference share contemplated in subparagraph (i); or  
 (e) any equity instrument, other than an equity instrument contemplated in paragraph (d), if that equity instrument is subject to a right or arrangement that would have constituted a right of redemption or security arrangement contemplated in paragraph (a), (b) or (c) had that right or arrangement applied in respect of the share with reference to which the value of that equity instrument is directly or indirectly determined;”;  
 (e) by the substitution for subsection (2) of the following subsection:  
 “(2) Any dividend or foreign dividend received by or accrued to a person during any year of assessment in respect of a share or equity

instrument must be deemed in relation to that person to be an amount of income accrued to that person if that share or equity instrument constitutes a hybrid equity instrument at any time during that year of assessment.”; and

- (f) by the insertion after subsection (2) of the following subsection: 5

“(2A) Where any share or preference share that was issued in terms of an agreement, all the terms of which were finally agreed to before 1 April 2012 by all the parties to that agreement, constitutes a hybrid equity instrument solely by reason of a right of redemption or a security arrangement acquired in accordance with the terms of that agreement and that right or arrangement is cancelled on or after 26 October 2016 and on or before 31 December 2017—

- (a) the provisions of subsection (2) will not apply in respect of any dividend or foreign dividend that accrues in respect of that share after the date of cancellation of that right or arrangement; and 10  
 (b) the cancellation of that right or arrangement must not be treated as a disposal of that share if no consideration is payable in respect of that cancellation.”. 15

- (2) Paragraphs (a) to (e) of subsection (1) come into operation on 1 January 2017 and applies in respect of years of assessment ending on or after that date 20

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

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

- (a) by the substitution in subsection (1) for the definition of “enforcement obligation” of the following definition: 25

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

- (a) acquire that share or equity instrument from the holder thereof; 30  
 (b) make any payment in respect of that share or equity instrument in terms of a guarantee, indemnity or similar arrangement; or  
 (c) procure, facilitate or assist with any acquisition contemplated in paragraph (a) or the making of any payment contemplated in paragraph (b);”;

- (b) by the substitution in subsection (1) for the definition of “enforcement right” of the following definition: 35

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

- (a) acquire that share or equity instrument from the holder; 40  
 (b) make any payment in respect of that share or equity instrument in terms of a guarantee, indemnity or similar arrangement; or  
 (c) procure, facilitate or assist with any acquisition contemplated in paragraph (a) or the making of any payment contemplated in paragraph (b);”;

- (c) by the insertion in subsection (1) after the definition of “enforcement right of the following definition: 45

“**‘equity instrument’** means a right or interest the value of which is determined directly or indirectly with reference to—

- (a) a preference share; or 50  
 (b) an amount derived from a preference share;”;

- (d) by the substitution in subsection (1) in the definition of “qualifying purpose” for paragraph (a) of the following paragraph: 55

“(a) The direct or indirect acquisition of an equity share by any person in a company that is an operating company at the time of the receipt or accrual of any dividend or foreign dividend in respect of that preference share, other than a direct or indirect acquisition of an equity share from a company that, immediately before that acquisition, formed part of the same group of companies as the person acquiring that equity share;”;

- (e) by the substitution in subsection (1) in the definition of “qualifying purpose” in paragraph (b)(i) for item (aa) of the following item:  
 “(aa) The direct or indirect acquisition of an equity share by any person in a company that is an operating company at the time of the receipt or accrual of any dividend or foreign dividend in respect of that preference share, other than a direct or indirect acquisition of an equity share from a company that, immediately before that acquisition, formed part of the same group of companies as the person acquiring that equity share;”;
- (f) by the substitution in subsection (1) for the definition of “third-party backed share” of the following definition:  
 “**‘third-party backed share’** means any preference share or equity instrument in respect of which an enforcement right is exercisable by the holder of that preference share or equity instrument or an enforcement obligation is enforceable as a result of any amount of any specified dividend, foreign dividend, return of capital or foreign return of capital attributable to that share or equity instrument not being received by or accruing to any person entitled thereto;”;
- (g) by the substitution for subsection (2) of the following subsection:  
 “(2) Any dividend or foreign dividend received by or accrued to a person during any year of assessment in respect of a share or equity instrument must be deemed in relation to that person to be an amount of income received by or accrued to that person if that share or equity instrument constitutes a third-party backed share at any time during that year of assessment.”; and
- (h) by the insertion after subsection (2) of the following subsection:  
 “(2A) Where a preference share that was issued in terms of an agreement, all the terms of which were finally agreed to before 1 April 2012 by all the parties to that agreement, constitutes a third-party backed instrument solely by reason of an enforcement right acquired in accordance with the terms of that agreement and that enforcement right is cancelled on or after 26 October 2016 and on or before 31 December 2017, the provisions of subsection (2) will not apply in respect of any dividend or foreign dividend that accrues in respect of that share after the date of cancellation of that enforcement right.”.

(2) Paragraphs (a) to (g) of subsection (1) come into operation on 1 January 2017 and apply in respect of years of assessment ending on or after that date.

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

16. (1) Section 8F of the Income Tax Act, 1962, is hereby amended—
- (a) by the insertion in subsection (1) of the following definition:  
 “**‘enforcement right’** in relation to an instrument means any right, whether fixed or contingent, to require any person other than the issuer of that instrument to—  
 (a) acquire that instrument from the holder thereof;  
 (b) make any payment in respect of that instrument in terms of a guarantee, indemnity or similar arrangement; or  
 (c) procure, facilitate or assist with any acquisition contemplated in paragraph (a) or the making of any payment contemplated in paragraph (b);”;
- (b) by the substitution in subsection (1) in the definition of “hybrid debt instrument” for paragraph (b) of the following paragraph:  
 “(b) the obligation to pay an amount so owed on a date or dates falling within that year of assessment has been deferred by reason of that obligation being conditional upon the market value of the assets of that company not being less than the amount of the liabilities of that company; or”;

- (c) by the substitution in subsection (1) for the definition of “instrument” of the following definition:  
 “**‘instrument’** means any form of interest-bearing arrangement or debt that is issued by—  
 (a) a company that is a resident; 5  
 (b) a company that is not a resident if the interest in respect of that instrument is attributable to a permanent establishment of that company in the Republic; or  
 (c) a company that is a controlled foreign company as contemplated in section 9D if the interest incurred in respect of that instrument must be taken into account in determining the net income of that controlled foreign company as contemplated in that section;”; 10
- (d) by the addition in subsection (1) after the definition of “redeem” of the following definition:  
 “**‘third-party backed instrument’** means any instrument in respect of which an enforcement right is exercisable as a result of any amount relating to that instrument not being received by or accruing to any person entitled thereto.”; 15
- (e) by the substitution for subsection (2) of the following subsection:  
 “(2) Any amount of interest that— 20  
 (a) is incurred by a company in respect of an instrument on or after the date that the instrument becomes a hybrid debt instrument is—  
 (i) deemed for the purposes of this Act to be a dividend *in specie* declared and paid by that company on the last day of the year of assessment of that company during which it was incurred; 25  
 and  
 (ii) not deductible in terms of this Act; and  
 (b) is deemed for the purposes of this Act to be a dividend *in specie* that is declared and paid in respect of a share on the last day of the year of assessment of the company contemplated in paragraph (a) to the person to whom that amount accrued.”; 30
- (f) by the deletion in subsection (3) at the end of paragraph (c) of the word “or” and the addition of the following paragraph after paragraph (d):  
 “(e) that constitutes a third-party backed instrument; or”;
- (g) by the addition in subsection (3) of the following paragraph: 35  
 “(f) that constitutes a hybrid debt instrument solely in terms of paragraph (b) of the definition of hybrid debt instrument if a registered auditor, as contemplated in the Auditing Profession Act, 2005 (Act No. 26 of 2005), has certified that the payment, by a company, of an amount owed in respect of that instrument has been or is to be deferred by reason of the market value of the assets of that company being less than the amount of the liabilities of that company.”. 40
- (2) Paragraphs (a), (d) and (f) of subsection (1) come into operation on 1 January 2017 and applies in respect of years of assessment commencing on or after that date. 45
- (3) Paragraphs (b) and (g) of subsection (1) are deemed to have come into operation on 1 January 2016 and apply in respect of years of assessment commencing on or after that date.
- (4) Paragraph (c) of subsection (1) is deemed to have come into operation on 24 February 2016 and applies in respect of amounts incurred in respect of an instrument on or after that date. 50

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

17. (1) Section 8FA of the Income Tax Act, 1962, is hereby amended— 55  
 (a) by the substitution in subsection (1) for the definition of “instrument” of the following definition:  
 “**‘instrument’** means an instrument as defined in section 8F(1);”;

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

“(2) Any amount—

(a) that is incurred by a company in respect of interest on or after the date that the interest becomes hybrid interest is—

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

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

(b) is deemed for the purposes of this Act to be a dividend *in specie* that is declared and paid in respect of a share on the last day of the year of assessment of the company contemplated in paragraph (a) to the person to whom that amount accrued.”;

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

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

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

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

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

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

(3) Paragraphs (c) and (d) of subsection (1) come into operation on 1 January 2017 and apply in respect of years of assessment commencing on or after that date.

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

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

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

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

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

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

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

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

“: Provided that this subsection must not apply—

(a) in respect of any expenditure or loss to the extent that the amount of that expenditure or loss is taken into account in terms of section 8(4)(a) or section 19; or

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

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

**Amendment of section 9D of Act 58 of 1962, as inserted by section 9 of Act 28 of 1997 and amended by section 28 of Act 30 of 1998, section 17 of Act 53 of 1999, section 19 of Act 30 of 2000, section 10 of Act 59 of 2000, section 9 of Act 5 of 2001, section 22 of Act 60 of 2001, section 14 of Act 74 of 2002, section 22 of Act 45 of 2003, section 13 of Act 32 of 2004, section 14 of Act 31 of 2005, section 9 of Act 20 of 2006, sections 9 and 96 of Act 8 of 2007, section 15 of Act 35 of 2007, section 8 of Act 3 of 2008, section 13 of Act 60 of 2008, section 12 of Act 17 of 2009, sections 16 and 146 of Act 7 of 2010, section 25 of Act 24 of 2011, sections 14 and 156 of Act 22 of 2012, section 19 of Act 31 of 2013, section 12 of Act 43 of 2014 and section 13 of Act 25 of 2015**

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

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

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

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

“(bb) after disregarding any loss arising during foreign tax years **[or from a company other than that controlled foreign company]** ending after the date that foreign company became a controlled foreign company; and”;

(c) by the deletion in subsection (9)(d) of subparagraph (iii).

