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THE PRESIDENCY

No. 1333 12 December 2001

It is hereby notified that the President has assented to the following Act, which is hereby published for general information:—

No. 60 of 2001: Second Revenue Laws Amendment Act, 2001.

DIE PRESIDENSIE

No. 1333 12 Desember 2001

Hierby word bekend gemaak dat die President sy goedkeuring geheg het aan die onderstaande Wet wat hierby ter algemene inligting gepubliseer word:—

No. 60 van 2001: Tweede Wysigingswet op Inkomstewette, 2001.

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.

(English text signed by the President.)
(Assented to 5 December 2001.)

ACT

To amend the Marketable Securities Tax Act, 1948, so as to provide for a further exemption; to effect changes to the Act to give effect to the restructuring of the South African Revenue Service; to provide for objection and appeal procedures where a person is aggrieved by a decision of the Commissioner; to amend the Transfer Duty Act, 1949, so as to effect changes to the Act to give effect to the restructuring of the South African Revenue Service; to provide for a further exemption; to further regulate the objection and appeal procedures where a person is aggrieved by a decision of the Commissioner; to amend the Estate Duty Act, 1955, so as to effect certain consequential amendments to the provisions relating to the determination of the value of property for purposes of the Act; to effect changes to the Act to give effect to the restructuring of the South African Revenue Service; to further regulate the objection and appeal procedures where a person is aggrieved by a decision of the Commissioner; to regulate refunds of amounts of duty not properly chargeable and to provide for the set-off of amounts refundable against any other amount due to the Commissioner; to amend the Income Tax Act, 1962, so as to insert a definition and to amend certain other definitions; to provide that the exercise of certain discretions of the Commissioner shall be subject to objection and appeal; to amend the secrecy provisions to enable the Commissioner to disclose certain information to the Director-General of the National Treasury, the National Commissioner of the South African Police Service and the National Director of Public Prosecutions in certain circumstances; to further regulate the provisions relating to foreign tax credits; to further regulate the provisions relating to the recoupments of amounts which have been allowed as a deduction; to further regulate the provisions relating to controlled foreign entities; to further regulate the provisions relating to foreign dividends; to further regulate the provisions relating to income received by or accrued to residents from a source outside the Republic; to provide for the determination of taxable income in respect of foreign equity instruments; to further regulate the exemption provisions; to further regulate the provisions relating to the scrapping allowance; to further regulate the capital allowance in respect of pipelines, transmission lines and railway lines; to further regulate the additional strategic industrial investment allowance; to provide for a cut-off date for the provisions relating to schemes of arrangements involving trading stock; to further regulate the limitation of the allowances granted to lessors of certain assets; to provide that where for purposes of the Act regard must be had to the market value of an asset, the amount of input tax in the case of

ALGEMENE VERDUIDELIKENDE NOTA:

[ ] Woorde in vet druk tussen vierkantige hake dui skrappings uit bestaande verordenings aan.

Woorde met 'n volstreep daaronder, dui invoegings in bestaande verordenings aan.

(Engelse teks deur die President geteken.)
(Goedgekeur op 5 Desember 2001.)

WET

Tot wysiging van die Handelseffektebelastingswet, 1948, ten einde vir 'n verdere vrystelling voorsiening te maak; om wysigings aan die Wet aan te bring om aan die herstrukturering van die Suid-Afrikaanse Inkomstediens gevolg te gee; om voorsiening te maak vir beswaar en appèlprosedures waar 'n persoon deur 'n beslissing van die Kommissaris veronreg is; tot wysiging van die Wet op Hereregte, 1949, ten einde wysigings aan die Wet aan te bring om aan die herstrukturering van die Suid-Afrikaanse Inkomstediens gevolg te gee; om vir 'n verdere vrystelling voorsiening te maak; om die beswaar en appèlprosedures verder te reël waar 'n persoon deur 'n beslissing van die Kommissaris veronreg is; tot wysiging van die Boedelbelastingwet, 1955, ten einde sekere gevolglike wysigings aan te bring by die bepalings wat met die vasstelling van die waarde van eiendom by die toepassing van die Wet verband hou; om wysigings aan die Wet aan te bring om aan die herstrukturering van die Suid-Afrikaanse Inkomstediens gevolg te gee; om die beswaar en appèlprosedures waar 'n persoon deur 'n beslissing van die Kommissaris veronreg is, verder te reël; om terugbetalings van bedrae van belasting wat nie behoorlik hefbaar is nie te reël en voorsiening te maak vir die verrekening van bedrae terugbetaalbaar teen enige ander bedrag aan die Kommissaris verskuldig; tot wysiging van die Inkomstebelastingwet, 1962, ten einde 'n woordomskrywing in te voeg en om sekere ander omskrywings te wysig; om te bepaal dat die uitoefening van sekere diskresies van die Kommissaris aan beswaar en appèl onderhewig is; om die geheimhoudingsbepalings te wysig om die Kommissaris in staat te stel om sekere inligting in sekere omstandighede aan die Direkteur-generaal van die Nasionale Tesourie, die Nasionale Kommissaris van die Suid-Afrikaanse Polisiediens en die Nasionale Direkteur van Openbare Vervolgings te voorsien; om die bepalings met betrekking tot buitelandse belastingkrediete verder te reël; om die bepalings met betrekking tot die verhaling van bedrae wat as 'n aftrekking toegelaat is, verder te reël; om die bepalings met betrekking tot beheerde buitelandse entiteite verder te reël; om die bepalings met betrekking tot buitelandse dividende verder te reël; om die bepalings met betrekking tot inkomste ontvang deur of toegeval aan 'n inwoner vanuit 'n bron buite die Republiek verder te reël; om die vasstelling van belasbare inkomste ten opsigte van buitelandse ekwiteitsinstrumente te reël; om die vrystellingsbepalings verder te reël; om die bepalings met betrekking tot die vermindering van bates wat as uitgedien onttrek is verder te reël; om die kapitaalverminderings met betrekking tot pyplyne, transmissielyne en spoorlyne verder te reël; om die addisionele strategiese nywerheidsbeleggingstoelae verder te reël; om voorsiening te maak vir 'n afsnydatum vir die bepalings met betrekking tot reëlingskemas waarby handelsvoorraad betrokke is; om die beperking van die verminderings van verhuurders van sekere bates verder te reël; om te bepaal dat waar die markwaarde van 'n bate by die toepassing van die Wet in berekening gebring moet word, die bedrag van die insetbelasting in die geval van 'n ondernemer van die

a vendor must be excluded from that market value; to further regulate the limitation of certain deductions of expenditure where the benefit in respect of which the expenditure relates extends beyond the year of assessment during which the expenditure is incurred; to provide for a cut-off date for the provisions relating to transactions whereby fixed property or company shares are exchanged for shares; to further regulate the provisions relating to gains or losses on foreign exchange transactions; to further regulate the provisions relating to the determination of taxable income and losses in foreign currency; to repeal a provision relating to assessments on transfers of business undertakings by foreign companies to South African subsidiaries; to amend the provisions relating to long-term insurers to provide that the different funds of an insurer shall be deemed to be companies which are connected persons for purposes of certain provisions of the Act; to amend the provisions relating to allowances in respect of capital expenditure of mining assets and the recoupment thereof upon sale, transfer, cession or lease of mining property; to provide for certain consequential amendments; to provide for special rules relating to company formations, share-for-share transactions, intra-group transactions, unbundling transactions and liquidation transactions; to provide for a further exemption from donations tax; to effect changes to the Act to give effect to the restructuring of the South African Revenue Service; to further regulate the provisions relating to secondary tax on companies; to further regulate the requirements relating to returns of information by unit portfolios and in respect of financial instruments administered by portfolio administrators; to provide that where a person appointed as an agent of a taxpayer does not comply with certain provisions of the Act, it shall constitute an offence; to further regulate the objection and appeal procedures where a person is aggrieved by an assessment by the Commissioner and matters relating thereto; to provide that the Minister may promulgate rules prescribing the procedures to be observed in lodging an objection and noting appeal and the conduct and hearing of an appeal before a tax court; to provide that the Minister may by regulation prescribe the circumstances under which the Commissioner may waive a claim against a taxpayer for purposes of the settlement of a dispute and the reporting requirements where a claim is waived; to further regulate the provisions relating to the taxation of lump sum benefits paid by a pension fund where a portion of that benefit must in terms of a divorce order be paid to the former spouse of the member; to further regulate and refine the provisions relating to capital gains tax; to amend the Customs and Excise Act, 1964, so as to insert and amend certain definitions in section 1; to provide that decisions or determinations must be in writing; to further amend provisions relating to the disclosure of information; to make provision for prescribing by rule of wharfs and places where degrouping depots may be established for the handling of imported or exported goods and matters incidental thereto; to further regulate provisions relating to the reporting of cargo; to further provide for the landing of goods before due entry; to further regulate the removal of goods in bond and the export of goods from a customs and excise warehouse; to introduce principles and procedures governing the administration of industrial development zones and matters incidental thereto; to amend a prohibition and a definition relating to marked goods; to further regulate the time of entry for imported goods; to provide for goods imported by air for which immediate clearance is requested; to provide for the disposal of goods on failure to make due entry, goods imported in contravention of any other law and seized and abandoned goods and matters incidental thereto; to amend the provisions determining liability for duty in respect of imported goods and when liability ceases; to further specify principles relating to the interpretation of provisions in the Schedules, the powers of the Commissioner to determine tariff headings, subheadings and items, to make binding tariff determinations and matters incidental thereto; to further provide for the enacting into law of international

markwaarde uitgesluit moet word; om die beperking van sekere aftrekkings van onkoste waar die voordeel waarop daardie onkoste betrekking het voortduur na die jaar van aanslag waarin die onkoste aangegaan is verder te reël; om vir 'n afsnydatum in die bepalings met betrekking tot transaksies ingevolge waarvan vasgoed of maatskappy-aandele vir aandele verruil word, voorsiening te maak; om die bepalings met betrekking tot winste of verliese op buitelandse valuta-transaksies verder te reël; om die bepalings met betrekking tot die vasstelling van belasbare inkomste of verliese in buitelandse valuta verder te reël; om 'n bepaling met betrekking tot aanslae by die oordrag van besigheidsondernemings deur buitelandse maatskappye aan Suid-Afrikaanse filiale te herroep; om die bepalings met betrekking tot langtermynversekeraars te wysig om te bepaal dat die onderskeie fondse van 'n versekeraar by die toepassing van sekere bepalings van die Wet geag word maatskappye te wees wat verbonde persone is; om die bepalings met betrekking tot verminderings ten opsigte van kapitaalonkoste van mynbates en die verhaling daarvan by verkoop, oordrag, sessie of verhuring van myneiendom te wysig; om vir sekere gevolglike wysigings voorsiening te maak; om spesiale reëls met betrekking tot maatskappy-formasies, aandeel-vir-aandeel-transaksies, intragroeptransaksies, ontbondelingstransaksies en likwidasie-uitkerings voorsiening te maak; om vir 'n verdere vrystelling van belasting op geskenke voorsiening te maak; om wysigings aan die Wet aan te bring om aan die herstrukturering van die Suid-Afrikaanse Inkomstediens gevolg te gee; om die bepalings met betrekking tot sekondêre belasting op maatskappye verder te reël; om die vereistes met betrekking tot opgawes van inligting deur effektegroepe en ten opsigte van finansiële instrumente deur portefeulje bestuurders geadministreer verder te reël; om te bepaal dat dit 'n misdryf daarstel waar 'n persoon wat as 'n agent van 'n belastingpligtige aangestel is versuim om aan sekere vereistes van die Wet te voldoen; om die beswaar en appèlprosedures waar 'n persoon deur 'n aanslag deur die Kommissaris veronreg is, en aangeleenthede wat daarmee in verband staan, verder te reël; om voorsiening te maak dat die Minister reëls kan uitvaardig wat die prosedures wat by die indiening van 'n beswaar en aantekening van 'n appèl nagekom moet word en die hantering en verhoor van 'n appèl voor 'n belastinghof, voorskryf; om voorsiening te maak dat die Minister die omstandighede by regulasie kan voorskryf waaronder die Kommissaris van 'n eis teen 'n belastingpligtige kan afstand doen vir doeleindes van 'n beslegting van 'n geskil en die verslagdoeningsvereistes waar van 'n eis afstand gedoen is; om die bepalings met betrekking tot die belasting van enkelbedragvoordele wat deur 'n pensioenfonds betaal word verder te reël, waar 'n gedeelte van daardie voordeel ingevolge 'n egskeidingsbevel aan die vorige eggenoot van die lid betaal word; om die bepalings met betrekking tot kapitaalwinsbelasting verder te reël en te verfyn; tot wysiging van die Doeane- en Aksynswet, 1964, om sekere omskrywings in artikel 1 in te voeg en te wysig; om voorsiening te maak dat beslissings of bepalings skriftelik moet wees; om verder voorsiening betreffende die openbaarmaking van inligting te maak; om voorsiening te maak om kaaie en plekke waar ontgroeperingsdepots opgerig kan word om ingevoerde of uitgevoerde goedere te hanteer en aangeleenthede in verband daarmee, by reël voor te skryf; om bepalings met betrekking tot die rapportering van vrag verder te reguleer; om verder voorsiening vir die landing van goedere voor behoorlike klaring te maak; om die verwydering van goedere onder waarborg en die uitvoer van goedere uit 'n doeane- en aksynspakhuis verder te reguleer; om beginsels en prosedures wat die administrasie van nywerheidsontwikkelingsones en aangeleenthede in verband daarmee, in te voeg; om 'n verbod en 'n omskrywing ten opsigte van gemerkte goedere te wysig; om die tydstip van klaring van ingevoerde goedere verder te reguleer; om voorsiening te maak vir goedere wat per lug ingevoer word en waarvoor onmiddellike klaring versoek word; om voorsiening te maak vir die beskikking oor goedere by versuim om behoorlike klaring te maak, goedere ingevoer strydig met enige ander wet en goedere waarop beslag gelê is of prysgegee is en aangeleenthede wat daarmee in verband staan; om die bepalings wat aanspreeklikheid vir reg bepaal ten opsigte van ingevoerde goedere en wanneer aanspreeklikheid verval, te wysig; om die vertolking van die bepalings van Bylaes, die bevoegdhede van die Kommissaris om tariefposte, subposte en items te bepaal, om bindende tariefbepalings te maak en aangeleenthede wat daarmee in verband staan, verder te reël; om verder voorsiening te maak om internasionale ooreenkomste kragtens die bepalings van die Wet regtens te verorden; om verder

agreements under the provisions of the Act; to further provide for the Commissioner's powers to determine the value of imported goods and locally produced goods and matters incidental thereto; to further regulate rebates and refunds of duty and losses in respect of certain goods; to amend procedures relating to claims for goods seized and to prescribe when goods are condemned and forfeited; to further provide for the disposal of seized goods; to introduce new provisions in terms of which the Commissioner may settle or waive claims; to introduce internal administrative appeal procedures and matters incidental thereto; to further provide for procedures governing notice of actions and the period for bringing action; to amend requirements providing for the appointment of agents by a container operator, or a master, pilot or other carrier; to amend provisions relating to the liability of agents to include liability in respect of other carriers; to further regulate the powers of the Commissioner to destroy goods or delay the departure of a ship or vehicle; and to provide for a lien in respect of goods in a customs and excise warehouse; to amend the Stamp Duties Act, 1968, so as to effect changes to the Act to give effect to the restructuring of the South African Revenue Service; to provide for objection and appeal procedures where a person is aggrieved by a decision of the Commissioner; to further regulate the stamp duties on debit entries; to provide for a further exemption; to amend the Value-Added Tax Act, 1991, so as to redefine welfare organisations and further define certain other expressions, to revise the provisions relating to the supply of accommodation, to clarify the exemption in respect of a debt obligation, to provide for the disclosure of certain information to the National Police Commissioner or the National Director of Public Prosecutions, to amend a reference to the Postmaster General to the Managing Director of the South African Post Office Limited, to clarify the position regarding the liability for VAT in the case of the expropriation of property, to clarify the exemption in respect of the rental of dwellings, to amend the provisions relating to exemption in respect of educational services, to regulate the payment of tax on importation in cases where tax has not been paid to a Controller of Customs and Excise, to require that the legal or trading name of a vendor be supplied in a tax invoice for an input tax deduction to be claimable, to provide for a refund in lieu of a refund in respect of the use of diesel in the case of amounts paid to small scale farmers, to regulate the holding of debit or credit notes, tax invoices or statements in the case of agents, to require the issue of a tax invoice in the case of all supplies exceeding R10 000 and impose further requirements in respect of tax invoices, to provide that returns may be submitted electronically up to the last business day of a month, to amend certain provisions relating to objection and appeal, to require that particulars of the banking or similar account of a vendor be submitted, to amend the reference to Receivers of Revenue to SARS offices, to require that reasons be submitted as to why a person appointed as agent is not able to comply with the appointment, to provide that a rental pool scheme operated and managed for the benefit of the owners of sectional title interests or shareholders in a Shareblock Company is regarded as a separate enterprise, to make it an offence to issue a document that purports to be a tax invoice but does not meet certain requirements, to make it an offence to, without lawful cause, fail to comply with a notice of appointment as agent in terms of section 47, to prevent a vendor from stating or implying that any form of discount, including discount in the form of trade or cash discount or a refund is in lieu of VAT, to provide for the rounding off of VAT, to substitute Schedule 1 to the Act which makes provision for exemption on importation; to amend the Income Tax Act, 1993, so as to provide for a cut-off date

voorsiening te maak vir die bevoegdhede van die Kommissaris om die waarde van ingevoerde en plaaslik geproduseerde goedere te bepaal en aangeleenthede wat daarmee in verband staan verder te reël; om kortings en terugbetalings van reg en verliese ten opsigte van sekere goedere verder te reguleer; om prosedures met betrekking tot eise vir goedere waarop beslag gelê is, te wysig en om die tydstip wanneer goedere prysverklaar en verbeur is voor te skryf; om die beskikking oor goedere waarop beslag gelê is verder te reël; om nuwe bepalings ingevolge waarvan die Kommissaris eise mag skik of kwytskeld, in te voeg; om interne administratiewe appèlprosedures en aangeleenthede in verband daarmee, in te voeg; om die prosedures wat kennisgewing van aksies en die tydperk vir die bring van 'n aksie beheers, verder te reël; om die vereistes ten opsigte van die aanstel van agente deur 'n houerbediener, of 'n gesagvoerder, loods of ander karweier te wysig; om bepalings met betrekking tot die aanspreeklikheid van agente te wysig om aanspreeklikheid ten opsigte van ander karweiers in te sluit; om verder die bevoegdhede van die Kommissaris om goedere te vernietig of die vertrek van 'n skip of voertuig te vertraag; en om vir 'n retensiereg ten opsigte van goedere in 'n doeane- en aksynspakhuis voorsiening te maak; tot wysiging van die Wet op Seëlregte, 1968, ten einde wysigings aan die Wet aan te bring om aan die herstrukturering van die Suid-Afrikaanse Inkomstediens gevolg te gee; om vir beswaar en appèlprosedures waar 'n persoon deur 'n beslissing van die Kommissaris veronreg is, voorsiening te maak; om die seëlregte op debetposte verder te reël; om vir 'n verdere vrystelling voorsiening te maak; tot wysiging van die Wet op Belasting op Toegevoegde Waarde, 1991, ten einde welsynsorganisasies te heromskryf en sekere ander uitdrukkings verder te omskryf; om die bepalings in verband met die lewering van akkommodasie te wysig; om die vrystelling met betrekking tot 'n skuldobligasie duidelik te maak; om voorsiening te maak vir die openbaarmaking van sekere inligting aan die Kommissaris van die Nasionale Polisie of die Nasionale Direkteur van Openbare Vervolgings; om die verwysing na die Posmeester-generaal te wysig na die Besturende Direkteur van die Suid-Afrikaanse Poskantoor Beperk; om die aanspreeklikheid vir BTW by die onteiening van eiendom verder te reël; om die vrystelling in verband met die verhuring van wonings verder te reël; om die bepalings met betrekking tot die vrystelling ten opsigte van opvoedkundige dienste te wysig; om die betaling van belasting op invoere te reël in gevalle waar die belasting nie aan 'n Kontroleur van Doeane en Aksyns betaal is nie; om te vereis dat die regs- of handelsnaam van 'n ondernemer in 'n belastingfaktuur voorsien moet word ten einde 'n aftrekking van insetbelasting te kan eis; om vir 'n terugbetaling voorsiening te maak in die plek van 'n terugbetaling ten opsigte van die gebruik van diesel in gevalle waar bedrae aan kleinskaalboere betaal word; om debet- of kreditnotas, belastingfakture of state wat deur agente gehou word, te reël; om die uitreiking van 'n belastingfaktuur te vereis in alle gevalle waar lewerings R10 000 oorskry en om verdere vereistes ten opsigte van belastingfakture voor te skryf; om voorsiening te maak dat opgawes elektronies verstrek kan word tot en met die laaste besigheidsdag van 'n maand; om sekere bepalings met betrekking tot besware en appèlle te wysig; om te vereis dat besonderhede met betrekking tot 'n ondernemer se bank of soortgelyke rekening verskaf word; om die verwysing na Ontvangers van Inkomste met kantore van die Suid-Afrikaanse Inkomstediens te vervang; om te vereis dat redes verskaf word waarom 'n persoon wat as agent aangestel is nie in staat is om te voldoen aan die aanstelling nie; om voorsiening te maak dat 'n huurpoelskema bedryf en bestuur tot die voordeel van die eienaars van deeltitelbelange of aandeelhouers in 'n Aandeleblokmaatskappy geag word afsonderlike ondernemings te wees; om dit 'n misdryf te maak om 'n dokument uit te reik wat voorgee om 'n belastingfaktuur te wees maar nie aan sekere vereistes voldoen nie; om dit 'n misdryf te maak om, sonder wettige gronde, te versuim om gevolg te gee aan 'n aanstellingskennisgewing as agent ingevolge artikel 47; om 'n ondernemer te verhoed om 'n verklaring te maak of om te impliseer dat enige vorm van korting, insluitende korting in die vorm van 'n handels- of kontantafslag, of 'n terugbetaling, in plek van BTW is; om vir die afronding van BTW voorsiening te maak en Bylae 1 van die Wet wat vir vrystellings op invoere voorsiening maak te vervang; tot wysiging van die Inkomstebelastingwet, 1993, ten einde vir 'n afsnydatum van die ontbondelingsbepalings voorsiening te maak vanweë die invoeging in Deel III van Hoofstuk II van die Inkomstebelastingwet, 1962, van die spesiale reëls met betrekking tot ontbondelingstransaksies; tot wysiging van die

for the unbundling provisions in consequence of the introduction of the special rules relating to unbundling transactions in Part III of Chapter II of the Income Tax Act, 1962; to amend the Taxation Laws Amendment Act, 1994, so as to provide for an exemption from marketable securities tax and uncertificated securities tax in the case of rationalisation schemes and to provide for a cut-off date of the rationalisation provisions in consequence of the introduction of the special rules relating to intra-group transactions in Part III of Chapter II of the Income Tax Act, 1962; to amend the Uncertificated Securities Tax Act, 1998, so as to provide for a further exemption; to effect changes to the Act to give effect to the restructuring of the South African Revenue Service; to provide for objection and appeal procedures where a person is aggrieved by a decision of the Commissioner; to amend the Revenue Laws Amendment Act, 1999, so as to repeal an amendment introduced by that Act; to amend the Taxation Laws Amendment Act, 2001, so as to effect certain textual amendments; to amend the Revenue Laws Amendment Act, 2001, so as to effect certain textual amendments; and to provide for matter connected therewith.

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

Amendment of section 3 of Act 32 of 1948, as amended by section 12 of Act 64 of 1960, section 36 of Act 77 of 1968, section 2 of Act 88 of 1974, section 2 of Act 114 of 1977, section 1 of Act 95 of 1978, section 2 of Act 106 of 1980, section 1 of Act 87 of 1982, section 1 of Act 92 of 1983, section 1 of Act 118 of 1984, section 1 of Act 81 of 1985, section 1 of Act 87 of 1988, section 1 of Act 136 of 1992, section 1 of Act 97 of 1993, section 3 of Act 37 of 1996, section 2 of Act 27 of 1997, section 1 of Act 30 of 1998, section 1 of Act 32 of 1999, section 2 of Act 53 of 1999 and section 1 of Act 30 of 2000

1. (1) Section 3 of the Marketable Securities Tax Act, 1948, is hereby amended by the addition of the following paragraph:

"*(f)* in respect of the purchase of marketable securities by a company that are acquired—

(i) in terms of a company formation transaction contemplated in section 42 of the Income Tax Act, 1962 (Act No. 58 of 1962);

(ii) in terms of a share-for-share transaction contemplated in section 43 of that Act;

(iii) in terms of an intra-group transaction contemplated in section 44 of that Act;

(iv) in pursuance of a distribution *in specie* in the course of an unbundling transaction contemplated in section 45 of that Act; or

(v) in terms of any liquidation distribution contemplated in section 46 of that Act,

where the public officer of that company has made a sworn affidavit or solemn declaration that such company formation transaction, share-for-share transaction, intra-group transaction, unbundling transaction or liquidation distribution complies with the provisions contained in section 42, 43, 44, 45 or 46, as the case may be, of that Act.".

(2) Subsection (1) shall be deemed to have come into operation on 1 October 2001, and shall apply in respect of any acquisition of a marketable security in terms of a company formation transaction, an intra-group transaction, a share-for-share transaction or unbundling transaction which takes effect on or after that date or liquidation distribution made on or after that date.

Amendment of section 4 of Act 32 of 1948, as substituted by section 2 of Act 103 of 1969 and amended by section 3 of Act 114 of 1977 and substituted by section 4 of Act 37 of 1996

2. Section 4 of the Marketable Securities Tax Act, 1948, is hereby amended—

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

"(1) Every member shall, subject to the provisions of section 3, in respect of every month, and not later than 14 days after the last day of

Wysigingswet op Belastingwette, 1994, ten einde vir 'n vrystelling van handelseffektebelasting en belasting op sertifikaatlose aandele in die geval van rasionalisasieskemas voorsiening te maak en om vir 'n afsnydatum van die rasionalisasiebepalings voorsiening te maak vanweë die invoeging in Deel III van Hoofstuk II van die Inkomstebelastingwet, 1962, van spesiale reëls met betrekking tot intragroeptransaksies; tot wysiging van die Wet op Belasting op Sertifikaatlose Aandele, 1998, ten einde vir 'n verdere vrystelling voorsiening te maak; om wysigings aan die Wet aan te bring om aan die herstrukturering van die Suid-Afrikaanse Inkomstediens gevolg te gee; om vir beswaar en appèlprosedures waar 'n persoon deur 'n beslissing van die Kommissaris veronreg is, voorsiening te maak; tot wysiging van die Wysigingswet op Inkomstewette, 1999, ten einde 'n wysiging deur daardie Wet ingevoeg, te skrap; tot wysiging van die Wysigingswet op Belastingwette, 2001, om sekere tekstuele wysigings aan te bring; tot wysiging van die Wysigingswet op Inkomstewette, 2001, om sekere tekstuele wysigings aan te bring; en om vir aangeleenthede wat daarmee in verband staan voorsiening te maak.

DAAR WORD BEPAAL deur die Parlement van die Republiek van Suid-Afrika, soos volg:—

Wysiging van artikel 3 van Wet 32 van 1948, soos gewysig deur artikel 12 van Wet 64 van 1960, artikel 36 van Wet 77 van 1968, artikel 2 van Wet 88 van 1974, artikel 2 van Wet 114 van 1977, artikel 1 van Wet 95 van 1978, artikel 2 van Wet 106 van 1980, artikel 1 van Wet 87 van 1982, artikel 1 van Wet 92 van 1983, artikel 1 van Wet 118 van 1984, artikel 1 van Wet 81 van 1985, artikel 1 van Wet 87 van 1988, artikel 1 van Wet 136 van 1992, artikel 1 van Wet 97 van 1993, artikel 3 van Wet 37 van 1996, artikel 2 van Wet 27 van 1997, artikel 1 van Wet 30 van 1998, artikel 1 van Wet 32 van 1999, artikel 2 van Wet 53 van 1999 en artikel 1 van Wet 30 van 2000

1. (1) Artikel 3 van die Handelseffektebelastingswet, 1948, word hierby gewysig deur die volgende paragraaf by te voeg:

"*(f)* ten opsigte van die koop van handelseffekte deur 'n maatskappy wat verkry word—

(i) ingevolge 'n maatskappyformasie-transaksie in artikel 42 van die Inkomstebelastingwet, 1962 (Wet No. 58 van 1962), bedoel;

(ii) ingevolge 'n aandeel-vir-aandeeltransaksie in artikel 43 van daardie Wet bedoel;

(iii) ingevolge 'n intragroeptransaksie in artikel 44 van daardie Wet bedoel;

(iv) vanweë 'n uitkering *in specie* in die loop van 'n ontbondelingstransaksie in artikel 45 van daardie Wet bedoel; of

(v) ingevolge 'n likwidasie-uitkering in artikel 46 van daardie Wet bedoel,

waar die openbare amptenaar van daardie maatskappy onder eed of plegtige verklaring verklaar het dat daardie maatskappyformasie-transaksie, aandeel-vir-aandeeltransaksie, intragroeptransaksie, ontbondelingstransaksie of likwidasie-uitkering aan die bepalings van artikel 42, 43, 44, 45 of 46, na gelang van die geval, van daardie Wet voldoen.".

(2) Subartikel (1) word geag op 1 Oktober 2001, in werking te getree het en is van toepassing ten opsigte van enige verkryging van 'n handelseffek ingevolge 'n maatskappyformasie-transaksie, 'n intragroeptransaksie, 'n aandeel-vir-aandeel-transaksie of ontbondelingstransaksie wat op of na daardie datum in werking tree of 'n likwidasie-uitkering wat op of na daardie datum gemaak word.

Wysiging van artikel 4 van Wet 32 van 1948, soos vervang deur artikel 2 van Wet 103 van 1969 en gewysig deur artikel 3 van Wet 114 van 1977 en vervang deur artikel 4 van Wet 37 van 1996

2. Artikel 4 van die Handelseffektebelastingswet, 1948, word hierby gewysig—

(a) deur subartikel (1) deur die volgende subartikel te vervang:

"(1) Behoudens die bepalings van artikel 3, betaal elke lid, ten opsigte van elke maand en nie later nie dan 14 dae na die laaste dag van daardie

that month or within such further period as the Commissioner, having regard to the circumstances of the case, may allow, pay to the **[receiver of revenue for the area in which such member carries on business]** Commissioner, the amount representing the tax payable on all marketable securities purchased through the agency of or from such member during that month."; and

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

"(3) A member who has not during any particular month effected any transaction in respect of marketable securities, shall within 14 days after the last day of that month or within such further period as the Commissioner, having regard to the circumstances of the case, may allow, lodge a declaration to that effect with the **[receiver of revenue for the area in which such member carries on business]** Commissioner.".

Amendment of section 9 of Act 32 of 1948, as substituted by section 2 of Act 46 of 1996 and amended by section 5 of Act 30 of 1998

3. Section 9 of the Marketable Securities Tax Act, 1948, is hereby amended by the substitution in subsection (1) for the definition of "authorisation letter" of the following definition:

" 'authorisation letter' means a written authorisation granted by the Commissioner, or by any **[chief director or chief revenue inspector under the control, direction or supervision of the Commissioner]** person designated by the Commissioner for this purpose, or by a person occupying a post designated by the Commissioner for this purpose, to an officer to inspect, audit, examine or obtain, as contemplated in section 9B, any information, documents or things;".

Amendment of section 10 of Act 32 of 1948, as amended by section 7 of Act 37 of 1996, section 3 of Act 46 of 1997 and section 4 of Act 53 of 1999

4. Section 10 of the Marketable Securities Tax Act, 1948, is hereby amended by the substitution for paragraph *(a)* of subsection (1) of the following paragraph:

" *(a)* refuses or neglects without just cause shown by him to render to the **[receiver of revenue concerned]** Commissioner, within the period specified, any declaration which he is in terms of section four required so to render, or who wilfully renders or causes or permits to be rendered any such declaration which is false or misleading in any respect; or".

Insertion of section 11A in Act 32 of 1948

5. (1) The following section is hereby inserted in the Marketable Securities Tax Act, 1948, after section 11:

"**Objection and Appeal procedures**

11A. (1) Any person aggrieved by a decision of the Commissioner in terms of this Act may object and appeal against that decision to the tax board or the tax court, as the case may be, established in terms of the Income Tax Act, 1962 (Act No. 58 of 1962), in the manner and under the terms and within the period prescribed by that Act and the rules promulgated thereunder.

(2) The provisions of the Income Tax Act, 1962, relating to objections and appeals, as provided for in Part III of Chapter III and the rules promulgated thereunder, shall *mutatis mutandis* apply in respect of any objection lodged or appeal noted in terms of this Act.

(3) Any decision of the Commissioner, contemplated in subsection (1) shall be deemed to be an assessment for purposes of the application of the provisions of the Income Tax Act, 1962, as contemplated in subsection (2).".

(2) Subsection (1) shall come into operation on a date fixed by the President by proclamation in the *Gazette*.

maand, of binne die verdere tydperk wat die Kommissaris, met inagneming van die omstandighede van die geval, toelaat, aan die **[ontvanger van inkomste van die gebied waarin so 'n lid sake doen]** Kommissaris die bedrag wat die belasting verteenwoordig wat betaalbaar is ten opsigte van alle handelseffekte wat deur die tussenkoms van of by so 'n lid gedurende daardie maand gekoop is."; en

(b) deur subartikel (3) deur die volgende subartikel te vervang:

"(3) 'n Lid wat nie gedurende 'n bepaalde maand 'n transaksie ten opsigte van handelseffekte bewerkstellig het nie, lê binne 14 dae na die laaste dag van daardie maand of binne die verdere tydperk wat die Kommissaris, met inagneming van die omstandighede van die geval, toelaat, 'n verklaring tot dien effekte aan die **[ontvanger van inkomste van die gebied waarin so 'n lid sake doen]** Kommissaris voor.".

Wysiging van artikel 9 van Wet 32 van 1948, soos vervang deur artikel 2 van Wet 46 van 1996 en gewysig deur artikel 5 van Wet 30 van 1998

3. Artikel 9 van die Handelseffektebelastingswet, 1948, word hierby gewysig deur in subartikel (1) die omskrywing van "magtigingsbrief" deur die volgende omskrywing te vervang:

" 'magtigingsbrief' 'n geskrewe magtiging verleen deur die Kommissaris, of **['n hoofdirekteur, ontvanger van inkomste of hoofinkomste-inspekteur onder die beheer, leiding of toesig van die Kommissaris]** deur 'n persoon wat vir dié doel deur die Kommissaris aangewys is, of deur 'n persoon wat 'n pos beklee wat vir dié doel deur die Kommissaris aangewys is, aan 'n amptenaar om enige inligting, dokumente of goed te inspekteer, ouditeer, ondersoek of verkry soos beoog in artikel 9B;".

Wysiging van artikel 10 van Wet 32 van 1948, soos gewysig deur artikel 7 van Wet 37 van 1996, artikel 3 van Wet 46 van 1997 en artikel 4 van Wet 53 van 1999

4. Artikel 10 van die Handelseffektebelastingswet, 1948, word hierby gewysig deur paragraaf *(a)* van subartikel (1) deur die volgende paragraaf te vervang:

"*(a)* weier of nalaat om, sonder gegronde redes aan te toon, aan die **[betrokke ontvanger van inkomste]** Kommissaris binne die vermelde tydperk, 'n verklaring voor te lê wat hy ingevolge artikel vier moet voorlê, of wat opsetlik so 'n verklaring wat in enige opsig vals of misleidend is, voorlê of laat voorlê of toelaat dat dit voorgelê word; of".

Invoeging van artikel 11A in Wet 32 van 1948

5. (1)Die volgende artikel word hierby in die Handelseffektebelastingswet, 1948, na artikel 11 ingevoeg:

"**Beswaar en appèlprosedures**

11A. (1) Enige persoon veronreg deur 'n beslissing ingevolge hierdie Wet deur die Kommissaris gemaak, kan beswaar en appèl teen daardie beslissing na die belastingraad of die belastinghof, na gelang van die geval, ingevolge die Inkomstebelastingwet, 1962 (Wet No. 58 van 1962), ingestel, aanteken, op die wyse en kragtens die voorwaardes en binne die tydperk deur daardie Wet en die reëls daarkragtens uitgevaardig, voorgeskryf.

(2) Die bepalings van die Inkomstebelastingwet, 1962, met betrekking tot besware en appèlle, soos in Deel III van Hoofstuk III en die reëls daarkragtens uitgevaardig bepaal, is *mutatis mutandis* van toepassing ten opsigte van enige beswaar ingedien en appèl aangeteken ingevolge hierdie Wet.

(3) Enige beslissing van die Kommissaris in subartikel (1) bedoel, word vir doeleindes van die toepassing van die bepalings van die Inkomstebelastingwet, 1962, soos in subartikel (2) bedoel, geag 'n aanslag te wees.".

(2) Subartikel (1) tree in werking op 'n datum deur die President by proklamasie in die *Staatskoerant* bepaal.

Amendment of section 3 of Act 40 of 1949, as substituted by section 4 of Act 88 of 1974 and amended by section 1 of Act 99 of 1981 and substituted by section 4 of Act 97 of 1993 and section 10 of Act 37 of 1996

6. Section 3 of the Transfer Duty Act, 1949, is hereby amended by the substitution for subsections (2) and (3) of the following subsections:

"(2) Pending the completion of the declarations referred to in section fourteen, or the determination of the amount of duty payable under this Act, a deposit on account of the duty payable may be made to the **[receiver of revenue]** office of the South African Revenue Service to whom the duty is payable in terms of subsection (3).

(3) The duty and any penalty payable under section 4 and any transfer duty and interest payable under any law repealed by this Act shall be paid to **[a receiver of revenue, on the establishment of the South African Revenue Service (hereafter in this subsection referred to as the departmental receiver of revenue)]**, the office of the South African Revenue Service where payments are accepted, for the area in which the property in question is **[situate]** situated or, if the property is **[situate]** situated in the area of more than one **[departmental receiver of revenue]** office of the South African Revenue Service where payments are accepted, to any one of those **[departmental receivers of revenue]** offices, or, in either case, to the **[departmental receiver of revenue in whose]** office of the South African Revenue Service or the area **[is situate]** where the deeds registry in which the property is registered is situated.".

Amendment of section 4 of Act 40 of 1949, as amended by section 2 of Act 70 of 1963 and substituted by section 1 of Act 72 of 1970 and section 3 of Act 87 of 1982

7. Section 4 of the Transfer Duty Act, 1949, is hereby amended by the substitution for subsection (3) of the following subsection:

"(3) Whenever **[a receiver of revenue to whom duty is payable]** the Commissioner is satisfied that the delay in the determination of the value on which the duty is payable cannot be ascribed to the person liable to pay the duty, he may allow a reasonable extension of time within which the duty may be paid without penalty if, within six months of the date of acquisition of the property—

(a) a deposit on account of the duty payable is made to the **[said receiver]** Commissioner of an amount equal to the duty calculated on the amount of the consideration paid or payable or on the declared value, as the case may be; and

(b) application is made in writing to the **[said receiver]** Commissioner for such extension of time.".

Amendment of section 9 of Act 49 of 1949, as amended by section 3 of Act 31 of 1953, section 12 of Act 80 of 1959, section 3 of Act 70 of 1963, section 3 of Act 77 of 1964, section 1 of Act 81 of 1965, section 7 of Act 103 of 1969, section 2 of Act 89 of 1972, section 3 of Act 66 of 1973, section 5 of Act 88 of 1974, section 77 of Act 54 of 1976, section 2 of Act 95 of 1978, section 6 of Act 106 of 1980, section 2 of Act 99 of 1981, section 2 of Act 118 of 1984, section 3 of Act 81 of 1985, section 3 of Act 86 of 1987, section 4 of Act 87 of 1988, section 36 of Act 9 of 1989, section 1 of Act 69 of 1989, section 79 of Act 89 of 1991, section 6 of Act 120 of 1992, section 4 of Act 136 of 1992, section 5 of Act 97 of 1993, section 2 of Act 37 of 1995, section 3 of Act 32 of 1999, section 3 of Act 30 of 2000 and section 2 of Act 5 of 2001

8. (1) Section 9 of the Transfer Duty Act, 1949, is hereby amended by addition to subsection (1) of the following paragraph:

"*(l)* any company in terms of any intra-group transaction contemplated in section 44 of the Income Tax Act, 1962 (Act No. 58 of 1962), or any liquidation distribution contemplated in section 46 of that Act, where the public officer of that company has made a sworn affidavit or solemn declaration that such

Wysiging van artkel 3 van Wet 40 van 1949, soos vervang deur artikel 4 van Wet 88 van 1974 en gewysig deur artikel 1 van Wet 99 van 1981 en vervang deur artikel 4 van Wet 97 van 1993 en artikel 10 van Wet 37 van 1996

6. Artikel 3 van die Wet op Hereregte, 1949, word hierby gewysig deur subartikels (2) en (3) deur die volgende subartikels te vervang:

"(2) Onderwyl die voltooiing van die in artikel veertien bedoelde verklarings, of die vasstelling van die kragtens hierdie Wet aan hereregte betaalbare bedrag, hangende is, kan 'n deposito teen die betaalbare hereregte inbetaal word by die **[ontvanger van inkomste]** kantoor van die Suid-Afrikaanse Inkomstediens aan wie die hereregte volgens subartikel (3) betaalbaar is.

(3) Hereregte en enige kragtens artikel 4 betaalbare boete en hereregte en rente betaalbaar kragtens 'n wet wat deur hierdie Wet herroep is, word betaal aan **['n ontvanger van inkomste, op die diensstaat van die Suid-Afrikaanse Inkomste Diens (hierna in hierdie subartikel die departementele ontvanger van inkomste genoem) van]** die kantoor van die Suid-Afrikaanse Inkomstediens waar betalings aanvaar word, vir die gebied waarin die betrokke eiendom geleë is of, indien die eiendom in die gebied van meer **[dan]** as een **[departementele ontvanger van inkomste]** kantoor van die Suid-Afrikaanse Inkomstediens waar betalings aanvaar word, geleë is, aan enigeen van daardie **[departementele ontvangers van inkomste]** kantore, of, in óf die een óf die ander geval, aan die **[departementele ontvanger van inkomste]** kantoor van die Suid-Afrikaanse Inkomstediens **[in wie se]** vir die gebied waar die registrasiekantoor van aktes geleë is waarin die eiendom geregistreer is.".

Wysiging van artikel 4 van Wet 40 van 1949, soos gewysig deur artikel 2 van Wet 70 van 1963 en vervang deur artikel 1 van Wet 72 van 1970 en artikel 3 van Wet 87 van 1982

7. Artikel 4 van die Wet op Hereregte, 1949, word hierby gewysig deur subartikel (3) deur die volgende subartikel te vervang:

"(3) Wanneer **['n ontvanger van inkomste aan wie hereregte betaalbaar is]** die Kommissaris oortuig is dat die vertraging by die vasstelling van die waarde waarop die hereregte betaalbaar is, nie toe te skryf is aan die persoon wat die hereregte moet betaal nie, kan hy 'n redelike verlenging van tyd toestaan waarbinne die hereregte sonder boete betaal kan word, mits, binne ses maande vanaf die datum van verkryging van die eiendom—

(a) 'n deposito teen die betaalbare hereregte van 'n bedrag wat gelyk staan aan die hereregte bereken op die betaalde of betaalbare bedrag van die vergoeding of op die verklaarde waarde, na gelang van die geval, by **[genoemde ontvanger]** die Kommissaris inbetaal word; en

(b) skriftelik aansoek vir sodanige verlenging van tyd by **[bedoelde ontvanger]** die Kommissaris gedoen word.".

Wysigig van artikel 9 van Wet 40 van 1949, soos gewysig deur artikel 3 van Wet 31 van 1953, artikel 12 van Wet 80 van 1959, artikel 3 van Wet 70 van 1963, artikel 3 van Wet 77 van 1964, artikel 1 van Wet 81 van 1965, artikel 7 van Wet 103 van 1969, artikel 2 van Wet 89 van 1972, artikel 3 van Wet 66 van 1973, artikel 5 van Wet 88 van 1974, artikel 77 van Wet 54 van 1976, artikel 2 van Wet 95 van 1978, artikel 6 van Wet 106 van 1980, artikel 2 van Wet 99 van 1981, artikel 2 van Wet 118 van 1984, artikel 3 van Wet 81 van 1985, artikel 3 van Wet 86 van 1987, artikel 4 van Wet 87 van 1988, artikel 36 van Wet 9 van 1989, artikel 1 van Wet 69 van 1989, artikel 79 van Wet 89 van 1991, artikel 6 van Wet 120 van 1992, artikel 4 van Wet 136 van 1992, artikel 5 van Wet 97 van 1993, artikel 2 van Wet 37 van 1995, artikel 3 van Wet 32 van 1999, artikel 3 van Wet 30 van 2000 en artikel 2 van Wet 5 van 2001

8. (1) Artikel 9 van die Wet op Hereregte, 1949, word hierby gewysig deur die volgende paragraaf by subartikel (1) te voeg:

"*(l)* enige maatskappy ingevolge 'n intragroeptransaksie in artikel 44 van die Inkomstebelastingwet, 1962 (Wet No. 58 van 1962), bedoel, of 'n likwidasie-uitkering in artikel 46 van daardie Wet bedoel, waar die openbare amptenaar van daardie maatskappy onder eed of plegtige verklaring verklaar het dat daardie intragroeptransaksie of likwidasie-uitkering aan die betrokke

intra-group transaction or liquidation distribution complies with the relevant provisions contained in section 44 or 46, as the case may be, of that Act.".

(2) Subsection (1) shall be deemed to have come into operation on 1 October 2001, and shall apply in respect of any property acquired in terms of an intra-group transaction or liquidation distribution which takes effect on or after that date.

Amendment of section 11A of Act 40 of 1949, as inserted by section 5 of Act 46 of 1996 and amended by section 9 of Act 30 of 1998

9. Section 11A of the Transfer Duty Act, 1949, is hereby amended by the substitution in subsection (1) for the definition of "authorisation letter" of the following definition:

" 'authorisation letter' means a written authorisation granted by the Commissioner, or by any **[chief director or chief revenue inspector under the control, direction or supervision of the Commissioner]** person designated by the Commissioner for this purpose, or by a person occupying a post designated by the Commissioner for this purpose, to an officer to inspect, audit, examine or obtain, as contemplated in section 11C, any information, documents or things;".

Substitution of section 18 of Act 40 of 1949, as amended by section 3 of Act 27 of 1997

10. (1) Section 18 of the Transfer Duty Act, 1949, is hereby substituted by the following section:

"**Objection and Appeal procedures**

18. (1) Any person aggrieved by a decision of the Commissioner in terms of this Act may object and appeal against that decision to the tax board or the tax court, as the case may be, established in terms of the Income Tax Act, 1962 (Act No. 58 of 1962), in the manner and under the terms and within the period prescribed by that Act and the rules promulgated thereunder.

(2) The provisions of the Income Tax Act, 1962, relating to objections and appeals, as provided for in Part III of Chapter III and the rules promulgated thereunder, shall *mutatis mutandis* apply in respect of any objection noted or appeal lodged in terms of this Act.

(3) A decision of the Commissioner contemplated in subsection (1) shall be deemed to be an assessment for the purposes of the application of the provisions of the Income Tax Act, 1962, as contemplated in subsection (2).".

(2) Subsection (1) shall come into operation on a date fixed by the President by proclamation in the *Gazette*.

Repeal of section 19 of Act 40 of 1949, as amended by section 4 of Act 27 of 1997

11. (1) Section 19 of the Transfer Duty Act, 1949, is hereby repealed.

(2) Subsection (1) shall come into operation on a date fixed by the President by proclamation in the *Gazette*.

Amendment of section 5 of Act 45 of 1955, as amended by section 3 of Act 59 of 1957, section 4 of Act 65 of 1960, section 10 of Act 71 of 1961, section 10 of Act 77 of 1964, section 4 of Act 81 of 1965, section 2 of Act 56 of 1966, section 7 of Act 114 of 1977, section 7 of Act 81 of 1985, section 12 of Act 87 of 1988, section 2 of Act 136 of 1991, section 9 of Act 97 of 1993, section 8 of Act 53 of 1999 and section 1 of Act 19 of 2001

12. (1) Section 5 of the Estate Duty Act, 1955, is hereby amended—

(a) by substitution for the heading of the following heading:

"**Determination of value of property [in Estate]**"; and

bepalings van artikel 44 of 46, na gelang van die geval, van daardie Wet voldoen.".

(2) Subartikel (1) word geag op 1 Oktober 2001 in werking te getree het en is van toepassing ten opsigte van enige eiendom ingevolge 'n intragroeptransaksie of 'n likwidasie-uitkering wat op of na daardie datum in werking tree, verkry.

Wysiging van artikel 11A van Wet 40 of 1949, soos ingevoeg deur artikel 5 van Wet 46 van 1996 en gewysig deur artikel 9 van Wet 30 van 1998

9. Artikel 11A van die Wet op Hereregte, 1949, word hierby gewysig deur in subartikel (1) die omskrywing van "magtigingsbrief" deur die volgende omskrywing te vervang:

" 'magtigingsbrief' 'n geskrewe magtiging verleen deur die Kommissaris, of **['n hoofdirekteur, ontvanger van inkomste of hoofinkomste-inspekteur onder die beheer, leiding of toesig van die Kommissaris]** deur 'n persoon vir dié doel deur die Kommissaris aangewys, of deur 'n persoon wat 'n pos beklee wat vir dié doel deur die Kommissaris aangewys is, aan 'n amptenaar om enige inligting, dokumente of goed te inspekteer, ouditeer, ondersoek of verkry soos beoog in artikel 11C;".

Vervanging van artikel 18 van Wet 40 van 1949, soos gewysig deur artikel 3 van Wet 27 van 1997

10. (1) Artikel 18 van die Wet op Hereregte, 1949, word hierby deur die volgende artikel vervang:

"Beswaar en appèlprosedures

18. (1) Enige persoon deur 'n beslissing van die Kommissaris ingevolge hierdie Wet veronreg, kan beswaar en appèl teen daardie beslissing na die belastingraad of die belastinghof, na gelang van die geval, ingevolge die Inkomstebelastingwet, 1962 (Wet No. 58 van 1962) ingestel, aanteken op die wyse en kragtens die voorwaardes en binne daardie tydperk deur daardie Wet en die reëls daarkragtens uitgevaardig, voorgeskryf.

(2) Die bepalings van die Inkomstebelastingwet, 1962, met betrekking tot besware en appèlle, soos in Deel III van Hoofstuk III en die reëls daarkragtens uitgereik bepaal, is *mutatis mutandis* van toepassing ten opsigte van enige beswaar ingedien of appèl aangeteken ingevolge hierdie Wet.

(3) Enige beslissing van die Kommissaris in subartikel (1) bedoel word vir doeleindes van die toepassing van die bepalings van die Inkomstebelastingwet, 1962, soos in subartikel (2) bedoel, geag 'n aanslag te wees.".

(2) Subartikel (1) tree in werking op 'n datum deur die President by proklamasie in die *Staatskoerant* bepaal.

Herroeping van artikel 19 van Wet 40 van 1949, soos gewysig deur artikel 4 van Wet 27 van 1997

11. (1) Artikel 19 van die Wet op Hereregte, 1949, word hierby herroep.

(2) Subartikel (1) tree in werking op 'n datum deur die President by proklamasie in die *Staatskoerant* bepaal.

Wysiging van artikel 5 van Wet 45 van 1955, soos gewysig deur artikel 3 van Wet 59 van 1957, artikel 4 van Wet 65 van 1960, artikel 10 van Wet 71 van 1961, artikel 10 van Wet 77 van 1964, artikel 4 van Wet 81 van 1965, artikel 2 van Wet 56 van 1966, artikel 7 van Wet 114 van 1977, artikel 7 van Wet 81 van 1985, artikel 12 van Wet 87 van 1988, artikel 2 van Wet 136 van 1991, artikel 9 van Wet 97 van 1993, artikel 8 van Wet 53 van 1999 en artikel 1 van Wet 19 van 2001

12. (1) Artikel 5 van die Boedelbelastingwet, 1955, word hierby gewysig—

(a) deur die opskrif deur die volgende opskrif te vervang:

"**Vasstelling van waarde van eiendom [in boedel]**"; en

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

"Provided that where the Commissioner is satisfied that the property which is subject to any such interest could not reasonably be expected to produce an annual yield equal to 12 per cent on such value of the property, the Commissioner may fix such sum as representing the annual yield as may be reasonable, and the sum so fixed shall **[for the purposes of paragraphs *(b)* and *(f)* of subsection (1)]** be deemed to be the annual value of the right of enjoyment of such property:".

(2) Subsection (1) shall be deemed to have come into operation on 27 July 2001.

Amendment of section 8A of Act 45 of 1955, as substituted by section 7 of Act 46 of 1996 and amended by section 15 of Act 30 of 1998

13. Section 8A of the Estate Duty Act, 1955, is hereby amended by the substitution in subsection (1) for the definition of "authorisation letter" of the following definition:

" 'authorisation letter' means a written authorisation granted by the Commissioner, or by any **[chief director or chief revenue inspector under the control, direction or supervision of the Commissioner]** person designated by the Commissioner for this purpose, or by a person occupying a post designated by the Commissioner for this purpose, to an officer to inspect, audit, examine or obtain, as contemplated in section 8C, any information, documents or things;".

Amendment of section 9A of Act 45 of 1955, as inserted by section 7 of Act 86 of 1987

14. (1) Section 9A of the Estate Duty Act, 1955, is hereby amended by the substitution for the words following paragraph *(b)* but preceding the proviso by the following words:

"he shall raise an assessment or assessments in respect of the said value or amount, notwithstanding that an assessment or assessments in respect of the value or amount in question may have been made upon the executor or person liable for the duty, and notwithstanding the provisions of section 24**[(9)]**(3):".

(2) Subsection (1) shall come into operation on a date fixed by the President by proclamation in the *Gazette*.

Substitution of section 24 of Act 45 of 1955, as substituted by section 15 of Act 77 of 1962 and amended by section 12 of Act 77 of 1964, section 2 of Act 104 of 1976, section 8 of Act 86 of 1987, section 10 of Act 97 of 1993, section 8 of Act 27 of 1997 and section 9 of Act 53 of 1999

15. (1) Section 24 of the Estate Duty Act, 1955, is hereby substituted by the following section:

"Objection and Appeal procedures

24. (1) Every executor or other person liable for duty under this Act who is aggrieved by any assessment of such duty in terms of sections 9 and 9A of this Act, may object and appeal against that assessment to the tax board or the tax court, as the case may be, established in terms of the Income Tax Act, 1962 (Act No. 58 of 1962), in the manner and under the terms and within the period prescribed by that Act and the rules promulgated thereunder.

(2) The provisions of the Income Tax Act, 1962, relating to objections and appeals, as provided for in Part III of Chapter III and the rules promulgated thereunder, shall *mutatis mutandis* apply in respect of any objection lodged or appeal noted in terms of this Act.

(3) Where no objection is made to any assessment or where an objection has been allowed in full or withdrawn, such assessment or altered assessment, as the case may be, shall be final and conclusive.".

(2) Subsection (1) shall come into operation on a date fixed by the President by proclamation in the *Gazette*.

(b) deur die eerste voorbehoudsbepaling by subartikel (2) deur die volgende voorbehoudsbepaling te vervang:

"Met dien verstande dat waar die Kommissaris oortuig is dat van die goed wat aan so 'n reg onderworpe is, nie redelikerwys verwag kan word om 'n jaarlikse opbrengs gelyk aan 12 persent van bedoelde waarde van die goed op te lewer nie, die Kommissaris so 'n som kan vasstel as wat billikerwys die jaarlikse opbrengs voorstel, en die aldus vasgestelde som **[by die toepassing van paragrawe *(b)* en *(f)* van subartikel (1)]** geag word die jaarlikse waarde van die reg op die genot van bedoelde goed te wees:".

(2) Subartikel (1) word geag op 27 Julie 2001 in werking te getree het.

Wysiging van artikel 8A van Wet 45 van 1955, soos vervang deur artikel 7 van Wet 46 van 1996 en gewysig deur artikel 15 van Wet 30 van 1998

13. Artikel 8A van die Boedelbelastingwet, 1955, word hierby gewysig deur die omskrywing van "magtigingsbrief" in subartikel (1) deur die volgende omskrywing te vervang:

" 'magtigingsbrief' 'n geskrewe magtiging verleen deur die Kommissaris, **['n hoof-direkteur of hoofinkomste-inspekteur onder die beheer, leiding of toesig van die Kommissaris]**, of deur 'n persoon deur die Kommissaris vir dié doel aangewys, of deur 'n persoon wat 'n pos beklee wat deur die Kommissaris vir dié doel aangewys is, aan 'n amptenaar om enige inligting, dokumente of goed te inspekteer, ouditeer, ondersoek of verkry soos beoog in artikel 8C;".

Wysiging van artikel 9A van Wet 45 van 1955, soos ingevoeg deur artikel 7 van Wet 86 van 1987

14. (1) Artikel 9A van die Boedelbelastingwet, 1945, word hierby gewysig deur die woorde wat volg op paragraaf *(b)* maar wat die voorbehoudsbepaling voorafgaan deur die volgende woorde te vervang:

"doen hy 'n aanslag of aanslae ten opsigte van bedoelde waarde of bedrag, nieteenstaande dat die eksekuteur of persoon aanspreeklik vir die belasting, aangeslaan mag gewees het ten opsigte van die betrokke waarde of bedrag, en ondanks die bepalings van artikel 24**[(9)]**(3):".

(2) Subartikel (1) tree in werking op 'n datum deur die President by proklamasie in die *Staatskoerant* bepaal.

Vervanging van artikel 24 van Wet 45 van 1955, soos vervang deur artikel 15 van Wet 77 van 1962 en gewysig deur artikel 12 van Wet 77 van 1964, artikel 2 van Wet 104 van 1976, artikel 8 van Wet 86 van 1987, artikel 10 van Wet 97 van 1993, artikel 8 van Wet 27 van 1997 en artikel 9 van Wet 53 van 1999

15. (1) Artikel 24 van die Boedelbelastingwet, 1955, word hierby deur die volgende artikel vervang:

"Beswaar en appèlprosedures

24. (1) Elke eksekuteur of ander persoon vir belasting ingevolge hierdie Wet aanspreeklik wie deur 'n aanslag van daardie belasting ingevolge artikels 9 en 9A van hierdie Wet veronreg is, kan beswaar en appèl teen daardie aanslag na die belastingraad of belastinghof, na gelang van die geval, ingevolge die Inkomstebelastingwet, 1962 (Wet No. 58 van 1962) ingestel, aanteken op die wyse en kragtens daardie voorwaardes en binne daardie tydperk deur daardie Wet en die reëls daarkragtens uitgevaardig, voorgeskryf.

(2) Die bepalings van die Inkomstebelastingwet, 1962, met betrekking tot besware en appèlle, soos in Deel III van Hoofstuk III bepaal en die reëls daarkragtens uitgevaardig, is *mutatis mutandis* van toepassing ten opsigte van enige beswaar ingedien of appèl aangeteken ingevolge hierdie Wet.

(3) Waar geen beswaar teen 'n aanslag ingedien is nie of waar 'n beswaar ten volle toegelaat of teruggetrek is, is daardie aanslag of gewysigde aanslag, na gelang van die geval, finaal en afdoende.".

(2) Subartikel (1) tree in werking op 'n datum deur die President by proklamasie in die *Staatskoerant* bepaal.

Insertion of section 25A in Act 45 of 1955

16. (1) The following section is hereby inserted in the Estate Duty Act, 1955, after section 25:

"**Refunds and set off**

25A. (1) If it is proved to the satisfaction of the Commissioner that any amount of duty paid by an executor in respect of an estate was in excess of the amount properly chargeable under this Act, the Commissioner may, subject to the provisions of subsection (3), authorise a refund to such executor of any duty overpaid: Provided that an amount paid in respect of an assessment accepted by the executor and which was made in accordance with any practice generally prevailing at the date of that assessment, shall be deemed to have been properly chargeable.

(2) The Commissioner shall not authorise any refund under this section unless the claim therefor is made within three years after the date of the assessment under which such duty was payable.

(3) Where any refund contemplated in subsection (1) is due to any executor in respect of any estate of a person and such person has failed to pay any amount of tax, additional tax, duty, levy, charge, interest or penalty levied or imposed under any other law administered by the Commissioner, within the period prescribed for payment of that amount, the Commissioner may set off against the amount which that person has failed to pay, any amount which has become refundable to the executor of his or her estate under this section.".

(2) Subsection (1) shall come into operation on 7 November 2001 and shall apply in respect of any claim for a refund received by the Commissioner on or after that date.

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 95 of 1967, 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 No. R.780 of 14 April 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, 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, 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 and section 3 of Act 19 of 2001

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

(a) by the insertion after the definition of "financial year" of the following definitions:

" 'foreign equity instrument' means—

(a) a share listed on any recognised exchange outside the Republic;

(b) a unit in an arrangement or scheme contemplated in paragraph *(e)*(ii) of the definition of 'company' in section 1;

(c) any other contractual right or obligation which derives its value from any specified index outside the Republic; or

(d) any coin made mainly from gold or platinum,

and any option, future or contract relating to such share, unit, interest, investment or contractual right or obligation or coin;";

Invoeging van artikel 25A in Wet 45 van 1955

16. (1) Die volgende artikel word hierby in die Boedelbelastingwet, 1955, na artikel 25 ingevoeg:

"**Terugbetalings en verrekening**

25A. (1) Indien daar tot die bevrediging van die Kommissaris bewys word dat enige bedrag aan belasting, wat deur 'n eksekuteur betaal is ten opsigte van 'n boedel, die bedrag wat kragtens hierdie Wet behoorlik hefbaar is te bowe gaan, kan die Kommissaris, behoudens die bepalings van subartikel (3), 'n terugbetaling aan daardie eksekuteur van enige belasting oorbetaal magtig: Met dien verstande dat 'n bedrag betaal ten opsigte van 'n aanslag wat deur die eksekuteur aanvaar is en wat gemaak is ingevolge enige algemeen heersende praktyk op die datum van die aanslag, geag word behoorlik hefbaar te gewees het.

(2) Die Kommissaris magtig nie 'n terugbetaling kragtens hierdie artikel nie, tensy aanspraak daarop gemaak word binne drie jaar vanaf die datum van die aanslag waarvolgens daardie belasting betaalbaar was.

(3) Waar 'n terugbetaling in subartikel (1) bedoel aan 'n eksekuteur betaalbaar is ten opsigte van 'n boedel van 'n persoon en daardie persoon nagelaat het om enige bedrag van belasting, addisionele belasting, reg, heffing, tarief, rente of boete gehef of opgelê kragtens enige ander wet deur die Kommissaris geadministreer, te betaal binne die tydperk voorgeskryf vir betaling van daardie bedrag, kan die Kommissaris teen die bedrag wat die persoon versuim het om te betaal, enige bedrag wat kragtens hierdie artikel aan die eksekuteur van sy of haar boedel terugbetaalbaar geword het, verreken.".

(2) Subartikel (1) tree op 7 November 2001 in werking en is van toepassing ten opsigte van enige eis om 'n terugbetaling op of na daardie datum deur die Kommissaris ontvang.

Wysiging van artikel 1 van Wet 58 van 1962, soos gewysig deur artikel 3 van Wet 90 van 1962, artikel 1 van Wet 6 van 1963, artikel 4 van Wet 72 van 1963, artikel 4 van Wet 90 van 1964, artikel 5 van Wet 88 van 1965, artikel 5 van Wet 55 van 1966, artikel 5 van Wet 95 van 1967, artikel 5 van Wet 76 van 1968, artikel 6 van Wet 89 van 1969, artikel 6 van Wet 52 van 1970, artikel 4 van Wet 88 van 1971, artikel 4 van Wet 90 van 1972, artikel 4 van Wet 65 van 1973, artikel 4 van Wet 85 van 1974, artikel 4 van Wet 69 van 1975, artikel 4 van Wet 103 van 1976, artikel 4 van Wet 113 van 1977, artikel 3 van Wet 101 van 1978, artikel 3 van Wet 104 van 1979, artikel 2 van Wet 104 van 1980, artikel 2 van Wet 96 van 1981, artikel 3 van Wet 91 van 1982, artikel 2 van Wet 94 van 1983, artikel 1 van Wet 30 van 1984, artikel 2 van Wet 121 van 1984, artikel 2 van Wet 96 van 1985, artikel 2 van Wet 65 van 1986, artikel 1 van Wet 108 van 1986, artikel 2 van Wet 85 van 1987, artikel 2 van Wet 90 van 1988, artikel 1 van Wet 99 van 1988, Goewermentskennisgewing No. R.780 van 14 April 1989, artikel 2 van Wet 70 van 1989, artikel 2 van Wet 101 van 1990, artikel 2 van Wet 129 van 1991, artikel 2 van Wet 141 van 1992, artikel 2 van Wet 113 van 1993, artikel 2 van Wet 21 van 1994, artikel 2 van Wet 21 van 1995, artikel 2 van Wet 36 van 1996, artikel 2 van Wet 28 van 1997, artikel 19 van Wet 30 van 1998, artikel 10 van Wet 53 van 1999, artikel 13 van Wet 30 van 2000, artikel 2 van Wet 59 van 2000, artikel 5 van Wet 5 van 2001 en artikel 3 van Wet 19 van 2001

17. Artikel 1 van die Inkomstebelastingwet, 1962, word hierby gewysig—

(a) deur die voorbehoudsbepaling by subparagraaf *(bb)* van paragraaf *(e*A*)* van die omskrywing van "bruto inkomste" deur die volgende voorbehoudsbepaling te vervang:

"Met dien verstande dat waar **['n aantekening in die rekords van die fonds gemaak word wat]** 'n hof wat 'n egskeidingsbevel toestaan 'n bevel gemaak het wat bepaal dat 'n deel van daardie bedrag aan die vorige eggenoot van daardie lid betaal moet word, soos in artikel 7(8) van die Wet op Egskeiding, 1979 (Wet No. 70 van 1979), bedoel, word daardie deel vir die doeleindes van hierdie paragraaf geag 'n bedrag vir

(b) by the substitution for the proviso to subparagraph *(bb)* of paragraph *(e*A*)* of the definition of "gross income" of the following proviso:

"Provided that where **[any endorsement has been made in the records of the fund which provides]** a court granting a decree of divorce in respect of such member has made an order that any part of such amount shall be paid to the former spouse of such member, as provided for in section 7(8) of the Divorce Act, 1979 (Act No. 70 of 1979), such part shall for the purposes of this paragraph be deemed to be an amount converted for the benefit or ultimate benefit of such member; or";

(c) by the insertion in the definition of "gross income" after paragraph *(j)* of the following paragraph:

"*(j*A*)* any amount received by or accrued to any person during the year of assessment from the disposal of any asset manufactured, produced, constructed or assembled by that person, which is similar to any other asset manufactured, produced, constructed or assembled by that person for purposes of manufacture, sale or exchange by that person or on that person's behalf;";

(d) by the substitution for paragraph *(k)* of the definition of "gross income" of following paragraph:

"*(k)* any amount received or accrued by way of dividends including any amount **[determined in accordance with the provisions of section 9E in respect of any foreign dividend received by or accrued to any person who is a resident]** which is deemed to be a dividend declared as contemplated in the definition of 'foreign dividend' in section 9E;"; and

(e) by the substitution for subparagraph (i) of paragraph *(a)* of the definition of "trading stock" of the following subparagraph:

"(i) produced, manufactured, constructed, assembled, purchased or in any other manner acquired by a taxpayer for the purposes of manufacture, sale or exchange by him or on his behalf; or".

(2) *(a)* Subsection (1)*(a)* shall be deemed to have come into operation on 1 October 2001.

(b) Subsection (1)*(b)* shall come into operation on the date of promulgation of this Act and shall apply in respect of any amount converted on or after that date.

(c) Subsection (1)*(c)* shall come into operation on the date of promulgation of this Act and shall apply in respect of any disposal on or after that date.

(d) Subsection (1)*(d)* shall be deemed to have come into operation on 23 February 2000.

Amendment of section 3 of Act 58 of 1962, as amended by section 3 of Act 141 of 1992, section 3 of Act 21 of 1994, section 3 of Act 21 of 1995, section 20 of Act 30 of 1998, section 3 of Act 59 of 2000, section 6 of Act 5 of 2001 and section 4 of Act 19 of 2001

18. Section 3 of the Income Tax Act, 1962, is hereby amended by the substitution for subsection (4) of the following subsection:

"(4) Any decision of the Commissioner under the definitions of 'benefit fund', 'pension fund', 'provident fund', 'retirement annuity fund' and 'spouse' in section 1, section 6, section 8(4)*(b)*, *(c)*, *(d)* and *(e)*, section 9D, section 9F, section 10(1)*(c*H*)*, *(c*K*)*, (e)*, *(i*A*)*, (j)* and *(n*B*)*, section 11*(e)*, *(f)*, *(g)*, *(g*A*)*, *(j)*, *(l)*, *(t)*, *(u)* and *(w)*, section 12C, section 12E, section 12G, section 13, section 14, section 15, section 22(1), (3) and (5), section 24(2), section 24A(6), section 24C, section 24D, section 24I, section 25D, section 27, section 31, section 35(2), section 38(4), section 57, paragraphs 6, 7, 9, 13, 13A, 14, 19 and 20 of the First Schedule, paragraph *(b)* of the definition of 'formula A' in paragraph 1 and paragraph 4 of the Second Schedule, paragraphs 18, 19(1), 20, 21, 22, 24 and 27 of the Fourth Schedule, **[and]** paragraphs 2, 3, 6, 9 and 11 of the Seventh Schedule and paragraphs 29(2A), 29(7), 31(2), 65(1)*(d)* and 66(1)*(c)* of the Eighth Schedule, shall be subject to objection and appeal.".

die voordeel of uiteindelike voordeel van daardie lid omgeskakel te wees; of";

(b) deur in die omskrywing van "bruto inkomste" die volgende paragraaf na paragraaf *(j)* in te voeg:

"*(j*A) enige bedrag ontvang deur of toegeval aan 'n persoon gedurende die jaar van aanslag uit die beskikking oor 'n bate deur daardie persoon vervaardig, geproduseer, opgerig of aanmekaargesit, wat soortgelyk is aan enige ander bate deur daardie persoon vervaardig, geproduseer, opgerig of aanmekaargesit vir doeleindes van vervaardiging, verkoop of ruil deur daardie persoon of ten behoewe van daardie persoon;";

(c) deur paragraaf *(k)* van die omskrywing van "bruto inkomste" deur die volgende paragraaf te vervang:

"*(k)* 'n bedrag ontvang of toegeval by wyse van dividende, met inbegrip van 'n bedrag **[ooreenkomstig die bepalings van artikel 9E bepaal ten opsigte van enige buitelandse dividend ontvang deur of toegeval aan enige persoon wat 'n inwoner is]** wat geag word 'n dividend verklaar te wees soos in die omskrywing van 'buitelandse dividend' in artikel 9E bedoel;";

(d) deur die volgende omskrywing na die omskrywing van "bruto inkomste" in te voeg:

" 'buitelandse ekwiteitsinstrument'—

(a) 'n aandeel op 'n erkende beurs buite die Republiek genoteer;

(b) 'n eenheid in 'n reëling of skema in paragraaf *(e)*(ii) van die omskrywing van 'maatskappy' in artikel 1 bedoel;

(c) enige ander kontraktuele reg of verpligting waarvan die waarde deur 'n gespesifiseerde indeks buite die Republiek bepaal word; of

(d) enige munt hoofsaaklik van goud of platinum gemaak,

en enige opsie, termynooreenkoms of kontrak met betrekking tot daardie aandeel, eenheid, belang, belegging of kontraktuele reg of verpligting of munt;"; en

(e) deur subparagraaf (i) van paragraaf *(a)* van die omskrywing van "handelsvoorraad" deur die volgende subparagraaf te vervang:

"(i) deur 'n belastingpligtige vir die doeleindes van vervaardiging, verkoop of ruil deur of ten behoewe van hom geproduseer, vervaardig, opgerig, aanmekaargesit, gekoop of op 'n ander wyse verkry; of".

(2) *(a)* Subartikel (1)*(a)* tree in werking op die datum van afkondiging van hierdie Wet en is van toepassing ten opsigte van enige bedrag op of na daardie datum omgeskakel.

(b) Subartikel (1)*(b)* tree in werking op die datum van afkondiging van hierdie Wet en is van toepassing ten opsigte van enige beskikking op of na daardie datum.

(c) Subartikel (1)*(c)* word geag op 23 Februarie 2000 in werking te getree het.

(d) Subartikel (1)*(d)* word geag op 1 Oktober 2001 in werking te getree het.

Wysiging van artikel 3 van Wet 58 van 1962, soos gewysig deur artikel 3 van Wet 141 van 1992, artikel 3 van Wet 21 van 1994, artikel 3 van Wet 21 van 1995, artikel 20 van Wet 30 van 1998, artikel 3 van Wet 59 van 2000, artikel 6 van Wet 5 van 2001 en artikel 4 van Wet 19 van 2001

18. Artikel 3 van die Inkomstebelastingwet, 1962 word hierby gewysig deur subartikel (4) deur die volgende subartikel te vervang:

"(4) Enige beslissing van die Kommissaris kragtens die omskrywings van 'bystandsfonds', 'gade', 'pensioenfonds', 'uittredingannuïteitsfonds' en 'voorsorgfonds' in artikel 1, artikel 6, artikel 8(4)*(b)*, *(c)*, *(d)* en *(e)*, artikel 9D, artikel 9F, artikel 10(1)*(c*H), *(c*K), *(e)*, *(i*A), *(j)* en *(n*B), artikel 11*(e)*, *(f)*, *(g)*, *(g*A), *(j)*, *(l)*, *(t)*, *(u)* en *(w)*, artikel 12C, artikel 12E, artikel 12G, artikel 13, artikel 14, artikel 15, artikel 22(1), (3) en (5), artikel 24(2), artikel 24A(6), artikel 24C, artikel 24D, artikel 24I, artikel 25D, artikel 27, artikel 31, artikel 35(2), artikel 38(4), artikel 57, paragrawe 6, 7, 9, 13, 13A, 14, 19 en 20 van die Eerste Bylae, paragraaf *(b)* van die omskrywing van 'formule A' in paragraaf 1 en paragraaf 4 van die Tweede Bylae, paragrawe 18, 19(1), 20, 21, 22, 24 en 27 van die Vierde Bylae, paragrawe 2, 3, 6, 9 en 11 van die Sewende Bylae en paragrawe 29(2A), 29(7), 31(2), 65(1)*(d)* en 66(1)*(c)* van die Agtste Bylae is aan beswaar en appèl onderhewig.".

Amendment of section 4 of Act 58 of 1962, as amended by section 6 of Act 55 of 1966, section 4 of Act 104 of 1979, section 32 of Act 104 of 1980, section 3 of Act 96 of 1981, section 3 of Act 85 of 1987, section 3 of Act 70 of 1989, section 4 of Act 21 of 1994, section 3 of Act 36 of 1996, section 34 of Act 34 of 1997, section 21 of Act 30 of 1998, section 11 of Act 53 of 1999 and section 14 of Act 30 of 2000

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

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

"*(e)* the Commissioner shall disclose information in respect of any class of taxpayers to the Director-General of the National Treasury, to the extent necessary for the purposes of tax policy design or revenue estimation;";

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

"(1B) The Commissioner may apply *ex parte* to a judge in chambers for an order allowing him or her to disclose to the National Commissioner of the South African Police Service, contemplated in section 6(1) of the South African Police Service Act, 1995 (Act No. 68 of 1995), or the National Director of Public Prosecutions, contemplated in section 5(2)*(a)* of the National Prosecuting Authority Act, 1998 (Act No. 32 of 1998), such information, which may reveal evidence—

(a) that an offence, other than an offence in terms of this Act or any other Act administered by the Commissioner or any other offence in respect of which the Commissioner is a complainant, has been or may be committed, or where such information may be relevant to the investigation or prosecution of such an offence, and such offence is a serious offence in respect of which a court may impose a sentence of imprisonment exceeding five years; or

(b) of an imminent and serious public safety or environmental risk,

and where the public interest in the disclosure of the information outweighs any potential harm to the taxpayer concerned should such information be disclosed: Provided that any information, document or thing provided by a taxpayer in any return or document, or obtained from a taxpayer in terms of section 74A, 74B or 74C, which is disclosed in terms of this subsection, shall not, unless a competent court otherwise directs, be admissible in any criminal proceedings against such taxpayer, to the extent that such information, document or thing constitutes an admission by such taxpayer of the commission of an offence contemplated in paragraph *(a)*.

(1C) For the purposes of subsection (1B), the Commissioner may delegate the powers vested in him or her by that subsection, to any other officer.

(1D) The Director-General or any person acting under the direction and control of such Director-General shall not disclose any information supplied under subsection (1)*(e)* to any other person or permit any other person to have access thereto, except in the performance of any function contemplated in subsection (1)*(e)*.

(1E) The National Police Commissioner or the National Director of Public Prosecutions or any person acting under the direction and control of such National Police Commissioner or National Director of Public Prosecutions, shall not disclose any information supplied under subsection (1B) to any other person or permit any other person to have access thereto, except in the exercise of his or her powers or the carrying out of his of her duties for purposes of any investigation of, or prosecution for, an offence contemplated in subsection (1B).";

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

"*(c)* The Director-General of the National Treasury, and any person acting under the direction and control of that Director-General, who performs any function as contemplated in subsection (1)*(e)*, shall take and subscribe before a magistrate or justice of the peace or a commissioner of

Wysiging van artikel 4 van Wet 58 van 1962, soos gewysig deur artikel 6 van Wet 55 van 1966, artikel 4 van Wet 104 van 1979, artikel 32 van Wet 104 van 1980, artikel 3 van Wet 96 van 1981, artikel 3 van Wet 85 van 1987, artikel 3 van Wet 70 van 1989, artikel 4 van Wet 21 van 1994, artikel 3 van Wet 36 van 1996, artikel 34 van Wet 34 van 1997, artikel 21 van Wet 30 van 1998, artikel 11 van Wet 53 van 1999 en artikel 14 van Wet 30 van 2000

19. Artikel 4 van die Inkomstebelastingwet, 1962, word hierby gewysig—

(a) deur die volgende paragraaf by subartikel (1) te voeg:

"*(e)* die Kommissaris inligting met betrekking tot enige klas van belastingpligtiges aan die Direkteur-generaal van die Nasionale Tesourie sal bekendmaak, tot die mate wat dit vir doeleindes van belastingbeleidsontwikkeling of inkomsteraming benodig word;";

(b) deur na subartikel (1A) die volgende subartikels by te voeg:

"(1B) Die Kommissaris kan *ex parte* by 'n regter in kamers aansoek doen vir 'n bevel wat hom of haar magtig om aan die Nasionale Kommissaris van die Suid-Afrikaanse Polisiediens, in artikel 6(1) van die Wet op die Suid-Afrikaanse Polisiediens, 1995 (Wet No. 68 van 1995), bedoel of die Nasionale Direkteur van Openbare Vervolgings, in artikel 5(2)*(a)* van die Wet op die Nasionale Vervolgingsgesag, 1998 (Wet No. 32 van 1998), bedoel, daardie inligting bekend te maak, wat getuienis mag openbaar—

(a) dat 'n misdryf, behalwe 'n misdryf ingevolge hierdie Wet of enige ander Wet deur die Kommissaris geadministreer of enige ander misdryf ten opsige waarvan die Kommissaris 'n klaer is, gepleeg is of gaan word, of waar daardie inligting relevant mag wees by die ondersoek of vervolging van sodanige misdryf, en daardie misdryf 'n ernstige misdryf daarstel ten opsigte waarvan 'n hof gevangenisstraf van langer as vyf jaar kan oplê; of

(b) van 'n dreigende en ernstige openbare gevaar of omgewingsrisiko, en waar die openbare belang in die openbaarmaking van die inligting swaarder weeg as enige moontlike benadeling van die betrokke belastingpligtige indien die inligting bekend gemaak sou word: Met dien verstande dat enige inligting, dokument of goed deur 'n belastingpligtige in 'n opgawe of dokument verskaf, of vanaf 'n belastingpligtige verkry ingevolge artikel 74A, 74B of 74C, wat ingevolge hierdie subarikel bekendgemaak is, tensy 'n bevoegde hof anders gelas, nie in enige kriminele vervolging teen daardie belastingpligtige toelaatbaar is nie, tot die mate wat daardie inligting, dokument of goed 'n erkenning deur daardie belastingpligtige daarstel van die pleeg van 'n misdryf in paragraaf *(a)* bedoel.