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

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

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

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

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

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

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

“Where a controlled foreign company ceases to be a controlled foreign company during any foreign tax year of that controlled foreign company as contemplated in paragraph [(a)(ii)](b)—”.

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

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

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

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

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

“(b) as having disposed of that asset for an amount received or accrued that is equal to, in the case of—

(i) trading stock, or livestock or produce contemplated in the First Schedule, the amount that was allowed as a deduction in respect of that asset for purposes of determining that person’s taxable income, before the inclusion of any taxable capital

gain, for the year of assessment ending on the date of that person's death; or

- (ii) any other asset, the base cost of that asset, as contemplated in the Eighth Schedule, as at the date of that person's death.”.

(2) Subsection (1) is deemed to have come into operation on 1 March 2016 and applies in respect of a person that dies on or after that date. 5

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

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

- (a) by the insertion in subsection (1) after paragraph (bA) of the following paragraph: 35

“(bB) the receipts and accruals of the—

- (i) African Development Bank established on 10 September 1964; 40  
 (ii) World Bank established on 27 December 1945 including the International Bank for Reconstruction and Development and International Development Association;  
 (iii) International Monetary Fund established on 27 December 1945;  
 (iv) African Import and Export Bank established on 8 May 1993; 45  
 (v) European Investment Bank established on 1 January 1958 under the Treaty of Rome;  
 (vi) New Development Bank established on 15 July 2014;”;

- (b) by the substitution in subsection (1)(gC) for subparagraph (ii) of the following subparagraph: 50

“(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) excluding any amount transferred to that fund from a source outside the Republic in respect of that member;”;

- (c) by the deletion in subsection (1) of paragraph (hB); 55

- (d) by the addition in the proviso to subsection (1)(k)(i) after paragraph (ii) of the following paragraph:
- “(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 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;
- (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 not a restricted equity instrument as defined in section 8C, that will, on vesting be subject to that section;”.
- (e) by the substitution in subsection (1)(q) in paragraph (ii) of the proviso for subparagraph (aa) of the following subparagraph
- “(aa) if the remuneration proxy derived by the employee in relation to a year of assessment exceeded [R250 000] R400 000; and”;
- (f) by the substitution in subsection (1)(q) in paragraph (ii)(bb)(A) of the proviso for the words preceding subitem (AA) of the following words:
- “[R10 000] R15 000 in respect of—”;
- (g) by the substitution in subsection (1)(q) in paragraph (ii)(bb) of the proviso for item (B) of the following item:
- “(B) [R30 000] R40 000 in respect of a qualification to which an NQF level from 5 up to and including 10 has been allocated in accordance with Chapter 2 of the National Qualifications Framework Act, 2008 (Act No. 67 of 2008);”;
- (h) by the substitution in subsection (1)(t) after subparagraph (xvi) for the colon of a semi-colon and by the addition of the following subparagraph:
- “(xvii) of the National Housing Finance Corporation established in 1996 by the National Department of Human Settlements;”.
- (2) Paragraph (b) of subsection (1) comes into operation on 1 March 2017 and applies in respect of years of assessment commencing on or after that date.
- (3) Paragraph (c) of subsection (1) comes into operation on 1 January 2017.
- (4) Paragraph (d) of subsection (1) comes into operation on 1 March 2017 and applies in respect of any amount received or accrued on or after that date.
- (5) Paragraphs (e), (f), and (g) of subsection (1) come into operation on 1 March 2016 and apply in respect of years of assessment commencing on or after that date.
- (6) Paragraph (h) is deemed to have come into operation 1 April 2016 and applies in respect of receipts and accruals on or after that date.

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

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

- (a) by the addition to subsection (7) of the following paragraph:
- “(c) Where the capital element of annuity amounts has been calculated as provided in subsection (4) or has been re-calculated as provided in subsection (6)(b), the calculation or re-calculation shall apply in respect of all annuity amounts which become due to any person under the annuity contract in question and shall also apply to any year of assessment subsequent to the year of assessment in which the calculation or re-calculation took place.”; and

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

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



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

25. (1) Section 10B of the Income Tax Act, 1962, is hereby amended by the substitution for subsection (6) of the following subsection: 5

“(6) Subsections (2) and (3) do not apply to any foreign dividend received by or accrued to a person in respect of—

(a) services rendered or to be rendered or in respect of or by virtue of employment or the holding of any office, other than a foreign dividend in respect of a share held by that person; or 10

(b) a restricted equity instrument as defined in section 8C that was acquired in the circumstances contemplated in that section if that foreign dividend is derived directly or indirectly from, or constitutes—

(i) an amount—

(aa) transferred or applied by a company as consideration for the acquisition or redemption of any share in that company; or 15

(bb) received or accrued in anticipation or in the course of the winding up, liquidation, deregistration or final termination of a company; or

(ii) an equity instrument that is not a restricted equity instrument as defined in section 8C that will, on vesting, be subject to that section.”. 20

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

**Amendment of section 11 of Act 58 of 1962, as amended by section 9 of Act 90 of 1962, section 8 of Act 72 of 1963, section 9 of Act 90 of 1964, section 11 of Act 88 of 1965, section 12 of Act 55 of 1966, section 11 of Act 95 of 1967, section 9 of Act 76 of 1968, section 14 of Act 89 of 1969, section 10 of Act 52 of 1970, section 10 of Act 88 of 1971, section 8 of Act 90 of 1972, section 9 of Act 65 of 1973, section 12 of Act 85 of 1974, section 9 of Act 69 of 1975, section 9 of Act 113 of 1977, section 5 of Act 101 of 1978, section 8 of Act 104 of 1979, section 8 of Act 104 of 1980, section 9 of Act 96 of 1981, section 7 of Act 91 of 1982, section 10 of Act 94 of 1983, section 11 of Act 121 of 1984, section 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** 25 30 35 40 45

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

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

“save as provided in paragraph 12 (2) of the First Schedule, such sum as the Commissioner may think just and reasonable as representing the amount by which the value of any machinery, plant, implements, utensils and articles (other than machinery, plant, implements, utensils and articles in respect of which a deduction may be granted under section 12B, 12C, 12DA, 12E(1), 12U or 37B) owned by the taxpayer or acquired by the taxpayer as purchaser in terms of an agreement contemplated in paragraph (a) of the definition of ‘installment credit agreement’ in section 1 of the Value-Added Tax Act and used by the taxpayer for the purpose of his or her trade has been diminished by reason of wear and tear or depreciation during the year of assessment:”;

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

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

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

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

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

(3) Paragraphs (b) and (c) of subsection (1) are deemed to have come into operation on 1 March 2016.

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

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

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

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

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

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

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

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

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

**Amendment of section 12E of Act 58 of 1962, as inserted by section 12 of Act 19 of 2001 and amended by section 17 of Act 30 of 2002, section 21 of Act 74 of 2002, section 37 of Act 12 of 2003, section 31 of Act 45 of 2003, section 9 of Act 9 of 2005, section 21 of Act 31 of 2005, section 24 of Act 9 of 2006, section 14 of Act 20 of 2006, section 15 of Act 8 of 2007, section 25 of Act 35 of 2007, section 13 of Act 3 of 2008, section 23 of Act 60 of 2008, section 21 of Act 17 of 2009, section 23 of Act 7 of 2010, section 34 of Act 24 of 2011, section 25 of Act 22 of 2012, section 7 of Act 23 of 2013, section 35 of Act 31 of 2013, section 20 of Act 43 of 2014 and section 21 of Act 25 of 2015**

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

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

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

**Amendment of section 12H of Act 58 of 1962, as substituted by section 23 of Act 17 of 2009 and amended by section 25 of Act 7 of 2010, section 36 of Act 24 of 2011, section 27 of Act 22 of 2012 and section 21 of Act 43 of 2014**

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

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

“(b) entered into between a learner and an employer before [1 October 2016] 1 April 2022;”;

(b) by the substitution for subsections (2), (3) and (4) of the following subsections:

“(2) (a) In addition to any deductions allowable in terms of this Act and subject to paragraph (b), where—

(i) during any year of assessment a learner who holds a qualification to which an NQF level from 1 up to and including 6 has been allocated in accordance with Chapter 2 of the National Qualifications Framework Act, 2008 (Act No. 67 of 2008) is a party to a registered learnership agreement with an employer; and

(ii) that agreement was entered into pursuant to a trade carried on by that employer,

there must, in that year, be allowed to be deducted from the income derived by that employer from that trade an amount of R40 000.

(b) Where a learner is a party to a registered learnership agreement as contemplated in paragraph (a) for a period of less than 12 full months during the year of assessment contemplated in paragraph (a), the amount that is allowed to be deducted in terms of that paragraph must be limited to an amount which bears to an amount of R40 000 the same ratio as the number of full months that the learner is a party to that agreement bears to 12.

(c) If a registered learnership agreement is registered as contemplated in paragraph (a) of the definition of ‘registered learnership agreement’ within a period of 12 months after the last day of the year of assessment contemplated in paragraph (a), the registered learnership agreement must be deemed to have been so registered on the date on which the registered learnership agreement was entered into as contemplated in paragraph (b) of that definition.