(1C) By die toepassing van subartikel (1B), kan die Kommissaris die magte in hom of haar gevestig deur daardie subartikel aan enige ander amptenaar delegeer.

(1D) Die Direkteur-generaal of enige persoon wat optree onder die beheer en toesig van daardie Direkteur-generaal openbaar nie enige inligting kragtens subartikel (1)*(e)* voorsien aan enige ander persoon nie of laat enige ander persoon toe om toegang daartoe te hê nie, behalwe in die verrigting van enige funksie in subartikel (1)*(e)* bedoel.

(1E) Die Nasionale Kommissaris van die Polisiediens of die Nasionale Direkteur van Openbare Vervolgings of enige persoon wat onder die beheer en toesig van daardie Nasionale Kommissaris van die Polisiediens of die Nasionale Direkteur van Openbare Vervolgings optree, openbaar nie enige inligting kragtens subartikel (1B) voorsien aan enige persoon nie of laat nie toe dat enige persoon toegang daartoe verkry nie, behalwe in die uitoefening van sy of haar magte of uitvoering van sy of haar pligte vir doeleindes van enige ondersoek of vervolging van 'n misdryf in subartikel (1B) bedoel.";

(c) deur die volgende paragraaf by subartikel (2) te voeg:

"*(c)* Die Direkteur-generaal van die Nasionale Tesourie en enige persoon wat onder die toesig en beheer van daardie Direkteur-generaal optree, wat enige funksie in subartikel (1)*(e)* bedoel verrig, moet 'n eed of plegtige verklaring, na gelang van die geval, van getrouheid of geheimhouding

oaths, such oath or solemn declaration, as the case may be, of fidelity or secrecy as may be prescribed."; and

(d) by the insertion after subsection (2A) of the following subsection:

(2B) The provisions of this section shall not apply in respect of any information relating to any person, where that person has consented that such information may be published or made known to any other person.".

Amendment of section 6*quat* of Act 58 of 1962, as inserted by section 5 of Act 85 of 1987 and amended by section 5 of Act 28 of 1997, section 12 of Act 53 of 1999, section 16 of Act 30 of 2000 and substituted by section 4 of Act 59 of 2000 and amended by section 8 of Act 5 of 2001

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

(a) by the addition of the word "or" at the end of paragraph *(e)* of subsection (1);

(b) by the addition to subsection (1) of the following paragraph:

"*(f)* any amount—

(i) received by or accrued to any other person which is deemed to have been received by or accrued to such resident in terms of section 7;

(ii) of capital gain of any other person which is attributed to that resident in terms of paragraph 68, 69, 70, 71, 72 or 80 of the Eighth Schedule; or

(iii) which represents capital of a trust, as contemplated in section 25B(2A) or paragraph 80(3) of the Eighth Schedule, in respect of which that resident acquires a vested right,";

(c) by the addition of the word "or" at the end of paragraph *(d)* of subsection (1A); and

(d) by the addition to subsection (1A) of the following paragraphs:

"*(e)* any unit portfolio in respect of the amount of any foreign dividend which is deemed to have been declared to such resident in terms of section 9E(5) and included in the taxable income of that resident; or

(f) any other person contemplated in subsection (1)*(f)*(i) or (ii) or any trust contemplated in subsection (1)*(f)*(iii), in respect of the amount included in the taxable income of that resident as contemplated in subsection (1)*(f)*,".

(2)*(a)* Subsection (1)*(a)* shall be deemed to have come into operation on 1 January 2001.

(b) Subsection (1)*(b)* shall, to the extent that it inserts—

(i) paragraph *(f)*(i) in subsection (1) of section 6*quat*, be deemed to have come into operation on 1 January 2001;

(ii) paragraph *(f)*(ii) in subsection (1) of section 6*quat*, be deemed to have come into operation on 1 October 2001; and

(iii) paragraph *(f)*(iii) in subsection (1) of section 6*quat*, be deemed to have come into operation on 1 January 2001, and to the extent that it adds a reference to paragraph 80(3) of the Eighth Schedule, shall be deemed to have come into operation on 1 October 2001.

(c) Subsection (1)*(c)* shall be deemed to have come into operation on 23 February 2000.

(d) Subsection (1)*(d)* shall, to the extent that it inserts—

(i) paragraph *(e)* in subsection (1A), be deemed to have come into operation on 23 February 2000;

(ii) paragraph *(f)* shall be deemed to have come into operation on the date that paragraph *(f)*(i), (ii) and (iii) of subsection (1) of section 6*quat*, respectively, come into operation.

Amendment of section 8 of Act 58 of 1962, as amended by section 6 of Act 90 of 1962, section 6 of Act 90 of 1964, section 9 of Act 88 of 1965, section 10 of Act 55 of 1966, section 10 of Act 89 of 1969, section 6 of Act 90 of 1972, section 8 of Act 85 of 1974, section 7 of Act 69 of 1975, section 7 of Act 113 of 1977, section 8 of Act 94 of 1983, section 5 of Act 121 of 1984, section 4 of Act 96 of 1985, section 5 of Act 65 of 1986, section 6 of Act 85 of 1987, section 6 of Act 90 of 1988, section 5 of Act 101 of 1990, section 9 of Act 129 of 1991, section 6 of Act 141 of 1992, section 4 of Act 113 of 1993, section 6 of Act 21 of 1994, section 8 of Act 21 of 1995, section 6 of Act 36

wat voorgeskryf word, voor 'n landdros of vrederegter of 'n kommissaris van ede aflê en onderteken."; en

(d) deur die volgende subartikel na subartikel (2A) in te voeg:

"(2B) Die bepalings van hierdie artikel is nie van toepassing nie ten opsigte van enige inligting met betrekking tot 'n persoon, waar daardie persoon toegestem het dat daardie inligting gepubliseer of openbaar gemaak kan word aan enige ander persoon.".

Wysiging van artikel 6*quat* van Wet 58 van 1962, soos ingevoeg deur artikel 5 van Wet 85 van 1987 en gewysig deur artikel 5 van Wet 28 van 1997, artikel 12 van Wet 53 van 1999, artikel 16 van Wet 30 van 2000 en vervang deur artikel 4 van Wet 59 van 2000 en gewysig deur artikel 8 van Wet 5 of 2001

20. (1) Artikel 6*quat* van die Inkomstebelastingwet, 1962, word hierby gewysig—

(a) deur die woord "of" aan die einde van paragraaf *(e)* van subartikel (1) by te voeg;

(b) deur die volgende paragraaf by subartikel (1) te voeg:

"*(f)* enige bedrag—

(i) ontvang deur of toe te geval het aan 'n ander persoon wat geag word ontvang deur of toegeval te gewees het aan daardie inwoner ingevolge artikel 7;

(ii) van kapitaalwins van enige ander persoon wat aan daardie inwoner toegereken word ingevolge paragraaf 68, 69, 70, 71, 72 of 80 van die Agtste Bylae; of

(iii) wat kapitaal van 'n trust daarstel, soos in artikel 25B(2A) van paragraaf 80(3) van die Agtste Bylae bedoel, ten opsigte waarvan die inwoner 'n gevestigde reg verkry,";

(c) deur die woord "of" aan die einde van paragraaf *(d)* van subartikel (1A) by te voeg; en

(d) deur die volgende paragrawe by subartikel (1A) te voeg:

"*(e)* enige effektegroep ten opsigte van die bedrag van enige buitelandse dividend wat geag word aan daardie inwoner verklaar te gewees het ingevolge artikel 9E(5) en in die belasbare inkomste van daardie inwoner ingesluit is; of

(f) enige ander persoon in subartikel (1)*(f)*(i) of (ii) bedoel van 'n trust in subartikel (1)*(f)*(iii) bedoel, ten opsigte van die bedrag in die belasbare inkomste van die inwoner ingesluit, soos in subartikel (1)*(f)* bedoel,".

(2)*(a)* Subartikel (1)*(a)* word geag op 1 Januarie 2001 in werking te getree het.

(b) Subartikel (1)*(b)* word, tot die mate wat dit—

(i) paragraaf *(f)*(i) in subartikel (1) van artikel 6*quat* invoeg, geag op 1 Januarie 2001 in werking te getree het;

(ii) paragraaf *(f)*(ii) in subartikel (1) van artikel 6*quat* invoeg, geag op 1 Oktober 2001 in werking te getree het; en

(iii) paragraaf *(f)*(iii) in subartikel (1) van artikel 6*quat* invoeg, geag op 1 Januarie 2001 in werking te getree het, en tot die mate wat dit die verwysing na paragraaf 80(3) van die Agtste Bylae byvoeg, geag op 1 Oktober 2001 in werking te getree het.

(c) Subartikel (1)*(c)* word geag op 23 Februarie 2000 in werking te getree het.

(d) Subartikel (1)*(d)* word, tot die mate wat dit—

(i) paragraaf *(e)* in subartikel (1A) invoeg, geag op 23 Februarie 2000 in werking te getree het; en

(ii) paragraaf *(f)* invoeg, geag op die datum wat paragraaf *(f)*(i), (ii) en (iii) van subartikel (1) van artikel 6*quat* onderskeidelik in werking tree, in werking te getree het.

Wysiging van artikel 8 van Wet 58 van 1962, soos gewysig deur artikel 6 van Wet 90 van 1962, artikel 6 van Wet 90 van 1964, artikel 9 van Wet 88 van 1965, artikel 10 van Wet 55 van 1966, artikel 10 van Wet 89 van 1969, artikel 6 van Wet 90 van 1972, artikel 8 van Wet 85 van 1974, artikel 7 van Wet 69 van 1975, artikel 7 van Wet 113 van 1977, artikel 8 van Wet 94 van 1983, artikel 5 van Wet 121 van 1984, artikel 4 van Wet 96 van 1985, artikel 5 van Wet 65 van 1986, artikel 6 van Wet 85 van 1987, artikel 6 van Wet 90 van 1988, artikel 5 van Wet 101 van 1990, artikel 9 van Wet 129 van 1991, artikel 6 van Wet 141 van 1992, artikel 4 van Wet 113 van

of 1996, section 6 of Act 28 of 1997, section 24 of Act 30 of 1998, section 14 of Act 53 of 1999, section 17 of Act 30 of 2000, section 6 of Act 59 of 2000 and section 7 of Act 19 of 2001

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

(a) by the substitution for the proviso to paragraph *(a)* of subsection (4) of the following proviso:

"Provided that the provisions of this paragraph shall not apply in respect of any such amount so recovered or recouped which has been included in the gross income of such taxpayer in terms of paragraph *(e*B*)* or *(j*A*)* of the definition of 'gross income'."; and

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

"*(k)* For the purposes of paragraph *(a)*, where during any year of assessment any person has—

(i) donated any asset;

(ii) distributed any asset by way of a dividend; or

(iii) disposed of any asset to a person who is a connected person in relation to that person,

in respect of which a deduction or an allowance has been granted to such person in terms of any of the provisions referred to in that paragraph, such person shall be deemed to have recovered or recouped an amount equal to the market value of such asset as at the date of such donation, distribution or disposal.".

(2)*(a)* Subsection (1)*(a)* shall come into operation on the date of promulgation.

(b) Subsection (1)*(b)* shall come into operation on the date of promulgation and shall apply in respect of any asset disposed of 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 and section 9 of Act 5 of 2001

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

(a) by the addition to the definition of "controlled foreign entity" of the following proviso:

"Provided that in determining whether residents jointly hold more than 50 per cent of the participation rights of any foreign entity which is listed on a recognised exchange or which is a scheme or arrangement contemplated in paragraph *(e)*(ii) of the definition of 'company' in section 1, except where connected persons hold more than 50 per cent of the participation rights of that foreign entity, scheme or arrangement, any person who holds less than five per cent of the participation rights of that foreign entity shall be deemed not to be a resident;";

(b) by the substitution for paragraph *(d)* of the proviso to subsection (2A) of the following paragraph:

"*(d)* any capital gain or capital loss of such entity shall, when applying paragraph 43(4) of the Eighth Schedule, be determined **[with reference to and]** in the currency **[in which it conducts the majority of its transactions]** of the Republic and such capital gain or capital loss shall be translated on the last day of the foreign tax year of the controlled foreign entity to the local currency, as defined in section 24I, of that controlled foreign entity; and";

(c) by the addition to the proviso to subsection (2A) of the following paragraphs:

1993, artikel 6 van Wet 21 van 1994, artikel 8 van Wet 21 van 1995, artikel 6 van Wet 36 van 1996, artikel 6 van Wet 28 van 1997, artikel 24 van Wet 30 van 1998, artikel 14 van Wet 53 van 1999, artikel 17 van Wet 30 van 2000, artikel 6 van Wet 59 van 2000 en artikel 7 van Wet 19 van 2001

21. (1) Artikel 8 van die Inkomstebelastingwet, 1962, word hierby gewysig—

(a) deur die voorbehoudsbepaling by paragraaf *(a)* van subartikel (4) deur die volgende voorbehoudsbepaling te vervang:

"Met dien verstande dat die bepalings van hierdie paragraaf nie van toepassing is nie ten opsigte van enige bedoelde bedrag aldus verhaal of vergoed wat ingevolge paragraaf *(e*B*)* of *(j*A*)* van die omskrywing van 'bruto inkomste' in die bruto inkomste van bedoelde belastingpligtige ingesluit is."; en

(b) deur paragraaf *(k)* van subartikel (4) deur die volgende paragraaf te vervang:

"*(k)* By die toepassing van paragraaf *(a)*, waar gedurende 'n jaar van aanslag 'n persoon—

(i) 'n bate geskenk het;

(ii) 'n bate by wyse van 'n dividend uitgekeer het; of

(iii) oor 'n bate beskik het aan 'n persoon wat 'n verbonde persoon met betrekking tot daardie persoon is,

ten opsigte waarvan 'n aftrekking of vermindering aan bedoelde persoon toegestaan is ingevolge enige van die bepalings in daardie paragraaf bedoel, word bedoelde persoon geag 'n bedrag gelyk aan die markwaarde van bedoelde bate soos op die datum van bedoelde skenking, uitkering of beskikking, te verhaal of vergoed te gewees het.".

(2) *(a)* Subartikel (1)*(a)* tree in werking op die datum van afkondiging van hierdie Wet.

(b) Subartikel (1)*(b)* tree in werking op die datum van afkondiging van hierdie Wet en is van toepassing ten opsigte van die beskikking van enige bate op of na daardie datum.

Wysiging van artikel 9D van Wet 58 van 1962, soos ingevoeg deur artikel 9 van Wet 28 van 1997 en gewysig deur artikel 28 van Wet 30 van 1998, artikel 17 van Wet 53 van 1999, artikel 19 van Wet 30 van 2000, artikel 10 van Wet 59 van 2000 en artikel 9 van Wet 5 van 2001

22. (1) Artikel 9D van die Inkomstebelastingwet, 1962, word hierby gewysig—

(a) deur die volgende voorbehoudsbepaling by die omskrywing van "beheerde buitelandse entiteit" te voeg:

"Met dien verstande dat ten einde te bepaal of inwoners gesamentlik meer as 50 persent van die deelnemende regte hou in enige buitelandse entiteit wat op 'n erkende beurs genoteer is of wat 'n skema of reëling in paragraaf *(e)*(ii) van die omskrywing van 'maatskappy' in artikel 1 daarstel, behalwe waar verbonde persone meer as 50 persent van die deelnemende regte van daardie buitelandse entiteit, skema of reëling hou, word 'n persoon wat minder as vyf persent van die deelnemende regte van daardie buitelandse entiteit hou geag nie 'n inwoner te wees nie;";

(b) deur paragraaf *(d)* van die voorbehoudsbepaling by subartikel (2A) deur die volgende paragraaf te vervang:

"*(d)* enige kapitaalwins of kapitaalverlies van sodanige entiteit word by die toepassing van paragraaf 43(4) van die Agtste Bylae, bepaal **[met verwysing na en]** in die geldeenheid **[waarin die entiteit die meerderheid van sy transaksies voer]** van die Republiek en daardie kapitaalwins of kapitaalverlies word op die laaste dag van die buitelandse belastingjaar van die beheerde buitelandse entiteit na die plaaslike geldeenheid, soos in artikel 24I omskryf, van daardie beheerde buitelandse entiteit omgereken;";

(c) deur die volgende paragrawe by die voorbehoudsbepaling by subartikel (2A) te voeg:

"*(f)* where the resident contemplated in subsection (2) is a natural person, special trust or an insurer in respect of its individual policyholder fund, the taxable capital gain of the controlled foreign entity shall, for the purposes of paragraph 10 of the Eighth Schedule, be 25 per cent of that entity's net capital gain for the relevant year of assessment; and

(g) any amount to be taken into account in the determination of such net income of that entity in respect of the disposal of any foreign equity instrument, shall be determined in the currency of the Republic and such amount shall then be translated on the last day of the foreign tax year of the controlled foreign entity to the local currency, as defined in section 24I, of that controlled foreign entity.";

(d) by the substitution in paragraph *(a)* of subsection (9) for the words preceding the proviso of the following words:

"*(a)* in respect of receipts and accruals (other than receipts and accruals of a capital nature) or capital gains of any controlled foreign entity which is a company, where—

(i) such receipts and accruals have been or will be subject to tax on income in a designated country at a statutory rate of at least 27 per cent; or

(ii) those capital gains of that company have been or will be subject to tax in a designated country at a statutory rate of at least 13,5 per cent,

(after taking into account the application of the relevant agreement for the avoidance of double taxation, if any) without any right of recovery by any person (other than a right of recovery in terms of an entitlement to carry back losses arising during any year of assessment to any year of assessment prior to such year of assessment), notwithstanding the fact that such entity may, as a result of any foreign assessed tax loss incurred by such entity during such year or any previous year of assessment, not be liable for the payment of any tax:";

(e) by the substitution in the proviso to paragraph *(b)* of subsection (9) for the words in paragraph (iii) preceding subparagraph *(aa)* of the following words:

"(iii) in the form of dividends, interest, royalties, rental, annuities, insurance premiums or income of a similar nature, or any **[proceeds derived from]** capital gain determined in respect of the disposal of any asset **[as determined in accordance with the Eighth Schedule]** from which any such income is earned, or any foreign currency gain determined in respect of any foreign equity instrument or any foreign currency gain determined in terms of section 24I, except where such receipts and accruals, capital gains and foreign currency gains—";

(f) by the substitution for item *(aa)* of subparagraph (iii) of paragraph *(b)* of subsection (9) of the following item:

"*(aa)* do not in total exceed five per cent of the sum of the **[total]** receipts and accruals (other than receipts and accruals of a capital nature) and the amount of all capital gains and foreign currency gains of such controlled foreign entity; or";

(g) by the substitution for subitem (A) of item *(bb)* of subparagraph (iii) of paragraph *(b)* of subsection (9) of the following subitem:

"(A) connected person (in relation to such controlled foreign entity) who is a resident or any resident who holds at least five per cent of the participation rights in that controlled foreign entity; or:";

(h) by the addition to item *(bb)* of subparagraph (iii) of paragraph *(b)* of subsection (9) of the following proviso:

"Provided that the receipts and accruals of such banking or financial services, insurance or rental business are derived mainly from persons who are not connected persons in relation to that controlled foreign entity.";

"*(f)* waar die inwoner in subartikel (2) bedoel 'n natuurlike persoon, 'n spesiale trust of 'n versekeraar met betrekking tot sy individuele polishouerfonds is, is die belasbare kapitaalwins van die beheerde buitelandse entiteit, by die toepassing van paragraaf 10 van die Agtste Bylae, 25 persent van daardie entiteit se netto kapitaalwins vir die betrokke jaar van aanslag; en

(g) enige bedrag wat in berekening gebring word by die vasstelling van daardie netto inkomste van daardie entiteit ten opsigte van die beskikking oor 'n buitelandse ekwiteitsinstrument, in die geldeenheid van die Republiek bepaal word en word daardie bedrag dan op die laaste dag van die buitelandse belastingjaar van die beheerde buitelandse entiteit na die plaaslike geldeenheid, soos in artikel 24I omskryf, van daardie beheerde buitelandse entiteit omgereken.";

(d) deur in paragraaf *(a)* van subartikel (9) die woorde wat die voorbehoudsbepaling voorafgaan deur die volgende woorde te vervang:

"*(a)* ten opsigte van ontvangste en toevallings (behalwe ontvangste en toevallings van 'n kapitale aard) of kapitaalwinste van enige beheerde buitelandse entiteit wat 'n maatskappy is, waar—

(i) daardie ontvangste en toevallings onderhewig is of sal wees aan belasting op inkomste in 'n aangewese land teen 'n statutêre koers van minstens 27 persent; of

(ii) daardie kapitaalwinste van daardie maatskappy onderhewig is of sal wees aan belasting teen 'n statutêre koers van minstens 13,5 persent,

(na inagneming van die toepassing van die betrokke ooreenkoms ter voorkoming van dubbele belasting, as daar is) sonder enige reg van verhaal deur enige persoon (behalwe 'n reg van verhaal ingevolge 'n reg om enige verliese wat gedurende enige jaar van aanslag ontstaan na 'n jaar van aanslag wat bedoelde jaar van aanslag voorafgaan, terug te dra), ondanks die feit dat daardie entiteit, as gevolg van enige buitelandse aangeslane belastingverlies deur daardie entiteit gedurende daardie jaar of enige vorige jaar van aanslag gely, nie vir die betaling van enige belasting aanspreeklik was nie:";

(e) deur in die voorbehoudsbepaling by paragraaf *(b)* van subartikel (9) die woorde in paragraaf (iii) wat subparagraaf *(aa)* voorafgaan deur die volgende woorde te vervang:

"(iii) in die vorm van dividende, rente, tantième, huurgeld, jaargelde, versekeringspremies of inkomste van 'n soortgelyke aard, of enige **[opbrengs verkry uit]** kapitaalwins vasgestel ten opsigte van die beskikking oor enige bate, **[bereken ingevolge die Agtste Bylae]** ten opsigte waarvan enige sodanige inkomste verdien word, of enige buitelandse valutawins vasgestel ten opsigte van enige buitelandse ekwiteitsinstrument of enige buitelandse valutawins vasgestel ingevolge artikel 24I, behalwe waar daardie ontvangste en toevallings, kapitaalwins en buitelandse valutawins—";

(f) deur item *(aa)* van subparagraaf (iii) van paragraaf *(b)* van subartikel (9) deur die volgende item te vervang:

"*(aa)* nie in totaal vyf persent van die som van die **[totale]** ontvangste en toevallings (behalwe ontvangste en toevallings van 'n kapitale aard) en die bedrag van alle kapitaalwinste en buitelandse valutawinste van bedoelde beheerde buitelandse entiteit te bowe gaan nie; of";

(g) deur subitem (A) van item *(bb)* van subparagraaf (iii) van paragraaf *(b)* van subartikel (9) deur die volgende subitem te vervang:

"(A) verbonde persoon (met betrekking tot daardie beheerde buitelandse entiteit) wat 'n inwoner is of enige inwoner wat minstens vyf persent van die deelnemende regte in daardie beheerde buitelandse entiteit hou; of:";

(h) deur die volgende voorbehoudsbepaling by item *(bb)* van subparagraaf (iii) van paragraaf *(b)* van subartikel (9) te voeg:

"Met dien verstande dat die ontvangste en toevallings van daardie bank- of finansiële dienste, versekerings- of verhuringsbesigheid verkry word hoofsaaklik van persone wat nie verbonde persone met betrekking tot daardie beheerde buitelandse entiteit is nie.";

(i) by the substitution for paragraph *(f*A*)* of subsection (9) of the following paragraph:

"*(f*A*)* in relation to **[the proportional amount of an amount equal to]** the net income of a controlled foreign entity **[which is attributable to any resident]**, to the extent that it relates to any interest, royalties, **[or]** rental or income of a similar nature, which is **[paid]** payable to such entity by any other **[controlled]** foreign entity **[in relation to such resident]**, or any exchange difference determined in terms of section 24I in respect of any exchange item to which that controlled foreign entity and that other foreign entity are parties, where that controlled foreign entity and that other foreign entity form part of the same group of companies, as defined in section 41;";

(j) by the insertion in subsection (9) of the following paragraph after paragraph *(f*A*)*:

*(f*B*)* in relation to the net income of a controlled foreign entity to the extent that it relates to any capital gain of such entity, which is determined in respect of the disposal of any asset, as defined in the Eighth Schedule, (excluding any financial instrument or intangible asset), where that asset was attributable to any business establishment of that controlled foreign entity or any other foreign entity which forms part of the same group of companies, as defined in section 41, as that controlled foreign entity;";

(k) by the addition to subsection (9) of the following paragraph:

"*(h)* in respect of any amount received by or accrued to such controlled foreign entity—

(i) from the disposal of any interest in the equity share capital of any other foreign entity which is a company; or

(ii) by way of a dividend declared to that controlled foreign entity by any other foreign entity which is a company,

if that controlled foreign entity on the date of that disposal or declaration of dividend—

(aa) holds more than 25 per cent of the equity share capital in that other foreign entity; and

(bb) in the case of any disposal contemplated in subparagraph (i), held such interest contemplated in item *(aa)* for a period of at least 18 months prior to that disposal, unless that interest was acquired by the controlled foreign entity from any other foreign entity, where that controlled foreign entity and that other foreign entity form part of the same group of companies, as defined in section 41 and that controlled foreign entity and that other foreign entity in aggregate held that interest for more than 18 months:

Provided that the provisions of this paragraph shall not apply where more than 50 per cent of either the market value or the actual costs of all the assets of that other foreign entity and any foreign entity, which is a controlled company, as defined in section 41, in relation to that other foreign entity on the date of that disposal or distribution, consists of financial instruments, as defined in paragraph 1 of the Eighth Schedule, other than any shares held in any foreign entity which is a controlled company in relation to that other foreign entity.".

(2) *(a)* Subsection (1)*(a)* shall be deemed to have come into operation on 1 January 2001 and shall apply in respect of any financial year of a controlled foreign entity which ends during any year of assessment of a resident which commences on or after that date.

(b) Subsections (1)*(b)*, *(c)*, *(d)*, *(e)* and *(f)* shall be deemed to have come into operation on 1 October 2001.

(c) Subsections (1)*(g)*, *(h)* and *(j)* shall be deemed to have come into operation on 1 October 2001 and shall apply in respect of any financial year of a controlled foreign entity which ends during any year of assessment of a resident commencing on or after that date.

(i) deur paragraaf *(f*A*)* van subartikel (9) deur die volgende paragraaf te vervang:
"*(f*A*)* met betrekking tot **[die proporsionele bedrag van 'n bedrag gelyk aan]** die netto inkomste van 'n beheerde buitelandse entiteit **[wat toeskryfbaar is aan enige inwoner]**, in die mate wat dit verband hou met enige rente, tantième, **[of]** huurgeld of inkomste van 'n dergelike aard, wat aan daardie entiteit **[betaal]** betaalbaar word deur enige ander **[beheerde]** buitelandse entiteit **[met betrekking tot daardie inwoner]**, of enige valutaverskil ingevolge artikel 24I vasgestel ten opsigte van enige valuta-item waarby daardie beheerde buitelandse entiteit en daardie ander buitelandse entiteit partye is, waar daardie beheerde buitelandse entiteit en daardie ander buitelandse entiteit deel van dieselfde groep van maatskappye, soos in artikel 41 omskryf, vorm;";

(j) deur in subartikel (9) die volgende paragraaf na paragraaf *(f*A*)* in te voeg:
"*(f*B*)* met betrekking tot die netto inkomste van 'n beheerde buitelandse entiteit in die mate wat dit verband hou met enige kapitaalwins van daardie entiteit, vasgestel ten opsigte van die beskikking oor 'n bate, soos in die Agtste Bylae omskryf, (uitgesluit enige finansiële instrument of ontasbare bate), waar daardie bate aan enige besigheidsaak van daardie beheerde buitelandse entiteit of enige ander buitelandse entiteit wat deel van dieselfde groep van maatskappye, soos in artikel 41 omskryf, as daardie beheerde buitelandse entiteit vorm, toeskryfbaar was;"; en

(k) deur die volgende paragraaf by subartikel (9) te voeg:
"*(h)* ten opsigte van enige bedrag ontvang deur of toegeval aan daardie beheerde buitelandse entiteit—

(i) uit die beskikking oor 'n belang in die ekwiteitsaandelekapitaal van enige ander buitelandse entiteit wat 'n maatskappy is; of

(ii) by wyse van 'n dividend aan daardie beheerde buitelandse entiteit verklaar deur enige ander buitelandse entiteit wat 'n maatskappy is,

indien daardie beheerde buitelandse entiteit op die datum van daardie beskikking of verklaring van dividend—

(aa) meer as 25 persent van die ekwiteitsaandelekapitaal in daardie ander buitelandse entiteit hou; en

(bb) in die geval van enige beskikking in subparagraaf (i) bedoel, daardie belang in item *(aa)* bedoel vir 'n tydperk van minstens 18 maande voor daardie beskikking gehou het, tensy daardie belang deur die beheerde buitelandse entiteit van 'n ander buitelandse entiteit verkry is, waar daardie beheerde buitelandse entiteit en daardie ander buitelandse entiteit deel van dieselfde groep van maatskappye, soos in artikel 41 omskryf, vorm en daardie beheerde buitelandse entiteit en daardie ander buitelandse entiteit daardie belang in totaal vir meer as 18 maande gehou het:

Met dien verstande dat die bepalings van hierdie paragraaf nie van toepassing is nie waar meer as 50 persent van òf die markwaarde òf die werklike koste van al die bates van daardie ander buitelandse entiteit en enige buitelandse entiteit wat 'n beheerde maatskappy, soos in artikel 41 omskryf, met betrekking tot daardie ander buitelandse entiteit is, op die datum van daardie beskikking of uitkering bestaan uit finansiele instrumente soos in paragraaf 1 van die Agtste Bylae omskryf, behalwe aandele in enige buitelandse entiteit wat 'n beheerde maatskappy met betrekking tot daardie ander buitelandse entiteit is.".

(2) *(a)* Subartikel (1)*(a)* word geag op 1 Januarie 2001 in werking te getree het en is van toepassing ten opsigte van enige finansiële jaar van 'n buitelandse beheerde entiteit wat gedurende enige jaar van aanslag van 'n inwoner wat op of na daardie datum begin, eindig.

(b) Subartikels (1)*(b)*, *(c)*, *(d)*, *(e)* en *(f)* word geag op 1 Oktober 2001 in werking te getree het.

(c) Subartikels (1)*(g)*, *(h)* en *(j)* word geag op 1 Oktober 2001 in werking te getree het en is van toepassing ten opsigte van enige finansiële jaar van 'n beheerde buitelandse entiteit wat gedurende enige jaar van aanslag van 'n inwoner wat op of na daardie datum begin, eindig.

(d) Subsection (1)*(i)* shall—

(i) in so far as it inserts the reference to exchange item contemplated in section 24I or amounts of a similar nature, been deemed to have come into operation on 1 January 2001; and

(ii) in so far as it amends the rest of paragraph *(fA)* of subsection (9), been deemed to have come into operation on 1 October 2001,

and shall apply in respect of any financial year of a controlled foreign entity which ends during any year of assessment of a resident commencing on or after that date.

(e) Subsection (1)*(k)* shall be deemed to have come into operation on 1 October 2001 and shall apply in respect of any disposal of any interest or dividend received or accrued on or after that date.

Amendment of section 9E of Act 58 of 1962, as inserted by section 20 of Act 30 of 2000 and amended by section 11 of Act 59 of 2000, section 10 of Act 5 of 2001 and section 8 of Act 19 of 2001

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

(a) by the deletion of paragraph *(b)* of the definition of "foreign dividend";

(b) by the substitution in subsection (5) for the words following paragraph *(b)* of the following words:
"such dividend contemplated in paragraph *(a)* shall, to the extent that such dividend is declared to such holders of units as contemplated in paragraph *(b)*, be deemed to have been declared by such company directly to such holders of units";

(c) by the substitution for the proviso to paragraph *(a)* of subsection (5A) of the following proviso:
"Provided that such deduction shall be limited to the amount of foreign dividends included in the **[gross]** income of such resident during such year; and"; and

(d) by the substitution for paragraph *(d)* of subsection (7) of the following paragraph:
"*(d)* any company, which is distributed directly or indirectly to a resident who holds a qualifying interest in such company, to the extent that the profits from which the dividend is declared**[—**
(i) were generated in a designated country; and
(ii)] are or will be subject to tax in a designated country at a statutory rate of at least 27 per cent or, in the case of any capital gains of that company, at a statutory rate of at least 13,5 per cent, (after taking into account the application of the relevant agreement for the avoidance of double taxation, if any) without any right of recovery by any person (other than a right of recovery in terms of an entitlement to carry back losses arising during any year of assessment to any year of assessment prior to such year of assessment): Provided that where such designated country imposes tax on that company at a progressive scale of statutory rates, the statutory rate shall for the purposes of this paragraph be deemed to be the highest rate on such scale;"; and

(e) by the substitution for paragraph *(f)* of subsection (7) of the following paragraph:
"*(f)* any company out of profits derived by such company by way of—
(i) any foreign dividend which is exempt from tax in terms of the provisions of this subsection; or
(ii) any dividend which would have constituted a foreign dividend which is exempt from tax, had such dividend been declared on or after 23 February 2000.".

(2) *(a)* Subsection (1)*(a)* shall be deemed to have come into operation on 1 October 2001.

(b) Subsections (1)*(b)*, *(c)* and *(e)* shall be deemed to have come into operation on 23 February 2000.

(c) Subsection (1)*(d)* shall, in so far as it—

(i) inserts the reference to capital gains, be deemed to have come into operation on 1 October 2001; and

(ii) amends the rest of paragraph *(d)* of subsection (7), be deemed to have come into operation on 23 February 2000.

(d) Subartikel (1)*(i)* word—

(i) vir sover dit die verwysing na valuta-item in artikel 24I bedoel of bedrae van 'n dergelike aard invoeg, geag op 1 Januarie 2001 in werking te getree het; en

(ii) vir sover dit die res van paragraaf *(f*A*)* van subartikel (9) wysig, geag op 1 Oktober 2001 in werking te getree het,

en is van toepassing ten opsigte van enige finansiële jaar van 'n beheerde buitelandse entiteit wat gedurende enige jaar van aanslag van 'n inwoner wat op of na daardie datum begin, eindig.

(e) Subartikel (1)*(k)* word geag op 1 Oktober 2001 in werking te getree het en is van toepassing ten opsigte van enige beskikking oor 'n belang of 'n dividend ontvang of toegeval op of na daardie datum.

Wysiging van artikel 9E van Wet 58 van 1962, soos ingevoeg deur artikel 20 van Wet 30 van 2000 en gewysig deur artikel 11 van Wet 59 van 2000, artikel 10 van Wet 5 van 2001 en artikel 8 van Wet 19 van 2001

23. (1) Artikel 9E van die Inkomstebelastingwet, 1962, word hierby gewysig—

(a) deur paragraaf *(b)* van die omskrywing van "buitelandse dividend" te skrap;

(b) deur in subartikel (5) die woorde wat op paragraaf *(b)* volg deur die volgende woorde te vervang:

"word bedoelde dividend in paragraaf *(a)* beoog, tot die mate wat daardie dividend aan daardie houers van onderaandele verklaar word soos in paragraaf *(b)* bedoel, geag deur bedoelde maatskappy verklaar te gewees het direk aan bedoelde houers van onderaandele.";

(c) deur die voorbehoudsbepaling by paragraaf *(a)* van subartikel (5A) deur die volgende voorbehoudsbepaling te vervang:

"Met dien verstande dat daardie aftrekking beperk word tot die bedrag van die buitelandse dividende wat in die **[bruto]** inkomste van daardie inwoner gedurende daardie jaar van aanslag ingesluit is; en";

(d) deur paragraaf *(d)* van subartikel (7) deur die volgende paragraaf te vervang:

"*(d)* 'n maatskappy, wat direk of indirek aan 'n inwoner uitgekeer word wat 'n kwalifiserende belang in die maatskappy hou, in die mate wat die winste waaruit die dividend verklaar word**[—**

(i) in 'n aangewese land gegenereer is; en

(ii)] in 'n aangewese land aan belasting onderhewig is of sal word teen 'n statutêre koers van minstens 27 persent of, in die geval van enige kapitaalwins van daardie maatskappy, teen 'n statutêre koers van minstens 13,5 persent, (na inagneming van die toepassing van die betrokke ooreenkoms ter voorkoming van dubbele belasting, as daar is), sonder enige reg van verhaal deur 'n persoon (behalwe 'n reg van verhaal ingevolge 'n reg om enige verliese wat gedurende enige jaar van aanslag ontstaan na 'n jaar van aanslag wat bedoelde jaar van aanslag voorafgaan, terug te dra): Met dien verstande dat waar daardie aangewese land belasting op daardie maatskappy oplê teen 'n progressiewe skaal van statutêre koerse word die statutêre koers by die toepassing van hierdie paragraaf geag die hoogste koers op daardie skaal te wees;"; en

(e) deur paragraaf *(f)* van subartikel (7) deur die volgende paragraaf te vervang:

"*(f)* enige maatskappy uit die winste deur daardie maatskappy verkry by wyse van—

(i) enige buitelandse dividend wat ingevolge die bepalings van hierdie artikel van belasting vrygestel is; of

(ii) enige dividend wat 'n buitelandse dividend sou daarstel wat van belasting vrygestel is, indien daardie dividend op of na 23 Februarie 2000 verklaar was.".

(2) *(a)* Subartikel (1)*(a)* word geag op 1 Oktober 2001 in werking te getree het.

(b) Subartikels (1)*(b)*, *(c)* en *(e)* word geag op 23 Februarie 2000 in werking te getree het.

(c) Subartikel (1)*(d)* word, vir sover dit—

(i) die verwysing na kapitaalwins invoeg, geag op 1 Oktober 2001 in werking te getree het; en

(ii) die res van paragraaf *(d)* van subartikel (7) wysig, geag op 23 Februarie 2000 in werking te getree het.

Amendment of section 9F of Act 58 of 1962, as inserted by section 12 of Act 59 of 2000

24. (1) Section 9F of the Income Tax Act, 1962, is hereby amended by the substitution in subsection (2) for the words preceding the proviso of the following words:

"(2) The amount of any income which shall be exempt from tax in terms of the provisions of section 10(1)*(k*A*)*, shall be so much of any amount received by or accrued during the relevant year of assessment to any company which is a resident from a source outside the Republic, which is not deemed to be from a source in the Republic, which has been or will be subject to tax in any designated country at a statutory rate of at least 27 per cent or, in the case of any capital gains of that company, at a statutory rate of at least 13,5 per cent, (after taking into account the application of the relevant agreement for the avoidance of double taxation, if any) without any right of recovery by any person (other than a right of recovery in terms of an entitlement to carry back losses arising during any year of assessment to any year of assessment prior to such year of assessment):".

(2) Subsection (1) shall be deemed to have come into operation on 1 October 2001.

Insertion of section 9G in Act 58 of 1962

25. (1) The following section is hereby inserted in the Income Tax Act, 1962, after section 9F:

"**Taxable income in respect of foreign equity instruments**

9G. (1) For the purposes of this section 'foreign currency' means any currency which is not legal tender in the Republic.

(2) Notwithstanding the provisions of section 25D, the amount to be included in the gross income of a person in respect of the disposal by that person of any foreign equity instrument which constitutes trading stock, shall be determined by translating the amount received or accrued in any foreign currency in respect of that disposal into the currency of the Republic at the ruling exchange rate on the date of that disposal.

(3) Any—

(a) expenditure incurred by a person in any foreign currency in respect of any foreign equity instrument which is allowable as a deduction in terms of the provisions of this Act; or

(b) amount in any foreign currency which is taken into account in the determination of the taxable income of any person in respect of any foreign equity instrument,

shall, for purposes of determining the taxable income of that person for the year in which that foreign equity instrument is disposed of, be translated into the currency of the Republic at the ruling exchange rate on the later of the date of incurral of that expenditure or 1 October 2001.".

(2) Subsection (1) shall be deemed to have come into operation on 1 October 2001, and shall apply in respect of any foreign equity instrument disposed of on or after that date.

Amendment of section 10 of Act 58 of 1962, as amended by section 8 of Act 90 of 1962, section 7 of Act 72 of 1963, section 8 of Act 90 of 1964, section 10 of Act 88 of 1965, section 11 of Act 55 of 1966, section 10 of Act 95 of 1967, section 8 of Act 76 of 1968, section 13 of Act 89 of 1969, section 9 of Act 52 of 1970, section 9 of Act 88 of 1971, section 7 of Act 90 of 1972, section 7 of Act 65 of 1973, section 10 of Act 85 of 1974, section 8 of Act 69 of 1975, section 9 of Act 103 of 1976, section 8 of Act 113 of 1977, section 4 of Act 101 of 1978, section 7 of Act 104 of 1979, section 7 of Act 104 of 1980, section 8 of Act 96 of 1981, section 6 of Act 91 of 1982, section 9 of Act 94

Wysiging van artikel 9F van Wet 58 van 1962, soos ingevoeg deur artikel 12 van Wet 59 van 2000

24. (1) Artikel 9F van die Inkomstebelastingwet, 1962, word hierby gewysig deur in subartikel (2) die woorde wat die voorbehoudsbepaling voorafgaan deur die volgende woorde te vervang:

"(2) Die bedrag van enige inkomste wat ingevolge die bepalings van artikel 10(1)*(kA)* van belasting vrygestel is, is soveel van enige bedrag wat gedurende die betrokke jaar van aanslag ontvang word deur of toeval aan 'n maatskappy wat 'n inwoner is van 'n bron buite die Republiek, wat nie geag word uit 'n bron in die Republiek te wees nie, wat in enige aangewese land onderhewig was of sal wees aan belasting teen 'n statutêre koers van minstens 27 persent of, in die geval van enige kapitaalwins van daardie maatskappy, teen 'n statutêre koers van minstens 13,5 persent, (na inagneming van die toepassing van die betrokke ooreenkoms ter voorkoming van dubbele belasting, as daar is), sonder enige reg van verhaal deur enige persoon (behalwe 'n reg van verhaal ingevolge 'n reg om verliese wat gedurende enige jaar van aanslag ontstaan na 'n jaar van aanslag wat bedoelde jaar van aanslag voorafgaan, terug te dra):".

(2) Subartikel (1) word geag op 1 Oktober 2001 in werking te getree het.

Invoeging van artikel 9G in Wet 58 van 1962

25. (1) Die volgende artikel word hierby in die Inkomstebelastingwet, 1962, na artikel 9F ingevoeg:

"**Belasbare inkomste ten opsigte van buitelandse ekwiteitsinstrumente**

9G. (1) By die toepassing van hierdie artikel beteken 'buitelandse geldeenheid' enige geldeenheid wat nie 'n wettige betaalmiddel in die Republiek is nie.

(2) Ondanks die bepalings van artikel 25D, word die bedrag wat by die bruto inkomste van 'n persoon ingesluit moet word ten opsigte van die beskikking deur daardie persoon oor enige buitelandse ekwiteitsinstrument wat handelsvoorraad daarstel, vasgestel deur die bedrag in enige buitelandse geldeenheid ten opsigte van daardie beskikking ontvang of toegeval, om te reken na die geldeenheid van die Republiek teen die heersende wisselkoers op die datum van daardie beskikking.

(3) Enige—

(a) onkoste aangegaan deur 'n persoon in enige buitelandse geldeenheid ten opsigte van 'n buitelandse ekwiteitsinstrument wat ingevolge die bepalings van hierdie Wet as 'n aftrekking toelaatbaar is; of

(b) bedrag in 'n buitelandse geldeenheid wat in berekening gebring is by die vasstelling van die belasbare inkomste van 'n persoon ten opsigte van 'n buitelandse ekwiteitsinstrument,

word, vir doeleindes van die vasstelling van die belasbare inkomste van daardie persoon vir die jaar waarin oor daardie buitelandse ekwiteitsinstrument beskik is, na die geldeenheid van die Republiek omgereken teen die heersende wisselkoers op die datum waarop die onkoste aangegaan is of 1 Oktober 2001, welke datum die laatste is.".

(2) Subartikel (1) word geag op 1 Oktober 2001 in werking te getree het en is van toepassing ten opsigte van enige buitelandse ekwiteitsinstrument op of na daardie datum oor beskik.

Wysiging van artikel 10 van Wet 58 van 1962, soos gewysig deur artikel 8 van Wet 90 van 1962, artikel 7 van Wet 72 van 1963, artikel 8 van Wet 90 van 1964, artikel 10 van Wet 88 van 1965, artikel 11 van Wet 55 van 1966, artikel 10 van Wet 95 van 1967, artikel 8 van Wet 76 van 1968, artikel 13 van Wet 89 van 1969, artikel 9 van Wet 52 van 1970, artikel 9 van Wet 88 van 1971, artikel 7 van Wet 90 van 1972, artikel 7 van Wet 65 van 1973, artikel 10 van Wet 85 van 1974, artikel 8 van Wet 69 van 1975, artikel 9 van Wet 103 van 1976, artikel 8 van Wet 113 van 1977, artikel 4 van Wet 101 van 1978, artikel 7 van Wet 104 van 1979, artikel 7 van Wet 104 van 1980, artikel 8 van Wet 96 van 1981, artikel 6 van Wet 91 van 1982, artikel 9 van Wet 94 van 1983, artikel 10 van Wet 121 van 1984, artikel 6 van Wet 96 van 1985,

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 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 and section 9 of Act 19 of 2001

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

(a) by the substitution for item *(aa)* of subparagraph (iii) of paragraph *(e)* of subsection (1) of the following item:

"*(aa)* has been formed solely for the purposes of managing the collective interests common to all its members, which includes expenditure applicable to the common immovable property of such members and the collection of levies for which such members are liable; and"; and

(b) by the substitution for paragraph *(dd)* of the proviso to subparagraph (i) of paragraph *(k)* of subsection (1) of the following paragraph:

"*(dd)* to the amount of any foreign dividend contemplated in section 9E received by or accrued to any resident, which is not exempt from tax under section 9E(7);".

(2) *(a)* Subsection (1)*(a)* shall be deemed to have come into operation on 24 November 1999.

(b) Subsection (1)*(b)* shall be deemed to have come into operation on 23 February 2000.

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 and section 10 of Act 19 of 2001

27. (1) Section 11 of the Income Tax Act, 1962, is hereby amended by the addition in paragraph *(o)* to the proviso of the following subparagraph:

"(vii) no allowance shall be made under this paragraph in respect of any building, improvements to such building, shipbuilding structure, improvements to such shipbuilding structure, residential unit, permanent work, road pavement, ancillary service, machinery, plant, implements, utensils, articles, transmission line or cable or railway line which is disposed of by that person to any other person who is a connected person in relation to that person: Provided that any amount which is disallowed as a deduction under this subparagraph may be deducted by that person from any amount received by or accrued to that person from that other person, which must be included in the gross income of that person, in that year of assessment or any subsequent year of assessment, if that other person is still a connected person in relation to that person;".

(2) Subsection (1) shall be deemed to have come into operation on 1 October 2001.

artikel 7 van Wet 65 van 1986, artikel 3 van Wet 108 van 1986, artikel 9 van Wet 85 van 1987, artikel 7 van Wet 90 van 1988, artikel 36 van Wet 9 van 1989, artikel 7 van Wet 70 van 1989, artikel 10 van Wet 101 van 1990, artikel 12 van Wet 129 van 1991, artikel 10 van Wet 141 van 1992, artikel 7 van Wet 113 van 1993, artikel 4 van Wet 140 van 1993, artikel 9 van Wet 21 van 1994, artikel 10 van Wet 21 van 1995, artikel 8 van Wet 36 van 1996, artikel 9 van Wet 46 van 1996, artikel 10 van Wet 28 van 1997, artikel 29 van Wet 30 van 1998, artikel 18 van Wet 53 van 1999, artikel 21 van Wet 30 van 2000, artikel 13 van Wet 59 van 2000 en artikel 9 van Wet 19 van 2001

26. (1) Artikel 10 van die Inkomstebelastingwet, 1962, word hierby gewysig—

(a) deur item *(aa)* van subparagraaf (iii) van paragraaf *(e)* van subartikel (1) deur die volgende item te vervang:

"*(aa)* alleenlik opgerig is met die doel om die gesamentlike belange wat gemeenskaplik is aan al sy lede te bestuur, met inbegrip van uitgawes met betrekking tot die gemeenskaplike onroerende eiendom van daardie lede en die invordering van heffings waarvoor daardie lede aanspreeklik is;"; en

(b) deur paragraaf *(dd)* van die voorbehoudsbepaling by subparagraaf (i) van paragraaf *(k)* van subartikel (1) deur die volgende paragraaf te vervang:

"*(dd)* op die bedrag van enige buitelandse dividend in artikel 9E bedoel, ontvang deur of toegeval aan enige inwoner, wat nie kragtens artikel 9E(7) van belasting vrygestel is nie;".

(2)*(a)* Subartikel (1)*(a)* word geag op 24 November 1999 in werking te getree het.

(b) Subartikel (1)*(b)* word geag op 23 Februarie 2000 in werking te getree het.

Wysiging van artikel 11 van Wet 58 van 1962, soos gewysig deur artikel 9 van Wet 90 van 1962, artikel 8 van Wet 72 van 1963, artikel 9 van Wet 90 van 1964, artikel 11 van Wet 88 van 1965, artikel 12 van Wet 55 van 1966, artikel 11 van Wet 95 van 1967, artikel 9 van Wet 76 van 1968, artikel 14 van Wet 89 van 1969, artikel 10 van Wet 52 van 1970, artikel 10 van Wet 88 van 1971, artikel 8 van Wet 90 van 1972, artikel 9 van Wet 65 van 1973, artikel 12 van Wet 85 van 1974, artikel 9 van Wet 69 van 1975, artikel 9 van Wet 113 van 1977, artikel 5 van Wet 101 van 1978, artikel 8 van Wet 104 van 1979, artikel 8 van Wet 104 van 1980, artikel 9 van Wet 96 van 1981, artikel 7 van Wet 91 van 1982, artikel 10 van Wet 94 van 1983, artikel 11 van Wet 121 van 1984, artikel 46 van Wet 97 van 1986, artikel 10 van Wet 85 van 1987, artikel 8 van Wet 90 van 1988, artikel 8 van Wet 70 van 1989, artikel 11 van Wet 101 van 1990, artikel 13 van Wet 129 van 1991, artikel 11 van Wet 141 van 1992, artikel 9 van Wet 113 van 1993, artikel 5 van Wet 140 van 1993, artikel 10 van Wet 21 van 1994, artikel 12 van Wet 21 van 1995, artikel 9 van Wet 36 van 1996, artikel 12 van Wet 28 van 1997, artikel 30 van Wet 30 van 1998, artikel 20 van Wet 53 van 1999, artikel 22 van Wet 30 van 2000, artikel 15 van Wet 59 van 2000 en artikel 10 van Wet 19 van 2001

27. (1) Artikel 11 van die Inkomstebelastingwet, 1962, word hierby gewysig deur in paragraaf *(o)* van die voorbehoudsbepaling die volgende subparagraaf by te voeg:

"(vii) geen vermindering ingevolge hierdie paragraaf gemaak word nie ten opsigte van enige gebou, verbeterings aan bedoelde gebou, skeepsbouwerk, verbeterings aan bedoelde skeepsbouwerk, wooneenheid, permanente werk, padplaveisel, bykomstige diens, masjinerie, installasie, gereedskap, werktuie, artikels, transmissielyn of -kabel of spoorlyn, deur daardie persoon oor beskik aan 'n ander persoon wat 'n verbonde persoon met betrekking tot daardie persoon is: Met dien verstande dat enige bedrag nie as 'n aftrekking ingevolge hierdie subparagraaf toegestaan nie, deur daardie persoon afgetrek kan word van enige bedrag ontvang deur of toegeval aan daardie persoon van daardie ander persoon wat by die bruto inkomste van daardie persoon ingesluit moet word, in daardie jaar van aanslag of enige daaropvolgende jaar van aanslag, indien daardie ander persoon steeds 'n verbonde persoon met betrekking tot daardie persoon is;".

(2) Subartikel (1) word geag op 1 Oktober 2001 in werking te getree het.

Amendment of section 12D of Act 58 of 1962, as inserted by section 23 of Act 30 of 2000 and amended by section 19 of Act 59 of 2000

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

"(2) There shall be allowed to be deducted an allowance in respect of the cost actually incurred by the taxpayer in respect of the acquisition of any new and unused affected asset which—

(a) is owned by the taxpayer and is brought into use for the first time by such taxpayer on or after the effective date; and

(b) is used directly by such taxpayer **[in carrying on his sole business of]** for—

(i) the transportation of persons, goods, things or natural oil; or

(ii) the transmission of electricity or any telecommunication signal,

[there shall be allowed to be deducted an allowance in respect of the cost actually incurred by the taxpayer in respect of the acquisition of such asset] to the extent that such affected asset is used in the production of his income: Provided that such transportation or transmission must constitute the sole or principal business of that taxpayer or is a main or necessary activity in the conduct of the sole or principal business of that taxpayer.".

(2) Subsection (1) shall be deemed to have come into operation on 23 February 2000.

Amendment of section 12G of Act 58 of 1962, as inserted by section 12 of Act 19 of 2001

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

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

"*(b)* the industrial project will increase production of, and employment in, the relevant industrial sector within the Republic, after taking into account the displacement **[of any other activities]** within that sector;"

(b) by the substitution of paragraph *(b)* of subsection (7) of the following paragraph:

"*(b)* prescribing the criteria for determining the extent of the increase of production of, and employment in, an industrial sector required and the extent of the displacement **[of other activities]** to be taken into account for purposes of subsection (4)*(b)*;"; and

(c) by the substitution for paragraph *(e)* of subsection (7) of the following paragraph:

"*(e)* prescribing what constitutes an industrial participation project and a concurrent investment incentive for the purposes of subsection (4)*(e)*;".

(2) Subsection (1) shall be deemed to have come into operation on 27 July 2001.

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 and section 13 of Act 19 of 2001

30. Section 13 of the Income Tax Act, 1962, is hereby amended by the substitution for the heading of the following heading:

"**Deductions in respect of buildings used in a process of manufacture [or by hotelkeepers]**".

Wysiging van artikel 12D van Wet 58 van 1962, soos ingevoeg deur artikel 23 van Wet 30 van 2000 en gewysig deur artikel 19 van Wet 59 van 2000

28. (1) Artikel 12D van die Inkomstebelastingwet, 1962, word hierby gewysig deur subartikel (2) deur die volgende subartikel te vervang:

"(2) Daar word as 'n aftrekking toegelaat 'n vermindering ten opsigte van die koste werklik deur die belastingpligtige aangegaan ten opsigte van die verkryging van enige nuwe en ongebruikte geaffekteerde bate wat—

(a) behoort aan die belastingpligtige en op of na die effektiewe datum vir die eerste keer deur bedoelde belastingpligtige in gebruik geneem word; en

(b) regstreeks gebruik word deur bedoelde belastingpligtige **[in die beoefening van sy enigste besigheid van]** vir—

(i) die vervoer van persone, goed, sake of aardolie; of

(ii) die transmissie van elektrisiteit of enige telekommunikasiesein,

[word 'n vermindering ten opsigte van die koste werklik deur die belastingpligtige aangegaan ten opsigte van die verkryging van bedoelde bate as 'n aftrekking toegelaat] in die mate wat daardie geaffekteerde bate in die voortbrenging van sy inkomte gebruik word: Met dien verstande dat daardie vervoer of transmissie die enigste of hoofbesigheid van daardie belastingpligtige daarstel of 'n hoof- of noodsaaklike aktiwiteit in die beoefening van die enigste of hoofbesigheid van daardie belastingpligtige daarstel.".

(2) Subartikel (1) word geag op 23 Februarie 2000 in werking te getree het.

Wysiging van artikel 12G van Wet 58 van 1962, soos ingevoeg deur artikel 12 van Wet 19 van 2001

29. (1) Artikel 12G van die Inkomstebelastingwet, 1962, word hierby gewysig—

(a) deur paragraaf *(b)* van subartikel (4) deur die volgende paragraaf te vervang:

"*(b)* die nywerheidsprojek die produksie van, en werksgeleenthede in, die betrokke nywerheidsektor binne die Republiek sal verhoog, na inagnemeing van die verplasing **[van enige ander aktiwiteite]** binne daardie sektor;";

(b) deur paragraaf *(b)* van subartikel (7) deur die volgende paragraaf te vervang:

"*(b)* wat die kriteria voorskryf om die omvang van die vereiste verhoging in produksie van, en werksgeleenthede in, 'n nywerheidsektor te bepaal en die mate van die verplasing **[van ander aktiwiteite]** wat by die toepassing van subartikel (4)*(b)* in berekening gebring moet word;"; en

(c) deur paragraaf *(e)* van subartikel (7) deur die volgende paragraaf te vervang:

"*(e)* wat voorskryf wat 'n nywerheidsdeelnemingsprojek en 'n gelyktydige beleggingsaansporing daarstel by die toepassing van subartikel (4)*(e)*;".

(2) Subartikel (1) word geag op 27 Julie 2001 in werking te getree het.

Wysiging van artikel 13 van Wet 58 van 1962, soos gewysig deur artikel 12 van Wet 90 van 1962, artikel 5 van Wet 6 van 1963, artikel 11 van Wet 72 van 1963, artikel 12 van Wet 90 van 1964, artikel 14 van Wet 88 van 1965, artikel 17 van Wet 55 van 1966, artikel 13 van Wet 52 van 1970, artikel 13 van Wet 88 van 1971, artikel 12 van Wet 90 van 1972, artikel 13 van Wet 65 van 1973, artikel 16 van Wet 85 van 1974, artikel 13 van Wet 69 van 1975, artikel 7 van Wet 101 van 1978, artikel 10 van Wet 104 van 1980, artikel 14 van Wet 96 van 1981, artikel 10 van Wet 96 van 1985, artikel 12 van Wet 85 van 1987, artikel 12 van Wet 90 van 1988, artikel 12 van Wet 113 van 1993, artikel 11 van Wet 46 van 1996, artikel 22 van Wet 53 van 1999, artikel 20 van Wet 59 van 2000 en artikel 13 van Wet 19 van 2001

30. Artikel 13 van die Inkomstebelastingwet, 1962, word hierby gewysig deur die opskrif deur die volgende opskrif te vervang:

"**Aftrekkings ten opsigte van geboue gebruik by 'n vervaardigingsproses [of deur hotelhouers]**".

Amendment of section 22A of Act 58 of 1962, as inserted by section 19 of Act 88 of 1971

31. Section 22A of the Income Tax Act, 1962, is hereby amended by the substitution in subsection (1) for the words preceding paragraph *(a)* of the following words:

"If, under any scheme of arrangement or reconstruction of any company or its affairs (including any scheme for the amalgamation of two or more companies and any other scheme) which is sanctioned by any order of court on or after the first day of April, 1971, any company (hereinafter referred to as the transferee company) has before 1 October 2001, acquired from any other company (hereinafter referred to as the transferor company) any asset which was trading stock of the transferor company, and in respect of such acquisition—".

Amendment of section 23A of Act 58 of 1962, as inserted by section 21 of Act 121 of 1984 and substituted by section 12 of Act 70 of 1989 and amended by section 22 of Act 101 of 1990, section 24 of Act 129 of 1991 and section 34 of Act 30 of 1998

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

(a) by the substitution for paragraph *(b)* of the definition of "affected asset" in subsection (1) of the following paragraph:

"*(b)* any machinery, plant, implement, utensil, article, aircraft or ship which has been let and in respect of which the lessor is or was entitled to an allowance under section 11*(e)*, 12B or 12C, whether in the current or a previous year of assessment, other than any such machinery, plant, implement, utensil, article, aircraft or ship let by him under an agreement of lease formally and finally signed by every party to the agreement before 19 November 1988,";

(b) by the substitution for paragraph *(a)* of the definition of "operating lease" in subsection (1) of the following paragraph:

"*(a)* such property may be hired by members of the general public directly from that lessor in terms of such a lease, for a period of less than one month;"; and

(c) by the substitution for the definition of "rental income" of the following definition:

" 'rental income' means income derived by way of rent from the letting of movable property or any machinery or plant in respect of which an allowance has been granted to the lessor under section 11*(e)*, 12, 12B or 12C, whether in the current or any previous year of assessment.".

(2) Subsection (1) shall come into operation on the date of promulgation of this Act and shall apply in respect of any agreement of lease formally and finally signed by all parties on or after that date.

Amendment of section 23C of Act 58 of 1962, as amended by section 25 of Act 129 of 1991 and section 21 of Act 141 of 1992

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

(a) by the substitution for the heading of the following heading:
"**Reduction of cost or market value of certain assets**";

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

"(1) Where for the purposes of applying any provision of this Act regard is to be had to the cost to the taxpayer or the market value of any asset acquired by him or to the amount of any expenditure incurred by him, and—"; and

(c) by the substitution in subsection (1) for the words following paragraph *(b)*, but preceding the proviso of the following words:
"the amount of such input tax shall be excluded from the cost or the market value of such asset or the amount of such expenditure:".

(2) Subsection (1) shall be deemed to have come into operation on 1 October 2001.

Wysiging van artikel 22A van Wet 58 van 1962, soos ingevoeg deur artikel 19 van Wet 88 van 1971

31. Artikel 22A van die Inkomstebelastingwet, 1962, word hierby gewysig deur in subartikel (1) die woorde wat paragraaf *(a)* voorafgaan deur die volgende woorde te vervang:

"Indien, ingevolge 'n plan vir die reëling of rekonstruksie van 'n maatskappy of sy sake (met inbegrip van 'n plan vir die amalgamasie van twee of meer maatskappye en enige ander plan) wat deur 'n hofbevel op of na die eerste dag van April 1971 goedgekeur is, 'n maatskappy (hieronder die oornemende maatskappy genoem) van 'n ander maatskappy (hieronder die oordraende maatskappy genoem) 'n bate voor 1 Oktober 2001 verkry het wat handelsvoorraad van die oordraende maatskappy was, en ten opsigte van dié verkryging—".

Wysiging van artikel 23A van Wet 58 van 1962, soos ingevoeg deur artikel 21 van Wet 121 van 1984 en vervang deur artikel 12 van Wet 70 van 1989 en gewysig deur artikel 22 van Wet 101 van 1990, artikel 24 van Wet 129 van 1991 en artikel 34 van Wet 30 van 1998

32. (1) Artikel 23A van die Inkomstebelastingwet, 1962, word hierby gewysig—

(a) deur paragraaf *(a)* van die omskrywing van "bedryfshuur" in subartikel (1) deur die volgende paragraaf te vervang:

"*(a)* bedoelde goed deur lede van die algemene publiek direk van daardie verhuurder ingevolge sodanige huur vir 'n tydperk van minder as een maand gehuur kan word;";

(b) deur paragraaf *(b)* van die omskrywing van "geaffekteerde bate" in subartikel (1) deur die volgende paragraaf te vervang:

"*(b)* enige masjinerie, installasie, gereedskap, werktuig, artikel, vliegtuig of skip wat verhuur is en ten opsigte waarvan die verhuurder hetsy in die lopende of 'n vorige jaar van aanslag op 'n vermindering ingevolge artikel 11*(e)*, 12B of 12C geregtig is of was, behalwe enige bedoelde masjinerie, installasie, gereedskap, werktuig, artikel, vliegtuig of skip wat deur hom ingevolge 'n huurooreenkoms wat voor 19 November 1988 formeel en finaal deur elke party tot die ooreenkoms onderteken is, verhuur is,"; en

(c) deur die omskrywing van "huurinkomste" deur die volgende omskrywing te vervang:

" 'huurinkomste' inkomste verkry by wyse van huurgeld uit die verhuring van roerende eiendom of enige masjinerie of installasie ten opsigte waarvan 'n vermindering ingevolge artikel 11*(e)*, 12, 12B of 12C aan die verhuurder toegestaan is, hetsy in die lopende of 'n vorige jaar van aanslag.".

(2) Subartikel (1) tree op die datum van afkondiging van hierdie Wet in werking en is van toepassing ten opsigte van enige huurooreenkoms wat op of na daardie datum formeel en finaal deur elke party tot die ooreenkoms onderteken is.

Wysiging van artikel 23C van Wet 58 van 1962, soos gewysig deur artikel 25 van Wet 129 van 1991 en artikel 21 van Wet 141 van 1992

33. (1) Artikel 23C van die Inkomstebelastingwet, 1962, word hierby gewysig—

(a) deur die opskrif deur die volgende opskrif te vervang:

"**Vermindering van koste of markwaarde van sekere bates**";

(b) deur in subartikel (1) die woorde wat paragraaf *(a)* voorafgaan deur die volgende woorde te vervang:

"(1) Waar vir die doeleindes van die toepassing van enige bepaling van hierdie Wet die koste vir 'n belastingpligtige of die markwaarde van 'n bate deur hom verkry of die bedrag van enige uitgawe deur hom aangegaan, in aanmerking geneem moet word, en—"; en

(c) deur in subartikel (1) die woorde wat paragraaf *(b)* volg, maar wat die voorbehoudsbepaling voorafgaan deur die volgende woorde te vervang:

"word die bedrag van bedoelde insetbelasting van die koste of die markwaarde van bedoelde bate of die bedrag van bedoelde uitgawe uitgesluit:".

(2) Subartikel (1) word geag op 1 Oktober 2001 in werking te getree het.

Amendment of section 23H of Act 58 of 1962, as inserted by section 31 of Act 30 of 2000 and amended by section 29 of Act 59 of 2000

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

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

"*(b)* in respect of—

(i) goods or services **[or any other benefit]**, all of which will not be supplied or rendered to such person, **[or the full benefit of which such person will not become entitled to]** during such year of assessment; or,

(ii) any other benefit, the period to which the expenditure relates extends beyond such year of assessment,";

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

"(iii) any other benefit to which such **[person will become entitled]** expenditure relates, an amount which bears to the total amount of such expenditure the same ratio as the number of months in such year during which such person will **[be entitled to]** enjoy such benefit bears to the total number of months during which such person will **[be entitled to]** enjoy such benefit or where the period of such benefit is not determinable, such period over which the benefit is likely to be enjoyed:";

(c) by the substitution for paragraph *(aa)* of the proviso to subsection (1) of the following paragraph:

"*(aa)* where all the goods or services are to be supplied or rendered within six months after the end of the year of assessment during which the expenditure was incurred, or such person **[becomes entitled to]** will have the full enjoyment of such benefit in respect of which the expenditure was incurred within such period; or"; and

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

"*(b)* such person will never **[become entitled to]** enjoy such other benefit in respect of which any expenditure is incurred,".

(2) Subsection (1) shall be deemed to have come into operation on 23 February 2000.

Amendment of section 24A of Act 58 of 1962, as amended by section 23 of Act 89 of 1969, section 20 of Act 88 of 1971, section 24 of Act 85 of 1974 and section 15 of Act 85 of 1987

35. Section 24A of the Income Tax Act, 1962, is hereby amended by the substitution in subsection (1) for the words preceding paragraph *(a)* of the following words:

"(1) If, under any transaction entered into before 1 October 2001 for the disposal by any person (hereinafter referred to as the trader) of any trading stock consisting of fixed property or any shares in any company, the consideration received by or accrued to the trader for such trading stock in effect consists of or includes—".

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 and section 31 of Act 59 of 2000

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

(a) by the substitution in subsection (1) for the definition of "exchange item" of the following definition:

" 'exchange item' of or in relation to a person means an amount in a foreign currency—

(a) which constitutes any unit of currency acquired and not disposed of by that person;

Wysiging van artikel 23H van Wet 58 van 1962, soos ingevoeg deur artikel 31 van Wet 30 van 2000 en gewysig deur artikel 29 van Wet 59 van 2000

34. (1) Artikel 23H van die Inkomstebelastingwet, 1962, word hierby gewysig—

(a) deur paragraaf *(b)* van subartikel (1) deur die volgende paragraaf te vervang:

"*(b)* ten opsigte van—

(i) goed of dienste **[of enige ander voordeel]**, waarvan alles nie aan bedoelde persoon verskaf of gelewer sal word **[nie of die volle voordeel waarop bedoelde persoon nie]** gedurende bedoelde jaar van aanslag **[geregtig sal word]** nie; of

(ii) enige ander voordeel, waar die tydperk waarop die onkoste betrekking het na daardie jaar van aanslag voortduur,";

(b) deur subparagraaf (iii) van subartikel (1) deur die volgende subparagraaf te vervang:

"(iii) enige ander voordeel waarop bedoelde **[persoon geregtig sal word]** onkoste betrekking het, 'n bedrag wat tot die totale bedrag van bedoelde onkoste, in dieselfde verhouding staan as wat die aantal maande in bedoelde jaar waartydens bedoelde persoon **[op]** bedoelde voordeel **[geregtig is]** sal geniet tot die totale aantal maande waartydens bedoelde persoon **[op]** bedoelde voordeel **[geregtig sal wees]** sal geniet, of waar die tydperk van daardie voordeel nie bepaalbaar is nie, die tydperk waartydens die voordeel waarskynlik geniet sal word, staan:";

(c) deur paragraaf *(aa)* van die voorbehoudsbepaling by subartikel (1) deur die volgende paragraaf te vervang:

"*(aa)* waar al die goed of dienste verskaf of gelewer staan te word binne ses maande na die einde van die jaar van aanslag waartydens die onkoste aangegaan is, of bedoelde persoon binne bedoelde tydperk **[geregtig word op]** die volle genot van daardie voordeel ten opsigte waarvan die onkoste aangegaan is, sal hê; of"; en

(d) deur paragraaf *(b)* van subartikel (3) deur die volgende paragraaf te vervang:

"*(b)* bedoelde persoon nooit **[geregtig sal word op]** bedoelde ander voordeel ten opsigte waarvan enige onkoste aangegaan is, sal geniet nie,".

(2) Subartikel (1) word geag op 23 Februarie 2000 in werking te getree het.

Wysiging van artikel 24A van Wet 58 van 1962, soos gewysig deur artikel 23 van Wet 89 van 1969, artikel 20 van Wet 88 van 1971, artikel 24 van Wet 85 van 1974 en artikel 15 van Wet 85 van 1987

35. Artikel 24A van die Inkomstebelastingwet, 1962, word hierby gewysig deur in subartikel (1) die woorde wat paragraaf *(a)* voorafgaan deur die volgende woorde te vervang:

"(1) Indien, ingevolge 'n transaksie voor 1 Oktober 2001 aangegaan, waarby 'n persoon (hieronder die handelaar genoem) handelsvoorraad bestaande uit vasgoed of maatskappy-aandele van die hand sit, die vergoeding vir daardie handelsvoorraad wat deur die handelaar ontvang word of aan hom toeval in werklikheid uit—".

Wysiging van artikel 24I van Wet 58 van 1962, soos ingevoeg deur artikel 21 van Wet 113 van 1993 en gewysig deur artikel 11 van Wet 140 van 1993, artikel 18 van Wet 21 van 1994, artikel 13 van Wet 36 van 1996, artikel 18 van Wet 28 van 1997, artikel 35 van Wet 30 van 1998, artikel 26 van Wet 53 van 1999 en artikel 31 van Wet 59 van 2000

36. (1) Artikel 24I van die Inkomstebelastingwet, 1962, word hierby gewysig—

(a) deur die omskrywing van "buitelandse valuta" in subartikel (1) deur die volgende omskrywing te vervang:

" 'buitelandse valuta' met betrekking tot—

(a) enige permanente saak van 'n persoon, enige geldeenheid wat nie 'n wettige betaalmiddel is in die land waarin daardie permanente saak geleë is nie;

(b) owing by or to that person in respect of a loan or advance or a debt incurred by or payable to such person;

(c) owed by or to that person in respect of a forward exchange contract; or

(d) where that person has the right or contingent obligation to buy or sell that amount in terms of a foreign currency option contract.";

(b) by the substitution in subsection (1) for the definition of "foreign currency" of the following definition:

" 'foreign currency' means in relation to—

(a) any permanent establishment of a person, any currency which is not legal tender in the country in which that permanent establishment is situated;

(b) any resident in respect of any exchange item which is not attributable to a permanent establishment outside the Republic, any currency which is not legal tender in the Republic;

(c) any company or trust which is not a resident in respect of any exchange item which is not attributable to a permanent establishment of that company or trust, any currency which is not legal tender in the country in which that company is incorporated or trust is formed;";

(c) by the insertion in subsection (1) after the definition of "intrinsic value" of the following definition:

" 'local currency' means in relation to—

(a) any permanent establishment of a person, any currency which is legal tender in the country in which that permanent establishment is situated;

(b) any resident in respect of an exchange item which is not attributable to a permanent establishment outside the Republic, any currency which is legal tender in the Republic;

(c) any company or trust which is not a resident in respect of any exchange item which is not attributable to a permanent establishment, any currency which is legal tender in the country in which that company is incorporated or trust is formed;";

(d) by the substitution for the definition of "spot rate" in subsection (1) of the following definition:

" 'spot rate' means the appropriate quoted exchange rate at a specific time for the delivery of currency **[within a period of two business days]**;";

(e) by the deletion of the definition of "transitional exchange difference" in subsection (1);

(f) by the substitution for the definition of "translate" in subsection (1) of the following definition:

" 'translate' means the restatement of an exchange item in the local currency **[of the Republic]** at the end of any year of assessment, by applying the ruling exchange rate to such exchange item.";

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

"(2) The provisions of this section shall apply in respect of any—

(a) company;

(b) trust carrying on any trade; and

(c) natural person who holds any exchange item for purposes of trade.";

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

"(3) In determining the taxable income of any person contemplated in subsection (2), there shall be included in or deducted from the income, as the case may be, of that person—

(a) any exchange difference in respect of an exchange item of or in relation to that person, subject to subsection (10);

(b) (i) any premium or like consideration received by, or paid by, such person in terms of a foreign currency option contract entered into by such person; or

(ii) any consideration paid by such person in respect of a foreign currency option contract acquired by such person; and

(b) enige inwoner ten opsigte van 'n valuta-item wat nie aan 'n permanente saak buite die Republiek toeskryfbaar is nie, enige geldeenheid wat nie 'n wettige betaalmiddel in die Republiek is nie;

(c) 'n maatskappy of trust wat nie 'n inwoner is nie ten opsigte van 'n valuta-item wat nie aan 'n permanente saak van daardie maatskappy of trust toeskryfbaar is nie, enige geldeenheid wat nie 'n wettige betaalmiddel is in die land waar daardie maatskappy opgerig is of trust gestig is nie;";

(b) deur die omskrywing van "kontantkoers" in subartikel (1) deur die volgende omskrywing te vervang:

" 'kontantkoers' die toepaslike genoteerde wisselkoers op 'n spesifieke tydstip vir die lewering van valuta **[binne 'n tydperk van twee besigheidsdae]**;";

(c) deur die omskrywing van "omreken" in subartikel (1) deur die volgende omskrywing te vervang:

" 'omreken', die herstatering van 'n valuta-item in die plaaslike geldeenheid **[valuta van die Republiek]** aan die einde van 'n jaar van aanslag deur die heersende wisselkoers op bedoelde valuta-item toe te pas;";

(d) deur die omskrywing van "oorgangsvalutaverskil" in subartikel (1) te skrap;

(e) deur die volgende omskrywing na die omskrywing van "opsie-uitoefeningskoers" in subartikel (1) in te voeg:

" 'plaaslike geldeenheid' met betrekking tot—

(a) enige permanente saak van 'n persoon, enige geldeenheid wat 'n wettige betaalmiddel is in die land waarin daardie permanente saak geleë is;

(b) enige inwoner met betrekking tot 'n valuta-item wat nie aan 'n permanente saak buite die Republiek toeskryfbaar is nie, enige geldeenheid wat 'n wettige betaalmiddel in die Republiek is;

(c) enige maatskappy of trust wat nie 'n inwoner is nie ten opsigte van enige valuta-item wat nie aan 'n permanente saak toeskryfbaar is nie, enige geldeenheid wat 'n wettige betaalmiddel is in die land waarin daardie maatskappy opgerig is of trust gestig is;";

(f) deur die omskrywing van "valuta-item" in subartikel (1) deur die volgende omskrywing te vervang:

" 'valuta-item' met betrekking tot 'n persoon 'n bedrag in 'n buitelandse valuta—

(a) wat 'n valuta-eenheid daarstel wat deur daardie persoon verkry is en nie oor beskik is nie;

(b) deur of aan daardie persoon verskuldig ten opsigte van 'n lening of voorskot of 'n skuld aangegaan deur of betaalbaar aan daardie persoon;

(c) deur of aan daardie persoon verskuldig ten opsigte van 'n valutatermynkontrak; of

(d) waar daardie persoon die reg of voorwaardelike aanspreeklikheid het om daardie bedrag ingevolge 'n buitelandse valuta-opsiekontrak te koop of te verkoop;";

(g) deur subartikel (2) deur die volgende subartikel te vervang:

"(2) Die bepalings van hierdie artikel is van toepassing ten opsigte van enige—

(a) maatskappy;

(b) trust wat 'n bedryf beoefen; en

(c) 'n natuurlike persoon wat enige valuta-item hou vir doeleindes van 'n bedryf.

(h) deur subartikel (3) deur die volgende subartikel te vervang:

"(3) By die vasstelling van die belasbare inkomste van 'n persoon in subartikel (2) bedoel, word daar by of van die inkomste van daardie persoon ingesluit of afgetrek, na gelang van die geval—

(a) enige valutaverskil ten opsigte van 'n valuta-item van of met betrekking tot daardie persoon, behoudens subartikel (10);

(b) (i) enige premie of soortgelyke vergoeding ontvang deur, of betaal deur, bedoelde persoon ingevolge 'n buitelandse valuta-opsiekontrak deur daardie persoon aangegaan; of

(ii) enige vergoeding betaal deur bedoelde persoon ten opsigte van 'n buitelandse valuta-opsiekontrak deur daardie persoon verkry;

(c) any discount which accrued to such person or any premium incurred by him in respect of any forward exchange contract, where—

(i) such forward exchange contract was entered into by such person as a related or matching forward exchange contract to serve as a hedge in respect of any loan, advance or debt utilized or to be utilized by such person to acquire any asset or to finance any expense, or to serve as a hedge in respect of any loan, advance or debt arising from the sale of any asset or the supply of any services; and

(ii) such loan, advance or debt was recorded on transaction date at the forward rate in terms of such forward exchange contract, but such asset so acquired or such expense so financed, or such asset so sold or services so supplied, was recorded at the spot rate or an alternative rate as the Commissioner may have prescribed in terms of the definition of 'ruling exchange rate':

Provided that such discount or premium shall be deemed to have accrued or been incurred, as the case may be, on a day to day basis during the period of such forward exchange contract for the purposes of this paragraph.

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

"(6) Any inclusion in or deduction from income in terms of this section **[in respect of an exchange difference, transitional exchange difference or a premium or discount in respect of a forward exchange contract or a premium or other consideration in respect of or in terms of a foreign currency option contract,]** shall be in lieu of any deduction or inclusion which may otherwise be allowed or included under any other provision of this Act.";

(j) by the substitution in subsection (7) for the words preceding paragraph *(a)* of the following words:

"(7) Notwithstanding the provisions of **[subsections (2) and (4)]** subsection (3), but subject to the provisions of sections 36 and 37E—";

(k) by the substitution in subsection (7A) for the words preceding subparagraph (i) of paragraph *(a)* of the following words:

"Subject to subsection (10), where any exchange difference is to be included in or deducted from the income of any company in terms of subsection **[(2)]** (3), there shall, in lieu of such deduction or inclusion, be included in or deducted, as the case may be, from the income of such company during any year of assessment an amount equal to 10 per cent of the deferred amount of such exchange difference arising from a loan or advance owing by such company to any other company or a loan or advance owing by any other company to such company (such a loan or advance referred to as a qualifying exchange item for the purposes of this subsection), if—";

(l) by the substitution for subsection (8) of the following subsection:

"(8) Any foreign exchange loss sustained in respect of a transaction entered into by a person, or any premium or other consideration paid in respect of or in terms of a foreign currency option contract entered into or acquired by a person, shall not be allowed as a deduction from such person's income under subsection **[(2) or (4)]** (3), **[as the case may be]** if such transaction was entered into or such foreign currency option contract was entered into or acquired solely or mainly to enjoy a reduction in tax by way of a deduction from income.";

(c) enige diskonto wat aan bedoelde persoon toegeval het of enige premie wat deur hom aangegaan is ten opsigte van 'n valutatermynkontrak waar—

(i) bedoelde valutatermynkontrak deur bedoelde persoon aangegaan is as 'n verwante of ooreenstemmende valutatermynkontrak om as dekking te dien ten opsigte van 'n lening, voorskot of skuld, wat deur bedoelde persoon aangewend is of aangewend staan te word vir die verkryging van 'n bate of vir die finansiering van 'n onkoste of om as dekking te dien ten opsigte van 'n lening, voorskot of skuld wat ontstaan uit die verkoop van enige bate of die lewering van enige dienste; en

(ii) bedoelde lening, voorskot of skuld op transaksiedatum teen die termynkoers te boek gestel is ingevolge bedoelde valuta-termynkontrak, maar bedoelde bate wat aldus verkry is of bedoelde uitgawe wat aldus gefinansier is, of bedoelde bate aldus verkoop of dienste wat aldus gelewer is, teen die kontantkoers of 'n alternatiewe koers soos wat die Kommissaris mag voorgeskryf het ingevolge die omskrywing van 'heersende wisselkoers', te boek gestel is:

Met dien verstande dat bedoelde diskonto of premie by die toepassing van hierdie paragraaf geag word toe te geval het of aangegaan te gewees het, na gelang van die geval, op 'n dag-tot-dag-grondslag gedurende die tydperk van bedoelde valutatermynkontrak.";

(i) deur subartikel (6) deur die volgende subartikel te vervang:

"(6) Enige insluiting in of aftrekking van inkomste ingevolge hierdie artikel **[ten opsigte van 'n valutaverskil, oorgangsvalutaverskil of 'n premie of diskonto ten opsigte van 'n valutatermynkontrak of 'n premie of ander vergoeding ten opsigte van of ingevolge 'n buitelandse valuta-opsiekontrak,]** geskied in plaas van enige aftrekking of insluiting wat andersins ingevolge enige ander bepaling van hierdie Wet toegestaan of ingesluit mag word.";

(j) deur in subartikel (7) die woorde wat paragraaf *(a)* voorafgaan deur die volgende woorde te vervang:

"(7) Ondanks die bepalings van **[subartikels (2) en (4)]** subartikel (3), maar behoudens die bepalings van artikels 36 en 37E—";

(k) deur in subartikel (7A) die woorde wat subparagraaf (i) van paragraaf *(a)* voorafgaan deur die volgende woorde te vervang:

"Behoudens subartikel (10), waar 'n valutaverskil ingevolge subartikel **[(2)]** (3) by die inkomste van 'n maatskappy ingesluit of afgetrek staan te word, word in plaas van sodanige aftrekking of insluiting, 'n bedrag gelykstaande aan 10 persent van die uitgestelde bedrag van bedoelde valutaverskil wat ontstaan uit 'n lening of voorskot deur bedoelde maatskappy aan 'n ander maatskappy verskuldig of 'n lening of voorskot deur 'n ander maatskappy aan bedoelde maatskappy verskuldig (bedoelde lening of voorskot by die toepassing van hierdie artikel verwys na as 'n kwalifiserende valuta-item), by die inkomste van bedoelde maatskappy ingesluit of afgetrek, na gelang van die geval, indien—";

(l) deur subartikel (8) deur die volgende subartikel te vervang:

"(8) Enige buitelandse valutaverlies gely ten opsigte van 'n transaksie deur 'n persoon aangegaan, of enige premie of ander vergoeding betaal ten opsigte van of ingevolge 'n buitelandse valuta-opsiekontrak deur 'n persoon aangegaan of verkry, word nie as 'n aftrekking van bedoelde persoon se inkomste ingevolge subartikel **[(2) of (4)]** (3) **[na gelang van die geval]** toegestaan nie, indien bedoelde transaksie aangegaan is of bedoelde buitelandse valuta-opsiekontrak aangegaan is of verkry is uitsluitlik of hoofsaaklik om 'n belastingvermindering te geniet by wyse van 'n aftrekking van inkomste.";

(m) by the addition of the following subsections:

"(9) Any exchange item of a person contemplated in subsection (2), held on 1 October 2001, other than in the course of trade of such person, shall be deemed to have been acquired by that person on that date at the ruling exchange rate on that date.

(10) No deduction shall be allowed from the income of any person in terms of this section in respect of any exchange difference arising from a transaction entered into by such person with any controlled foreign entity in relation to that person or any connected person in relation to that controlled foreign entity, to the extent that the income attributable to that transaction is not included in the net income of that controlled foreign entity for purposes of section 9D.

(11) No amount shall be included in or deducted from the income of a person in terms of this section in respect of any exchange difference arising from—

(a) any amount owing by a person in respect of a loan, advance or debt incurred by that person to acquire any asset to which the provisions of paragraph 43(1) or (2) of the Eighth Schedule applies; and

(b) any forward exchange contract or foreign currency option contract entered into to hedge such loan, advance or debt.

(12) Where any amount contemplated in paragraphs *(a)* to *(d)* of the definition of 'exchange item' is denominated in the local currency of a permanent establishment of a person, and that amount—

(a) becomes attributable to that permanent establishment, that amount shall be deemed to be an exchange item which has been realised for the purposes of this section; or

(b) ceases to be attributable to that permanent establishment otherwise than by way of disposal, that amount shall be deemed to be an exchange item which has been acquired for the purposes of this section.".

(2) Subsection (1) shall be deemed to have come into operation on 1 October 2001.

Substitution of section 25D of Act 58 of 1962, as inserted by section 33 of Act 59 of 2000

37. (1) Section 25D of the Income Tax Act, 1962, is hereby substituted by the following section:

"Determination of taxable income in foreign currency

25D. The amount of any taxable income derived by any resident from a source outside the Republic (other than by way of any foreign dividend as contemplated in section 9E), shall—

(a) where such income is attributable to a permanent establishment of that resident outside the Republic, be determined in the relevant currency of the country **[from where the income is derived]** in which that permanent establishment is situated, if the financial records of that permanent establishment are kept in that currency, and the amount of the taxable income so determined shall be converted on the last day of the relevant year of assessment to the currency of the Republic and the ruling exchange rate at that date, or any other exchange rate or rates as the Commissioner may approve taking into account the ruling exchange rates during such year of assessment, shall be applied to determine the value of the amount of the taxable income so derived; or

(b) in any other case, be determined in the currency of the Republic.".

(2) Subsection (1) shall be deemed to have come into operation on 1 January 2001 and shall apply in respect of any year of assessment commencing on or after that date.

(m) deur die volgende subartikels by te voeg:

"(9) Enige valuta-item van 'n persoon in subartikel (2) bedoel, op 1 Oktober 2001 gehou anders as in die loop van die bedryf van daardie person, word geag deur daardie persoon verkry te gewees het op daardie datum teen die heersende wisselkoers op daardie datum.

(10) Geen aftrekking van die inkomste van enige persoon word ingevolge hierdie artikel toegelaat nie ten opsigte van enige valutaverskil wat ontstaan uit 'n transaksie aangegaan deur daardie persoon met enige ander persoon wat 'n beheerde buitelandse entiteit met betrekking tot daardie persoon is of wat 'n verbonde persoon met betrekking tot daardie beheerde buitelandse entiteit is, in die mate wat die inkomste wat aan daardie transaksie toeskryfbaar is nie in die netto inkomste van daardie beheerde buitelandse entiteit ingesluit is by die toepassing van artikel 9D nie.

(11) Geen bedrag word ingesluit in of afgetrek van die inkomste van 'n persoon ingevolge hierdie artikel nie ten opsigte van enige valutaverskil wat ontstaan uit—

(a) enige bedrag deur 'n persoon verskuldig ten opsigte van 'n lening, voorskot of skuld deur daardie persoon aangegaan om 'n bate te verkry ten opsigte waarvan die bepalings van paragraaf 43(1) of (2) van die Agtste Bylae van toepassing is; en

(b) enige valuta-termynkontrak of 'n buitelandse valuta-opsiekontrak aangegaan om as dekking te dien vir daardie lening, voorskot of skuld.

(12) Waar 'n bedrag in paragrawe *(a)* tot *(d)* van die omskrywing van 'valuta-item' in 'n plaaslike geldeenheid van 'n permanente saak van 'n persoon aangedui is, en daardie bedrag—

(a) aan daardie permanente saak toeskryfbaar word, word daardie bedrag geag 'n valuta-item te wees wat by die toepassing van hierdie artikel gerealiseer is; of

(b) ophou om aan daardie permanente saak toeskryfbaar te wees behalwe by wyse van beskikking, word daardie bedrag by die toepassing van hierdie artikel geag 'n valuta-item te wees wat verkry te gewees het.".

(2) Subartikel (1) word geag op 1 Oktober 2001 in werking te getree het.

Vervanging van artikel 25D van Wet 58 van 1962, soos ingevoeg deur artikel 33 van Wet 59 van 2000

37. (1) Artikel 25D van die Inkomstebelastingwet, 1962, word hierby deur die volgende artikel vervang:

"**Vasstelling van belasbare inkomste of verlies in buitelandse [valuta] geldeenheid**

25D. Die bedrag van enige belasbare inkomste deur 'n inwoner uit 'n bron buite die Republiek verkry (behalwe by wyse van enige buitelandse dividend soos in artikel 9E bedoel), word—

(a) waar daardie inkomste aan 'n permanente saak van daardie inwoner buite die Republiek toeskryfbaar is, vasgestel in die betrokke geldeenheid van die land **[waaruit die inkomste verkry word]** waar daardie permanente saak geleë is, indien die finansiële rekords van daardie permanente saak in daardie geldeenheid gehou word, en die bedrag van die belasbare inkomste aldus vasgestel, word op die laaste dag van die betrokke jaar van aanslag na die geldeenheid van die Republiek omgeskakel en die heersende wisselkoers op daardie datum, of enige ander wisselkoers of -koerse wat die Kommissaris mag goedkeur met inagneming van die heersende wisselkoerse gedurende daardie jaar van aanslag, word toegepas om die waarde van die bedrag van die belasbare inkomste aldus verkry, vas te stel; of

(b) in enige ander geval, vasgestel in die geldeenheid van die Republiek.".

(2) Subartikel (1) word geag op 1 Januarie 2001 in werking te getree het en is van toepassing ten opsigte van enige jaar van aanslag wat op of na daardie datum 'n aanvang neem.

Repeal of section 28*bis* of Act 58 of 1962, as inserted by section 19 of Act 88 of 1965 and amended by section 25 of Act 89 of 1969, section 25 of Act 85 of 1974, section 18 of Act 113 of 1977, section 23 of Act 94 of 1983, section 34 of Act 30 of 2000 and section 35 of Act 59 of 2000

38. (1) Section 28*bis* is hereby repealed.

(2) Subsection (1) shall come into operation on 1 December 2001.

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 and section 15 of Act 19 of 2001

39. (1) Section 29A of the Income Tax Act, 1962, is hereby amended by the substitution for subsection (10) of the following subsection:

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

(2) Subsection (1) shall be deemed to have come into operation on 1 October 2001.

Amendment of section 33 of Act 58 of 1962, as amended by section 26 of Act 85 of 1974, section 28 of Act 113 of 1993 and section 38 of Act 59 of 2000

40. Section 33 of the Income Tax Act, 1962, is hereby amended by the substitution for the heading of the following heading:

"**Assessment of owners or charterers of ships or aircraft [not ordinarily resident or registered, managed or controlled in] who are not residents of the Republic**".

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 and section 17 of Act 36 of 1996

41. (1) Section 36 of the Income Tax Act, 1962, is hereby amended by the substitution for paragraph *(hh)* of the proviso to paragraph *(c)* of the definition of "capital expenditure" in subsection (11) of the following paragraph:

"*(hh)* where a **[change of ownership]** sale, transfer, lease or cession of **[a]** any mining property, as contemplated in section 37, occurs **[and the assets passing by such change of ownership include any]** which results in the disposal of an asset in respect of which the provisions of paragraph *(d)* are applicable, so much of the effective value as relates to the asset so **[included]** disposed of shall qualify for the calculation of the amount under this paragraph as from the first day of the year of assessment following the year of assessment during which the **[change of ownership occurred]** agreement of sale, transfer, lease or cession of that mining property takes effect; and".

(2) Subsection (1) shall come into operation on the date of promulgation and shall apply in respect of any disposal of an asset on or after that date.

Herroeping van artikel 28*bis* van Wet 58 van 1962, soos ingevoeg deur artikel 19 van Wet 88 van 1965 en gewysig deur artikel 25 van Wet 89 van 1969, artikel 25 van Wet 85 van 1974, artikel 18 van Wet 113 van 1977, artikel 23 van Wet 94 van 1983, artikel 34 van Wet 30 van 2000 en artikel 35 van Wet 59 van 2000

38. (1) Artikel 28*bis* word hierby herroep.

(2) Subartikel (1) tree op 1 Desember 2001 in werking.

Wysiging van artikel 29A van Wet 58 van 1962, soos ingevoeg deur artikel 30 van Wet 53 van 1999 en gewysig deur artikel 36 van Wet 59 van 2000, artikel 15 van Wet 5 van 2001 en artikel 15 van Wet 19 van 2001

39. (1) Artikel 29A van die Inkomstebelastingwet, 1962, word hierby gewysig deur subartikel (10) deur die volgende subartikel te vervang:

"(10) Die belasbare inkomste deur 'n versekeraar verkry ten opsigte van sy individuele polishouerfonds, sy maatskappypolishouerfonds en sy korporatiewe fonds word afsonderlik ooreenkomstig die bepalings van hierdie Wet vasgestel asof elke bedoelde fonds 'n afsonderlike belastingpligtige was en die individuele polishouerfonds, maatskappypolishouerfonds, onbelaste polishouerfonds en korporatiewe fonds word geag afsonderlike **[persone]** maatskappye te wees wat verbonde persone is met betrekking tot mekaar by die toepassing van subartikels (6), (7) en (8) en artikels 9B, 20, 24I, 24J, 24K, **[en]** 24L en 26A en die Agtste Bylae by hierdie Wet.".

(2) Subartikel (1) word geag op 1 Oktober 2001 in werking te getree het.

Wysiging van artikel 33 van Wet 58 van 1962, soos gewysig deur artikel 26 van Wet 85 van 1974, artikel 28 van Wet 113 van 1993 en artikel 38 van Wet 59 van 2000

40. Artikel 33 van die Inkomstebelastingwet, 1962, word hierby gewysig deur die opskrif deur die volgende opskrif te vervang:

"**Aanslag van eienaars of bevragters van skepe of vliegtuie wat nie [gewoonlik in] inwoners van die Republiek [woonagtig is of nie daar geregistreer is of bestuur of beheer word] is nie.**".

Wysiging van artikel 36 van Wet 58 van 1962, soos gewysig deur artikel 12 van Wet 72 van 1963, artikel 15 van Wet 90 van 1964, artikel 20 van Wet 88 van 1965, artikel 23 van Wet 55 van 1966, artikel 16 van Wet 95 van 1967, artikel 14 van Wet 76 van 1968, artikel 26 van Wet 89 van 1969, artikel 21 van Wet 65 van 1973, artikel 28 van Wet 85 van 1974, artikel 20 van Wet 104 van 1980, artikel 25 van Wet 94 van 1983, artikel 16 van Wet 96 van 1985, artikel 14 van Wet 70 van 1989, artikel 26 van Wet 101 van 1990, artikel 30 van Wet 129 van 1991, artikel 24 van Wet 141 van 1992, artikel 29 van Wet 113 van 1993 en artikel 17 van Wet 36 van 1996

41. (1) Artikel 36 van die Inkomstebelastingwet, 1962, word hierby gewysig deur paragraaf *(hh)* van die voorbehoudsbepaling by paragraaf *(c)* van die omskrywing van "kapitaaluitgawe" in subartikel (11) deur die volgende paragraaf te vervang:

"*(hh)* waar 'n **[verandering van eiendomsreg]** verkoop, oordrag, verhuring of sessie van **['n]** enige myneiendom, soos in artikel 37 bedoel, plaasvind en **[die bates wat ten gevolge van daardie verandering van eiendomsreg oorgaan]** 'n beskikking van 'n bate **[insluit]** waarop die bepalings van paragraaf *(d)* van toepassing is tot gevolg het, soveel van die effektiewe waarde as wat betrekking het op die **[aldus ingeslote]** bate aldus oor beskik vir die berekening van die bedrag kragtens hierdie paragraaf kwalifiseer vanaf die eerste dag van die jaar van aanslag wat volg op die jaar van aanslag waarin die **[verandering van eiendomsreg plaasgevind het]** ooreenkoms vir die verkoop, oordrag, verhuring of sessie van daardie myneiendom in werking tree; en".

(2) Subartikel (1) tree in werking op die datum van afkondiging van hierdie Wet en is van toepassing ten opsigte van enige beskikking oor 'n bate op of na daardie datum.

Substitution of section 37 of Act 58 of 1962, as amended by section 29 of Act 85 of 1974 and section 25 of Act 141 of 1992

42. (1) Section 37 of the Income Tax Act, 1962, is hereby substituted by the following section:

"**Calculation of capital expenditure on sale, transfer, lease or cession of mining property**

37.(1) For the purposes of this Act, but subject to subsection (1A), whenever **[a change of ownership of a mining property, occurs the new owner]** a taxpayer—

(a) sells, transfers, leases or cedes any mining property; and

(b) disposes of any assets contemplated in section 36(11) (hereinafter referred to as 'the capital assets') in consequence of the sale, transfer, lease or cession contemplated in paragraph *(a)*,

the person acquiring those capital assets shall be deemed to have acquired such **[preliminary surveys, boreholes, shafts, development and equipment (in this section referred to as the development assets) as are included in the]** capital assets **[passing by such change of ownership]** at a cost equal to the effective value **[to the new owner of the development assets at the time the change of ownership takes place takes place]** of those capital assets to that person on the effective date of that agreement of sale, transfer, lease or cession of the mining property, and the said cost shall be deemed to be expenditure that is incurred by **[the new owner]** that person during the period of assessment during which **[the change of ownership occurs]** that agreement takes effect and to be capital expenditure which is in respect of such period required to be taken into account for the purposes of the definition of 'capital expenditure incurred' in section 36(11). **[Provided that if in a case in which consideration is given, the effective value of all the assets so passing, exceeds the consideration, the amount of such cost and expenditure shall be deemed to be an amount which bears to the amount of such consideration the same ratio as such effective value of the development assets bears to the effective value to the new owner at the said time of all the assets passing.]**

(1A) Where any consideration is given by the person acquiring the assets disposed of by the taxpayer, as contemplated in subsection (1), and the effective value of all those assets (including any mining property) so acquired, exceeds that consideration, the amount of the cost and expenditure in respect of the capital assets shall, for the purposes of subsection (1), be deemed to be an amount which bears to the total amount of such consideration the same ratio as such effective value of those capital assets bears to the effective value to that person of all the assets (including any mining property) so disposed of to that person.

(2) For the purposes of paragraph *(j)* of the definition of 'gross income' in section 1 and section 36, the **[person from whom ownership of any mining property is acquired in consequence of a change of ownership of that property]** taxpayer who disposes of any capital assets contemplated in subsection (1), shall be deemed to have disposed of **[the development assets included in the]** such capital assets **[passing by the change of ownership]** for a consideration equal in value to the cost of **[the development]** those capital assets to the **[new owner]** person acquiring such capital assets as determined under subsection (1) and (1A), and such consideration shall be deemed to have been received by or to have accrued to the said **[person at the time the change of ownership takes place]** taxpayer on the effective date of the agreement of sale, transfer, lease or cession.

Vervanging van artikel 37 van Wet 58 van 1962, soos gewysig deur artikel 29 van Wet 85 van 1974 en artikel 25 van Wet 141 van 1992

42. (1) Artikel 37 van die Inkomstebelastingwet, 1962, word hierby deur die volgende artikel vervang:

"**Berekening van kapitaaluitgawe by verkoop, oordrag, verhuring of sessie van myneiendom**

37. (1) By die toepassing van hierdie Wet, maar behoudens subartikel (1A), wanneer **[daar 'n verandering van eienaar van 'n myneiendom plaasvind]** 'n belastingpligtige—

(a) enige myneiendom verkoop, oordra, verhuur of sedeer; en

(b) oor enige bates in artikel 36(11) bedoel (hierna 'die kapitaalbates' genoem) beskik as gevolg van die verkoop, oordrag, verhuring of sessie in paragraaf *(a)* bedoel,

word **[die nuwe eienaar]** die persoon wat daardie kapitaalbates verkry geag **[die voorafgaande opnames, boorgate, skagte, ontwikkeling en toerusting (in hierdie artikel die ontwikkelingsbates genoem) wat ingesluit word by die bates wat ten gevolge van die verandering van eienaar oorgaan]**, daardie kapitaalbates te verkry het teen 'n koste wat gelyk is aan die effektiewe waarde **[vir die nuwe eienaar ten tyde van die verandering van eienaar, van die ontwikkelingsbates]** van daardie kapitaalbates vir daardie persoon op die effektiewe datum van die ooreenkoms van verkoop, oordrag, verhuring of sessie van die myneiendom, en word bedoelde koste geag uitgawe te wees wat deur **[die nuwe eienaar]** daardie persoon aangegaan word gedurende die aanslagtydperk waarin **[die verandering van eienaar plaasvind]** daardie ooreenkoms in werking tree en kapitaaluitgawe te wees wat ten opsigte van bedoelde tydperk in berekening gebring moet word by die toepassing van die omskrywing van 'kapitaaluitgawe aangegaan' in artikel 36(11). **[Met dien verstande dat indien, in 'n geval waar 'n teenprestasie gegee word, die effektiewe waarde van al die bates wat aldus oorgaan, die teenprestasie oorskry, die bedrag van bedoelde koste en uitgawe geag word 'n bedrag te wees wat in dieselfde verhouding tot die teenprestasie staan as dié waarin bedoelde effektiewe waarde van die ontwikkelingsbates tot die effektiewe waarde vir die nuwe eienaar op bedoelde tydstip van al die oorgaande bates staan.]**

(1A) Waar enige teenprestasie deur die persoon wat die bates verkry gegee word, soos in subartikel (1) bedoel, en die effektiewe waarde van al daardie bates (waarby ingesluit enige myneiendom) aldus verkry, daardie teenprestasie te bowe gaan, word die bedrag van die koste en onkoste ten opsigte van die kapitaalbates, by die toepassing van subartikel (1), geag 'n bedrag te wees wat tot die totale bedrag van daardie teenprestasie in dieselfde verhouding staan as wat daardie effektiewe waarde van daardie kapitaalbates in verhouding tot die effektiewe waarde vir daardie persoon van al die bates (waarby ingesluit enige myneiendom) aldus aan daardie persoon beskik, staan.

(2) By die toepassing van paragraaf *(j)* van die omskrywing van 'bruto inkomste' in artikel 1 en artikel 36, word die **[persoon van wie eiendomsreg op 'n myneiendom verkry word as gevolg van 'n verandering van eienaar van daardie eiendom]** belastingpligtige wat oor enige kapitaalbates in subartikel (1) bedoel beskik, geag **[die ontwikkelingsbates ingesluit by die bates wat ten gevolge van die verandering van eienaar oorgaan]** daardie kapitaalbates van die hand te gesit het vir 'n teenprestasie waarvan die waarde gelyk is aan die koste van **[die ontwikkelingsbates]** daardie kapitaalbates vir die **[nuwe eienaar]** persoon wat daardie kapitaalbates verkry, soos volgens voorskrif van subartikel (1) en (1A) vasgestel, en word bedoelde teenprestasie geag deur bedoelde **[persoon]** belastingpligtige ontvang te gewees het of aan hom toe te geval het **[ten tyde van die verandering van eienaar]** op die effektiewe datum van die ooreenkoms van verkoop, oordrag, verhuring of sessie.

(3) If the value of the consideration given or the value of the property **[passing where no consideration is given]** disposed of is in dispute, **[it]** the value may, **[with the consent of the new owner]** be fixed by the Commissioner and shall **[failing such consent]** be determined—

(a) in the case of any mining property, in the same manner as if transfer duty were payable; or

(b) in the case of any capital asset, at the market value of such capital asset.

(4) The effective value **[at the time the change of ownership takes place]** on the effective date of the agreement of sale, transfer, lease or cession, of all the assets **[passing and of the development assets included therein]** disposed of, shall be determined by the Director General **[Mineral and Energy Affairs]** for Minerals and Energy who shall, notwithstanding the repeal of the Second Schedule to the Transvaal Mining Leases and Mineral Law Amendment Act, 1918 (Act No. 30 of 1918), for the purposes of such determination have all the powers which were conferred upon him by the provisions of that Schedule.

(5) For the purpose of this section, 'mining property' means—

(a) any land on which mining is carried on; or

(b) any right to minerals (including any right to mine for minerals) and a lease or sub-lease of such a right.".

(2) Subsection (1) shall come into operation on the date of promulgation of this Act and shall apply in respect of any disposal of a capital asset on or after that date.

Amendment of section 38 of Act 58 of 1962, as amended by section 21 of Act 90 of 1962, section 16 of Act 90 of 1964, section 28 of Act 89 of 1969, section 31 of Act 85 of 1974, section 27 of Act 94 of 1983, section 24 of Act 121 of 1984, section 32 of Act 53 of 1999 and section 36 of Act 30 of 2000

43. (1) Section 38 of the Income Tax Act, 1962, is hereby amended by the substitution for paragraph *(c)* of subsection (2) of the following paragraph:

"*(c)* any company which **[the Commissioner is satisfied was incorporated to serve a specified purpose, beneficial to the public or a section of the public, if under the constitution of the company no shareholder is entitled to participate in the profits or income of the company to an extent greater than seven per cent of the nominal value of his shareholding]** has been approved as a public benefit organisation in terms of the provisions of section 30(3);".

(2) Subsection (1) shall be deemed to have come into operation on 15 July 2001.

Insertion of Part III in Chapter II of Act 58 of 1962

44. (1) The following Part is hereby inserted in the Income Tax Act, 1962, after Part II of Chapter II:

"PART III

Special Rules relating to company formations, share-for-share transactions, intra-group transaction, unbundling transactions and liquidation distributions

General

41. (1) For the purposes of this Part, unless the context otherwise indicates, any word or expression that has been defined in section 1, shall bear the same meaning so defined, and—

'capital asset' means an asset as defined in paragraph 1 of the Eighth Schedule, which does not constitute trading stock;

'controlled company' means a company in relation to which another company is the controlling company;

'controlling company' means a company which holds for its own benefit, whether directly or indirectly through one or more companies in the group of companies of which all the companies in question are members, shares

(3) Indien die waarde van die gegewe teenprestasie of **[waar geen teenprestasie gegee word nie]** die waarde van die eiendom **[wat oorgedra is]** waaroor beskik is in geskil is, kan die waarde **[met toestemming van die nuwe eienaar]** deur die Kommissaris vasgestel word, en word dit **[by ontstentenis van sodanige toestemming]** vasgestel—

(a) in die geval van enige myneiendom, op dieselfde wyse asof hereregte betaalbaar is; of

(b) in die geval van enige kapitaalbate, op die markwaarde van daardie kapitaalbate.

(4) Die effektiewe waarde op die datum waarop die ooreenkoms van verkoop, oordrag, verhuring of sessie in werking tree, van al die **[oorgaande]** bates **[en van die ontwikkelingsbates daarby ingesluit, ten tyde van die verandering van eienaar]** waaroor beskik word, word vasgestel deur die Direkteur-generaal **[Mineraal- en Energiesake]** Minerale en Energie, wat, ondanks die herroeping van die Tweede Bylae by die "Transvaal Mijnverhuring en Minerale Wet Wijzigings Wet, 1918" (Wet 30 van 1918), vir die doeleindes van sodanige vasstelling al die bevoegdhede besit wat die bepalings van daardie Bylae aan hom verleen het.

(5) By die toepassing van hierdie artikel, beteken 'myneiendom'—

(a) enige grond waarop mynbedrywighede beoefen word; of

(b) enige reg tot minerale (waarby ingesluit enig reg om vir minerale te myn) en 'n verhuring of onderverhuring van so 'n reg.".

(2) Subartikel (1) tree in werking op die datum van afkondiging van hierdie Wet en is van toepassing ten opsigte van enige beskikking van 'n kapitaalbate op of na daardie datum.

Wysiging van artikel 38 van Wet 58 van 1962, soos gewysig deur artikel 21 van Wet 90 van 1962, artikel 16 van Wet 90 van 1964, artikel 28 van Wet 89 van 1969, artikel 31 van Wet 85 van 1974, artikel 27 van Wet 94 van 1983, artikel 24 van Wet 121 van 1984, artikel 32 van Wet 53 van 1999 en artikel 36 van Wet 30 van 2000

43. Artikel 38 van die Inkomstebelastingwet, 1962, word hierby gewysig deur paragraaf *(c)* van subartikel (2) deur die volgende paragraaf te vervang:

"*(c)* 'n maatskappy wat **[volgens die oortuiging van die Kommissaris ingelyf is om 'n bepaalde doel ten voordele van die publiek of 'n deel van die publiek te dien, indien volgens die konstitusie van die maatskappy geen aandeelhouer op 'n groter deel in die winste of inkomste van die maatskappy as sewe persent van die nominale waarde van sy aandelebesit geregtig is nie]** ingevolge die bepalings van artikel 30(3) as 'n openbare weldaadsorganisasie goedgekeur is;".

(2) Subartikel (1) word geag op 15 Julie 2001 in werking te getree het.

Invoeging van Deel III in Hoofstuk II van Wet 58 van 1962

44. (1) Die volgende Deel word hierby in die Inkomstebelastingwet, 1962, na Deel II van Hoofstuk II ingevoeg:

"DEEL III

Spesiale Reëls met betrekking tot maatskappyformasies, aandeel-vir-aandeeltransaksies, intragroeptransaksies, ontbondelingstransaksies en likwidasie-uitkerings

Algemeen

41. By die toepassing van hierdie Deel, tensy uit die samehang anders blyk, het enige woord of uitdrukking waaraan 'n betekenis in die Wet geheg word, daardie betekenis, en beteken—

'afskryfbare bate' 'n kapitaalbate ten opsigte waarvan 'n aftrekking toelaatbaar is kragtens die bepalings van die Wet, die vergoeding of verhaling waarvan in die inkomste van daardie persoon ingesluit moet word ingevolge paragraaf *(j)* van die omskrywing van 'bruto inkomste' in artikel 1 of artikel 8(4)*(a)* indien daar oor daardie bate beskik sou word;

(a) that person must be deemed to have—

(i) disposed of that capital asset for an amount equal to the base cost of that capital asset on the date of that disposal; and

(ii) acquired those equity shares on the date that such person acquired that capital asset and for a cost equal to that base cost, which cost must, for the purposes of paragraph 20(1)*(a)* of the Eighth Schedule, be treated as an expenditure actually incurred and paid by that person in respect of those equity shares; and

(b) that company must be deemed to have acquired that capital asset on the date that such person acquired that capital asset and at a cost equal to the base cost contemplated in paragraph *(a)*, which cost must, for the purposes of paragraph 20(1)*(a)* of the Eighth Schedule, be treated as an expenditure actually incurred and paid by that company in respect of that asset.

(3) Subject to subsection (5), where a person disposes of a capital asset (hereinafter referred to as 'the formation asset') to a company in the circumstances contemplated in subsection (2) and that person, at any time during the period of 18 months prior to that disposal, disposed of any other capital asset to that company in respect of which a capital loss was determined—

(a) that person must, for purposes of subsection (2)*(a)*, be deemed to have—

(i) disposed of that formation asset for an amount equal to the market value of that formation asset: Provided that the amount of the capital gain determined in respect of the disposal of that formation asset which must be taken into account in the determination of the aggregate capital gain or aggregate capital loss of that person in terms of the Eighth Schedule, shall not exceed the amount by which the capital losses determined in respect of all disposals by that person to that company within that period of 18 months, exceeds all capital gains determined in respect of all disposals by that person to that company during that period; and

(ii) acquired the equity shares in that company in terms of the company formation transaction, at a cost equal to the sum of—

(aa) the base cost of that formation asset on disposal thereof to that company; and

(bb) the amount of that capital gain that was taken into account in the determination of the aggregate capital gain or aggregate capital loss of that person, as contemplated in subparagraph (i);

(b) that person must, where the amount of that capital loss was disregarded in terms of the provisions of subsection (9), reduce the balance of that capital loss by the amount of the capital gain taken into account in the determination of the aggregate capital gain or aggregate capital loss, as contemplated in paragraph *(a)*(i); and

(c) the company must, for purposes of subsection (2)*(b)*, be deemed to have acquired that formation asset at a cost equal to the cost of the equity shares to that person as contemplated in paragraph *(a)*(ii), which cost must for the purposes of paragraph 20(1)*(a)* of the Eighth Schedule be treated as expenditure actually incurred and paid by that company in respect of that asset.

(4) Notwithstanding any provision to the contrary contained in this Act, where any person disposes of any asset (other than any financial instrument as defined in paragraph 1 of the Eighth Schedule) to a company in terms of a company formation transaction and that asset constitutes trading stock and is attributable to the business undertaking of that person which is transferred to that company as a going concern, and will constitute trading stock in the hands of the company to which that asset is so disposed of—

(ii) daardie aandele te verkry het op die datum wat daardie persoon daardie kapitaalbate verkry het en vir 'n koste gelyk aan daardie basiskoste, welke koste by die toepassing van paragraaf 20(1)*(a)* van die Agtste Bylae, geag moet word 'n onkoste werklik deur daardie persoon aangegaan en betaal te gewees het ten opsigte van daardie ekwiteitsaandele; en

(b) daardie maatskappy moet geag word daardie kapitaalbate te verkry het op die datum wat daardie persoon daardie kapitaalbate verkry het en teen 'n koste gelyk aan die basiskoste in paragraaf *(a)* bedoel, welke koste by die toepassing van paragraaf 20(1)*(a)* van die Agtste Bylae, geag word 'n onkoste werklik deur daardie maatskappy aangegaan en betaal te gewees het ten opsigte van daardie bate.

(3) Behoudens subartikel (5), waar 'n persoon oor 'n kapitaalbate beskik (hierna 'die formasiebate' genoem) aan 'n maatskappy in die omstandighede in subartikel (2) bedoel en daardie persoon, op enige tydstip gedurende die tydperk van 18 maande voor daardie beskikking, oor enige ander kapitaalbate aan daardie maatskappy beskik het ten opsigte waarvan 'n kapitaalverlies vasgestel was—

(a) moet daardie persoon, by die toepassing van subartikel (2)*(a)*, geag word—

(i) oor daardie formasiebate te beskik het vir 'n bedrag gelyk aan die markwaarde van daardie formasiebate: Met dien verstande dat die bedrag van die kapitaalwins ten opsigte van die beskikking oor daardie formasiebate vasgestel wat in berekening gebring moet word by die vasstelling van die totale kapitaalwins of totale kapitaalverlies van daardie persoon ingevolge die Agtste Bylae, nie meer is nie as die bedrag waarmee die kapitaalverliese vasgestel ten opsigte van alle beskikkings deur daardie persoon aan daardie maatskappy binne daardie 18 maande tydperk, alle kapitaalwinste vasgestel ten opsigte van alle beskikkings deur daardie persoon aan daardie maatskappy in daardie tydperk te bowe gaan; en

(ii) die ekwiteitsaandele in daardie maatskappy ingevolge die maatskappyformasie-transaksie te verkry het teen 'n koste gelyk aan die som van—

(aa) die basiskoste van daardie formasiebate by beskikking daarvan aan daardie maatskappy; en

(bb) die bedrag van daardie kapitaalwins wat in berekening gebring is by die vasstelling van die totale kapitaalwins of totale kapitaalverlies van daardie persoon, soos in subparagraaf (i) bedoel;

(b) moet daardie persoon, waar die bedrag van daardie kapitaalverlies ingevolge die bepalings van subartikel (9) verontagsaam is, die balans van daardie kapitaalverlies verminder met die bedrag van die kapitaalwins wat by die vasstelling van die totale kapitaalwins of totale kapitaalverlies in berekening gebring is, soos in paragraaf *(a)*(i) bedoel; en

(c) moet die maatskappy, by die toepassing van subartikel (2)*(b)*, geag word daardie formasiebate te verkry het teen 'n koste gelyk aan die koste van die ekwiteitsaandele vir daardie persoon soos in paragraaf *(a)*(ii) bedoel, welke koste by die toepassing van paragraaf 20(1)*(a)* van die Agtste Bylae geag word 'n onkoste werklik aangegaan en betaal te wees deur daardie maatskappy ten opsigte van daardie bate.

(4) Ondanks enige bepaling tot die teendeel in hierdie Wet vervat, waar 'n persoon oor 'n bate beskik (behalwe 'n finansiële instrument soos in paragraaf 1 van die Agtste Bylae omskryf), aan 'n maatskappy ingevolge 'n maatskappyformasie-transaksie en daardie bate handelsvoorraad daarstel en toeskryfbaar is aan die besigheidsonderneming van daardie persoon wat as 'n lopende saak aan daardie maatskappy oorgeplaas word, en handelsvoorraad in die hande van die maatskappy, aan wie daardie bate aldus oor beskik is, sal uitmaak—

(a) that person must be deemed to have—

(i) disposed of that asset for an amount equal to the cost of that asset contemplated in section 22(1) or (3), as the case may be; and

(ii) acquired the equity shares in terms of that company formation transaction at a cost equal to that amount, which cost must, for purposes of paragraph 20(1)*(a)* of the Eighth Schedule, be treated as an expenditure actually incurred and paid in respect of those equity shares; and

(b) that company must, be deemed to have acquired that asset at a cost equal to the amount of the cost to that person of that asset, contemplated in section 22(1) or (3), as the case may be.

(5) Subject to subsection (11), where—

(a) a person disposes of an asset to a company in terms of a company formation transaction; and

(b) that person in exchange for that asset, becomes entitled to any consideration in addition to any equity shares issued by the company to that person,

the disposal of that asset to that company, contemplated in paragraph *(a)* must, to the extent that any equity shares are issued by the company to that person, be deemed to be a disposal in terms of a company formation transaction for purposes of this section, and to the extent that such person becomes entitled to any other consideration, as contemplated in paragraph *(b)*—

(i) in the case of a disposal of a capital asset, be treated as a part disposal for purposes of the Eighth Schedule; or

(ii) in the case of a disposal of an asset which constitutes trading stock, be deemed to be a sale of that trading stock for the purposes of the Act.

(6) Where a person transfers an asset or a liability to a company as part of a company formation transaction and that asset or liability constitutes—

(a) a depreciable asset, any allowance which—

(i) that company may be entitled to in terms of this Act shall be limited to the amount of any allowance which that person would have been entitled to deduct in respect of that asset, had that asset not been disposed of by that person to that company; and

(ii) was allowed as a deduction during any year of assessment in the determination of the taxable income of that person—

(aa) which has been recovered or recouped by that person shall, for the purposes of section 8(4)*(a)* and paragraph *(j)* of the definition of 'gross income' be deemed not to have been recovered, recouped or received; and

(bb) must for the purposes of the recoupment of any allowance, or inclusion thereof in the income of that company, be deemed to have been allowed as a deduction of that company during that year of assessment; or

(b) any asset or liability in respect of which an allowance under section 11*(i)*, 11*(j)*, 24 or 24C was allowable to that person as at the end of the year of assessment preceding that in which that asset or liability is transferred—

(i) the amount of any debt due to that person that was included in the income of that person during any year of assessment, must for purposes of section 11*(i)* be deemed to have been included in the income of that company during that year; and

(ii) so much of that allowance as relates to the asset or liability so transferred must not be included in that person's income during the year of that transfer but must be included in the income of that company.

(a) moet daardie persoon geag word—

(i) oor daardie bate te beskik het vir 'n bedrag gelyk aan die koste van daardie bate in artikel 22(1) of (3), na gelang van die geval, bedoel; en

(ii) die ekwiteitsaandele ingevolge daardie maatskappyformasie-transaksie te verkry het teen 'n koste gelyk aan daardie bedrag, welke koste by die toepassing van paragraaf 20(1)*(a)* van die Agtste Bylae, geag word 'n onkoste werklik aangegaan en betaal te wees ten opsigte van daardie ekwiteitsaandele; en

(b) moet daardie maatskappy, geag word daardie bate te verkry het vir 'n koste gelyk aan die bedrag van die koste van daardie bate vir daardie persoon, soos in artikel 22(1) of (3), na gelang van die geval, bedoel.

(5) Behoudens subartikel (11), waar—

(a) 'n persoon oor 'n bate aan 'n maatskappy ingevolge 'n maatskappyformasie-transaksie beskik; en

(b) daardie persoon in ruil vir daardie bate, bykomstig tot enige ekwiteitsaandele deur daardie maatskappy aan daardie persoon uitgereik, geregtig word op enige teenprestasie,

word die beskikking oor daardie bate aan daardie maatskappy, in paragraaf *(a)* bedoel, tot die mate wat enige ekwiteitsaandele deur die maatskappy aan daardie persoon uitgereik word, by die toepassing van hierdie artikel geag 'n beskikking ingevolge 'n maatskappyformasie-transaksie te wees, en tot die mate wat daardie persoon op enige teenprestasie, soos in paragraaf *(b)* bedoel, geregtig word—

(i) in die geval van 'n beskikking oor 'n kapitaalbate, geag 'n gedeeltelike beskikking te wees by die toepassing van die Agtste Bylae; of

(ii) in die geval van die beskikking oor 'n bate wat handelsvoorraad daarstel, by die toepassing van die Wet geag 'n verkoop van daardie handelsvoorraad te wees.

(6) Waar 'n persoon 'n bate of 'n verpligting aan 'n maatskappy oorplaas ingevolge 'n maatskappyformasie-transaksie en daardie bate of verpligting—

(a) 'n afskryfbare bate is, word enige toelae—

(i) waarop daardie maatskappy ingevolge die Wet geregtig mag wees beperk tot die bedrag van enige toelae wat daardie persoon geregtig sou wees om te kon aftrek ten opsigte van daardie bate, indien daardie bate nie deur daardie persoon aan daardie maatskappy oor beskik was nie; en

(ii) wat as 'n aftrekking toegelaat is gedurende enige jaar van aanslag by die vasstelling van die belasbare inkomste van daardie persoon—

(aa) wat deur daardie persoon verhaal of vergoed is, by die toepassing van artikel 8(4)*(a)* en paragraaf *(j)* van die omskrywing van 'bruto inkomste' geag nie verhaal, vergoed of ontvang te gewees nie; en

(bb) moet vir doeleindes van die verhaling van enige toelae, of insluiting daarvan in die inkomste van daardie maatskappy, geag word as 'n aftrekking aan daardie maatskappy toegelaat te gewees het gedurende daardie jaar van aanslag; of

(b) 'n bate of verpligting is ten opsigte waarvan 'n toelae kragtens artikel 11*(i)*, 11*(j)*, 24 of 24C toelaatbaar was vir daardie persoon soos aan die einde van die jaar van aanslag wat die jaar waarin daardie bate of verpligting oorgeplaas is, voorafgaan—

(i) word die bedrag van enige skuld aan daardie persoon verskuldig wat gedurende enige jaar van aanslag by die inkomste van daardie persoon ingesluit was, by die toepassing van artikel 11*(i)* geag by die inkomste van daardie maatskappy vir daardie jaar ingesluit te gewees het; en

(ii) word soveel van daardie toelae as wat op daardie bate of verpligting aldus oorgeplaas betrekking het, nie by die inkomste van daardie persoon ingesluit in die jaar van daardie oorplasing nie maar moet by die inkomste van daardie maatskappy ingesluit word.

(7) Where a person—

(a) acquired any equity share in a company in terms of a company formation transaction, as contemplated in subsection (2) or (4), and more than 50 per cent of the market value of all the assets disposed of by that person to that company consists of depreciable assets or trading stock or both depreciable assets and trading stock; and

(b) disposes of any such equity share (other than by way of involuntary disposal, as contemplated in paragraph 65 of the Eighth Schedule, or the death of that person) within a period of 18 months after the date of acquisition contemplated in paragraph *(a)*,

that equity share must be deemed to be trading stock of that person.

(8) Where a person disposed of any asset in terms of a company formation transaction, as contemplated in subsection (2) or (4), and that person ceases to hold a qualifying interest in that company, as contemplated in paragraph *(b)* of the definition of 'qualifying interest' in subsection (1), within a period of 18 months after the date of the disposal of that asset (whether or not by way of the disposal of any shares in that company), that person must—

(a) where that person ceased to hold a qualifying interest other than as the result of the disposal of any equity shares, be deemed to have—

(i) disposed of all the equity shares acquired in terms of that company formation transaction which were not disposed of immediately before that person ceased to hold such a qualifying interest, for an amount equal to the market value of those equity shares on the date that those equity shares were acquired in terms of the company formation transaction; and

(ii) immediately reacquired all the equity shares not disposed of immediately after that person ceased to hold a qualifying interest at a cost equal to that market value, which cost be treated as expenditure actually incurred and paid by that person in respect of those equity shares for purposes of paragraph 20(1)*(a)* of the Eighth Schedule; or

(b) where that person ceases to hold a qualifying interest as a result of the disposal of any equity shares, (other than in terms of an intra-group transaction contemplated in section 44, unbundling transaction contemplated in section 45 or a liquidation distribution contemplated in section 46), be deemed to have—

(i) disposed of all the equity shares (other than any shares contemplated in subsection (7)) for proceeds equal to—

(aa) in the case of the equity share actually disposed of by that person, the higher of the proceeds from that disposal or the market value of those equity shares on the date of that disposal; or

(bb) in the case of equity shares not actually disposed of by that person, the market value of those equity shares on the date that person acquired those equity shares; and

(ii) immediately reacquired any equity shares held after that person ceased to hold a qualifying interest at a cost equal to that market value contemplated in subparagraph (i)*(bb)*:

Provided that the provisions of this subsection shall not apply where that person ceases to hold a qualifying interest in that company as the result of the death of that person and that qualifying interest accrues to the surviving spouse of that person upon his or her death.

(9) Despite paragraph 39 of the Eighth Schedule, where a person disposes of a capital asset to a company in terms of a company formation

(7) Waar 'n persoon—

(a) enige ekwiteitsaandeel in 'n maatskappy verkry het ingevolge 'n maatskappyformasie-transaksie, soos in subartikel (2) of (4) bedoel, en meer as 50 persent van die markwaarde van al die bates deur daardie persoon aan daardie maatskappy oor beskik uit afskryfbare bates of handelsvoorraad of beide afskryfbare bates en handelsvoorraad bestaan; en

(b) oor so 'n ekwiteitsaandeel beskik (behalwe by wyse van 'n onvrywillige beskikking, soos in paragraaf 65 van die Agtste Bylae bedoel, of deur die dood van daardie persoon) binne 'n tydperk van 18 maande na die datum van verkryging in paragraaf *(a)* bedoel,

moet daardie ekwiteitsaandeel geag word handelsvoorraad van daardie persoon te wees.

(8) Waar 'n persoon oor 'n bate beskik ingevolge 'n maatskappyformasie-transaksie, soos in subartikel (2) of (4) bedoel, en daardie persoon ophou om 'n kwalifiserende belang, soos in paragraaf *(b)* van die omskrywing van 'kwalifiserende belang' in subartikel (1) omskryf, te hou binne 'n tydperk van 18 maande na die datum van die beskikking oor daardie bate (hetsy by wyse van die beskikking oor enige aandele in daardie maatskappy of nie), moet daardie persoon—

(a) waar daardie persoon ophou om 'n kwalifiserende belang te hou anders as ten gevolge van die beskikking oor enige aandele, geag word—

(i) oor al die ekwiteitsaandele ingevolge daardie maatskappyformasie-transaksie verkry wat nie onmiddellik voor daardie persoon opgehou het om 'n kwalifiserende belang te hou oor beskik was nie, te beskik het vir 'n bedrag gelyk aan die markwaarde van daardie ekwiteitsaandele op die datum waarop daardie ekwiteitsaandele ingevolge die maatskappyformasie-transaksie verkry is; en

(ii) onmiddellik al die ekwiteitsaandele waaroor nie onmiddellik nadat daardie persoon ophou om 'n kwalifiserende belang te hou beskik is nie, te herverkry het teen 'n koste gelyk aan daardie markwaarde, welke koste by die toepassing van paragraaf 20(1)*(a)* van die Agtste Bylae geag word onkoste werklik aangegaan en betaal te gewees het deur daardie persoon ten opsigte van daardie ekwiteitsaandele; of

(b) waar daardie persoon ophou om 'n kwalifiserende belang te hou ten gevolge van die beskikking oor enige ekwiteitsaandele (behalwe ingevolge 'n intragroeptransaksie in artikel 44 bedoel, 'n ontbondelingstransaksie in artikel 45 bedoel of 'n likwidasie-uitkering in artikel 46 bedoel), geag word—

(i) oor al die ekwiteitsaandele (behalwe enige aandele in subartikel (7) bedoel) te beskik het vir opbrengs gelyk aan—

(aa) in die geval van die ekwiteitsaandele werklik deur daardie persoon oor beskik, die grootste van die opbrengs uit daardie beskikking of die markwaarde van daardie ekwiteitsaandele op die datum van daardie beskikking; of

(bb) in die geval van ekwiteitsaandele nie werklik deur daardie persoon oor beskik nie, die markwaarde van daardie ekwiteitsaandele op die datum wat daardie persoon daardie ekwiteitsaandele verkry het; en

(ii) onmiddellik enige ekwiteitsaandele gehou na daardie persoon opgehou het om 'n kwalifiserende belang te hou, te herverkry het vir 'n koste gelyk aan daardie markwaarde in subparagraaf (i)*(bb)* bedoel:

Met dien verstande dat die bepalings van hierdie subartikel nie van toepassing is nie waar daardie persoon ophou om 'n kwalifiserende belang in die maatskappy te hou as gevolg van die dood van daardie persoon en daardie kwalifiserende belang aan die langslewende gade van daardie persoon op die datum van sy of haar dood toeval.

(9) Ondanks paragraaf 39 van die Agtste Bylae, waar 'n persoon oor 'n kapitaalbate aan 'n maatskappy beskik ingevolge 'n maatskappyformasie-

transaction and the base cost of that asset exceeds the market value of that asset at the date of that disposal—

(a) that person must disregard any capital loss determined in respect of the disposal of that asset to that company in determining the aggregate capital gain or aggregate capital loss of that person; and

(b) that company must be deemed to have acquired that asset for a cost equal to the market value of that asset on the date of that disposal, which cost must be treated as an expenditure actually incurred and paid for the purposes of paragraph 20(1)*(a)* of the Eighth Schedule in respect of that asset:

Provided that a person's capital loss which is disregarded during any year of assessment in terms of paragraph *(a)* may, after reduction thereof as contemplated in subsection (3)*(b)*, be deducted from any capital gain determined in respect of any capital asset disposed of by that person to that company during that year or any subsequent year of assessment, if that person at the time of that disposal holds a qualifying interest in that company.

(10) Where a company disposes of a capital asset within a period of 18 months after acquiring that asset in terms of a company formation transaction—

(a) the capital gain determined in respect of the disposal of that asset may not be set off against any assessed loss, balance of assessed loss, capital loss or assessed capital loss of that company; or

(b) the company must disregard any capital loss determined in respect of the disposal of that asset.

(11) Where a person disposes of—

(a) any asset to a company in terms of a company formation transaction, as contemplated in subsection (2), which secures any debt—

(i) which was incurred by that person more than 18 months before that disposal; or

(ii) which was incurred by that person within a period of 18 months before that disposal—

(aa) and that debt was incurred at the same time as that asset was acquired by that person; or

(bb) to the extent that debt constitutes the refinancing of any debt in respect of that asset incurred more than 18 months before that disposal,

and that company assumes that debt or an equivalent amount of debt that is secured by that asset; or

(b) any business undertaking to a company as a going concern in terms of a company formation transaction, as contemplated in subsection (2), which includes any amount of any debt that is attributable to, and arose in, the normal course of that business undertaking,

that person must be deemed to have acquired any equity share in exchange for the disposal of that asset or business undertaking at a cost equal to the base cost of that asset or business undertaking, reduced by the amount of that debt: Provided that where that debt exceeds the base cost of that asset or business undertaking, that person must add that excess to proceeds when that person disposes of that equity share.

(12) Where in terms of a company formation transaction—

(a) any company (hereinafter referred to as 'the subsidiary') which is a resident acquires all the assets and assumes all the liabilities relating to the business undertaking of any company which is not a resident (hereinafter referred to as 'the foreign company'), carried on through a branch in the Republic;

(b) the business undertaking of that branch has been transferred to that subsidiary as a going concern; and

transaksie en die basiskoste van daardie bate die markwaarde van daardie bate op die datum van daardie beskikking oorskry—

(a) moet daardie persoon enige kapitaalverlies vasgestel ten opsigte van die beskikking oor daardie bate aan daardie maatskappy verontagsaam by die vasstelling van die totale kapitaalwins of totale kapitaalverlies van daardie persoon; en

(b) moet daardie maatskappy geag word daardie bate te verkry het teen 'n koste gelyk aan die markwaarde van daardie bate op die datum van daardie beskikking, welke koste by die toepassing van paragraaf 20(1)*(a)* van die Agtste Bylae, geag word onkoste werklik aangegaan en betaal te gewees het ten opsigte van daardie bate:

Met dien verstande dat 'n persoon se kapitaalverlies wat gedurende enige jaar van aanslag ingevolge paragraaf *(a)* verontagsaam is, na vermindering daarvan soos in subartikel (3)*(b)* bedoel, afgetrek kan word van enige kapitaalwins vasgestel ten opsigte van enige kapitaalbate deur daardie persoon aan daardie maatskappy oor beskik gedurende daardie jaar of enige daaropvolgende jaar van aanslag, indien daardie persoon op die tydstip van daardie beskikking 'n kwalifiserende belang in daardie maatskappy hou.

(10) Waar 'n maatskappy oor 'n kapitaalbate beskik binne 'n tydperk van 18 maande na verkryging van daardie bate ingevolge 'n maatskappy-formasie-transaksie—

(a) word die kapitaalwins vasgestel ten opsigte van die beskikking oor daardie bate nie teen enige vasgestelde verlies, balans van vasgestelde verlies of kapitaalverlies of vasgestelde kapitaalverlies verreken nie; of

(b) moet die maatskappy enige kapitaalverlies vasgestel ten opsigte van daardie beskikking verontagsaam.

(11) Waar 'n persoon oor—

(a) enige bate aan 'n maatskappy beskik ingevolge 'n maatskappy-formasie-transaksie, soos in subartikel (2) bedoel, wat deur 'n skuld beswaar is—

(i) wat meer as 18 maande voor daardie beskikking deur daardie persoon aangegaan is; of

(ii) wat deur daardie persoon aangegaan is binne 'n tydperk van 18 maande voor daardie beskikking—

(aa) en daardie skuld aangegaan is op dieselfde tydstip as wat daardie bate deur daardie persoon verkry is; of

(bb) in die mate wat daardie skuld die herfinansiering daarstel van 'n skuld ten opsigte van daardie bate wat meer as 18 maande voor daardie beskikking aangegaan is,

en daardie maatskappy daardie skuld of 'n gelyke bedrag van skuld aanvaar wat deur daardie bate gesekureer is; of

(b) enige besigheidsonderneming aan 'n maatskappy as 'n lopende saak beskik ingevolge 'n maatskappyformasie-transaksie, soos in subartikel (2) bedoel, wat insluit enige bedrag van 'n skuld wat toeskryfbaar is aan, en ontstaan het in, die gewone loop van daardie besigheidsonderneming,

moet daardie persoon geag word 'n ekwiteitsaandeel in ruil vir die beskikking van daardie bate of besigheidsonderneming te verkry het vir 'n koste gelyk aan die basiskoste van daardie bate of besigheidsonderneming, verminder met die bedrag van daardie skuld: Met dien verstande dat waar daardie skuld die basiskoste van daardie bate of besigheidsonderneming oorskry, moet daardie persoon daardie oorskot by die opbrengs tel wanneer daardie persoon oor daardie ekwiteitsaandeel beskik.

(12) Waar ingevolge 'n maatskappyformasie-transkasie—

(a) 'n maatskappy (hierna 'die filiaal' genoem) wat 'n inwoner is al die bates verkry en al die verpligtinge aanvaar met betrekking tot die besigheidsonderneming van enige maatskappy wat nie 'n inwoner is nie (hierna 'die buitelandse maatskappy' genoem), wat deur 'n tak in die Republiek bedryf word;

(b) die besigheidsonderneming van daardie tak na daardie filiaal as 'n lopende saak oorgeplaas word; en

(c) at the time of the transfer of that business undertaking, all the issued share capital of the subsidiary was held for its own benefit by the foreign company,

that foreign company and that subsidiary must be deemed to be one and the same company in respect of any transaction of the branch, for purposes of determining any taxable income derived or any assessed loss incurred by the subsidiary after the transfer of that business undertaking.

(13) The provisions of this section shall not apply in respect of the disposal of any asset—

(a) by a person to a company, where all the receipts and accruals of that company are exempt from tax in terms of the provisions of section 10;

(b) by a person, where the asset constitutes a financial instrument as defined in paragraph 1 of the Eighth Schedule, unless—

(i) that financial instrument constitutes a debt due to that person in respect of goods sold or services rendered by that person in the course of carrying on any business which is transferred as a going concern; or

(ii) the total market value of all financial instruments so transferred (other than debts contemplated in subparagraph (i)), does not exceed five per cent of the total market value of all assets of any business which is transferred as a going concern;

(c) by a company where that asset was acquired by that company in terms of any company formation transaction, unless that asset was held by that company for a period of more than 18 months.

Share-for-share Transactions

43. (1) For the purposes of this section, a 'share-for-share transaction' means any transaction in terms of which any person (other than a trust which is not a special trust) disposes of any equity share (hereinafter referred to as the 'target share') in a company (hereinafter referred to as the 'target company'), which is a resident to any other company (hereinafter referred to as the 'acquiring company'), which is a resident, in exchange for any equity share issued by that acquiring company to that person, and—

(a) the acquiring company—

(i) in the case where that target company is a listed company or will become a listed company within six months after that transaction (or where the Commissioner is satisfied that those equity shares cannot be listed within that initial six months period due to circumstances beyond the control of the company, such further period not exceeding six months, as may be approved by the Commissioner), after that transaction and any other share-for-share transaction (entered into in terms of any offer made on the same terms as that transaction and which is accepted within a period of 45 days before or after that transaction) holds equity shares in that target company, which constitute a direct interest of—

(aa) more than 25 per cent in the equity share capital of that target company, in the case where no other shareholder holds an equal or greater amount of equity share capital in that target company; or

(bb) in any other case, at least 35 per cent in the equity share capital of the target company; or

(ii) where the target company is not a company contemplated in subparagraph (i), after that transaction holds shares in the target company, which constitute a direct interest of more than 50 per cent in the equity share capital of the target company; and

(c) op die tydstip van die oorplasing van daardie besigheidsonderneming, al die uitgereikte aandelekapitaal van die filiaal vir eie voordeel deur die buitelandse maatskappy gehou was,

word daardie buitelandse maatskappy en daardie filiaal geag een en dieselfde maatskappy te wees ten opsigte van enige transaksie van die tak, vir doeleindes van die vasstelling van enige belasbare inkomste verkry of enige vasgestelde verlies aangegaan deur die filiaal na die oorplasing van daardie besigheidsonderneming.

(13) Die bepalings van hierdie artikel is nie van toepassing nie ten opsigte van die beskikking oor enige bate—

(a) deur 'n persoon aan 'n maatskappy, waarvan al die ontvangste en toevallings van daardie maatskappy van belasting vrygestel is ingevolge die bepalings van artikel 10;

(b) deur 'n persoon, waar die bate 'n finansiële instrument soos omskryf in paragraaf 1 van die Agtste Bylae, daarstel, tensy—

(i) daardie finansiële instrument 'n skuld verskuldig aan daardie persoon daarstel ten opsigte van goedere verkoop of dienste gelewer deur daardie persoon in die loop van die bedryf van enige besigheid wat as 'n lopende saak oorgeplaas word; of

(ii) die totale markwaarde van alle finansiële instrumente aldus oorgeplaas (behalwe skulde in subparagraaf (i) bedoel) nie vyf persent van die totale markwaarde van alle bates van 'n besigheid wat as 'n lopende saak oorgeplaas word, oorskry nie;

(c) deur 'n maatskappy waar daardie bate deur daardie maatskappy verkry is ingevolge 'n maatskappyformasie-transaksie, tensy daardie bate vir 'n tydperk van langer as 18 maande deur daardie maatskappy gehou is.

Aandeel-vir-aandeeltransaksies

43. (1) By die toepassing van hierdie artikel, beteken 'aandeel-vir-aandeeltransaksie' enige transaksie ingevolge waarvan enige persoon (behalwe 'n trust wat nie 'n spesiale trust is nie) oor enige ekwiteitsaandeel (hierna 'die teikenaandeel' genoem) in 'n maatskappy (hierna 'die teikenmaatskappy' genoem) wat 'n inwoner is, beskik aan 'n ander maatskappy (hierna 'die verkrygende maatskappy' genoem) wat 'n inwoner is, in ruil vir enige ekwiteitsaandeel deur daardie verkrygende maatskappy aan daardie persoon uitgereik, en—

(a) die verkrygende maatskappy—

(i) in die geval waar daardie teikenmaatskappy 'n genoteerde maatskappy is of binne ses maande na daardie transaksie (of so 'n langer tydperk deur die Kommissaris goedgekeur van nie langer nie as ses maande, waar die Kommissaris tevrede is dat daardie ekwiteitsaandele nie binne daardie aanvanklike ses maande tydperk genoteer kan word nie weens omstandighede buite die beheer van die maatskappy) 'n genoteerde maatskappy sal word na daardie transaksie en enige ander aandeel-vir-aandeeltransaksie (aangegaan ingevolge enige aanbod gemaak op dieselfde voorwaardes as daardie transaksie en wat binne 'n tydperk van 45 dae voor of na daardie transaksie aanvaar is) ekwiteitsaandele in daardie teikenmaatskappy hou, wat uit 'n direkte belang van—

(aa) meer as 25 persent van die ekwiteitsaandelekapitaal van daardie teikenmaatskappy bestaan, mits geen ander aandeelhouer 'n gelyke of groter bedrag van ekwiteits-aandelekapitaal in daardie teikenmaatskappy hou nie; of

(bb) in enige ander geval, minstens 35 persent van die ekwiteitsaandelekapitaal in die teikenmaatskappy bestaan; of

(ii) waar die teikenmaatskappy nie 'n maatskappy is in subparagraaf (i) bedoel nie, na daardie transaksie aandele in die teiken-maatskappy hou wat uit 'n direkte belang van meer as 50 persent van die ekwiteitsaandelekapitaal van die teikenmaatskappy bestaan; en

(b) that person after that transaction holds equity shares in that acquiring company—

(i) which is a listed company on the date of that transaction; or

(ii) in any other case, which constitutes a direct interest of more than 25 per cent in the equity share capital of that acquiring company:

Provided that in determining the total equity share capital of the target company or the acquiring company, regard must be had to any agreement in terms of which, on the date of determining the interest of that acquiring company or that person, any person is entitled to acquire an interest in the equity share capital of that target company or acquiring company, as the case may be on that date, at no or nominal cost.

(2) Notwithstanding any provision to the contrary contained in this Act, but subject to subsection (4), where a person disposes of any target shares, which are held by that person other than as trading stock, to an acquiring company in terms of a share-for-share transaction and the market value of those target shares exceeds the base cost thereof—

(a) that person must be deemed to have—

(i) disposed of those target shares for an amount equal to the base cost to that person of those target shares on the date of that disposal; and

(ii) acquired the shares in that acquiring company on the date that such person acquired those target shares, and at a cost equal to the base cost contemplated in subparagraph (i), which cost must be treated as expenditure actually incurred and paid for purposes of paragraph 20(1)*(a)* of the Eighth Schedule in respect of those shares in the acquiring company; and

(b) the acquiring company must—

(i) where the target company is a listed company and the equity shares in that company were acquired by the acquiring company from any shareholder who does not hold a direct interest of more than 25 per cent in the equity share capital of the acquiring company after that transaction, be deemed to have acquired those equity shares at a cost equal to the market value of those equity shares; or

(ii) in any other case, be deemed to have acquired those equity shares at a cost equal to that base cost contemplated in paragraph *(a)*(i), which cost must be treated as expenditure actually incurred and paid by that company for the purposes of paragraph 20(1)*(a)* of the Eighth Schedule in respect of those target shares.

(3) Notwithstanding any provision to the contrary contained in this Act, but subject to subsection (4), where a person disposes of any equity shares, which are held by that person as trading stock, to a company in terms of a share-for-share transaction—

(a) that person must be deemed to have—

(i) disposed of those equity shares for an amount equal to the cost of those equity shares contemplated in section 22(1) or (3), as the case may be; and

(ii) acquired the equity shares in the company in terms of the share-for-share transaction at a cost equal to that amount and those equity shares so acquired must be deemed to be trading stock of that person; and

(b) that company must be deemed to have acquired those target shares at a cost equal to the amount of the cost contemplated in paragraph *(a)*(i), which cost must be treated as expenditure actually incurred and paid by that company for purposes of paragraph 20(1)*(a)* of the Eighth Schedule in respect of those target shares.

(4) For the purposes of this section, where—

(b) daardie persoon na daardie transaksie ekwiteitsaandele in daardie verkrygende maatskappy hou—

(i) wat 'n genoteerde maatskappy is op die datum van daardie transaksie; of

(ii) in enige ander geval, wat uit 'n direkte belang van meer as 25 persent van die ekwiteitsaandelekapitaal van daardie verkrygende maatskappy bestaan:

Met dien verstande dat by die bepaling van die totale ekwiteitsaandelekapitaal van die teikenmaatskappy of die verkrygende maatskappy, enige ooreenkoms ingevolge waarvan enige persoon op die datum van die vasstelling van die belang van die verkrygende maatskappy of daardie persoon, geregtig is om op daardie datum 'n belang in die ekwiteitsaandelekapitaal van die teikenmaatskappy of die verkrygende maatskappy, na gelang van die geval, te verkry teen geen of 'n nominale koste.

(2) Ondanks enige andersluidende bepaling tot die teendeel in hierdie Wet vervat, maar behoudens subartikel (4), waar 'n persoon oor enige teikenaandele wat deur daardie persoon gehou word anders as handelsvoorraad, aan 'n verkrygende maatskappy beskik ingevolge 'n aandeel-vir-aandeeltransaksie en die markwaarde van daardie teikenaandele die basiskoste daarvan oorskry—

(a) moet daardie persoon geag word—

(i) oor daardie teikenaandele te beskik het vir 'n bedrag gelyk aan die basiskoste vir daardie persoon van daardie teikenaandele op die datum van daardie beskikking; en

(ii) die aandele in daardie verkrygende maatskappy te verkry het op die datum wat daardie persoon daardie teikenaandele verkry het, en vir 'n koste gelyk aan die basiskoste in subparagraaf (i) bedoel, welke koste by die toepassing van paragraaf 20(1)*(a)* van die Agtste Bylae geag word onkoste te wees wat werklik aangegaan en betaal is ten opsigte van daardie aandele in die verkrygende maatskappy; en

(b) moet die verkrygende maatskappy—

(i) waar die teikenmaatskappy 'n genoteerde maatskappy is en die aandele in daardie maatskappy deur die verkrygende maatskappy verkry is van 'n aandeelhouer wat nie 'n direkte belang van minstens 25 persent in die ekwiteitsaandelekapitaal van die verkrygende maatskappy na die transaksie hou nie, geag word daardie aandele te verkry het teen 'n koste gelyk aan die markwaarde van daardie aandele; of

(ii) in enige ander geval, geag word daardie aandele te verkry het teen 'n koste gelyk aan daardie basiskoste in paragraaf *(a)*(i) bedoel,

welke koste by die toepassing van paragraaf 20(1)*(a)* van die Agtste Bylae geag word onkoste te wees wat werklik deur daardie maatskappy aangegaan en betaal is ten opsigte van daardie teikenaandele.

(3) Ondanks enige andersluidende bepaling in hierdie Wet vervat, maar behoudens subartikel (4), waar 'n persoon oor enige ekwiteitsaandele wat deur daardie persoon as handelsvoorraad gehou is, aan 'n maatskappy beskik ingevolge 'n aandeel-vir-aandeeltransaksie—

(a) moet daardie persoon geag word—

(i) oor daardie ekwiteitsaandele te beskik het vir 'n bedrag gelyk aan die koste van daardie ekwiteitsaandele in artikel 22(1) of (3), na gelang van die geval, bedoel; en

(ii) die ekwiteitsaandele in die maatskappy te verkry het ingevolge die aandeel-vir-aandeeltransaksie vir 'n koste gelyk aan daardie bedrag en daardie ekwiteitsaandele aldus verkry moet geag word handelsvoorraad van daardie persoon te wees; en

(b) moet daardie maatskappy geag word daardie teikenaandele te verkry het vir 'n koste gelyk aan die bedrag van die koste in paragraaf *(a)*(i) bedoel, welke koste by die toepassing van paragraaf 20(1)*(a)* van die Agtste Bylae geag word onkoste werklik deur maatskappy aangegaan en betaal te wees ten opsigte van daardie teikenaandele.

(4) By die toepassing van hierdie artikel, waar—

(a) a person disposes of any equity shares to a company in terms of a share-for-share transaction; and

(b) that person becomes entitled to any consideration in addition to any equity shares issued by the company to that person, in exchange for those equity shares,

the disposal of those equity shares to that company must, to the extent that any equity shares are issued by the company to that person, be deemed to be a disposal in terms of a share-for-share transaction for purposes of this section and to the extent that such person becomes entitled to any other consideration, as contemplated in paragraph *(b)*—

(i) in the case where the equity shares disposed of were held other than as trading stock, be treated as a part disposal for purposes of the Eighth Schedule; or

(ii) in the case where the equity shares disposed of constituted trading stock, be deemed to be a sale of that trading stock for purposes of this Act.

(5) Where the provisions of subsection (2) or (3) apply in respect of a disposal of an equity share by a person in terms of a share-for-share transaction and that person, within a period of 18 months after that transaction, ceases to hold an interest in the acquiring company, as contemplated in paragraph *(b)*(ii) of the definition of 'share-for-share transaction', (whether or not by way of a disposal of any equity shares in that acquiring company), other than by way of an intra-group transaction contemplated in section 44, that person must be deemed to have—

(a) disposed of all the equity shares acquired in terms of that share-for-share transaction, which were not disposed of immediately before that person ceased to hold a qualifying interest for proceeds equal to—

(i) in the case of the equity shares actually disposed of by that person, the higher of the proceeds from that disposal or the market value of those equity shares on the date of that disposal; or

(ii) in the case of equity shares not actually disposed of by that person, the market value of those equity shares on the date that person acquired those equity shares; and

(b) immediately reacquired all the equity shares held in the acquiring company after that person ceases to hold that interest at a cost equal to that market value contemplated in paragraph *(a)*(ii):

Provided that the provisions of this subsection shall not apply where that person ceases to hold an interest, as contemplated in paragraph *(b)*(ii) of the definition of 'share-for-share transaction', in that company as the result of the death of that person and that interest accrues to the surviving spouse of that person upon his or her death.

(6) Where a person disposes of any target share to a company in terms of a share-for-share transaction in the circumstances contemplated in subsection (2) and that person, at any time within the period of 18 months before that transaction, disposed of any other equity share to that company in respect of which a capital loss was determined—

(a) that person must be deemed to have—

(i) disposed of that target share to the acquiring company for proceeds equal to the market value of that target share: Provided that the amount of the capital gain determined in respect of the disposal of that target share which must be taken into account in the determination of the aggregate capital gain or aggregate capital loss of that person in terms of the Eighth Schedule, shall not exceed the amount by which the capital losses, determined in respect of all disposals of equity shares by that person to that

(a) 'n persoon oor enige ekwiteitsaandele aan 'n maatskappy beskik ingevolge 'n aandeel-vir-aandeeltransaksie; en

(b) daardie persoon bykomstig tot enige ekwiteitsaandele deur die maatskappy aan daardie persoon uitgereik op enige teenprestasie geregtig word in ruil vir daardie ekwiteitsaandele,

word die beskikking van daardie aandele aan daardie maatskappy, tot die mate wat enige ekwiteitsaandele deur die maatskappy aan daardie persoon uitgereik word, geag 'n beskikking ingevolge 'n aandeel-vir-aandeeltransaksie te wees by die toepassing van hierdie artikel en tot die mate wat daardie persoon op enige ander teenprestasie geregtig word soos in paragraaf *(b)* bedoel—

(i) in die geval waar die ekwiteitsaandele oor beskik anders as handelsvoorraad gehou was, geag word 'n gedeeltelike beskikking te wees by die toepassing van die Agtste Bylae; of

(ii) in die geval waar die ekwiteitsaandele oor beskik handelsvoorraad daargestel het, geag 'n verkoop van daardie handelsvoorraad te wees by die toepassing van hierdie Wet.

(5) Waar die bepalings van subartikel (2) of (3) van toepassing is ten opsigte van 'n beskikking oor 'n aandeel deur 'n persoon ingevolge 'n aandeel-vir-aandeeltransaksie en daardie persoon, binne 'n tydperk van 18 maande na daardie transaksie ophou om 'n belang in die verkrygende maatskappy, soos in paragraaf *(b)*(ii) van die omskrywing van 'aandeel-vir-aandeeltransaksie' bedoel te hou, (hetsy by wyse van 'n beskikking van enige ekwiteitsaandele in daardie verkrygende maatskappy of nie), behalwe by wyse van 'n intragroeptransaksie in artikel 44 bedoel, moet daardie persoon geag word—

(a) oor al die ekwiteitsaandele ingevolge daardie aandeel-vir-aandeeltransaksie verkry, wat nie onmiddellik voor daardie persoon opgehou het om 'n kwalifiserende belang te hou beskik is nie, te beskik het vir opbrengs gelyk aan—

(i) in die geval van ekwiteitsaandele werklik deur daardie persoon oor beskik, die grootste van die opbrengs uit daardie beskikking of die markwaarde van daardie ekwiteitsaandele op die datum van daardie beskikking; of

(ii) in die geval van ekwiteitsaandele nie werklik deur daardie persoon beskik nie, die markwaarde van daardie ekwiteitsaandele op die datum wat daardie persoon daardie ekwiteitsaandele verkry het; en

(b) onmiddellik al die ekwiteitsaandele in die verkrygende maatskappy gehou nadat daardie persoon ophou om daardie belang te hou, te herverkry het teen 'n koste gelyk aan daardie markwaarde in paragraaf *(a)*(ii) bedoel:

Met dien verstande dat die bepalings van hierdie subartikel nie van toepassing is nie waar daardie persoon ophou om 'n belang, soos in paragraaf *(b)*(ii) van die omskrywing van 'aandeel-vir-aandeeltransaksie' bedoel, in daardie maatskappy te hou as gevolg van die dood van daardie persoon en daardie belang aan die langslewende gade van daardie persoon by sy of haar dood toeval.

(6) Waar 'n persoon oor enige teikenaandele beskik aan 'n maatskappy ingevolge 'n aandeel-vir-aandeeltransaksie in die omstandighede in subartikel (2) bedoel en daardie persoon, op enige tydstip gedurende die tydperk van 18 maande voor daardie transaksie, oor enige ander ekwiteitsaandeel aan daardie maatskappy beskik het ten opsigte waarvan 'n kapitaalverlies vasgestel was—

(a) moet daardie persoon geag word—

(i) oor daardie teikenaandele te beskik het aan die verkrygende maatskappy vir opbrengs gelyk aan die markwaarde van daardie teikenaandeel: Met dien verstande dat die bedrag van die kapitaalwins vasgestel ten opsigte van daardie teikenaandeel wat in berekening gebring moet word by die vasstelling van die totale kapitaalwins of totale kapitaalverlies van daardie persoon ingevolge die Agtste Bylae, nie die bedrag oorskry waarmee die kapitaalverliese, vasgestel ten opsigte van alle beskikkings van ekwiteitsaandele deur daardie persoon aan daardie maatskappy

company during that 18 month period, exceed the capital gains determined in respect of all disposals of equity shares by that person to that company during that period; and

(ii) acquired the equity shares in that acquiring company in terms of a share-for-share transaction, at a cost equal to the sum of—

(aa) the base cost of that target share on disposal thereof to that company; and

(bb) the amount of that capital gain that was taken into account in the determination of the aggregate capital gain or aggregate capital loss of that person, as contemplated in subparagraph (i);

(b) that person must, where the amount of that capital loss was disregarded in terms of the provisions of subsection (7), reduce the balance of that capital loss by the amount of the capital gain taken into account in the determination of the aggregate capital gain or aggregate capital loss, as contemplated in paragraph *(a)*(i); and

(c) the company must be deemed to have acquired those target shares at a cost equal to the cost to that person of the equity shares in the acquiring company, as contemplated in paragraph *(a)*(ii).

(7) Despite paragraph 39 of the Eighth Schedule, where a person disposes of any equity share to a company in terms of a share-for-share transaction and the base cost of that share exceeds the market value of that equity share at the time of that disposal—

(a) that person must disregard any capital loss determined in respect of the disposal of that equity share to that company in determining the aggregate capital gain or aggregate capital loss of that person; and

(b) that company must be deemed to have acquired that equity share for a cost equal to the market value of that share on the date of that disposal, which cost must be treated as an expenditure actually incurred and paid for the purposes of paragraph 20(1)*(a)* of the Eighth Schedule in respect of that target share:

Provided that a person's capital loss which is disregarded during any year of assessment in terms of paragraph *(a)* may, after reduction thereof as contemplated in subsection (6)*(b)*, be deducted from any capital gain determined in respect of any capital asset disposed of by that person to that company during that year or any subsequent year of assessment, if that person at the time of that disposal holds an interest in that company as contemplated in paragraph *(b)*(ii) of the definition of 'share-for-share transaction'.

(8) Where an acquiring company disposes of an equity share (other than in terms of an intra-group transaction contemplated in section 44, an unbundling transaction contemplated in section 45 or a liquidation transaction contemplated in section 46), within a period of 18 months after acquiring that equity share in terms of a share-for-share transaction—

(a) the company may not set off any capital gain determined in respect of the disposal of that equity share against any assessed loss, balance of assessed loss, capital loss or assessed capital loss of that company; and

(b) the company must disregard any capital loss determined in respect of the disposal of that equity share.

(9) The provisions of this section shall not apply in respect of the disposal of any equity share by a company—

(a) to a transferee company, all the receipts and accruals of which are exempt from tax in terms of the provisions of section 10;

gedurende daardie 18 maande tydperk, die kapitaalwinste vasgestel ten opsigte van alle beskikkings van ekwiteitsaandele deur daardie persoon aan daardie maatskappy gedurende daardie tydperk, nie; en

(ii) die aandele in daardie verkrygende maatskappy te verkry het ingevolge 'n aandeel-vir-aandeeltransaksie teen 'n koste gelyk aan die som van—

(aa) die basiskoste van daardie teikenaandeel by beskikking daarvan aan daardie maatskappy; en

(bb) die bedrag van daardie kapitaalwins wat in berekening gebring is by die vasstelling van die totale kapitaalwins of totale kapitaalverlies van daardie persoon, soos in subparagraaf (i) bedoel;

(b) moet daardie persoon, waar die bedrag van daardie kapitaalverlies ingevolge die bepalings van subartikel (7) verontagsaam is, die balans van daardie kapitaalverlies verminder met die bedrag van die kapitaalwins in berekening gebring by die vasstelling van die totale kapitaalwins of totale kapitaalverlies, soos in paragraaf *(a)*(i) bedoel; en

(c) moet die maatskappy geag word daardie teikenaandele te verkry het teen 'n koste gelyk aan die koste vir daardie persoon van die ekwiteitsaandele in die verkrygende maatskappy, soos in paragraaf *(a)*(ii) bedoel.