(2A) (a) In addition to any deductions allowable in terms of this Act and subject to paragraph (b), where—

(i) during any year of assessment a learner who holds a qualification to which an NQF level from 7 up to and including 10 has been allocated in accordance with Chapter 2 of the National Qualifica-

- tions Framework Act, 2008 (Act No. 67 of 2008) is a party to a registered learnership agreement with an employer; and
- (ii) that agreement was entered into pursuant to a trade carried on by that employer,
- there must, in that year, be allowed to be deducted from the income derived by that employer from that trade an amount of R20 000. 5
- (b) Where a learner is a party to a registered learnership agreement as contemplated in paragraph (a) for a period of less than 12 full months during the year of assessment contemplated in paragraph (a), the amount that is allowed to be deducted in terms of that paragraph must be limited to an amount which bears to an amount of R20 000 the same ratio as the number of full months that the learner is a party to that agreement bears to 12. 10
- (c) If a registered learnership agreement is registered as contemplated in paragraph (a) of the definition of 'registered learnership agreement' within a period of 12 months after the last day of the year of assessment contemplated in paragraph (a), the registered learnership agreement must be deemed to have been so registered on the date on which the registered learnership agreement was entered into as contemplated in paragraph (b) of that definition 15 20
- (3) In addition to any deductions allowable in terms of this Act, where—
- (a) during any year of assessment a learner who holds a qualification to which an NQF level from 1 up to and including 6 has been allocated in accordance with Chapter 2 of the National Qualifications Framework Act, 2008 (Act No. 67 of 2008) is a party to a registered learnership agreement with an employer for a period of less than 24 full months; 25
- (b) that agreement was entered into pursuant to a trade carried on by that employer; and 30
- (c) that learner successfully completes that learnership during that year of assessment,
- there must, in that year, be allowed to be deducted from the income derived by that employer from that trade an amount of R40 000. 35
- (3A) In addition to any deductions allowable in terms of this Act, where—
- (a) during any year of assessment a learner who holds a qualification to which an NQF level from 7 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) is a party to a registered learnership agreement with an employer for a period of less than 24 full months; 40
- (b) that agreement was entered into pursuant to a trade carried on by that employer; and
- (c) that learner successfully completes that learnership during that year of assessment, 45
- there must, in that year, be allowed to be deducted from the income derived by that employer from that trade an amount of R20 000.
- (4) In addition to any deductions allowable in terms of this Act, where— 50
- (a) during any year of assessment a learner who holds a qualification to which an NQF level from 1 up to and including 6 has been allocated in accordance with Chapter 2 of the National Qualifications Framework Act, 2008 (Act No. 67 of 2008) to a registered learnership agreement with an employer for a period that equals or exceeds 24 full months; 55
- (b) that agreement was entered into pursuant to a trade carried on by that employer; and
- (c) that learner successfully completes that learnership during that year of assessment, 60
- there must, in that year, be allowed to be deducted from the income derived by that employer from that trade an amount of R40 000

multiplied by the number of consecutive 12 month periods within the duration of that agreement.

(4A) In addition to any deductions allowable in terms of this Act, where—

- (a) during any year of assessment a learner is a party who holds a qualification to which an NQF level from 7 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) to a registered learnership agreement with an employer for a period that equals or exceeds 24 full months;
- (b) that agreement was entered into pursuant to a trade carried on by that employer; and
- (c) that learner successfully completes that learnership during that year of assessment,

there must, in that year, be allowed to be deducted from the income derived by that employer from that trade an amount of R20 000 multiplied by the number of consecutive 12 month periods within the duration of that agreement.

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

(5A) Where a learner contemplated in subsection (2A), (3A) or (4A) is a person with a disability (as defined in section 6B (1)) at the time of entering into the learnership agreement, the amounts contemplated in subsection (2A), (3A) or (4A) must be increased by an amount of R30 000.”.

(2) Subsection (1) is deemed to have come into operation on 1 October 2016 and applies in respect of learnership agreements entered into on or after that date.

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

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

- (a) by the insertion after subsection (12) of the following subsection: 35

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

- (b) by the substitution in subsection (13) for the full stop at the end of paragraph (c) of a semi-colon and by the addition after paragraph (c) of the following paragraph: 50

“(d) where the approval granted in respect of that industrial policy project as an industrial policy project with preferred status was withdrawn and substituted as an industrial policy project with qualifying status as contemplated in subsection (12A), make an appropriate adjustment to the taxable income of that company during the year of assessment in which that approval is substituted in relation to all deductions of the company as at the end of that year of assessment, having regard to all amounts which would have been deemed to have been incurred by that company had the 55 60

provisions of this paragraph not been applicable during all years of assessment before that year of assessment and all amounts which have been deducted from the income of that company during those years of assessment.”;

- (c) by the substitution for subsection (14) of the following subsection: 5  
 “(14) The Commissioner may, notwithstanding the provisions of sections 99 and 100 of the Tax Administration Act, raise an additional assessment for any year of assessment where—  
 (a) an additional investment allowance which has been allowed in any previous year must be disallowed in terms of subsection (12) or (13); or 10  
 (b) an adjustment must be made as contemplated in subsection (13)(d).”; and  
 (d) by the substitution in subsection (19) for paragraph (a) of the following paragraph: 15  
 “(a) may, after taking into account the recommendations of the adjudication committee, extend the periods contemplated in subsections (2) [**and**], (6)(b) and (7)(c) by a period not exceeding one year.”.

**Amendment of section 12J of Act 58 of 1962, as inserted by section 27 of Act 60 of 2008 and amended by section 25 of Act 17 of 2009 and section 38 of Act 24 of 2011, section 271 of Act 28 of 2011, read with item 37 of Schedule 1 to that Act, section 36 of Act 31 of 2013, section 23 of Act 43 of 2014 and section 23 of Act 25 of 2015** 20

**32.** (1) Section 12J of the Income Tax Act, 1962, is hereby amended by the substitution for subsection (3A) of the following subsection: 25

- “(3A) If, at the end of any year of assessment, after the expiry of a period of 36 months commencing on the first date of the issue of venture capital shares a taxpayer has incurred expenditure as contemplated in subsection (2) and that taxpayer is a connected person in relation to that venture capital company—  
 (a) no deduction must be allowed in terms of subsection (2) in respect of that year of assessment in respect of any expenditure incurred by the taxpayer in acquiring any venture capital share issued to that taxpayer by that venture capital company: 30  
 (b) the Commissioner must, after due notice to the venture capital company, withdraw any approval in terms of subsection (5) with effect from the date of that approval by the Commissioner of that company as a venture capital company in terms of that subsection; and 35  
 (c) the Commissioner must withdraw the approval of that company in terms of subsection (5) and an amount equal to 125 per cent of the expenditure incurred by any person to acquire shares issued by the company must be included in the income of the company in the year of assessment in which the approval is withdrawn by the Commissioner, 40  
 if corrective steps acceptable to the Commissioner are not taken by the company within a period stated in the notice contemplated in paragraph (b).”.
- (2) Subsection (1) comes into operation on 1 January 2017. 45

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

- 33.** (1) Section 12P of the Income Tax Act, 1962, is hereby amended—  
 (a) by the substitution in subsection (1) for the definition of “government grant” of the following definition: 50  
 “‘**government grant**’ means a grant-in-aid, subsidy or contribution by the government of the Republic in the national [**or**], provincial or local sphere.”; and  
 (b) by the substitution in subsection (2A) for paragraph (b) of the following paragraph: 55  
 “(b) [**to the extent**] that person is required in terms of that Public Private Partnership to expend an amount at least equal to that amount in respect of any improvements on land or to buildings

owned by any sphere of government or over which any sphere of government holds a servitude.”.

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

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

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

- (a) by the deletion of subsection (2);
- (b) by the substitution in subsection (4)(a) for the words preceding subparagraph (i) of the following words:
  - “**subsection (2) and section 12S do not apply to any qualifying company that** a company is not a qualifying company if that company conducts any of the following activities classified under ‘section C: Manufacturing’ in the SIC Code:”;
- (c) by the substitution in subsection (4) for paragraph (b) of the following paragraph:
  - “**subsection (2) does not apply to any qualifying company** a company that conducts any activity classified in the SIC Code, which the Minister of Finance may designate by notice in the *Gazette* is not a qualifying company; or”;
- (d) by the substitution in subsection (4)(c) for the words preceding subparagraph (i) of the following words:
  - “**a company is not a qualifying company if—**”.

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

35. Section 12S of the Income Tax Act, 1962, is hereby amended—

- (a) by the substitution for subsection (1) of the following subsection:
  - “(1) For the purposes of this section, ‘**qualifying company**’ means a qualifying company as defined in section 12R, notwithstanding section 12R(4).”;
- (b) by the substitution for subsection (8) of the following subsection:
  - “(8) The Commissioner may, notwithstanding the provisions of **[Chapter 6]** sections 99 and 100 of the Tax Administration Act disallow all deductions otherwise provided for under this section if a qualifying company is guilty of fraud or misrepresentation or non-disclosure of material facts with regard to any tax, duty or levy administered by the Commissioner.”.

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

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

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

**12U.** (1) There must be allowed to be deducted by a person any amount actually incurred during the year of assessment in which that expenditure is incurred, subject to subsection (3), in respect of—

- (a) the construction of any road or the erecting of any fence and a foundation or supporting structure designed for such a fence for the purpose of trade of that person of generation of electricity which exceeds 5 megawatts from—
  - (i) wind power;
  - (ii) solar energy;
  - (iii) hydropower to produce electricity of not more than 30 megawatts; or
  - (iv) biomass comprising organic wastes, landfill gas or plant material; or

- (b) improvements (other than repairs) to—
- (i) any road or fence contemplated in paragraph (a); or
  - (ii) foundation or supporting structure designed for such a fence, subject to subsection (2).
- (2) For the purpose of any deduction under subsection (1)—
- (a) the foundation or supporting structure designed for a fence must be constructed in such manner that the foundation or supporting structure is or should be regarded as being integrated with that fence; and
  - (b) the useful life of the foundation or supporting structure is or will be limited to the useful life of that fence.
- (3) For purposes of deduction under subsection (1) any expenditure—
- (a) actually incurred by that person prior to the commencement of and in preparation for carrying on that trade;
  - (b) which would have been allowed as a deduction in terms of subsection (1) had the expenditure been incurred after that person commenced carrying on that trade; and
  - (c) which was not allowed as a deduction in any previous year of assessment,
- shall be allowed as a deduction in terms of this section.”.

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

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

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

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

**Amendment of section 13quat of Act 58 of 1962, as inserted by section 33 of Act 45 of 2003 and amended by section 12 of Act 16 of 2004, section 19 of Act 32 of 2004, section 23 of Act 31 of 2005, section 16 of Act 8 of 2007, section 5 of Act 4 of 2008, section 29 of Act 60 of 2008, sections 29 and 106 of Act 17 of 2009, section 33 of Act 7 of 2010, section 41 of Act 24 of 2011, section 34 of Act 22 of 2012, section 48 of Act 31 of 2013 and section 32 of Act 25 of 2015**

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

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

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

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



- (ii) that area is demarcated through formal resolution by the relevant municipal council;
- (iii) that area is prioritised in that municipality's integrated development plan adopted and undertaken in terms of Chapter 5 of the Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000) as a priority area for further investments to promote business or industrial activity or residential settlements to support such activity;
- (iv) that area proportionately contributes or previously contributed a significant portion of the total revenue collections for all areas located within the current boundaries of that municipality, as measured in the form of—
  - (aa) property rates; or
  - (bb) assessed property values,
 and where the contribution from that area is undergoing a sustained real or nominal decline; and
- (v) significant fiscal measures have been implemented by that municipality to support the regeneration of that area, including—
  - (aa) the appropriation of significant funds for developing the area in the annual budget of the municipality;
  - (bb) special tariffs for categories of residential, commercial or industrial users; or
  - (cc) partnership arrangements with the business community for the promotion of urban development within that area;
 or
- (b) that area is approved by the Minister by notice in the *Gazette*, after application by a Municipality in the form and manner and at the place and time that the Minister prescribes, if the area complies with criteria as the Minister must prescribe by Regulation."; and
- (b) by the substitution in subsection (7) for paragraph (bA) of the following paragraph:
  - “(bA) Where a municipality has a population of less than 1 million persons the Minister may by notice in the *Gazette* approve that municipality for the purposes of paragraph (b) in terms of subsection (6)(c).”.