(7) Ondanks paragraaf 39 van die Agtste Bylae, waar 'n persoon oor enige ekwiteitsaandeel aan 'n maatskappy beskik ingevolge 'n aandeel-vir-aandeeltransaksie en die basiskoste van daardie ekwiteitsaandeel die markwaarde van daardie ekwiteitsaandeel op die tydstip van daardie beskikking oorskry—

(a) moet daardie persoon enige kapitaalverlies vasgestel ten opsigte van die beskikking oor daardie ekwiteitsaandeel aan daardie maatskappy verontagsaam by die vasstelling van die totale kapitaalwins of totale kapitaalverlies van daardie persoon; en

(b) moet daardie maatskappy geag word daardie ekwiteitsaandeel te verkry het vir 'n koste gelyk aan die markwaarde van daardie aandeel op die datum van daardie beskikking, welke koste by die toepassing van paragraaf 20(1)*(a)* van die Agtste Bylae, geag word onkoste werklik aangegaan en betaal te wees ten opsigte van daardie teikenaandeel:

Met dien verstande dat 'n persoon se kapitaalverlies wat verontagsaam word gedurende enige jaar van aanslag ingevolge paragraaf *(a)*, na vermindering daarvan soos in subartikel (6)*(a)* bedoel, afgetrek kan word van enige kapitaalwins vasgestel ten opsigte van enige kapitaalbate deur daardie persoon aan daardie maatskappy oor beskik gedurende daardie jaar of enige daaropvolgende jaar van aanslag, indien daardie persoon op die tydstip van daardie beskikking 'n belang in daardie maatskappy hou soos in paragraaf *(b)*(ii) van die omskrywing van 'aandeel-vir-aandeeltransaksie' bedoel.

(8) Waar 'n verkrygende maatskappy oor 'n ekwiteitsaandeel beskik (behalwe ingevolge 'n intragroeptransaksie in artikel 44 bedoel, 'n ontbondelingstransaksie in artikel 45 bedoel of 'n likwidasie-uitkering in artikel 46 bedoel), binne 'n tydperk van 18 maande na verkryging van daardie ekwiteitsaandele ingevolge 'n aandeel-vir-aandeeltransaksie—

(a) verreken die maatskappy nie enige kapitaalwins vasgestel ten opsigte van die beskikking oor daardie ekwiteitsaandeel teen enige vasgestelde verlies, balans van vasgestelde verlies, kapitaalverlies of vasgestelde kapitaalverlies van daardie maatskappy nie; en

(b) moet die maatskappy enige kapitaalverlies vasgestel ten opsigte van die beskikking oor daardie ekwiteitsaandeel verontagsaam.

(9) Die bepalings van hierdie artikel is nie van toepassing nie ten opsigte van die beskikking oor enige ekwiteitsaandeel deur 'n maatskappy—

(a) aan 'n oordragnemende maatskappy waarvan al die ontvangste en toevallings ingevolge artikel 10 van belasting vrygestel is;

(b) where that equity share was acquired in terms of a share-for-share transaction in terms of this section within a period of 18 months before that disposal; or

(c) where more than 50 per cent of either the market value or the actual costs of all the assets of that target company and any other company, which is a controlled company in relation to that target company on the date of that share-for-share transaction, consists of financial instruments, as defined in paragraph 1 of the Eighth Schedule, other than any shares held in any other company which is a controlled company in relation to that target company.

Intra-group transactions

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

'intra-group transaction' means a transaction in terms of which any asset is disposed of by one company which is a resident (hereinafter referred to as the 'transferor company') to another company which is a resident (hereinafter referred to as the 'transferee company') and both companies form part of the same group of companies on the date of that transaction.

(2) Notwithstanding any provision to the contrary contained in this Act, where a transferor company disposes of any asset to a transferee company, in terms of an intra-group transaction the transferor company and transferee company may jointly elect that the provisions of subsection (3) or (5), as the case may be, must apply.

(3) Notwithstanding the provisions of paragraph 38 of the Eighth Schedule, where the transferor company and the transferee company have elected that the provisions of this subsection must apply in respect of the disposal by that transferor company of any capital asset to that transferee company—

(a) the transferor company must be deemed to have disposed of that asset for an amount equal to the base cost of that asset on the date of that disposal;

(b) the transferee company must be deemed to have acquired that capital asset on the date that the transferor company acquired that asset, and at a cost equal to the base cost contemplated in paragraph *(a)*, which cost must be treated as expenditure actually incurred and paid by the transferee company for purposes of paragraph 20(1)*(a)* of the Eighth Schedule in respect of that capital asset.

(4) Where a transferor company transfers an asset or a liability to a transferee company as part of an intra-group transaction and that asset or liability constitutes—

(a) a depreciable asset, any allowance which—

(i) that transferee company may be entitled to in terms of this Act shall be limited to the amount of any allowance which that transferor company would have been entitled to deduct in respect of that asset, had that asset not been disposed of by that transferor company to that transferee company; and

(ii) was allowed as a deduction during any year of assessment in the determination of the taxable income of that transferor company—

(aa) which has been recovered or recouped by that transferor company shall, for the purposes of section 8(4)*(a)* and paragraph *(j)* of the definition of 'gross income' be deemed not to have been recovered, recouped or received; and

(bb) must for the purposes of the recoupment of any allowance, or inclusion thereof in the income of that transferee

(b) waar daardie ekwiteitsaandeel verkry is ingevolge 'n aandeel-vir-aandeeltransaksie ingevolge hierdie artikel binne 'n tydperk van 18 maande voor daardie beskikking;

(c) waar meer as 50 persent van òf die markwaarde òf die werklike koste van al die bates van daardie teikenmaatskappy en enige ander maatskappy, wat 'n beheerde maatskappy met betrekking tot daardie teikenmaatskappy is, op die datum van daardie aandeel-vir-aandeel transaksie finansiële instrumente, soos in paragraaf 1 van die Agtste Bylae omskryf, daarstel, behalwe enige aandele gehou in enige ander maatskappy wat 'n beheerde maatskappy met betrekking tot daardie teikenmaatskappy is.

Intragroeptransaksies

44. (1) By die toepassing van hierdie artikel beteken—

'intragroeptransaksie' 'n transaksie ingevolge waarvan enige bate deur een maatskappy wat 'n inwoner is (hierna 'die oordraggewende maatskappy' genoem) oor beskik word aan 'n ander maatskappy wat 'n inwoner is (hierna 'die oordragnemende maatskappy' genoem) en beide maatskappye op die datum van daardie transaksie deel van dieselfde groep van maatskappye vorm.

(2) Ondanks enige andersluidende bepaling in hierdie Wet vervat, waar 'n oordraggewende maatskappy oor 'n bate aan 'n oordragnemende maatskappy beskik ingevolge 'n intragroeptransaksie, kan die oordraggewende en oordragnemende maatskappy gesamentlik kies dat die bepalings van subartikel (3) of (5), na gelang van die geval, van toepassing moet wees.

(3) Ondanks die bepalings van paragraaf 38 van die Agtste Bylae, waar die oordraggewende maatskappy en die oordragnemende maatskappy gekies het dat die bepalings van hierdie subartikel van toepassing moet wees ten opsigte van die beskikking deur daardie oordraggewende maatskappy van enige kapitaalbate aan daardie oordragnemende maatskappy—

(a) moet die oordraggewende maatskappy geag word oor daardie bate te beskik het vir 'n bedrag gelyk aan die basiskoste van daardie bate op die datum van daardie beskikking;

(b) moet die oordragnemende maatskappy geag word daardie kapitaalbate te verkry het op die datum wat die oordraggewende maatskappy daardie bate verkry het, en teen 'n koste gelyk aan die basiskoste in paragraaf *(a)* bedoel, welke koste by die toepassing van paragraaf 20(1)*(a)* van die Agtste Bylae geag word onkoste werklik deur die oordragnemende maatskappy aangegaan en betaal te gewees het ten opsigte van daardie kapitaalbate.

(4) Waar 'n oordraggewende maatskappy 'n bate of 'n verpligting aan 'n oordragnemende maatskappy oordra as deel van 'n intragroeptransaksie en daardie bate of verpligting—

(a) 'n afskryfbare bate daarstel, word enige toelae—

(i) waarop daardie oordragnemende maatskappy ingevolge die Wet geregtig word, beperk tot die bedrag van enige toelae waarop die oordraggewende maatskappy geregtig sou wees om ten opsigte van daardie bate af te trek, indien daardie bate nie deur daardie oordraggewende maatskappy oor beskik was nie; en

(ii) wat as 'n aftrekking toegelaat is gedurende enige jaar van aanslag by die vasstelling van die belasbare inkomste van daardie oordraggewende maatskappy—

(aa) wat verhaal of vergoed is deur daardie oordraggewende maatskappy, by die toepassing van artikel 8(4)*(a)* en paragraaf *(j)* van die omskrywing van 'bruto inkomste' geag nie verhaal, vergoed of ontvang te gewees het nie; en

(bb) vir doeleindes van die verhaling van enige toelae of insluiting daarvan in die inkomste van daardie oordragnemende maatskappy, geag 'n aftrekking aan daardie

company, be deemed to have been allowed as a deduction of that transferee company during that year of assessment; or

(b) any asset or liability in respect of which an allowance under section 11*(i)*, 11*(j)*, 24 or 24C was allowable to that transferor company as at the end of the year of assessment preceding that in which that asset or liability is transferred—

(i) the amount of any debt due to that transferor company that was included in the income of that transferor company during any year of assessment, must for purposes of section 11*(i)* be deemed to have been included in the income of that transferee company during that year; and

(ii) so much of that allowance as relates to the asset or liability so transferred must not be included in the income of that transferor during the year of that transfer but must be included in the income of that transferee company.

(5) Notwithstanding section 22(8), where the transferor company and the transferee company have elected that the provisions of this subsection apply in respect of the disposal by that transferor company to that transferee company of any asset that constitutes trading stock—

(a) that transferor company must be deemed to have disposed of that asset for an amount equal to the amount of the cost to that transferor company of that asset as contemplated in section 22(1) or (3), as the case may be; and

(b) the transferee company must be deemed to have acquired that asset on the date that the transferor company acquired that asset, and at a cost equal to the cost contemplated in paragraph *(a)*.

(6) Where an asset is disposed of by a transferor company to a transferee company in terms of an intra-group transaction in respect of which the provisions of subsection (3) or (5) apply and the transferor company and the transferee company at any time thereafter cease to form part of the same group of companies before the disposal by the transferee company of that asset, that transferee company must be deemed to have disposed of that asset for an amount equal to the market value of that asset on the date that such companies cease to form part of the same group of companies and as having immediately reaquired that asset for a cost equal to that market value: Provided that where the transferor company or transferee company is liquidated or deregistered as contemplated in section 46, the holding company and the liquidating company, as contemplated in that section, must be deemed to be one and the same company for purposes of this subsection.

(7) The provisions of subsections (3) and (5) shall not apply, where—

(a) the asset disposed of by a company is a financial instrument, as defined in paragraph 1 of the Eighth Schedule, unless—

(i) that financial instrument constitutes a debt due to that person in respect of goods sold or services rendered by that person in the course of carrying on any business which is transferred as a going concern; or

(ii) the total value of all financial instruments so transferred, (other than debts contemplated in subparagraph (i)), does not exceed five per cent of the total value of all assets of any business which is transferred as a going concern;

(b) all the receipts and accruals of the transferee company are exempt from tax in terms of section 10; or

(c) more than 50 per cent of either the market value or the actual costs of all the assets of that company and any other company, which is a controlled company in relation to that company, on the date of that

oordragnemende maatskappy toegelaat te gewees het gedurende daardie jaar van aanslag; of

(b) 'n bate of 'n verpligting daarstel ten opsigte waarvan 'n toelae kragtens artikel 11*(i)*, 11*(j)*, 24 of 24C toelaatbaar was vir daardie oordraggewende maatskappy soos aan die einde van die jaar van aanslag wat die jaar waarin daardie bate of verpligting oorgedra is voorafgaan—

(i) word die bedrag van enige skuld aan daardie oordraggewende maatskappy verskuldig wat gedurende enige jaar van aanslag by die inkomste van daardie oordraggewende maatskappy ingesluit was, by die toepassing van artikel 11*(i)* geag by die inkomste van daardie oordragnemende maatskappy vir daardie jaar ingesluit te gewees het; en

(ii) word soveel van daardie toelae as wat op daardie bate of verpligting aldus oorgedra betrekking het, nie by die inkomste van daardie oordraggewende maatskappy ingesluit in die jaar van daardie oordrag nie maar moet by die inkomste van daardie oordragnemende maatskappy ingesluit word.

(5) Ondanks artikel 22(8), waar die oordraggewende maatskappy en die oordragnemende maatskappy gekies het dat die bepalings van hierdie subartikel van toepassing is ten opsigte van die beskikking deur daardie oordraggewende maatskappy aan daardie oordragnemende maatskappy van enige bate wat handelsvoorraad daarstel—

(a) word daardie oordraggewende maatskappy geag oor daardie bate te beskik het vir 'n bedrag gelyk aan die bedrag van die koste vir daardie oordraggewende maatskappy van daardie bate in artikel 22(1) of (3), na gelang van die geval, vasgestel; en

(b) word die oordragnemende maatskappy geag daardie bate te verkry het op die datum wat die oordraggewende maatskappy daardie bate verkry het, en vir 'n koste gelyk aan die koste in paragraaf *(a)* bedoel.

(6) Waar 'n bate deur 'n oordraggewende maatskappy oor beskik word aan 'n oordragnemende maatskappy ingevolge 'n intragroeptransaksie ten opsigte waarvan die bepalings van subartikel (3) of (5) van toepassing is en die oordraggewende maatskappy en die oordragnemende maatskappy op enige tydstip daarna ophou om deel van dieselfde groep maatskappye te vorm voor die beskikking deur die oordragnemende maatskappy oor daardie bate, word daardie oordragnemende maatskappy geag oor daardie bate te beskik het vir 'n bedrag gelyk aan die markwaarde van die bate op die datum wat daardie maatskappye ophou om deel van dieselfde groep maatskappye te vorm en om onmiddellik daardie bate te herverkry het vir 'n koste gelyk aan daardie markwaarde: Met dien verstande dat waar die oordraggewende maatskappy of die oordragnemende maatskappy gelikwideer of gederegistreer word soos in artikel 46 bedoel, word die houermaatskappy en die likwiderende maatskappy, soos in daardie artikel bedoel, geag een en dieselfde maatskappy te wees by die toepassing van hierdie subartikel.

(7) Die bepalings van subartikels (3) en (5) is nie van toepassing nie waar—

(a) die bate deur die maatskappy oor beskik 'n finansiële instrument, soos in paragraaf 1 van die Agtste Bylae omskryf, daarstel, tensy—

(i) daardie finansiële instrument 'n skuld aan daardie persoon verskuldig daarstel ten opsigte van goedere verkoop of dienste gelewer deur daardie persoon in die loop van die bedryf van enige besigheid wat as 'n lopende saak oorgedra is; of

(ii) die totale waarde van alle finansiële instrumente aldus oorgedra (behalwe skulde in subparagraaf (i) bedoel), nie vyf persent van die totale waarde van alle bates van 'n besigheid wat as 'n lopende saak oorgedra word oorskry nie;

(b) al die ontvangste en toevallings van die oordragnemende maatskappy van belasting vrygestel is ingevolge artikel 10; of

(c) meer as 50 persent van of die markwaarde of die werklike koste van al die bates van daardie maatskappy en enige ander maatskappy, wat 'n beheerde maatskappy met betrekking tot daardie maatskappy is, op die

transfer, consists of financial instruments, as defined in paragraph 1 of the Eighth Schedule, other than any shares held in any controlled company in relation to that company.

(8) Where a transferee company acquired a capital asset from a transferor company in terms of an intra-group transaction, as contemplated in subsection (3) and that transferee company disposes of that asset within a period of 18 months after that acquisition, and—

(a) a capital gain is determined in respect of that disposal, any amount recovered or recouped or capital gain so determined may not be set off against any assessed loss, balance of assessed loss, capital loss or assessed capital loss of that transferee company; or

(b) a capital loss is determined in respect of that disposal, that capital loss must be disregarded and any claim for an allowance under the provisions of section 11*(o)* must be disallowed.

(9) An acquisition or disposal of any asset in terms of an intra-group transaction in respect of which the provisions of subsection (3) or (5) apply, shall be deemed not to be a dividend for purposes of Part VII of Chapter II of this Act.

Unbundling Transactions

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

'distributable shares' means any equity shares in a company which is a resident, held directly by an unbundling company which is a resident, for its own benefit on the date of the unbundling transaction, if that unbundling company's interest in that company on that date—

(a) where that company is a listed company or will become a listed company, within six months after that transaction (or such further period not exceeding six months, as may be approved by the Commissioner, where the Commissioner is satisfied that those equity shares cannot be listed within that initial six months period due to circumstances beyond the control of the company), constitutes—

(i) more than 25 per cent in the equity share capital of that company, in the case where no other shareholder holds an equal or greater amount of equity share capital in that company; or

(ii) in any other case, at least 35 per cent in the equity share capital of the company;

(b) where that company is an unlisted company—

(i) constitutes more than 50 per cent of the equity share capital of that unlisted company; and

(ii) in the case where the unbundling company is a listed company, those equity shares are, in pursuance of a distribution *in specie* thereof in the course of an unbundling transaction, to be listed on a stock exchange as defined in section 1 of the Stock Exchanges Control Act, 1985 (Act No. 1 of 1985), within six months of such distribution *in specie* (or such further period not exceeding six months, as may be approved by the Commissioner, where the Commissioner is satisfied that those equity shares cannot be listed within that initial six months period due to circumstances beyond the control of the company):

Provided that—

(i) in determining the total equity share capital of a company contemplated in paragraphs *(a)* and *(b)*, regard must be had to any agreement in terms of which any person is, on the date of determining that interest of the unbundling company, entitled to acquire an interest in the equity share capital in that company on that date at no or nominal cost; and

(ii) any such equity share in a listed or unlisted company which was acquired by the unbundling company during the period of 18 months before the date of that unbundling transaction, shall not—

datum van daardie oordrag, 'n finansiële instrument, soos omskryf in paragraaf 1 van die Agtste Bylae, daarstel, behalwe enige aandeel gehou in enige beheerde maatskappy met betrekking tot daardie maatskappy.

(8) Waar 'n oordragnemende maatskappy 'n kapitaalbate van 'n oordraggewende maatskappy verkry het ingevolge 'n intragroeptransaksie, soos in subartikel (3) bedoel en daardie oordragnemende maatskappy binne 'n tydperk van 18 maande na daardie verkryging oor daardie bate beskik, en—

(a) 'n kapitaalwins vasgestel word ten opsigte van daardie beskikking, word enige bedrag verhaal of vergoed of kapitaalwins aldus vasgestel nie verreken teen enige vasgestelde verlies, balans van vasgestelde verlies, kapitaalverlies of vasgestelde kapitaalverlies van daardie oordragnemende maatskappy nie; of

(b) 'n kapitaalverlies vasgestel word ten opsigte van daardie beskikking, word daardie kapitaalverlies verontagsaam en enige eis vir 'n toelae ingevolge die bepalings van artikel 11*(o)* word afgewys.

(9) 'n Verkryging of beskikking van 'n bate ingevolge 'n intragroeptransaksie ten opsigte waarvan die bepalings van subartikel (3) of (5) van toepassing is word geag nie 'n dividend te wees nie by die toepassing van Deel VII van Hoofstuk II van hierdie Wet.

Ontbondelingstransaksies

45. (1) By die toepassing van hierdie artikel, beteken—

'houermaatskappy' met betrekking tot 'n ander maatskappy, 'n maatskappy wat 'n inwoner is en wat direk vir sy eie voordeel minstens 75 persent van die ekwiteitsaandelekapitaal van daardie ander maatskappy hou;

'kwalifiserende aandeelhouer' enige persoon wie as eienaar of voordelige eienaar van 'n aandeel in 'n ontbondelingsmaatskappy, geregtig is om uitkeerbare aandele te ontvang by wyse van 'n uitkering *in specie* in die loop van 'n ontbondelingstransaksie;

'ontbondelde maatskappy' enige maatskappy die ekwiteitsaandele waarvan deur 'n ontbondelingsmaatskappy uitgekeer word ingevolge 'n ontbondelingstransaksie;

'ontbondelingsmaatskappy' die ontbondelingsmaatskappy in die omskrywing van 'ontbondelingstransaksie' bedoel;

'ontbondelingstransaksie' enige transaksie wat uitgevoer staan te word om—

(a) die aandeelhouers van enige genoteerde maatskappy; of

(b) die houermaatskappy van 'n ongenoteerde maatskappy,

(welke genoteerde of ongenoteerde maatskappy hierna 'die ontbondelingsmaatskappy' genoem word), instaat te stel om direk by wyse van 'n uitkering *in specie* deur daardie ontbondelingsmaatskappy al die uitkeerbare aandele deur daardie ontbondelingsmaatskappy in die maatskappy wat ontbondel word, te verkry, op so 'n wyse as wat sal verseker dat die effektiewe belang van daardie aandeelhouer of houermaatskappy in daardie uitkeerbare aandele nie wesenlik sal verander deur daardie transaksie nie;

'uitkeerbare aandele' enige ekwiteitsaandele in 'n maatskappy wat 'n inwoner is, wat direk deur 'n ontbondelingsmaatskappy wat 'n inwoner is gehou word, vir sy eie voordeel op die datum van die ontbondelingstransaksie, indien daardie ontbondelingsmaatskappy se belang in daardie maatskappy op daardie datum—

(a) waar daardie maatskappy 'n genoteerde maatskappy is of binne ses maande na daardie transaksie *in specie* (of so 'n verdere tydperk nie langer as ses maande nie, as wat die Kommissaris mag goedkeur waar die Kommissaris tevrede is dat daardie aandele nie binne die aanvanklike ses maande tydperk genoteer kan word nie weens omstandighede buite die beheer van die maatskappy) 'n genoteerde maatskappy sal word—

(i) uit meer as 25 persent van die ekwiteitsaandelekapitaal van daardie maatskappy bestaan, mits geen ander aandeelhouer 'n

(aa) be taken into account in determining the interest in terms of paragraph *(a)* or *(b)*; or

(bb) constitute a distributable share for purposes of this section,

unless that equity share was acquired in terms of any transaction contemplated in this Part or an unbundling transaction contemplated in section 60 of the Income Tax Act, 1993 (Act No. 113 of 1993), or a rationalisation scheme contemplated in section 39 of the Taxation Laws Amendment Act, 1994 (Act No. 20 of 1994);

'holding company' in relation to any other company means a company which is a resident and which directly holds for its own benefit at least 75 per cent of the equity share capital of that other company;

'qualifying shareholder' means any person who by reason of being the owner or the beneficial owner of an equity share in an unbundling company, is entitled to receive distributable shares by way of a distribution *in specie* in the course of an unbundling transaction;

'unbundled company' means any company the equity shares of which are distributed by an unbundling company in terms of an unbundling transaction;

'unbundling company' means the unbundling company contemplated in the definition of 'unbundling transaction';

'unbundling transaction' means any transaction, which is to be carried out to enable—

(a) the shareholders of any listed company; or

(b) the holding company of an unlisted company,

(which listed or unlisted company is hereinafter referred to as the 'unbundling company'), to acquire directly by way of a distribution *in specie* by that unbundling company all the distributable shares held by that unbundling company in the company which is to be unbundled, in such manner as will ensure that the effective interest of such shareholders or holding company in such distributable shares will not be materially changed by such transaction.

(2) Notwithstanding any provision to the contrary contained in this Act, where an unbundling company disposes of any distributable shares to its shareholders or its holding company, as the case may be, in terms of an unbundling transaction—

(a) that unbundling company must be deemed to have disposed of those shares for proceeds equal to the base cost of those shares on the date of that disposal; and

(b) the shareholder or that holding company, as the case may be, must—

(i) be deemed to have acquired the equity shares held in the unbundling company (hereinafter referred to as the previously held shares) and those distributable shares at a cost equal to—

(aa) where those previously held shares were held by that shareholder as trading stock, the cost to that person of the previously held shares for the purposes of section 22(1) or (3), as the case may be, or where such person is not a company, the lesser of such cost or the diminished value of such disposed shares, as contemplated in that section;

(bb) in any other case, the base cost of those previously held shares, which cost must for the purposes of paragraph 20(1)*(a)* of the Eighth Schedule, be treated as expenditure actually incurred and paid in respect of those previously held shares and those distributable shares:

gelyke of groter bedrag van ekwiteitsaandelekapitaal in daardie maatskappy hou nie; of

(ii) in enige ander geval, uit minstens 35 persent van die ekwiteitsaandelekapitaal in die maatskappy bestaan; of

(b) waar daardie maatskappy 'n ongenoteerde maatskappy is—

(i) meer as 50 persent van die ekwiteitsaandelekapitaal van daardie ongenoteerde maatskappy daarstel; en

(ii) in die geval waar die ontbondelingsmaatskappy 'n genoteerde maatskappy is, daardie ekwiteitsaandele ten gevolge van 'n uitkering *in specie* daarvan in die loop van die ontbondelingstransaksie, op 'n aandelebeurs soos in artikel 1 van die Wet op Beheer van Aandelebeurse, 1985 (Wet No. 1 van 1985), genoteer staan te word, binne ses maande na daardie uitkering *in specie* (of so 'n verdere tydperk nie langer as ses maande nie, as wat die Kommissaris mag goedkeur waar die Kommissaris tevrede is dat daardie aandele nie binne die aanvanklike ses maande tydperk genoteer kan word nie weens omstandighede buite die beheer van die maatskappy):

Met dien verstande dat—

(i) by die bepaling van die totale ekwiteitsaandelekapitaal van 'n maatskappy in paragrawe *(a)* en *(b)* bedoel, moet enige ooreenkoms ingevolge waarvan enige persoon, op die datum van die vasstelling van daardie belang van die ontbondelingsmaatskappy, geregtig is om op daardie datum 'n belang in die ekwiteitsaandelekapitaal van daardie maatskappy teen geen of nominale koste te verkry; en

(ii) enige so 'n ekwiteitsaandeel in 'n genoteerde of ongenoteerde maatskappy wat deur die ontbondelingsmaatskappy verkry is binne die tydperk van 18 maande voor die datum van daardie ontbondelingstransaksie—

(aa) word nie in berekening gebring by die vassteling van die belang in paragraaf *(a)* of *(b)* bedoel nie; of

(bb) stel nie 'n uitkeerbare aandeel daar by die toepassing van hierdie artikel nie,

tensy daardie ekwiteitsaandeel verkry is ingevolge 'n ontbondelingstransaksie ingevolge hierdie Deel of 'n ontbondelingstransaksie in artikel 60 van die Inkomstebelastingwet, 1993 (Wet No. 113 van 1993), bedoel of 'n rasionalisasieskema in artikel 39 van die Wysigingswet op Belastingwette, 1994 (Wet No. 20 van 1994) bedoel.

(2) Ondanks enige andersluidende bepaling in hierdie Wet vervat, waar 'n ontbondelingsmaatskappy oor enige uitkeerbare aandele aan sy aandeelhouers of houermaatskappy, na gelang van die geval, beskik ingevolge 'n ontbondelingstransaksie—

(a) word daardie ontbondelingsmaatskappy geag oor daardie aandele te beskik het vir opbrengs gelyk aan die basiskoste van daardie aandele; en

(b) word die aandeelhouer of daardie houermaatskappy, na gelang van die geval—

(i) geag daardie aandele in die ontbondelingsmaatskappy gehou (hierna 'die aandele voorheen gehou' genoem) en daardie uitkeerbare aandele te verkry het vir 'n koste gelyk aan—

(aa) waar daardie aandele voorheen gehou deur daardie aandeelhouer gehou is as handelsvoorraad, die koste vir daardie persoon van die aandele voorheen gehou by die toepassing van artikel 22(1) of (3), na gelang van die geval, of waar daardie persoon nie 'n maatskappy is nie, die minste van daardie koste of die verminderde waarde van daardie aandele oor beskik, soos in daardie artikel bedoel;

(bb) in enige ander geval, die basiskoste van daardie aandele voorheen gehou, welke koste by die toepassing van paragraaf 20(1)*(a)* van die Agtste Bylae geag word 'n onkoste werklik aangegaan en betaal te wees ten opsigte van daardie aandele voorheen gehou en daardie uitkeerbare aandele:

Provided that—

(A) a portion of such cost or such base cost, as the case may be, must be apportioned to such distributable shares, which portion shall be deemed to be an amount which bears to such cost or such base cost, as the case may be, the same ratio as the market value of such distributable shares bears to the market value of such previously held shares, such market values being determined on the date on which the qualifying shareholders become entitled to acquire distributable shares by way of a distribution *in specie*; and

(B) such previously held shares and such distributable shares must be deemed to be the same shares for purposes of section 9B;

(ii) where those previously held shares were held by that person in the unbundling company as a result of a right contemplated in section 8A, which has been exercised by that person and distributable shares are distributed to such person in accordance with an unbundling transaction, any portion of any gain made by such person in the exercise of such right to acquire such previously held shares must be included in the income of that person—

(aa) in the year of assessment during which that person becomes entitled to dispose of those distributable shares, which portion shall be an amount which bears to such gain the same ratio as the market value of such distributable shares on the date on which that person became entitled to such distributable shares by way of a distribution *in specie* bears to the market value of such previously held shares on that date; and

(bb) in the year of assessment during which that person becomes entitled to dispose of the previously held shares, which portion shall be calculated by reducing such gain by the amount which has been determined or is to be determined in terms of item *(aa)*:

Provided that for the purposes of paragraph (A) of the proviso to subparagraph (i) and subparagraph (ii)*(aa)*, the market value of such previously held shares on the date on which the qualifying shareholders became entitled to acquire such distributable shares by way of a distribution *in specie*, shall be determined without having regard to the fact that such distributable shares are to be issued to such shareholders.

(3) Notwithstanding anything to the contrary contained in this Act—

(a) the distribution *in specie* by a company of any distributable shares shall be deemed not to be a dividend for the purposes of Part VII of Chapter II; and

(b) any distribution *in specie* received by a company must be deemed—

(i) not to be a dividend which accrued to that company for the purposes of section 64B(3); and

(ii) to be profits which are not of a capital nature for the purposes of section 64B(5)*(c)*.

(4) The distribution *in specie* by an unbundling company in terms of an unbundling transaction in respect of which the provisions of this section apply, must be deemed to have been distributed first from the share premium account of that unbundling company (if any) and to the extent that the distribution exceeds the amount of that share premium account, be deemed to have been distributed from undistributed profits.

(5) The provisions of this section shall not apply—

(a) where more than 50 per cent of either the market value or the actual costs of all the assets of the unbundled company and any other company, which is a controlled company, in relation to that unbundled

Met dien verstande dat—

(A) 'n gedeelte van daardie koste of basiskoste, na gelang van die geval, toegedeel moet word aan daardie uitkeerbare aandele, welke gedeelte geag sal word 'n bedrag wat tot daardie koste of basiskoste, na gelang van die geval, in dieselfde verhouding staan as wat die markwaarde van daardie uitkeerbare aandele in verhouding tot die aandele voorheen gehou staan, welke markwaardes bepaal word op die datum waarop die kwalifiserende aandeelhouers geregtig word om uitkeerbare aandele by wyse van 'n uitkering *in specie* te verkry; en

(B) daardie aandele voorheen gehou en daardie uitkeerbare aandele geag moet word dieselfde aandele te wees by die toepassing van artikel 9B;

(ii) waar daardie aandele voorheen gehou deur daardie persoon gehou is in die ontbondelingsmaatskappy vanweë 'n reg soos in artikel 8A bedoel, wat deur deur daardie persoon uitgeoefen is en uitkeerbare aandele aan daardie persoon uitgekeer word ingevolge 'n ontbondelingstransaksie, 'n gedeelte van enige wins deur daardie persoon gemaak by die uitoefening van daardie reg om daardie aandele voorheen gehou te verkry, by die inkomste van daardie persoon ingesluit moet word—

(aa) in die jaar van aanslag waarin daardie persoon geregtig word om oor daardie uitkeerbare aandele te beskik, welke gedeelte 'n bedrag is wat tot daardie wins in dieselfde verhouding staan as wat die markwaarde van daardie uitkeerbare aandele op die datum waarop daardie persoon geregtig word op daardie uitkeerbare aandele by wyse van 'n uitkering *in specie*, tot die markwaarde van daardie aandele voorheen gehou op daardie datum, staan; en

(bb) in die jaar van aanslag waarin daardie persoon geregtig word om oor die aandele voorheen gehou te beskik, welke gedeelte vasgestel word deur daardie wins deur die bedrag wat vasgestel is of vasgestel staan te word ingevolge item *(aa)*, te verminder:

Met dien verstande dat by die toepassing van paragraaf (A) van die voorbehoudsbepaling by subparagraaf (i) en subparagraaf (ii)*(aa)*, word die markwaarde van daardie aandele voorheen gehou op die datum waarop die kwalifiserende aandeelhouers geregtig word om daardie uitkeerbare aandele te verkry by wyse van 'n uitkering *in specie* bepaal sonder inagneming van die feit dat daardie uitkeerbare aandele aan daardie aandeelhouers uitgereik staan te word.

(3) Ondanks enige andersluidende bepaling in hierdie Wet vervat—

(a) word die uitkering *in specie* deur 'n maatskappy van enige uitkeerbare aandele geag nie 'n dividend te wees nie by die toepassing van Deel VII van Hoofstuk II; en

(b) word enige uitkering *in specie* ontvang deur 'n maatskappy geag—

(i) nie 'n dividend te wees wat aan daardie maatskappy toeval nie by die toepassing van artikel 64B(3); en

(ii) winste te wees wat nie van 'n kapitale aard is nie by die toepassing van artikel 64B(5)*(c)*.

(4) Die uitkering *in specie* deur 'n ontbondelingsmaatskappy ingevolge 'n ontbondelingstransaksie ten opsigte waarvan die bepalings van hierdie artikel van toepassing is, word geag uit te gekeer te gewees het eerste uit die aandelepremierekening van daardie ontbondelingsmaatskappy (indien enige) en tot die mate wat die uitkering die bedrag van daardie aandelepremierekening oorskry, geag word uit te gekeer te gewees het uit onuitgekeerde winste.

(5) Die bepalings van hierdie artikel is nie van toepassing nie—

(a) waar meer as 50 persent van òf die markwaarde òf die werklike koste van al die bates van die ontbondelde maatskappy en enige ander maatskappy, wat 'n beheerde maatkappy met betrekking tot daardie ontbondelde maatskappy is, op die datum van daardie

company, on the date of that unbundling transaction, consists of financial instruments, as defined in paragraph 1 of the Eighth Schedule, other than any shares held in any other controlled company in relation to that unbundled company; or

(b) in respect of any distribution of shares in terms of an unbundling transaction to a shareholder who is not a resident, where that shareholder acquires more than five per cent of the distributable shares in terms of that unbundling transaction.

Transactions relating to liquidation, winding-up and deregistration

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

'distribution *in specie*' means a distribution of equity shares whether by means of a dividend, a total or partial reduction of capital (including any share premium), a redemption of redeemable preference shares or an acquisition of equity shares in terms of section 85 of the Companies Act, 1973 (Act No. 61 of 1973);

'holding company' in relation to any other company means a company which is a resident, which on the date of the liquidation distribution directly holds for its own benefit shares which constitute at least 75 per cent of the equity share capital of that other company: Provided that in determining the value of the total equity share capital of that company, regard must be had to any agreement, in terms of which any person is on the date of determining whether that company is a holding company, entitled to acquire an interest in the equity share capital in that company on that date at no or nominal cost;

'liquidating company' means the liquidating company contemplated in the definition of 'liquidation distribution';

'liquidation distribution' means a disposal by a liquidating company which is a resident, of any asset to its holding company in anticipation of or in the course of the liquidation, winding up or deregistration of that liquidating company.

(2) Notwithstanding any provision to the contrary contained in this Act, where a liquidating company disposes of a capital asset in terms of a liquidation distribution to its holding company—

(a) that liquidating company must be deemed to have disposed of that asset for an amount equal to the base cost of that asset on the date of the disposal thereof; and

(b) that holding company must be deemed to have acquired that asset on the same date that that asset was acquired by that liquidating company and at a cost equal to that base cost of that asset to that liquidating company, which cost must be treated as expenditure actually incurred and paid for purposes of paragraph 20(1)*(a)* of the Eighth Schedule in respect of that asset.

(3) Notwithstanding any provision to the contrary contained in this Act, where a liquidating company disposes of an asset, which constitutes trading stock, in terms of a liquidation distribution to its holding company—

(a) that liquidating company must be deemed to have disposed of that asset for an amount equal to the cost of that asset as contemplated in section 22(1) or (3), as the case may be; and

(b) that holding company must be deemed to have acquired that asset at a cost equal to the cost contemplated in paragraph *(a)*.

(4) Where a company disposes of an asset or a liability in terms of a liquidation distribution to its holding company and that asset or liability constitutes—

(a) a depreciable asset, any allowance which—

(i) that holding company may be entitled to in terms of this Act shall be limited to the amount of any allowance which that liquidating company would have been entitled to deduct in respect of that asset, had that asset not been distributed by that liquidating company to that holding company; and

ontbondelingstransaksie, finansiële instrumente, soos in paragraaf 1 van die Agtste Bylae omskryf, daarstel behalwe enige aandele in enige ander beheerde maatskappy met betrekking tot daardie ontbondelde maatskappy gehou; of

(b) ten opsigte van enige uitkering van aandele ingevolge 'n ontbondelingstransaksie aan 'n aandeelhouer wat nie 'n inwoner is nie, waar daardie aandeelhouer meer as vyf persent van die uitkeerbare aandele ingevolge daardie ontbondelingstransaksie verkry.

Transaksies met betrekking tot likwidasie en deregistrasie

46. (1) By die toepassing van hierdie artikel, beteken—

'houermaatskappy' met betrekking tot 'n ander maatskappy wat 'n inwoner is, wat op die datum van die likwidasie-uitkering direk vir sy eie voordeel aandele hou wat uit minstens 75 persent van die ekwiteitsaandelekapitaal van daardie ander maatskappy bestaan: Met dien verstande dat by die bepaling van die totale ekwiteitsaandelekapitaal van daardie maatskappy, word enige ooreenkoms ingevolge waarvan enige persoon op die datum van vasstelling van die belang van daardie maatskappy, geregtig is om op daardie datum 'n belang in die ekwiteitsaandelekapitaal van daardie maatskappy te verkry teen geen of nominale koste in ag geneem;

'likwidasie-uitkering' 'n beskikking deur 'n likwiderende maatskappy wat 'n inwoner is, van enige bate aan sy houermaatskappy in afwagting of in die loop van die likwidasie of deregistrasie van daardie likwiderende maatskappy;

'likwiderende maatskappy' die likwiderende maatskappy in die omskrywing van 'likwidasie-uitkering' bedoel;

'uitkering *in specie*' 'n uitkering van ekwiteitsaandele hetsy by wyse van 'n dividend, 'n totale of gedeeltelike vermindering van kapitaal (ingesluit aandelepremie), 'n aflossing van aflosbare voorkeuraandele of 'n verkryging van aandele ingevolge artikel 85 van die Maatskappywet, 1973 (Wet No. 61 van 1973).

(2) Ondanks enige andersluidende bepaling in hierdie Wet vervat, waar 'n likwiderende maatskappy oor 'n kapitaalbate beskik ingevolge 'n likwidasie-uitkering aan sy houermaatskappy—

(a) word daardie likwiderende maatskappy geag oor daardie bate te beskik het vir 'n ontvangste gelyk aan die basiskoste van daardie bate op die datum van die beskikking daaroor; en

(b) word daardie houermaatskappy geag daardie bate te verkry het op dieselfde datum wat daardie bate deur die likwiderende maatskappy verkry is en teen 'n koste gelyk aan daardie basiskoste van daardie bate vir daardie likwiderende maatskappy, welke koste by die toepassing van paragraaf 20(1)*(a)* van die Agtste Bylae geag word onkoste werklik aangegaan en betaal te wees ten opsigte van daardie bate.

(3) Ondanks enige andersluidende bepaling in hierdie Wet vervat, waar 'n likwiderende maatskappy oor 'n bate beskik wat uit handelsvoorraad bestaan, ingevolge 'n likwidasie-uitkering aan sy houermaatskappy—

(a) word daardie likwiderende maatskappy geag oor daardie bate te beskik het vir 'n bedrag gelyk aan die koste van daardie bate soos in artikel 22(1) of (3), na gelang van die geval, bedoel; en

(b) word daardie houermaatskappy geag daardie bate te verkry het teen 'n koste gelyk aan die koste in paragraaf *(a)* bedoel.

(4) Waar 'n likwiderende maatskappy oor 'n bate of verpligting aan sy houermaatskappy beskik ingevolge 'n likwidasie-uitkering en daardie bate of verpligting—

(a) 'n afskryfbare bate is, word enige toelae—

(i) waarop daardie houermaatskappy ingevolge hierdie Wet geregtig is, beperk tot die bedrag van enige toelae waarop daardie likwiderende maatskappy geregtig sou wees om af te trek ten opsigte van daardie bate indien daardie bate nie deur daardie likwiderende maatskappy aan daardie houermaatskappy oor beskik is nie; en

(ii) was allowed as a deduction during any year of assessment in the determination of the taxable income of that liquidating company—

(aa) which has been recovered or recouped by that liquidating company shall, for the purposes of section 8(4)*(a)* and paragraph *(j)* of the definition of 'gross income' be deemed not to have been recovered, recouped or received; and

(bb) must for the purposes of the recoupment of any allowance, or inclusion thereof in the income of that holding company, be deemed to have been allowed as a deduction of that holding company during that year of assessment; or

(b) any asset or liability in respect of which an allowance under section 11*(i)*, 11*(j)*, 24 or 24C was allowable to that company as at the end of the year of assessment preceding that in which that asset or liability is transferred—

(i) the amount of any debt due to that liquidation company that was included in the income of that liquidating company during any year of assessment, must for purposes of section 11*(i)* be deemed to have been included in the income of that holding company during that year; and

(ii) so much of that allowance as relates to the asset or liability so transferred must not be included in the income of that liquidating company during the year of that transfer but must be included in the income of that holding company.

(5) Where the holding company acquires any asset from the liquidating company in terms of a liquidation distribution in respect of which the provisions of subsection (2) apply, and that holding company disposes of that asset within a period of 18 months after so acquiring that asset—

(a) any capital gain determined in respect of the disposal of that asset by the holding company may not be set off against any amount of assessed loss, balance of assessed loss, assessed capital loss or capital loss of that holding company (other than any capital loss determined in respect of the disposal of any other asset acquired by the holding company from the liquidating company in terms of that liquidation distribution); or

(b) any capital loss determined in respect of the disposal of that asset must be disregarded in determining the aggregate capital gain or aggregate capital loss of that holding company for purposes of the Eighth Schedule: Provided that the amount of any capital loss so disregarded may be deducted from the amount of any capital gain determined in respect of the disposal during that year or any subsequent year of assessment of any other asset acquired by that holding company from the liquidating company in terms of that liquidation distribution.

(6) The provisions of this section shall not apply where—

(a) all the receipts and accruals of the holding company are exempt from tax in terms of section 10;

(b) more than 50 per cent of either the market value or the actual costs of all the assets of that liquidating company and any other company, which is a controlled company in relation to that liquidating company on the date of that liquidation distribution, consists of financial instruments, as defined in paragraph 1 of the Eighth Schedule, other than any shares held in any other controlled company in relation to that liquidating company;

(c) the liquidating company has not, within a period of six months after the date of the liquidation distribution, taken such steps as may be prescribed by the Minister by regulation in the *Gazette* to liquidate,

(ii) wat as 'n aftrekking gedurende enige jaar van aanslag by die vasstelling van die belasbare inkomste van daardie likwiderende maatskappy toegelaat is—

(aa) wat deur daardie likwiderende maatskappy verhaal of vergoed is, by die toepassing van artikel 8(4)*(a)* en paragraaf *(j)* van die omskrywing van 'bruto inkomste' in artikel 1 geag nie verhaal, vergoed of ontvang te gewees het nie; en

(bb) vir doeleindes van die verhaling van die toelae, of insluiting daarvan in die inkomste van daardie houermaatskappy geag 'n aftrekking van daardie houermaatskappy toegelaat te gewees het gedurende daardie jaar van aanslag; of

(b) 'n bate of verpligting ten opsigte waarvan 'n toelae kragtens artikel 11*(i)*, 11*(j)*, 24 of 24C toelaatbaar was vir daardie maatskappy soos aan die einde van die jaar van aanslag wat die jaar waarin daardie bate of verpligting oorgeplaas is voorafgaan—

(i) word die bedrag van enige skuld aan daardie likwiderende maatskappy verskuldig wat gedurende enige jaar van aanslag by die inkomste van daardie likwiderende maatskappy ingesluit was, by die toepassing van artikel 11*(i)* geag by die inkomste van daardie houermaatskappy vir daardie jaar ingesluit te gewees het; en

(ii) word soveel van daardie toelae as wat op daardie bate of verpligting aldus oorgeplaas betrekking het, nie by die inkomste van daardie likwiderende maatskappy ingesluit in die jaar van daardie oorplasing nie maar moet by die inkomste van daardie houermaatskappy ingesluit word.

(5) Waar die houermaatskapy enige bate van die likwiderende maatskappy verkry ingevolge 'n likwidasie-uitkering ten opsigte waarvan die bepalings van subartikel (2) van toepassing is, en daardie houermaatskappy binne 'n tydperk van 18 maande na die bate aldus verkry is oor daardie bate beskik—

(a) word enige kapitaalwins vasgestel ten opsigte van daardie beskikking oor daardie bate deur die houermaatskappy nie verreken teen enige bedrag van vasgestelde verlies, balans van vasgestelde verlies, kapitaalverlies of vasgestelde kapitaalverlies van daardie maatskappy nie (behalwe 'n kapitaalverlies vasgestel ten opsigte van die beskikking oor enige ander bate deur die houermaatskappy van die likwiderende maatskappy verkry ingevolge daardie likwidasie-uitkering); of

(b) word enige kapitaalverlies vasgestel ten opsigte van die beskikking daarvan deur die houermaatskappy verontagsaam by die vasstelling van die totale kapitaalwins of totale kapitaalverlies van daardie houermaatskappy by die toepassing van die Agtste Bylae: Met dien verstande dat die bedrag van enige kapitaalverlies aldus verontagsaam afgetrek kan word van enige bedrag van kapitaalwins vasgestel ten opsigte van die beskikking gedurende daardie jaar of enige daaropvolgende jaar van aanslag van enige ander bate deur daardie houermaatskappy verkry ingevolge daardie likwidasie-uitkering.

(6) Die bepalings van hierdie artikel is nie van toepassing nie waar—

(a) al die ontvangste en toevallings van die houermaatskappy van belasting vrygestel is ingevolge artikel 10;

(b) meer as 50 persent van òf die markwaarde òf die werklike koste van al die bates van die likwiderende maatskappy en enige ander maatskappy, wat 'n beheerde maatskappy met betrekking tot daardie likwiderende maatskappy op die datum van daardie likwidasie-uitkering daarstel, finansiële instrumente, soos in paragraaf 1 van die Agtste Bylae omskryf, daarstel, behalwe enige aandele gehou in enige ander beheerde maatskappy met betrekking tot daardie likwiderende maatskappy;

(c) die likwiderende maatskappy nie, binne 'n tydperk van ses maande na die datum van die likwidasie-uitkering daardie stappe wat deur die Minister by regulasie in die *Staatskoerant* voorgeskryf mag word,

wind up or deregister that company: Provided that any tax which becomes payable as a result of the application of this paragraph shall be recoverable from the holding company.".

(2) Subsection (1) shall be deemed to have come into operation on 1 October 2001 and shall apply in respect of any transaction entered into on or after that date.

Amendment of section 56 of Act 58 of 1962, as amended by section 18 of Act 90 of 1964, section 25 of Act 55 of 1966, section 33 of Act 89 of 1969, section 38 of Act 85 of 1974, section 21 of Act 113 of 1977, section 13 of Act 101 of 1978, section 23 of Act 96 of 1981, section 31 of Act 94 of 1983, section 4 of Act 30 of 1984, section 28 of Act 121 of 1984, section 18 of Act 96 of 1985, section 21 of Act 85 of 1987, section 26 of Act 90 of 1988, section 28 of Act 141 of 1992, section 32 of Act 113 of 1993, section 18 of Act 36 of 1996, section 39 of Act 30 of 1998, section 38 of Act 30 of 2000 and section 41 of Act 59 of 2000

45. (1) Section 56 of the Income Tax Act, 1962, is hereby amended by the addition to subsection (1) of the following paragraph:

"*(q)* by a company to any other company in terms of an intra-group transfer contemplated in section 44, where the public officer of that company has made a sworn affidavit or solemn declaration that such intra-group transfer complies with the provisions contained in section 44.".

(2) Subsection (1) shall be deemed to have come into operation on 1 October 2001, and shall apply in respect of any donation made in terms of an intra-group transaction entered into on or after that date.

Amendment of section 60 of Act 58 of 1962, as amended by section 39 of Act 85 of 1974 and section 28 of Act 90 of 1988

46. Section 60 of the Income Tax Act, 1962, is hereby amended by the substitution for subsection (1) of the following subsection:

"(1) Donations tax shall be **[payable]** paid to the Commissioner within three months or such longer period as the Commissioner may allow from the date upon which the donation in question takes effect **[and shall be paid to the receiver of revenue for the district within which the donor (in the case of any person other than a company) is ordinarily resident or (in the case of any company) has its registered office or principal place of business]**.".

Substitution of section 63 of Act 58 of 1962, as substituted by section 34 of Act 53 of 1999

47. Section 63 of the Income Tax Act, 1962, is hereby substituted by the following section:

"**Objection and appeal**

63. The decision of the Commissioner in the exercise of his discretion under section 57**[(3)]**(2), section 62(1)*(c)*(iii), the proviso to section 62(1)*(d)* or section 62(2)*(a)* or 62(4), and any determination by the Commissioner under section 55(2)*(g)* of the value of the mineral rights attaching to any property, shall be subject to objection and appeal.".

Amendment of section 64B of Act 58 of 1962, as inserted by section 34 of Act 113 of 1993 and amended by section 12 of Act 140 of 1993, section 24 of Act 21 of 1994, section 29 of Act 21 of 1995, section 21 of Act 36 of 1996, section 13 of Act 46 of 1996, section 25 of Act 28 of 1997, section 35 of Act 53 of 1999, section 39 of Act 30 of 2000, section 42 of Act 59 of 2000 and section 18 of Act 5 of 2001

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

geneem het om die daardie maatskappy te likwideer of te deregistreer nie: Met dien verstande dat enige belasting wat betaalbaar mag word as gevolg van die toepassing van hierdie paragraaf, verhaalbaar is van die houermaatskappy.".

(2) Subartikel (1) word geag op 1 Oktober 2001 in werking te getree het en is van toepassing ten opsigte van enige transaksie op of na daardie datum aangegaan.

Wysiging van artikel 56 van Wet 58 van 1962, soos gewysig deur artikel 18 van Wet 90 van 1964, artikel 25 van Wet 55 van 1966, artikel 33 van Wet 89 van 1969, artikel 38 van Wet 85 van 1974, artikel 21 van Wet 113 van 1977, artikel 13 van Wet 101 van 1978, artikel 23 van Wet 96 van 1981, artikel 31 van Wet 94 van 1983, artikel 4 van Wet 30 van 1984, artikel 28 van Wet 121 van 1984, artikel 18 van Wet 96 van 1985, artikel 21 van Wet 85 van 1987, artikel 26 van Wet 90 van 1988, artikel 28 van Wet 141 van 1992, artikel 32 van Wet 113 van 1993, artikel 18 van Wet 36 van 1996, artikel 39 van Wet 30 van 1998, artikel 38 van Wet 30 van 2000 en artikel 41 van Wet 59 van 2000

45. (1) Artikel 56 van die Inkomstebelastingwet, 1962, word hierby gewysig deur die volgende paragraaf by subartikel (1) te voeg:

"*(q)* deur 'n maatskappy aan 'n ander maatskappy ingevolge 'n intragroeptransaksie in artikel 44 bedoel, waar die openbare amptenaar van daardie maatskappy onder eed of plegtige verklaring verklaar het dat daardie intragroeptransaksie aan die bepalings van artikel 44 voldoen.".

(2) Subartikel (1) word geag op 1 Oktober 2001 in werking te getree het en is van toepassing ten opsigte van enige skenking gemaak ingevolge 'n intragroeptransaksie op of na daardie datum aangegaan.

Wysiging van artikel 60 van Wet 58 van 1962, soos gewysig deur artikel 39 van Wet 85 van 1974 en artikel 28 van Wet 90 van 1988

46. Artikel 60 van die Inkomstebelastingwet, 1962, word hierby gewysig deur subartikel (1) deur die volgende subartikel te vervang:

"(1) Belasting op geskenke **[is betaalbaar]** word aan die Kommissaris betaal binne drie maande, of so 'n langer tydperk as wat die Kommissaris mag toestaan, vanaf die datum waarop die betrokke skenking in werking tree **[en moet betaal word aan die ontvanger van inkomste van die distrik waarin die skenker (in die geval van 'n ander persoon as 'n maatskappy) gewoonlik woonagtig is of (in die geval van 'n maatskappy) sy geregistreerde kantoor of hoofbesigheidsplek het]**.".

Vervanging van artikel 63 van Wet 58 van 1962, soos vervang deur artikel 34 van Wet 53 van 1999

47. Artikel 63 van die Inkomstebelastingwet, 1962, word hierby deur die volgende artikel vervang:

"**Beswaar en appèl**

63. Die beslissing van die Kommissaris by die uitoefening van sy diskresie ingevolge artikel 57**[(3)]**(2), artikel 62(1)*(c)*(iii), die voorbehoudsbepaling by artikel 62(1)*(d)* of artikel 62(2)*(a)* of 62(4), en enige bepaling deur die Kommissaris ingevolge artikel 55(2)*(g)* van die waarde van die mineraalregte aan enige eiendom verbonde, is aan beswaar en appèl onderhewig.".

Wysiging van artikel 64B van Wet 58 van 1962, soos ingevoeg deur artikel 34 van Wet 113 van 1993 en gewysig deur artikel 12 van Wet 140 van 1993, artikel 24 van Wet 21 van 1994, artikel 29 van Wet 21 van 1995, artikel 21 van Wet 36 van 1996, artikel 13 van Wet 46 van 1996, artikel 25 van Wet 28 van 1997, artikel 35 van Wet 53 van 1999, artikel 39 van Wet 30 van 2000, artikel 42 van Wet 59 van 2000 en artikel 18 van Wet 5 van 2001

48. (1) Artikel 64B van die Inkomstebelastingwet, 1962, word hierby gewysig—

(a) by the substitution for the definition of "holding company" in subsection (1) of the following definition:

" 'holding company' means any company which holds for its own benefit whether directly, or indirectly through one or more intermediate companies, **[together with shares held in terms of a share incentive scheme all]** at least 75 per cent of the equity share capital of any other company;";

(b) by the substitution in the definition of "intermediate company" in subsection (1) for the words preceding paragraph *(a)* of the following words:

" 'intermediate company' means any company **[all]** at least 75 percent of whose equity share capital is **[together with shares held in terms of a share incentive scheme,]** held by—";

(c) by the deletion in subsection (1) of the definition of "share incentive scheme";

(d) by the substitution for the proviso to paragraph *(c)* of subsection (5) of the following proviso:

"Provided that where such dividend is distributed in anticipation of the liquidation or winding up or deregistration of a company and such company **[is]** has not **[liquidated or wound up or deregistered]** within six months after the date on which such dividend is so distributed **[or such further period as is in the circumstances of the case considered reasonably necessary]** taken such steps as may be prescribed by the Minister by regulation in the *Gazette* to liquidate, wind up or deregister that company, the provisions of this paragraph and of subsection (3)*(b)* shall be deemed not to have applied to such dividend and any secondary tax on companies which becomes payable as a result thereof shall be recoverable from the shareholders to whom such dividend was distributed in the same proportion as such dividend was so distributed;"; and

(e) by the deletion of subparagraph (i) of paragraph *(f)* of subsection (5).

(2) *(a)* Subsection (1)*(a)*, *(b)* and *(c)* shall come into operation on 1 January 2002 and shall apply in respect of any dividend declared on or after that date.

(b) Subsection (1)*(d)* and *(e)* shall come into operation on the date of promulgation of this Act and shall apply in respect of any dividend declared on or after that date.

Substitution of section 70A of Act 58 of 1962, as inserted by section 21 of Act 5 of 2001

49. (1) Section 70A of the Income Tax Act, 1962, is hereby substituted the following section:

"Return of information by Unit Portfolio

70A. Any unit portfolio contemplated in paragraph *(e)*(i) of the definition of 'company' in section 1, and any unit portfolio comprised in any unit trust scheme in property shares authorised under the Unit Trust Control Act, 1981 (Act No. 54 of 1981), shall furnish to the Commissioner an annual return in such form and within such time and containing such information as the Commissioner may prescribe.".

(2) Subsection (1) shall be deemed to have come into operation on 1 October 2001.

Amendment of section 70B of Act 58 of 1962, as inserted by section 21 of Act 5 of 2001

50. (1) Section 70B of the Income Tax Act, 1962, is hereby amended by the substitution for subsection (1) of the following subsection:

"(1) Every person who administers a portfolio of financial instruments, as defined in the Eighth Schedule, on behalf of any other person and has the mandate of that other person to buy and sell any such financial instruments on such other person's behalf, shall furnish to the Commissioner an annual return in such form and within such time and containing such information as the Commissioner may prescribe.".

(a) deur in subartikel (1) die omskrywing van "aandele-aansporingskema" te skrap;

(b) deur die omskrywing van "houermaatskappy" in subartikel (1) deur die volgende omskrywing te vervang:

" 'houermaatskappy' 'n maatskappy wat vir sy eie voordeel hetsy regstreeks, of onregstreeks deur een of meer tussenmaatskappye, **[tesame met aandele gehou ingevolge 'n aandele-aansporingskema, al]** minstens 75 persent van die ekwiteitsaandelekapitaal van 'n ander maatskappy hou;";

(c) deur die omskrywing van "tussenmaatskappy" in subartikel (1) deur die volgende omskrywing te vervang:

" 'tussenmaatskappy' 'n maatskappy waarvan **[al]** minstens 75 persent van sy ekwiteitsaandelekapitaal, **[tesame met aandele gehou ingevolge 'n aandele-aansporingskema,]** gehou word deur—";

(d) deur die voorbehoudsbepaling by paragraaf *(c)* van subartikel (5) deur die volgende voorbehoudsbepaling te vervang:

"Met dien verstande dat waar bedoelde dividend in afwagting van die likwidasie of deregistrasie van 'n maatskappy uitgekeer is en bedoelde maatskappy nie binne ses maande na die datum waarop bedoelde dividend aldus uitgekeer is **[of sodanige verdere tydperk as wat in die omstandighede van die geval, redelikerwys nodig beskou word, gelikwideer of gederegistreer word nie]**, daardie stappe wat deur die Minister by regulasie in die *Staatskoerant* mag voorskryf, geneem het om daardie maatskappy te likwideer of te deregistreer nie, word die bepalings van hierdie paragraaf en van subartikel (3)*(b)* geag om nie op bedoelde dividend van toepassing te gewees het nie en enige sekondêre belasting op maatskappye wat as gevolg daarvan betaalbaar word, is verhaalbaar op die aandeelhouers aan wie bedoelde dividend uitgekeer is, in dieselfde verhouding as bedoelde dividend aldus uitgekeer is;";

(e) deur subparagraaf (i) van paragraaf *(f)* van subartikel (5) te skrap.

(2) *(a)* Subartikel (1)*(a)*, *(b)* en *(c)* tree op 1 Januarie 2002 in werking en is van toepassing ten opsigte van enige dividend op of na daardie datum verklaar.

(b) Subartikel (1)*(d)* en *(e)* tree in werking op die datum van afkondiging van hierdie Wet en is van toepassing ten opsigte van enige dividend op of na daardie datum verklaar.

Vervanging van artikel 70A van Wet 58 van 1962, soos ingevoeg deur artikel 21 van Wet 5 van 2001

49. (1) Artikel 70A van die Inkomstebelastingwet, 1962, word hierby deur die volgende artikel vervang:

"**Opgawe van inligting deur Effektegroep**

70A. Enige effektegroep beoog in paragraaf *(e)*(i) van die omskrywing van 'maatskappy' in artikel 1, en enige effektegroep vervat in enige effektetrustskema in eiendomsaandele gemagtig deur die Wet op Beheer van Effektetrustskemas, 1981 (Wet No. 54 van 1981), moet aan die Kommissaris 'n jaarlikse opgawe verstrek in sodanige vorm en binne sodanige tydperk en wat sodanige inligting vervat as wat die Kommissaris mag voorskryf.".

(2) Subartikel (1) word geag op 1 Oktober 2001 in werking te getree het.

Wysiging van artikel 70B van Wet 58 van 1962, soos ingevoeg deur artikel 21 van Wet 5 van 2001

50. (1) Artikel 70B van die Inkomstebelastingwet, 1962, word hierby gewysig deur subartikel (1) deur die volgende subartikel te vervang:

"(1) Elke persoon wat 'n portefeulje van finansiële instrumente, soos in die Agtste Bylae omskryf, namens enige ander persoon bestuur en wat die mandaat van daardie ander persoon het om enige sodanige finansiële instrumente namens daardie ander persoon te koop of te verkoop, moet aan die Kommissaris 'n jaarlikse opgawe verstrek, in daardie vorm en binne daardie tydperk en wat daardie inligting vervat as wat die Kommissaris mag voorskryf.".

(2) Subsection (1) shall be deemed to have come into operation on 1 October 2001.

Amendment of section 74 of Act 58 of 1962, as substituted by section 14 of Act 46 of 1996 and amended by section 27 of Act 28 of 1997

51. Section 74 of the Income Tax Act, 1962, is hereby amended by the substitution in subsection (1) for the definition of "authorisation letter" of the following definition:

" 'authorisation letter' means a written authorisation granted by the Commissioner, or by any **[chief director or chief revenue inspector under the control, direction or supervision of the Commissioner]** person designated by the Commissioner for this purpose or occupying a post designated by the Commissioner for this purpose, to an officer to inspect, audit, examine or obtain, as contemplated in section 74B, any information, documents or things;".

Amendment of section 75 of Act 58 of 1962, as amended by section 40 of Act 101 of 1990, section 34 of Act 129 of 1991, section 30 of Act 141 of 1992, section 35 of Act 113 of 1993, section 27 of Act 21 of 1994, section 15 of Act 46 of 1996, section 39 of Act 53 of 1999, section 44 of Act 30 of 2000, section 23 of Act 5 of 2001 and section 18 of Act 19 of 2001

52. Section 75 of the Income Tax Act, 1962, is hereby amended—

(a) by the addition of the word "or" at the end of paragraph *(i)* of subsection (1); and

(b) by the insertion in subsection (1) after paragraph *(i)* of the following paragraph:

"*(j)* without just cause fails to comply with the provisions of section 99, where that person has been declared to be the agent of any other person as contemplated in that section,".

Amendment of section 81 of Act 58 of 1962, as amended by section 27 of Act 69 of 1975 and section 15 of Act 70 of 1989

53. (1) Section 81 of the Income Tax Act, 1962, is hereby amended—

(a) by the substitution for the heading of the following heading:

"**Objection against assessment**";

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

"(1) Objections to any assessment made under this Act **[may]** shall be made **[within 30 days after the date of the assessment,]** in the manner and under the terms and within the period prescribed by this Act and the rules promulgated in terms of section 107A by any taxpayer who is aggrieved by any assessment in which **[he is interested]** that taxpayer has an interest.";

(c) by the substitution for subsections (2), (3), (4) and (5) of the following subsections:

"(2) The period prescribed in the rules within which objections must be made may be extended by the Commissioner where the Commissioner is satisfied that reasonable grounds exist for the delay in lodging the objection.

(3) Any decision by the Commissioner in the exercise of his or her discretion under subsection (2) shall be subject to objection and appeal.

(4) The Commissioner may on receipt of a notice of objection to an assessment alter the assessment or may disallow the objection and shall send to the taxpayer or his or her representative notice of such alteration or disallowance, and record therein any alteration or disallowance made in the assessment.

(5) Where no objections are made to any assessment or where objections have been allowed in full or withdrawn, such assessment or altered **[or reduced]** assessment, as the case may be, shall **[subject to the right of appeal hereinafter provided,]** be final and conclusive."; and

(d) by the addition of the following subsections:

"(6) Where any dispute between the Commissioner and the person aggrieved by an assessment has been settled in accordance with the

(2) Subartikel (1) word geag op 1 Oktober 2001 in werking te getree het.

Wysiging van artikel 74 van Wet 58 van 1962, soos vervang deur artikel 14 van Wet 46 van 1996 en gewysig deur artikel 27 van Wet 28 van 1997

51. Artikel 74 van die Inkomstebelastingwet, 1962, word hierby gewysig deur in subartikel (1) die omskrywing van "magtigingsbrief" deur die volgende omskrywing te vervang:

" 'magtigingsbrief' 'n geskrewe magtiging verleen deur die Kommissaris, of **['n hoofdirekteur, ontvanger van inkomste of hoofinkomste-inspekteur onder die beheer, leiding of toesig van die Kommissaris]** deur 'n persoon deur die Kommissaris vir daardie doel aangewys of wat 'n pos beklee wat deur die Kommissaris vir die doel aangewys is, aan 'n amptenaar om enige inligting, dokumente of goed te inspekteer, ouditeer, ondersoek of verkry soos beoog in artikel 74B;".

Wysiging van artikel 75 van Wet 58 van 1962, soos gewysig deur artikel 40 van Wet 101 van 1990, artikel 34 van Wet 129 van 1991, artikel 30 van Wet 141 van 1992, artikel 35 van Wet 113 van 1993, artikel 27 van Wet 21 van 1994, artikel 15 van Wet 46 van 1996, artikel 39 van Wet 53 van 1999, artikel 44 van Wet 30 van 2000, artikel 23 van Wet 5 van 2001 en artikel 18 van Wet 19 van 2001

52. Artikel 75 van die Inkomstebelastingwet, 1962, word hierby gewysig—

(a) deur die woord "of" aan die einde van paragraaf *(i)* van subartikel (1) by te voeg; en

(b) deur die volgende paragraaf na paragraaf *(i)* in te voeg:

"*(j)* sonder goeie redes nalaat om te voldoen aan die bepalings van artikel 99, waar daardie persoon as die agent verklaar is van enige ander persoon soos in daardie artikel bedoel,".

Wysiging van artikel 81 van Wet 58 van 1962, soos gewysig deur artikel 27 van Wet 69 van 1975 en artikel 15 van Wet 70 van 1989

53. (1) Artikel 81 van die Inkomstebelastingwet, 1962, word hierby gewysig—

(a) deur die opskrif deur die volgende opskrif te vervang:

"**Beswaar teen aanslag**";

(b) deur subartikel (1) deur die volgende subartikel te vervang:

"(1) Besware teen 'n aanslag ingevolge hierdie Wet gedoen, **[kan binne 30 dae na die datum van die aanslag en]** moet op die wyse en op die voorwaardes en binne die tydperk by hierdie Wet voorgeskryf en die reëls ingevolge artikel 107A uitgevaardig **[voorgeskryf]**, gemaak word deur 'n belastingpligtige wat hom veronreg ag deur 'n aanslag waarby **[hy]** daardie belastingpligtige 'n belang het.";

(c) deur subartikels (2), (3), (4) en (5) deur die volgende subartikels te vervang:

"(2) Die tydperk voorgeskryf in die reëls waarbinne besware gedoen moet word, kan deur die Kommissaris verleng word waar die Kommissaris tevrede is dat redelike gronde vir die vertraging by die indiening van die bewaar bestaan.

(3) 'n Beslissing deur die Kommissaris in die uitoefening van sy of haar diskresie ingevolge subartikel (2) is aan beswaar en appèl onderhewig.

(4) Die Kommissaris kan by ontvangs van 'n kennisgewing van beswaar teen 'n aanslag, die aanslag wysig of die beswaar van die hand wys en moet 'n kennisgewing van so 'n wysiging of afwysing aan die belastingpligtige of sy of haar verteenwoordiger stuur en elke wysiging of afwysing van die aanslag daarin aanteken.

(5) Waar geen besware teen 'n aanslag gemaak word nie, of besware ten volle gehandhaaf of teruggetrek is, is so 'n aanslag of gewysigde **[of verminderde]** aanslag, na gelang van die geval, **[behoudens die reg van appèl hieronder bepaal]** finaal en afdoende."; en

(d) deur die volgende subartikels by te voeg:

"(6) Waar enige geskil tussen die Kommissaris en die persoon veronreg deur 'n aanslag ingevolge die alternatiewe geskilbeslegtings-

alternative dispute resolution procedures prescribed in the regulations, as contemplated in section 107B, the Commissioner may alter that assessment for purposes of giving effect to that settlement.

(7) Any altered assessment contemplated in subsection (6) shall not be subject to objection and appeal.".

(2) Subsection (1) shall come into operation on a date or dates fixed by the President by proclamation in the *Gazette*.

Amendment of section 83 of Act 58 of 1962, as amended by section 21 of Act 90 of 1964, section 22 of Act 103 of 1976, section 15 of Act 104 of 1979, section 19 of Act 96 of 1985, section 16 of Act 70 of 1989, section 36 of Act 129 of 1991, section 36 of Act 113 of 1993, section 30 of Act 28 of 1997 and section 45 of Act 30 of 2000

54. (1) Section 83 of the Income Tax Act, 1962, is hereby amended—

(a) by the substitution for the heading of the following heading:

"Appeals to [specially constituted] tax court against [Commissioner's decision] assessment";

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

"(1) Any person entitled to **[make an objection who is dissatisfied with any decision of the Commissioner as notified to him in terms of section 81 (4)]** object to an assessment, may, subject to the provisions of section 83A, appeal **[therefrom]** against such assessment to **[a special]** the tax court **[for hearing income tax appeals constituted]** established in **[accordance with]** terms of the provisions of this section in the manner and under the terms and within the period prescribed by this Act and the rules promulgated in terms of section 107A.";

(c) by the insertion after subsection (1) of the following subsections:

"(1A) The period prescribed in the rules within which appeal must be noted may be extended by the Commissioner where the Commissioner is satisfied that reasonable grounds exist for the delay in noting the appeal: Provided that any decision by the Commissioner in the exercise of his or her discretion under this subsection shall be subject to objection and appeal.

(1B) No notice of appeal shall be of any force or effect whatsoever which is not delivered at the Commissioner's office within the period prescribed for noting an appeal, or within such extended period as contemplated in subsection (1A).";

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

"(2) There shall be a court to be known as the tax court which shall be a court of record.

(3) The President of the Republic may, by proclamation in the *Gazette*, **[constitute such]** establish a tax court or courts for **[such]** any area or areas as he may think fit, and may from time to time by **[such]** proclamation abolish any existing court or courts or **[constitute such]** establish additional courts as circumstances may require.

(4) Subject to subsection (4B), every tax court established in terms of this Act shall consist of a judge or an acting judge of the High Court, who shall be the President of the court, an accountant and a representative of the commercial community who shall be of good standing and who have appropriate experience: Provided that—

(a) in all cases relating to the business of mining such third member shall, if the President of the court, the Commissioner or the appellant so desires, be a qualified mining engineer;

(b) where any such appeal relates to the valuation of immovable property, or of both movable and immovable property, such third member shall, if the President of the court, the Commissioner or the appellant so desires, be a person appointed by the Commissioner from amongst persons approved by the President of the Republic, an additional member who shall be a person appointed and carrying on business as sworn appraiser who has skills or knowledge relating to the purpose for which the property is utilised; and

prosedures in die reëls, soos in artikel 107B bedoel, voorgeskryf, geskik is, kan die Kommissaris daardie aanslag wysig ten einde effek aan daardie skikking te gee.

(7) Enige gewysigde aanslag in subartikel (6) bedoel is nie aan beswaar en appèl onderhewig nie.".

(2) Subartikel (1) tree in werking op 'n datum deur die President by proklamasie in die *Staatskoerant* bepaal.

Wysiging van artikel 83 van Wet 58 van 1962, soos gewysig deur artikel 21 van Wet 90 van 1964, artikel 22 van Wet 103 van 1976, artikel 15 van Wet 104 van 1979, artikel 19 van Wet 96 van 1985, artikel 16 van Wet 70 van 1989, artikel 36 van Wet 129 van 1991, artikel 36 van Wet 113 van 1993, artikel 30 van Wet 28 van 1997 en artikel 45 van Wet 30 van 2000

54. (1) Artikel 83 van die Inkomstebelastingwet, 1962, word hierby gewysig—

(a) deur die opskrif deur die volgende opskrif te vervang:

"**Appèlle na [spesiaal ingestelde hof] belastinghof teen [beslissing van Kommissaris] aanslag**";

(b) deur subartikel (1) deur die volgende subartikel te vervang:

"(1) Iemand wat geregtig is om 'n beswaar te maak **[en wat ontevrede is met 'n beslissing van die Kommissaris soos ooreenkomstig artikel 81 (4) aan hom meegedeel]** teen 'n aanslag, kan, behoudens die bepalings van artikel 83A, **[daarteen]** teen daardie aanslag appelleer na **['n spesiale hof vir die verhoor van inkomstebelastingappèlle]** die belastinghof, ingestel **[ooreenkomstig]** ingevolge die bepalings van hierdie artikel op die wyse en ingevolge die voorwaardes en binne die tydperk voorgeskryf deur hierdie Wet en die reëls kragtens artikel 107A uitgevaardig.";

(c) deur na subartikel (1) die volgende subartikels in te voeg:

"(1A) Die tydperk in die reëls voorgeskryf waarbinne 'n appèl aangeteken moet word kan deur die Kommissaris verleng word waar die Kommissaris tevrede is dat redelike gronde bestaan vir die vertraging in die aantekening van die appèl: Met dien verstande dat enige beslissing deur die Kommissaris by die uitoefening van sy of haar diskresie ingevolge hierdie subartikel aan beswaar en appèl onderhewig is.

(1B) Geen kennisgewing van appèl het enige uitwerking of krag hoegenaamd nie wat nie by die Kommissaris se kantoor afgelewer is binne die tydperk voorgeskryf vir die aantekening van appèl, of binne sodanige verlengde tydperk soos in subartikel (1A) bedoel, nie.";

(d) deur subartikels (2), (3) en (4) deur die volgende subartikels te vervang:

"(2) Daar is 'n hof bekend as die belastinghof wat 'n hof van rekord is.

(3) Die President van die Republiek kan by proklamasie in die *Staatskoerant* **[so]** 'n **[hof]** belastinghof of -howe instel vir **[die]** enige gebied of gebiede wat hy goedvind, en kan van tyd tot tyd by **[so 'n]** proklamasie 'n bestaande hof of howe afskaf of die addisionele howe instel wat die omstandighede mag vereis.

(4) 'n Hof wat ingevolge die bepalings van hierdie Wet daargestel is, bestaan, behoudens subartikel (4B), uit 'n regter of 'n waarnemende regter van die Hooggeregshof, wat die Voorsitter van die hof is, 'n rekenmeester en 'n verteenwoordigier van die handelstand wat van goeie naam is en wat toepaslike ondervinding het: Met dien verstande dat—

(a) in alle gevalle wat op die mynbou betrekking het, so 'n derde lid 'n gekwalifiseerde myningenieur moet wees indien die Voorsitter van die hof, die Kommissaris of die appellant dit verlang;

(b) waar die appèl verband hou met die waardasie van onroerende eiendom, of beide roerende en onroerende eiendom, so 'n derde lid moet, indien die President van die hof, die Kommissaris of die appellant dit so verlang, 'n persoon wees deur die Kommissaris aangestel uit persone deur die President van die Republiek goedgekeur, wat aangestel is en besigheid as geswore waardeerder beoefen wie kundigheid of kennis moet hê met betrekking tot die doel waarvoor die eiendom gebruik is; en

(c) when an appeal before the court involves a matter of law only or constitutes an application for condonation, the court shall consist of the President of the court sitting alone.";

(e) by the insertion after subsection (4) of the following subsections:

"(4A) Any question as to whether a matter for decision involves a matter of fact or a matter of law, as contemplated in subsection (4)*(c)*, shall be decided by the President of the court sitting alone.

(4B) The Judge President of the Provincial Division of the High Court having jurisdiction in the area where the tax court to hear the appeal is situated, may, where—

(a) the amount which is the subject of the dispute exceeds R50 million; or

(b) the Commissioner and the appellant agree thereto and have jointly applied to that Judge President,

direct that the tax court hearing that appeal shall consist of three judges or acting judges of the High Court, one of whom shall be the President of the tax court, and the members of the court, as contemplated in subsection (4).";

(f) by the substitution in subsection (5) for the words preceding the proviso to paragraph *(a)* of the following words:

"The members of any **[such]** tax court other than judges shall be appointed by the President of the Republic by proclamation in the *Gazette*, and shall hold office for five years from the date of the relevant proclamation:";

(g) by the substitution for paragraph *(c)* of subsection (5) of the following subparagraph:

"*(c)* The members **[of any Special Court for the hearing of income tax appeals constituted under the Income Tax Act, 1941]** appointed under this section as on the date that the amendments to this section are introduced by the Second Revenue Laws Amendment Act, 2001, come into operation, shall be deemed to have been appointed under the provisions of this subsection until the expiry of the term of office of that member, as contemplated in subsection (5)*(a)*.";

(h) by the substitution for subsections (6), (7) and (8) of the following subsections:

"(6) The Judge-President of the Provincial Division of the High Court having jurisdiction in the area for which a tax court has been constituted shall nominate and second a judge or an acting judge of **[such]** that division to be the President of **[such]** that tax court, and **[such]** that secondment shall be for such period or for the hearing of such cases as the said Judge-President shall determine.

(7) Any court established under the provisions of this Act may hear and determine any appeal lodged under the provisions of this Act, or any other Act administered by the Commissioner which provides that the objection and appeal procedures contained in this Part shall apply, whether or not the appellant is resident or carries on business within the area for which that court is established and whether or not the dispute arose within that area.

(8) If an assessment has been altered **[or reduced]**, the assessment as altered **[or reduced]** shall be deemed to be the assessment against which the appeal is made.";

(i) by the deletion of subsections (9) and (10);

(j) by the substitution for subsection (11) of the following subsection:

"(11) The sittings of the tax court **[for the hearing of such appeals]** shall not be public, and the court shall at any time on the application of the appellant exclude **[from such sitting]** or require to withdraw **[therefrom]** from such sitting all or any persons whomsoever whose attendance is not necessary for the hearing of the appeal under consideration.";

(k) by the substitution for paragraphs *(a)* and *(b)* of subsection (13) of the following paragraphs:

"*(a)* in the case of any assessment under appeal—

(i) confirm the assessment; or

(c) wanneer 'n appèl voor die hof slegs 'n regspunt behels of 'n aansoek om kondonasie is, die hof alleenlik uit die Voorsitter van die hof bestaan.";

(e) deur die volgende subartikels na subartikel (4) in te voeg:

"(4A) Enige vraag of 'n aangeleentheid vir beslissing 'n feitegeskil of 'n regspunt is, soos in subartikel (4)*(c)* bedoel, word deur die Voorsitter van die hof alleen beslis.

(4B) Die Regter-president vir die Provinsiale Afdeling van die Hooggeregshof wat regsbevoegdheid het in die gebied waar die belastinghof wat die appèl gaan verhoor, geleë is, kan, waar—

(a) die bedrag wat die onderwerp van geskil R50 miljoen te bowe gaan; of

(b) die Kommissaris en die appellant daartoe ooreenkom, en gesamentlik by daardie Regter-president aansoek gedoen het,

beveel dat die belastinghof wat daardie appèl verhoor sal bestaan uit drie regters of waarnemende regters van die Hooggeregshof, een waarvan die Voorsitter van die belastinghof sal wees, en die lede van die hof soos in subartikel (4) bedoel.";

(f) deur in subartikel (5) die woorde wat die voorbehoudsbepaling by paragraaf *(a)* voorafgaan deur die volgende woorde te vervang:

"Die lede van **[so]** 'n **[hof]** belastinghof wat nie regters is nie word deur die President van die Republiek by proklamasie in die *Staatskoerant* aangestel en beklee hul amp vir vyf jaar vanaf die datum van die betrokke proklamasie:";

(g) deur paragraaf *(c)* van subartikel (5) deur die volgende paragraaf te vervang:

"*(c)* Die lede **[van 'n spesiale hof vir die verhoor van inkomstebelastingappèlle ingestel ingevolge die bepalings van die Inkomstebelastingwet, 1941,]** wat ingevolge hierdie artikel aangestel is soos op die datum wat die wysigings aan hierdie artikel deur die Tweede Wysigingswet op Inkomstewette, 2001, ingevoeg in werking tree word geag ingevolge die bepalings van hierdie subartikel aangestel te wees tot die termyn van aanstelling van daardie lid verstryk, soos in subartikel (5)*(a)* bedoel.";

(h) deur subartikels (6), (7) en (8) deur die volgende subartikels te vervang:

"(6) Die Regter-president van die Provinsiale Afdeling van die Hoë Hof wat regsbevoegdheid het in die gebied waarvoor 'n **[hof]** belastinghof ingestel is, moet 'n regter of waarnemende regter van **[so 'n]** daardie afdeling benoem en tydelik oorplaas om die voorsitter van **[so 'n Hof]** daardie belastinghof te wees, en **[so 'n]** daardie tydelike oorplasing is vir die tydperk of vir die verhoor van die sake wat bedoelde Regter-president bepaal.

(7) 'n Hof kragtens die bepalings van hierdie Wet daargestel kan enige appèl ingevolge die bepalings van hierdie Wet, of enige ander Wet wat deur die Kommissaris geadministreer word wat bepaal dat die beswaar en appèlprosedures in hierdie Deel vervat van toepassing is, aangeteken aanhoor, hetsy die appellant 'n inwoner is of besigheid bedryf in die area waarin daardie hof daargestel is aldan nie en hetsy die dispuut in daardie area ontstaan het aldan nie.

(8) Indien 'n aanslag gewysig **[of verminder]** is, word die aanslag soos gewysig **[of verminder]** geag die aanslag te wees waarteen geappelleer word.";

(i) deur subartikels (9) en (10) te skrap;

(j) deur subartikel (11) deur die volgende subartikel te vervang:

"(11) Die sittings van die **[hof vir die verhoor van sulke appèlle]** belastinghof is nie vir die publiek toeganklik nie en die hof moet te eniger tyd op aansoek van die appellant alle of enige persone wie ook al wie se aanwesigheid nie vir die verhoor van die appèl onder oorweging nodig is nie, van so 'n sitting uitsluit of hulle gelas om hul daaraan te onttrek.";

(k) deur paragrawe *(a)* en *(b)* van subartikel (13) deur die volgende paragrawe te vervang:

"*(a)* in die geval van 'n aanslag waarteen appèl aangeteken is—

(i) die aanslag bevestig;

(ii) order **[such]** that assessment to be **[amended, reduced or confirmed]** altered; or

(iii) **[may]** if it thinks fit, refer the assessment back to the Commissioner for further investigation and assessment;

(b) in the case of any appeal against the amount of **[the]** any additional **[charge]** tax imposed by the Commissioner **[under subsection (1) of section seventy-six]**, reduce, confirm or increase the amount of the additional **[charge]** tax so imposed, subject to the maximum amount chargeable in terms of this Act;";

(l) by the substitution for subsection (14) of the following subsection:

"(14) Any altered assessment made by the Commissioner **[on reference under subsection (13)]** as a result of a referral of an assessment back to the Commissioner, as contemplated in subsection (13)*(a)*(iii), shall be subject to objection and appeal as provided in this Part **[provided]** and the rules promulgated in terms of section 107A.";

(m) by the deletion of subsections (15) and (16);

(n) by the substitution for subsection (17) of the following subsection:

"(17) Where—

(a) the claim of the Commissioner is held to be unreasonable;

(b) the grounds of appeal of the appellant are held to be frivolous;

(c) the decision of the tax board contemplated in section 83A is substantially confirmed;

(d) the hearing of the appeal is postponed at the request of one of the parties; or

(e) the appeal has been withdrawn or conceded by one of the parties after a date of hearing has been allocated by the registrar,

the tax court may, on application by the aggrieved party, grant an order for costs in favour of that aggrieved party, which costs shall be determined in accordance with the fees prescribed by the rules of the High Court.";

(o) by the substitution for subsection (19) of the following subsection:

"(19)**[***(a)***]** The President of the court may indicate which judgments or decisions of the court **[he considers ought to]** must be published for general information, in such form as does not reveal the identity of the appellant."; and

(p) by the addition of the following subsections:

"(20) There shall be a registrar of the tax court, who shall be appointed by the Commissioner.

(21) A person appointed as registrar shall become an employee of the South African Revenue Service.

(22) The registrar shall exercise his or her functions in terms of the Act and the rules independently and impartially.

(23) Any reference in this Part and the rules to 'day' means any day other than a Saturday, Sunday or public holiday: Provided that the days between 16 December of a year and 15 January of the following year, both inclusive, shall not be taken into account in determining days or the period allowed for complying with any provision in this Part or the rules.".

(2) Subsection (1) shall come into operation on a date or dates fixed by the President by proclamation in the *Gazette*.

Amendment of section 83A of Act 58 of 1962, as inserted by section 37 of Act 129 of 1991 and amended by section 37 of Act 113 of 1993, Government Notice R.1245 of 26 September 1997, section 47 of Act 59 of 2000 and section 28 of Act 5 of 2001

55. (1) Section 83A of the Income Tax Act, 1962 is hereby amended—

(a) by the substitution for the heading of the following heading:

"**Appeals to [specially constituted] tax board**";

(ii) beveel dat **[die]** daardie aanslag gewysig **[verminder of bekragtig]** word; of

(iii) na goedvinde die aanslag na die Kommissaris vir verdere ondersoek en aanslag terugverwys;

(b) in die geval van 'n appèl teen die bedrag van **[die]** enige addisionele **[heffing]** belasting deur die Kommissaris **[kragtens subartikel (1) van artikel ses-en-sewentig]** opgelê, die bedrag van die addisionele **[heffing]** belasting aldus opgelê verminder, bekragtig of vermeerder, behoudens die maksimum bedrag hefbaar ingevolge hierdie Wet;";

(l) deur subartikel (14) deur die volgende subartikel te vervang:

"(14) 'n Gewysigde aanslag deur die Kommissaris gedoen **[ingevolge 'n terugverwysing kragtens subartikel (13)]** vanweë 'n terugverwysing van 'n aanslag na die Kommissaris, soos in subartikel (13)*(a)*(iii) bedoel, is onderhewig aan beswaar en appèl volgens voorskrif van hierdie Deel en die reëls ingevolge artikel 107A afgekondig.";

(m) deur subartikels (15) en (16) te skrap;

(n) deur subartikel (17) deur die volgende subartikel te vervang:

"(17) Waar—

(a) die eis van die Kommissaris bevind word onredelik te wees;

(b) die gronde van appèl van die appellant bevind word beuselsagtig te wees;

(c) die beslissing van die belastingraad in artikel 83A bedoel wesenlik bekragtig word;

(d) die verhoor van die appèl op versoek van een van die partye uitgestel word; of

(e) die appèl teruggetrek of toegegee word deur een van die partye nadat 'n datum vir verhoor deur die griffier toegeken is,

kan die belastinghof, op versoek van die veronregte party, 'n bevel maak vir koste in die guns van daardie veronregte party, welke koste vasgestel word ingevolge die tariewe deur die reëls van die Hooggeregshof voorgeskryf.";

(o) deur subartikel (19) deur die volgende subartikel te vervang:

"(19) Die Voorsitter van die hof kan aandui welke uitsprake of beslissings van die hof **[na sy mening]** vir algemene inligting gepubliseer **[behoort te]** moet word, in 'n vorm wat nie die identiteit van die appellant openbaar nie.";

(p) deur die volgende subartikels by te voeg:

"(20) Daar is 'n griffier van die belastinghof, wat deur die Kommissaris aangestel word.

(21) 'n Persoon wat as griffier aangestel is, word 'n werknemer van die Suid-Afrikaanse Inkomstediens.

(22) Die griffier vervul sy of haar funksies ingevolge die Wet en die reëls onafhanklik en onbevooroordeeld.

(23) Enige verwysing in hierdie Deel en die reëls na 'dag' beteken enige dag behalwe 'n Saterdag, Sondag of openbare vakansiedag: Met dien verstande dat die dae tussen 16 Desember van 'n jaar en 15 Januarie van die volgende jaar, beide insluitend, nie in ag geneem sal word by die berekening van dae of die tydperk toegelaat om aan enige bepaling in hiedie Deel of die reëls te voldoen nie.".

(2) Subartikel (1) tree in werking op 'n datum deur die President by proklamasie in die *Staatskoerant* bepaal.

Wysiging van artikel 83A van Wet 58 van 1962, soos ingevoeg deur artikel 37 van Wet 129 van 1991 en gewysig deur artikel 37 van Wet 113 van 1993, Goewermentskennisgewing R.1245 van 26 September 1997, artikel 47 van Wet 59 van 2000 en artikel 28 van Wet 5 van 2001

55. (1) Artikel 83A van die Inkomstebelastingwet, 1962, word hierby gewysig—

(a) deur die opskrif deur die volgende opskrif te vervang:

"**Appèlle na [spesiaal ingestelde raad] belastingraad**";

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

"Provided that where the Commissioner, at any time prior to the hearing of such appeal, or the **[Chairman]** Chairperson of the board, at any time prior to or during the hearing of such appeal, is of the opinion that on the ground of the disputes or legal principles arising or that may arise out of such appeal, such appeal should rather be heard by the **[special]** tax court, such appeal shall be set down for hearing de novo before the **[special]** tax court referred to in section 83.";

(c) by the substitution for subsections (2) and (3) of the following subsections:

"(2) A **[special]** board, **[hereinafter referred to]** to be known as the tax board, is hereby established for the hearing of an appeal referred to in subsection (1).

(3) The board shall consist of an advocate or attorney referred to in subsection (4), who shall be the **[Chairman]** Chairperson of the board, and, if the **[Chairman]** Chairperson, the Commissioner or the taxpayer considers it necessary, an accountant or a representative of the commercial community referred to in section 83 **[(2)]** (4).";

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

"*(a)* The Minister of Finance shall in consultation with the Judge-President of the Provincial Division within whose area of jurisdiction the board is to sit, appoint, by notice in the *Gazette*, advocates and attorneys to a panel, from which a **[Chairman]** Chairperson of the board shall be nominated from time to time or as required, and such persons shall hold office for five years from the date of the relevant notice: Provided that the appointment of such a person may at any time be terminated by the said Minister for any reason which he considers good and sufficient.";

(e) by the substitution in subsection (7) for the words preceding subparagraph (i) of paragraph *(b)* of the following words:

"*(b)* within **[21 business]** 30 days before the date of the hearing of the appeal, furnish the members of the board and the appellant with a written notice of the time and place of the hearing of the appeal and a dossier containing copies of—";

(f) by the substitution for subparagraphs (i) and (ii) of paragraph *(b)* of subsection (9) of the following subparagraphs:

"(i) the appellant or his or her representative taxpayer may, together with his notice of appeal **[under section 83(7)*(a)*]** or within such further period as the **[Chairman]** Chairperson may allow, request permission to present his or her case otherwise than as contemplated in this subsection;

(ii) the **[Chairman]** Chairperson may as he or she deems fit permit the appellant to present his or her case in such manner as the **[Chairman]** Chairperson sees fit;";

(g) by the substitution for paragraphs *(a)*, *(b)* and *(c)* of subsection (10) of the following paragraphs:

"*(a)* During the hearing of the appeal the **[Chairman]** Chairperson shall determine the procedures as he or she sees fit, subject to each party having the opportunity to put his or her case to the board in a reasonable manner.

(b) The board shall not be required to record its proceedings, but the decision of the board shall be recorded in writing by the **[Chairman]** Chairperson, with a short statement of the facts of the case as found by the board and the reasons for its decision.

(c) The hearing of an appeal may be adjourned by the **[Chairman]** Chairperson to any time and place that may seem convenient.";

(h) by the substitution for paragraphs *(e)* and *(f)* of subsection (10) of the following paragraphs:

"*(e)* (i) If neither the appellant nor anyone authorized to appear on his or her behalf appears before the board at the time and place appointed for the purpose, the board may, at the request of the Commissioner's representative and on proof that the prescribed notice of the sitting of the board had been submitted to the appellant, confirm the assessment in respect of which the appeal has been lodged, and thereafter such

(b) deur die voorbehoudsbepaling by subartikel (1) deur die volgende subartikel te vervang:

"Met dien verstande dat waar die Kommissaris te eniger tyd voor die verhoor van bedoelde appèl of die Voorsitter van die Raad te eniger tyd voor of tydens die verhoor van bedoelde appèl, van mening is dat op grond van die geskilpunte of regsbeginsels wat uit bedoelde appèl voortspruit of mag voortspruit, bedoelde appèl eerder deur die **[spesiale hof]** belastinghof verhoor moet word, word bedoelde appèl *de novo* voor die **[spesiale hof]** belastinghof bedoel in artikel 83 vir verhoor geplaas.";

(c) deur subartikels (2) en (3) deur die volgende subartikels te vervang:

"(2) Hierby word 'n **[spesiale]** raad **[hieronder]** wat die **[Raad]** belastingraad genoem word, ingestel vir die verhoor van 'n appèl bedoel in subartikel (1).

(3) Die raad bestaan uit 'n advokaat of prokureur in subartikel (4) bedoel, wat die Voorsitter van die Raad is, en, indien die Voorsitter, die Kommissaris of die belastingpligtige dit goed ag, 'n rekenmeester of 'n verteenwoordiger van die handelstand soos in artikel 83 **[(2)]** (4) bedoel.";

(d) deur in die Engelse teks paragraaf *(a)* van subartikel (4) deur die volgende paragraaf te vervang:

"*(a)* The Minister of Finance shall in consultation with the Judge-President of the Provincial Division within whose area of jurisdiction the board is to sit, appoint, by notice in the *Gazette*, advocates and attorneys to a panel, from which a **[Chairman]** Chairperson of the board shall be nominated from time to time or as required, and such persons shall hold office for five years from the date of the relevant notice: Provided that the appointment of such a person may at any time be terminated by the said Minister for any reason which he considers good and sufficient.";

(e) deur in subartikel (7) die woorde wat subparagraaf (i) van paragraaf *(b)* deur die volgende woorde te vervang:

"*(b)* verstrek binne **[21 besigheidsdae]** 30 dae voor die verhoordatum van die appèl, aan die lede van die Raad en die appellant 'n skriftelike kennisgewing van die tyd en plek vir die verhoor van die appèl en 'n dossier bevattende afdrukke van—";

(f) deur subparagrawe (i) en (ii) van paragraaf *(b)* van subartikel (9) deur die volgende subparagrawe te vervang:

"(i) die appellant of sy of haar verteenwoordigende belastingpligtige, tesame met sy kennisgewing van appèl **[ingevolge artikel 83(7)*(a)*]** of binne sodanige verdere tydperk wat die Voorsitter toelaat, toestemming kan vra om sy of haar appèl op 'n ander wyse soos beoog in hierdie subartikel, te stel;

(ii) die Voorsitter na goeddunke die appellant kan toelaat om sy of haar saak op die wyse wat **[hy]** die Voorsitter goed ag, te stel;";

(g) deur paragraaf *(a)* en in die Engelse teks paragrawe *(b)* en *(c)* van subartikel (10) deur die volgende paragrawe te vervang:

"*(a)* Tydens die verhoor van die appèl bepaal die Voorsitter die prosedure na goeddunke mits elke party die geleentheid het om sy of haar saak op 'n redelike wyse aan die Raad te stel.

(b) The board shall not be required to record its proceedings, but the decision of the board shall be recorded in writing by the **[Chairman]** Chairperson, with a short statement of the facts of the case as found by the board and the reasons for its decision.

(c) The hearing of an appeal may be adjourned by the **[Chairman]** Chairperson to any time and place that may seem convenient.";

(h) deur paragraaf *(e)* van subartikel (10) en in die Engelse teks paragraaf *(f)* van subartikel (10) deur die volgende paragrawe te vervang:

"*(e)* (i) As nòg die appellant nòg enigeen met magtiging om namens hom te verskyn voor die Raad verskyn op die tyd en plek vir die doel bepaal, kan die Raad op versoek van die Kommissaris se verteenwoordiger en by bewys dat die voorgeskrewe kennisgewing van die sitting van die Raad aan die appellant gestuur is, die aanslag ten opsigte waarvan beswaar gemaak is, bekragtig, en bedoelde appellant is

appellant shall not be entitled to request that the appeal be referred to the **[special]** tax court in terms of subsection (13)*(a)*.

(ii) If the Commissioner's representative fails to appear before the board at the time and place appointed for the purpose the board may, at the request of the appellant, allow the appellant's appeal and thereafter the Commissioner shall not be entitled to refer the appeal to the **[special]** tax court in terms of subsection (13)*(b)*.

(f) The provisions of paragraph *(e)* shall not apply where the **[Chairman]** Chairperson is satisfied that sound reasons exist for the non-appearance and such reasons are advanced by the appellant or the Commissioner (as the case may be) within seven days after the date on which the appeal was set down for hearing."; and

(i) by the substitution for subsection (11) of the following subsection:

"(11) For the purposes of this section the provisions of sections 82, 83**[(7)]**(1B), (8), (11) and (13) **[and (15)]**, 87 and 88 shall *mutatis mutandis* apply."; and

(j) by the substitution for subsections (13) and (14) of the following subsection:

"(13) *(a)* Where an appellant is not satisfied with the decision of the board, he may, within 30 days (or within such further period as the **[Chairman]** Chairperson may on good cause shown allow) after the date of the notice referred to in subsection (10)*(d)*, require that the appeal be referred to the **[special]** tax court for hearing.

(b) Where the Commissioner is not satisfied with the decision of the board, he may **[decide to]** refer the appeal to the **[special]** tax court for hearing and he shall notify the appellant thereof within 30 days (or within such further period as the **[Chairman]** Chairperson may on good cause shown allow) after the date of the notice referred to in subsection (10)*(d)*.

(14) An appeal which has been heard by the board and has been referred to the **[special]** tax court by virtue of subsection (13)*(a)* or *(b)*, shall be heard *de novo* by the **[special]** tax court.".

(2) Subsection (1) shall come into operation on a date or dates fixed by the President by proclamation in the *Gazette*.

Amendment of section 84 of Act 58 of 1962, as amended by section 46 of Act 30 of 2000

56. (1) Section 84 of the Income Tax Act, 1962 is hereby amended—

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

"(1) The Commissioner, the appellant or the President of a **[special]** tax court may procure the attendance of any witness (whether residing or for the time being within the area of jurisdiction of that court or not) in the manner prescribed in the **[regulations]** rules."; and

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

"(6) A penalty imposed under subsection (2) or (3) shall be enforced *mutatis mutandis* as if it were a penalty imposed by a **[magistrate's court]** High Court in circumstances such as are described in the relevant subsection, and the provisions of any law which are applicable in respect of such a penalty imposed by a **[magistrate's court]** High Court shall *mutatis mutandis* apply in respect of a penalty imposed under either of the said subsections.".

(2) Subsection (1) shall come into operation on a date or dates fixed by the President by proclamation in the *Gazette*.

Amendment of section 85 of Act 58 of 1962, as amended by section 47 of Act 30 of 2000

57. (1) Section 85 of the Income Tax Act, 1962, is hereby amended—

(a) by the substitution for the heading of the following heading:

"**Contempt of [special] tax court**"; and

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

"(1) If during the sitting of a **[special]** tax court, any person wilfully insults a member of the court or any officer of the court attending at the sitting, or wilfully interrupts the proceedings of the court or otherwise

daarna nie geregtig om te versoek dat die appèl na die **[spesiale hof]** belastinghof ingevolge subartikel (13)*(a)* verwys word nie.

(ii) As die Kommissaris se verteenwoordiger versuim om voor die Raad te verskyn op die tyd en plek vir die doel bepaal, kan die Raad op versoek van die appellant die appellant se appèl handhaaf, en die Kommissaris is daarna nie geregtig om die appèl na die **[spesiale hof]** belastinghof ingevolge subartikel 13*(b)* te verwys nie.

(f) The provisions of paragraph *(e)* shall not apply where the **[Chairman]** Chairperson is satisfied that sound reasons exist for the non-appearance and such reasons are advanced by the appellant or the Commissioner (as the case may be) within seven days after the date on which the appeal was set down for hearing."; en

(i) deur subartikel (11) deur die volgende subartikel te vervang:

"(11) By die toepassing van hierdie artikel geld die bepalings van artikels 82, 83**[(7)]**(1B), (8), (11) en (13) **[en (15)]**, 87 en 88 *mutatis mutandis*.";

(j) deur subartikels (13) en (14) deur die volgende subartikels te vervang:

"(13) *(a)* Waar 'n appellant ontevrede is met 'n beslissing van die Raad kan hy binne 30 dae (of sodanige verdere tydperk wat die Voorsitter by bewys van gegronde rede toelaat) na die datum van die kennisgewing bedoel in subartikel (10)*(d)*, vereis dat die appèl vir verhoor na die **[spesiale hof]** belastinghof verwys word.

(b) Waar die Kommissaris ontevrede is met die beslissing van die Raad kan hy **[besluit om]** die appèl vir verhoor na die **[spesiale hof te]** belastinghof verwys en stel hy die appellant binne 30 dae (of sodanige verdere tydperk wat die Voorsitter by bewys van gegronde rede toelaat) na die datum van die kennisgewing bedoel in subartikel (10)*(d)*, daarvan in kennis.

(14) 'n Appèl wat deur die raad verhoor is en uit hoofde van subartikel (13)*(a)* of *(b)* na die **[spesiale hof]** belastinghof vir verhoor verwys is, word *de novo* deur die **[spesiale hof]** belastinghof verhoor.".

(2) Subartikel (1) tree in werking op 'n datum of datums deur die President by proklamasie in die *Staatskoerant* bepaal.

Wysiging van artikel 84 van Wet 58 van 1962, soos gewysig deur artikel 46 van Wet 30 van 2000

56. (1) Artikel 84 van die Inkomstebelastingwet, 1962, word hierby gewysig—

(a) deur subartikel (1) deur die volgende subartikel te vervang:

"(1) Die Kommissaris, die appellant of die Voorsitter van 'n **[spesiale hof]** belastinghof kan die verskyning van 'n getuie (ongeag of hy binne die regsgebied van daardie hof woonagtig is of aldaar verkeer al dan nie) op die by **[regulasie]** reël voorgeskrewe wyse verkry.; en

(b) deur subartikel (6) deur die volgende subartikel te vervang:

"(6) 'n Kragtens subartikel (2) of (3) opgelegde straf word ten uitvoer gelê *mutatis mutandis* asof dit 'n straf is wat 'n **[landdroshof]** Hooggeregshof opgelê het onder omstandighede soos dié wat in die toepaslike subartikel beskryf word, en die wetsbepalings van toepassing ten opsigte van so 'n straf deur 'n **[landdroshof]** Hooggeregshof opgelê, is *mutatis mutandis* van toepassing ten opsigte van 'n straf kragtens die een of die ander van genoemde subartikels opgelê.

(2) Subartikel (1) tree in werking op 'n datum of datums deur die President by proklamasie in die *Staatskoerant* bepaal.

Wysiging van artikel 85 van Wet 58 van 1962, soos gewysig deur artikel 47 van Wet 30 van 2000

57. (1) Artikel 85 van die Inkomstebelastingwet, 1962, word hierby gewysig—

(a) deur die opskrif deur die volgende opskrif te vervang:

"**Minagting van [spesiale hof] belastinghof**"; en

(b) deur subartikel (1) deur die volgende subartikel te vervang:

"(1) Indien iemand gedurende 'n sitting van 'n **[spesiale hof]** belastinghof opsetlik 'n lid van die hof of 'n by die sitting aanwesige beampte van die hof beledig, of opsetlik die verrigtings van die hof

misbehaves **[himself]** in the place where the court is held, the President of the court may make an order committing that person to imprisonment for any period not exceeding three months or order that person to pay a fine or in default of payment thereof to be imprisoned for such a period.".

(2) Subsection (1) shall come into operation on a date or dates fixed by the President by proclamation in the *Gazette*.

Amendment of section 86A of Act 58 of 1962, as inserted by section 24 of Act 103 of 1976 and amended by section 39 of Act 113 of 1993 and section 31 of Act 28 of 1997

58. (1) Section 86A of the Income Tax Act, 1962 is hereby amended—

(a) by the substitution for the heading of the following heading:
"**Appeals against decisions of a [special] tax court**";

(b) by the substitution for subsection (1) of the following subsection:
"(1) The appellant in a **[special]** tax court or the Commissioner may in the manner hereinafter provided appeal under this section against any decision of that court.";

(c) by the substitution for paragraph *(b)* of subsection (2) of the following paragraph:
"*(b)* where—
(i) the President of the **[special]** tax court has granted leave under subsection (5); or
(ii) the appeal was heard by the tax court constituted in terms of section 83(4B),
to the Supreme Court of Appeal, without any intermediate appeal to such provincial division.";

(d) by the substitution for subsection (3) of the following subsection:
"(3) Any party who in terms of subsection (1) has a right to appeal against a decision of a **[special]** tax court and intends to lodge an appeal against such decision under this section shall, within 21 **[business]** days after the date of the notice issued by the registrar of the **[special]** tax court notifying such decision or within such further period as the President of that court may on good cause shown allow, lodge with the said registrar and the opposite party or his attorney or agent a notice of his intention to appeal against such decision.";

(e) by the substitution for paragraph *(c)* of subsection (4) of the following paragraph:
"*(c)* whether, for the purposes of preparing the record on appeal, a transcript is required of the evidence given at the hearing of the case by the **[special]** tax court or, if only a part of such evidence is required, what part is required.";

(f) by the substitution for subsections (5) and (6) of the following subsections:
"(5) If an intending appellant wishes his appeal against a decision of the **[special]** tax court to be heard by the Supreme Court of Appeal, the registrar of the **[special]** tax court shall submit the notice or notices of intention to appeal lodged under subsection (3) to the President of the **[special]** tax court who shall, having regard to the contemplated grounds of the intended appeal or appeals as indicated in the said notice or notices, make an order granting or refusing, as he sees fit, leave to appeal against such decision to the said Court, and the order so made shall be final.

(6) If the person nominated as President of the **[special]** tax court cannot act in that capacity for the purposes of this section by reason of his having ceased to be a judge or acting judge or if such person has died or if it is inconvenient for such person to act in the said capacity by reason of his absence or illness or for some other reason, the Judge President of the provincial division of the High Court having jurisdiction in the area for which the **[special]** tax court has been constituted may nominate and

onderbreek of **[hom]** op 'n ander wyse aan wangedrag skuldig maak in die plek waar die hofsitting gehou word, kan die Voorsitter van die hof by bevel so iemand vir 'n tydperk van hoogstens drie maande na die gevangenis verwys of gelas dat hy 'n boete betaal of by wanbetaling vir so 'n tydperk gevange gesit word.".

(2) Subartikel (1) tree in werking op 'n datum of datums deur die President by proklamasie in die *Staatskoerant* bepaal.

Wysiging van artikel 86A van Wet 58 van 1962, soos ingevoeg deur artikel 24 van Wet 103 van 1976 en gewysig deur artikel 39 van Wet 113 van 1993 en artikel 31 van Wet 28 van 1997

58. (1) Artikel 86A van die Inkomstebelastingwet, 1962, word hierby gewysig—

(a) deur die opskrif deur die volgende opskrif te vervang:
"**Appèlle teen beslissings van 'n [spesiale hof] belastinghof**";

(b) deur subartikel (1) deur die volgende subartikel te vervang:
"Die appellant in 'n **[spesiale hof]** belastinghof of die Kommissaris kan ingevolge hierdie artikel op die hieronder voorgeskrewe wyse appelleer teen 'n beslissing van daardie hof.";

(c) deur paragraaf *(b)* van subartikel (2) deur die volgende paragraaf te vervang:
"*(b)* waar—
(i) die Voorsitter van die **[spesiale hof]** belastinghof ingevolge subartikel (5) verlof toegestaan het; of
(ii) die appèl verhoor is deur die belastinghof saamgestel ingevolge artikel 83(4B),
deur die Hoogste Hof van Appèl van die Hooggeregshof, sonder 'n tussenappèl na bedoelde provinsiale afdeling.";

(d) deur subartikel (3) deur die volgende subartikel te vervang:
"(3) 'n Party wat ingevolge subartikel (1) 'n reg van appèl het teen 'n beslissing van 'n **[spesiale hof]** belastinghof en voornemens is om 'n appèl teen daardie beslissing ingevolge hierdie artikel in te dien, moet, binne **[een-en-twintig besigheidsdae]** 21 dae na die datum van die kennisgewing uitgereik deur die griffier van die **[spesiale hof]** belastinghof waarin bedoelde beslissing meegedeel word, of binne die verdere tydperk wat die Voorsitter van dié hof by bewys van gegronde rede toelaat, by bedoelde griffier en die teenparty of sy prokureur of verteenwoordiger 'n kennisgewing indien van sy voorneme om teen bedoelde beslissing te appelleer.";

(e) deur paragraaf *(c)* van subartikel (4) deur die volgende paragraaf te vervang:
"*(c)* of, ten einde die oorkonde vir appèl voor te berei, 'n transkrip vereis word van die getuienis wat by die verhoor van die appèl deur die **[spesiale hof]** belastinghof gelewer is of, indien slegs 'n gedeelte van die getuienis vereis word, watter gedeelte vereis word.";

(f) deur subartikel (5) en (6) deur die volgende subartiktels te vervang:
"(5) Indien 'n voornemende appellant verlang dat sy appèl teen 'n beslissing van die **[spesiale hof]** belastinghof deur die Hoogste Hof van Appèl verhoor word, moet die griffier van die **[spesiale hof]** belastinghof die kennisgewing of kennisgewings van voorneme om te appelleer wat ingevolge subartikel (3) ingedien is, aan die Voorsitter van die **[spesiale hof]** belastinghof voorlê, wat, met inagneming van die beoogde gronde van die voorgenome appèl of appèlle, soos in bedoelde kennisgewing of kennisgewings aangedui, 'n bevel moet uitreik waarin verlof om na bedoelde Hof teen bedoelde beslissing te appelleer, toegestaan of geweier word, na hy goedvind, en die aldus uitgereikte bevel is afdoende.

(6) Indien die persoon wat as Voorsitter van die **[spesiale hof]** belastinghof benoem is, nie vir die doeleindes van hierdie artikel in daardie hoedanigheid kan optree nie uit hoofde van die feit dat hy nie meer 'n regter of waarnemende regter is nie of indien daardie persoon oorlede is of indien dit vir daardie persoon ongeleë is om in bedoelde hoedanigheid op te tree uit hoofde van sy afwesigheid of siekte of om enige ander rede, kan die Regter-president van die provinsiale afdeling van die **[Hoë Hof]** Hooggeregshof wat regsbevoegdheid het in die gebied waarvoor die **[spesiale hof]** belastinghof ingestel is, 'n ander regter of waarnemende regter benoem en tydelik oorplaas om as

second another judge or acting judge to act as President of the **[special]** tax court for the purposes of this section in the place of the said person.";

(g) by the substitution for subsections (8) and (9) for the following subsections:

"(8) Any person who was entitled under this section to appeal against a decision of the **[special]** tax court but has not within the time allowed by subsection (3) lodged a notice of his intention to appeal against such decision as required by that subsection, shall be deemed to have abandoned his right of appeal against such decision: Provided that he shall be entitled as the respondent in an appeal noted by the opposite party in the same case, to note in the manner hereinafter provided a cross-appeal in that case.

(9) Any person who has in terms of subsection (3) lodged a notice of his intention to appeal against a decision of the **[special]** tax court but has subsequently withdrawn such notice shall be deemed to have abandoned his right to note any appeal or cross-appeal against such decision.";

(h) by the substitution for the words preceding subparagraph (i) of paragraph *(a)* of subsection (10) of the following words:

"*(a)* After the expiry of the time allowed under subsection (3) for the lodging of a notice of intention to appeal against a decision of the **[special]** tax court the registrar of that court shall—";

(i) by the substitution for subparagraphs (i) and (ii) of paragraph *(a)* of subsection (10) of the following subparagraphs:

"(i) give notice to any person who has lodged a notice of intention in terms of the said subsection and has not withdrawn such notice, that if it is decided to appeal the appeal should be noted within 21 **[business]** days after the date of the registrar's notice;

(ii) supply to such person a certified copy of any order made by the President of the **[special]** tax court under subsection (5) in relation to the intended appeal against the said decision; and";

(j) by the substitution for paragraph *(b)* of subsection (10) of the following paragraph:

"*(b)* Where it appears that an order be made by the President of the **[special]** tax court under subsection (5) or where an intending appellant requires a transcript of evidence given at the hearing of the case by the **[special]** tax court to enable him to prepare the record on appeal, the registrar of that court shall not give notice under paragraph *(a)*(i) until such order has been made and such transcript has been completed.";

(k) by the substitution for subsection (11) of the following subsection:

"(11) Any appeal under this section against a decision of a **[special]** tax court shall be noted by lodging a written notice of such appeal with the registrar of the **[special]** tax court, the opposite party or his attorney and the registrar of the appeal court.";

(l) by the substitution for subsections (13) and (14) of the following subsections:

"(13) Any cross-appeal against a decision of the **[special]** tax court in any case in which an appeal has been lodged under this section shall be noted by lodging a written notice of such cross-appeal with the registrar of the **[special]** tax court, the opposite party or his attorney and the registrar of the appeal court.

(14) Such notice of cross-appeal shall be lodged within 21 **[business]** days after the date of the noting of the appeal or within such longer period as may be allowed under the rules of the appeal court.";

(m) by the substitution for paragraph *(a)* of subsection (16) for the following subparagraph:

"*(a)* A party may, by notice in writing lodged with the opposite party or his attorney or agent and the registrar of the **[special]** tax court, abandon the whole or any part of a judgment of that court in his favour.";

Voorsitter van die **[spesiale hof]** belastinghof vir die doeleindes van hierdie artikel in die plek van bedoelde persoon waar te neem.";

(g) deur subartikels (8) en (9) deur die volgende subartikels te vervang:

"(8) Iemand wat ingevolge hierdie artikel geregtig was om teen 'n beslissing van die **[spesiale hof]** belastinghof te appelleer, maar nie binne die tydperk wat ingevolge subartikel (3) toegelaat word, 'n kennisgewing van sy voorneme om teen daardie beslissing te appelleer, ingedien het nie, soos deur dié subartikel vereis, word geag afstand te gedoen het van sy reg om teen bedoelde beslissing te appelleer: Met dien verstande dat hy as respondent in 'n appèl aangeteken deur die teenparty in dieselfde saak geregtig is om op die hieronder voorgeskrewe wyse 'n teenappèl in daardie saak aan te teken.

(9) Iemand wat ingevolge subartikel (3) 'n kennisgewing van sy voorneme om teen 'n beslissing van die **[spesiale hof]** belastinghof te appelleer, ingedien het maar daarna daardie kennisgewing ingetrek het, word geag afstand te gedoen het van sy reg om 'n appèl of teenappèl teen bedoelde beslissing aan te teken.";

(h) deur die woorde wat subparagraaf (i) van paragraaf *(a)* van subartikel (10) deur die volgende woorde te vervang:

"*(a)* Na verstryking van die tydperk toegelaat ingevolge subartikel (3) vir die indiening van 'n kennisgewing van voorneme om te appelleer teen 'n beslissing van die **[spesiale hof]** belastinghof, moet die griffier van daardie hof—";

(i) deur subparagrawe (i) en (ii) van paragraaf *(a)* van subartikel (10) deur die volgende subparagrawe te vervang:

"(i) kennis gee aan enige persoon wat 'n kennisgewing van voorneme kragtens bedoelde subartikel ingedien het en dié kennisgewing nie teruggetrek het nie, dat indien daar besluit word om te appelleer, die appèl binne 21 **[besigheidsdae]** dae na die datum van die griffier se kennisgewing aangeteken moet word;

(ii) aan bedoelde persoon 'n gesertifiseerde afskrif verstrek van 'n bevel deur die Voorsitter van die **[spesiale hof]** belastinghof ingevolge subartikel (5) uitgereik met betrekking tot die voorgenome appèl teen bedoelde beslissing;";

(j) deur paragraaf *(b)* van subartikel (10) deur die volgende paragraaf te vervang:

"*(b)* Waar dit voorkom dat 'n bevel deur die Voorsitter van die **[spesiale hof]** belastinghof ingevolge subartikel (5) uitgereik sal word of waar 'n voornemende appellant 'n transkrip van getuienis wat by die verhoor van die saak deur die **[spesiale hof]** belastinghof gelewer is, nodig het ten einde hom in staat te stel om die oorkonde vir appèl voor te berei, gee die griffier van daardie hof nie kennis ingevolge paragraaf *(a)*(i) nie totdat bedoelde bevel uitgereik is en bedoelde transkrip voltooi is.";

(k) deur subartikel (11) deur die volgende subartikel te vervang:

"(11) 'n Appèl ingevolge hierdie artikel teen 'n beslissing van 'n **[spesiale hof]** belastinghof word aangeteken deur 'n skriftelike kennisgewing van daardie appèl in te dien by die griffier van die spesiale hof, die teenparty of sy prokureur en die griffier van die appèlhof.";

(l) deur subartikels (13) en (14) deur die volgende subartikels te vervang:

"(13) 'n Teenappèl teen 'n beslissing van die **[spesiale hof]** belastinghof in 'n saak waarin appèl ingevolge hierdie artikel aangeteken is, word aangeteken deur 'n skriftelike kennisgewing van daardie teenappèl in te dien by die griffier van die **[spesiale hof]** belastinghof, die teenparty of sy prokureur en die griffier van die appèlhof.)

(14) Bedoelde kennisgewing van teenappèl word ingedien binne **[een-en-twintig besigheidsdae]** 21 dae na die datum waarop die appèl aangeteken is of binne die langer tydperk wat toegelaat word ingevolge die reëls van die appèlhof.";

(m) deur paragraaf *(a)* van subartikel (16) deur die volgende subparagraaf te vervang:

"*(a)* 'n Party kan, by skriftelike kennisgewing ingedien by die teenparty of sy prokureur of verteenwoordiger en die griffier van die **[spesiale hof]** belastinghof, geheel en al of ten dele van 'n vonnis van dié hof in sy guns afstand doen.";

(n) by the substitution for subsections (17), (18) and (19) of the following subsections:

"(17) The record lodged with an appeal court in an appeal against a decision of a **[special]** tax court shall include any documents placed before the **[special]** tax court in terms of the **[regulations]** rules: Provided that merely formal documents and, if the parties consent, such other documents as do not relate to the matters in dispute in the appeal, may be excluded from the record.

(18) Any application or notice which may in terms of this section be lodged with the registrar of the **[special]** tax court shall be delivered to the registrar **[or assistant registrar]** of that court **[personally]** during office hours.

(19) Service of any notice which the registrar of the **[special]** tax court is required to give to any person under this section or of any notice which any party may under this section lodge with an opposite party or his or her attorney or agent shall be effected by the registrar or the party lodging the notice, as the case may be, or by some person acting on the instructions of the registrar or such party, in the manner prescribed by law for the service of process of the High Court, or by dispatching such notice to the person to whom it is addressed by registered post addressed to such person's residential or business address."; and

(o) by the substitution for paragraph *(b)* of subsection (20) for the following paragraph:

"*(b)* any notice served by or on behalf of the Commissioner or the registrar of the **[special]** tax court upon the public officer of a company in his capacity as such shall be deemed to have been served upon the company;".

(2) Subsection (1) shall come into operation on a date or dates fixed by the President by proclamation in the *Gazette*.

Substitution of section 87 of Act 58 of 1962, as amended by section 32 of Act 28 of 1997

59. (1) Section 87 of the Income Tax Act, 1962 is hereby substituted by the following section:

"**Members of courts not disqualified from adjudicating**

87. A member of any **[special]** tax court or a judge of any division of the High Court of South Africa shall not solely on account of his or her liability to be assessed under this Act be deemed to be interested in any matter upon which he or she may be called upon to adjudicate thereunder.".

(2) Subsection (1) shall come into operation on a date fixed by the President by proclamation in the *Gazette*.

Amendment of section 88 of Act 58 of 1962, as amended by section 12 of Act 6 of 1963, section 44 of Act 85 of 1974, section 25 of Act 103 of 1976, section 24 of Act 91 of 1982, section 30 of Act 121 of 1984, section 17 of Act 70 of 1989, section 40 of Act 113 of 1993 and section 14 of Act 140 of 1993

60. (1) Section 88 of the Income Tax Act, 1962, is hereby amended by the substitution for subsection (1) of the following subsection:

"(1) The obligation to pay and the right to receive and recover any tax chargeable under this Act shall not, unless the Commissioner so directs, be suspended by any appeal or pending the decision of a court of law under section 86A, but if any assessment is altered on appeal or in conformity with any such decision or a decision by the Commissioner to concede the appeal to the **[special]** tax board or the **[special]** tax court or such court of law, a due adjustment shall be made, amounts paid in excess being refunded with interest at the prescribed rate, such interest being calculated from the date proved to the satisfaction of the

(n) deur subartikels (17), (18) en (19) deur die volgende subartikels te vervang:

"(17) By die oorkonde wat by 'n appèlhof ingedien word in 'n appèl teen 'n beslissing van 'n **[spesiale hof]** belastinghof word ingesluit enige dokumente wat ingevolge die **[regulasies]** reëls aan die **[spesiale hof]** belastinghof voorgelê is: Met dien verstande dat dokumente wat bloot van 'n formele aard is en, indien die partye instem, sodanige ander dokumente as wat nie betrekking het op die geskilpunte in die appèl nie, van die oorkonde uitgesluit kan word.

(18) 'n Aansoek of kennisgewing wat ingevolge hierdie artikel by die griffier van die **[spesiale hof]** belastinghof ingedien kan word, word aan die griffier **[of 'n assistent-griffier]** van daardie hof **[persoonlik]** oorhandig gedurende kantoorure.

(19) Betekening van 'n kennisgewing waartoe die griffier van die **[spesiale hof]** belastinghof ingevolge hierdie artikel teenoor iemand verplig is of 'n kennisgewing wat 'n party ingevolge hierdie artikel by 'n teenparty of sy prokureur of verteenwoordiger kan indien, word bewerkstellig deur die griffier of die party wat die kennisgewing indien, na gelang van die geval, of deur iemand wat in opdrag van die griffier of bedoelde party optree, op die wyse volgens wet voorgeskryf vir die betekening van prosesstukke van die Hoë Hof, of deur bedoelde kennisgewing aan die persoon aan wie dit gerig is, te stuur per geregistreerde pos, geadresseer aan daardie persoon se woon- of besigheidsadres."; en

(o) deur paragraaf *(b)* van subartikel (20) deur die volgende paragraaf te vervang:

"*(b)* word 'n kennisgewing wat deur of ten behoewe van die Kommissaris of die griffier van die **[spesiale hof]** belastinghof beteken word aan die openbare amptenaar van 'n maatskappy in sy hoedanigheid as sodanig, geag aan die maatskappy beteken te gewees het;".

(2) Subartikel (1) tree in werking op 'n datum deur die President by proklamasie in die *Staatskoerant* bepaal.

Vervanging van artikel 87 van Wet 58 van 1962, soos gewysig deur artikel 32 van Wet 28 van 1997

59. (1) Artikel 87 van die Inkomstebelastingwet, 1962, word hierby deur die volgende artikel vervang:

"**Lede van howe nie onbevoeg om te beslis nie**

87. 'n Lid van 'n **[spesiale hof]** belastinghof of 'n regter van 'n afdeling van die **[Hoë Hof]** Hooggeregshof van Suid-Afrika word nie, bloot omrede hy of sy aan aanslag ingevolge hierdie Wet onderhewig is, geag 'n belang te hê by 'n saak wat daarvolgens aan hom of haar ter beslissing voorgelê word nie.".

(2) Subartikel (1) tree in werking op 'n datum deur die President by proklamasie in die *Staatskoerant* bepaal.

Wysiging van artikel 88 van Wet 58 van 1962, soos gewysig deur artikel 12 van Wet 6 van 1963, artikel 44 van Wet 85 van 1974, artikel 25 van Wet 103 van 1976, artikel 24 van Wet 91 van 1982, artikel 30 van Wet 121 van 1984, artikel 17 van Wet 70 van 1989, artikel 40 van Wet 113 van 1993 en artikel 14 van Wet 140 van 1993

60. (1) Artikel 88 van die Inkomstebelastingwet, 1962, word hierby gewysg deur subartikel (1) deur die volgende subartikel te vervang:

"(1) Die verpligting om 'n belasting hefbaar ingevolge hierdie Wet te betaal, en die reg om dit te ontvang en te in, word nie, tensy die Kommissaris aldus beveel, deur 'n appèl of hangende die beslissing van 'n geregshof ingevolge artikel 86A opgeskort nie, maar indien 'n aanslag op appèl of ooreenkomstig so 'n beslissing of 'n beslissing van die Kommissaris om die appèl na die **[spesiale raad]** belastingraad of die **[spesiale hof]** belastinghof of bedoelde geregshof toe te gee, verander word, vind 'n behoorlike aansuiwering plaas waarby bedrae wat te veel betaal is, terugbetaal word met rente teen die voorgeskrewe koers bereken vanaf die datum wat, na tot bevrediging van die Kommissaris bewys word, die datum is

Commissioner to be the date on which such excess was received and amounts short-paid being recoverable with interest calculated as provided in section 89.".

(2) Subsection (1) shall come into operation on a date fixed by the President by proclamation in the *Gazette*.

Amendment of section 102 of Act 58 of 1962, as substituted by section 28 of Act 69 of 1975 and amended by section 27 of Act 91 of 1982 and section 44 of Act 30 of 1998

61. (1) Section 102 of the Income Tax Act, 1962 is hereby amended by the substitution in subsection (1) for the words preceding the proviso of the following words:

"(1) If it is proved to the satisfaction of the Commissioner that any amount paid by a taxpayer was in excess of the amount properly chargeable under this Act, the Commissioner may, notwithstanding the provisions of section 81(5), but subject to the provisions of subsection (4), authorize a refund to such taxpayer of any tax overpaid:".

(2) Subsection (1) shall come into operation on a date fixed by the President by proclamation in the *Gazette*.

Amendment of section 107 of Act 58 of 1962, as amended by section 26 of Act 65 of 1973, section 46 of Act 97 of 1986, section 29 of Act 21 of 1994, section 37 of Act 28 of 1997, section 46 of Act 30 of 1998 and section 34 of Act 5 of 2001

62. Section 107 of the Income Tax Act, 1962 is hereby amended by the deletion of paragraph *(e)* of subsection (1).

Insertion of sections 107A and 107B in Act 58 of 1962

63. (1) The following sections are hereby inserted in the Income Tax Act, 1962, after section 107:

"**Rules of tax court**

107A. (1) The Minister may, after consultation with the Minister of Justice, promulgate rules prescribing the procedures to be observed in lodging an objection and noting appeal against an assessment and the conduct and hearing of an appeal before a tax court.

(2) The rules contemplated in subsection (1) may provide for alternative dispute resolution procedures in terms of which the Commissioner and the person aggrieved by an assessment may resolve a dispute.

Settlement of dispute

107B. (1) The Minister may by regulation prescribe the circumstances under which the Commissioner may, for purposes of the settlement of a dispute between the Commissioner and a taxpayer, waive any claim against that taxpayer in whole or in part, where such a settlement would be to the best advantage of the state.

(2) The Minister must prescribe the requirements for the reporting by the Commissioner of any claim against a taxpayer which has been waived in whole or in part by the Commissioner, as contemplated in subsection (1).".

(2) The provisions contained in the regulations prescribing the circumstances under which the Commissioner may waive any claim for purposes of the settlement of any dispute and the reporting requirements, as contemplated in section 107B of the Income Tax Act, 1962, must be incorporated into the Income Tax Act, 1962, within a period of 12 months from the date that the regulations come into operation.

waarop die bedrae wat te veel betaal is, ontvang is, en bedrae wat te min betaal is met rente, bereken volgens voorskrif van artikel 89, verhaal kan word.".

(2) Subartikel (1) tree in werking op 'n datum deur die President by proklamasie in die *Staatskoerant* bepaal.

Wysiging van artikel 102 van Wet 58 van 1962, soos vervang deur artikel 28 van Wet 69 van 1975 en gewysig deur artikel 27 van Wet 91 van 1982 en artikel 44 van Wet 30 van 1998

61. (1) Artikel 102 van die Inkomstebelastingwet, 1962, word hierby gewysig deur in subartikel (1) die woorde wat die voorbehoudsbepaling voorafgaan deur die volgende woorde te vervang:

"(1) Indien daar tot bevrediging van die Kommissaris bewys word dat 'n bedrag wat 'n belastingpligtige betaal het, die bedrag behoorlik hefbaar ingevolge hierdie Wet te bowe gegaan het, kan die Kommissaris, ondanks die bepalings van artikel 81(5), maar behoudens die bepalings van subartikel (4), magtiging verleen om die bedrag wat te veel aan belasting betaal is, aan so 'n belastingpligtige terug te betaal:".

(2) Subartikel (1) tree in werking op 'n datum deur die President by proklamasie in die *Staatskoerant* bepaal.

Wysiging van artikel 107 van Wet 58 van 1962, soos gewysig deur artikel 26 van Wet 65 van 1973, artikel 46 van Wet 97 van 1986, artikel 29 van Wet 21 van 1994, artikel 37 van Wet 28 van 1997, artikel 46 van Wet 30 van 1998 en artikel 34 van Wet 5 van 2001

62. Artikel 107 van die Inkomstebelastingwet, 1962, word hierby gewysig deur paragraaf *(e)* van subartikel (1) te skrap.

Invoeging van artikels 107A en 107B in Wet 58 van 1962

63. (1) Die volgende artikels word hierby in die Inkomstebelastingwet, 1962, ingevoeg na artikel 107:

"**Belastinghofreëls**

107A. (1) Die Minister kan, na oorlegpleging met die Minister van Justisie, reëls afkondig wat die prosedures wat gevolg moet word by die indiening van 'n beswaar en die aantekening van appèl teen 'n aanslag en die aanvoer en die verhoor van besware en appèlle voor die belastinghowe, voorskryf.

(2) Die reëls in subartikel (1) bedoel kan vir alternatiewe geskilbeslegtingsprosedures voorsiening maak ingevolge waarvan die Kommissaris en 'n persoon wat deur 'n aanslag veronreg is, 'n geskil kan besleg.

Beslegting van geskil

107B. (1) Die Minister kan by regulasie die omstandighede voorskryf waaronder die Kommissaris, vir doeleindes van die beslegting van 'n geskil tussen die Kommissaris en 'n belastingpligtige, ten volle of gedeeltelik van 'n eis teen daardie belastingpligte kan afstand doen, waar 'n beslegting in die beste belang van die staat sal wees.

(2) Die Minister moet die vereistes met betrekking tot verslagdoening deur die Kommissaris van enige eis teen 'n belastingpligtige waarvan ten volle of gedeeltelik deur die Kommissaris afstand gedoen is, soos in subartikel (1) bedoel, voorskryf.".

(2) Die bepalings in die regulasies wat die omstandighede voorskryf waaronder die Kommissaris van enige eis kan afstand doen vir doeleindes van 'n beslegting van 'n geskil en die verslagdoeningsvereistes, soos in artikel 107B van die Inkomste-belastingwet, 1962, bedoel, moet binne 'n tydperk van 12 maande vanaf die datum waarop die regulasies in werking tree in die Inkomstebelastingwet, 1962, geïnkorporeer word.

Amendment of paragraph 2B of Second Schedule to Act 58 of 1962, as inserted by section 42 of Act 53 of 1999

64. (1) Paragraph 2B of the Second Schedule to the Income Tax Act, 1962, is hereby amended by the substitution for the words preceding the proviso of the following words:

"2B. For the purposes of paragraph 2, where **[any endorsement has been made in the records of the fund of which such person is or was a member, which provides]** a court granting an decree of divorce in respect of any member of a pension fund, provident fund or retirement annuity fund, has made an order that any part of the pension interest of that member shall be paid to the former spouse of such member, as provided for in section 7(8) of the Divorce Act, 1979 (Act 70 of 1979), the amount of such part shall be deemed to be an amount that accrues to such person on the date on which the pension interest, of which such amount forms part, accrues to such person:".

(2) Subsection (1) shall come into operation on the date of promulgation of this Act and shall apply in respect of any pension interest which accrues to a member on or after that date.

Amendment of paragraph 1 of Eighth Schedule to Act 58 of 1962, as inserted by section 38 of Act 5 of 2001

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

(a) by the substitution for the definition of "pre-valuation date asset" of the following definition:

" 'pre-valuation date asset' means an asset acquired prior to valuation date by a person and which **[is still held]** has not been disposed of by that person **[on]** before valuation date;";

(b) by the insertion after the definition of "residence" of the following definition:

" 'ruling price' means—

(a) in the case of a financial instrument listed on a recognised exchange in the Republic, the last sale price of that financial instrument at close of business of the exchange, unless there is a higher bid or a lower offer on that day subsequent to the last sale in which case the price of that higher bid or lower offer will prevail; or

(b) in the case of a financial instrument listed on a recognised exchange outside the Republic, the ruling price of that financial instrument as determined in item *(a)* and if the ruling price is not determined in this manner by that exchange, the last price quoted in respect of that financial instrument at close of business of that exchange.";

(c) by the substitution for paragraphs *(a)* and *(b)* of the definition of "value-shifting arrangement" of the following paragraphs:

"*(a)* the value of the interest of **[another]** a connected person in relation to that person held directly or indirectly in that company, trust or partnership increases; or

(b) **[another]** a connected person in relation to that person acquires a direct or indirect interest in that company, trust or partnership.".

(2) Subsection (1) shall be deemed to have come into operation on 1 October 2001.

Amendment of paragraph 2 of Eighth Schedule to Act 58 of 1962, as inserted by section 38 of Act 5 of 2001, and amended by section 25 of Act 19 of 2001

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

"(2) For purposes of subparagraph (1)*(b)*(i), an interest in immovable property situated in the Republic includes a direct or indirect interest of at least 20 per cent held by a person (alone or together with any connected person in relation to that

Wysiging van paragraaf 2B van die Tweede Bylae by Wet 58 van 1962, soos ingevoeg deur artikel 42 van Wet 53 van 1999

64. (1) Paragraaf 2B van die Tweede Bylae by die Inkomstebelastingwet, 1962, word hierby gewysig deur die woorde wat die voorbehoudsbepaling voorafgaan deur die volgende woorde te vervang:

"2B. By die toepassing van paragraaf 2, waar **['n aantekening in die rekords van die fonds waarvan daardie persoon 'n lid is of was, gemaak word, wat bepaal]** 'n hof wat 'n egskeidingsbevel ten opsigte van 'n lid van 'n pensioenfonds, voorsorgsfonds of uittredingannuïteits-fonds toestaan, 'n bevel gemaak het dat 'n gedeelte van die pensioenbelang van daardie lid aan die vorige eggenoot van daardie lid betaal moet word, soos in artikel 7 (8) van die Wet op Egskeiding, 1979 (Wet 70 van 1979), bedoel, word die bedrag van daardie gedeelte 'n bedrag geag te wees wat aan daardie persoon toegeval het op die datum waarop die pensioenbelang, waarvan daardie bedrag 'n deel vorm, aan daardie persoon toeval:".

(2) Subartikel (1) tree in werking op die datum van afkondiging van hierdie Wet en is van toepassing ten opsigte van enige pensioenbelang wat op of na daardie datum aan 'n lid toeval.

Wysiging van paragraaf 1 van Agtste Bylae by Wet 58 van 1962, soos ingevoeg deur artikel 38 van Wet 5 van 2001

65. (1) Paragraaf 1 van die Agtste Bylae by die Inkomstebelastingwet, 1962, word hierby gewysig—

(a) deur die volgende omskrywing na die omskrywing van "finansiële instrument" in te voeg:

" 'heersende prys'—

(a) in die geval van 'n finansiële instrument op 'n erkende beurs in die Republiek genoteer, die laaste verkoopprys van daardie finansiële instrument teen sluiting van besigheid van die beurs, tensy daar 'n hoër aanbod om te koop of laer aanbod om te verkoop op daardie dag na die laaste verkoop was in welke geval die prys van daardie hoër aanbod of laer aanbod sal geld; of

(b) in die in geval van 'n finansiële instrument op 'n erkende beurs buite die Republiek genoteer, die heersende prys van daardie finansiële instrument soos in item *(a)* bepaal en indien die heersende prys nie op die wyse deur daardie beurs bepaal word nie, die laaste prys gekwoteer ten opsigte van daardie finansiële instrument teen sluiting van besigheid van daardie beurs."; en

(b) deur die omskrywing van "voor-waardasiedatumbate" deur die volgende omskrywing te vervang:

" 'voor-waardasiedatumbate' 'n bate deur 'n persoon voor die waardasiedatum verkry wat **[steeds gehou word]** nie deur daardie persoon **[op]** voor die waardasiedatum oor beskik is nie;

(c) deur paragrawe *(a)* en *(b)* van die omskrywing van "waardeverskuiwingsreëling" deur die volgende paragrawe te vervang:

"*(a)* die waarde van die belang van **['n ander]** 'n verbonde persoon met betrekking tot daardie persoon direk of indirek gehou in daardie maatskappy, trust of vennootskap toeneem; of

(b) 'n **[ander]** verbonde persoon met betrekking tot daardie persoon 'n direkte of indirekte belang in daardie maatskappy, trust of vennootskap verkry.".

(2) Subartikel (1) word geag op 1 Oktober 2001 in werking te getree het.

Wysiging van paragraaf 2 van Agtste Bylae by Wet 58 van 1962, soos ingevoeg deur artikel 38 van Wet 5 van 2001, en gewysig deur artikel 25 van Wet 19 van 2001

66. (1) Paragraaf 2 van die Agtste Bylae by die Inkomstebelastingwet, 1962, word hierby gewysig deur subparagraaf (2) deur die volgende paragraaf te vervang:

"(2) By die toepassing van subparagraaf (1)*(b)*(i), sluit 'n belang in onroerende eiendom geleë in die Republiek in 'n direkte of indirekte belang van ten minste 20 persent gehou deur 'n persoon (alleen of tesame met enige verbonde persoon met

person) in the equity share capital of a company or in any other entity, where 80 per cent or more of the value of the net assets of that company or other entity, determined on the market value basis, is, at the time of disposal of shares in that company or interest in that other entity, attributable directly or indirectly to immovable property situated in the Republic, other than immovable property held by that company or other entity as trading stock.".

(2) Subsection (1) shall be deemed to have come into operation on 1 October 2001.

Amendment of paragraph 3 of Eighth Schedule to Act 58 of 1962, as inserted by section 38 of Act 5 of 2001

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

"*(a)* during that year, is equal to the amount by which the proceeds received or accrued in **[consequence]** respect of that disposal exceed the base cost of that asset; or".

(2) Subsection (1) shall be deemed to have come into operation on 1 October 2001.

Amendment of paragraph 4 of Eighth Schedule to Act 58 of 1962, as inserted by section 38 of Act 5 of 2001

68. (1) Paragraph 4 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended—

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

"*(a)* during that year, is equal to the amount by which the proceeds received or accrued in **[consequence]** respect of that disposal exceed the base cost of that asset; or"; and

(b) by the substitution in item (i) of subparagraph *(b)* for the words preceding sub-item *(aa)* of the following words:

"(i) so much of the proceeds received or accrued in **[consequence]** respect of the disposal of that asset that have been taken into account during any year in determining the capital gain or capital loss in respect of that disposal—".

(2) Subsection (1) shall be deemed to have come into operation on 1 October 2001.

Amendment of paragraph 6 of Eighth Schedule to Act 58 of 1962, as inserted by section 38 of Act 5 of 2001

69. (1) Paragraph 6 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended—

(a) by the substitution for the words preceding subparagraph *(a)* of the following words:

"A person's aggregate capital gain for a year of assessment is the amount by which the sum of that person's capital gains for that year and any other capital gains which are required to be taken into account in the determination of that person's aggregate capital gain or aggregate capital loss for that year, exceeds the sum of—"; and

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

"*(b)* in the case of a natural person or special trust, that person's or special trust's annual exclusion for that year.".

(2) Subsection (1) shall be deemed to have come into operation on 1 October 2001.

Amendment of paragraph 7 of Eighth Schedule to Act 58 of 1962, as inserted by section 38 of Act 5 of 2001

70. (1) Paragraph 7 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended by the substitution for subparagraphs *(a)* and *(b)* of the following subparagraphs:

"*(a)* that person's capital gains for that year and any other capital gains which are required to be taken into account in the determination of that person's aggregate capital gain or aggregate capital loss for that year; and

(b) in the case of a natural person or a special trust, that person's or special trust's annual exclusion for that year.".

betrekking tot daardie persoon) in die ekwiteitsaandelekapitaal van 'n maatskappy of in enige ander entiteit, waar 80 persent of meer van die waarde van die netto bates van die maatskappy of ander entiteit, op 'n markwaardebasis bepaal, ten tyde van die beskikking oor aandele in daardie maatskappy of belang in daardie ander entiteit, direk of indirek toeskryfbaar is aan onroerende eiendom in die Republiek geleë, behalwe onroerende eiendom deur daardie maatskappy of ander entiteit as handelsvoorraad gehou.".

(2) Subartikel (1) word geag op 1 Oktober 2001 in werking te getree het.

Wysiging van paragraaf 3 van Agtste Bylae by Wet 58 van 1962, soos ingevoeg deur artikel 38 van Wet 5 van 2001

67. (1) Paragraaf 3 van die Agtste Bylae by die Inkomstebelastingwet, 1962, word hierby gewysig deur subparagraaf *(a)* deur die volgende paragraaf te vervang:

"*(a)* gedurende sodanige jaar, gelyk aan die bedrag waarmee die opbrengs ontvang of toegeval **[as gevolg]** ten opsigte van sodanige beskikking die basiskoste van sodanige bate oorskry; of".

(2) Subartikel (1) word geag op 1 Oktober 2001 in werking te getree het.

Wysiging van paragraaf 4 van Agtste Bylae by Wet 58 van 1962, soos ingevoeg deur artikel 38 van Wet 5 van 2001

68. (1) Paragraaf 4 van die Agtste Bylae by die Inkomstebelastingwet, 1962, word hierby gewysig—

(a) deur subparagraaf *(a)* deur die volgende subparagraaf te vervang:

"*(a)* gedurende daardie jaar, is gelyk aan die bedrag waarmee die basiskoste van die bate die opbrengs verkry of toegeval **[as gevolg]** ten opsigte van sodanige beskikking, oorskry; of";

(b) deur in item (i) van subparagraaf *(b)* die woorde wat sub-item *(aa)* voorafgaan deur die volgende woorde te vervang:

"(i) soveel van die opbrengs ontvang of toegeval **[as gevolg]** ten opsigte van die beskikking oor daardie bate wat in ag geneem is in enige jaar by die vasstelling van 'n kapitaalwins of kapitaalverlies ten opsigte van daardie beskikking—".

(2) Subartikel (1) word geag op 1 Oktober 2001 in werking te getree het.

Wysiging van paragraaf 6 van Agtste Bylae by Wet 58 van 1962, soos ingevoeg deur artikel 38 van Wet 5 van 2001

69. (1) Paragraaf 6 van die Agtste Bylae by die Inkomstebelastingwet, 1962, word hierby gewysig—

(a) deur die woorde wat subparagraaf *(a)* voorafgaan deur die volgende woorde te vervang:

" 'n Persoon se totale kapitaalwins vir 'n jaar van aanslag is die bedrag waarmee die som van 'n persoon se kapitaalwinste vir daardie jaar en enige ander kapitaalwinste wat in berekening gebring moet word by die vasstelling van daardie persoon se totale kapitaalwins of totale kapitaalverlies vir daardie jaar, vir daardie jaar die som oorskry van—";

(b) deur subparagraaf *(b)* deur die volgende suparagraaf te vervang:

"*(b)* in die geval van 'n natuurlike persoon of 'n spesiale trust, daardie persoon of spesiale trust se jaarlikse uitsluiting vir die jaar.".

(2) Subartikel (1) word geag op 1 Oktober 2001 in werking te getree het.

Wysiging van paragraaf 7 van Agtste Bylae by Wet 58 van 1962, soos ingevoeg deur artikel 38 van Wet 5 van 2001

70. (1) Paragraaf 7 van die Agtste Bylae by die Inkomstebelastingwet, 1962, word hierby gewysig deur subparagrawe *(a)* en *(b)* deur die volgende subparagrawe te vervang:

"*(a)* die persoon se kapitaalwinste vir daardie jaar en enige ander kapitaalwinste wat in berekening gebring moet word by die vasstelling van daardie persoon se totale kapitaalwins of totale kapitaalverlies vir daardie jaar; en";

(b) in die geval van 'n natuurlike persoon of 'n spesiale trust, daardie persoon of spesiale trust se jaarlikse uitsluiting vir die jaar.".

(2) Subsection (1) shall be deemed to have come into operation on 1 October 2001.

Amendment of paragraph 11 of Eighth Schedule to Act 58 of 1962, as inserted by section 38 of Act 5 of 2001

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

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

"*(b)* by a company in respect of the issue or cancellation of a share in the company, or by a company in respect of the granting of an option to acquire a share or debenture in that company;";

(b) by the deletion of item *(f)* of subparagraph (2); and

(c) by the addition to subparagraph (2) of the following item:

"*(i)* by a person where that asset vests in the Master of the High Court or in a trustee, in consequence of the sequestration of the estate of the spouse of that person, as contemplated in section 21 of the Insolvency Act, 1936 (Act No. 24 of 1936), and where that asset is subsequently released by the Master or that trustee as contemplated in that section.".

(2) Subsection (1) shall be deemed to have come into operation on 1 October 2001.

Amendment of paragraph 12 of Eighth Schedule to Act 58 of 1962, as inserted by section 38 of Act 5 of 2001

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

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

"(1) Where an event described in subparagraph (2) occurs, a person will be treated for the purposes of this Schedule as having disposed of an asset described in that subparagraph for proceeds equal to the market value of the asset at the time of the event and to have immediately re-acquired the asset at an expenditure equal to that market value, which expenditure must be treated as an amount of expenditure actually incurred and paid for the purposes of paragraph 20(1)*(a)*." and

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

"(3) Where assets that are held by a person as trading stock cease to be held by that person as trading stock, otherwise than by way of a disposal contemplated in paragraph 11, that person will be treated as having disposed of those assets for a consideration equal to the amount included in that person's income in terms of section 22(8) and to have immediately reacquired those assets for a cost equal to that amount, which cost must be treated as an amount of expenditure actually incurred and paid for the purposes of paragraph 20(1)*(a)*.

(4) A person who commences to be a resident must, subject to paragraph 24, be treated as having disposed of each of that person's assets, other than assets in the Republic listed in paragraph 2(1)*(b)*(i) and (ii), and as having acquired each of those assets at a cost equal to the market value of each of those assets, which cost must be treated as an amount of expenditure actually incurred and paid for the purposes of paragraph 20(1)*(a)*."; and

(c) by the substitution in subparagraph (5) for the words preceding item *(a)* of the following words:

"Where a debt owed by a person to a creditor has been reduced or discharged by that creditor without full consideration for that reduction or discharge, that person will, to the extent that that reduction or discharge did not constitute a capital gain in terms of paragraph 3*(b)*(ii) or has not been taken into account in terms of paragraph 20(3), be treated as having—".

(2) Subsection (1) shall be deemed to have come into operation on 1 October 2001.

(2) Subartikel (1) word geag op 1 Oktober 2001 in werking te getree het.

Wysiging van paragraaf 11 van Agtste Bylae by Wet 58 van 1962, soos ingevoeg deur artikel 38 van Wet 5 van 2001

71. Paragraaf 11 van die Agtste Bylae by die Inkomstebelastingwet, 1962, word hierby gewysig—

(a) deur item *(b)* van subparagraaf (2) deur die volgende item te vervang:

"*(b)* deur 'n maatskappy ten opsigte van die uitreiking of kansellasie van 'n aandeel in die maatskappy of deur 'n maatskappy ten opsigte van die verlening van 'n opsie om 'n aandeel in daardie maatskappy te verkry of skuldbrief in daardie maatskappy";

(b) deur item *(f)* van subparagraaf (2) te skrap; en

(c) deur die volgende item by subparagraaf (2) te voeg:

"*(i)* deur 'n persoon waar daardie bate in die Meester van die Hooggeregshof of 'n trustee vestig, vanweë die sekwestrasie van die boedel van die gade van daardie persoon, soos bedoel in artikel 21 van die Insolvensiewet, 1936 (Wet No. 24 van 1936), en waar daardie bate daarna deur die Meester of daardie trustee vrygegee word soos in daardie artikel bedoel.".

(2) Subartikel (1) word geag op 1 Oktober 2001 in werking te getree het.

Wysiging van paragraaf 12 van Agtste Bylae by Wet 58 van 1962, soos ingevoeg deur artikel 38 van Wet 5 van 2001

72. (1) Paragraaf 12 van die Agtste Bylae by die Inkomstebelastingwet, 1962, word hierby gewysig—

(a) deur subparagraaf (1) deur die volgende subparagraaf te vervang:

"(1) Waar 'n gebeurtenis beskryf in subparagraaf (2) plaasvind, word 'n persoon by die toepassing van hierdie Bylae geag te beskik het oor 'n bate in daardie subparagraaf beskryf vir vergoeding gelyk aan die markwaarde van die bate op die tydstip van die gebeurtenis en onmiddellik die bate teen 'n koste gelyk aan daardie markwaarde herverkry het, welke koste by die toepassing van paragraaf 20(1)*(a)* geag word 'n bedrag van koste werklik aangegaan en betaal te wees.";

(b) deur subparagrawe (3) en (4) deur die volgende subparagrawe te vervang:

"(3) Waar bates wat deur 'n persoon as handelsvoorraad gehou word ophou om as handelsvoorraad deur daardie persoon gehou te word, anders as by wyse van beskikking in paragraaf 11 beoog, word daardie persoon geag oor daardie bates te beskik het vir vergoeding gelyk aan die bedrag in daardie persoon se inkomste ingesluit kragtens artikel 22(8) en daardie bates onmiddellik teen 'n koste gelyk aan daardie bedrag herverky het, welke koste by die toepassing van paragraaf 20(1)*(a)* geag word 'n bedrag van koste werklik aangegaan en betaal te wees.

(4) 'n Persoon wat begin om 'n inwoner te wees, moet behoudens paragraaf 24 geag word te beskik het oor elk van daardie persoon se bates, anders as bates in die Republiek in paragraaf 2(1)*(b)*(i) en (ii) gelys, en daardie bates verkry het teen 'n koste gelyk aan die markwaarde van elk van daardie bates, welke koste by die toepassing van paragraaf 20(1)*(a)* geag word 'n bedrag van koste werklik aangegaan en betaal te wees."; en

(c) deur in subparagraaf (5) die woorde wat item *(a)* voorafgaan deur die volgende woorde te vervang:

"Waar 'n skuld wat deur 'n persoon aan 'n skuldeiser verskuldig is deur daardie skuldeiser verminder of afgelos word sonder volle vergoeding vir daardie vermindering of aflossing, word daardie persoon, tot die mate wat daardie vermindering of aflossing nie 'n kapitaalwins ingevolge paragraaf 3*(b)*(ii) daargestel het nie of nie ingevolge paragraaf 20 in berekening gebring is nie, geag—".

(2) Subartikel (1) word geag op 1 Oktober 2001 in werking te getree het.

Amendment of paragraph 15 of Eighth Schedule to Act 58 of 1962, as inserted by section 38 of Act 5 of 2001

73. (1) Paragraph 15 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended—

(a) by the deletion of the word "or" at the end of subparagraph *(d)*;

(b) by the substitution for subparagraph *(e)* of the following subparagraph:

"*(e)* any—

(i) time-sharing interest as defined in section 1 of the Property Time-sharing Control Act, 1983 (Act No. 75 of 1983); or

(ii) share in a share block company, as defined in section 1 of the Share Blocks Control Act, 1980 (Act No. 59 of 1980),

with a fixed life, the value of which decreases over time; or"; and

(c) by the addition of the following subparagraph:

(f) any right or interest of whatever nature to or in an asset contemplated in items *(a)*, *(b)*, *(c)*, *(d)* or *(e)*.".

(2) Subsection (1) shall be deemed to have come into operation on 1 October 2001.

Amendment of paragraph 18 of Eighth Schedule to Act 58 of 1962, as inserted by section 38 of Act 5 of 2001

74. (1) Paragraph 18 of the Eighth Schedule of the Income Tax Act, 1962, is hereby amended by the substitution in subparagraph (2) for the words preceding item *(a)* of following words:

"Subparagraph (1) does not apply in respect of an option to acquire or dispose of—".

(2) Subsection (1) shall be deemed to have come into operation on 1 October 2001.

Amendment of paragraph 20 of Eighth Schedule to Act 58 of 1962, as inserted by section 38 of Act 5 of 2001, and amended by section 26 of Act 19 of 2001

75. (1) Paragraph 20 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended—

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

"(1) Despite section 23*(b)* and *(f)*, but subject to paragraphs 24, **[and]** 25 and 32 and subparagraphs (2) and (3), the base cost of an asset acquired by a person is the sum of—";

(b) by the substitution for item *(f)* of subparagraph (1) of the following item:

"*(f)* if that asset was acquired or disposed of by the exercise after valuation date of an option acquired prior to the valuation date, the valuation date value of the option, which value must be treated to be expenditure actually incurred in respect of that asset on valuation date for the purposes of this Part;";

(c) by the substitution for sub-items (i), (ii) and (iii) of item *(h)* of subparagraph (1) of the following sub-items:

"(i) a marketable security, **[any gain in respect of that acquisition that was included]** the acquisition of which resulted in the determination of any gain to be included in that person's income in terms of section 8A, **[as has not otherwise been included in the cost of that marketable security]** the market value of that marketable security that was taken into account in determining the amount of that gain or, where the gain so determined was nil, the amount of the consideration taken into account under section 8A in respect of that acquisition;

(ii) any other asset, so much of an amount that has been included in that person's income in terms of section 8(5), **[or is]** as having been applied towards the reduction of the purchase price of that asset or, where an amount has been included in that person's gross income in terms of paragraph *(i)* of the definition of 'gross income' in section 1, **[as has not otherwise been included in the cost of that asset]** the value placed on

Wysiging van paragraaf 15 van Agtste Bylae by Wet 58 van 1962, soos ingevoeg deur artikel 38 van Wet 5 van 2001

73. (1) Paragraaf 15 van die Agtste Bylae by die Inkomstebelastingwet, 1962, word hierby gewysig—

(a) deur die woord "of" aan die einde van subparagraaf *(d)* te skrap;

(b) deur subparagraaf *(e)* deur die volgende subparagraaf te vervang:

"*(e)* enige—

(i) tydsdelingbelang soos omskryf in artikel 1 van die Wet op die Beheer van Eiendomstydsdeling, 1983 (Wet No. 75 van 1983); of

(ii) aandele in 'n aandeleblokmaatskappy, soos omskryf in artikel 1 van die Wet op die Beheer van Aandeleblokke, 1980 (Wet No. 59 van 1980),

met 'n vaste leeftyd, die waarde waarvan oor tyd verminder; of"; en

(c) deur die volgende subparagraaf by te voeg:

"*(f)* enige reg of belang van welke aard ookal tot of in 'n bate in item *(a)*, *(b)*, *(c)*, *(d)* of *(e)* bedoel.".

(2) Subartikel (1) word geag op 1 Oktober 2001 in werking te getree het.

Wysiging van paragraaf 18 van Agtste Bylae by Wet 58 van 1962, soos ingevoeg deur artikel 38 van Wet 5 van 2001

74. (1) Paragraaf 18 van die Agtste Bylae by die Inkomstebelastingwet, 1962, word hierby gewysig deur in subparagraaf (2) die woorde wat item *(a)* voorafgaan deur die volgende woorde te vervang:

"Subparagraaf (1) is nie van toepassing nie ten opsigte van 'n opsie vir die verkryging van of beskikking oor—".

(2) Subartikel (1) word geag op 1 Oktober 2001 in werking te getree het.

Wysiging van paragraaf 20 van Agtste Bylae by Wet 58 van 1962, soos ingevoeg deur artikel 38 van Wet 5 van 2001, en gewysig deur artikel 26 van Wet 19 van 2001

75. (1) Paragraaf 20 van die Agtste Bylae by die Inkomstebelastingwet, 1962, word hierby gewysig—

(a) deur in subparagraaf (1) die woorde wat item *(a)* voorafgaan deur die volgende woorde te vervang:

"(1) Ondanks artikel 23*(b)* en *(f)*, maar behoudens paragrawe 24, **[en]** 25 en 32 en subparagrawe (2) en (3), is die basiskoste van 'n bate verkry deur 'n persoon die som van—";

(b) deur item *(f)* van subparagraaf (1) deur die volgende item te vervang:

"*(f)* indien daardie bate verkry is of oor beskik is deur middel van die uitoefening na die waardasiedatum van 'n opsie voor die waardasiedatum verkry, die waardasiedatumwaarde van daardie opsie, welke waarde geag moet word as onkoste werklik aangegaan op waardasiedatum ten opsigte van daardie bate vir doeleindes van hierdie Deel;";

(c) deur sub-items (i), (ii) en (iii) van item *(h)* van subparagraaf (1) deur die volgende sub-items te vervang:

"(i) 'n handelseffek, **[enige wins ten opsigte van daardie verkryging]** die verkryging waarvan aanleiding gegee het tot die vasstelling van 'n wins wat in daardie persoon se inkomste kragtens artikel 8A ingesluit is, **[wat nie andersins in die koste van daardie handelseffek ingesluit is nie]** die markwaarde van daardie handelseffek wat in berekening gebring is by die vasstelling van daardie wins of, waar die wins aldus vasgestel nul was, die bedrag van die vergoeding in berekening gebring kragtens artikel 8A ten opsigte van daardie verkryging;

(ii) enige ander bate, soveel van 'n bedrag as wat kragtens artikel 8(5) in daardie persoon se inkomste ingesluit is, **[of wat]** as wat aangewend is by die vermindering van die koopprys van daardie bate of, waar 'n bedrag ingevolge paragraaf *(i)* van die omskrywing van 'bruto inkomste' in artikel 1 in daardie persoon se bruto inkomste ingesluit is, **[as wat nie andersins by die koste van daardie bate ingesluit is nie]** die waarde ingevolge die Sewende Bylae op daardie bate geplaas vir doeleindes van

the asset under the Seventh Schedule for purposes of determining the amount so included in that person's gross income;

(iii) an interest in a controlled foreign entity as defined in section 9D, the proportional amount of the net income of that entity which was included in the income of that person in terms of section 9D during any year of assessment (other than such portion of that proportional amount which relates to the amount of any taxable capital gain included in that net income) plus the proportional amount of the net capital gains of that controlled foreign entity, less the amount of any foreign dividend distributed by that entity to that person during any year of assessment which was exempt from tax in terms of section 9E(7)*(e)*(i);";

(d) by the substitution in subparagraph (3) for the words preceding item *(a)* of the following words:

"(3) The expenditure contemplated in subparagraph (1)*(a)* to *(g)*, incurred by a person in respect of an asset must be reduced by any amount which—";

(e) by the substitution for item *(b)* of subparagraph (3) of the following item:

"*(b)* has for any reason been reduced or recovered or become recoverable from or has been paid by any other person (whether prior to or after the incurral of the expense to which it relates), to the extent which such amount—

(i) is not taken into account as a recoupment in terms of section 8(4)*(a)* or paragraph *(j)* of the definition of 'gross income' of an amount contemplated in item *(a)*; or

(ii) does not represent the recovery or reduction of an amount contemplated in item *(c)*.".

(2) Subsection (1) shall be deemed to have come into operation on 1 October 2001.