**Amendment of section 20 of Act 58 of 1962, as amended by section 13 of Act 90 of 1964, section 18 of Act 88 of 1965, section 13 of Act 76 of 1968, section 18 of Act 89 of 1969, section 15 of Act 65 of 1973, section 8 of Act 101 of 1978, section 18 of Act 94 of 1983, section 19 of Act 101 of 1990, section 16 of Act 113 of 1993, section 17 of Act 21 of 1995, section 15 of Act 28 of 1997, section 26 of Act 30 of 2000, section 27 of Act 59 of 2000, section 23 of Act 74 of 2002, section 35 of Act 45 of 2003, section 19 of Act 8 of 2007, section 32 of Act 35 of 2007, section 15 of Act 3 of 2008, section 35 of Act 60 of 2008, section 32 of Act 17 of 2009, section 37 of Act 22 of 2012, section 54 of Act 31 of 2013 and section 31 of Act 43 of 2014**

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

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

- (b) by the substitution in subsection (1)(b) for the words preceding the proviso of the following words:  
 “any assessed loss incurred by **[the taxpayer]** a person during the same year of assessment in carrying on any other trade either alone or in partnership with others, otherwise than as a member of a company the capital whereof is divided into shares:”; and 5
- (c) by the substitution for subsection (2A) of the following subsection:  
 “(2A) In the case of any **[taxpayer]** person other than a company—
- (a) the provisions of subsections (1) and (2) shall *mutatis mutandis* apply for the purpose of determining the taxable income derived by such **[taxpayer]** person otherwise than from carrying on any trade, the reference in subsection (1) to ‘taxable income derived by any person from carrying on any trade’ and the reference in that subsection to ‘the income so derived’ being respectively construed as including a reference to taxable income derived by **[the taxpayer]** that person otherwise than from carrying on any trade and a reference to income so derived; and 10 15
- (b) the said **[taxpayer]** person shall, subject to the provisos to subsection (1), not be prevented from carrying forward a balance of assessed loss merely by reason of the fact that he has not derived any income during any year of assessment.”. 20

**Amendment of section 22 of Act 58 of 1962, as amended by section 8 of Act 6 of 1963, section 14 of Act 90 of 1964, section 21 of Act 89 of 1969, section 23 of Act 85 of 1974, section 20 of Act 69 of 1975, section 15 of Act 103 of 1976, section 20 of Act 94 of 1983, section 19 of Act 121 of 1984, section 14 of Act 65 of 1986, section 5 of Act 108 of 1986, section 21 of Act 101 of 1990, section 22 of Act 129 of 1991, section 17 of Act 113 of 1993, section 1 of Act 168 of 1993, section 19 of Act 21 of 1995, section 12 of Act 36 of 1996, section 25 of Act 53 of 1999, section 27 of Act 30 of 2000, section 12 of Act 5 of 2001, section 24 of Act 74 of 2002, section 37 of Act 45 of 2003, section 16 of Act 3 of 2008, section 36 of Act 60 of 2008, section 39 of Act 7 of 2010, section 45 of Act 24 of 2011, section 40 of Act 22 of 2012, section 55 of Act 31 of 2013, section 32 of Act 43 of 2014 and section 37 of Act 25 of 2015** 25 30

- 40.** (1) Section 22 of the Income Tax Act, 1962, is hereby amended—
- (a) by the substitution in subsection (8)(b) for subparagraph (ii) of the following subparagraph: 35  
 “(ii) taxpayer has disposed of trading stock, other than in the ordinary course of his or her trade **[or has disposed of an asset to his or her surviving spouse as contemplated in section 9HA(2),]** for a consideration less than the market value thereof;”; and
- (b) by the substitution in subsection (9) for paragraphs (a) to (d) of the following paragraphs respectively: 40
- “(a) (i) the trading stock of any person during any year of assessment includes any security or any bond issued by the government of the Republic in the national or local sphere if that bond is listed on a recognised exchange as defined in paragraph 1 of the Eighth Schedule; 45  
 (ii) such person has, during such year of assessment, lent such security or such bond to a borrower in terms of a securities lending arrangement; and  
 (iii) a security or a bond that is an identical security or such same bond has not been returned by the borrower to such person at the end of such year of assessment, such security or such bond shall, for the purposes of this section, be deemed to be trading stock held and not disposed of by such person at the end of such year of assessment; 50 55
- (b) (i) the trading stock of any other person during any year of assessment includes any security or any bond issued by the government of the Republic in the national or local sphere if that bond is listed on a recognised exchange as defined in paragraph 1 of the Eighth Schedule; 60

- (ii) such other person has, during such year of assessment, borrowed such security or such bond from a lender in terms of a securities lending arrangement; and
- (iii) a security that is an identical security or that same bond has not been returned by such other person to such lender at the end of such year of assessment,

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

- (c) (i) the trading stock of any person during any year of assessment includes any share or any bond issued by the government of the Republic in the national or local sphere if that bond is listed on a recognised exchange as defined in paragraph 1 of the Eighth Schedule;
- (ii) that person has, during that year of assessment, transferred that share or that bond to a transferee in terms of a collateral arrangement; and
- (iii) a share that is an identical share to the share contemplated in subparagraph (ii) or that same bond has not been returned by the transferee to that person at the end of that year of assessment,

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

- (d) (i) the trading stock of any transferee during any year of assessment includes any share or any bond issued by the government of the Republic in the national or local sphere if that bond is listed on a recognised exchange as defined in paragraph 1 of the Eighth Schedule;
- (ii) that transferee has, during such year of assessment, acquired such share or such bond from a transferor in terms of a collateral arrangement; and
- (iii) a share that is an identical share to the share contemplated in subparagraph (ii) or that same bond has not been returned by such transferee to such transferor at the end of such year of assessment,

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(2) Paragraph (b) of subsection (1) is deemed to have come into operation on 1 March 2015 and applies in respect of amounts received or accrued on or after that date.

**Amendment of section 24I of Act 58 of 1962, as inserted by section 21 of Act 113 of 1993 and amended by section 11 of Act 140 of 1993, section 18 of Act 21 of 1994, section 13 of Act 36 of 1996, section 18 of Act 28 of 1997, section 35 of Act 30 of 1998, section 26 of Act 53 of 1999, section 31 of Act 59 of 2000, section 36 of Act 60 of 2001, section 27 of Act 74 of 2002, section 42 of Act 45 of 2003, section 23 of Act 32 of 2004, section 33 of Act 31 of 2005, section 26 of Act 9 of 2006, section 19 of Act 20 of 2006, section 23 of Act 8 of 2007, section 40 of Act 35 of 2007, section 20 of Act 3 of 2008, section 38 of Act 17 of 2009, section 47 of Act 7 of 2010, section 52 of Act 24 of 2011, section 53 of Act 22 of 2012, section 68 of Act 31 of 2013, section 40 of Act 43 of 2014 and section 44 of Act 25 of 2015**

44. (1) Section 24I of the Income Tax Act, 1962, is hereby amended by the insertion after subsection (3) of the following subsection:

“(4) Subject to section 11, in determining the taxable income of any person contemplated in subsection (2) in respect of a debt owing to that person as referred to in paragraph (b) of the definition of exchange item, to the extent that it has become bad—

- (a) the amount of any foreign exchange gain, relating to that debt, that is or was included in the income of that person in the current or any previous year of assessment must be deducted from the income of that person; and
- (b) the amount of any foreign exchange loss, relating to that debt, that is or was deducted from the income of that person in the current or any previous year of assessment must be included in the income of that person.”.

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

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

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

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

**Amendment of section 24JB of Act 58 of 1962, as 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** 5

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

“(a) any authorised user as defined in section 1 of the Financial Markets Act that is a company, other than any company of which the principal trading activities constitute the activities of a treasury operation;” 10

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

**Amendment of section 25 of Act 58 of 1962, as substituted by section 22 of Act 113 of 1993 and section 48 of Act 25 of 2015** 15

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

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

“(a) other than an asset contemplated in section 9HA(2), be treated as having acquired that asset for an amount of expenditure incurred equal to the **[market value of that asset as at the date of the death of that deceased person]** amount contemplated in section 9HA(1); and”; and 20

(b) by the substitution for subsection (4) of the following subsection: 25

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

(i) allowance or deduction to which that spouse may be entitled or that is to be recovered or recouped by or included in the income of that spouse in respect of that asset; or 30

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

(b) The surviving spouse contemplated in paragraph (a) must be treated as one and the same person as the deceased person and deceased estate with respect to— 35

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

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

(iii) the amount of any expenditure and the date on which and the currency in which that expenditure was incurred in respect of that asset— 40

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

(bb) by that deceased estate, other than the expenditure contemplated in section 9HA(2)(b); 45

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

(v) any allowance or deduction allowable in respect of that asset to the deceased person and the deceased estate.” 50

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

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

48. (1) Section 25BB of the Income Tax Act, 1962, is hereby amended—
- (a) by the deletion in the definition of “rental income” at the end of paragraph (c) of the word “or”, by the substitution for the full stop at the end of paragraph (d) of the expression “;or” and by the addition of the following paragraph:  
 “(e) any amount recovered or recouped in terms of section 8(4) in respect of an amount of an allowance previously deducted in terms of section 11(g), 13, 13bis, 13ter, 13quat, 13quin or 13sex.”;
- (b) by the substitution in subsection (2A) for the words following paragraph (a)(ii) of the following words:  
 “so much of any amount of tax on income proved to be payable by that trust to the government of a country other than the Republic as is attributable to the interest of that REIT or controlled company in that trust, without any right of recovery of that tax by any person, must be allowed to be deducted by that REIT or controlled company before taking into account any deduction in terms of subsection (2)(a);”;
- (c) by the substitution in subsection (2A) for paragraph (b) of the following paragraph:  
 “(b) there must be allowed as a deduction from the income of that REIT or that controlled company the sum of any taxes on income proved to be payable, by that REIT or that controlled company in respect of any amount to any sphere of government of any country other than the Republic, without any right of recovery by any person other than a right of recovery in terms of any entitlement to carry back losses arising during any year of assessment[**to any year of assessment prior to such year of assessment**], limited to the amount of taxable income that is attributable to those amounts, before taking into account any deduction in terms of paragraph (c) and subsection (2)(a); and”;
- (d) by the substitution in subsection (6) for paragraph (a) of the following paragraph:  
 “(6)(a) Any amount of interest received by or accrued to a person during a year of assessment in respect of a debenture forming part of a linked unit held by that person in a company that is—  
 (i) a REIT or a controlled company that is a resident must **[if that company or controlled company is a resident]** be deemed to be a dividend received by or accrued to that person; or **[if that company or]**  
 (ii) a controlled company that is a foreign company must be deemed to be a foreign dividend received by or accrued to that person, during that year of assessment.”; and
- (e) by the substitution in subsection (6)(c) for subparagraph (i) of the following subparagraph:  
 “(i) to be a dividend paid by that REIT or that controlled company that is a resident for the purposes of the dividends tax contemplated in Part VIII of this Chapter; and”.
- (2) Paragraph (a) of subsection (1) is deemed to have come into operation on 1 January 2016 and applies in respect of years of assessment ending on or after that date.
- (3) Paragraphs (b) and (c) of subsection (1) are deemed to have come into operation on 1 January 2016 and apply in respect of years of assessment commencing on or after that date.
- (4) Paragraph (e) of subsection (1) comes into operation on 1 January 2017 and applies in respect of amounts paid on or after that date.

**Amendment of section 28 of Act 58 of 1962, as amended by section 17 of Act 90 of 1962, section 22 of Act 55 of 1966, section 24 of Act 89 of 1969, section 21 of Act 88 of 1971, section 19 of Act 65 of 1973, section 19 of Act 91 of 1982, section 22 of Act 94 of 1983, section 17 of Act 65 of 1986, section 23 of Act 90 of 1988, section 13 of Act 70 of 1989, section 25 of Act 101 of 1990, section 29 of Act 129 of 1991, section 24 of Act 113 of 1993, section 19 of Act 21 of 1994, section 33 of Act 30 of 2000,**

**section 42 of Act 35 of 2007, section 40 of Act 60 of 2008, section 40 of Act 17 of 2009, section 51 of Act 7 of 2010, section 61 of Act 22 of 2012, section 76 of Act 31 of 2013 and section 52 of Act 25 of 2015**

**49.** (1) Section 28 of the Income Tax Act, 1962, is hereby amended by the substitution in subsection (3) for the words preceding paragraph (a) of the following words: 5

“Notwithstanding section 23(e), for the purpose of determining the taxable income derived during any year of assessment by any short-term insurer that is a resident from carrying on short-term insurance business, there shall be allowed as a deduction from the income of that short-term insurer an amount equal to the sum of liabilities on investment contracts relating to short-term insurance business in accordance with IFRS as reported by that short-term insurer in its audited annual financial statements, and amounts recognised as insurance liabilities, in accordance with IFRS by that short-term insurer in its audited annual financial statements, relating to—”.

(2) Subsection (1) comes into operation on the date on which the Insurance Act, 2016 comes into operation and applies in respect of years of assessment ending on or after that date. 15

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

**50.** (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: 25

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

(a) (i) the amount of the liabilities in respect of policies of the insurer, net of amounts recognised as recoverable under policies of reinsurance, determined in accordance with IFRS as annually reported by the insurer to shareholders in the audited annual financial statements in respect of policies allocated to that fund; 30

(ii) for a policyholder fund the amount of deferred tax liabilities, determined in accordance with IFRS as annually reported by the insurer to shareholders in the audited annual financial statements, in respect of assets allocated to that policyholder fund; 35

(iii) the amount calculated in terms of subsection (14) if a phasing-in amount is determined in terms of subsection (15)(a); and 40

(b) if the phasing-in amount is determined in terms of subsection (15)(b), reduced by the amount calculated in terms of subsection (14);” 45

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

“(a) any policy issued by the insurer during any year of assessment of that insurer commencing on or after 1 January 2016 under which the benefits payable— 50

(i) cannot exceed the amount of premiums receivable, except where all or substantially the whole of the policy benefits are payable due to death, disablement, illness or unemployment and excludes a contract of insurance in terms of which annuities are being paid; or 55

(ii) other than benefits payable due to death, disablement, illness or unemployment, cannot exceed the amount of premiums receivable and excludes a contract of insurance in terms of which annuities are being paid; or”

- (c) by the substitution in subsection (1) for the definition of “value of liabilities” of the following definition:  
 “**‘value of liabilities’** means, in respect of a policyholder fund or a risk policy fund, an amount equal to the value of the liabilities of the insurer in respect of the business conducted by it in the fund concerned calculated on the basis as shall be determined by the chief actuary of the Financial Services Board, appointed in terms of section 13 of the Financial Services Board Act, in consultation with the Commissioner;”;
- (d) by the substitution in subsection (11)(a)(iii) for the proviso of the following proviso:  
 “: Provided that the amount of the deduction in terms of this subparagraph shall not exceed the taxable income of the policyholder fund before deducting an amount in terms of this subparagraph;”;
- (e) by the substitution in subsection (11) for paragraph (h) of the following paragraph:  
 “(h) no amount may be deducted, other than in the corporate fund or risk policy fund, by way of an allowance in respect of an asset as defined in the Eighth Schedule other than a financial instrument.”;
- (f) by the substitution for subsection (12) of the following subsection:  
 “(12) In the allocation of any receipt, accrual, asset, expenditure [or], liability or payment to any fund contemplated in subsection (4), an insurer shall, when establishing such fund and at all times thereafter—  
 (a) to the extent to which such receipt, accrual, asset, expenditure [or], liability or payment relates exclusively to business conducted by it in any one fund, allocate such receipt, accrual, asset, expenditure [or], liability or payment to that fund; and  
 (b) to the extent to which such receipt, accrual, asset, expenditure [or], liability or payment does not relate exclusively to business conducted by it in any one fund, allocate such receipt, accrual, asset, expenditure [or], liability or payment in a manner which is consistent with and appropriate to the manner in which its business is conducted.”;
- (g) by the substitution in subsection (13B)(d)(ii) for the words preceding item (aa) of the following words:  
 “the policyholder fund that disposes of that asset and [that] the risk policy fund that acquires that asset must, for purposes of determining any capital gain or capital loss by the risk policy fund that acquires that asset in respect of a disposal of that asset, be deemed to be one and the same person with respect to—”; and
- (h) by the addition of the following subsections:  
 “(14) The amount referred to in the definition of adjusted IFRS value in respect of the phasing-in amount is in respect of—  
 (a) the first year of assessment ending on or after the date on which the Insurance Act, 2016, comes into operation, which will be 83.3 per cent of the phasing-in amount;  
 (b) the second year of assessment ending on or after the date on which the Insurance Act, 2016, comes into operation, which will be 66.7 per cent of the phasing-in amount;  
 (c) the third year of assessment ending on or after the date on which the Insurance Act, 2016, comes into operation, which will be 50 per cent of the phasing-in amount;  
 (d) the fourth year of assessment ending on or after the date on which the Insurance Act, 2016, comes into operation, which will be 33.3 per cent of the phasing-in amount; and  
 (e) the fifth year of assessment ending on or after the date on which the Insurance Act, 2016, comes into operation, which will be 16.7 per cent of the phasing-in amount.  
 (15) For the purposes of subsection (14) **‘phasing-in amount’** in relation to a policyholder fund or the risk policy fund means—  
 (a) if the amount of negative liabilities that has been recognised in accordance with IFRS as reported by the insurer to shareholders in the audited annual financial statements relating to policies allocated to that fund, reduced by negative liabilities recognised as an asset



(adjusted to the manner of disclosure of policy liabilities and assets 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 disclosure 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 2016, 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 of disclosure of policy liabilities 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 2016, reduced by negative liabilities recognised as an asset (adjusted to the manner of disclosure of policy liabilities and assets in the audited annual financial statements for 2015), the amount of that excess.

(16) For purposes of this section, other than for the purposes of subsection (15), ‘**asset**’ excludes—

(a) negative liabilities;  
 (b) policies of reinsurance;  
 (c) a deferred tax asset; or  
 (d) goodwill,  
 recognised as an asset in accordance with IFRS as annually reported by the insurer to shareholders in the audited financial statements.”

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

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

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

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

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

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

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

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

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

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

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

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

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

“(eA) expenditure (excluding the cost of land, surface rights and

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

- (i) housing for residential occupation (other than housing intended for sale) and furniture for such housing;
- (ii) infrastructure in respect of residential areas developed;
- (iii) any hospital, school, shop or similar amenity (including furniture and equipment); or
- (iv) recreational buildings and facilities:

Provided that—

(aa) such expenditure shall for the purposes of this definition be deemed to be paid in ten successive equal annual instalments, the first of which shall be deemed to be paid on the date on which payment of the relevant expenditure was made and the succeeding instalments on the appropriate anniversaries of that date, but if any such anniversary falls on a date after the asset to which such expenditure relates has been sold, disposed of or scrapped by the taxpayer, the instalment of such expenditure so deemed to be paid on such anniversary shall be disregarded;

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

(cc) where any asset the expenditure in respect of which has qualified as capital expenditure under this paragraph is sold, disposed of or scrapped by the taxpayer during any year of assessment, an allowance shall be made in respect of that asset, equal to the amount by which the full amount of the expenditure paid by the taxpayer in respect of that asset, as contemplated in this paragraph, exceeds the total amount of all the instalments of such expenditure which are deemed by

item (aa) of this proviso to be paid before the asset was sold, disposed of or scrapped, and in such case the amount of the said allowance shall be deemed to be the final installment of the said expenditure made on the date on which the asset was sold, disposed of or scrapped;” ; and

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

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

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

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

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

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

“in which formula—

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

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

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

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

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

**Amendment of section 41 of Act 58 of 1962, as substituted by section 34 of Act 74 of 2002 and amended by section 49 of Act 45 of 2003, section 32 of Act 32 of 2004, section 37 of Act 31 of 2005, section 28 of Act 20 of 2006, sections 32 and 103 of Act 8 of 2007, section 52 of Act 35 of 2007, section 25 of Act 3 of 2008, 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 and section 61 of Act 25 of 2015**

- 54.** Section 41 of the Income Tax Act, 1962, is hereby amended by the deletion in subsection (1) of the definition of “hold”.