Amendment of paragraph 24 of Eighth Schedule to Act 58 of 1962, as inserted by section 38 of Act 5 of 2001

76. (1) Paragraph 24 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended—

(a) by the substitution for the heading of the following heading:

"**Base cost of asset of a person who becomes a resident on or after valuation date**";

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

"(1) The base cost of an asset, other than an asset situated in the Republic listed in paragraph 2(1)*(b)*(i) and (ii), acquired by a person before **[a]** the date on which that person became a resident, is the sum of the value of that asset determined in terms of subparagraphs (2) or (3) and the expenditure allowable in terms of paragraph 20 incurred after **[the valuation]** that date in respect of that asset.";

(c) by the addition of the following subparagraph:

"(4) The provisions of this paragraph do not apply in respect of any asset of a person who became a resident before valuation date.".

(2) Subsection (1) shall be deemed to have come into operation on 1 October 2001.

Substitution of paragraph 25 of Eighth Schedule to Act 58 of 1962, as inserted by section 38 of Act 5 of 2001

77. (1) Paragraph 25 of the Eighth Schedule to the Income Tax Act, 1962, is hereby substituted by the following paragraph:

"**Determination of base cost of pre-valuation date assets**

25. The base cost of a pre-valuation date asset (other than an identical asset in respect of which paragraph 32(3A) has been applied), is, the sum of the valuation date value of that asset, as determined terms of paragraph 26,

die vasstelling van die bedrag aldus in die persoon se bruto inkomste ingesluit;

(iii) 'n belang in 'n beheerde buitelandse entiteit soos in artikel 9D omskryf, die proporsionele bedrag van die netto inkomste van daardie entiteit wat kragtens artikel 9D gedurende enige jaar van aanslag in die inkomste van daardie persoon ingesluit was (behalwe daardie gedeelte van daardie proporsionele bedrag wat verband hou met die bedrag van enige belasbare kapitaalwins wat by daardie netto inkomste ingesluit is) plus die proporsionele bedrag van die netto kapitaalwinste van daardie beheerde buitelandse entiteit, verminder met die bedrag van enige buitelandse dividend deur daardie entiteit aan daardie persoon gedurende enige jaar van aanslag uitgekeer wat kragtens artikel 9E(7)*(e)*(i) van belasting vrygestel was; of";

(d) deur in subparagraaf (3) die woorde wat item *(a)* voorafgaan deur die volgende woorde te vervang:

"(3) Die onkoste in subparagraaf (1)*(a)* tot *(g)* bedoel, deur 'n persoon aangegaan ten opsigte van 'n bate moet verminder word met enige bedrag wat—";

(e) deur item *(b)* van subparagraaf (3) deur die volgende item te vervang:

"*(b)* wat vir enige rede verminder of verhaal is of verhaalbaar geword het van of wat betaal is deur enige ander persoon (hetsy voor of na die aangaan van die onkoste waarmee dit verband hou), tot die mate wat daardie bedrag—

(i) nie in berekening gebring is nie as 'n verhaling ingevolge artikel 8(4)*(a)* of paragraaf *(j)* van die omskrywing van 'bruto inkomste' van 'n bedrag in item *(a)* bedoel; of

(ii) nie die vergoeding of vermindering van 'n bedrag in item *(c)* daarstel nie;".

(2) Subartikel (1) word geag op 1 Oktober 2001 in werking te getree het.

Wysiging van paragraaf 24 van Agtste Bylae by Wet 58 van 1962, soos ingevoeg deur artikel 38 van Wet 5 van 2001

76. (1) Paragraaf 24 van die Agtste Bylae by die Inkomstebelastingwet, 1962, word hierby gewysig—

(a) deur die opskrif deur die volgende opskrif te vervang:

"**Basiskoste van bate van persoon wat op of na waardasiedatum 'n inwoner word**";

(b) deur subparagraaf (1) deur die volgende subparagraaf te vervang:

"(1) Die basiskoste van 'n bate, behalwe 'n bate in die Republiek geleë wat in paragraaf 2(1)*(b)*(i) en (ii) gelys is, wat deur 'n persoon verkry is voor **['n]** die datum waarop daardie persoon 'n inwoner geword het, is die som van die waarde van daardie bate ingevolge subparagrawe (2) of (3) vasgestel en die onkoste ingevolge paragraaf 20 toelaatbaar wat na **[die waardasiedatum]** daardie datum ten opsigte van daardie bate aangegaan is.";

(c) deur die volgende subparagraaf by te voeg:

"(4) Die bepalings van hierdie paragraaf is nie van toepassing nie ten opsigte van enige bate van 'n persoon wat voor waardasiedatum 'n inwoner geword het nie.".

(2) Subartikel (1) word geag op 1 Oktober 2001 in werking te getree het.

Vervanging van paragraaf 25 van Agtste Bylae by Wet 58 van 1962, soos ingevoeg deur artikel 38 van Wet 5 van 2001

77. (1) Paragraaf 25 van die Agtste Bylae by die Inkomstebelastingwet, 1962, word hierby deur die volgende paragraaf vervang:

"**Vasstelling van basiskoste van voor-waardasiedatumbates**

25. Die basiskoste van 'n voor-waardasiedatumbate (behalwe 'n identiese bate ten opsigte waarvan paragraaf 32(3A) van toepassing is), is die som van die waardasiedatumwaarde van daardie bate, soos vasgestel

[or] 27 or 28 and the expenditure allowable in terms of paragraph 20 incurred after the valuation date in respect of that asset.".

(2) Subsection (1) shall be deemed to have come into operation on 1 October 2001.

Amendment of paragraph 26 of Eighth Schedule to Act 58 of 1962, as inserted by section 38 of Act 5 of 2001

78. (1) Paragraph 26 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended—

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

"**[Subject to paragraph 32(5)]** Where the proceeds from the disposal of a pre-valuation date asset (other than an asset contemplated in paragraph 28 or in respect of which paragraph 32(3A) has been applied) exceed the expenditure allowable in terms of paragraph 20 incurred both before and after the valuation date in respect of that asset, the person who disposed of that asset must, subject to subparagraph (3), adopt any of the following as the valuation date value of that asset—"; and

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

"(3) Where a person has adopted the market value as the valuation date value of an asset, as contemplated in subparagraph (1)*(a)*, and the proceeds from the disposal of that asset do not exceed that market value, that person must substitute as the valuation date value of that asset, those proceeds less the expenditure allowable in terms of paragraph 20 incurred after the valuation date in respect of that asset.".

(2) Subsection (1) shall be deemed to have come into operation on 1 October 2001.

Substitution of paragraph 27 of Eighth Schedule to Act 58 of 1962, as inserted by Act 5 of 2001

79. (1) Paragraph 27 of the Eighth Schedule to the Income Tax Act, 1962, is hereby substituted by the following paragraph:

"**Valuation date value where proceeds do not exceed expenditure**

27. (1) Subject to subparagraph (2), where the proceeds from the disposal of a pre-valuation date asset do not exceed the expenditure allowable in terms of paragraph 20 incurred both before and after the valuation date in respect of that asset, the valuation date value of that asset must be determined in terms of this paragraph.

(2) This paragraph does not apply in respect of any asset contemplated in paragraph 28 or in respect of which paragraph 32(3A) has been applied.

(3) Where a person has determined the market value of an asset on the valuation date, as contemplated in paragraph 29, or the market value of an asset has been published in terms of that paragraph, and—

(a) the expenditure allowable in terms of paragraph 20 incurred before the valuation date in respect of that asset—

(i) is equal to or exceeds the proceeds from the disposal of that asset; and

(ii) exceeds the market value of that asset on valuation date,

the valuation date value of that asset must be the higher of—

(aa) that market value; or

(bb) those proceeds less the expenditure allowable in terms of paragraph 20 incurred after the valuation date in respect of that asset; or

(b) the provisions of item *(a)* do not apply, the valuation date value of that asset must be the lower of—

(i) that market value; or

kragtens paragraaf 26, **[of]** 27 of 28, en die onkoste kragtens paragraaf 20 toelaatbaar wat na die waardasiedatum ten opsigte van daardie bate aangegaan is.".

(2) Subartikel (1) word geag op 1 Oktober 2001 in werking te getree het.

Wysiging van paragraaf 26 van Agtste Bylae by Wet 58 van 1962, soos ingevoeg deur artikel 38 van Wet 5 van 2001

78. (1) Paragraaf 26 van die Agtste Bylae by die Inkomstebelastingwet, 1962, word hierby gewysig—

(a) deur in subparagraaf (1) die woorde wat item *(a)* voorafgaan deur die volgende woorde te vervang:

"**[Behoudens paragraaf 32(5)]** Waar die opbrengs van die beskikking oor 'n voor-waardasiedatumbate (behalwe 'n bate in paragraaf 28 beoog of ten opsigte waarvan paragraaf 32(3A) van toepassing is) die onkoste kragtens paragraaf 20 toelaatbaar, wat beide voor en na die waardasiedatum ten opsigte van daardie bate aangegaan is, te bowe gaan, moet die persoon wat oor daardie bate beskik het, behoudens subparagraaf (3), enige van die volgende as die waardasiedatumwaarde van daardie bate aanneem—"; en

(b) deur subparagraaf (3) deur die volgende subparagraaf te vervang:

"(3) Waar 'n persoon die markwaarde as die waardasiedatumwaarde van daardie bate aangeneem het, soos in subparagraaf (1)*(a)* bedoel, en die opbrengs uit die beskikking van die bate nie die markwaarde te bowe gaan nie, moet daardie persoon daardie opbrengs verminder met die onkoste ingevolge paragraaf 20 toelaatbaar, wat na die waardasiedatum ten opsigte van daardie datum aangegaan is, as die waardasiedatumwaarde van daardie bate vervang.".

(2) Subartikel (1) word geag op 1 Oktober 2001 in werking te getree het.

Vervanging van paragraaf 27 van Agtste Bylae by Wet 58 van 1962, soos ingevoeg deur artikel 38 van Wet 5 van 2001

79. (1) Paragraaf 27 van die Agtste Bylae by die Inkomstebelastingwet, 1962, word hierby deur die volgende paragraaf te vervang:

"**Waardasiedatumwaarde waar opbrengs nie onkoste oorskry nie**

27. (1) Behoudens subparagraaf (2), waar die opbrengs uit die beskikking van 'n voorwaardasiedatumbate nie die onkoste ingevolge pargraaf 20 toelaatbaar wat beide voor en na die waardasiedatum ten opsigte van daardie bate aangegaan is, oorskry nie, moet die waardasiedatumwaarde van daardie bate ingevolge hierdie paragraaf vasgestel word.

(2) Hierdie paragraaf is nie van toepassing nie ten opsigte van enige bate in paragraaf 28 bedoel of ten opsigte waarvan paragraaf 32(3A) toegepas is.

(3) Waar 'n persoon die markwaarde op die waardasiedatum van 'n bate bepaal het, soos in paragraaf 29 bedoel, of die markwaarde van 'n bate ingevolge daardie paragraaf gepubliseer is, en—

(a) die onkoste toelaatbaar ingevolge paragraaf 20 ten opsigte van daardie bate aangegaan voor die waardasiedatum—

(i) gelyk is aan of meer is as die opbrengs uit die beskikking van daardie bate; en

(ii) die markwaarde van daardie bate op waardasiedatum te bowe gaan,

is die waardasiedatumwaarde van daardie bate die hoogste van—

(aa) daardie markwaarde; of

(bb) daardie opbrengs verminder met die onkoste toelaatbaar ingevolge paragraaf 20 aangegaan na die waardasiedatum ten opsigte van daardie bate; of

(b) die bepalings van item *(a)* nie van toepassing is nie, is die waardasiedatumwaarde van daardie bate die minste van—

(i) daardie markwaarde; of

(ii) the time-apportionment base cost of that asset as contemplated in paragraph 30.

(4) Where the provisions of subparagraph (3) do not apply, the valuation date value of that asset is the time-apportionment base cost of that asset, as contemplated in paragraph 30.".

(2) Subsection (1) shall be deemed to have come into operation on 1 October 2001.

Amendment of paragraph 28 of Eighth Schedule to Act 58 of 1962, as inserted by section 38 of Act 5 of 2001

80. (1) Paragraph 28 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended—

(a) by the substitution in subparagraph (1) for the words preceding item *(a)* of the following words:
"Despite paragraph 29, the valuation date value of an instrument as defined in section 24J must be—";

(b) by the substitution in subparagraph (1) for item *(b)* of the following item:
"*(b)* **[market value of that instrument determined in terms of paragraph 31]** the price which could have been obtained upon a sale of that instrument between a willing buyer and a willing seller dealing at arm's length in an open market—
(i) in the case of an instrument which is listed on a recognised exchange, on the last trading day before valuation date; or
(ii) in any other case, on valuation date; and

(c) by the addition of the following subparagraph:
"(2) Where a person has adopted the adjusted initial amount as the valuation date value of an instrument (other than an instrument listed on a recognised exchange), as contemplated in subparagraph (1)*(a)*, and the proceeds from the disposal of that instrument are less than that adjusted initial amount, the valuation date value of that instrument must be the time-apportionment base cost of that instrument, as contemplated in paragraph 30.".

(2) Subsection (1) shall be deemed to have come into operation on 1 October 2001.

Amendment of paragraph 29 of Eighth Schedule to Act 58 of 1962, as inserted by section 38 of Act 5 of 2001

81. (1) Paragraph 29 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended—

(a) by the substitution for the words in item *(a)* of subparagraph (1) preceding sub-item (i) of the following words:
"*(a)* a financial instrument listed on a recognised exchange and for which a price was quoted on that exchange both before and after valuation date is, subject to subparagraphs (2) and (2A), in the case of a financial instrument listed on an exchange—";

(b) by the substitution for sub-items (i) and (ii) of item *(a)* of subparagraph (1) of the following sub-items:
"(i) in the Republic, the price published by the Commissioner in the *Gazette*, which is the **[average of the last price quoted in respect of]** aggregate value of all transactions in that financial instrument **[instruments quoted]** as traded on **[the]** that recognised exchange **[on each of]** during the five business days **[of trading]** preceding the valuation date, divided by the total quantity of that financial instrument traded during the same period; and
(ii) outside the Republic, and is not listed on any exchange in the Republic, the **[last]** ruling price **[quoted]** in respect of that financial instrument on that recognised exchange on the last **[trading]** business day before valuation date;";

(c) by the substitution for item *(b)* of subparagraph (2) of the following item:
"*(b)* the price per share for which that controlling interest has been so

(ii) die tydtoedelingsbasiskoste van daardie bate soos in paragraaf 30 bedoel.

(4) Waar die bepalings van subparagraaf (3) nie van toepassing is nie, is die waardasiedatumwaarde van daardie bate die tydtoedelingsbasiskoste van daardie bate, soos in paragraaf 30 bedoel.".

(2) Subartikel (1) word geag op 1 Oktober 2001 in werking te getree het.

Wysiging van paragraaf 28 van Agtste Bylae by Wet 58 van 1962, soos ingevoeg deur artikel 38 van Wet 5 van 2001

80. (1) Paragraaf 28 van die Agtste Bylae by die Inkomstebelastingwet, 1962, word hierby gewysig—

(a) deur in subparagraaf (1) die woorde wat item *(a)* voorafgaan deur die volgende woorde te vervang:
"Ondanks paragraaf 29, is die waardasiedatumwaarde van 'n instrument soos in artikel 24J omskryf **[is]**—";

(b) deur item *(b)* van subparagraaf (1) deur die volgende item te vervang:
"*(b)* **[die markwaarde van daardie instrument kragtens paragraaf 31 vasgestel]** die prys wat verkry kon word by die verkoop van daardie instrument tussen 'n gewillige koper en 'n gewillige verkoper wat onder uiterste voorwaardes in 'n ope mark beding—
(i) in die geval waar 'n instrument op 'n erkende beurs genoteer is, op die laaste dag van handel voor die waardasiedatum;
(ii) in enige ander geval, op die waardasiedatum."; en

(c) deur die volgende subparagraaf by te voeg:
"(2) Waar 'n persoon die aangepaste aanvangsbedrag as die waardasiedatumwaarde van 'n instrument (behalwe 'n instrument op 'n erkende beurs genoteer) aangeneem het, soos in subparagraaf (1)*(a)* bedoel, en die opbrengs uit die beskikking van daardie instrument minder is as daardie aangepaste aanvangsbedrag, is die waardasiedatumwaarde van daardie instrument die tydtoedelingsbasiskoste van daardie instrument, soos in paragraaf 30 bedoel.".

(2) Subartikel (1) word geag op 1 Oktober 2001 in werking te getree het.

Wysiging van paragraaf 29 van Agtste Bylae by Wet 58 van 1962, soos ingevoeg deur artikel 38 van Wet 5 van 2001

81. (1) Paragraaf 29 van die Agtste Bylae by die Inkomstebelastingwet, 1962, word hierby gewysig—

(a) deur in item *(a)* van subparagraaf (1) die woorde wat sub-item (i) voorafgaan deur die volgende woorde te vervang:
"*(a)* 'n finansiële instrument op 'n erkende beurs genoteer en waarvoor 'n prys gekwoteer is op daardie beurs beide voor en na die waardasiedatum is, behoudens subparagraaf (2) en (2A), in die geval van 'n finansiële instrument genoteer op 'n beurs—";

(b) deur sub-items (i) and (ii) van item *(a)* van subparagraaf (1) deur die volgende sub-items te vervang:
"(i) in die Republiek, die prys deur die Kommissaris in die *Staatskoerant* gepubliseer, wat die **[gemiddeld daarstel van die laaste prys gekwoteer ten opsigte van]** totale waarde van alle transaksies in daardie finansiële instrument op **[die]** daardie erkende beurs **[op elk van]** gedurende die vyf **[dae van handel]** besigheidsdae wat die waardasiedatum voorafgaan, gedeel deur die totale hoeveelheid van daardie finansiële instrument gedurende daardie selfde tydperk verhandel; en";
(ii) buite die Republiek en wat nie op enige beurs in die Republiek genoteer is nie, die **[laaste]** heersende prys **[gekwoteer]** ten opsigte van daardie finansiële instrument op daardie erkende beurs op die laaste **[dag van handel]** besigheidsdag wat die waardasiedatum voorafgaan;";

(c) deur item *(b)* van subparagraaf (2) deur die volgende item te vervang:
"*(b)* die prys per aandeel waarvoor daardie beherende belang oor beskik is afwyk van die **[laaste gekwoteerde]** heersende prys ten opsigte van

disposed of deviates from the **[last]** ruling price **[quoted]** in respect of that share on that date prior to the announcement of the transaction,";

(d) by the substitution in subparagraph (2) for the words following item *(b)* of the following words:

"the valuation date market value of that share so disposed of, as determined in subparagraph (1)*(a)*, must be increased or decreased, as the case may be, by an amount which bears to that market value the same ratio as the deviation bears to **[the last]** that ruling price **[so quoted]**.";

(e) by the insertion after subparagraph (2) of the following subparagraph:

"(2A) Where—

(i) a financial instrument listed on an exchange in the Republic was not traded during the last five business days preceding valuation date;

(ii) a financial instrument listed on an exchange in the Republic is suspended for any period during September 2001; or

(iii) the market value of a financial instrument determined in terms of subparagraph (1)*(a)*(i), exceeds the average of the ruling price of that financial instrument, determined for the first 14 business days of the month of September 2001, by five per cent or more,

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

(f) by the substitution in item *(b)* of subparagraph (3) for the expression "50 per cent" of the expression "35 per cent".

(2) Subsection (1) shall be deemed to have come into operation on 1 October 2001.

Amendment of paragraph 30 of Eighth Schedule to Act 58 of 1962, as inserted by section 38 of Act 5 of 2001

82. (1) Paragraph 30 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended—

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

$$\text{"Y} = B + \frac{[(P - B) \times N]}{T + N},\text{"};$$

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

" 'B' represents the amount of expenditure allowable in terms of paragraph 20 in respect of that asset that is attributable to the period **[of ownership]** from the date that the asset was acquired to the day before valuation date;"; and

(c) by the substitution for items *(d)* and *(e)* of subparagraph (1) of the following items:

(d) 'N' represents the number of years **[or part thereof]** determined from the date that the asset was **[owned prior]** acquired to the day before valuation date, which number of years may not exceed 20 in the case where the expenditure allowable in terms of paragraph 20 in respect of that asset was incurred in more than one year of assessment prior to the valuation date;

(e) 'T' represents the number of years **[or part thereof]** determined from valuation date until the date the asset was **[owned]** disposed of after valuation date.";

(d) by the addition to subparagraph (1) of the following proviso:

"Provided that for purposes of items *(d)* and *(e)* a part of a year must be treated as a full year.".

(2) Subsection (1) shall be deemed to have come into operation on 1 October 2001.

daardie aandeel op die datum voor die aankondiging van die transaksie,";

(d) deur in subparagraaf (2) die woorde wat item *(b)* volg deur die volgende woorde te vervang:

"moet die waardasiedatummarkwaarde van daardie aandeel aldus oor beskik soos ooreenkomstig subparagraaf (1) *(a)* vasgestel, vermeerder of verminder word, na gelang van die geval, met 'n bedrag wat in dieselfde verhouding tot die markwaarde staan as wat die bedrag van die afwyking tot **[die laaste]** daardie heersende prys **[aldus gekwoteer]** staan.";

(e) deur na subparagraaf (2) die volgende subparagraaf in te voeg:

"(2A) Waar—

(i) 'n finansiële instrument wat op 'n beurs in die Republiek genoteer is, nie gedurende die laaste vyf besigheidsdae wat die waardasiedatum voorafgaan verhandel is nie;

(ii) 'n finansiële instrument op 'n erkende beurs in die Republiek genoteer vir enige tydperk gedurende September 2001 opgeskort is; of

(iii) die markwaarde van 'n finansiële instrument ingevolge subparagraaf vasgestel (1)*(a)*(i), die gemiddeld van die heersende prys van daardie finansiële instrument, vasgestel vir die eerste 14 besigheidsdae van die maand van September 2001, met meer as vyf persent te bowe gaan,

moet die Kommissaris, na oorlegpleging met die erkende beurs en die Raad op Finansiële Dienste ingestel kragtens die Wet op die Raad op Finansiële Dienste, 1990 (Wet No. 97 van 1990), die markwaarde van daardie finansiële instrument bepaal met inagneming van die waarde van die finansiële instrument, omstandighede rondom die opskorting van daardie finansiële instrument of redes vir die toename in waarde van daardie finansiële instrument."; en

(f) deur in item *(b)* van subparagraaf (3) die uitdrukking "50 persent" deur die uitdrukking "35 persent" te vervang.

(2) Subartikel (1) word geag op 1 Oktober 2001 in werking te getree het.

Wysiging van paragraaf 30 van Agtste Bylae by Wet 58 van 1962, soos ingevoeg deur artikel 38 van Wet 5 van 2001

82. (1) Paragraaf 30 van die Agtste Bylae by die Inkomstebelastingwet, 1962, word hierby gewysig—

(a) deur die formule in subparagraaf (1) deur die volgende formule te vervang:

$$\text{"Y} = \text{B} + \frac{[(\text{P} - \text{B}) \times \text{N}]}{\text{T} + \text{N}},\text{";}$$

(b) deur item *(b)* of subparagraaf (1) deur die volgende item te vervang:

" 'B' die bedrag van die onkoste kragtens paragraaf 20 toelaatbaar ten opsigte van daardie bate wat aan die periode **[van eienaarskap]** vanaf die datum wat die bate verkry is tot die dag voor die waardasiedatum toeskryfbaar is, verteenwoordig;";

(c) deur items *(d)* en *(e)* van subparagraaf (1) deur die volgende items te vervang:

"*(d)* 'N' die aantal jare **[of deel daarvan van eienaarskap van die]** gereken vanaf die datum wat daardie bate verkry is tot die dag voor die waardasiedatum, welke aantal jare nie 20 mag oorskry nie in die geval waar die toelaatbare onkoste kragtens paragraaf 20 ten opsigte van daardie bate in meer as een jaar voor die waardasiedatum aangegaan is, verteenwoordig;

(e) 'T' die aantal jare **[of deel daarvan van eienaarskap van]** gereken vanaf waardasiedatum tot die datum wat die bate na die waardasiedatum oor beskik is, verteenwoordig.";

(d) deur die volgende voorbehoudsbepaling by subparagraaf (1) te voeg:

"Met dien verstande dat by die toepassing van items *(d)* en *(e)* 'n gedeelte van 'n jaar geag word 'n volle jaar te wees.".

(2) Subartikel (1) word geag op 1 Oktober 2001 in werking te getree het.

Amendment of paragraph 31 of the Eighth Schedule to Act 58 of 1962, as inserted by section 38 of Act 5 of 2001

83. (1) Paragraph 31 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended—

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

"*(a)* an asset which is a financial instrument listed on a recognised exchange and for which a price was quoted on that exchange, is **[the average of the buying and selling prices]** the ruling price in respect of that financial instrument on that recognised exchange **[quoted]** at close of business on the last **[trading]** business day before disposal of that financial instrument;"; and

(b) by the substitution for item *(d)* of subparagraph (1) of the following item:

"*(d)* a fiduciary, usufructuary or other similar interest in any property, an amount determined by capitalizing at 12 per cent the annual value of the right of enjoyment of the property subject to that fiduciary, usufructuary or other like interest, as determined in terms of subparagraph (2), over the expectation of life of the person **[entitled to]** to whom that interest was granted, or if that right of enjoyment is to be held for a lesser period than the life of that person, over that lesser period;".

(2) Subsection (1) shall be deemed to have come into operation on 1 October 2001.

Amendment of paragraph 32 of Eighth Schedule to Act 58 of 1962, as inserted by section 38 of Act 5 of 2001, and amended by section 28 of Act 19 of 2001

84. (1) Paragraph 32 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended—

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

"(1) This paragraph applies to **[the disposal of]** assets which form part of a holding of identical assets.";

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

"(3) Subject to subparagraph (3A), the base cost of identical assets must be determined by using one of the following methods—

(a) specific identification; or

(b) the first in first out method **[or**

***(c)* weighted average]**.";

(c) by the insertion after subparagraph (3) of the following subparagraph:

"(3A) Despite the provisions of subparagraph (3), the weighted average method of determining base cost of assets, as contemplated in subparagraph (4), may be used for identical assets which—

(a) from the date of acquisition to the date of disposal constituted assets contemplated in paragraph 31(1)*(a)*;

(b) constitute assets contemplated in paragraph 31(1)*(c)*, where the prices of these units, shares or interests are regularly published in a national or international newspaper; or

(c) constitute coins made mainly from gold or platinum, where the prices of these coins are regularly published in a national or international newspaper,

and where a person uses the weighted average method for any identical asset contemplated in item *(a)*, *(b)* or *(c)*, that method must be used for all identical assets, contemplated in that item, held by that person.";

(d) by the substitution for subparagraph (4) of the following subparagraph:

"(4) In applying the weighted average method of determining base cost—

(a) the weighed average base cost, on valuation date, of identical assets acquired and not disposed of before valuation date is equal to the valuation date value of those identical assets, as contemplated in paragraph 28, or the market value of those identical assets, as

Wysiging van paragraaf 31 van Agtste Bylae by Wet 58 van 1962, soos ingevoeg deur artikel 38 van Wet 5 van 2001

83. (1) Paragraaf 31 van die Agtste Bylae by die Inkomstebelastingwet, 1962, word hierby gewysig—

(a) deur item *(a)* van subparagraaf (1) deur die volgende item te vervang:

"*(a)* 'n bate wat 'n finansiële instrument is wat op 'n erkende beurs genoteer is en waarvoor daar 'n prys op daardie beurs gekwoteer is, is die **[gemiddelde van die aankoop- en verkoopprys]** heersende prys ten opsigte van daardie finansiële instrument op daardie erkende beurs **[gekwoteer]** by die afsluiting van besigheid op die laaste **[dag van handel]** besigheidsdag voor die beskikking oor daardie finansiële instrument;";

(b) deur item *(d)* van subparagraaf (1) deur die volgende item te vervang:

"*(d)* 'n fidusiêre reg, vruggebruik of ander soortgelyke reg in enige eiendom, 'n bedrag vasgestel deur die kapitalisering teen 12 persent van die jaarlikse waarde van die reg van genot van die eiendom onderhewig aan sodanige fidusiêre reg, vruggebruik of ander soortgelyke reg, soos ingevolge subparagraaf (2) bepaal, oor die verwagte lewensduur van die persoon **[wat op]** aan wie daardie belang **[geregtig]** verleen is, of indien daardie reg van genot vir 'n korter tydperk as die lewe van die persoon gehou word, oor daardie korter tydperk;".

(2) Subartikel (1) word geag op 1 Oktober 2001 in werking te getree het.

Wysiging van paragraaf 32 van Agtste Bylae by Wet 58 van 1962, soos ingevoeg deur artikel 38 van Wet 5 van 2001, en gewysig deur artikel 28 van Wet 19 van 2001

84. (1) Paragraaf 32 van die Agtste Bylae by die Inkomstebelastingwet, 1962, word hierby gewysig—

(a) deur subparagraaf (1) deur die volgende subparagraaf te vervang:

"(1) Hierdie paragraaf is van toepassing op **[die beskikking oor]** bates wat deel uitmaak van 'n besit van identiese bates.";

(b) deur subparagraaf (3) deur die volgende subparagraaf te vervang:

"(3) Behoudens subparagraaf (3A), moet die basiskoste van identiese bates **[moet]** vasgestel word deur die gebruik van een van die volgende metodes—

(a) spesifieke identifikasie; of

(b) die eerste in eerste uit metode **[of**

***(c)* geweegde gemiddelde].**";

(c) deur die volgende subparagraaf na subparagraaf (3) in te voeg:

"(3A) Ondanks die bepalings van subparagraaf (3), mag die geweegde gemiddelde metode van vasstelling van die basiskoste van bates gebruik word, soos in subparagraaf (4) bedoel, vir identiese bates wat—

(a) vanaf die datum van verkryging tot die datum van beskikking bates in paragraaf 31(1)*(a)* bedoel daarstel;

(b) bates in paragraaf 31(1)*(c)* bedoel daarstel, waar die pryse van hierdie eenhede, aandele of belange gereeld in 'n nasionale of internasionale koerant gepubliseer word; of

(c) munte daarstel wat hoofsaaklik van goud of platinum gemaak is, waar die pryse van hierdie munte gereeld in 'n nasionale of internasionale koerant gepubliseer word,

en waar 'n persoon die geweegde gemiddelde metode vir identiese bates in item *(a)*, *(b)* of *(c)* bedoel gebruik, moet daardie metode gebruik word vir alle identiese bates in daardie item bedoel, wat deur daardie persoon gehou word.";

(d) deur subparagraaf (4) deur die volgende subparagraaf te vervang:

"(4) By die toepassing van die geweegde gemiddelde-metode van die vasstelling van die basiskoste—

(a) is die geweegde gemiddelde basiskoste op waardasiedatum van identiese bates verkry en nie oor beskik nie voor waardasiedatum gelyk aan die waardasiedatumwaarde van daardie bates, soos in paragraaf 28 bedoel, of die markwaarde van daardie identiese bates,

contemplated in paragraph 29, divided by the number of those identical assets; and

(b) the weighted average base cost, thereafter, of identical assets **[shall]** must be calculated **[after each acquisition of an asset]** by—

(i) adding **[the]** expenditure allowable in terms of paragraph 20 in respect of identical assets to the base cost of **[the]** identical assets **[on hand]** acquired and not disposed of before that expenditure was incurred; and

(ii) dividing that amount by the **[new total]** number of identical assets acquired and not disposed of after that expenditure was incurred.";

(e) by the deletion of subparagraph (5); and

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

"(6) Once a person has adopted one of the methods specified in **[subparagraph (3)]** this paragraph in respect of a **[holding]** class of identical assets contemplated in subparagraph (3A), that method must be used until all those identical assets have been disposed of.".

(2) Subsection (1) shall be deemed to have come into operation on 1 October 2001.

Substitution of paragraph 34 of Eighth Schedule to Act 58 of 1962, as inserted by section 38 of Act 5 of 2001

85. (1) Paragraph 34 of the Eighth Schedule to the Income Tax Act, 1962, is hereby substituted by the following paragraph:

"**Debt Substitution**

34. Where a person reduces or discharges a debt owed by that person to a creditor by disposing of an asset to that creditor, that asset must be treated as having been acquired by the creditor at a cost equal to the market value of that asset at the time of that disposal, which cost must be treated as an amount of expenditure actually incurred and paid for the purposes of paragraph 20(1)*(a)*.".

(2) Subsection (1) shall be deemed to have come into operation on 1 October 2001.

Amendment of paragraph 35 of Eighth Schedule to Act 58 of 1962, as inserted by section 38 of Act 5 of 2001

86. (1) Paragraph 35 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended by the substitution for the words in subparagraph (1) preceding item *(a)* of the following words:

"(1) Subject to subparagraphs (2), (3), and (4), the proceeds from the disposal of an asset by a person are equal to the amount received by or accrued to, or which is treated as having been received by, or accrued to or in favour of, that person in **[consequence]** respect of that disposal, and includes—".

(2) Subsection (1) shall be deemed to have come into operation on 1 October 2001.

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

87. (1) Paragraph 38 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended—

(a) by the substitution for the words preceding item *(a)* of the following words:

"(1) Subject to subparagraph (2) and paragraph 67, where a person disposed of an asset by means of a donation or for a consideration not measurable in money or to a person who is a connected person in relation to that person for a consideration which does not reflect an arm's length price—";

in paragraaf 29 bedoel, gedeel deur die getal van daardie identiese bates; en

(b) word die geweegde gemiddelde **[koste]** basiskoste van identiese bates bereken **[na elke verkryging van 'n bate]** deur—

(i) die onkoste in paragraaf 20 toelaatbaar ten opsigte van enige identiese bates, **[die koste van die nuutverkreë bates]**, te tel by die basiskoste van die identiese bates **[op hande]** verkry en nie oor beskik nie voor daardie verkryging of aangaan van onkoste; en

(ii) daardie bedrag deur die **[nuwe totale]** aantal identiese bates verkry en nie oor beskik nie nadat daardie onkoste aangegaan is, te deel.";

(e) deur subparagraaf (5) te skrap; en

(f) deur subparagraaf (6) deur die volgende subparagraaf te vervang:

"(6) Sodra 'n persoon een van die metodes in **[subparagraaf (3)]** hierdie paragraaf voorgeskryf ten opsigte van **[die besit]** 'n klas van identiese bates in subparagraaf (3A) bedoel aangeneem het, moet daardie metode gebruik word totdat daar oor al daardie identiese bates beskik is.".

(2) Subartikel (1) word geag op 1 Oktober 2001 in werking te getree het.

Vervanging van paragraaf 34 van Agtste Bylae by Wet 58 van 1962, soos ingevoeg deur artikel 38 van Wet 5 van 2001

85. (1) Paragraaf 34 van die Agtste Bylae by die Inkomstebelastingwet, 1962, word hierby deur die volgende paragraaf vervang:

"**Skuldvervanging**

34. Waar 'n persoon 'n skuld deur daardie persoon aan 'n krediteur verskuldig verminder of aflos deur oor 'n bate aan daardie krediteur te beskik, word die bate geag verkry te gewees het deur die krediteur teen 'n koste gelyk aan die markwaarde van daardie bate op die tydstip van daardie beskikking, welke koste geag moet word 'n bedrag van onkoste werklik aangegaan en betaal te gewees het by die toepassing van paragraaf 20(1)*(a)*.".

(2) Subartikel (1) word geag op 1 Oktober 2001 in werking te getree het.

Wysiging van paragraaf 35 van Agtste Bylae by Wet 58 van 1962, soos ingevoeg deur artikel 38 van Wet 5 van 2001

86. (1) Paragraaf 35 van die Agtste Bylae by die Inkomstebelastingwet, 1962, word hierby gewysig deur in subparagraaf (1) die woorde wat item *(a)* voorafgaan deur die volgende woorde te vervang:

"(1) Behoudens subparagrawe (2), (3), en (4), is die opbrengs van die beskikking oor 'n bate deur 'n persoon gelyk aan die bedrag ontvang deur of toegeval aan, of wat geag word ontvang te gewees het deur of toe te geval het aan of ten gunste van, daardie persoon **[as gevolg]** ten opsigte van daardie beskikking, en sluit dit in—".

(2) Subartikel (1) word geag op 1 Oktober 2001 in werking te getree het.

Wysiging van paragraaf 38 van Agtste Bylae by Wet 58 van 1962, soos ingevoeg deur artikel 38 van Wet 5 van 2001

87. (1) Paragraaf 38 van die Agtste Bylae by die Inkomstebelastingwet, 1962, word hierby gewysig—

(a) deur die woorde wat item *(a)* voorafgaan deur die volgende woorde te vervang:

"(1) Behoudens subparagraaf (2) en paragraaf 67, waar 'n persoon oor 'n bate beskik het by wyse van 'n skenking of teen vergoeding wat nie in geld meetbaar is nie of aan 'n persoon wat 'n verbonde persoon is met betrekking tot daardie persoon teen vergoeding wat nie onder uiterste voorwaardes in 'n ope mark beding is nie—";

(b) by the substitution for item *(b)* of the following item:

" *(b)* the person who acquired that asset must be treated as having acquired that asset at a cost equal to that market value, which cost must be treated as an amount of expenditure actually incurred and paid for the purposes of paragraph 20(1)*(a)*."; and

(c) by the addition of the following subparagraph:

"(2) Subparagraph (1) does not apply in respect of the disposal of—

(a) a right contemplated in section 8A; or

(b) an asset in the circumstances contemplated in section 10(1)*(n*E*)*.".

(2) Subsection (1) shall be deemed to have come into operation on 1 October 2001.

Amendment of paragraph 39 of the Eighth Schedule to Act 58 of 1962, as inserted by section 38 of Act 5 of 2001

88. (1) Paragraph 39 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended by the substitution for subparagraph (3) of the following subparagraph:

"(3) For the purposes of this paragraph, a connected person in relation to—

(a) a natural person does not include a relative of that person other than a **[spouse]** parent, child, stepchild, brother, sister, grandchild or grandparent of that person; or

(b) a fund of an insurer contemplated in section 29A does not include another such fund of that insurer in respect of the disposal of an asset in terms of section 29A(6) or (7).".

(2) Subsection (1) shall be deemed to have come into operation on 1 October 2001.

Amendment of paragraph 40 of the Eighth Schedule to Act 58 of 1962, as inserted by section 38 of Act 5 of 2001

89. (1) Paragraph 40 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended—

(a) by the addition to subparagraph (1) of the following item:

"*(d)* an interest in a pension, provident or retirement annuity fund in the Republic or a fund, arrangement or instrument situated outside the Republic which provides benefits similar to a pension, provident or retirement annuity fund which if the proceeds thereof had been received by or accrued to the deceased, the capital gain or capital loss determined in respect of the disposal of the interest would have been disregarded in terms of paragraph 54.".

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

"to his or her deceased estate for proceeds equal to the market value of those assets at the date of that person's death, and the deceased estate must be treated as having acquired those assets at a cost equal to that market value, which cost must be treated as an amount of expenditure actually incurred and paid for the purposes of paragraph 20(1)*(a)*."; and

(c) by the substitution for item *(b)* of subparagraph (2) of the following item:

"*(b)* the heir, legatee or trustee must be treated as having acquired that asset at a cost equal to the base cost of the deceased estate in respect of that asset, which cost must be treated as an amount of expenditure actually incurred and paid for the purposes of paragraph 20(1)*(a)*.".

(2) Subsection (1) shall be deemed to have come into operation on 1 October 2001.

(b) deur item *(b)* deur die volgende item te vervang:

" *(b)*moet die persoon wat daardie bate verkry het geag word daardie bate te verkry het teen 'n koste gelyk aan daardie markwaarde, welke koste geag moet word 'n bedrag van onkoste werklik aangegaan en betaal te gewees het by die toepassing van paragraaf 20(1)*(a)*."; en

(c) deur die volgende subparagraaf by te voeg:

"(2) Subparagraaf (1) is nie van toepassing nie ten opsigte van die beskikking oor—

(a) 'n reg in artikel 8A bedoel; of

(b) 'n bate in die omstandighede in artikel 10(1)(nE) bedoel.".

(2) Subartikel (1) word geag op 1 Oktober 2001 in werking te getree het.

Wysiging van paragraaf 39 van Agtste Bylae by Wet 58 van 1962, soos ingevoeg deur artikel 38 van Wet 5 van 2001

88. (1) Paragraaf 39 van die Agtste Bylae by die Inkomstebelastingwet, 1962, word hierby gewysig deur subparagraaf (3) deur die volgende subparagraaf te vervang:

"(3) By die toepassing van hierdie paragraaf, sluit 'n verbonde persoon met betrekking tot—

(a) 'n natuurlike persoon nie in 'n familielid van daardie persoon nie behalwe 'n **[gade]** ouer, kind, stiefkind, broer, suster, kleinkind of grootouer van daardie persoon; of

(b) 'n fonds van 'n versekeraar in artikel 29A bedoel, nie in 'n ander sodanige fonds van daardie versekeraar nie ten opsigte van die beskikking oor 'n bate ingevolge artikel 29A(6) of (7).".

(2) Subartikel (1) word geag op 1 Oktober 2001 in werking te getree het.

Wysiging van paragraaf 40 van Agtste Bylae by Wet 58 van 1962, soos ingevoeg deur artikel 38 van Wet 5 van 2001

89. (1) Paragraaf 40 van die Agtste Bylae by die Inkomstebelastingwet, 1962, word hierby gewysig—

(a) deur die volgende item by subparagraaf (1) te voeg:

"*(d)* 'n belang in 'n pensioen-, voorsorgs- of uittredingannuïteitsfonds in die Republiek of 'n fonds, reëling of instrument buite die Republiek geleë wat voordele soortgelyk aan die van 'n pensioen-, voorsorgs- of uittredingannuïteitsfonds voorsien wat, indien die opbrengs daarvan ontvang is deur of toegeval het aan die oorledene, die kapitaalwins of kapitaalverlies ten opsigte van die beskikking van die belang vasgestel, ingevolge paragraaf 54 verontagsaam sou word.".

(b) deur in subparagraaf (1) die woorde wat item *(c)* volg deur die volgende woorde te vervang:

"aan sy of haar bestorwe boedel vir 'n opbrengs gelyk aan die markwaarde van daardie bates soos op die datum van daardie persoon se dood, en die bestorwe boedel moet geag word as daardie bates te verkry het teen 'n koste gelyk aan daardie markwaarde, welke koste geag moet word 'n bedrag van onkoste werklik aangegaan en betaal te gewees het by die toepassing van paragraaf 20(1)*(a)*."; en

(c) deur item *(b)* van subparagraaf (2) deur die volgende item te vervang:

"*(b)* die erfgenaam, legataris of trustee geag word daardie bate te verkry het vir 'n koste gelyk aan die basiskoste van die bestorwe boedel ten opsigte van daardie bate, welke koste geag moet word 'n bedrag van onkoste werklik aangegaan en betaal te gewees het by die toepassing van paragraaf 20(1)*(a)*.".

(2) Subartikel (1) word geag op 1 Oktober 2001 in werking te getree het.

Amendment of paragraph 42 of Eighth Schedule to Act 58 of 1962, as inserted by section 38 of Act 5 of 2001

90. (1) Paragraph 42 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended—

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

"*(b)* the person who acquired the financial instrument of the same kind and of the same or equivalent quality must be treated as having acquired that financial instrument at a cost equal to the total of—

(i) any amount allowable in terms of paragraph 20; **[plus]** and

(ii) the amount of any capital loss which would have arisen in the hands of the person who disposed of the asset, were it not for the operation of item *(a)*,

which cost must be treated as an amount of expenditure actually incurred and paid for the purposes of paragraph 20(1)*(a)*."; and

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

"(3) For the purposes of this paragraph, a connected person in relation to—

(a) a natural person does not include a relative of that person other than a **[spouse]** parent, child, stepchild, brother, sister, grandchild or grandparent of that person; or

(b) a fund of an insurer contemplated in section 29A does not include another such fund of that insurer in respect of the disposal of an asset in terms of section 29A(6) or (7).".

(2) Subsection (1) shall be deemed to have come into operation on 1 October 2001.

Amendment of paragraph 43 of Eighth Schedule to Act 58 of 1962, as inserted by section 38 of Act 5 of 2001

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

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

"(1) Where a person disposes of an asset, other than a foreign equity instrument, for proceeds denominated in a foreign currency after having incurred expenditure in respect of that asset in the same currency, that person must determine the capital gain or capital loss on the disposal by translating both proceeds and the **[expenditure incurred]** base cost into the currency of the Republic at the ruling exchange rate on the date of disposal.";

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

"Where a person disposes of an asset, other than a foreign equity instrument, for proceeds denominated in any currency (hereinafter referred to as the 'currency of disposal') after having incurred expenditure in respect of that asset in another currency (hereinafter referred to as the 'currency of expenditure'), that person must—";

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

"*(a)* determine the capital gain or capital loss on the disposal by translating both proceeds and the **[expenditure incurred]** base cost into the currency of expenditure at the ruling exchange rate on the date of disposal; and";

(d) by the addition of the following subparagraph:

"(4) Despite section 25D, where a person disposes of any foreign equity instrument, that person must determine the capital gain or capital loss on the disposal by translating—

(a) the proceeds into the currency of the Republic at the ruling exchange rate on the date of disposal;

(b) the valuation date value of that foreign equity instrument which is a pre-valuation date asset into the currency of the Republic at the ruling exchange rate on valuation date; and

Wysiging van paragraaf 42 van Agtste Bylae by Wet 58 van 1962, soos ingevoeg deur artikel 38 van Wet 5 van 2001

90. (1) Paragraaf 42 van die Agtste Bylae by die Inkomstebelastingwet, 1962, word hierby gewysig—

(a) deur item *(b)* van subparagraaf (1) deur die volgende item te vervang:

"*(b)* moet die persoon wat die finansiële instrument van dieselfde soort of dieselfde of gelyke gehalte verkry het geag word daardie finansiële instrument te verkry het teen 'n koste gelyk aan die totaal van—

(i) enige bedrag kragtens paragraaf 20 toelaatbaar; **[tesame met]** en

(ii) die bedrag van enige kapitaalverlies wat sou ontstaan het in die hande van die persoon wat oor die bate beskik het, was dit nie vir die werking van item *(a)* nie,

welke koste geag moet word 'n bedrag van onkoste werklik aangegaan en betaal te gewees het by die toepassing van paragraaf 20(1)*(a)*."; en

(b) deur subparagraaf (3) deur die volgende subparagraaf te vervang:

"(3) By die toepassing van hierdie paragraaf, sluit 'n verbonde persoon met betrekking tot—

(a) 'n natuurlike persoon nie 'n familielid van daardie persoon in nie behalwe 'n **[gade]** ouer, kind, stiefkind, broer, suster, kleinkind of grootouer van daardie persoon; of

(b) 'n fonds van 'n versekeraar in artikel 29A bedoel, nie enige ander sodanige fonds van daardie versekeraar in nie ten opsigte van die beskikking oor 'n bate ingevolge artikel 29A(6) of (7).".

(2) Subartikel (1) word geag op 1 Oktober 2001 in werking te getree het.

Wysiging van paragraaf 43 van Agtste Bylae by Wet 58 van 1962, soos ingevoeg deur artikel 38 van Wet 5 van 2001

91. (1) Paragraaf 43 van die Agtste Bylae by die Inkomstebelastingwet, 1962, word hierby gewysig—

(a) deur subparagraaf (1) deur die volgende subparagraaf te vervang:

"(1) Waar 'n persoon oor 'n bate, behalwe 'n buitelandse ekwiteitsinstrument, beskik vir 'n opbrengs wat in 'n buitelandse geldeenheid aangetoon word nadat 'n onkoste ten opsigte van daardie bate in dieselfde geldeenheid aangegaan is, moet daardie persoon die **[wins]** kapitaalwins of **[verlies]** kapitaalverlies by die beskikking vasstel deur beide daardie opbrengs en die **[onkoste aangegaan]** basiskoste na die geldeenheid van die Republiek om te skakel teen die heersende wisselkoers op die datum van beskikking.";

(b) deur in subparagraaf (2) die woorde wat item *(a)* voorafgaan deur die volgende woorde te vervang:

"Waar 'n persoon oor 'n bate, behalwe 'n buitelandse ekwiteitsinstrument, beskik vir 'n opbrengs wat in enige geldeenheid aangetoon word (hierna die "geldeenheid van beskikking" genoem) nadat onkoste ten opsigte van daardie bate in 'n ander geldeenheid (hierna die "geldeenheid van onkoste" genoem) aangegaan is, moet daardie persoon—";

(c) deur item *(a)* van subparagraaf (2) deur die volgende item te vervang:

"*(a)* die **[wins]** kapitaalwins of **[verlies]** kapitaalverlies by die beskikking vasstel deur beide die opbrengs en die **[onkoste aangegaan]** basiskoste na die geldeenheid van die Republiek om te skakel teen die heersende wisselkoers op die datum van beskikking; en";

(d) deur die volgende subparagraaf by te voeg:

"(4) Ondanks artikel 25D, waar 'n persoon oor enige buitelandse ekwiteitsinstrument beskik, moet daardie persoon die wins of verlies by die beskikking vasstel deur—

(a) die opbrengs na die geldeenheid van die Republiek om te reken teen die heersende wisselkoers op die datum van beskikking;

(b) die waardasiedatumwaarde van daardie buitelandse ekwiteitsinstrument wat 'n voorwaardasiedatumbate is om te reken na die geldeenheid van die Republiek teen die heersende wisselkoers op waardasiedatum; en

(c) the expenditure incurred after valuation date in respect of that foreign equity instrument into the currency of the Republic at the ruling exchange rate on the date of incurral of that expenditure.".

(2) Subsection (1) shall be deemed to have come into operation on 1 October 2001.

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

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

(a) by the substitution for the words following subparagraph *(c)* of the definition of "an interest" for the following words:

"but excluding—

(i) a right under a mortgage bond; or

(ii) **[an]** a right or interest of whatever nature in a trust or an asset of a trust, other than a right of a lessee who is not a connected person in relation to that trust;"; and

(b) by the substitution in item *(b)* of the definition of "primary residence" for the words preceding sub-item (i) of the following words:

"*(b)* which that person or a beneficiary of that special trust or a spouse of that person or beneficiary—".

(2) Subsection (1) shall be deemed to have come into operation on 1 October 2001.

Amendment of paragraph 45 of Eighth Schedule to Act 58 of 1962, as inserted by section 38 of Act 5 of 2001, and amended by section 29 of Act 19 of 2001

93. (1) Paragraph 45 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended by the substitution for subparagraph (1) of the following subparagraph:

"(1) Subject to subparagraphs (2) and (3), a natural person or a special trust must, when determining an aggregate capital gain or aggregate capital loss, disregard so much of a capital gain or capital loss determined in respect of the disposal of the primary residence of that person or that special trust as does not exceed R1 million.".

(2) Subsection (1) shall be deemed to have come into operation on 1 October 2001.

Amendment of paragraph 47 of Eighth Schedule to Act 58 of 1962, as inserted by section 38 of Act 5 of 2001

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

"*(b)* that person or a beneficiary of that special trust or a spouse of that person or beneficiary, was not ordinarily resident in that residence throughout the period on or after the valuation date during which that person or special trust held that interest,".

(2) Subsection (1) shall be deemed to have come into operation on 1 October 2001.

Amendment of paragraph 49 of Eighth Schedule to Act 58 of 1962, as inserted by section 38 of Act 5 of 2001

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

(a) by the substitution for item (ii) of subparagraph *(a)* of the following item:

"(ii) disposes of an interest in a residence that was a primary residence for a part of the period on or after the valuation date during which that person or special trust held that interest; and"; and

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

"*(b)* where that person or a beneficiary of that special trust used the residence referred to in subparagraph *(a)* or a part thereof for the purposes of carrying on a trade for any portion of the period on or after the valuation date during which that person or special trust held that interest,".

(2) Subsection (1) shall be deemed to have come into operation on 1 October 2001.

(c) die onkoste na waardasiedatum ten opsigte van daardie buitelandse ekwiteitsinstrument aangegaan om te reken na die geldeenheid van die Republiek teen die heersende wisselkoers op die datum van aangaan van daardie onkoste.".

(2) Subartikel (1) word geag op 1 Oktober 2001 in werking te getree het.

Wysiging van paragraaf 44 van Agtste Bylae by Wet 58 van 1962, soos ingevoeg deur artikel 38 van Wet 5 van 2001

92. (1) Paragraaf 44 van die Agtste Bylae by die Inkomstebelastingwet, 1962, word hierby gewysig—

(a) deur in die omskrywing van "'n belang" die woorde wat subparagraaf *(c)* volg deur die volgende woorde te vervang:

maar uitgesluit—

(i) 'n reg kragtens 'n huisleningsverband; of

(ii) 'n reg of belang van welke aard ookal in 'n trust of 'n bate van 'n trust, behalwe 'n reg van 'n huurder wat nie 'n verbonde persoon met betrekking tot daardie trust is nie;"; en

(b) deur in item *(b)* van die omskrywing van "primêre woning" die woorde wat sub-item (i) voorafgaan deur die volgende woorde te vervang:

"*(b)* wat daardie persoon of 'n begunstigde van daardie spesiale trust of 'n gade van daardie persoon of begunstigde—".

(2) Subartikel (1) word geag op 1 Oktober 2001 in werking te getree het.

Wysiging van paragraaf 45 van Agtste Bylae by Wet 58 van 1962, soos ingevoeg deur artikel 38 van Wet 5 van 2001, en gewysig deur artikel 29 van Wet 19 van 2001

93. (1) Paragraaf 45 van die Agtste Bylae by die Inkomstebelastingwet, 1962, word hierby gewysig deur subparagraaf (1) deur die volgende subparagraaf te vervang:

"(1) Behoudens subparagrawe (2) en (3), moet 'n natuurlike persoon of 'n spesiale trust by die vasstelling van 'n totale kapitaalwins of totale kapitaalverlies, soveel van 'n kapitaalwins of kapitaalverlies ten opsigte van die beskikking oor die primêre woning van daardie persoon of daardie spesiale trust vasgestel verontagsaam as wat nie R1 miljoen te bowe gaan nie.".

(2) Subartikel (1) word geag op 1 Oktober 2001 in werking te getree het.

Wysiging van paragraaf 47 van Agtste Bylae by Wet 58 van 1962, soos ingevoeg deur artikel 38 van Wet 5 van 2001

94. (1) Paragraaf 47 van die Agtste Bylae by die Inkomstebelastingwet, 1962, word hierby gewysig deur subparagraaf *(b)* deur die volgende subparagraaf te vervang:

"*(b)* daardie persoon of 'n begunstigde van daardie spesiale trust of 'n gade van daardie persoon of begunstigde, nie deurgaans gedurende die tydperk op of na die waardasiedatum waartydens daardie persoon of spesiale trust daardie belang gehad het gewoonlik in daardie woning woonagtig was nie,".

(2) Subartikel (1) word geag op 1 Oktober 2001 in werking te getree het.

Wysiging van paragraaf 49 van Agtste Bylae by Wet 58 van 1962, soos ingevoeg deur artikel 38 van Wet 5 van 2001

95. (1) Paragraaf 49 van die Agtste Bylae by die Inkomstebelastingwet, 1962, word hierby gewysig—

(a) deur item (ii) van subparagraaf *(a)* deur die volgende item te vervang:

"(ii) oor 'n belang in 'n woning beskik wat 'n primêre woning was vir 'n gedeelte van die tydperk op of na die waardasiedatum waartydens daardie persoon of spesiale trust daardie belang gehou het; en";

(b) deur subparagraaf *(b)* deur die volgende subparagraaf te vervang:

"*(b)* waar daardie persoon of 'n begunstigde van daardie spesiale trust die woning in subparagraaf *(a)* bedoel of 'n gedeelte daarvan vir enige gedeelte van die tydperk op of na die waardasiedatum waartydens daardie persoon of spesiale trust daardie belang gehou het gebruik het vir doeleindes om 'n bedryf te beoefen,".

(2) Subartikel (1) word geag op 1 Oktober 2001 in werking te getree het.

Amendment of paragraph 51 of Eighth Schedule to Act 58 of 1962, as inserted by section 38 of Act 5 of 2001

96. (1) Paragraph 51 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended by the substitution for sub-item (i) of item *(b)* of subparagraph (2) of the following sub-item:

"(i) alone or together with his or her spouse directly held all the share capital or members' interest in that company from 5 April 2001 to the date of registration in the deeds registry of that residence in the name of that natural person or his or her spouse or in their names jointly; or".

(2) Subsection (1) shall be deemed to have come into operation on 1 October 2001.

Amendment of paragraph 53 of Eighth Schedule to Act 58 of 1962, as inserted by section 38 of Act 5 of 2001

97. (1) Paragraph 53 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended by the addition of the following subparagraph:

"(4) For the purposes of subparagraph (2), an asset of a natural person or a special trust to whom an allowance is or was paid or payable in respect of the use of that asset for business purposes, must be treated as being used mainly for purposes other than the carrying on of a trade.".

(2) Subsection (1) shall be deemed to have come into operation on 1 October 2001.

Amendment of paragraph 55 of Eighth Schedule to Act 58 of 1962, as inserted by section 38 of Act 5 of 2001, and amended by section 32 of Act 19 of 2001

98. (1) Paragraph 55 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended by the substitution for subitem (ii) of item *(a)* of subparagraph (1) of the following subitem:

"(ii) is the spouse, nominee, dependant as contemplated in the Pension Funds Act, 1956 (Act No. 24 of 1956), or deceased estate of the original beneficial owner of the relevant policy and no amount was paid or is payable or will become payable, whether directly or indirectly, in respect of **[the]** any cession of that policy from the beneficial owner of that policy to that spouse, nominee or dependant; or".

(2) Subsection (1) shall be deemed to have come into operation on 1 October 2001.

Substitution of paragraph 56 of Eighth Schedule to Act 58 of 1962, as inserted by section 38 of Act 5 of 2001

99. (1) Paragraph 56 of the Eighth Schedule to the Income Tax Act, 1962, is hereby substituted by the following paragraph:

"**Disposal by creditor of debt owed by connected person**

56. (1) Where a creditor disposes of a claim owed by a debtor, who is a connected person in relation to that creditor, that creditor must disregard any capital loss determined in consequence of that disposal.

(2) Subparagraph (1) does not apply in respect of any capital loss determined in consequence of the disposal by a creditor of a claim owed by a debtor, to the extent that the amount of that claim so disposed of represents a capital gain which is included in the determination of the aggregate capital gain or aggregate capital loss of that debtor by virtue of paragraph 12(5).".

(2) Subsection (1) shall be deemed to have come into operation on 1 October 2001.

Wysiging van paragraaf 51 van Agtste Bylae by Wet 58 van 1962, soos ingevoeg deur artikel 38 van Wet 5 van 2001

96. (1) Paragraaf 51 van die Agtste Bylae by die Inkomstebelastingwet, 1962, word hierby gewysig deur subitem (i) van item *(b)* van subparagraaf (2) deur die volgende subitem te vervang:

"(i) alleen of tesame met sy of haar gade direk al die aandelekapitaal of ledebelang in daardie maatskappy gehou het vanaf 5 April 2001 tot die datum van registrasie in die aktesregistrasiekantoor van daardie woning in die naam van daardie natuurlike persoon of sy of haar gade of gesamentlik in hulle name; of".

(2) Subartikel (1) word geag op 1 Oktober 2001 in werking te getree het.

Wysiging van paragraaf 53 van Agtste Bylae by Wet 58 van 1962, soos ingevoeg deur artikel 38 van Wet 5 van 2001

97. (1) Paragraaf 53 van die Agtste Bylae by die Inkomstebelastingwet, 1962, word hierby gewysig deur die volgende subparagraaf by te voeg:

"(4) By die toepassing van subparagraaf (2), word 'n bate van 'n natuurlike persoon of 'n spesiale trust aan wie 'n toelae betaal of betaalbaar is of was ten opsigte van die gebruik van daardie bate vir besigheidsdoeleindes, geag hoofsaaklik vir doeleindes anders as die beoefening van 'n bedryf gebruik te gewees het.".

(2) Subartikel (1) word geag op 1 Oktober 2001 in werking te getree het.

Wysiging van paragraaf 55 van Agtste Bylae by Wet 58 van 1962, soos ingevoeg deur artikel 38 van Wet 5 van 2001, en gewysig deur artikel 32 van Wet 19 van 2001

98. (1) Paragraaf 55 van die Agtste Bylae by die Inkomstebelastingwet, 1962, word hierby gewysig deur subitem (ii) van item *(a)* van subparagraaf (1) deur die volgende subitem te vervang:

"(ii) die gade, genomineerde of afhanklike soos in die Wet op Pensioenfondse, 1956 (Wet No. 24 van 1956), beoog, of die bestorwe boedel van die oorspronklike voordelige eienaar van die relevante polis is en geen bedrag betaal was of betaalbaar is of betaalbaar sal word nie, hetsy direk of indirek, ten opsigte van **[die]** enige sessie van daardie polis vanaf die voordelige eienaar van daardie polis aan daardie gade, genomineerde of afhanklike;".

(2) Subartikel (1) word geag op 1 Oktober 2001 in werking te getree het.

Vervanging van paragraaf 56 van Agtste Bylae by Wet 58 van 1962, soos ingevoeg deur artikel 38 van Wet 5 van 2001

99. (1) Paragraaf 56 van die Agtste Bylae by die Inkomstebelastingwet, 1962, word hierby deur die volgende paragraaf vervang:

"Beskikking deur 'n skuldeiser van 'n eis verskuldig deur 'n verbonde persoon

56. (1) Waar 'n skuldeiser oor 'n eis wat deur 'n skuldenaar, wat 'n verbonde persoon met betrekking tot daardie skuldeiser is, verskuldig is beskik, moet daardie skuldeiser enige kapitaalverlies ten gevolge van daardie beskikking verontagsaam.

(2) Subparagraaf (1) is nie van toepassing nie ten opsigte van enige kapitaalverlies vasgestel vanweë die beskikking deur 'n skuldeiser van 'n eis deur 'n skuldenaar verskuldig, tot die mate wat die bedrag van daardie eis aldus oor beskik 'n kapitaalwins daarstel wat by die vasstelling van die totale kapitaalwins of totale kapitaalverlies van daardie skuldeiser ingevolge paragraaf 12(5) ingesluit is.".

(2) Subartikel (1) word geag op 1 Oktober 2001 in werking te getree het.

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

100. (1) Paragraph 58 of the Eighth Schedule to the Income Tax Act, 1962, is hereby substituted by the following paragraph:

"**Exercise of an option**

58. Where, as a result of the exercise by a person of an option, that person acquires or disposes of an asset in respect of which that option was granted, that person must disregard any **[A]** capital gain or capital loss **[of a person]** determined in respect of the **[termination]** exercise of **[the]** that option **[as a result of the exercise by that person of an option, must be disregarded]**.".

(2) Subsection (1) shall be deemed to have come into operation on 1 October 2001.

Substitution of paragraph 59 of Eighth Schedule to Act 58 of 1962, as inserted by section 38 of Act 5 of 2001

101. (1) Paragraph 59 of the Eighth Schedule to the Income Tax Act, 1962, is hereby substituted by the following paragraph:

"**Compensation for personal injury, illness or defamation**

59. A natural person or a special trust must disregard a capital gain or a capital loss determined in respect of a disposal that resulted in that person or that special trust, as the case may be, receiving compensation for personal injury, illness or defamation of that person or a beneficiary of that special trust.".

(2) Subsection (1) shall be deemed to have come into operation on 1 October 2001.

Substitution of paragraph 61 of Eighth Schedule to Act 58 of 1962, as inserted by section 38 of Act 5 of 2001

102. (1) Paragraph 61 of the Eighth Schedule to the Income Tax Act, 1962, is hereby substituted by the following paragraph:

"**Unit trust funds**

61. A unit portfolio **[comprised in any unit trust scheme managed or carried on by a management company under section 4 or 30 of the Unit Trusts Control Act, 1981 (Act No. 54 of 1981),]** contemplated in paragraph *(e)*(i) of the definition of "company" in section 1, must disregard any capital gain or capital loss.".

(2) Subsection (1) shall be deemed to have come into operation on 1 October 2001.

Amendment of paragraph 65 of Eighth Schedule to Act 58 of 1962, as inserted by section 38 of Act 5 of 2001

103. (1) Paragraph 65 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended by the substitution for items *(a)* and *(b)* of subparagraph (1) of the following items:

"*(a)* a person disposes of an asset, other than a financial instrument, by way of expropriation, loss or destruction, or where the Master of the High Court or an appointed trustee disposes of an asset, other than a financial instrument, of a person in consequence of the sequestration of the estate of the spouse of that person, as contemplated in section 21 of the Insolvency Act, 1936 (Act No. 24 of 1936), and that person obtains an order in which the proceeds are declared to be those of that person;

Vervanging van paragraaf 58 van Agtste Bylae by Wet 58 van 1962, soos ingevoeg deur artikel 38 van Wet 5 van 2001

100. (1) Paragraaf 58 van die Agtste Bylae by die Inkomstebelastingwet, 1962, word hierby deur die volgende paragraaf vervang:

"**Uitoefening van 'n opsie**

58. Waar vanweë die uitoefening deur 'n persoon van 'n opsie, daardie persoon 'n bate, ten opsigte waarvan daardie opsie verleen is, verkry of daaroor beskik, moet daardie persoon enige **['n]** kapitaalwins of kapitaalverlies **[van 'n persoon]** vasgestel ten opsigte van die **[beëindiging]** uitoefening van **[die]** daardie opsie **[as gevolg van die uitoefening deur daardie persoon van 'n opsie, moet]** verontagsaam **[word]**.".

(2) Subartikel (1) word geag op 1 Oktober 2001 in werking te getree het.

Vervanging van paragraaf 59 van Agtste Bylae by Wet 58 van 1962, soos ingevoeg deur artikel 38 van Wet 5 van 2001

101. (1) Paragraaf 59 van die Agtste Bylae by die Inkomstebelastingwet, 1962, word hierby deur die volgende paragraaf vervang:

"**Vergoeding vir persoonlike besering, siekte of naamskending**

59. 'n Natuurlike persoon of 'n spesiale trust moet 'n kapitaalwins of 'n kapitaalverlies **[verontagsaam]** vasgestel ten opsigte van 'n beskikking wat tot gevolg het dat daardie persoon of daardie spesiale trust, na gelang van die geval, vergoeding vir 'n persoonlike besering, siekte of naamskending van daardie persoon of 'n begunstigde van daardie spesiale trust ontvang, verontagsaam.".

(2) Subartikel (1) word geag op 1 Oktober 2001 in werking te getree het.

Wysiging van paragraaf 61 van Agtste Bylae by Wet 58 van 1962, soos ingevoeg deur artikel 38 van Wet 5 van 2001

102. (1) Paragraaf 61 van die Agtste Bylae by die Inkomstebelastingwet, 1962, word hierby deur die volgende paragraaf vervang:

"**Effektetrustfondse**

61. 'n Effektegroep **[bevat in 'n effekte-trustskema bestuur of bedryf deur enige maatskappy geregistreer as 'n bestuursmaatskappy kragtens artikel 4 of 30 van die Wet op Beheer van Effektetrustskemas, 1981 (Wet 54 van 1981)]** in paragraaf (e)(i) van die omskrywing van 'maatskappy' in artikel 1 bedoel, moet enige kapitaalwins of kapitaalverlies verontagsaam.".

(2) Subartikel (1) word geag op 1 Oktober 2001 in werking te getree het.

Wysiging van paragraaf 65 van Agtste Bylae by Wet 58 van 1962, soos ingevoeg deur artikel 38 van Wet 5 van 2001

103. (1) Paragraaf 65 van die Agtste Bylae by die Inkomstebelastingwet, 1962, word hierby gewysig deur items *(a)* en *(b)* van subparagraaf (1) deur die volgende items te vervang:

"*(a)* 'n persoon oor 'n bate, behalwe 'n finansiële instrument, beskik by wyse van onteiening, verlies of vernietiging, of waar die Meester van die Hooggeregshof of 'n aangestelde trustee oor 'n bate, behalwe 'n finansiële instrument, van 'n persoon beskik vanweë die sekwestrasie van die boedel van die gade van daardie persoon, soos in artikel 21 van die Insolvensiewet, 1936 (Wet No. 24 van 1936) bedoel, en daardie persoon 'n bevel verkry ingevolge waarvan die opbrengs verklaar word die van daardie persoon te wees;

(b) proceeds accrue to that person by way of compensation for that expropriation, loss or destruction, or in consequence of the disposal by the Master of the High Court or the appointed trustee, as contemplated in item *(a)*;".

(2) Subsection (1) shall be deemed to have come into operation on 1 October 2001.

Amendment of paragraph 67 of Eighth Schedule to Act 58 of 1962, as inserted by section 38 of Act 5 of 2001

104. (1) Paragraph 67 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended—

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

"(1) *(a)* Subject to subparagraph (3), a person (hereinafter referred to as 'the transferor') must disregard any capital gain or capital loss determined in respect of the disposal of an asset to his or her spouse (hereinafter referred to as 'the transferee').

(b) The transferee must be treated as having—

(i) acquired the asset on the same date that such asset was acquired by the transferor;

(ii) acquired the asset for an amount equal to the expenditure contemplated in paragraph 20 that was incurred by that transferor prior to that disposal;

(iii) incurred that expenditure on the same date that it was incurred by the transferor; and

(iv) used the asset in the same manner that it was used by the transferor in respect of the period prior to that disposal."; and

(b) by the addition of the following subparagraph:

"(3) Subparagraph (1) shall not apply in respect of the disposal of an asset by a person to his or her spouse who is not a resident, unless the asset disposed of is an asset contemplated in paragraph 2(1)*(b)*.".

(2) Subsection (1) shall be deemed to have come into operation on 1 October 2001.

Insertion of paragraph 67A in Eighth Schedule to Act 58 of 1962

105. (1) The following paragraph is hereby inserted in the Eighth Schedule after paragraph 67:

"Capital gains and capital losses in respect of interests in unit trust funds

67A. (1) A holder of a unit in a unit portfolio comprised in any unit trust scheme managed or carried on by any company registered as a management company under section 30 of the Unit Trusts Control Act, 1981 (Act No. 54 of 1981), must determine a capital gain or capital loss in respect of any interest in that unit portfolio only upon the disposal of that unit.

(2) The capital gain or capital loss to be determined in terms of subparagraph (1) must be determined with reference to the proceeds from the disposal of that unit and its base cost.".

(2) Subsection (1) shall be deemed to have come into operation on 1 October 2001.

Amendment of paragraph 74 of Eighth Schedule to Act 58 of 1962, as inserted by section 38 of Act 5 of 2001

106. (1) Paragraph 74 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended by the substitution for the definition of "share" of the following definition:

" 'share' in relation to a company means any **[issued]** share capital **[in relation to a]** of, or member's interest in, that company **[(or any fraction thereof) regardless of]** and any right or interest in or to such share capital or member's interest,

(b) opbrengs toeval aan daardie persoon by wyse van vergoeding vir daardie onteiening, verlies of vernietiging, of vanweë die beskikking deur die Meester van die Hooggeregshof of die aangestelde trustee, soos in item *(a)* bedoel;".

(2) Subartikel (1) word geag op 1 Oktober 2001 in werking te getree het.

Wysiging van paragraaf 67 van Agtste Bylae by Wet 58 van 1962, soos ingevoeg deur artikel 38 van Wet 5 van 2001

104. (1) Paragraaf 67 van die Agtste Bylae by die Inkomstebelastingwet, 1962, word hierby gewysig—

(a) deur subparagraaf (1) deur die volgende subparagraaf te vervang:

"(1) *(a)* Behoudens subparagraaf (3), moet 'n persoon (hierna 'die oordraggewer' genoem) enige kapitaalwins of kapitaalverlies vasgestel ten opsigte van die beskikking oor 'n bate aan sy of haar gade (hierna 'die oordragnemer' genoem) verontagsaam.

(b) Die oordragnemer moet geag word—

(i) die bate te verkry het op dieselfde datum wat daardie bate deur die oordraggewer verkry is;

(ii) die bate te verkry het vir 'n bedrag gelyk aan die onkoste in paragraaf 20 bedoel wat voor daardie beskikking deur daardie oordraggewer aangegaan is;

(iii) daardie onkoste aan te gegaan het op dieselfde datum wat dit deur die oordraggewer aangegaan is; en

(iv) die bate op dieselfde wyse te gebruik het as wat dit deur die oordraggewer gebruik is ten opsigte van die tydperk voor daardie beskikking."; en

(b) deur die volgende subparagraaf by te voeg:

"(3) Subparagraaf (1) is nie van toepassing nie ten opsigte van die beskikking oor 'n bate deur 'n persoon aan sy of haar gade wat nie 'n inwoner is nie, tensy die bate oor beskik 'n bate is soos in paragraaf 2(1)*(b)* bedoel.".

(2) Subartikel (1) word geag op 1 Oktober 2001 in werking te getree het.

Invoeging van paragraaf 67A in Agtste Bylae by Wet 58 van 1962

105. (1) Die volgende paragraaf word hierby in die Agtste Bylae by die Inkomstebelastingwet, 1962, na paragraaf 67 ingevoeg:

"Kapitaalwinste en kapitaalverliese ten opsigte van belange in effektegroepe

67A. (1) 'n Eenheidshouer in 'n effektegroep bevat in 'n effekte-trustskema bestuur of bedryf deur enige maatskappy geregistreer as 'n bestuursmaatskappy kragtens artikel 30 van die Wet op Beheer van Effekte-trustskemas, 1981 (Wet No. 54 van 1981), moet 'n kapitaalwins of kapitaalverlies ten opsigte van enige belang in daardie effektegroep vasstel slegs by die beskikking van daardie eenheid.

(2) Die kapitaalwins of kapitaalverlies wat ingevolge subparagraaf (1) vasgestel moet word, moet vasgestel word met verwysing na die opbrengs uit die beskikking van daardie eenheid en sy basiskoste.".

(2) Subartikel (1) word geag op 1 Oktober 2001 in werking te getree het.

Wysiging van paragraaf 74 van Agtste Bylae by Wet 58 van 1962, soos ingevoeg deur artikel 38 van Wet 5 van 2001

106. (1) Paragraaf 74 van die Agtste Bylae by die Inkomstebelastingwet, 1962, word hierby gewysig deur die omskrywing van "aandeel" deur die volgende omskrywing te vervang:

"'aandeel' met betrekking tot 'n maatskappy enige **[uitgereikte]** aandelekapitaal **[met betrekking tot 'n]** van, of ledebelang in, daardie maatskappy **[(of enige breukdeel daarvan) ongeag of]** en enige reg of belang in of tot daardie aandelekapitaal of ledebelang, hetsy daardie **[uitgereikte]** aandelekapitaal of

whether or not that **[issued]** share capital or member's interest carries a right to participate in dividends or a capital distribution.".

(2) Subsection (1) shall be deemed to have come into operation on 1 October 2001.

Amendment of paragraph 76 of Eighth Schedule to Act 58 of 1962, as inserted by section 38 of Act 5 of 2001

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

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

"(1) Subject to subparagraph (4), where a capital distribution of cash or assets *in specie* is received by or accrues to a person in respect of a share, that person must reduce the base cost of that share by the amount of that capital distribution prior to disposing of that share.";

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

"(4) Where a shareholder disposes of a share that qualifies as a pre-valuation date asset and has adopted the time-apportionment base cost for that share—

(a) the expenditure incurred in respect of that share must be reduced to the extent of any capital distribution of cash or assets *in specie* received by or accrued to that shareholder in respect of that share **[before the valuation date]**; and

(b) where the capital distribution exceeds that expenditure, the shareholder must add the excess to the proceeds.".

(2) Subsection (1) shall be deemed to have come into operation on 1 October 2001.

Amendment of paragraph 80 of Eighth Schedule to Act 58 of 1962, as inserted by section 38 of Act 5 of 2001

108. (1) Paragraph 80 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended by the addition of the following subparagraph:

"(3) Where during any year of assessment any resident acquires a vested right to any amount representing capital of any trust which is not a resident, and—

(a) that capital arose from—

(i) a capital gain of that trust determined in any previous year of assessment during which that resident had a contingent right to that capital; or

(ii) any amount which would have constituted a capital gain of that trust had that trust been a resident; and

(b) that capital gain has not been subject to tax in the Republic in terms of the provisions of this Act,

that amount must be taken into account for the purposes of calculating the aggregate captial gain or aggregate capital loss of that resident that year of assessment.".

(2) Subsection (1) shall be deemed to have come into operation on 1 October 2001.

Amendment of paragraph 81 of Eighth Schedule to Act 58 of 1962, as inserted by section 38 of Act 5 of 2001

109. (1) Paragraph 81 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended—

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

"**[(1)]** Despite paragraph 38*(b)*, a person's interest in a discretionary trust must **[subject to subparagraph (2)]** be treated as having a base cost of nil."; and

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

(2) Subsection (1) shall be deemed to have come into operation on 1 October 2001.

ledebelang die reg bevat om aan dividende of 'n kapitaaluitkering deel te neem of nie, al dan nie;".

(2) Subartikel (1) word geag op 1 Oktober 2001 in werking te getree het.

Wysiging van paragraaf 76 van Agtste Bylae by Wet 58 van 1962, soos ingevoeg deur artikel 38 van Wet 5 van 2001

107. (1) Paragraaf 76 van die Agtste Bylae by die Inkomstebelastingwet, 1962, word hierby gewysig—

(a) deur subparagraaf (1) deur die volgende subparagraaf te vervang:

"(1) Behoudens subparagraaf (4), waar 'n kapitaaluitkering van kontant of bates *in specie* ontvang is deur of toeval aan 'n persoon ten opsigte van 'n aandeel, moet daardie persoon die basiskoste van daardie aandeel verminder met die bedrag van daardie kapitaaluitkering voor die beskikking oor daardie aandeel.";

(b) deur subparagraaf (4) deur die volgende subparagraaf te vervang:

"(4) Waar 'n aandeelhouer oor 'n aandeel wat as 'n voorwaardasiedatumbate kwalifiseer beskik en die tydtoedelingbasiskoste vir daardie aandeel aangeneem het—

(a) moet die onkoste aangegaan ten opsigte van daardie aandeel verminder word tot die mate van enige kapitaaluitkering in kontant of bates *in specie* wat ontvang is deur of toegeval het aan daardie aandeelhouer ten opsigte van daardie aandeel **[voor die waardasiedatum ontvang is]**; en

(b) waar die kapitaaluitkering daardie onkoste te bowe gaan, moet die aandeelhouer die oorskot by die opbrengs tel.".

(2) Subartikel (1) word geag op 1 Oktober 2001 in werking te getree het.

Wysiging van paragraaf 80 van Agtste Bylae by Wet 58 van 1962, soos ingevoeg deur artikel 38 van Wet 5 van 2001

108. (1) Paragraaf 80 van die Agtste Bylae by die Inkomstebelastingwet, 1962, word hierby gewysig deur die volgende subparagraaf by te voeg:

"(3) Waar gedurende enige jaar van aanslag 'n inwoner enige gevestigde reg tot 'n bedrag verkry wat kapitaal van 'n trust wat nie 'n inwoner is nie, en—

(a) daardie kapitaal ontstaan het uit—

(i) 'n kapitaalwins van daardie trust vasgestel in enige vorige jaar van aanslag waarin daardie inwoner 'n voorwaardelike reg tot daardie kapitaal gehad het; of

(ii) 'n bedrag wat 'n kapitaalwins van daardie trust sou daarstel indien daardie trust 'n inwoner was; en

(b) daardie kapitaalwins nie in die Republiek aan belasting onderhewig was ingevolge hierdie Wet nie,

word daardie bedrag in berekening gebring vir doeleindes van die vasstelling van die totale kapitaalwins of totale kapitaalverlies van daardie inwoner in daardie jaar van aanslag.".

(2) Subartikel (1) word geag op 1 Oktober 2001 in werking te getree het.

Wysiging van paragraaf 81 van Agtste Bylae by Wet 58 van 1962, soos ingevoeg deur artikel 38 van Wet 5 van 2001

109. (1) Paragraaf 81 van die Agtste Bylae by die Inkomstebelastingwet, 1962, word hierby gewysig—

(a) deur subparagraaf (1) deur die volgende subparagraaf te vervang:

"**[(1)]** Ondanks paragraaf 38*(b)*, word 'n persoon se belang in 'n diskresionêre trust **[moet, behoudens subparagraaf (2)]** geag **[word]** 'n nul-basiskoste te hê."; en

(b) deur subparagraaf (2) te skrap.

(2) Subartikel (1) word geag op 1 Oktober 2001 in werking te getree het.

Amendment of paragraph 84 of Eighth Schedule to Act 58 of 1962, as inserted by section 38 of Act 5 of 2001, and amended by section 34 of Act 19 of 2001

110. (1) Paragraph 84 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended—

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

"The Minister must, by way of notice in the *Gazette*, issue regulations to determine a capital gain or capital loss of persons (other than trusts carrying on any trade, natural persons who hold any foreich currency asset, foreign currency option contract or forward exchange contract as trading stock, or companies) in respect of—";

(b) by the substitution for item *(b)* of subparagraph (3) of the following item:

"*(b)* **[acquiring an]** exchanging or converting a foreign currency asset **[or incurring an expenditure]** into another foreign currency asset which is denominated in the same currency **[as the currency of acquisition or incurral]**; and

(c) by the deletion of item *(c)* of subparagraph (3);

(d) by the deletion of item *(a)* of subparagraph (4); and

(e) by the addition of the following subparagraph:

"(5) For the purposes of this paragraph 'foreign currency asset' means—

(a) any foreign currency; and

(b) any—

(i) loan, advance or debt;

(ii) stock, bond, debenture, bill, promissory note, certificate or similar arrangement; or

(iii) deposit with a bank or other financial institution,

the value of which is denominated in and primarily determined with reference to any foreign currency, (but excluding any policy or right in a pension fund which gives rise to any benefit contemplated in paragraph 54 or an amount contemplated in section 10(1)(*g*C)).".

(2) Subsection (1) shall be deemed to have come into operation on 1 October 2001.

Repeal of paragraph 85 of Eighth Schedule to Act 58 of 1962, as inserted by section 38 of Act 5 of 2001

111. (1) Paragraph 85 of the Eighth Schedule to the Income Tax Act, 1962, is hereby repealed.

(2) Subsection (1) shall be deemed to have come into operation on 1 October 2001.

Amendment of paragraph 86 of Eighth Schedule to Act 58 of 1962, as inserted by section 38 of Act 5 of 2001

112. (1) Paragraph 86 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended—

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

"(2) Subject to subparagraph (3), where a person—";

(b) by the addition of the following subparagraph:

"(3) The provisions of this paragraph do not apply to any disposal of an asset by a fund contemplated in section 29A(4) to any other such fund in terms of section 29A(6) or (7).".

(2) Subsection (1) shall be deemed to have come into operation on 1 October 2001.

Wysiging van paragraaf 84 van Agtste Bylae by Wet 58 van 1962, soos ingevoeg deur artikel 38 van Wet 5 van 2001, en gewysig deur artikel 34 van Wet 19 van 2001

110. (1) Paragraaf 84 van die Agtste Bylae by die Inkomstebelastingwet, 1962, word hierby gewysig—

(a) deur in subparagraaf (1) die woorde wat item *(a)* voorafgaan deur die volgende woorde te vervang:

"Die Minister moet, by wyse van kennisgewing in die Staatskoerant, regulasies uitvaardig om die kapitaalwins of kapitaalverlies van persone (behalwe trusts wat 'n bedryf beoefen, natuurlike persone wat enige buitelandse valutabate, buitelandse valuta-opsiekontrak of valutatermynkontrak as handelsvoorraad hou, of maatskappye) vas te stel ten opsigte van—";

(b) deur item *(b)* van subparagraaf (3) deur die volgende item te vervang:

"*(b)* 'n **[bate verkry of 'n onkoste aangaan]** buitelandse valutabate geruil vir of omgeskakel in 'n ander buitelandse valutabate wat in dieselfde geldeenheid aangetoon word **[as die geldeenheid van die verkryging of onkoste]**.";

(c) deur item *(c)* van subparagraaf (3) te skrap;

(d) deur item *(a)* van subparagraaf (4) te skrap;

(e) deur die volgende subparagraaf by te voeg:

"(5) By die toepassing van hierdie paragraaf beteken 'buitelandse valutabate—

(a) enige buitelandse valuta; en

(b) enige—

(i) lening, voorskot of skuld;

(ii) effek, obligasie, skuldbrief, wissel, promesse, sertifikaat of soortgelyke reëling; of

(iii) deposito by 'n bank of ander finansiële instelling,

die waarde waarvan aangedui word in en primêr vasgestel word met verwysing na enige buitelandse geldeenheid, (maar sluit nie in 'n polis of reg in 'n pensioenfonds wat enige voordeel in paragraaf 54 bedoel of 'n bedrag in artikel 10(1)*(gC)* tot gevolg het nie).".

(2) Subartikel (1) word geag op 1 Oktober 2001 in werking te getree het.

Herroeping van paragraaf 85 van Agtste Bylae by Wet 58 van 1962, soos ingevoeg deur artikel 38 van Wet 5 van 2001

111. (1) Paragraaf 85 van die Agtste Bylae by die Inkomstebelastingwet, 1962, word hierby herroep.

(2) Subartikel (1) word geag op 1 Oktober 2001 in werking te getree het.

Wysiging van paragraaf 86 van Agtste Bylae by Wet 58 van 1962, soos ingevoeg deur artikel 38 van Wet 5 van 2001

112. (1) Paragraaf 86 van die Agtste Bylae by die Inkomstebelastingwet, 1962, word hierby gewysig—

(a) deur in subparagraaf (2) die woorde wat item *(a)* voorafgaan deur die volgende woorde te vervang:

"(2) Behoudens subparagraaf (3), waar 'n persoon—";

(b) deur die volgende subparagraaf by te voeg:

"(3) Die bepalings van hierdie paragraaf is nie van toepassing nie met betrekking tot enige beskikking van 'n bate deur 'n fonds in artikel 29A(4) bedoel aan enige ander sodanige fonds ingevolge artikel 29A(6) of (7).".

(2) Subartikel (1) word geag op 1 Oktober 2001 in werking te getree het.

Amendment of section 1 of Act 91 of 1964, as amended by section 1 of Act 95 of 1965, section 1 of Act 57 of 1966, section 1 of Act 105 of 1969, section 1 of Act 98 of 1970, section 1 of Act 71 of 1975, section 1 of Act 112 of 1977, section 1 of Act 110 of 1979, sections 1 and 15 of Act 98 of 1980, section 1 of Act 89 of 1984, section 1 of Act 84 of 1987, section 1 of Act 68 of 1989, section 1 of Act 59 of 1990, section 1 of Act 19 of 1994, section 57 of Act 30 of 1998, section 46 of Act 53 of 1999, section 58 of Act 30 of 2000 and section 60 of Act 59 of 2000

113. Section 1 of the Customs and Excise Act, 1964, is hereby amended—

(a) by the substitution for the definition of "container operator" of the following definition:

" 'container operator' means any person providing international transportation of containerised goods, and approved by the Commissioner, under section 96A, for operating containers in the Republic, and includes any agent appointed by such container operator as contemplated in section 97;";

(b) by the substitution for the definition of "container terminal" of the following definition:

" 'container terminal' means any container terminal contemplated in section 6(1)*(h*A*)* and licensed in terms of the provisions of this Act;";

(c) by the insertion after the definition of "container terminal" of the following definition:

" 'container terminal operator' means the licensee of a container terminal;";

(d) by the insertion after the definition of "customs duty" of the following definitions:

" 'degrouping depot' means any degrouping depot for air cargo contemplated in section 6(1)*(h*C*)* and licensed under the provisions of this Act; and

'degrouping operator' means the licensee of a degrouping depot;";

(e) by the substitution for the definition of "fuel levy goods" of the following definition:

" 'fuel levy goods' means any goods specified in Part 5 of Schedule No. 1, except any goods specified in any item of that Part for which a free rate of duty is prescribed as contemplated in section 37A(1)*(a)*, which have been manufactured in or imported into the Republic;";

(f) by the substitution for the definition of "master" of the following definition:

" 'master' in relation to any ship, means any person (other than a pilot) having charge of such ship and includes any agent appointed by such master as contemplated in section 97;";

(g) by the substitution for the definition of "pilot" of the following definition:

" 'pilot' in relation to any aircraft, means any person having charge of such aircraft and includes any agent appointed by such pilot as contemplated in section 97(1);";

(h) by the insertion after the definition of "this Act" of the following definitions:

" 'transit shed' means any transit shed contemplated in section 6(1)*(g)* and licensed under the provisions of this Act; and

'transit shed operator' means the licensee of a transit shed;"; and

(i) by the insertion after the definition of "vehicle" of the following definition:

" 'wharf operator' means the licensee in control of any goods on any wharf contemplated in section 6(1)*(g*A*)* and licensed in terms of the provisions of this Act where any imported or exported goods which are not containerised including goods in bulk are landed from or loaded into any ship;".

(2) *(a)* The amendment in paragraph *(e)* in respect of the definition of "fuel levy goods" shall be deemed to have come into operation on 24 November 1999.

(b) The amendments in paragraphs *(a)* to *(d)* and *(f)* to *(i)* shall come into operation on a date or dates fixed by the President by proclamation in the *Gazette*.

Wysiging van artikel 1 van Wet 91 van 1964, soos gewysig deur artikel 1 van Wet 95 van 1965, artikel 1 van Wet 57 van 1966, artikel 1 van Wet 105 van 1969, artikel 1 van Wet 98 van 1970, artikel 1 van Wet 71 van 1975, artikel 1 van Wet 112 van 1977, artikel 1 van Wet 110 van 1979, artikels 1 en 15 van Wet 98 van 1980, artikel 1 van Wet 89 van 1984, artikel 1 van Wet 84 van 1987, artikel 1 van Wet 68 van 1989, artikel 1 van Wet 59 van 1990, artikel 1 van Wet 19 van 1994, artikel 57 van Wet 30 van 1998, artikel 46 van Wet 53 van 1999, artikel 58 van Wet 30 van 2000 en artikel 60 van Wet 59 van 2000

113. Artikel 1 van die Doeane- en Aksynswet, 1964, word hierby gewysig—

(a) deur die omskrywing van "brandstofheffinggoedere" deur die volgende omskrywing te vervang:

" 'brandstofheffinggoedere" enige goedere vermeld in Deel 5 van Bylae No. 1, behalwe enige goedere vermeld in enige item van daardie Deel waarvoor 'n skaal vry van reg voorgeskryf is soos beoog in artikel 37A(1)*(a)*, wat in die Republiek vervaardig of ingevoer is;";

(b) deur na die omskrywing van "depotbediener" die volgende omskrywings in te voeg:

" 'deurvoerloods' enige deurvoerloods soos beoog in artikel 6(1)*(g)* en ingevolge die bepalings van hierdie Wet gelisensieer; en

'deurvoerloodsbediener' die gelisensieerde van 'n deurvoerloods;";

(c) deur die omskrywing van "gesagvoerder" deur die volgende omskrywing te vervang:

" 'gesagvoerder' met betrekking tot enige skip, enigiemand (behalwe 'n loods) wat toesig oor sodanige skip het en sluit enige agent in deur sodanige gesagvoerder aangestel soos in artikel 97 beoog;";

(d) deur die omskrywing van "houerbediener" deur die volgende omskrywing te vervang:

" 'houerbediener' enigiemand wat internasionale vervoer van behouerde goedere verskaf, en deur die Kommissaris kragtens artikel 96A goedgekeur is om houers in die Republiek te bedien, en sluit enige agent in deur sodanige houerbediener aangestel soos in artikel 97 beoog;";

(e) deur die omskrywing van "houereindpunt" deur die volgende omskrywing te vervang:

" 'houereindpunt' enige houereindpunt in artikel 6(1)*(h*A*)* beoog en ingevolge die bepalings van hierdie Wet gelisensieer;";

(f) deur na die omskrywing van "houereindpunt" die volgende omskrywing in te voeg:

" 'houereindpuntbediener' die gelisensieerde van 'n houereindpunt;";

(g) deur na die omskrywing van "invoerder" die volgende omskrywing in te voeg:

" 'kaaibediener' die gelisensieerde wat beheer het oor enige goedere op enige kaai in artikel 6(1)*(g*A*)* beoog en ingevolge die bepalings van hierdie Wet gelisensieer waar enige ingevoerde of uitgevoerde goedere wat nie behouer is nie met inbegrip van goedere in massa geland word van en gelaai word op enige skip;";

(h) deur die omskrywing van "loods" deur die volgende omskrywing te vervang:

" 'loods', met betrekking tot 'n vliegtuig, enige persoon in bevel van sodanige vliegtuig en sluit enige agent in deur sodanige loods aangestel soos in artikel 97(1) beoog;"; en

(i) deur na die omskrywing van "Minister" die volgende omskrywings in te voeg:

" 'ontgroeperingsdepot' enige ontgroeperingsdepot vir lugvrag in artikel 6(1)*(h*C*)* beoog en kragtens die bepalings van hierdie Wet gelisensieer; en

'ontgroeperingsbediener' die gelisensieerde van 'n ontgroeperingsdepot;".

(2) *(a)* Die wysigings in paragraaf *(a)* ten opsigte van die omskrywing van "brandstofheffinggoedere" word geag op 24 November 1999 in werking te getree het.

(b) Die wysigings in paragrawe *(b)* tot *(i)* tree in werking op 'n datum of datums deur die President by proklamasie in die *Staatskoerant* bepaal.

Amendment of section 3 of Act 91 of 1964

114. Section 3 of the Customs and Excise Act, 1964, is hereby amended by the addition of the following subsection:

"(3) Any decision or determination made or any other act performed by the Commissioner or an officer under the provisions of this Act, including any amendment or withdrawal thereof, shall be deemed to be effective from the date any notice or communication in respect of such decision, determination or act is issued in writing. ".

Amendment of section 4 of Act 91 of 1964, as amended by section 2 of Act 105 of 1969, section 2 of Act 110 of 1979, sections 3 and 15 of Act 98 of 1980, section 2 of Act 84 of 1987, section 4 of Act 59 of 1990, section 1 of Act 105 of 1992, section 1 of Act 98 of 1993, section 2 of Act 45 of 1995, Schedule 3 of Act 34 of 1997, section 58 of Act 30 of 1998 and section 47 of Act 53 of 1999

115. (1) Section 4 of the Customs and Excise Act, 1964, is hereby amended—

(a) by the substitution for subsections (3) and (3A) of the following subsections:

"(3) **[No]** The Commissioner or any officer shall not disclose any information relating to any person, firm or business acquired in the performance of his duties, except—

(a) for the purposes of this Act; or

(b) when required to do so as a witness in a court of law **[or]**:

[*(c)* such information in relation to any person as may be required by the Chief of the Central Statistical Services in connection with the collection of statistics in complying with the provisions of the Statistics Act, 1976 (Act No. 66 of 1976), or any regulation thereunder.]

Provided that the provisions of this subsection shall not be construed as preventing the Commissioner (in such form and under such procedural arrangements as the Commissioner may prescribe) from, on good cause shown—

(i) disclosing such information in relation to any person as may be required by the Chief of the Central Statistical Services in connection with the collection of statistics in complying with the provisions of the Statistics Act, 1976 (Act No. 66 of 1976), or any regulation thereunder;

(ii) disclosing to the Director-General of the Department of Trade and Industry such information in relation to imports and exports and importers and exporters as may be required by such Director-General for the determination of any trade policy;

(iii) applying *ex parte* to a judge in chambers for an order allowing the Commissioner to disclose to the National Commissioner of the South African Police Service, contemplated in section 6(1) of the South African Police Service Act, 1955 (Act No. 68 of 1995), or the National Director of Public Prosecutions, contemplated in section 5(2)*(a)* of the National Prosecuting Authority Act, 1998 (Act No. 32 of 1998), such information the disclosure of which may reveal evidence—

(a) that an offence, other than an offence in terms of this Act or any other Act administered by the Commissioner or any other offence in respect of which the Commissioner is a complainant, has been or may be committed, or where such information may be relevant to the investigation or prosecution of such an offence, and such offence is a serious offence in respect of which a court may impose a sentence exceeding five years imprisonment; or

(b) of an imminent and serious public safety or environmental risk,

and where the public interest in the disclosure of the information outweighs any potential harm to the person concerned should such information be disclosed: Provided that any information or document provided by any person in terms of this Act which is disclosed

Wysiging van artikel 3 van Wet 91 van 1964

114. Artikel 3 van die Doeane en Aksynswet, 1964, word hierby gewysig deur die volgende subartikel by te voeg:

"(3) Enige beslissing of bepaling gemaak of enige ander handeling verrig deur die Kommissaris of 'n beampte kragtens die bepalings van hierdie Wet, met inbegrip van enige wysiging of intrekking daarvan, word geag van krag te wees vanaf die datum waarop enige kennisgewing of mededeling ten opsigte van sodanige beslissing, bepaling of handeling skriftelik uitgereik word.".

Wysiging van artikel 4 van Wet 91 van 1964, soos gewysig deur artikel 2 van Wet 105 van 1969, artikel 2 van Wet 110 van 1979, artikels 3 en 15 van Wet 98 van 1980, artikel 2 van Wet 84 van 1987, artikel 4 van Wet 59 van 1990, artikel 1 van Wet 105 van 1992, artikel 1 van Wet 98 van 1993, artikel 2 van Wet 45 van 1995, Bylae 3 van Wet 34 van 1997, artikel 58 van Wet 30 van 1998 en artikel 47 van Wet 53 van 1999

115. (1) Artikel 4 van die Doeane- en Aksynswet, 1964, word hierby gewysig—

(a) deur subartikels (3) en (3A) deur die volgende subartikels te vervang:

"(3) **[Geen]** Die Kommissaris of enige beampte mag nie enige inligting openbaar wat hy by die verrigting van sy pligte met betrekking tot enige persoon, maatskappy of besigheid te wete gekom het nie, behalwe—

(a) vir die doeleindes van hierdie Wet; of

(b) wanneer dit van hom as 'n getuie in 'n geregshof vereis word **[of]**:

[*(c)* die inligting met betrekking tot 'n persoon wat deur die Hoof van die Sentrale Statistiekdiens vereis word met betrekking tot die insameling van statistieke by die nakoming van die bepalings van die Wet op Statistieke, 1976 (Wet No. 66 van 1976), of enige regulasie daarkragtens.]

Met dien verstande dat die bepalings van hierdie subartikel nie vertolk moet word as sou dit die Kommissaris verhinder om (in sodanige vorm en kragtens sodanige prosedurereëlings wat die Kommissaris voorskryf) op goeie gronde aangetoon—

(i) sodanige inligting met betrekking tot 'n persoon te openbaar wat deur die Hoof van die Sentrale Statistiekdiens vereis word met betrekking tot die insameling van statistieke by die nakoming van die Wet op Statistieke, 1976 (Wet No. 66 van 1976), of enige regulasie daarkragtens;

(ii) aan die Direkteur-generaal van die Departement van Handel en Nywerheid sodanige inligting in verband met invoere en uitvoere en invoerders en uitvoerders wat deur sodanige Direkteur-generaal vir die bepaling van handelsbeleid vereis word, te openbaar;

(iii) om 'n *ex parte*-aansoek voor 'n regter in kamers te bring om 'n bevel wat die Kommissaris magtig om inligting aan die Nasionale Kommissaris van die Suid-Afrikaanse Polisiediens, beoog in artikel 6(1) van die Wet op die Suid-Afrikaanse Polisiediens, 1995 (Wet No. 68 van 1995), of die Nasionale Direkteur van Openbare Vervolgings, beoog in artikel 5(2)*(a)* van die Wet op die Nasionale Vervolgingsgesag, 1998 (Wet No. 32 van 1998), bekend te maak wat getuienis aan die lig mag bring—

(a) dat 'n misdryf, behalwe 'n misdryf ingevolge hierdie Wet of enige ander wet wat deur die Kommissaris geadministreer word, of enige ander misdryf ten opsigte waarvan die Kommissaris 'n klaer is, gepleeg is of gepleeg mag word, of waar sodanige inligting relevant mag wees tot die ondersoek of vervolging van sodanige misdryf, en die misdryf 'n ernstige misdryf is ten opsigte waarvan 'n hof 'n vonnis wat vyf jaar gevangenisstraf oorskry, mag oplê; of

(b) van 'n dreigende en ernstige openbare gevaar of omgewingsrisiko,

en waar die openbare belang in die openbaarmaking van die inligting swaarder weeg as enige potensiële nadeel vir die betrokke persoon as die inligting aan die lig sou kom: Met dien verstande dat

in terms of this subsection, shall not, unless a competent court otherwise directs, be admissible in any criminal proceedings against such person, to the extent that such information or document constitutes an admission by such person of the commission of an offence contemplated in paragraph *(a)*; or

(iv) disclosing such information in the records of any office under the control of the Commissioner in relation to imports and exports and importers and exporters as may be required by the Treasury as defined in the Exchange Control Regulations, 1961, or the Governor of the South African Reserve Bank, contemplated in section 4 or 6(1)*(a)* of the South African Reserve Bank Act, 1989 (Act No. 90 of 1989), for purposes of exercising any power or performance of any duty or function in connection with foreign transactions under the provisions of the Exchange Control Regulations, 1961:

Provided further that the Commissioner shall disclose information in respect of any class of persons to the Director-General of the National Treasury, to the extent necessary for the purposes of tax policy design or revenue estimation.

(3A) The Chief of the Central Statistical Services or the Director-General of the Department of Trade and Industry or the Treasury as defined in the Exchange Control Regulations, 1961, or the Governor of the South African Reserve Bank or the National Commissioner of the South African Police Service or the National Director of Public Prosecutions or the Director-General of the National Treasury or any person acting under the direction and control of such Chief of the Central Statistical Services or Director-General of the Department of Trade and Industry or Governor of the South African Reserve Bank or National Commissioner of the South African Police Service or National Director of Public Prosecutions or the Director-General of the National Treasury, shall not disclose any information supplied under the proviso to subsection (3)**[*(c)*]** to any person or permit any person to have access thereto, except in the exercise of **[that Chief's]** his powers or the carrying out of **[that person's]** his duties under **[the direction and control of such Chief, to collect statistics or to publish statistics in any anonymous form]** any Act from which such powers or duties are derived.";

(b) by the insertion after subsection (3B) of the following subsections:

"(3C) For the purposes of the proviso to subsection (3), the Commissioner may, subject to the provisions of section 3(2), delegate the powers vested in him by that proviso, to any officer.

(3D) The provisions of this section shall not apply in respect of any information relating to any person, where that person has consented that such information may be published or made known to any other person.".

(2) Subsection (1) shall in so far as it—

(a) inserts paragraph (iv) of the proviso to subsection (3), come into operation on a date to be determined by the President by proclamation in the *Gazette*; and

(b) amends the rest of section 4, come into operation on the date of promulgation of this Act.

Amendment of section 6 of Act 91 of 1964, as amended by section 2 of Act 71 of 1975, section 1 of Act 52 of 1986, section 6 of Act 59 of 1990 and section 3 of Act 45 of 1995

116. (1) Section 6 of the Customs and Excise Act, 1964, is hereby amended—

enige inligting of dokument deur enige persoon verskaf ingevolge hierdie Wet wat ingevolge hierdie subartikel openbaar is, nie, tensy 'n bevoegde hof anders beslis, in enige kriminele geding teen sodanige persoon toelaatbaar is nie, in die mate dat sodanige inligting of dokument 'n erkenning uitmaak van die pleging van 'n misdryf soos in paragraaf *(a)* beoog word; of

(iv) sodanige inligting in die rekords van enige kantoor onder beheer van die Kommissaris met betrekking tot invoere en uitvoere en invoerders en uitvoerders soos deur die Tesourie, soos omskryf in die Deviesebeheerregulasies, 1961, of die Goewerneur van die Suid-Afrikaanse Reserwebank beoog in artikel 4 of 6(1)*(a)* van die Wet op die Suid-Afrikaanse Reserwebank, 1989 (Wet No. 90 van 1989), vir die doeleindes van die uitoefening van enige bevoegdheid of die verrigting van enige plig of funksie in verband met buitelandse transaksies wat kragtens die bepalings van die Deviesebeheerregulasies, 1961, vereis mag word, te openbaar:

Met dien verstande voorts dat die Kommissaris inligting ten opsigte van enige klas van persone aan die Direkteur-generaal van die Nasionale Tesourie in die mate wat dit nodig is vir die doeleindes van belastingbeleidontwerp of inkomsteraming moet openbaar.

(3A) Die Hoof van die Sentrale Statistiekdiens of die Direkteur-generaal van die Departement van Handel en Nywerheid of die Tesourie soos omskryf in die Deviesebeheerregulasies, 1961, of die Goewerneur van die Suid-Afrikaanse Reserwebank of die Nasionale Kommissaris van die Suid-Afrikaanse Polisiediens of die Nasionale Direkteur van Openbare Vervolgings of die Direkteur-generaal van die Nasionale Tesourie of enige persoon wat in opdrag en onder beheer van daardie Hoof van die Sentrale Statistiekdiens of die Direkteur-generaal van die Departement van Handel en Nywerheid of die Goewerneur van die Suid-Afrikaanse Reserwebank of die Nasionale Kommissaris van die Suid-Afrikaanse Polisiediens of die Nasionale Direkteur van Openbare Vervolgings of die Direkteur-generaal van die Nasionale Tesourie, optree, mag nie enige inligting wat ingevolge die voorbehoudsbepaling by subartikel (3)**[*(c)*]** verskaf is aan enige persoon openbaar nie of toelaat dat enige persoon toegang daartoe verkry nie, behalwe in die uitoefening van **[daardie Hoof se]** sy bevoegdhede of die uitvoering van **[daardie persoon se]** sy pligte **[in opdrag en onder die beheer van daardie Hoof, statistieke te versamel of statistieke in naamlose vorm te publiseer]** kragtens enige Wet waarvan sodanige bevoegdhede of pligte ontleen word.";

(b) deur na subartikel (3B) die volgende subartikels in te voeg:

"(3C) By die toepassing van die voorbehoudsbepaling by subartikel (3) kan die Kommissaris, behoudens die bepalings van artikel 3(2), die bevoegdhede waarmee hy in daardie voorbehoudsbepaling beklee is aan enige beampte delegeer.

(3D) Die bepalings van hierdie artikel is nie van toepassing nie ten opsigte van enige inligting met betrekking tot enige persoon waar sodanige persoon ingestem het dat sodanige inligting aan enige ander persoon gepubliseer of bekendgemaak mag word.".

(2) Subartikel (1), in sover dit—

(a) paragraaf (iv) van die voorbehoudsbepaling by subartikel (3) invoeg, tree in werking op 'n datum deur die President by proklamasie in die *Staatskoerant* bepaal; en

(b) die res van artikel 4 wysig, tree in werking op die datum van promulgasie van hierdie Wet.

Wysiging van artikel 6 van Wet 91 van 1964, soos gewysig deur artikel 2 van Wet 71 van 1975, artikel 1 van Wet 52 van 1986, artikel 6 van Wet 59 van 1990 en artikel 3 van Wet 45 van 1995

116. (1) Artikel 6 van die Doeane en Aksynswet, 1964, word hierby gewysig—

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

"*(g)* places where **[sheds as]** transit sheds may be established into which goods, before due entry thereof, may be removed from a ship, aircraft or vehicle or to which such goods may be removed after removal from such ship, aircraft or vehicle;";

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

"*(g*A*)* wharfs on which goods imported or exported which are not containerised, including goods in bulk, may be landed from or loaded into any ship by, and be under the control of, a wharf operator;";

(c) by the insertion after paragraph *(h*B*)* of subsection (1) of the following paragraph:

"*(h*C*)* places where degrouping depots may be established to which air cargo may be removed from a transit shed before due entry thereof for the storage, detention, unpacking or examination of consolidated packing or its contents, for the removal to another transit shed or the delivery to importers of such contents after due entry thereof, or for the consolidation of air cargo for export and such other purposes as may be specified by rule;"; and

(d) by the addition of the following subsection:

"(6) No person may be in control of, or receive, deliver, remove, store or otherwise deal with any imported goods landed from any ship, aircraft or other vehicle before due entry thereof unless such person is an approved container operator as contemplated in section 96A or is in control of or receives, delivers, removes, stores or otherwise deals with such goods in accordance with a licence issued under the provisions of the Notes to the item of Schedule No. 8 in which such licence is specified, the provisions of such Notes, the rules contemplated in section 60(1)*(b)* and any other provision of this Act relating to such goods, except if the Commissioner otherwise determines by rule.".

(2) *(a)* Subsection (1)*(a)*, *(b)* and *(c)* shall come into operation on the date of promulgation of this Act.

(b) Subsection (1)*(d)* shall come into operation on a date fixed by the President by proclamation in the *Gazette*.

Amendment of section 8 of Act 91 of 1964

117. (1) Section 8 of the Customs and Excise Act, 1964, is hereby amended—

(a) by the substitution of the words preceding paragraph *(a)* of subsection (1) of the following words:

"(1) Notwithstanding the provisions of sections 7 and 12, the Commissioner may by rule prescribe that—";

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

"*(c)* any outturn report or other report in respect of any imported goods unpacked while under the control of any person after landing thereof **[at any place approved by the Commissioner]** as contemplated in section 11;";

(c) by the insertion of the following subsections:

"(2) *(a)* Any such outturn report or other report shall reflect full particulars concerning any excess or deficiency in respect of any goods landed, received, unpacked, packed or loaded, as the case may be, according to any manifest or other report contemplated in subsection (1)*(a)* or any subsequent outturn report or other report by any other person in accordance with to the sequence prescribed in the rules.

(b) Whenever any imported goods reported in any manifest or other report are not landed or any such goods not reported are landed or any container or package is landed with visible evidence of tampering or any deficiency is suspected, any person completing any outturn report on landing of the goods shall examine such goods in the presence of the

(a) deur paragraaf *(g)* van subartikel (1) deur die volgende paragraaf te vervang:
"*(g)* plekke waar **[loodse as]** deurvoerloodse opgerig mag word waarin goedere, voor behoorlike klaring daarvan, uit 'n skip, vliegtuig of voertuig verwyder kan word, of waarheen sodanige goed na verwydering vanuit sodanige skip, vliegtuig of voertuig verwyder kan word;";

(b) deur na paragraaf *(g)* van subartikel (1) die volgende paragraaf in te voeg:
"*(g*A*)* kaaie waarop ingevoerde of uitgevoerde goedere wat nie behouer is nie, met inbegrip van goedere in massa, geland kan word van of gelaai kan word op enige skip deur en, wat onder die beheer is, van 'n kaaibediener;";

(c) deur na paragraaf *(h*B*)* van subartikel (1) die volgende paragraaf in te voeg:
"*(h*C*)* plekke waar ontgroeperingsdepots opgerig kan word waarheen lugvrag verwyder kan word vanaf 'n deurvoerloods, voor behoorlike klaring daarvan, vir die opslag, aanhouding, uitpak of ondersoek van gekonsolideerde verpakking of die inhoud daarvan, vir die verwydering na 'n ander deurvoerloods of die aflewering aan invoerders van sodanige inhoud, na behoorlike klaring daarvan, of vir die konsolidasie van lugvrag vir uitvoer en sodanige ander doeleindes wat by reël vermeld word;"; en

(d) deur die volgende subartikel by te voeg:
"(6) Niemand mag, in beheer wees van, of, enige ingevoerde goedere geland vanaf enige skip, vliegtuig of ander voertuig ontvang, aflewer, verwyder, opslaan of andersins daarmee handel, voor behoorlike klaring daarvan nie, tensy sodanige persoon 'n goedgekeurde houerbediener is soos in artikel 96A beoog of in beheer is van, of, sodanige goedere ontvang, aflewer, verwyder, opslaan of andersins daarmee handel ooreenkomstig 'n lisensie uitgereik kragtens die bepalings van die Opmerkings by die item van Bylae No. 8 waarin sodanige lisensie vermeld word, die bepalings van sodanige Opmerkings, die reëls beoog in artikel 60(1)*(b)* en enige ander bepaling van hierdie Wet, met betrekking tot sodanige goedere, tensy die Kommissaris andersins by reël bepaal.".

(2) *(a)* Subartikel (1)*(a)*, *(b)* en *(c)* tree in werking op die datum van proklamasie van hierdie Wet.

(b) Subartikel (1)*(d)* tree in werking op 'n datum deur die President by proklamasie in die *Staatskoerant* bepaal.

Wysiging van artikel 8 van Wet 91 van 1964

117. (1) Artikel 8 van die Doeane en Aksynswet, 1964, word hierby gewysig—

(a) deur die woorde wat paragraaf *(a)* van subartikel (1) voorafgaan deur die volgende woorde te vervang:
"(1) Ondanks die bepalings van artikels 7 en 12, kan die Kommissaris by reël voorskryf dat—";

(b) deur paragraaf *(c)* deur die volgende paragraaf te vervang:
"*(c)* enige opbrengsrapport of ander rapport ten opsigte van enige ingevoerde goedere uitgepak terwyl dit onder die beheer van enige persoon is na landing daarvan **[by enige plek deur die Kommissaris goedgekeur]** soos in artikel 11 beoog;";

(c) deur die volgende subartikels in te voeg:
"(2) *(a)* Enige sodanige opbrengsrapport of ander rapport moet volledige besonderhede weergee aangaande enige oorskot of tekort ten opsigte van enige goedere geland, ontvang, uitgepak, gepak of gelaai, na gelang van die geval, volgens enige manifes of ander rapport beoog in subartikel (1)*(a)* of enige daaropvolgende opbrengsrapport of ander rapport deur enige ander persoon ooreenkomstig die volgorde wat in die reëls voorgeskryf word.

(b) Wanneer enige ingevoerde goedere in enige manifes of ander rapport gerapporteer nie geland word nie of enige houer of pak word geland met sigbare tekens van knoeiery of enige tekort vermoed word, moet iemand wat enige opbrengsrapport by die landing van die goedere voltooi sodanige goedere ondersoek in die teenwoordigheid van die karweier of enige agent van die karweier wat die resultate van die

carrier or any agent of the carrier who shall confirm the result of the examination and furnish an explanation of the condition of such goods.

(c) Any person who fails to report cargo landed or makes any false or misleading statement in connection with any report to which this section relates, shall be guilty of an offence and liable on conviction to a fine not exceeding R100 000 or treble the value of the goods in respect of which such offence was committed, whichever is the greater, or to imprisonment for a period not exceeding 10 years, or both such fine and imprisonment and the goods in respect of which such offence was committed shall be liable to forfeiture under this Act.".

(2) Subsection (1) shall come into operation on a date fixed by the President by proclamation in the *Gazette*.

Amendment of section 11 of Act 91 of 1964, as amended by section 2 of Act 105 of 1976 and section 6 of Act 45 of 1995

118. (1) Section 11 of the Customs and Excise Act, 1964, is hereby substituted by the following section:

"**Landing of unentered goods and delivery thereof**

11. (1) All goods imported into the Republic by ship, aircraft or other vehicle shall if landed before due entry thereof be—

(a) landed on a licensed wharf under the control of a wharf operator; or

(b) placed into or delivered to any licensed—

(i) container terminal;

(ii) container depot;

(iii) transit shed; or

(iv) degrouping depot; or

(c) delivered to—

(i) any container operator approved under the provisions of section 96A;

(ii) any other premises licensed under the provisions of this Act;

(iii) the State warehouse; or

(iv) any other place approved by the Commissioner on furnishing such security as the Commissioner may require.

(2) Where any carrier fails to deal with goods landed before due entry as contemplated in subsection (1) such carrier shall—

(a) be liable for the duty on the goods concerned until they are duly entered for the purposes of this Act;

(b) be guilty of an offence and liable on conviction to a fine of R100 000 or treble the value of the goods in respect of which such offence was committed, whichever is the greater, or to imprisonment for a period not exceeding 10 years, or both such fine and imprisonment and the goods in respect of which such offence was committed shall be liable to forfeiture under this Act.

(3) The Commissioner may, subject to the provisions of section 6(6), licence any wharf, container terminal, transit shed or degrouping depot as a special customs and excise storage warehouse contemplated in section 21.".

(2) Subsection (1) shall come into operation on a date fixed by the President by proclamation in the *Gazette*.

Amendment of section 18 of Act 91 of 1964, as amended by section 2 of Act 95 of 1965, section 6 of Act 105 of 1969, section 4 of Act 71 of 1975, section 3 of Act 105 of 1976, section 3 of Act 112 of 1977, section 4 of Act 84 of 1987, section 13 of Act 59 of 1990, section 11 of Act 45 of 1995 and section 48 of Act 53 of 1999

119. (1) Section 18 of the Customs and Excise Act, 1964, is hereby amended—

ondersoek moet bevestig en 'n verduideliking van die toestand van sodanige goedere moet verskaf.

(c) Iemand wat nalaat om gelande vrag te rapporteer of wat enige vals of misleidende verklaring maak in verband met enige rapport waarop hierdie artikel betrekking het, is aan 'n misdryf skuldig en by skuldbevinding strafbaar met 'n boete van hoogstens R100 000 of drie maal die waarde van die goedere ten opsigte waarvan die misdryf gepleeg is, na gelang van watter die hoogste is, of tot gevangenisstraf van hoogstens 10 jaar of met sowel sodanige boete en gevangenisstraf, en die goedere ten opsigte waarvan sodanige misdryf gepleeg is, is kragtens hierdie Wet aan verbeuring onderhewig.".

(2) Subartikel (1) tree in werking op 'n datum deur die President by proklamasie in die *Staatskoerant* bepaal.

Wysiging van artikel 11 van Wet 91 van 1964, soos gewysig deur artikel 2 van Wet 105 van 1976 en artikel 6 van wet 45 van 1995

118. (1) Artikel 11 van die Doeane en Aksynswet, 1964, word hierby deur die volgende artikel vervang:

"**Landing van ongeklaarde goedere en aflewering daarvan**

11. (1) Alle goedere in die Republiek ingevoer per skip, vliegtuig of ander voertuig moet, indien geland voor behoorlike klaring daarvan—

(a) geland word op 'n gelisensieerde kaai onder die beheer van 'n kaaibediener;

(b) geplaas word in of afgelewer word aan enige gelisensieerde—
- (i) houereindpunt;
- (ii) houerdepot;
- (iii) deurvoerloods; of
- (iv) ontgroeperingsdepot;

(c) afgelewer word aan—
- (i) enige houerbediener goedgekeur ingevolge die bepalings van artikel 96A;
- (ii) enige ander perseel kragtens die bepalings van hierdie Wet gelisensieer;
- (iii) die Staatspakhuis; of
- (iv) enige ander plek deur die Kommissaris goedgekeur teen die verskaffing van sodanige sekerheid wat die Kommissaris vereis.

(2) Waar enige karweier versuim om met goedere voor behoorlike klaring te handel soos in subartikel (1) beoog, is sodanige karweier—

(a) aanspreeklik vir die reg op die betrokke goedere totdat dit vir die doeleindes van hierdie Wet behoorlik geklaar is;

(b) aan 'n misdryf skuldig en by skuldigbevinding strafbaar met 'n boete van R100 000 of driemaal die waarde van die goedere ten opsigte waarvan die misdryf gepleeg is, na gelang van watter die hoogste is, of tot gevangenisstraf van hoogstens 10 jaar of met sowel sodanige boete en gevangenisstraf en die goedere ten opsigte waarvan sodanige misdryf gepleeg is, is kragtens hierdie Wet aan verbeuring onderhewig.

(3) Die Kommissaris kan, behoudens die bepalings van artikel 6(6), enige kaai, houereindpunt, deurvoerloods of ontgroeperingsdepot as 'n spesiale doeane- en aksynsopslagpakhuis soos in artikel 21 beoog, lisensieer.".

(2) Subartikel (1) tree in werking op 'n datum deur die President by proklamasie in die *Staatskoerant* bepaal.

Wysiging van artikel 18 van Wet 91 van 1964, soos gewysig deur artikel 2 van Wet 95 van 1965, artikel 6 van Wet 105 van 1969, artikel 4 van Wet 71 van 1975, artikel 3 van Wet 105 van 1976, artikel 3 van Wet 112 van 1977, artikel 4 van Wet 84 van 1987, artikel 13 van Wet 59 van 1990, artikel 11 van Wet 45 van 1995 en artikel 48 van Wet 53 van 1999

119. (1) Artikel 18 van die Doeane en Aksynswet, 1964, word hierby gewysig—

(a) by the insertion of the following subsection:

"(1B) Any imported goods landed in the Republic when removed in bond to a destination in the Republic may, except where the Commissioner otherwise determines by rule, only be so removed to any premises licensed under the provisions of this Act."; and

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

"*(b)* in the case of goods which were destined for a place beyond the borders of the common customs area, that such goods have been duly taken out of that area or, in circumstances and in accordance with procedures which the Commissioner may determine by rule, that the goods have been duly accounted for in the country of destination.".

(2) Subsection (1)*(a)* shall come into operation on a date fixed by the President by proclamation in the *Gazette*.

Amendment of section 18A of Act 91 of 1964

120. Section 18A of the Customs and Excise Act, 1964, is hereby amended by the substitution for subsection (2) of the following subsection:

"(2) Subject to the provisions of subsection (3), any liability for duty in terms of subsection (1) shall cease when it is proved by the exporter that the said goods have been duly taken out of the common customs area or, in circumstances and in accordance with procedures which the Commissioner may determine by rule, that the goods have been duly accounted for in the country of destination.".

Insertion of section 21A in Act 91 of 1964

121. (1) The following section is hereby inserted after section 21 of the Customs and Excise Act, 1964:

"Provisions for the customs and excise administration of industrial development zones

21A. (1) *(a)* For the purposes of this Act, Industrial Development Zone or the abbreviation IDZ, and any other expression relating thereto shall, unless otherwise specified in this Act or the context of any provision of this Act otherwise indicates, have the meaning assigned thereto in the regulations made by the Minister of Trade and Industry under section 10(1) of the Manufacturing Development Act, 1993 (Act No. 187 of 1993), and published in Government Notice R1224 of 1 December 2000 (Regulation *Gazette* No. 6936).

(b) (i) Any reference in this section and its rules to 'the regulations' or any regulation, shall, unless otherwise specified, be a reference to the regulations or a regulation published in Government Notice R1224 of 1 December 2000.

(ii) Where any provision of the Manufacturing Development Act, 1993, or any regulation is inconsistent or in conflict with any provision of this Act governing the administration of industrial development zones including any matter relating to the liability or levying of duty or any rebate, refund or drawback of duty, the provision of this Act shall prevail over the provision of the Manufacturing Development Act, 1993, or the regulation.

(2) *(a)* (i) The customs secured area (CSA) of an IDZ shall, notwithstanding anything to the contrary contained in this Act or in any regulation and subject to the provisions of this section or any Schedule or rule, be deemed to be a special customs and excise manufacturing and storage warehouse contemplated in section 21.

(ii) Before such warehouse is licensed the IDZ operator applying for the licence shall furnish such security as the Commissioner may require.

(iii) The Commissioner may at any time require that the form, nature or amount of such security shall be altered or renewed in such manner as he may determine.

(a) deur die volgende subartikel in te voeg:

"(1B) Enige ingevoerde goedere in die Republiek geland kan wanneer dit onder waarborg na 'n bestemming in die Republiek vervoer word, behalwe waar die Kommissaris by reël anders bepaal, slegs so vervoer word na enige perseel wat kragtens die bepalings van hierdie Wet gelisensieer is."; en

(b) deur paragraaf *(b)* van subartikel (3) deur die volgende paragraaf te vervang:

"*(b)* in die geval van goedere wat vir 'n plek buite die grense van die gemeenskaplike doeanegebied bestem was, dat sodanige goedere wel uit daardie gebied geneem is of, in die omstandighede en ooreenkomstig prosedures wat die Kommissaris by reël bepaal, dat die goedere in die land van bestemming behoorlik verantwoord is.".

(2) Subartikel (1)*(a)* tree in werking op 'n datum deur die President by proklamasie in die *Staatskoerant* bepaal.

Wysiging van artikel 18A van Wet 91 van 1964

120. Artikel 18A van die Doeane- en Aksynswet, 1964, word hierby gewysig deur subartikel (2) deur die volgende subartikel te vervang:

"(2) Behoudens die bepalings van subartikel (3), eindig enige aanspreeklikheid vir reg kragtens subartikel (1) wanneer daar deur die uitvoerder bewys word dat genoemde goedere wel uit die gemeenskaplike doeanegebied geneem is of, in die omstandighede en ooreenkomstig die prosedures wat die Kommissaris by reël bepaal, dat die goedere in die land van bestemming behoorlik verantwoord is.".

Invoeging van artikel 21A in Wet 91 van 1964

121.(1) Die volgende artikel word hierby na artikel 21 van die Doeane- en Aksynswet, 1964 ingevoeg:

"**Voorsiening vir doeane- en aksynsadministrasie van nywerheidsontwikkelingsones**

21A. (1) *(a)* Vir doeleindes van hierdie Wet het Nywerheidsontwikkelingsone of die afkorting NOS, en enige ander uitdrukking wat daarop betrekking het, tensy anders in hierdie Wet vermeld of waar die samehang van enige bepaling van hierdie Wet anders aandui, die betekenis wat daaraan in die regulasies deur die Minister van Handel en Nywerheid kragtens die bepalings van artikel 10(1) van die Wet op Vervaardigingsontwikkeling, 1993 (Wet No. 187 van 1993), uitgevaardig en afgekondig in Goewermentskennisgewing R1224 van 1 Desember 2000 (Regulasiekoerant No. 6936) toegeskryf is.

(b) (i) Enige verwysing in hierdie artikel en die reëls na 'die regulasies' of enige regulasie is, tensy anders vermeld, 'n verwysing na die regulasies of 'n regulasie in Goewermentskennisgewing R1224 van 1 Desember 2000 afgekondig.

(ii) Waar enige bepaling van die Wet op Vervaardigingsontwikkeling, 1993, of enige regulasie nie ooreenkomstig of strydig is met enige bepaling van hierdie Wet wat die administrasie van nywerheidsontwikkelingsones, met inbegrip van enige aangeleentheid rakende die aanspreeklikheid of die heffing van reg of enige korting, terugbetaling of teruggawe van reg, beheers moet die bepalings van hierdie Wet voorrang geniet bo die bepalings van die Wet op Vervaardigingsontwikkeling, 1993, of die regulasie.

(2) *(a)* (i) Die doeane beveiligde gebied (DBG) van 'n NOS word, ondanks andersluidende bepalings in hierdie Wet of van enige regulasie, en onderhewig aan die bepalings van hierdie artikel of enige Bylae of reël, geag 'n spesiale doeane- en aksynsvervaardiging- en opslagpakhuis te wees soos in artikel 21 beoog.

(ii) Voordat sodanige pakhuis gelisensieer word, moet die NOS-bediener wat vir die lisensie aansoek doen die sekerheid verskaf wat die Kommissaris vereis.

(iii) Die Kommissaris kan te enige tyd vereis dat die vorm, aard en bedrag van sodanige sekerheid gewysig of hernu word op die wyse wat hy bepaal.

(b) (i) The CSA must be licensed as such a warehouse by the IDZ operator.

(ii) The Commissioner may after consultation with the Manufacturing Development Board established under section 2 of the Manufacturing Development Act, 1993, refuse any application for a licence or cancel or suspend any such licence.

(iii) The provisions of section 60(2) and of the regulations shall apply *mutatis mutandis* for the purposes of paragraph (ii).

(c) The IDZ operator shall be liable for the duty on any goods which:

(i) the IDZ operator, the IDZ enterprise or any other person bring into the CSA;

(ii) are manufactured or produced in the CSA.

(d) The person who actually brings the goods into the CSA and the IDZ operator shall be jointly and severally liable for the duty on such goods and the provisions of section 44A shall apply *mutatis mutandis* to such liability.

(e) The liability for duty of the IDZ operator as contemplated in paragraph *(c)*, shall cease—

(i) if the IDZ operator proves that, as the case may be—

(aa) the duty on the goods concerned has been paid;

(bb) the goods have been consumed within the CSA;

(cc) the goods have been duly used in the manufacture or production of any goods by the IDZ enterprise in accordance with any IDZ enterprise permit and any relevant provision in any Schedule of this Act;

(dd) the goods have been duly exported;

(ee) the goods have been removed and received in any other premises licensed under the provisions of this Act;

(ff) any goods brought temporarily into the CSA are removed therefrom in accordance with the provisions of this Act and any conditions imposed by the Commissioner;

(ii) where the goods are abandoned or destroyed under the provisions of this Act.

(3) Any goods manufactured or produced in the CSA shall be deemed to be imported goods for the purposes of entry for home consumption.

(4) *(a)* Notwithstanding anything to the contrary contained in this Act or the Manufacturing Development Act, 1993, or any regulation or any other law, the Minister may, at the request of the Minister of Trade and Industry, in respect of any goods produced or manufactured in or removed for home consumption or exported from or brought into or used in any activity in the CSA, by notice in the *Gazette*—

(i) in a schedule which shall be deemed to be incorporated in Schedule No. 1 as Part 9 thereof and to constitute an amendment of Schedule No. 1, specify the duty leviable on goods manufactured or produced in, or any other goods brought into, the CSA on entry for home consumption;

(ii) in any item in a separate Part of each of Schedule No. 3, 4, 5 or 6, as the case may be, which shall be deemed to be an amendment of such Schedule, provide for a rebate, refund or drawback of duty in respect of any goods brought into, produced or manufactured or used in or removed from the CSA in the circumstances and for the purposes and on compliance with any conditions that may be specified in such Part or item.

(b) Any amendment contemplated in paragraph *(a)* may be made with retrospective effect from such date as may be specified in such notice.

(c) Notwithstanding the provisions of sections 48 and 75(15) any amendment to the said Part 9 or Schedule No. 3, 4, 5 or 6 shall be made under the provisions of this section.

(d) The provisions of section 48(6) shall apply *mutatis mutandis* to the provisions of this subsection.

(b) (i) Die DBG moet as sodanige pakhuis deur die NOS-bediener gelisensieer word.

(ii) Die Kommissaris kan na raadpleging met die Raad op Vervaardigingsontwikkeling, ingestel kragtens artikel 2 van die Wet op Vervaardigingsontwikkeling, 1993, enige aansoek om 'n lisensie weier of enige sodanige lisensie kanselleer of opskort.

(iii) Die bepalings van artikel 60(2) en van die regulasies is *mutatis mutandis* vir doeleindes van paragraaf (ii) van toepassing.

(c) Die NOS-bediener is aanspreeklik vir enige goedere wat:

(i) die NOS-bediener, die NOS-onderneming of enige ander persoon in die DBG inbring;

(ii) in die DBG vervaardig of geproduseer word.

(d) Iemand wat werklik goedere in die DBG inbring en die NOS-bediener is gesamentlik en afsonderlik aanspreeklik vir die reg op sodanige goedere en die bepalings van artikel 44A is *mutatis mutandis* op sodanige aanspreeklikheid van toepassing.

(e) Die aanspreeklikheid vir reg van die NOS-bediener ingevolge paragraaf *(c)* verval—

(i) indien die NOS-bediener na gelang van die geval bewys dat—

(aa) die reg op die betrokke goedere betaal is;

(bb) die goedere binne die DBG verbruik is;

(cc) die goedere behoorlik in die vervaardiging of produksie van enige goedere deur die NOS-onderneming in ooreenstemming met enige NOS-ondernemingspermit en enige betrokke bepaling in enige Bylae van hierdie Wet, gebruik is;

(dd) die goedere behoorlik uitgevoer is;

(ee) die goedere verwyder is na en ontvang is in enige ander perseel wat kragtens die bepalings van hierdie Wet gelisensieer is;

(ff) enige goedere wat tydelik in die DBG ingebring is daaruit verwyder word ooreenkomstig die bepalings van hierdie Wet en enige voorwaardes deur die Kommissaris opgelê;

(ii) waar die goedere kragtens die bepalings van hierdie Wet prysgegee of vernietig is.

(3) Enige goedere wat in 'n DBG vervaardig of geproduseer word, word vir doeleindes van klaring vir binnelandse verbruik geag ingevoerde goedere te wees.

(4) *(a)* Ondanks onderluidende bepalings in hierdie Wet of in die Wet op Vervaardingingsontwikkeling, 1993, of enige regulasie of enige ander Wet, kan die Minister op versoek van die Minister van Handel en Nywerheid ten opsigte van enige goedere in 'n DBG geproduseer of vervaardig of daaruit verwyder vir binnelandse verbruik of daaruit uitgevoer of daarin gebring of gebruik in enige aktiwiteit daarbinne, by kennisgewing in die *Staatskoerant*—

(i) in 'n bylae wat geag word ingelyf te wees in Bylae No. 1 as Deel 9 daarvan en 'n wysiging van Bylae No. 1 te wees, die reg hefbaar op goedere in 'n DBG geproduseer of vervaardig of enige ander goedere daarin gebring by klaring vir binnelandse verbruik, vermeld;

(ii) in enige item in 'n afsonderlike Deel van elk van Bylaes No. 3, 4 , 5 of 6, na gelang van die geval, wat 'n wysiging van sodanige Bylae geag word 'n korting, terugbetaling of teruggawe van reg bepaal ten opsigte van goedere wat in die DBG ingebring, geproduseer of vervaardig is of gebruik is in of daaruit verwyder word in die omstandighede en vir die doeleindes en by nakoming van die voorwaardes wat in sodanige Deel of item vemeld word.

(b) Enige wysiging in paragraaf *(a)* beoog, kan met terugwerkende krag vanaf die datum wat in sodanige kennisgewing vermeld word, uitgevaardig word.

(c) Ondanks die bepalings van artikels 48 en 75(15) moet enige wysiging van die gemelde Deel 9 of Bylae No. 3, 4, 5, of 6 ingevolge die bepalings van hierdie artikel uitgevaardig word.

(d) Die bepalings van artikel 48(6) is *mutatis mutandis* op hierdie subartikel van toepassing.

(e) 'Manufactured or produced' shall have the meaning applied in terms of this Act to goods imported into the Republic, and in determining the duty leviable in Part 9, the Minister shall take into account the preferential rates of duty in operation in Part 1 of Schedule No. 1 in respect of goods originating in a country which is entitled to such preferential rates.

(5) The provisions of sections 65, 66 and 67 shall, subject to the rules, *mutatis mutandis* apply in respect of the valuation of such goods.

(6) The Commissioner may make rules—

(a) in addition to or in substitution of any power, duty or function relating to the South African Revenue Service or any officer thereof or any procedure or process prescribed in the regulations;

(b) regarding duties or functions of the IDZ operator or IDZ enterprise;

(c) to ensure the security and control of the CSA;

(d) to regulate the customs and excise administration of the CSA in connection with goods received or removed or manufactured or produced or consumed or any other activity to which this Act relates;

(e) requiring the registration and prescribing conditions and procedures regulating such registration in respect of any enterprise or any other person operating in or having access to the IDZ;

(f) any other matter which may be necessary and useful for the purpose of the effective and efficient administration of the CSA.

(7) *(a)* The Commissioner may after consultation with the Manufacturing Development Board referred to in subsection (2)*(b)*(ii), refuse any application for registration required by any rule contemplated in subsection (6)*(e)* or cancel or suspend any such registration.

(b) The provisions of section 60(2) and of the regulations shall apply *mutatis mutandis* for the purposes of paragraph *(a)*.".

(2) Subsection (1) shall come into operation on a date fixed by the President by proclamation in the *Gazette*.

Amendment of section 37A of Act 91 of 1964, as amended by section 8 of Act 95 of 1965, section 12 of Act 105 of 1969, sections 7 and 15 of Act 98 of 1980, section 8 of Act 84 of 1987, section 17 of Act 59 of 1990, section 27 of Act 45 of 1995 and section 61 of Act 30 of 1998

122. (1) Section 37A of the Customs and Excise Act, 1964, is hereby amended—

(a) by the substitution for subparagraph (vi) of paragraph *(a)* of subsection (4) of the following paragraph:

"(vi) be in possession of or sell any marked goods mixed in any proportion with distillate fuel or petrol;"; and

(b) by the substitution for the definition of "engine" in subsection (12) of the following definition:

" 'engine' referred to in subsection (4)*(a)* and *(c)*(ii), (5)*(a)*(i) and (6)*(a)* **[includes]** means any engine **[of]** in any machine, machinery, plant, equipment, apparatus, vehicle or ship, classifiable under any heading or subheading of Chapters 84 to 87 and 89 of Part 1 of Schedule No. 1;".

(2) Subsection (1)*(b)* shall be deemed to have come into operation on 24 November 1999.

Amendment of section 38 of Act 91 of 1964, as amended by section 13 of Act 105 of 1969, section 5 of Act 71 of 1975, section 4 of Act 105 of 1976, section 2 of Act 89 of 1983, section 18 of Act 59 of 1990, section 28 of Act 45 of 1995 and section 42 of Act 19 of 2001

123. Section 38 of the Customs and Excise Act, 1964, is hereby amended—

(a) by the substitution in paragraph *(a)* of subsection (1) for the words preceding the proviso of the following words:

"Every importer of goods shall within seven days of the date on which such goods are, in terms of section ten deemed to have been imported except in respect of goods in a container depot as provided for in section

(e) 'Vervaardig of geproduseer' het die betekenis ingevolge die bepalings van hierdie Wet toegepas op goedere in die Republiek ingevoer, en by die bepaling van die reg hefbaar in Deel 9 moet die Minister die voorkeurskale van reg in werking in Deel 1 van Bylae No 1 ten opsigte van goedere wat oorsprong verwerf het in 'n land wat geregtig is op sodanige voorkeurtariewe in ag neem.

(5) Die bepalings van artikels 65, 66 en 67 is, behoudens die reëls, *mutatis mutandis* ten opsigte van die waardasie van sodanige goedere van toepassing.

(6) Die Kommissaris kan reëls uitvaardig—

(a) bykomend tot of ter vervanging van enige bevoegdheid, plig of funksie met betrekking tot die Suid-Afrikaanse Inkomstediens of enige beampte daarvan of enige prosedure of proses in die regulasies voorgeskryf;

(b) aangaande pligte en funksies van die NOS-bediener of NOS-onderneming;

(c) om die sekerheid en kontrole van die DBG te verseker;

(d) om die doeane- en aksynsadministrasie van die DBG te reguleer in verband met goedere ontvang of verwyder of vervaardig of geproduseer of verbruik of enige ander bedrywigheid waarmee hierdie Wet in verband staan;

(e) wat registrasie vereis en wat voorwaardes en prosedures voorskryf wat sodanige registrasie ten opsigte van enige onderneming of ander persoon wat binne die NOS opereer of daartoe toegang het, reguleer;

(f) enige ander aangeleentheid wat noodsaaklik of nuttig is vir doeleindes van die effektiewe en doeltreffende administrasie van die DBG.

(7) *(a)* Die Kommissaris kan na oorlegpleging met die Raad op Vervaardigingsontwikkeling in subartikel (2)*(b)*(ii) bedoel enige aansoek om registrasie wat vereis word deur enige reël in subartikel (6)*(e)* beoog, weier of enige sodanige registrasie kanselleer of opskort.

(b) Die bepalings van aritkel 60(2) is *mutatis mutandis* vir doeleindes van paragraaf *(a)* van toepassing.

(2) Subartikel (1) tree in werking op 'n datum deur die President by proklamasie in die *Staatskoerant* bepaal.

Wysiging van artikel 37A van Wet 91 van 1964, soos gewysig deur artikel 8 van Wet 95 van 1965, artikel 12 van Wet 105 van 1969, artikels 7 en 15 van Wet 98 van 1980, artikel 8 van Wet 84 van 1987, artikel 17 van Wet 59 van 1990, artikel 27 van Wet 45 van 1995 en artikel 61 van Wet 30 van 1998

122. (1) Artikel 37A van die Doeane- en Aksynswet, 1964, word hierby gewysig—

(a) deur subparagraaf (vi) van paragraaf *(a)* van subartikel (4) deur die volgende paragraaf te vervang.

"(vi) in besit wees van, of, enige gemerkte goedere in enige verhouding gemeng met distillaatbrandstof of petrol verkoop; en

(b) deur die omskrywing van "enjin" in subartikel (12) deur die volgende omskrywing te vervang:

" 'enjin' bedoel in subartikels (4)*(a)* en *(c)*(ii), (5)*(a)*(i) en (6)*(a)*, ook enige enjin **[van]** in enige masjien, masjinerie, installasie, toerusting, apparaat, voertuig of skip indeelbaar onder enige pos of subpos van Hoofstukke 84 tot 87 en 89 van Deel 1 van Bylae No. 1;".

(2) Subartikel (1)*(b)* word geag op 24 November 1999 in werking te getree het.

Wysiging van artikel 38 van Wet 91 van 1964, soos gewysig deur artikel 13 van Wet 105 van 1969, artikel 5 van Wet 71 van 1975, artikel 4 van Wet 105 van 1976, artikel 2 van Wet 89 van 1983, artikel 18 van Wet 59 van 1990, artikel 28 van Wet 45 van 1995 en artikel 42 van Wet 19 van 2001

123. Artikel 38 van die Doeane en Aksynswet, 1964, word hierby gewysig—

(a) deur in paragraaf *(a)* van subparagraaf (1) die woorde wat die voorbehoudsbepaling voorafgaan deur die volgende woorde te vervang:

"Elke invoerder van goedere moet binne sewe dae vanaf die datum waarop sodanige goedere ingevolge artikel tien geag word ingevoer te gewees het, behalwe ten opsigte van goedere in 'n houerdepot soos in

are entered and delivery granted by the Controller before such sale, 50 per cent of any such rent paid on entry of the goods.

(c) (i) The Commissioner shall compile a list of all the goods in the State warehouse or deemed to be in the State warehouse as provided in this section reflecting the date of importation, the distinguishing marks and numbers, a description of the goods, the name and address of the importer, if known, the name of the carrier and any other relevant person contemplated in subparagraph *(ee)*, the location of the goods and any other information available and shall—

(aa) obtain and keep a copy of the manifest, transport document, outturn report and any other document available relating to the exportation, carriage and importation of the goods;

(bb) update the list weekly;

(cc) display the list on a notice board in the office of the Controller and at the State warehouse;

(dd) place the list on the SARS website specified by rule and keep a printout of such list and every amendment thereof;

(ee) notify by facsimile transmission or other means the importer, where the importer and the importer's address are known, and any other person known to the Commissioner to be involved or who may reasonably be expected to be involved in the exportation or importation including, where relevant, the container operator, any port authority, a transit shed operator, any other person in control of freight landed from any carrier, the carrier or agent for the carrier, the clearing agent and the exporter or supplier of the goods.

(ii) The contents of the list so displayed and included in the website shall be deemed to be sufficient notification to the importer or any other person who has any right or interest in the goods concerned that unless the goods are duly entered in accordance with the provisions of this Act they will be disposed of in terms of this section.";

(b) by the insertion of the following subsection:

"(2A) The Commissioner may—

(a) by rule amend or substitute any requirement or prescribe any additional requirement relating to any document or procedure contemplated in subsection (2);

(b) notwithstanding anything to the contrary contained in section 4(3) or in any other law, for the purposes of this section, disclose by publication or otherwise any information acquired regarding any person, goods, firm or business to which this section relates.";

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

"If after the expiration of 60 days from the date of removal to the State warehouse or other place indicated by the Controller or, where no such removal has taken place, from the date of expiry of the period prescribed in section 38(1), any goods remain unentered the Commissioner may cause them, except if they have been imported in contravention of any law, to be sold, and if so sold the proceeds thereof shall be applied in discharge of any duty, expenses incurred by the Commissioner, charges due to the Commissioner (including any State warehouse rent referred to in subsection (2)), a port or railway authority, the Department of Transport, a container operator or a depot operator, and freight, in that order, and the surplus if any, shall, upon application be paid to the owner of the said goods: Provided that—

(a) if any goods cannot be sold at a price regarded by the Commissioner as reasonable having regard to the duty, expenses and charges in respect of such goods, the Commissioner may direct that the goods concerned be destroyed or appropriated to the State without payment of any duty;

die goedere geklaar en aflewering deur die Kontroleur gemagtig word, voor sodanige verkope, 50 persent van enige sodanige huur wat by die klaring van die goedere betaal is.

(c) (i) Die Kommissaris moet 'n lys opstel van alle goedere in die Staatspakhuis of wat soos in hierdie artikel bepaal, geag word om in die Staatspakhuis te wees, wat die datum van invoer, onderskeidende merke en nommers, 'n beskrywing van die goedere, die naam en adres van die invoerder, indien bekend, die naam van die karweier en van enige ander relevante persoon soos beoog in subparagraaf *(ee)*, die ligging van die goedere en enige ander beskikbare inligting weergee en moet—

(aa) 'n afskrif van die manifes, vervoerdokument, opbrengsrapport en enige ander beskikbare dokument in verband met die uitvoer, vervoer en invoer van die goedere verkry en hou;

(bb) weekliks die lys bywerk;

(cc) die lys op 'n kennisgewingbord in die kantoor van die Kontroleur en by die Staatspakhuis vertoon;

(dd) die lys op die SAID-webwerf by reël voorgeskryf plaas en 'n drukstuk van sodanige lys en enige verandering daarvan hou;

(ee) by wyse van faksimilee of op ander wyse, die invoerder, waar die invoerder en die invoerder se adres bekend is, en enige ander persoon wat die Kommissaris weet betrokke is of wat redelikerwys verwag kan word om betrokke te wees in die uitvoer of invoer, met inbegrip van waar van toepassing die houerbediener, enige haweowerheid, 'n deurvoerloodsbediener, enige ander persoon in beheer van vrag vanaf enige karweier geland, die karweier of agent van die karweier, die klaringsagent en die uitvoerder of verskaffer van die goedere, inlig.

(ii) Die inhoud van die lys aldus vertoon en in die webwerf ingesluit, word geag voldoende kennisgewing te wees aan die invoerder of enige ander persoon wat enige reg of belang in die betrokke goedere het, dat tensy die goedere behoorlik geklaar word ooreenkomstig die bepalings van hierdie Wet, ingevolge hierdie artikel daaroor beskik sal word.";

(b) deur die volgende subartikel in te voeg:

"(2A) Die Kommissaris kan—

(a) by reël enige vereiste wysig of vervang of enige bykomende vereiste met betrekking tot enige dokument of prosedure in subartikel (2) beoog, voorskryf;

(b) ondanks andersluidende bepalings in artikel 4(3) of in enige ander wet, vir die doeleindes van hierdie artikel, deur middel van publikasie of andersins enige inligting verkry betreffende enige persoon, goedere, firma of besigheid waarop hierdie artikel betrekking het, openbaar.";

(c) deur in subartikel (3) die woorde wat paragraaf *(c)* van die voorbehoudsbepaling van daardie subartikel voorafgaan deur die volgende woorde te vervang:

"Indien enige goedere na die verloop van 60 dae vanaf die datum van verwydering na die Staatspakhuis of 'n ander deur die Kontroleur aangewese plek, of waar geen sodanige verwydering plaasgevind het nie, vanaf die datum van verloop van die in artikel 38(1) voorgeskrewe tydperk, nog ongeklaar is, kan die Kommissaris dit laat verkoop behalwe as dit strydig met enige wet ingevoer is, en indien aldus verkoop moet die opbrengs daarvan vir die betaling van enige reg, onkostes deur die Kommissaris aangegaan, gelde aan die Kommisaris (met inbegrip van enige Staatspakhuishuur in subartikel (2) bedoel), 'n hawe- of spoorwegowerheid, die Departement van Vervoer, 'n houerbediener of 'n depotbediener verskuldig en vraggeld, in daardie orde, aangewend word en moet die oorskot, indien daar is, op aansoek aan die eienaar van die gemelde goed betaal word: Met dien verstande dat—

(a) indien die goedere nie vir 'n bedrag verkoop kan word wat met inagneming van die reg, onkoste en gelde ten opsigte van sodanige goedere, deur die Kommissaris as redelik beskou word nie, kan die Kommissaris gelas dat die betrokke goedere vernietig of aan die Staat sonder betaling van reg toegeëien word;

(b) where any goods are sold at a price which is insufficient to cover the duty, such expenses, charges and freight, the Commissioner may apply the proceeds in discharge thereof in the order mentioned."; and

(d) by the addition of the following subsections:

"(5) *(a)* Where the Commissioner on reasonable grounds determines that any goods to which this section relates or any goods which are detained as contemplated in section 113(8), have been imported or exported in contravention of any law, the Commissioner may, except in the case of goods detained under section 113(8) for the purposes of the Counterfeit Goods Act, 1997 (Act No. 37 of 1997), request the South African Police Service or the authority administering such law—

(i) to take delivery of such goods for the purposes of instituting any civil proceedings or criminal prosecution or to take any other action in terms of such law within 60 days or such further time as the Commissioner may specify in such request;

(ii) if it is not intended to act as contemplated in subparagraph (i) to advise the reasons therefor within such period; or

(iii) to authorise the Commissioner, as contemplated in paragraph *(e)*, to deal with such goods under the provisions of this section.

(b) When delivery is taken as contemplated in paragraph *(a)*, such goods shall not be allowed to enter into home consumption in the Republic unless they have been duly entered, and any duty and value-added tax payable thereon have been paid to the Controller under whose control they were at the time of such delivery.

(c) (i) The Commissioner shall at the time of such request notify any relevant person contemplated in subsection (2)*(c)*(i)*(ee)* of such request and that if delivery of the goods is not taken the goods will be disposed of as provided for in this section.

(ii) *(aa)* Particulars of such goods shall be included in a separate section of the list contemplated in subsection (2)*(c)*(i) and cross-referenced to any other unentered goods included in such list.

(bb) The provisions of subsection (2)*(c)*(i) shall otherwise *mutatis mutandis* apply to the goods to which this subsection relates.

(cc) Notwithstanding subparagraph (i), the contents of the list so displayed and placed on the website shall be deemed to be sufficient notification to the importer or any other person who has any right or interest in the goods concerned that the goods will be disposed of in terms of this section.

(d) If the South African Police Service or such authority fails to take such delivery or after taking delivery does not institute civil proceedings or criminal prosecution or take any other action under the relevant law within any reasonable period allowed by the Commissioner or has authorised the Commissioner to deal with such goods under the provisions of this section as contemplated in paragraph *(e)* and no person has given notice of intention to claim release of the goods within 60 days after inclusion thereof in the list referred to in paragraph *(c)*, such goods shall notwithstanding anything to the contrary in this Act or in the relevant other law contained, be deemed to be condemned and forfeited under the provisions of this Act and the Commissioner may dispose thereof as provided in this section.

(e) Notwithstanding the provisions of any other law, the authority administering such other law or the South African Police, may authorise the Commissioner to deal with any goods imported or exported in contravention of such law in terms of the provisions of this section.

(b) waar enige goedere verkoop word vir 'n bedrag wat onvoldoende is om die reg, sodanige onkoste, uitgawes en vraggeld te bestry kan die Kommissaris die opbrengs aanwend ter bestryding daarvan in die orde vermeld; en

(d) deur die volgende subartikels in te voeg:

"(5) *(a)* Waar die Kommissaris op redelike gronde bepaal dat enige goedere waarop hierdie artikel betrekking het, of enige goedere wat aangehou word soos bedoel in artikel 113(8), strydig met enige wet ingevoer of uitgevoer is, kan die Kommissaris, behalwe in die geval van goedere ingevolge artikel 113(8) aangehou vir doeleindes van die Wet op Nagemaakte Goedere, 1997 (Wet No. 37 van 1997), die Suid-Afrikaanse Polisiediens of die owerheid wat sodanige wet administreer versoek—

(i) om aflewering van sodanige goedere te neem met die doel om sivielregtelike verrigtinge of strafregtelike vervolging in te stel of om enige ander stappe ingevolge sodanige ander wet te neem, binne 60 dae of sodanige verdere tydperk wat die Kommissaris in sodanige versoek vermeld; of

(ii) om, indien dit nie die voorneme is om op te tree soos bedoel in subparagraaf (i) nie, die redes daarvoor binne sodanige tydperk te verskaf; of

(iii) om die Kommissaris, soos in paragraaf *(e)* beoog, te magtig om met die goedere kragtens die bepalings van hierdie artikel te handel.

(b) Wanneer aflewering soos beoog in paragraaf *(a)* geneem is, mag sodanige goedere nie toegelaat word om in binnelandse verbruik in die Republiek te gaan nie tensy dit behoorlik geklaar is en enige reg en belasting op toegevoegde waarde daarop aan die Kontroleur onder wie se beheer dit ten tyde van sodanige aflewering was, betaal is nie.

(c) (i) Die Kommissaris moet ten tyde van sodanige versoek enige relevante persoon soos in subartikel (2)*(c)*(i)*(ee)* beoog in kennis stel van sodanige versoek en dat indien aflewering van die goedere nie geneem word nie oor die goedere beskik sal word soos in hierdie artikel bepaal.

(ii) *(aa)* Besonderhede van sodanige goedere moet in 'n aparte afdeling van die lys beoog in subartikel (2)*(c)*(i) ingesluit word met kruisverwysing na enige ander ongeklaarde goedere in sodanige lys ingesluit.

(bb) Die bepalings van subartikel (2)*(c)*(i) is andersins *mutatis mutandis* van toepassing op die goedere waarop hierdie subartikel van toepassing is.

(cc) Die inhoud van die lys so vertoon en op die webwerf geplaas, word ondanks subparagraaf (i), geag voldoende kennisgewing te wees aan die invoerder of enige ander persoon wat enige reg of belang in die betrokke goedere het dat oor die goedere ingevolge die bepalings van hierdie artikel beskik sal word.

(d) Indien die Suid-Afrikaanse Polisiediens of sodanige owerheid nalaat om sodanige aflewering te neem of nadat aflewering geneem is nie sivielregtelike verrigtinge of strafregtelike vervolging instel of nie enige ander stappe ingevolge die ander betrokke wet binne enige redelike tyd deur die Kommissaris toegelaat, neem nie of die Kommissaris gemagtig het om met die goedere kragtens die bepalings van hierdie artikel soos in paragraaf *(e)* beoog, te handel, en niemand het kennis van die voorneme om die goedere op te eis gegee binne 60 dae na insluiting daarvan in die lys in paragraaf *(c)* bedoel nie, word sodanige goedere ondanks andersluidende bepalings in hierdie Wet of in die relevante ander wet vervat, geag prysverklaar en verbeur te wees kragtens die bepalings van hierdie Wet en die Kommissaris kan daaroor beskik soos in hierdie artikel bepaal word.

(e) Ondanks die bepalings van enige ander Wet, kan enige owerheid wat sodanige ander Wet administreer of die Suid-Afrikaanse Polisie, die Kommissaris magtig om met enige goedere wat strydig met sodanige Wet ingevoer of uitgevoer is, ingevolge die bepalings van hierdie artikel te handel.

(6) *(a)* Whenever any officer has reasonable grounds to suspect that any imported goods are counterfeit goods as contemplated in the Counterfeit Goods Act, 1997, the officer may detain such goods for the purposes of that Act under section 113(8).

(b) Where any such goods are seized under the provisions of the Counterfeit Goods Act, 1997, and the importer is not known and no criminal prosecution or civil proceedings is instituted or no instruction is received for the release of the goods as contemplated in section 9(2) of that Act, such goods shall, notwithstanding anything to the contrary in this Act or the said Counterfeit Goods Act contained, be subject to the provisions of this section.

(c) The provisions of subsection (5)*(c)* shall apply *mutatis mutandis* in respect of any goods to which this paragraph relates.

(d) If no person gives any notice of the intention to claim release of the goods within 60 days after inclusion in the list referred to in paragraph *(c)*, such goods shall be deemed to be condemned and forfeited under the provisions of this Act.

(7) *(a)* Any goods appropriated to the State as contemplated in subsection (3)*(a)*, any goods condemned and forfeited as contemplated in subsections (5) and (6), any goods condemned and forfeited as contemplated in sections 89 and 90 and any goods referred to in subsection (10)*(a)*, may be disposed of as provided in paragraph *(b)* by the Commissioner in consultation with the Directors-General of the National Treasury and of Trade and Industry or, where appropriate, with a Director-General of any other department.

(b) Such goods may—

(i) *(aa)* except any goods appropriated to the State or goods which have been imported in contravention of any other law, be sold by public auction or by tender for home consumption in the Republic;

(bb) be sold by public auction or by tender for export to a destination outside the common customs area;

(ii) be destroyed;

(iii) be transferred for use to any organ of State on payment of any expenses incurred by the Commissioner in connection with such goods;

(iv) be made available at the premises where they are kept to the Department of Welfare or any other body determined by the Commissioner for the purposes of providing disaster relief or basic human necessities for indigent persons in the Republic or for donation to any country in need of aid for such persons; or

(v) be disposed of for any other purpose or in any other manner which the Commissioner considers to be in the public interest.

(c) If the Commissioner so determines, the importer or exporter, as the case may be, or if the importer or exporter cannot be found or is unable to pay, the South African Police Service or any authority administering the other laws referred to in subsection (5) shall reimburse the Commissioner for expenses incurred in storing and disposing of or otherwise dealing with such goods.

(d) No duty shall be payable on any goods to which this subsection relates on disposal as contemplated in paragraph *(b)*, but any duty paid on such goods shall not be refundable.

(8) The provisions of subsections (5), (6) and (7) shall, subject to the provisions of sections 89 and 90, *mutatis mutandis* apply to any goods

(6) *(a)* Wanneer enige beampte redelike gronde het om te vermoed dat enige ingevoerde goedere nagemaakte goedere is soos beoog in die Wet op Nagemaakte Goedere 1997, kan die beampte sodanige goedere vir doeleindes van daardie Wet ingevolge artikel 113(8) aanhou.

(b) Waar op enige sodanige goedere ingevolge die bepalings van die Wet op Nagemaakte Goedere, 1997, beslag gelê word en die invoerder is onbekend en geen strafregtelike vervolging of sivielregtelike verrigtinge word ingestel nie of geen opdrag vir die loslating van die goedere soos bedoel in artikel 9(2) van daardie Wet ontvang is nie, is sodanige goedere ondanks andersluidende bepalings in hierdie Wet of in die Wet op Nagemaakte Goedere vervat, aan die bepalings van hierdie artikel onderhewig.

(c) Die bepalings van subartikel (5)*(c)* is *mutatis mutandis* van toepassing ten opsigte van enige goedere waarop hierdie paragraaf van toepassing is.

(d) Indien niemand kennis gee van die voorneme om vrylating van die goedere te eis binne 60 dae na insluiting in die lys in paragraaf *(c)* bedoel nie, word sodanige goedere geag ingevolge die bepalings van hierdie Wet prysverklaar en verbeur te wees.

(7) *(a)* Enige goedere aan die Staat toegeëien soos beoog in subartikel (3)*(a)*, enige goedere prysverklaar en verbeur soos beoog in subartikels (5) en (6), enige goedere prysverklaar en verbeur soos beoog in artikels 89 en 90 en enige goedere in subartikel (10)*(a)* bedoel, kan deur die Kommissaris soos bepaal in paragraaf *(b)* in oorleg met die Direkteurs-generaal van die Nasionale Tesourie en van Handel en Nywerheid, of waar toepaslik, met 'n Direkteur-generaal van enige ander departement oor beskik word.

(b) Sodanige goedere kan—

(i) *(aa)* behalwe enige goedere aan die staat toegeëien of goedere in stryd met enige ander wet ingevoer, deur openbare veiling of per tender vir binnelandse verbruik in die Republiek verkoop word;

(bb) deur openbare veiling of per tender verkoop word vir uitvoer na 'n bestemming buite die gemeenskaplike doeanegebied;

(ii) vernietig word;

(iii) oorgedra word vir gebruik aan enige staatsorgaan teen betaling van enige uitgawes deur die Kommissaris in verband met sodanige goedere aangegaan;

(iv) op die perseel waar dit gehou word aan die Departement van Welsyn of enige ander liggaam deur die Kommissaris bepaal beskikbaar gestel word vir doeleindes van rampspoedverligting of basiese humanitêre behoeftes vir hulpbehoewende persone binne die Republiek of vir skenking aan 'n land wat hulp vir sodanige persone benodig; of

(v) oor beskik word vir enige ander doel en op enige ander wyse wat die Kommissaris in die openbare belang ag.

(c) Indien die Kommissaris so bepaal moet die invoerder of uitvoerder, of indien die invoerder of uitvoerder nie gevind kan word nie of nie in staat is om te betaal nie, die Suid-Afrikaanse Polisiediens of enige owerheid wat die ander wette in subartikel (5) bedoel, administreer die Kommissaris vergoed vir uitgawes ten opsigte van sodanige goedere aangegaan in die opberging daarvan en beskikking daaroor of om andersins daarmee te handel.