**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 and section 63 of Act 25 of 2015** 5

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

- “(i) in terms of which an amalgamated company which is a foreign company 10 disposes of all of its assets (other than assets it elects to use to settle any debts incurred by it in the ordinary course of its trade and other than assets required to satisfy any reasonably anticipated liabilities to any sphere of government of any country and costs of administration relating to its liquidation or winding-up) to a resultant company which is a foreign company, by means of 15 an amalgamation, conversion or merger;”.

**Amendment of section 50D of Act 58 of 1962, as inserted by section 98 of Act 31 of 2013 and amended by section 71 of Act 25 of 2015**

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

- (a) by the deletion in subsection (1) of the word “or” at the end of paragraph (b); 20 and  
(b) by the substitution in subsection (1) for the full stop at the end of paragraph (c) of the expression “; or”, and by the addition of the following paragraph:

“(d) if that amount of interest is paid to—

- (i) the African Development Bank established on 10 September 25 1964;  
(ii) the World Bank established on 27 December 1945 including the International Bank for Reconstruction and Development and International Development Association;  
(iii) the International Monetary Fund established on 27 December 30 1945;  
(iv) the African Import and Export Bank established on 8 May 1993;  
(v) the European Investment Bank established on 1 January 1958 35 under the Treaty of Rome; or  
(vi) the New Development Bank established on 15 July 2014;”.

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

**Amendment of section 50E of Act 58 of 1962, as inserted by section 98 of Act 31 of 2013 and amended by section 65 of Act 43 of 2014** 40

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

“submitted to the person making the payment a declaration in such form as may be prescribed by the Commissioner that the foreign person is, in terms of section 50D(3) or an agreement for the prevention of double taxation, exempt from the 45 withholding tax on interest in respect of that payment.”.

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

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

- (a) by the substitution for subsection (1) of the following subsection: 50  
“(1) If, in terms of section 50C, a foreign person is liable for any amount of withholding tax on interest in respect of any amount of interest that is paid to or for the benefit of the foreign person, that foreign person must pay that amount of withholding tax and submit a return by the last day of the month following the month during which the interest is paid, 55 unless the tax has been paid by any other person.”; and

(b) by the addition of the following subsection:

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

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

**Substitution of section 50G of Act 58 of 1962, as inserted by section 98 of Act 31 of 2013**

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

**“Refund of withholding tax on interest**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

“(i) (aa) such immovable property was acquired by any beneficiary entitled to any grant or services in terms of the Land Reform Programme, as contemplated in the White Paper on South African Land Policy, 1997; and

- (bb) the Minister of Land Affairs or a person designated by him has, on such terms and conditions as such Minister may in consultation with the Commissioner prescribe, approved the particular project in terms of which such immovable property is so acquired; or
- (ii) such immovable property was acquired by a person in terms of land reform initiatives by virtue of the measures as contemplated in Chapter 6 of the National Development Plan: Vision 2030 of 11 November 2011 released by the National Planning Commission, Presidency of the Republic of South Africa;”.

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

**Amendment of paragraph 1 of Second Schedule to Act 58 of 1962, as amended by section 31 of Act 90 of 1962, section 23 of Act 90 of 1964, section 34 of Act 88 of 1971, section 34 of Act 69 of 1975, section 26 of Act 113 of 1977, section 17 of Act 104 of 1979, section 27 of Act 104 of 1980, section 28 of Act 96 of 1981, section 46 of Act 94 of 1983, section 24 of Act 65 of 1986, section 43 of Act 101 of 1990, section 35 of Act 21 of 1995, section 41 of Act 28 of 1997, section 47 of Act 30 of 1998, section 82 of Act 45 of 2003, section 43 of Act 32 of 2004, section 46 of Act 8 of 2007, section 61 of Act 35 of 2007, section 36 of Act 3 of 2008, section 58 of Act 60 of 2008, section 56 of Act 17 of 2009, section 79 of Act 7 of 2010 and section 91 of Act 22 of 2012**

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

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

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

**Amendment of paragraph 4 of Second Schedule to Act 58 of 1962, as amended by section 20 of Act 72 of 1963, section 24 of Act 90 of 1964, section 36 of Act 21 of 1995, section 41 of Act 3 of 2008, section 63 of Act 60 of 2008, section 60 of Act 17 of 2009, section 83 of Act 7 of 2010, section 91 of Act 24 of 2011, section 97 of Act 22 of 2012, section 71 of Act 43 of 2014 and section 85 of Act 25 of 2015**

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

“(3) If a person who is a member of a provident fund retires from such fund before he or she reaches the age of 55 years on grounds other than ill-health, any lump sum benefits received by or accrued to such person in consequence of or following upon such retirement shall, unless the Commissioner on application by the [person] fund and having regard to the circumstances of the case otherwise directs, be assessed to tax not in accordance with the provisions of paragraph 5 but in accordance with the provisions of paragraph 6 as though it were a lump sum benefit derived by such person in consequence of or following upon such person’s withdrawal or resignation from such fund.”.

(2) Subsection (1) comes into operation on 26 October 2016.

**Amendment of paragraph 1 of Sixth Schedule to Act 58 of 1962, as amended by section 85 of Act 7 of 2010 and section 88 of Act 25 of 2015**

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

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

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

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

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

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

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

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

**Amendment of paragraph 7 of Seventh Schedule to Act 58 of 1962, as added by section 46 of Act 121 of 1984 and amended by section 30 of Act 96 of 1985, section 10 of Act 108 of 1986, Government Notice 956 of 11 May 1988, section 44 of Act 90 of 1988, Government Notice R.715 of 14 April 1989, section 25 of Act 70 of 1989, Government Notice R.764 of 29 March 1990, section 58 of Act 101 of 1990, section 50 of Act 129 of 1991, section 36 of Act 141 of 1992, section 32 of Act 21 of 1994, section 47 of Act 21 of 1995, section 50 of Act 28 of 1997, section 45 of Act 53 of 1999, section 56 of Act 31 of 2005, section 91 of Act 7 of 2010, section 103 of Act 24 of 2011, section 101 of Act 22 of 2012, section 75 of Act 43 of 2014 and section 96 of Act 25 of 2015**

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

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

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

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

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

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

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

“(5) Where, by reason of the situation, nature or condition of the accommodation or any other factor, the Commissioner is satisfied that the rental value of such accommodation is less than the rental value thereof determined in accordance with the formula contemplated in subparagraph [(3)(a)] (3) or the rental value determinable under

subparagraph (4), he or she may determine such rental value at such lower amount as to him or her appears fair and reasonable.”.

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

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

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

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

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

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

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

(3) Paragraph (b) of subsection (1) comes into operation on 1 March 2017 and applies in respect contributions made on or after that date.

**Amendment of paragraph 11 of Eighth Schedule to Act 58 of 1962, as amended by section 71 of Act 60 of 2001, section 67 of Act 74 of 2002, section 92 of Act 45 of 2003, section 55 of Act 32 of 2004, section 66 of Act 31 of 2005, section 44 of Act 20 of 2006, section 74 of Act 60 of 2008, section 106 of Act 22 of 2012, section 126 of Act 31 of 2013, section 80 of Act 43 of 2014 and section 105 of Act 25 of 2015**

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**70.** (1) Paragraph 11 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended—

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

“(h) by a lender to a borrower or by a borrower to a lender where any security or bond has been lent by a lender to a borrower in terms of a securities lending arrangement; or”;

(b) by the substitution in subparagraph (2) for item (n) of the following item:

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

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

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



**Amendment of paragraph 38 of Eighth Schedule to Act 58 of 1962, as inserted by section 38 of Act 5 of 2001 and amended by section 87 of Act 60 of 2001, section 81 of Act 74 of 2002, section 63 of Act 32 of 2004, section 72 of Act 31 of 2005, section 98 of Act 7 of 2010, section 114 of Act 22 of 2012 and section 134 of Act 31 of 2013**

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

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

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

**Amendment of paragraph 43 of Eighth Schedule to Act 58 of 1962, as inserted by section 38 of Act 5 of 2001 and amended by section 91 of Act 60 of 2001, section 84 of Act 74 of 2002, section 101 of Act 45 of 2003, section 75 of Act 31 of 2005, section 51 of Act 20 of 2006, section 76 of Act 35 of 2007, section 100 of Act 7 of 2010, section 111 of Act 24 of 2011, section 117 of Act 22 of 2012, section 136 of Act 31 of 2013, section 88 of Act 43 of 2014 and section 114 of Act 25 of 2015**

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

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

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

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

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

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

**Amendment of paragraph 49 of Eighth Schedule to Act 58 of 1962, as inserted by section 38 of Act 5 of 2001 and substituted by section 95 of Act No. 60 of 2001**

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

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

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

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

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

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

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

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

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

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

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(2) Subsection (1) is deemed to have come into operation on 29 February 2016 and applies in respect of years of assessment ending on or after that date.

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

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

**“Land donated in terms of land reform measures**

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

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(2) Subsection (1) is deemed to have come into operation on 29 February 2016 and applies in respect of years of assessment ending on or after that date.

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

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**78.** (1) Paragraph 66 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended by the substitution in subparagraph (1) for item (d) of the following item:

“(d) all the replacement assets constitute assets contemplated in section 9(2)[(k)](j) or (k).”

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

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**Amendment of paragraph 76B of Eighth Schedule to Act 58 of 1962, as inserted by section 12I of Act 24 of 2011 and amended by section 134 of Act 22 of 2012 and section 122 of Act 25 of 2015**

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

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

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

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**Amendment of paragraph 4 of Part I of Ninth Schedule to Act 58 of 1962, as inserted by section 41 of Act 30 of 2002 and amended by section 125 of Act 45 of 2003, section 82 of Act 31 of 2005, section 60 of Act 20 of 2006, section 63 of Act 3 of 2008, section 87 of Act 60 of 2008, section 82 of Act 17 of 2009, section 12 of Act 13 of 2012 and section 151 of Act 31 of 2013**

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

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

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

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

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

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

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

#### **Insertion of section 119B in Act 91 of 1964**

**81.** (1) The following section is hereby inserted in Chapter XII of the Customs and Excise Act, 1964, after section 119A:

#### **“Arrangements for obtaining undue tax benefits**

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

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

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

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

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

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

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

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

(3) For the purposes of this section—

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

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

‘**tax benefit**’ includes—

- (a) any reduction in the liability of any person to pay any duty;
- (b) any increase in the entitlement of any person to a refund of any duty; or
- (c) any other avoidance, postponement or reduction of any liability for the payment of any tax, duty or levy imposed under this Act or by any other law administered by the Commissioner.”

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

#### **Continuation of certain amendments of Schedules to Act 91 of 1964**

**82.** Every amendment or withdrawal of or insertion in Schedules No. 1 to 6, 8 and 10 to the Customs and Excise Act, 1964, made under section 48, 49, 56, 56A, 57, 60 or 75(15) of that Act during the period 1 September 2015 up to and including 30 September 2016, shall not lapse by virtue of section 48(6), 49(5A), 56(3), 56A(3), 57(3), 60(4) or 75(16) of that Act.

**Amendment of section 1 of Act 89 of 1991, as amended by section 21 of Act 136 of 1991, paragraph 1 of Government Notice 2695 of 8 November 1991, section 12 of Act 136 of 1992, section 1 of Act 61 of 1993, section 22 of Act 97 of 1993, section 9 of Act 20 of 1994, section 18 of Act 37 of 1996, section 23 of Act 27 of 1997, section 34 of Act 34 of 1997, section 81 of Act 53 of 1999, section 76 of Act 30 of 2000, section 64 of Act 59 of 2000, section 65 of Act 19 of 2001, section 148 of Act 60 of 2001, section 114 of Act 74 of 2002, section 47 of Act 12 of 2003, section 164 of Act 45 of 2003, section 43 of Act 16 of 2004, section 92 of Act 32 of 2004, section 8 of Act 10 of 2005, section 101 of Act 31 of 2005, section 40 of Act 9 of 2006, section 77 20 of 2006, sections 81 and 108 of Act 8 of 2007, section 104 of Act 35 of 2007, section 68 of Act 3 of 2008, section 104 of Act 60 of 2008, section 33 of Act 18 of 2009, section 119 of Act 7 of 2010, section 26 of Act 8 of 2010, section 129 of Act 24 of 2011, section 271 of Act 28 of 2011, read with item 108 of Schedule 1 to that Act, section 145 of Act 22 of 2012, section 165 of Act 31 of 2013, section 95 of Act 43 of 2014 and section 128 of Act 25 of 2015**

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

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

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

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

“(ii) (aa) goods consisting solely of gold unless acquired for the sole purpose of supplying such goods in the same state without any further processing;

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

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

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

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

84. Section 7 of the Value-Added Tax Act, 1991, is hereby amended by the addition 5  
after subsection (3) of the following subsection:

“(4) If the Minister makes an announcement in the national annual budget contemplated in section 27(1) of the Public Finance Management, 1999 (Act No. 1 of 1999), that the VAT rate specified in this section is to be altered, that alteration will be effective from a date determined by the Minister in that announcement, and continues to apply for a period of 12 months from that date subject to Parliament passing legislation giving effect to that announcement within that period of 12 months.”. 10

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

85. (1) Section 15 of the Value-Added Tax Act, 1991, is hereby amended by the 20  
substitution for subsection (2A) of the following subsection:

“(2A) Any vendor, other than—

- (i) a public authority;
- (ii) a municipal entity as defined in section 1 of the Local Government: Municipal Systems Act, 2000 (Act No. 32 of 2000), where that municipal entity supplies— 25
  - (aa) electricity, gas or water; or
  - (bb) the services consisting of the drainage, removal or disposal of sewage or garbage; or
- (iii) a municipality, 30
 

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

(2) Subsection (1) comes into operation on 1 April 2017. 35

**Repeal of section 77 of Act 89 of 1991**

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

**Amendment of Schedule 1 of Act 89 of 1991, as amended by Amendment of Schedule 1 to Act 89 of 1991 as amended by section 48 of Act 136 of 1991, section 43 of Act 136 of 1992, Government Notice 2244 of 31 July, 1992, section 44 of Act 97 of 1993, Government Notice 1955 of 7 October 1993, section 32 of Act 20 of 1994, section 32 of Act 37 of 1996, section 53 of Act 27 of 1997, substituted by section 177 of Act 60 of 2001, amended by section 58 of Act 30 of 2002, section 121 of Act 74 of 2002, Government Notice R.111 in Government Gazette 24274 of 17 January 2003, section 189 of Act 45 of 2003, section 52 of Act 16 of 2004, section 53 of Act 16 of 2004, section 54 of Act 16 of 2004, section 55 of Act 16 of 2004, section 108 of Act 32 of 2004, section 111 of Act 31 of 2005, section 112 of Act 31 of 2005, section 113 of Act 31 of 2005, section 114 of Act 31 of 2005, section 115 of Act 31 of 2005, section 116 of Act 31 of 2005, section 117 of Act 31 of 2005, section 118 of Act 31 of 2005, section 119 of Act 31 of 2005, section 120 of Act 31 of 2005, section 121 of Act 31 of 2005, section 122 of Act 31 of 2005, section 123 of Act 31 of 2005, section 52 of Act 9 of 2006, section 53 of Act 9 of 2006, section 89 of Act No. 20 of 2006, section 85 of Act 8 of 2007, Government Notice R.958 in Government Gazette 30370 of 12 October 2007, section 107 of Act 35 of 2007 and Government Notice R.766 in Government Gazette 32416 of 24 July 2009, by Government Notice No. R.154 and R.157 in Government Gazette 34046 of 1 March, 2011, by section 143 (1) of Act No. 24 of 2011, by Government notice No Government Notice No. R.187** 40 45 50 55

in Government Gazette 35102 of 2 March, 2012, by Government Notice No. R.506 in Government Gazette 35481 of 6 July, 2012, by Government Notice No. 995 in Government Gazette 35932 of 7 December, 2012, by Government Notice No. R.1072 in Government Gazette 36002 of 14 December, 2012, by section 181 (1) of Act No. 31 of 2013, by Government Notice No. R.288 in Government Gazette 37554 of 17 April, 2014 and by Government Notice No. R.723 in Government Gazette 39100 of 14 August, 2015 with effect from date the regulations to be published in terms of the Special Economic Zones Act, 2014 (Act No. 16 of 2014) come into operation: 9 February, 2016 (Proclamation R.6 in Government Gazette 39667 of 8 February, 2016)

87. Schedule 1 to the Value-Added Tax Act, 1991, is hereby amended by the insertion after item number 412.07 of the following item numbers and description:

**“412.09 Goods Lost, Destroyed or Damaged**

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

- (a) in any customs and excise warehouse or in any appointed transit shed or under control of the Commissioner;
- (b) being removed with deferment of payment of duty or under rebate of duty from a place in the Republic to any other place in terms of the provisions of the Customs and Excise Act; or
- (c) being stored in any rebate storeroom: Provided that—
  - (i) no compensation in respect of the customs duty, fuel levy or VAT on such goods has been paid or is due to the owner by any other person;
  - (ii) such loss, destruction or damage was not due to any negligence or fraud on the part of the person liable for the duty or VAT; and
  - (iii) such goods did not enter into consumption and the importer of those goods was not liable for the tax imposed in terms of section 7(1)(b) when those goods were initially imported.”

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

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

**“Imposition of levy**

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

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

(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.”

### Amendment of section 6 of Act 4 of 2002

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

- (a) by the substitution in section 6 for subsection (1) of the following subsection: 5  
 “(1) Subject to subsection (2), the amount of the contribution payable in terms of section 5—
- (a) (i) by an employee, must be one per cent of the remuneration paid or payable to that employee by his or her employer during any month; or
- (ii) by an employer in respect of any one of its employees, must be equal to one per cent of the remuneration paid or payable by that employer to that employee during any month; or 10
- (b) a percentage as the Minister may announce in the national annual budget contemplated in section 27(1) of the Public Finance Management Act, 1999 (Act No. 1 of 1999), with effect from a date mentioned in that announcement.”; and 15
- (b) by the insertion after subsection (1) of the following subsection:  
 “(1A) If the Minister makes an announcement contemplated in subsection (1)(b), that percentage comes into effect on the date determined by the Minister in that announcement and continues to apply for a period of 12 months from that date subject to Parliament passing legislation giving effect to that announcement within that period of 12 months.”. 20

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

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: 30  
 “**‘collateral arrangement’** means any arrangement in terms of which—
- (a) a person (hereafter the transferor) transfers a listed share or any bond issued by the government of the Republic in the national or local sphere if that bond is listed on a recognised exchange as defined in paragraph 1 of the Eighth Schedule to the Income Tax Act to another person (hereafter the transferee) for the purposes of providing security in respect of an amount owed by the transferor to the transferee; 35
- (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; 40
- (c) that transferee in return contractually agrees in writing to deliver an identical share, as defined in section 1 of the Income Tax Act, or any bond issued by the government of the Republic in the national or local sphere that is listed on a recognised exchange as defined in paragraph 1 of the Eighth Schedule to the Income Tax Act 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; 45
- (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 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 50 55 60

- (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 that is listed on a recognised exchange as defined in paragraph 1 of the Eighth Schedule to the Income Tax Act; 5  
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- 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;” 15
- (b) by the substitution in subsection (1) for the definition of “lending arrangement” of the following definition: 20
- “ **‘lending arrangement’** means any arrangement in terms of which— 20
- (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 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 (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; 25  
30
- (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 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; 35  
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- (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 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 45  
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- (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 if that bond is listed on a recognised exchange as defined in paragraph 1 of the Eighth Schedule to the Income Tax Act, 55  
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- 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
  - (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;”.

(2) Subsection (1) comes into operation on 1 January 2017 and applies in respect of any collateral arrangement or lending arrangement entered into on or after that date.

**Amendment of section 2 of Act 25 of 2007, as amended by section 60 of Act 18 of 2009 and section 154 of Act 22 of 2012**

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

- “(2) The Minister of Finance may announce in the national annual budget contemplated in section 27(1) of the Public Finance Management Act, 1999 (Act No. 1 of 1999) that, with effect from the date mentioned in that announcement—
- (a) the rate of securities transfer tax referred to in subsection (1) is **[reduced]** altered to the extent mentioned in the announcement; or
  - (b) there is a change in the provisions of this Act to the effect that the transfer of any security is no longer subjected to securities transfer tax.

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

**Amendment of section 3 of Act 28 of 2008**

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

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

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

- (a) by the percentage determined in accordance with the formula in section 4(2); or
- (b) by the percentage determined in accordance with the formula as the Minister may announce in the national annual budget contemplated in section 27(1) of the Public Finance Management Act, 1999 (Act No. 1 of 1999) with effect from a date mentioned in that announcement.”; and

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

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

**Amendment of section 1 of Act 26 of 2013, as amended by section 112 of Act 43 of 2014**

**93.** (1) Section 1 of the Employment Tax Incentive Act, 2013, is hereby amended by the substitution in section 1 in the definition of “monthly remuneration” for paragraphs (a) and (b) of the following paragraphs respectively:

- “(a) where an employer employs and pays remuneration to a qualifying employee for **[more than]** at least 160 hours in a month, means the amount paid or payable to the qualifying employee by the employer in respect of a month; or
- (b) where an employer employs a qualifying employee and pays remuneration to that employee for less than 160 hours in a month, means an amount calculated in terms of section 7(5);”.
- (2) Subsection (1) comes into operation on 1 October 2016.

**Amendment of section 4 of Act 26 of 2013, as amended by section 113 of Act 43 of 2014**

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

- “(i) where the employee is employed and paid remuneration for **[more than]** at least 160 hours in a month, the amount of R2 000 in respect of a month; or
- (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 R2 000 the same ratio as 160 hours bears to the number of hours that the employee was employed for by that employer in that month.”.
- (2) Subsection (1) comes into operation on 1 October 2016.

**Amendment of section 7 of Act 26 of 2013, as amended by section 116 of Act 43 of 2014**

95. (1) Section 7 of the Employment Tax Incentive Act, 2013, is hereby amended—

- (a) 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).”;
- (b) by the substitution in subsection (2) for in paragraph (a) of the following paragraph:
- “(a) **less than** R2 000 **[or less]**, is an amount equal to 50 per cent of the monthly remuneration of the employee;”;
- (c) by the substitution in subsection (2) for in paragraph (b) of the following paragraph:
- “(b) **[more than]** R2 000 **or more** but less than **[R4 001]** R 4 000, is an amount of R1 000;”;
- (d) by the substitution in subsection (2) for in paragraph (c) for the words preceding the formula of the following words:
- “(b) **[more than]** R4 000 **or more** but less than **[R6 001]** R6 000, is an amount determined in accordance with the following formula:”;
- (e) by the substitution in subsection (2) for in paragraph (d) of the following paragraph:
- “(d) **[more than]** R6 000 **or more**, is an amount of nil.”;
- (f) by the substitution in subsection (3) for in paragraph (a) of the following paragraph:
- “(a) **less than** R2 000 **[or less]**, is an amount equal to 25 per cent of the monthly remuneration of the employee;”;
- (g) by the substitution in subsection (3) for in paragraph (b) of the following paragraph:
- “(b) **[more than]** R2 000 **or more** but less than **[R4 001]** R4 000, is an amount of R500;”;
- (h) by the substitution in subsection (3) for in paragraph (c) for the words preceding the formula of the following words:
- “(b) **[more than]** R4 000 **or more** but less than **[R6 001]** R6 000, is an amount determined in accordance with the following formula:”;
- (i) by the substitution in subsection (3) for in paragraph (d) of the following paragraph:
- “(d) **[more than]** R6 000 **or more**, is an amount of nil.”;

- (j) by the substitution for subsection (5) of the following subsection:  
 “(5) If an employer employs a qualifying employee for less than 160 hours in a month, the employment tax incentive to be received in respect of that month in respect of that qualifying employee must be an amount that bears to the total amount calculated in terms of subsection (2) or (3) the same ratio as the number of hours that the qualifying employee was employed and is paid remuneration in respect of those hours by that employer in that month bears to the number 160.”; 5
- (k) by the addition after subsection (5) of the following subsection:  
 “(6) The sum of the amounts determined in respect of all qualifying employees of that employer stipulated in subsections (2) and (3) and section 9 may not exceed R20 million in respect of any year commencing on 1 March and ending on the last day of February of the following year.” 10
- (2) Subsection (1) comes into operation on 1 March 2017. 15

**Amendment of section 9 of Act 26 of 2013, as amended by section 117 of Act 43 of 2014**

- 96.** (1) Section 9 of the Employment Tax Incentive Act, 2013, is hereby amended by the addition after subsection (3) of the following subsection:  
 “(4) Any amount as contemplated in subsection (2) on the first day of the month following the end of the period for which the employer is required to render a return in terms of paragraph 14(3)(a) of the Fourth Schedule to the Income Tax Act, must be deemed to be nil in respect of each qualifying employee employed by the employer on that date.” 20
- (2) Subsection (1) comes into operation on 1 March 2017. 25

**Substitution of section 12 of Act 26 of 2013**

- 97.** (1) The following section is hereby substituted for section 12 of the Employment Tax Incentive Act, 2013:

**“Cessation of employment tax incentive**

- 12.** An employer may not receive the employment tax incentive after **[1 January 2017] 28 February 2019.**” 30
- (2) Subsection (1) is deemed to have come into operation on 1 October 2016.

**Amendment of section 13 of Act 31 of 2013**

- 98.** (1) Section 13 of the Taxation Laws Amendment Act, 2013, is hereby amended by the substitution for subsection (2) of the following subsection: 35  
 “(2) Subsection (1) comes into operation on 1 January **[2016] 2018** and applies in respect of amounts incurred on or after that date.”.
- (2) Subsection (1) is deemed to have come into operation on 12 December 2013.

**Amendment of section 15 of Act 31 of 2013**

- 99.** (1) Section 15 of the Taxation Laws Amendment Act, 2013, is hereby amended by the substitution for subsection (2) of the following subsection: 40  
 “(2) Subsection (1) comes into operation on 1 January **[2016] 2018** and applies in respect of amounts incurred on or after that date.”.
- (2) Subsection (1) is deemed to have come into operation on 12 December 2013.

**Amendment of section 62 of Act 31 of 2013** 45

- 100.** (1) Section 62 of the Taxation Laws Amendment Act, 2013, is hereby amended by the substitution for subsection (2) of the following subsection:  
 “(2) Subsection (1) comes into operation on 1 January **[2016] 2018** and applies in respect of amounts of interest incurred on or after that date.”.
- (2) Subsection (1) is deemed to have come into operation on 12 December 2013. 50

**Amendment of section 47 of Act 43 of 2014**

**101.** (1) Section 47 of the Taxation Laws Amendment Act, 2014, is hereby amended—

- (a) by the deletion of paragraph (a) of subsection (1); and
- (b) by the substitution for subsection (2) of the following subsection: 5  
 “(2) Paragraphs [(a),] (b), (c), (d), (e), (f), (h), (i), (j), (k), (l), (m), (o), (p), (q), (r), (s), (t) and (u) of subsection (1) come into operation on 1 January 2016 and apply in respect of years of assessment commencing on or after that date.”.

(2) Subsection (1) is deemed to have come into operation on 20 January 2015. 10

**Amendment of section 63 of Act 25 of 2015**

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

- “(2) (a) Paragraph (a) of subsection (1) comes into operation on 1 January 2016 and applies in respect of years of assessment ending on or after that date. 15
- (b) Paragraph (b) of subsection (1) is deemed to have come into operation on 1 April 2015.”.

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

**Amendment of section 103 of Act 25 of 2015**

**103.** (1) Section 103 of the Taxation Laws Amendment Act, 2015, is hereby amended 20 by the substitution for subsection (2) of the following subsection:

- “(2) Subsection (1) comes into operation on 1 January 2016 and applies in respect of [**disposals**] any asset reacquired as a result of the cancellation or termination of an agreement during any year of assessment commencing on or after that date.”. 25

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

**Amendment of section 104 of Act 25 of 2015**

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

- “(2) Subsection (1) comes into operation on 1 January 2016 and applies in respect of [**disposals**] any asset reacquired as a result of the cancellation or termination of an agreement during any year of assessment commencing on or after that date.”. 30

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

**Amendment of section 108 of Act 25 of 2015**

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

- “(2) Paragraph (c) of subsection (1) comes into operation on 1 January 2016 and applies in respect of [**disposals**] any asset reacquired as a result of the cancellation or termination of an agreement during any year of assessment commencing on or after that date.”. 40

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

**Amendment of section 128 of Act 25 of 2015**

**106.** (1) Section 128 of the Taxation Laws Amendment Act, 2015, is hereby amended by the substitution for subsection 4 of the following subsection: 45

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

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

**Short title**

**107.** This Act is called the Taxation Laws Amendment Act, 2016. 50

# *Learnership Agreements and the Employment Tax Incentive*

3 November 2016

## *In brief*

The allowance for Learnership Agreements has been extended to all agreements entered into before 1 April 2022 and the Employment Tax Incentive has been extended to 28 February 2019.

## *Learnership Agreements*

Section 12H of the Income Tax Act allows an employer to claim a “learnership allowance”. The allowance is applicable to registered learnership agreements entered into or completed during a year of assessment.

In order to qualify for the allowance the learnership agreement must be:

- Registered in accordance with the Skills Development Act, 1998; and
- entered into before a certain date.

### *Amendments*

The Taxation Laws Amendment Bill, 2016 tabled in Parliament on 26 October (“the Bill”) amends s12H as follows:

- The period of the allowance has been

extended from 1 October 2016 to 1 April 2022;

- In respect of a learner who holds a qualification equal to NQF level 1-6, the employer qualifies for an annual and completion allowance of R40,000;
- In respect of a learner who holds a qualification equal to NQF level 7-10, the employer qualifies for an annual and completion allowance of R20,000;
- In respect of a person with a disability, the employer qualifies for an additional allowance of R20,000 where the learner has a qualification equal to NQF level 1 – 6, and R30,000 where the learner has a qualification equal to NQF level 7 – 10, i.e. a total allowance of R60,000 and R50,000 respectively.

The above allowances represent a shift away from the allowance being equally targeted at all

skills levels to provide a more generous allowance for less-skilled learners and a less generous allowance for more skilled learners.

These amendments are proposed to come into effect on 1 October 2016 and apply to learnership agreements entered into on or after that date.

## *Employment Tax Incentive*

The Employment Tax Incentive (“ETI”) was introduced in 2014 and aims to encourage employers to employ young people with less experience. Eligible employers qualify for the ETI.

### *Amendments*

Apart from extending the ETI to 2019, the Bill further amends the incentive by capping the incentive available to any one employer at R20 million per year.

## *Tax Alert*

# National Tax Technical

The proposed changes will come into effect on 1 March 2017.

### ***The Takeaway***

The incentives in respect of a “Learnership Agreement” as

### ***Let’s talk***

For a deeper discussion of how this issue might affect your business, please contact:

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well as the ETI have been extended. However, taxpayers should take note of how the changes to these incentives may impact their businesses.

We note that National Treasury has called for

submissions in terms of the proposed changes and that the current Bill may still be subject to change.

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