(d) Geen reg is betaalbaar by die beskikking oor enige goedere waarop hierdie subartikel betrekking het nie maar geen reg op sodanige goedere betaal, word terugbetaal nie.

(8) Die bepalings van subartikels (5), (6) en (7) is, behoudens die bepalings van artikels 89 en 90, *mutatis mutandis* van toepassing op

detained or seized under this Act that were imported, exported, manufactured or used, or otherwise dealt with in contravention of the provisions of this Act and any other law: Provided that where the Commissioner is satisfied on reasonable grounds that the owner did not know that the goods were imported in contravention of this Act and such other law and the Commissioner is satisfied that the goods do not constitute a danger to public health or the public and complies with any compulsory specification contemplated in the Standards Act, 1993, the Commissioner may, instead of disposing of the goods as contemplated in subsection (7), deliver the goods to the owner in accordance with the provisions of section 93.

(9) The provisions of subsection (7)*(b)*(iv) shall apply to any goods donated to the Commissioner by the owner of any intellectual property right after an appropriate order of court as contemplated in section 10 of the Counterfeit Goods Act, 1997.

(10) *(a)* The provisions of subsection (3), (4), (5) or (6), as the case may be, and subsection (7) shall *mutatis mutandis* apply in respect of any goods abandoned to the Commissioner under any provision of this Act and any goods referred to in section 42 or 107(1)*(b)*.

(b) The provisions of sections 89, 90 and 96 shall notwithstanding anything to the contrary contained in the laws concerned, *mutatis mutandis* apply in respect of any claim for the release of goods to which subsection (5) or (6) relates.

(11) The Commissioner may make rules—

(a) to delegate or assign, subject to section 3(2), any of the powers that may be exercised or assign any of the duties that shall be performed by the Commissioner under this section to any officer;

(b) regarding all matters which are required or permitted in this section to be prescribed by rule;

(c) to regulate any matter that the Commissioner may consider reasonably necessary and useful for the purposes of administering the provisions of this section.".

Amendment of section 44 of Act 91 of 1964, as amended by section 10 of Act 95 of 1965, section 5 of Act 57 of 1966, section 16 of Act 105 of 1969, section 7 of Act 71 of 1975, section 8 of Act 112 of 1977, section 5 of Act 110 of 1979, section 3 of Act 89 of 1984, section 13 of Act 84 of 1987, section 21 of Act 59 of 1990, section 3 of Act 98 of 1993, section 33 of Act 45 of 1995, section 51 of Act 53 of 1999 and section 43 of Act 19 of 2001

125. (1) Section 44 of the Customs and Excise Act, 1964, is hereby amended—

(a) by the substitution for subsections (4) and (5) of the following subsections:

"(4) The master, pilot or carrier concerned shall be liable for the duty on all goods deemed in terms of section 10 to have been imported, except goods in respect of which a bill of lading, air consignment note or other document was issued on loading of such goods onto the ship, aircraft or vehicle by means of which they were imported stating that the said goods were accepted for conveyance at the risk of the owner thereof in all respects and not only as regards risk in respect of damage to such goods, provided such goods have not been landed **[and placed in a transit shed appointed or prescribed under section 6(1)]**.

enige goedere wat ingevoer, uitgevoer, vervaardig of gebruik is of wat andersins mee gehandel is in stryd met die bepalings van hierdie Wet en enige ander Wet, wat kragtens hierdie Wet aangehou of op beslag gelê is: Met dien verstande dat waar die Kommissaris op redelike gronde oortuig is dat die eienaar nie geweet het dat die goedere strydig met die bepalings van hierdie Wet en sodanige ander Wet ingevoer is nie en die Kommissaris oortuig is dat die goedere nie 'n gevaar vir openbare gesondheid of die publiek daarstel nie en voldoen aan enige verpligte spesifikasies beoog in die Wet op Standaarde, 1993, kan die Kommissaris in plaas daarvan om oor die goedere te beskik soos beoog in subartikel (7), die goedere aan die eienaar daarvan in ooreenstemming met die bepalings van artikel 93 aflewer.

(9) Die bepalings van subartikel (7)*(b)*(iv) is op enige goedere aan die Kommissaris geskenk deur die eienaar van 'n immateriële goedereregna 'n toepaslike bevel deur die hof soos in artikel 10 van die Wet op Nagemaakte Goedere, 1997, beoog, van toepassing.

(10) *(a)* Die bepalings van subartikels (3), (4), (5) of (6) na gelang van die geval en subartikel (7) is *mutatis mutandis* van toepassing ten opsigte van enige goedere aan die Kommissaris geabandoneer ingevolge enige bepaling van hierdie Wet en enige goedere in artikel 42 of 107(1)*(b)* bedoel.

(b) Die bepalings van artikels 89, 90 en 96 is ondanks enige strydige bepalings in die betrokke wette vervat, *mutatis mutandis* van toepassing op enige eis vir die lossing van goedere waarmee subartikels (5) of (6) in verband staan.

(11) Die Kommissaris kan reëls uitvaardig—

(a) om, onderhewig aan artikel 3(2) enige bevoegdheid wat deur die Kommissaris kragtens hierdie artikel uitgeoefen kan word aan 'n beampte te delegeer of om enige plig wat deur die Kommissaris verrig moet word, kragtens hierdie artikel aan 'n beampte toe te wys;

(b) betreffende alle aangeleenthede wat ingevolge hierdie artikel by reël voorgeskryf moet of kan word;

(c) om enige aangeleentheid wat die Kommissaris redelik noodsaaklik en nuttig ag vir doeleindes van die administrasie van die bepalings van hierdie artikel te reguleer.".

Wysiging van artikel 44 van Wet 91 van 1964, soos gewysig deur artikel 10 van Wet 95 van 1965, artikel 5 van Wet 57 van 1966, artikel 16 van Wet 105 van 1969, artikel 7 van Wet 71 van 1975, artikel 8 van Wet 112 van 1977, artikel 5 van Wet 110 van 1979, artikel 3 van Wet 89 van 1984, artikel 13 van Wet 84 van 1987, artikel 21 van Wet 59 van 1990, artikel 3 van Wet 98 van 1993, artikel 33 van Wet 45 van 1995, artikel 51 van Wet 53 van 1999 en artikel 43 van Wet 19 van 2001

125. (1) Artikel 44 van die Doeane- en Aksynswet, 1964, word hierby gewysig—

(a) deur subartikels (4) en (5) deur die volgende subartikels te vervang:

"(4) Die betrokke gesagvoerder, loods of karweier is aanspreeklik vir die reg op alle goedere wat ingevolge artikel 10 geag word ingevoer te gewees het behalwe goedere ten opsigte waarvan 'n vragbrief, lugbesendingsbrief of ander dokument by die laai van sodanige goedere op die skip, vliegtuig of voertuig deur middel waarvan dit ingevoer is, uitgereik is, waarin verklaar word dat bedoelde goedere op risiko van die eienaar daarvan vir versending aangeneem is, in alle opsigte en nie slegs wat betref risiko ten opsigte van beskadiging van daardie goedere nie mits daardie goedere nie geland is **[en in 'n deurvoerloods wat kragtens artikel 6(1) aangewys is, geplaas is]** nie.

(5) *(a)* The liability of the master or pilot or other carrier for duty in terms of subsection (4) shall cease—

[*(a)*] (i) upon lawful delivery of the goods, after due entry thereof has been made, to the importer or his agent; or

[*(b)*] (ii) if due entry of the goods has not been made, upon delivery thereof to the State warehouse **[or other]** or any licensed place **[indicated for the purposes of this section by the Controller]** or, with the permission of the Commissioner, any other place contemplated in section 11;

[*(c)*] (iii) upon delivery of the goods, if containerised, to a container terminal or a container operator; or

[*(d)*] (iv) in respect of such goods for which an air cargo transfer manifest has been completed, upon delivery thereof to **[the South African Airways]** any licensed place contemplated in section 11.

(b) (i) The container terminal operator shall be liable for the duty on any containerised goods received in the container terminal on delivery thereof as contemplated in paragraph *(a)*(iii).

(ii) The liability of the terminal operator for duty in terms of subparagraph (i) shall cease on delivery thereof to:

(aa) a container operator;

(bb) a depot operator;

(cc) after due entry, to the importer or the importer's agent; or

(dd) the State warehouse or other place approved by the Commissioner.";

(b) by the substitution for paragraph *(c)* of subsection (5A) of the following paragraph:

"*(c)* in respect of any of such goods of which due entry has not been made, upon delivery thereof to the State warehouse or **[other]** any licensed place **[indicated for the purposes of this section by the Controller]** or, with the permission of the Commissioner, any other place contemplated in section 11.";

(c) by the substitution for paragraph *(b)* of subsection (5B) of the following paragraph:

"*(b)* in respect of any of such goods of which due entry has not been made, upon delivery thereof to the State warehouse or **[other]** any licensed place **[indicated for the purposes of this section by the Controller]** or, with the permission of the Commissioner, any other place contemplated in section 11."; and

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

"(5C) *(a)* Subject to the provisions of this section, the liability of the master, pilot or other carrier for the duty on imported goods shall cease on receipt of such goods in any licensed or other place contemplated in section 11.

(b) The liability for duty in respect of such goods of any licensee of such licensed place contemplated in section 11 shall cease—

(i) on receipt of such goods in any other such licensed place on removal thereto in accordance with the procedures prescribed by rule;

(ii) upon lawful delivery after due entry thereof to the importer or the importer's agent;

(iii) in respect of any of such goods of which due entry has not been made upon delivery thereof to the state warhouse, or with the permission of the Commissioner, any other place contemplated in section 11.

(c) (i) Any licensee shall issue a receipt in respect of any goods received in such place to the person delivering such goods.

(ii) Any outturn report or any discrepant report duly completed in accordance with section 8 and its rules shall, in respect of the goods concerned, be regarded to be a correct report of goods landed or received in a container, consolidated package or other package in such place, as the case may be.

(d) Subject to compliance with any procedure prescribed by rule in respect of any goods or means of transport, the liability for duty of the

(5) *(a)* Die aanspreeklikheid vir reg van die gesagvoerder of loods of ander karweier ingevolge subartikel (4) verval—

[*(a)*](i) by wettige aflewering van die goedere nadat dit behoorlik geklaar is, aan die invoerder of sy agent; of

[*(b)*](ii) indien die goedere nie behoorlik geklaar is nie, by aflewering daarvan by die Staatspakhuis **[of ander]** of enige gelisensieerde plek **[wat die Kontroleur vir doeleindes van hierdie artikel aangewys het]** of, met die toestemming van die Kommissaris, enige ander plek in artikel 11 beoog;

[*(c)*](iii) by aflewering van die goedere, indien dit behouer is, aan 'n houereindpunt of 'n houerbediener; of

[*(d)*](iv) ten opsigte van sodanige goedere waarvoor 'n lugvrag-oordragmanifes voltooi is, by aflewering daarvan aan **[die Suid-Afrikaanse Lugdiens]** enige gelisensieerde plek in artikel 11 beoog.

(b) (i) Die houereindpuntbediener is aanspreeklik vir die reg op enige behouerde goedere in die houereindpunt by aflewering daarvan soos in paragraaf *(a)*(iii) beoog.

(ii) Die aanspreeklikheid van die eindpuntbediener vir reg ingevolge subparagraaf (i) verval by aflewering daarvan aan:

(aa) 'n houerbediener;

(bb) 'n depotbediener;

(cc) na behoorlike klaring daarvan, die invoerder of sy agent; of

(dd) die Staatspakhuis of ander plek deur die Kommissaris goedgekeur.";

(b) deur paragraaf *(c)* van subartikel (5A) deur die volgende paragraaf te vervang:

"*(c)* ten opsigte van enige van sodanige goedere wat nie behoorlik geklaar is nie by aflewering daarvan by die Staatspakhuis of **[ander]** enige gelisensieerde plek **[wat die Kontroleur vir die doeleindes van hierdie artikel aangewys het]** of, met die toestemming van die Kommissaris, enige ander plek in artikel 11 beoog;

(c) deur paragraaf *(b)* van subartikel (5B) deur die volgende paragraaf te vervang:

"*(b)* ten opsigte van enige van sodanige goedere wat nie behoorlik geklaar is nie, by aflewering daarvan by die Staatspakhuis of **[ander]** enige gelisensieerde plek **[wat die Kontroleur vir die doeleindes van hierdie artikel aangewys het]** of met die toestemming van die Kommissaris, enige ander plek in artikel 11 beoog."; en

(d) deur na subartikel (5B) die volgende subartikel in te voeg:

"(5C) *(a)* Behoudens die bepalings van hierdie artikel, verval die aanspreeklikheid van die gesagvoerder, loods of ander karweier vir die reg op ingevoerde goedere by ontvangs van sodanige goedere in enige gelisensieerde of ander plek in artikel 11 beoog.

(b) Die aanspreeklikeheid vir reg ten opsigte van sodanige goedere van enige gelisensieerde van sodanige gelisensieerde plek beoog in artikel 11 verval—

(i) by ontvangs van sodanige goedere in enige ander sodanige gelisensieerde plek by verwydering daartoe in ooreenstemming met die prosedures by reël voorgeskryf;

(ii) by wettige aflewering na behoorlike klaring daarvan aan die invoerder of die invoerder se agent;

(iii) ten opsigte van enige van sodanige goedere waarvan behoorlike klaring nie gemaak is nie, by aflewering daarvan by die staatspakhuis of met die toestemming van die Kommissaris, enige ander plek in artikel 11 beoog.

(c) (i) Enige gelisensieerde moet 'n kwitansie uitreik ten opsigte van enige goedere in sodanige plek ontvang aan die persoon wat sodanige goedere aflewer.

(ii) Enige opbrengsrapport of enige afwykingsrapport behoorlik voltooi ooreenkomstig artikel 8 en die reëls word ten opsigte van die betrokke goedere geag 'n korrekte rapport te wees van goedere in 'n houer, gekonsolideerde verpakking of ander verpakking in sodanige plek en geland of ontvang na gelang van die geval.

(d) Onderworpe aan die nakoming van enige by reël voorgeskrewe prosedures ten opsigte van enige goedere of vervoermiddel, verval die

master, pilot or other carrier, wharf operator, terminal operator, container operator or transit shed operator, on any imported goods not consigned to a place in the Republic which are landed in the Republic, shall cease when it is proved that the goods have been duly taken out of the common customs area.".

(2) Subsection (1) shall come into operation on a date fixed by the President by proclamation in the *Gazette*.

Amendment of section 47 of Act 91 of 1964, as amended by section 11 of Act 95 of 1965, section 17 of Act 105 of 1969, section 2 of Act 7 of 1974, section 7 of Act 105 of 1976, section 10 of Act 112 of 1977, section 6 of Act 110 of 1979, sections 9 and 15 of Act 98 of 1980, section 8 of Act 86 of 1982, section 6 of Act 52 of 1986, section 15 of Act 84 of 1987, section 4 of Act 69 of 1988, section 6 of Act 68 of 1989, section 22 of Act 59 of 1990, section 3 of Act 61 of 1992, section 37 of Act 45 of 1995, section 4 of Act 44 of 1996, section 63 of Act 30 of 1998 and section 53 of Act 53 of 1999

126. (1) Section 47 of the Customs and Excise Act, 1964, is hereby amended—

(a) by the substitution for subsections (7) and (8) of the following subsections:

"(7) To the extent that any goods, classifiable under any tariff heading or subheading of Part 1 of Schedule No. 1 that is expressly quoted in any tariff item or fuel levy item or item of Part 2, 5 or 6 of the said Schedule or in any item in Schedule No. 2, are specified in any such tariff item or fuel levy item or item, the item concerned shall be deemed to include only such goods classifiable under such tariff heading or subheading.

(8) *(a)* The interpretation of—

(i) any tariff heading or tariff subheading in Part 1 of Schedule No. 1;

(ii) *(aa)* any tariff item or fuel levy item or item specified in Part 2, 5 or 6 of the said Schedule, and

(bb) any item specified in Schedule No. 2, 3, 4, 5 or 6;

(iii) the general rules for the interpretation of Schedule No. 1; and

(iv) every section note and chapter note in Part 1 of Schedule No. 1,

shall be subject to the Explanatory Notes to the Harmonised System issued by the Customs Co-operation Council, Brussels (now known as the World Customs Organisation) from time to time: Provided that where the application of any part of such Notes or any addendum thereto or any explanation thereof is optional the application of such part, addendum or explanation shall be in the discretion of the Commissioner.";

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

"*(a)* (i) The Commissioner may in writing determine—

(aa) the tariff headings, tariff subheadings or tariff items or other items of any Schedule under which any imported goods, goods manufactured in the Republic or goods exported shall be classified; or

(bb) whether goods so classified under such tariff headings, tariff subheadings, tariff items or other items of Schedule No. 3, 4, 5 or 6 may be used, manufactured, exported or otherwise disposed of or have been used, manufactured, exported or otherwise disposed of as provided in such tariff items or other items specified in any such Schedule.";

(c) by the insertion after paragraph *(a)*(ii) of subsection (9) of the following paragraph:

"(iii) Any determination made under this subsection shall operate—

(aa) only in respect of the goods mentioned therein and the person in whose name it is issued; and

(bb) subject to the provisions of section 44(11)*(c)* and 76B and subsections (10) and (11), from the date the determination is issued.";

aanspreeklikheid vir reg van die gesagvoerder, loods, ander karweier, kaaibediener, eindpuntbediener, houerbediener of deurvoerloodsbediener, op enige ingevoerde goedere nie bestem vir 'n plek in die Republiek nie wat in die Republiek geland is, wanneer bewys word dat die goedere behoorlik uit die gemeenskaplike doeanegebied geneem is.".

(2) Subartikel (1) tree in werking op 'n datum deur die President by proklamasie in die *Staatskoerant* bepaal.

Wysiging van artikel 47 van Wet 91 van 1964, soos gewysig deur artikel 11 van Wet 95 van 1965, artikel 17 van Wet 105 van 1969, artikel 2 van Wet 7 van 1974, artikel 7 van Wet 105 van 1976, artikel 10 van Wet 112 van 1977, artikel 6 van Wet 110 van 1979, artikels 9 en 15 van Wet 98 van 1980, artikel 8 van Wet 86 van 1982, artikel 6 van Wet 52 van 1986, artikel 15 van Wet 84 van 1987, artikel 4 van Wet 69 van 1988, artikel 6 van Wet 68 van 1989, artikel 22 van Wet 59 van 1990, artikel 3 van Wet 61 van 1992, artikel 37 van Wet 45 van 1995, artikel 4 van Wet 44 van 1996, artikel 63 van Wet 30 van 1998 en artikel 53 van Wet 53 van 1999

126. (1) Artikel 47 van die Doeane- en Aksynswet, 1964, word hierby gewysig—

(a) deur subartikels (7) en (8) deur die volgende subartikels te vervang:

"(7) In die mate waarin enige goedere onder enige tariefpos of subpos van Deel 1 van Bylae No. 1 indeelbaar is, wat uitdruklik aangehaal is in enige tariefitem of brandstofheffingitem of item van Deel 2, 5 of 6 van genoemde Bylae of in enige item in Bylae No. 2, in enige sodanige tariefitem of brandstofheffingitem of item vermeld word, word die betrokke item geag slegs sodanige goedere in te sluit wat onder sodanige tariefpos of subpos indeelbaar is.

(8) *(a)* Die uitleg van—

(i) enige tariefpos of tariefsubpos in Deel 1 van Bylae No. 1;

(ii) *(aa)* enige tariefitem of brandstofheffingitem of item vermeld in Deel 2, 5 of 6 van die gemelde Bylae; en

(bb) enige item vermeld in Bylae No. 2, 3, 4, 5, of 6

(iii) die algemene reëls vir die uitleg van Bylae No. 1; en

(iv) enige afdelingsopmerking en hoofstukopmerking in Deel 1 an Bylae No 1,

is onderworpe aan die 'Explanatory Notes to the Harmonised System' van tyd tot tyd uitgereik deur die Doeane Samewerkingsraad, Brussels (nou bekend as die Wêreld Doeaneorganisasie): Met dien verstande dat waar die toepassing van enige deel van sodanige "Notes" of enige addendum daarby of enige verklaring daarvan nie verpligtend is nie, die toepassing van sodanige deel, addendum of verklaring aan die diskresie van die Kommissaris oorgelaat word;

(b) deur paragraaf *(a)* (i) van subartikel (9) deur die volgende paragraaf te vervang—

"*(a)* (i) Die Kommissaris kan skriftelik—

(aa) die tariefposte, tariefsubposte of tariefitems of ander items van enige Bylae waaronder enige ingevoerde goedere, goedere in die Republiek vervaardig of uitgevoerde goedere ingedeel moet word, bepaal; of

(bb) bepaal of goedere so ingedeel onder sodanige tariefposte, tariefsubposte, tariefitems of ander items van Bylae No 3, 4, 5, of 6 gebruik, vervaardig, uitgevoer of andersins oor beskik kan word of gebruik, vervaardig uitgevoer of andersins oor beskik is soos in sodanige tariefitems of ander items in sodanige Bylae vermeld, bepaal word.";

(c) deur na subparagraaf *(a)*(ii) van subartikel (9) die volgende paragraaf in te voeg:

"(iii) Enige bepaling ingevolge hierdie subartikel gemaak is van toepassing—

(aa) slegs ten opsigte van die goedere daarin vermeld en die persoon in wie se naam dit uitgereik is; en

(bb) behoudens die bepalings van artikel 44(11)*(c)* en 76B en subartikels (10) en (11) vanaf die datum waarop die bepaling uitgereik word.";

(d) by the substitution for paragraphs *(b)* to *(d)* of subsection (9) of the following paragraphs:

"*(b)* (i) Whenever any determination is made under paragraph *(a)* or any determination is amended or withdrawn and a new determination is made under paragraph *(d)*, any amount due in terms thereof shall, notwithstanding that an internal administrative appeal has been filed as contemplated in section 95A or any proceedings have been instituted in any court in connection therewith, remain payable as long as such determination or amended or new determination remains in force: Provided that the Commissioner may on good cause shown, suspend such payment until the date the appeal is decided or any final judgment by the High Court or a judgment by the Supreme Court of Appeal.

(ii) Such determination, amendment of a determination or new determination shall cease to be in force from the date—

(aa) of the amendment of or the withdrawal and insertion of any Schedule or any amendment of the Explanatory Notes as contemplated in subsection (8)*(b)* with the result that the said determination, amended determination or new determination no longer conforms to the interpretation of the relevant provisions of such Schedule or Explanatory Notes;

(bb) when it is no longer compatible with a final judgment by the High Court or a judgment by the Supreme Court of Appeal, from the date of such judgment; or

(cc) any amendment of a determination or new determination is made effective under paragraph *(d)* or section 95A.

(c) Whenever a court amends or orders the Commissioner to amend any determination made under subsection (9)*(a)* or *(d)* or any determination is amended or a new determination is made under paragraph *(d)* or section 95A, the Commissioner shall not be liable to pay interest on any amount refundable which remained payable in terms of the provisions of paragraph *(b)*(i) for any period during which such determination remained in force.

(d) (i) The Commissioner shall—

(aa) amend any determination or withdraw it and make a new determination with effect from the date it is no longer in force as provided in paragraph *(b)*(ii)*(aa)* or *(bb)*;

(bb) except when an internal appeal has been filed in terms of the provisions of section 95A, or if filed, before it has been considered, amend any determination or withdraw it and make a new determination if it was made in error or any condition or obligation on which it was issued is no longer fulfilled or on any other good cause shown including any relevant ground for review contemplated in section 6 of the Administrative Justice Act, 2000 (Act No. 3 of 2000).

(ii) Any such amendment or new determination contemplated in paragraph (i)*(bb)* may be made with effect from—

(aa) subject to the provisions of section 44(11)*(c)*, the date of first entry of the goods in question in circumstances where a false declaration is made for the purposes of this Act;

(bb) the date of first entry, if the determination was made—

(A) by an officer who was biased or reasonably suspected of bias; or

(B) for an ulterior purpose or motive, arbitrarily or capriciously or in bad faith;

(cc) subject to subsection (12), the date of the determination made under paragraph *(a)* in circumstances where such determination was made in *bona fide* error of law or of fact; or

(dd) the date of the amendment of the previous determination or the date of the new determination:

Provided that whenever any amendment of a determination or a new determination is effective from a date resulting in the person to whom the determination was issued—

(d) deur paragrawe *(b)* tot *(d)* van subartikel (9) deur die volgende paragrawe te vervang:

"*(b)* (i) Wanneer enige bepaling kragtens paragraaf *(a)* gemaak word of enige bepaling gewysig of ingetrek word en 'n nuwe bepaling ingevolge paragraaf *(d)* gemaak word, bly enige bedrag ingevolge daarvan verskuldig, betaalbaar so lank as so 'n bepaling of gewysigde bepaling of nuwe bepaling van krag bly in weerwil daarvan dat 'n interne administratiewe appèl, soos bedoel in artikel 95A ingedien is, of enige verrigtinge in enige hof in verband daarmee ingestel is: Met dien verstande dat die Kommissaris op goeie gronde aangetoon sodanige betaling tot die datum waarop die appèl beslis word of enige finale uitspraak deur die Hoë Hof of 'n uitspraak van die Hoogste Hof van Appèl kan opskort.

(ii) Sodanige bepaling, wysiging van 'n bepaling of nuwe bepaling sal ophou om van krag te wees vanaf die datum—

(aa) van die wysiging van of die intrekking en invoeging van enige Bylae of enige wysiging van die 'Explanatory Notes' soos in subartikel (8)*(b)* beoog wat tot gevolg het dat die betrokke bepaling, gewysigde bepaling of nuwe bepaling nie meer in ooreenstemming is met die uitleg van die betrokke bepalings van sodanige Bylae of 'Explanatory Notes' nie.

(bb) wanneer dit nie meer versoenbaar is met 'n finale uitspraak van die Hoë Hof of met 'n uitspraak van die Hoogste Hof van Appèl nie, vanaf die datum van sodanige uitspraak;

(cc) waarop enige wysiging van 'n bepaling of nuwe bepaling ingevolge paragraaf *(d)* of artikel 95A van krag gemaak word.

(c) Wanneer 'n hof enige bepaling kragtens subartikel (9)*(a)* of *(d)* gemaak, wysig of die Kommissaris beveel om sodanige bepaling te wysig of enige bepaling gewysig word of 'n nuwe bepaling gemaak word kragtens subartikel *(d)* of artikel 95A, is die Kommissaris nie aanspreeklik vir die betaling van rente op enige terugbetaalbare bedrag wat betaalbaar gebly het ingevolge die bepalings van paragraaf *(b)*(i) vir enige tydperk wat sodanige bepaling van krag gebly het nie.

(d) (i) Die Kommissaris moet—

(aa) enige bepaling wat nie meer van krag is nie soos in paragraaf *(b)*(ii)*(aa)* of *(bb)* bepaal, wysig of dit intrek en 'n nuwe bepaling maak met ingang van die datum waarop dit nie meer van krag is nie;

(bb) behalwe waar 'n interne appèl ingedien is ingevolge die bepalings van artikel 95A, of indien dit ingedien is voordat dit oorweeg is, enige bepaling wysig of enige bepaling intrek en 'n nuwe bepaling maak indien dit foutiewelik gemaak is of indien enige voorwaarde of verpligting waarop dit uitgereik is nie meer aan voldoen word nie of op enige ander goeie gronde aangetoon met inbegrip van enige relevante hersieningsgrond in artikel 6 van die 'Promotion of Administrative Justice Act', 2000 (Wet No. 3 van 2000) beoog.

(ii) Enige sodanige wysiging of nuwe bepaling beoog in paragraaf (i)*(bb)* kan van krag gemaak word vanaf—

(aa) behoudens die bepalings van artikel 44(11)*(c)*, die datum van die eerste klaring van die betrokke goedere in omstandighede waar 'n vals verklaring vir die doeleindes van hierdie Wet gemaak is;

(bb) die datum van die eerste klaring indien die bepaling gemaak is—

(A) deur 'n beampte wat bevooroordeeld was of redelikerwys verdink word van vooroordeel; of

(B) vir 'n bedekte doel of beweegrede, of willekeurig of wispelturig of ter kwade trou gemaak is;

(cc) behoudens subartikel (12), die datum waarop die bepaling kragtens paragraaf *(a)* gemaak is in omstandighede waar sodanige bepaling op grond van *bona fide* feite- of regsdwaling gemaak is; of

(dd) die datum van die wysiging van die vorige bepaling of die datum van die nuwe bepaling:

Met dien verstande dat wanneer enige wysiging van 'n bepaling of 'n nuwe bepaling van krag word vanaf 'n datum wat tot gevolg het dat die persoon aan wie die bepaling uitgereik is—

(a) being entitled to a refund of duty, such refund shall be subject to the provisions of section 76B;

(b) retrospectively incurring an increased liability for duty, such liability shall, subject to the provisions of section 44(11)*(c)*, be limited to goods entered for home consumption during a period of two years immediately preceding the date of such amendment or new determination.";

(e) by the substitution for subsections (10) and (11) of the following subsections:

"(10) Save where—

(a) a determination has been made under subsection (9)*(a)* or *(d)*; or

(b) subject to section 44(11)*(c)*, any false declaration is made for the purposes of **[subsection (9)]** this Act,

there shall be no liability for any underpayment in duty on any goods, where such underpayment is due to the acceptance of a bill of entry bearing an incorrect tariff heading, tariff subheading or tariff item or other item of any Schedule, after a period of two years from the date of entry of such goods.

(11) *(a)* Notwithstanding the provisions of subsection (10), any determination made under subsection (9)*(a)* as a result of or during the course of or following upon an inspection of the books, accounts and other documents of an importer, exporter, manufacturer or user of goods, shall, subject to the provisions of section 44(11)*(c)*, be deemed to have come into operation in respect of the goods in question entered for the purposes of this Act two years prior to the date on which the inspection commenced.

(b) The expression 'inspection of any books, accounts and other documents', or any other reference to an inspection in this Act shall be taken to include any act done by an officer in the exercise of any duty imposed or power conferred by this Act for the purposes of the physical examination of goods and documents upon or after or in the absence of entry, the issue of stop notes or other reports, the making of assessments and any pre- or post-importation audit, investigation, inspection or verification of any such books, accounts and other documents required to be kept under this Act."; and

(f) by the insertion of the following subsections:

"(12) *(a)* For the purposes of any binding tariff determination provided for in this subsection, unless the context otherwise indicates—

'applicant' means the person who has applied to the Commissioner for a binding tariff determination;

'binding tariff determination' means a tariff determination binding on the Commissioner when it is issued to the applicant after compliance with the provisions of this subsection and the rules;

'holder' means the person in whose name the binding determination is issued.

(b) (i) An application for a binding tariff determination shall relate to only one type of goods and shall contain the particulars and comply with the requirements specified by rule.

(ii) Any binding tariff determination is issued in the name of the holder and is operative only in respect of the holder.

(iii) A binding tariff determination shall be binding on the Commissioner only in respect of—

(aa) the classification of goods in any heading, subheading, tariff item or other item of any Schedule;

(bb) goods entered or deemed to have been entered for customs or excise purposes after the date the binding tariff determination is issued.

(iv) When entering any goods for which a binding tariff determination has been issued the holder must—

(aa) furnish information of the binding tariff determination issued for the goods concerned;

(bb) be able to prove that the goods in question conform in all respects to the goods described in the information when application for a binding tariff determination was made.

(a) geregtig word op 'n terugbetaling van reg, is sodanige terugbetaling onderworpe aan die bepalings van artikel 76B;

(b) terugwerkend 'n verhoogde aanspreeklikheid vir reg oploop, word sodanige aanspreeklikheid behoudens die bepalings van artikel 44(11)*(c)*, beperk tot goedere geklaar vir binnelandse verbruik gedurende 'n tydperk van twee jaar wat sodanige wysiging of nuwe bepaling onmiddellik voorafgaan.";

(e) deur subartikels (10) en (11) deur die volgende subartikels te vervang:

"(10) Behalwe waar—

(a) 'n bepaling kragtens subartikel (9)*(a)* of *(d)* gemaak is; of

(b) behoudens artikel 44(11)*(c)* 'n valse verklaring vir doeleindes van **[subartikel (9)]** hierdie Wet gemaak word,

is daar geen aanspreeklikheid vir die onderbetaling van reg op goedere na 'n tydperk van twee jaar van die datum van klaring van daardie goedere nie waar sodanige onderbetaling toe te skrywe is aan die aanname van 'n klaringsbrief bevattende 'n verkeerde tariefpos, tariefsubpos of tariefitem of ander item van enige Bylae.

(11) *(a)* Ondanks die bepalings van subartikel (10), word enige bepaling kragtens subartikel (9)*(a)* gemaak as gevolg van, gedurende of wat volg op 'n inspeksie van die boeke rekeninge en ander dokumente van 'n invoerder, uitvoerder, vervaardiger of gebruiker van goedere ten opsigte van die betrokke goedere wat vir doeleindes van hierdie Wet geklaar is, behoudens die bepalings van artikel 44(11)*(c)*, geag twee jaar voor die datum waarop die inpseksie 'n aanvang geneem het, in werking te getree het.

(b) Die uitdrukking 'inspeksie van enige boeke, rekeninge en ander dokumente' of enige ander verwysing na 'n inspeksie in hierdie Wet, word geag in te sluit enige handeling deur 'n beampte verrig in die uitoefening van enige plig opgelê of bevoegdheid verleen deur hierdie Wet vir doeleindes van die fisiese ondersoek van goedere en dokumente tydens, volgende op of na of in die afwesigheid van klaring, die uitreik van aanhoudingsbriewe of ander rapporte, die maak van aanslae en enige voor- of na-invoer oudit, ondersoek, inspeksie of verifikasie van enige sodanige boeke, rekeninge en ander dokumente wat kragtens hierdie Wet gehou moet word."; en

(f) deur die volgende subartikels in te voeg:

"(12) *(a)* Vir die doeleindes van enige bindende tariefbepaling in hierdie subartikel bepaal en tensy die samehang anders aandui, beteken—

'applikant' die persoon wat by die Kommissaris aansoek gedoen het vir 'n bindende tariefbepaling wat bindend op die Kommissaris is wanneer dit aan die applikant na voldoening aan die bepalings van hierdie subartikel en die reëls uitgereik is;

'houer' die persoon in wie se naam die bindende bepaling uitgereik is.

(b) (i) 'n Aansoek om 'n bindende tariefbepaling het slegs betrekking op een tipe goedere en moet die besonderhede bevat en aan die vereistes in die reëls vermeld, voldoen.

(ii) Enige bindende tariefbepaling word slegs in die naam van die houer uitgereik en is slegs van krag ten opsigte van die houer.

(iii) Enige bindende tariefbepaling is slegs bindend op die Kommissaris ten opsigte van—

(aa) die indeling van goedere in enige pos, subpos, tariefitem of ander item van enige Bylae;

(bb) goedere geklaar of wat geag word geklaar te wees vir doeane- en aksynsdoeleindes na die datum waarop die bindende tariefbepaling uitgereik is.

(iv) Wanneer enige goedere waarvoor 'n bindende tariefbepaling uitgereik is geklaar word, moet die houer—

(aa) inligting verskaf van die bindende tariefbepaling wat vir die betrokke goedere uitgereik is;

(bb) in staat wees om te bewys dat die betrokke goedere in alle opsigte ooreenstem met die goedere in die inligting beskryf toe aansoek om 'n bindende tariefbepaling gemaak is.

(c) (i) A binding tariff determination shall be annulled by the Commissioner if it is found that it was issued on the basis of incorrect or incomplete information.

(ii) Such annulment shall be effective from the date the determination was made.

(d) (i) A binding tariff determination shall be valid for a period of six years, but shall cease to be valid in the circumstances and from the dates contemplated in section 47(9)*(b)*(ii).

(ii) The provisions of subsection (9)*(d)* shall apply *mutatis mutandis* whenever the Commissioner amends any binding tariff determination or withdraws it and makes a new determination.

(iii) Notwithstanding the provisions of subparagraphs (i) and (ii), if the Commissioner so permits, the holder of a binding tariff determination may still use such determination for a period of six months from the date specified therein, or until the period of six years expires, whichever is the earlier date provided—

(aa) such holder concluded binding contracts for the purchase or sale of the goods in question on the basis of such determination before any such date;

(bb) such determination is used solely for determining duties;

(cc) it relates to any certificate under which the goods concerned are allowed to be imported under rebate or free of duty.

(iv) Any holder who wishes to make use of the possibility of invoking such determination as provided in subparagraph (iii), shall notify the Commissioner and provide the necessary supporting documents to enable a check to be made whether the conditions specified in the said subparagraph (iii) have been satisfied.

(13) The Commissioner may make rules in respect of—

(i) all matters which are required or permitted in terms of this section to be prescribed by rule;

(ii) any other matter which the Commissioner may consider reasonably necessary and useful for the purposes of administering the provisions of this section.".

(2) *(a)* Subsection (1)*(a)* to *(e)* shall come into operation on the date of promulgation of this Act.

(b) Subsection (1)*(f)* shall—

(i) in so far as it inserts subsection (12) come into operation on a date fixed by the President by proclamation in the *Gazette*; and

(ii) in so far as it inserts subsection (13), come into operation on the date of promulgation of this Act.

Amendment of section 49 of Act 91 of 1964, as amended by section 60 of Act 30 of 2000

127. Section 49 of the Customs and Excise Act, 1964, is hereby amended—

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

"Whenever **[Parliament has approved]** any international agreement which binds the Republic as contemplated in section 231 of the Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996), **[any]** is an agreement with the government of any country or countries or group of countries—";

(b) by the substitution for paragraph *(c)* of subsection (1) of the following paragraph:

"*(c)* In this section and in sections 47 and 48 'agreement' includes, unless the context otherwise indicates, any international agreement, treaty or convention.".

Amendment of section 65 of Act 91 of 1964, as amended by section 5 of Act 85 of 1968, section 21 of Act 105 of 1969, section 20 of Act 112 of 1977, section 5 of Act 93 of 1978, section 7 of Act 110 of 1979, as substituted by section 13 of Act 86 of 1982, section 8 of Act 101 of 1985, as inserted by section 8 of Act 52 of 1986, as substituted

(c) (i) 'n Bindende tariefbepaling moet deur die Kommissaris nietig verklaar word indien daar gevind word dat dit uitgereik is op grond van foutiewe of onvolledige inligting.

(ii) Sodanige nietigverklaring is van krag vanaf die datum wat die bepaling gemaak is.

(d) (i) 'n Bindende tariefbepaling is geldig vir 'n tydperk van ses jaar, maar is nie meer geldig nie onder die omstandighede en vanaf die datums in artikel 47(9)*(b)*(ii) beoog.

(ii) Die bepalings van subartikel (9)*(d)* is *mutatis mutandis* van toepassing wanneer die Kommissaris enige bindende tariefbepaling wysig of dit intrek en 'n nuwe bepaling maak.

(iii) Ondanks die bepalings van subparagrawe (i) en (ii), kan die houer van 'n bindende tariefbepaling, indien die Kommissaris dit toelaat, sodanige bepaling nog gebruik vir 'n tydperk van ses maande vanaf die datum daarin vermeld of totdat die ses jaar tydperk verstryk, welke die vroegste is, met dien verstande dat—

(aa) sodanige houer bindende kontrakte vir die koop en verkoop van die betrokke goedere op grond van sodanige bepaling voor enige sodanige datum aangegaan het;

(bb) sodanige bepaling uitsluitlik gebruik word vir die bepaling van regte;

(cc) dit betrekking het op enige sertifikaat ingevolge waarvan die betrokke goedere toegelaat word om vry van reg onder korting ingevoer te word.

(iv) Enige houer wat van die moontlikheid om op sodanige bepaling te steun gebruik wil maak soos in subparagraaf (iii) bepaal, moet die Kommissaris in kennis stel en die nodige ondersteunende dokumente ten einde te kontroleer of aan die voorwaardes vermeld in genoemde subparagraaf (iii) voldoen is, verskaf.

(13) Die Kommissaris kan reëls uitvaardig ten opsigte van—

(i) alle aangeleenthede wat ingevolge hierdie artikel moet of kan voorgeskryf word;

(ii) enige ander aangeleentheid wat die Kommissaris vir die doeleindes van die administrasie van hierdie artikel redelikerwys noodsaaklik en nuttig ag.

(2)*(a)* Subartikel (1)*(a)* tot *(e)* tree op die datum van afkondiging van hierdie Wet in werking.

(b) Subartikel (1)(f) tree in werking—

(i) namate dit subartikel (12) invoeg, op 'n datum deur die President by proklamasie in die *Staatskoerant* bepaal; en

(ii) namate dit subartikel (13) invoeg, op die datum waarop die Wet afgekondig word.

Wysiging van artikel 49 van Wet 91 van 1964, soos gewysig deur artikel 60 van Wet 30 van 2000

127. Artikel 49 van die Doeane en Aksynswet, 1964, word hierby gewysig—

(a) deur in paragraaf *(a)* van subartikel (1) die woorde wat subparagraaf (i) voorafgaan deur die volgende woorde te vervang:

"Wanneer **[die Parlement]** enige internasionale ooreenkoms wat die Republiek verbind soos beoog in artikel 231 van die Grondwet van die Republiek van Suid-Afrika, 1996 (Wet No. 108 van 1996), 'n ooreenkoms is met enige regering van enige land of lande of groep lande **[goedgekeur het]**—";

(b) deur paragraaf *(c)* van subartikel (1) deur die volgende paragraaf te vervang:

"*(c)* In hierdie artikel en in artikels 47 en 48 sluit 'ooreenkoms', tensy uit die samehang anders blyk, enige internasionale ooreenkoms, verdrag of konvensie in.".

Wysiging van artikel 65 van Wet 91 van 1964, soos gewysig deur artikel 5 van Wet 85 van 1968, artikel 21 van Wet 105 van 1969, artikel 20 van Wet 112 van 1977, artikel 5 van Wet 93 of 1978, artikel 7 van Wet 110 van 1979, soos vervang deur artikel 13 van Wet 86 van 1982, artikel 8 van Wet 101 van 1985, soos ingevoeg deur

by section 48 of Act 45 of 1995, section 5 of Act 44 of 1996 and section 59 of Act 53 of 1999

128. Section 65 of the Customs and Excise Act, 1964, is hereby amended—

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

"*(a)*(i) The Commissioner may in writing determine the transaction value of any imported goods, which is required to be ascertained and may be determined as provided in section 66 **[and such determined value shall, subject to a right of appeal to the court, be deemed to be the value for customs duty purposes of the goods]**.

(ii) Any determination made under this subsection shall operate—

(aa) only in respect of the goods mentioned therein and the person in whose name it is issued; and

(bb) subject to the provisions of sections 44(11)*(c)* and 76B and subsections (7) and (7A), from the date of the determination is issued.";

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

"*(c)*(i) Whenever any determination is made under paragraph *(a)* or any determination is amended or withdrawn and a new determination is made under subsection (5), any amount due in terms thereof shall, notwithstanding that an internal administrative appeal has been filed as contemplated in section 95A or any proceedings have been instituted in any court in connection therewith, remain payable as long as such determination or amended or new determination remains in force: Provided that the Commissioner may suspend such payment until the administrative appeal is decided or any final judgment by the High Court or a judgment by the Supreme Court of Appeal.

(ii) Such determination, amendment of a determination or new determination shall cease to be in force from the date—

(aa) of any amendment of this section or sections 66 and 67 or any instrument contemplated in section 74A with the result that the said determination, amended determination or new determination no longer conforms to the interpretation of the relevant provisions of such section or sections or such instrument;

(bb) of a final judgment by the High Court or a judgment by the Supreme Court of Appeal; or

(cc) any amendment of a determination or new determination is made effective under subsection (5) or section 95A.

(iii) Whenever a court amends or orders the Commissioner to amend any determination made under this subsection or subsection (5) or any determination is amended or a new determination is made under subsection (5) or section 95A, the Commissioner shall not be liable to pay interest on any amount which remained payable in terms of the provisions of paragraph *(c)*(i) for any period during which such determination remained in force.";

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

"(5) *(a)* the Commissioner shall—

(i) amend any determination or withdraw it and make a new determination with effect from the date it is no longer in force as provided in subsection (4)*(c)*(ii)*(aa)* or *(bb)*;

(ii) except when an internal appeal has been filed in terms of the provisions of section 95A, or if filed before it has been considered, amend any determination or withdraw it and make a new determination if it was made in error or any condition or obligation on which it was issued is no longer fulfilled or on any other good cause shown including any relevant ground for review contemplated in section 6 of the Administrative Justice Act, 2000 (Act No. 3 of 2000).

(b) Any such amendment or new determination contemplated in paragraph *(a)*(ii) may be made with effect from—

artikel 8 van Wet 52 van 1986, soos vervang deur artikel 48 van Wet 45 van 1995, artikel 5 van Wet 44 van 1996 en artikel 59 van Wet 53 van 1999

128. Artikel 65 van die Doeane- en Aksynswet, 1964, word hierby gewysig—

(a) deur paragraaf *(a)* van subartikel (4) deur die volgende paragraaf te vervang:

"*(a)* (i) Die Kommissaris kan skriftelik die transaksiewaarde van enige ingevoerde goedere bepaal wat vasgestel moet word of bepaal kan word soos in artikel 66 bepaal **[en sodanige bepaalde waarde word behoudens 'n reg van appèl na die hof, geag die waarde vir doeanebelastingdoeleindes van die goedere te wees]**.

(ii) Enige bepaling kragtens hierdie subartikel gemaak is van krag—

(aa) slegs ten opsigte van die goedere daarin vermeld en die persoon in wie se naam dit uitgereik is; en

(bb) behoudens die bepalings van artikels 44(11)*(c)* en 76B en subartikels (7) en (7A) vanaf die datum waarop die bepaling uitgereik is.";

(b) deur paragraaf *(c)* van subartikel (4) deur die volgende paragraaf te vervang:

"*(c)* (i) Wanneer enige bepaling ingevolge paragraaf *(a)* gemaak word of enige bepaling gewysig of ingetrek word en 'n nuwe bepaling kragtens subartikel (5) gemaak word, bly enige bedrag ingevolge daarvan verskuldig, betaalbaar so lank as wat so 'n bepaling of gewysigde bepaling of nuwe bepaling van krag bly in weerwil daarvan dat 'n interne administratiewe appèl, soos bedoel in artikel 95A ingedien is, of enige verrigtinge in enige hof in verband daarmee ingestel is: Met dien verstande dat die Kommissaris op goeie gronde aangetoon sodanige betaling tot die datum waarop die appèl beslis word of enige finale uitspraak deur die Hoë Hof of 'n uitspraak van die Hoogste Hof van Appèl kan opskort.

(ii) Die werking van sodanige bepaling, wysiging van 'n bepaling of nuwe bepaling eindig vanaf die datum—

(aa) van enige wysiging van hierdie artikel of artikels 66 en 67 of enige instrument beoog in artikel 74A wat tot gevolg het dat die betrokke bepaling, gewysigde bepaling of nuwe bepaling nie meer in ooreenstemming is met die uitleg van die betrokke bepaling van sodanige artikel of artikels of sodanige instrument nie;

(bb) van 'n finale uitspraak van die Hoë Hof of 'n uitspraak van die Hoogste Hof van Appèl; of

(cc) waarop enige wysiging van 'n bepaling of nuwe bepaling van toepassing gemaak word ingevolge subartikel (5) of artikel 95A.

(iii) Wanneer 'n hof enige bepaling kragtens hierdie subartikel wysig of die Kommissaris beveel om sodanige bepaling te wysig of enige bepaling gewysig word of 'n nuwe bepaling gemaak word kragtens subartikel (5) of artikel 95A, is die Kommissaris nie aanspreeklik vir die betaling van rente op enige terugbetaalbare bedrag wat betaalbaar gebly het ingevolge die bepalings van paragraaf *(c)*(i) vir enige tydperk waartydens sodanige bepaling van krag gebly het nie.";

(c) deur subartikel (5) deur die volgende subartikel te vervang:

"(5) *(a)* Die Kommissaris moet—

(i) enige bepaling wysig of dit intrek en 'n nuwe bepaling maak met ingang van die datum waarop dit nie meer van krag is nie soos in subartikel (4)*(c)*(ii)*(aa)* of *(bb)* bepaal;

(ii) behalwe waar 'n interne appèl ingedien is ingevolge die bepalings van artikel 95A, of indien dit ingedien is, voordat dit oorweeg is, enige bepaling wysig of enige bepaling intrek en 'n nuwe bepaling maak indien dit foutiewelik gemaak is of indien enige voorwaarde of verpligting op grond waarvan dit uitgereik is nie meer aan voldoen word nie of enige ander goeie gronde aangetoon, met inbegrip van enige relevante hersieningsgrond, soos in artikel 6 van die 'Promotion of Administrative Justice Act', 2000 (Wet No. 3 van 2000), beoog.

(b) Enige sodanige wysiging of nuwe bepaling beoog in paragraaf *(a)*(ii) kan van krag gemaak word vanaf—

(i) subject to the provisions of section 44(11)*(c)*, the date of first entry of the goods in question in circumstances where a false declaration is made for the purposes of this Act;

(ii) the date of first entry, if the determination was made—

(aa) by an officer who was biased or reasonably suspected of bias; or

(bb) for an ulterior purpose or motive, arbitrarily or capriciously or in bad faith;

(iii) the date of the determination made under subsection (4) in circumstances where such determination was made in *bona fide* error of law or of fact;

(iv) the date of the amendment of the previous determination or the date of the new determination:

Provided that whenever any amendment of a determination or a new determination is effective from a date resulting in the person to whom the determination was issued—

(a) being entitled to a refund of duty, such refund shall be subject to the provisions of section 76B;

(b) retrospectively incurring an increased liability for duty, such liability shall, subject to the provisions of section 44(11)*(c)*, be limited to goods entered for home consumption during a period of two years immediately preceding the date of such amendment or new determination."; and

(d) by the substitution for subsections (7) and (7A) of the following subsections:

"(7) Save where—

(a) a determination has been made under subsection (4)*(a)* or (5); or

(b) subject to section 44(11)*(c)*, any false declaration is made for the purposes of this Act,

there shall be no liability for any underpayment of customs duty on any goods, where such underpayment is due to the acceptance of a bill of entry bearing an incorrect customs value, after a period of two years from the date of entry of such goods.

(7A) Notwithstanding the provisions of subsection (7), any determination made under subsection (4)*(a)* as a result of or during the course of or following upon an inspection of the books, accounts and other documents of any importer shall, subject to the provisions of section 44(11)*(c)*, be deemed to have come into operation in respect of the goods in question entered for the purposes of this Act two years prior to the date on which the inspection commenced.

(b) The expression 'inspection of any books and documents', or any other reference to an inspection in this Act shall be taken to include any act done by an officer in the exercise of any duty imposed or power conferred by this Act for the purposes of the physical examination of goods and documents upon or after or in the absence of entry, the issue of stop notes or other reports, the making of assessments and any pre- or post-importation audit, investigation, inspection or verification of any such books, accounts and other documents required to be kept under this Act.".

Amendment of section 69 of Act 91 of 1964, as section 22 of Act 105 of 1969, section 6 of Act 93 of 1978, section 9 of Act 101 of 1985, section 7 of Act 69 of 1988, as substituted by section 12 of Act 68 of 1989, section 1 of Act 111 of 1991, as amended by section 3 of Act 105 of 1992, section 6 of Act 98 of 1993, and as amended by section 6 of Act 44 of 1996, section 61 of Act 53 of 1999 and section 49 of Act 19 of 2001

129. Section 69 of the Customs and Excise Act, 1964, is hereby amended—

(a) by the substitution for subsections (3) and (4) of the following subsections:

"(3) *(a)* Where goods are sold or otherwise disposed of under such conditions that the value thereof cannot be ascertained or has been incorrectly ascertained in terms of subsection (1) or (2), as the case may be, the Commissioner may, having regard to the relevant provisions of subsection (1) or (2), in writing determine a value.

(i) behoudens die bepalings van artikel 44(11)*(c)*, die datum van die eerste klaring van die betrokke goedere in omstandighede waar 'n vals verklaring vir die doeleindes van hierdie Wet gemaak is.

(ii) die datum van die eerste klaring indien die bepaling gemaak is—

(aa) deur 'n beampte wat bevooroordeeld was of redelikerwys verdink word van vooroordeel; of

(bb) vir 'n bedekte doel of beweegrede of willekeurig of wispelturig of ter kwade trou gemaak is;

(iii) die datum waarop die bepaling kragtens subartikel (4) gemaak is in omstandighede waar sodanige bepaling in *bona fide* regs- of feitedwaling gemaak is; of

(iv) die datum van die wysiging van die vorige bepaling of die datum van die nuwe bepaling:

Met dien verstande dat wanneer enige wysiging van 'n bepaling of 'n nuwe bepaling van krag word vanaf 'n datum wat tot gevolg het dat die persoon aan wie die bepaling uitgereik is—

(a) geregtig word op 'n terugbetaling van reg is sodanige terugbetaling onderworpe aan die bepalings van artikel 76B;

(b) terugwerkend 'n verhoogde aanspreeklikheid vir reg oploop, is sodanige aanspreeklikheid, onderworpe aan die bepalings van artikel 44(11)*(c)*, beperk tot goedere geklaar vir binnelandse verbruik gedurende 'n tydperk van twee jaar wat sodanige wysiging of nuwe bepaling onmiddellik voorafgaan;"; en

(d) deur subartikels (7) en (7A) deur die volgende subartikels te vervang:

"(7) Behalwe waar—

(a) 'n bepaling kragtens subartikel (4)*(a)* of (5) gemaak is; of

(b) onderworpe aan artikel 44(11)*(c)* 'n valse verklaring vir doeleindes van hierdie Wet gemaak word,

is daar geen aanspreeklikheid vir 'n onderbetaling van doeanereg op goedere na 'n tydperk van twee jaar van die datum van klaring van daardie goedere nie waar sodanige onderbetaling toe te skrywe is aan die aanname van 'n klaringsbrief wat 'n verkeerde doeanewaarde bevat.

(7A) Ondanks die bepalings van subartikel (7) word enige bepaling kragtens subartikel (4)*(a)* gemaak as gevolg van, gedurende of wat volg op 'n inspeksie van die boeke, rekeninge en ander dokumente van 'n invoerder, geag, ten opisgte van die betrokke goedere wat vir doeleindes van hierdie Wet geklaar is, onderworpe aan die bepalings van artikel 44(11)*(c)*, twee jaar voor die datum waarop die inspeksie 'n aanvang geneem het, in werking te getree het.

(b) Die uitdrukking 'inspeksie van enige boeke en dokumente' of enige ander verwysing na 'n inspeksie in hierdie Wet word geag in te sluit enige handeling deur 'n beampte verrig in die uitoefening van enige plig opgelê of bevoegdheid verleen deur hierdie Wet vir doeleindes van die fisiese ondersoek van goedere en dokumente tydens, volgende op of na of in die afwesigheid van klaring, die uitreik van aanhoudingsbriewe of ander rapporte, die maak van aanslae en enige voor- of na- invoer oudit, ondersoek, inspeksie of verifikasie van enige sodanige boeke, rekeninge en ander dokumente wat kragtens hierdie Wet gehou moet word.".

Wysiging van artikel 69 van Wet 91 van 1964, soos gewysig deur artikel 22 van Wet 105 van 1969, artikel 6 van Wet 93 van 1978, artikel 9 van Wet 101 van 1985, artikel 7 van Wet 69 van 1988, soos vervang deur artikel 12 van Wet 68 van 1989, artikel 1 van Wet 111 van 1991, soos gewysig deur artikel 3 van Wet 105 van 1992, artikel 6 van Wet 98 van 1993, soos gewysig deur artikel 6 van Wet 44 van 1996, artikel 61 van Wet 53 van 1999 en artikel 49 van Wet 19 van 2001

129. Artikel 69 van die Doeane- en Aksynswet, 1964, word hierby gewysig—

(a) deur subartikels (3) en (4) deur die volgende subartikels te vervang:

"(3) *(a)* Indien goedere verkoop of op 'n ander wyse van die hand gesit word in sulke omstandighede dat die waarde daarvan nie vasgestel kan word nie of verkeerdelik vasgestel is ingevolge subartikels (1)*(a)* of (2), na gelang van die geval, kan die Kommissaris met inagneming van die betrokke bepalings van subartikels (1) of (2) skriftelik 'n waarde bepaal.

(b) Any determination made under this subsection shall operate—

(i) only in respect of the goods mentioned therein and the person in whose name it is issued;

(ii) subject to the provisions of sections 44(11)*(c)* and 76B and subsections (6) and (7), from the date the determination is issued.

(c) Whenever any determination is made under paragraph *(a)* or any determination is amended or withdrawn and a new determination is made under subsection (4), any amount due in terms thereof shall, notwithstanding that an administrative appeal has been filed as contemplated in section 95A or any proceedings have been instituted in any court in connection therewith, remain payable as long as such determination or amended or new determination remains in force: Provided that the Commissioner may suspend such payment until the date the administrative appeal is decided or any final judgment by the High Court or a judgment by the Supreme Court of Appeal.

(d) Such determination, amendment of a determination or new determination shall cease to be in force from the date—

(i) of any amendment of this section or the rules with the result that the said determination, amended determination or new determination no longer conforms to the interpretation of the relevant provisions of this section or such rules.

(ii) of a final judgment by the High Court or a judgment by the Supreme Court of Appeal; or

(iii) any amendment of a determination or new determination is made effective under subsection (4) or section 95A.

(e) Whenever a court amends or orders the Commissioner to amend any determination made under this subsection or subsection (4) or any determination is amended or a new determination is made under subsection (4) or section 95A, the Commissioner shall not be liable to pay interest on any amount refundable which remained payable in terms of the provisions of paragraph *(c)* for any period during which such determination remained in force.

(4) *(a)* the Commissioner shall—

(i) amend any determination or withdraw it and make a new determination with effect from the date it is no longer in force as provided in subsection (3)*(d)*(i) or (ii);

(ii) except when an internal appeal has been filed in terms of the provisions of section 95A, or if filed before it has been considered, amend any determination or withdraw it and make a new determination if it was made in error or any condition or obligation on which it was issued is no longer fulfilled or on any other good cause shown including any relevant ground for review contemplated in section 6 of the Administrative Justice Act, 2000 (Act No. 3 of 2000).

(b) Any such amendment or new determination contemplated in paragraph *(a)*(ii) may be made with effect from—

(i) subject to the provisions of section 44(11)*(c)*, the date of first entry of the goods in question in circumstances where a false declaration is made for the purposes of this Act;

(ii) the date of first entry, if the determination was made—

(aa) by an officer who was biased or reasonably suspected of bias; or

(bb) for an ulterior purpose or motive, arbitrarily or capriciously or in bad faith;

(iii) the date of the determination made under subsection (3)*(a)* in circumstances where such determination was made in *bona fide* error of law or of fact;

(iv) the date of the amendment of the previous determination or the date of the new determination:

Provided that whenever any amendment of a determination or a new determination is effective from a date resulting in the person to whom the determination was issued—

(b) Enige bepaling ingevolge hierdie subartikel gemaak is van krag—

(i) slegs ten opsigte van die goedere daarin vermeld en die persoon in wie se naam dit uitgereik is;

(ii) behoudens die bepalings van artikel 44(11)*(c)* en 76B en subartikels (6) en (7), vanaf die datum waarop die bepaling uitgereik word.

(c) Wanneer enige bepaling ingevolge paragraaf *(a)* gemaak word of enige bepaling gewysig of ingetrek word en 'n nuwe bepaling kragtens subartikel (4) gemaak word, bly enige bedrag ingevolge daarvan verskuldig, betaalbaar so lank as wat so 'n bepaling of gewysigde bepaling of nuwe bepaling van krag bly in weerwil daarvan dat 'n interne administratiewe appèl, soos bedoel in artikel 95A ingedien is, of enige verrigtinge in enige hof in verband daarmee ingestel is: Met dien verstande dat die Kommissaris op goeie gronde aangetoon sodanige betaling tot die datum waarop die appèl beslis word of enige finale uitspraak deur die Hoë Hof of 'n uitspraak van die Hoogste Hof van Appèl kan opskort.

(d) Die werking van sodanige bepaling, wysiging van 'n bepaling of nuwe bepaling eindig vanaf die datum—

(i) van die wysiging van hierdie artikel of die reëls wat tot gevolg het dat die genoemde bepaling, gewysigde bepaling of nuwe bepaling nie meer in ooreenstemming is met die uitleg van die betrokke bepalings van hierdie artikel of sodanige reëls nie;

(ii) van 'n finale uitspraak van die Hoë Hof of 'n uitspraak van die Hoogste Hof van Appèl;

(iii) waarop enige wysiging van 'n bepaling of nuwe bepaling ingevolge subartikel (4) van artikel 95A van toepassing gemaak word.

(e) Wanneer 'n hof enige bepaling kragtens hierdie subartikel of subartikel (4) gemaak, wysig of die Kommissaris beveel om sodanige bepaling te wysig of enige bepaling gewysig word of 'n nuwe bepaling gemaak word kragtens subartikel (4) of artikel 95A, is die Kommissaris nie aanspreeklik vir die betaling van rente op enige terugbetaalbare bedrag wat betaalbaar gebly het ingevolge die bepalings van paragraaf *(c)* vir enige tydperk wat sodanige bepaling van krag gebly het nie.

(4) *(a)* Die Kommissaris moet—

(i) enige bepaling wysig of dit intrek en 'n nuwe bepaling maak met ingang van die datum waarop dit nie meer van krag is nie, soos in subartikel (3)*(d)*(i) of (ii) bepaal;

(ii) behalwe waar 'n interne appèl ingedien is ingevolge die bepalings van artikel 95A, of indien dit ingedien is, voordat dit oorweeg is, enige bepaling wysig of enige bepaling intrek en 'n nuwe bepaling maak indien dit foutiewelik gemaak is of indien enige voorwaarde of verpligting waarop dit uitgereik is nie meer aan voldoen word nie of enige ander goeie gronde aangetoon, met insluiting van enige relevante hersieningsgrond, soos in artikel 6 van die 'Promotion of Administrative Justice Act', 2000 (Wet No. 3 van 2000), beoog.

(b) Enige sodanige wysiging of nuwe bepaling beoog in paragraaf *(a)*(ii) kan van krag gemaak word vanaf—

(i) behoudens die bepalings van artikel 44(11)*(c)*, die datum van die eerste klaring van die betrokke goedere in omstandighede waar 'n vals verklaring vir die doeleindes van hierdie Wet gemaak is;

(ii) die datum van die eerste klaring indien die bepaling gemaak is—

(aa) deur 'n beampte wat bevooroordeeld was of redelikerwys verdink word van vooroordeel; of

(bb) vir 'n bedekte doel of beweegrede of willekeurig of wispelturig of ter kwade trou gemaak is;

(iii) die datum waarop die bepaling ingevolge subartikel (3)*(a)* gemaak is in omstandighede waar sodanige bepaling in *bona fide* regs- of feitedwaling gemaak is; of

(iv) die datum van die wysiging van die vorige bepaling of die datum van die nuwe bepaling:

Met dien verstande dat wanneer enige wysiging van 'n bepaling of 'n nuwe bepaling van krag word vanaf 'n datum wat tot gevolg het dat die persoon aan wie die bepaling uitgereik is—

(a) being entitled to a refund of duty, such refund shall be subject to the provisions of section 76B;

(b) retrospectively incurring an increased liability for duty, such liability shall, subject to the provisions of section 44(11)*(c)*, be limited to goods entered for home consumption during a period of two years immediately preceding the date of such amendment or new determination."; and

(b) by the substitution for subsections (6) and (7) of the following subsections:

"(6) Save where—

(a) a determination has been made under subsection (3)*(a)* or (4); or

(b) subject to section 44(11)*(c)*, any false declaration is made for the purposes of this Act,

there shall be no liability for any underpayment in duty on any goods, where such underpayment is due to the acceptance of a bill of entry bearing an incorrect value for excise duty purposes, after a period of two years from the date of entry of such goods.

(7) *(a)* Notwithstanding the provisions of subsection (6), any determination made under subsection (3)*(a)* as a result of or during the course of or following upon an inspection of the books, accounts and other documents of any manufacturer, wholesaler or purchaser or any seller or buyer contemplated in subsection (1) or (2) shall, subject to the provisions of section 44(11)*(c)*, be deemed to have come into operation in respect of the goods in question entered for the purposes of this Act two years prior to the date on which the inspection commenced.

(b) The expression 'inspection of any books, accounts and other documents', or any other reference to an inspection in this Act shall be taken to include any act done by an officer in the exercise of any duty imposed or power conferred by this Act for the purposes of the physical examination of goods and documents upon or after or in the absence of entry, the issue of stop notes or other reports, the making of assessments and any pre- or post-production audit, investigation, inspection or verification of any such books, accounts and other documents required to be kept under this Act.".

Amendment of section 75 of Act 91 of 1964, as amended by section 13 of Act 95 of 1965, section 10 of Act 57 of 1966, section 8 of Act 85 of 1968, section 25 of Act 105 of 1969, section 8 of Act 103 of 1972, section 2 of Act 68 of 1973, section 9 of Act 71 of 1975, section 27 of Act 112 of 1977, section 28 of Act 93 of 1978, section 10 of Act 110 of 1979, section 19 of Act 86 of 1982, section 6 of Act 89 of 1984, section 11 of Act 101 of 1985, section 9 of Act 52 of 1986, section 23 of Act 84 of 1987, section 8 of Act 69 of 1988, section 13 of Act 68 of 1989, section 29 of Act 59 of 1990, section 13 of Act 61 of 1992, section 7 of Act 98 of 1993, section 10 of Act 19 of 1994, section 53 of Act 45 of 1995, section 61 of Act 30 of 2000 and section 50 of Act 19 of 2001

130. (1) Section 75 of the Customs and Excise Act, 1964, is hereby amended—

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

"*(b)* any imported goods described in Schedule No. 4 shall be admitted under rebate of any customs duties or fuel levy applicable in respect of such goods at the time of entry for home consumption thereof, or if duly entered for export and exported in accordance with such entry, to the extent stated in, and subject to compliance with the provisions of, the item of Schedule No. 4 in which such goods are specified;";

(b) by the substitution for paragraph *(d)* of subsection (1) of the following paragraph:

"*(d)* in respect of any excisable goods or fuel levy goods described in Schedule No. 6, a rebate of the excise duty specified in Part 2 of Schedule No. 1 or of the fuel levy specified in Part 5 of Schedule No. 1 in respect of such goods at the time of entry for home consumption thereof, or if duly entered for export and exported in accordance with such entry, or a refund of the excise duty or fuel levy actually paid at the time of entry for

(a) geregtig word op 'n terugbetaling van reg, is sodanige terugbetaling onderworpe aan die bepalings van artikel 76B;

(b) terugwerkend 'n verhoogde aanspreeklikheid vir reg oploop, is sodanige aanspreeklikheid, onderworpe aan die bepalings van artikel 44(11)*(c)*, beperk tot goedere geklaar vir binnelandse verbruik gedurende 'n tydperk van twee jaar wat sodanige wysiging of nuwe bepaling onmiddellik voorafgaan; en

(b) deur subartikels (6) en (7) deur die volgende subartikels te vervang:

"(6) Behalwe waar—

(a) 'n bepaling kragtens subartikel (3)*(a)* of (4) gemaak is; of

(b) behoudens artikel 44(11)*(c)* 'n valse verklaring vir doeleindes van hierdie Wet gemaak word,

is daar geen aanspreeklikheid vir enige onderbetaling van reg op goedere na 'n tydperk van twee jaar vanaf die datum van klaring van daardie goedere nie waar sodanige onderbetaling toe te skrywe is aan die aanname van 'n klaringsbrief wat 'n verkeerde waarde, vir aksynsreg-doeleindes bevat nie.

(7) *(a)* Ondanks die bepalings van subartikel (6) word enige bepaling kragtens subartikel (3)*(a)* gemaak as gevolg van, gedurende of wat volg op 'n inspeksie van die boeke, rekeninge en ander dokumente van enige vervaardiger, groothandelaar of enige koper of verkoper in subartikel (1) of (2) beoog, geag ten opisgte van die betrokke goedere wat vir doeleindes van hierdie Wet geklaar is, onderworpe aan die bepalings van artikel 44(11)*(c)*, twee jaar voor die datum waarop die inpseksie 'n aanvang geneem het, in werking te getree het.

(b) Die uitdrukking 'inspeksie van boeke, rekeninge en ander dokumente' of enige ander verwysing na 'n inspeksie in hierdie Wet word geag in te sluit enige handeling deur 'n beampte verrig in die uitoefening van enige plig opgelê of bevoegdheid verleen deur hierdie Wet vir doeleindes van die fisiese ondersoek van goedere en dokumente tydens, volgende op of in die afwesigheid van klaring, die uitreik van aanhoudingsbriewe of ander rapporte, die maak van aanslae en enige voor- of na- invoer oudit, ondersoek, inspeksie of verifikasie van enige sodanige boeke, rekeninge en ander dokumente wat kragtens hierdie Wet gehou moet word.".

Wysiging van artikel 75 van Wet 91 van 1964, soos gewysig deur artikel 13 van Wet 95 van 1965, artikel 10 van Wet 57 van 1966, artikel 8 van Wet 85 van 1968, artikel 25 van Wet 105 van 1969, artikel 8 van Wet 103 van 1972, artikel 2 van Wet 68 van 1973, artikel 9 van Wet 71 van 1975, artikel 27 van Wet 112 van 1977, artikel 28 van Wet 93 van 1978, artikel 10 van Wet 110 van 1979, artikel 19 van Wet 86 van 1982, artikel 6 van Wet 89 van 1984, artikel 11 van Wet 101 van 1985, artikel 9 van Wet 52 van 1986, artikel 23 van Wet 84 van 1987, artikel 8 van Wet 69 van 1988, artikel 13 van Wet 68 van 1989, artikel 29 van Wet 59 van 1990, artikel 13 van Wet 61 van 1992, artikel 7 van Wet 98 van 1993, artikel 10 van Wet 19 van 1994, artikel 53 van Wet 45 van 1995, artikel 61 van Wet 30 van 2000 en artikel 50 van Wet 19 van 2001

130. (1) Artikel 75 van die Doeane- en Aksynswet, 1964, word hierby gewysig—

(a) deur paragraaf *(b)* van subartikel (1) deur die volgende paragraaf te vervang:

"*(b)* enige ingevoerde goedere in Bylae No. 4 vermeld met korting op enige doeaneregte of brandstofheffing wat ten opsigte van sodanige goedere ten tyde van klaring vir binnelandse verbruik daarvan van toepassing is, toegelaat, of indien behoorlik geklaar vir uitvoer en uitgevoer ooreenkomstig sodanige klaring in die mate vermeld in, en onderworpe aan nakoming van die bepalings van, die item van Bylae No. 4 waarin sodanige goedere vermeld word;";

(b) deur paragraaf *(d)* van subartikel (1) deur die volgende paragraaf te vervang:

"*(d)* ten opsigte van enige synsbare goedere of brandstofheffinggoedere in Bylae No. 6 vermeld, 'n korting op die aksynsreg in Deel 2 van Bylae No. 1 of op die brandstofheffing in Deel 5 van Bylae No. 1 vermeld ten opsigte van sodanige goedere, ten tyde van klaring vir binnelandse verbruik daarvan **[vermeld]** of indien behoorlik geklaar vir uitvoer en uitgevoer ooreenkomstig sodanige klaring of 'n terugbetaling van die aksynsreg of brandstofheffing wat werklik ten tyde van klaring vir binnelandse verbruik betaal is, in die mate en in die omstandighede

home consumption shall be granted to the extent and in the circumstances stated in the item of Schedule No. 6 in which such goods are specified, subject to compliance with the provisions of the said item and any refund under this paragraph may be paid to the person who paid the duty or any person indicated in the notes to the said Schedule No. 6;";

(c) by the substitution for subparagraph (i) of paragraph *(b)* of subsection (1C) of the following subparagraph:

"(i) 'user' shall mean, according to the context and subject to any note in the said Schedule No. 5 or 6, the person registered for a diesel refund as contemplated in subsection (1A) **[and as a user as provided in subsection (4A)]**;";

(d) by the substitution for paragraphs *(a)* and *(b)* of subsection (4A) of the following paragraphs:

"*(a)* Any person who registers for a diesel refund as contemplated in subsection (1) shall **[in addition register as a user under the provisions of this Act]** be deemed to have registered in addition for the purposes of section 59A.

(b) (i) Any return for refund of such levies shall be in such form and shall declare such particulars and shall be for such quantities and for such periods **[and shall be submitted within such period]** as may be determined by the Commissioner.

(ii) Any return for refund of such levies shall be submitted within two years from the date of purchase of such fuel.";

(e) by the substitution for paragraph *(h)* of subsection (4A) of the following paragraph:

"*(h)* (i) Any person to whom a refund of levies has been granted in accordance with the provisions of this section and of item 540.02 of Schedule No. 5 or item 640.03 of Schedule No. 6 who falsely applied for such refund or who uses or disposes of such fuel contrary to such provisions, shall be guilty of an offence and liable on conviction to a fine not exceeding R100 000 or double the amount of any levies refunded, whichever is the greater, or to imprisonment for a period not exceeding 10 years, or to both such fine and imprisonment and the fuel in respect of which the offence has been committed shall be liable to forfeiture under this Act.

(ii) For the purposes of paragraph (i), where any person falsely applies for such refund without having purchased such fuel, any forfeiture amount shall be calculated on the basis of the usual retail price thereof on the date the false application was submitted or on the date of assessment of such amount, whichever is the greater.";

(f) by the substitution for subsection (8) of the following subsection:

"(8) To the extent that any goods, classifiable under any tariff heading or subheading or any tariff item or subitem of Schedule No. 1 that is expressly quoted in any item of Schedule No. 3, 4, 5 or 6, are specified in any item of Schedule No. 3, 4, 5 or 6, such item shall be deemed to include only such goods classifiable under such tariff heading or subheading or tariff item or subitem.";

(g) by the substitution for subparagraph (i) of paragraph *(b)* of subsection (14) of the following paragraph:

"(i) in respect of any refund referred to in subsection (1A) within **[a]** the period **[determined by the Commissioner as]** contemplated in subsection (4A)*(b)*(ii);";

(h) by the substitution in subsection (18) for the words preceding paragraph *(a)* and paragraphs *(a)*, *(b)* and *(b*A*)* of the following words and paragraphs:

"Subject to the provisions of the proviso to section 20(5) and items 412.07, 412.08, 412.09, 531.00, 532.00, 608.01, 608.02, 608.03, 608.04, 615.01, 615.02 and 615.03 of Schedules Nos. 4, 5 and 6 no rebate or refund of duty in respect of any loss or deficiency of any nature of any goods shall be allowed, but the Commissioner may allow a deduction from the dutiable quantity of the undermentioned goods of a quantity **[equal to]** not exceeding the percentage stated below in each case, namely—

vermeld in die item van Bylae No. 6 waarin sodanige goedere vermeld word, onderworpe aan nakoming van die bepalings van bedoelde item, toegestaan en enige terugbetaling ingevolge hierdie paragraaf kan aan die persoon wat die regte betaal het of enige persoon in die opmerkings by bedoelde Bylae No. 6 aangedui, betaal word;";

(c) deur subparagraaf (i) van paragraaf *(b)* van subartikel (1C) deur die volgende subparagraaf te vervang:

"(i) beteken 'gebruiker' ooreenkomstig die samehang en behoudens enige opmerking in die bedoelde Bylae No. 5 of 6, die persoon geregistreer vir 'n diesel-terugbetaling soos in subartikel (1A) bedoel **[en as 'n gebruiker soos in subartikel (4A) bepaal]**;";

(d) deur paragrawe *(a)* en *(b)* van subartikel (4A) deur die volgende paragrawe te vervang:

"*(a)* Iemand wat vir 'n diesel-terugbetaling registreer soos in subartikel (1A) bedoel **[moet bykomend as 'n gebruiker kragtens die bepalings van hierdie Wet registreer]** word geag om bykomend vir die doeleindes van artikel 59A te registreer het.

(b) (i) Enige opgawe vir terugbetaling van sodanige heffings moet in sodanige vorm wees en moet sodanige besonderhede verklaar en moet vir sodanige hoeveelhede en vir sodanige tydperke wees **[en binne sodanige tydperk voorgelê word]** soos die Kommissaris bepaal.

(ii) Enige opgawe vir terugbetaling van sodanige heffings moet binne twee jaar vanaf die datum van die aankoop van sodanige brandstof voorgelê word.";

(e) deur paragraaf *(h)* van subartikel (4A) deur die volgende paragraaf te vervang:

"*(h)* (i) Iemand aan wie 'n terugbetaling van heffings toegestaan is ooreenkomstig die bepalings van hierdie artikel en van item 540.02 van Bylae No. 5 of item 640.03 van Bylae No. 6, wat valslik om die terugbetaling aansoek gedoen het of wat die brandstof teenstrydig met sodanige bepalings gebruik of van die hand sit, is aan 'n misdryf skuldig en by skuldigbevinding strafbaar met 'n boete van hoogstens R100 000 of twee maal die waarde van enige heffings terugbetaal, na gelang van watter die hoogste is, of met gevangenisstraf van hoogstens 10 jaar, of met sowel sodanige boete as sodanige gevangenisstraf en die brandstof ten opsigte waarvan die misdryf gepleeg is, is aan verbeuring kragtens hierdie Wet onderhewig.

(ii) By die toepassing van paragraaf (i), waar enige persoon valslik om sodanige terugbetaling aansoek doen sonder dat sodanige brandstof gekoop is, word enige verbeuringsbedrag bereken op die basis van die gewone kleinhandelsprys daarvan op die datum waarop die vals aansoek voorgelê is of op die datum van aanslag van sodanige bedrag, watter ook al die grootste is.";

(f) deur subartikel (8) deur die volgende subartikel te vervang:

"(8) In die mate dat enige goedere, indeelbaar onder enige tariefpos of tariefsubpos of enige tariefitem of subitem van Bylae No. 1 wat uitdruklik in enige item van Bylae No. 3, 4, 5 of 6 vermeld word, in enige item van Bylae No. 3, 4, 5 of 6 vermeld word, word sodanige item geag alleenlik goedere in te sluit wat onder sodanige tariefpos of tariefsubpos of tariefitem of subitem indeelbaar is.";

(g) deur subparagraaf (i) van paragraaf *(b)* van subartikel (14) deur die volgende paragraaf te vervang:

"(i) ten opsigte van enige terugbetaling in subartikel (1A) bedoel binne **['n]** die tydperk **[deur die Kommissaris bepaal soos]** in subartikel (4A)*(b)*(ii) beoog;";

(h) deur in subartikel (18) die woorde wat paragraaf *(a)* voorafgaan en paragrawe *(a)*, *(b)* en *(b*A) deur die volgende woorde en paragrawe te vervang:

"Behoudens die bepalings van die voorbehoudsbepaling by artikel 20(5) en items 412.07, 412.08, 412.09, 531.00, 532.00, 608.01, 608.02, 608.03, 608.04, 615.01, 615.02 en 615.03 van Bylaes Nos. 4, 5 en 6 word geen korting op of terugbetaling van reg ten opsigte van enige verlies of tekort van enige aard van enige goedere toegestaan nie, maar die Kommissaris kan die aftrekking toelaat van die belasbare hoeveelheid van die hieronder genoemde goedere van 'n hoeveelheid **[gelyk aan]** wat hoogstens die persentasie hieronder in elke geval vermeld, is, naamlik—

(a) in the case of wine spirits (ethyl alcohol) manufactured in the Republic and entered for **[storage]** use and used in a customs and excise **[storage]** manufacturing warehouse, excluding spirits specified in paragraph *(b*A*)*, **[1,5 per cent]** in the manufacture of spirituous beverages, the actual manufacturing loss of **[the]** any quantity so entered and used or 1,5 per cent thereof, whichever is the least;

(b) in the case of spirits (ethyl alcohol), other than wine spirits, manufactured in the Republic **[1,5 per cent, of the quantity so manufactured]** and entered for use and used in a customs and excise manufacturing warehouse in **[making]** the manufacture of spirituous beverages, the actual manufacturing loss of any quantity so entered and used or 1,5 per cent thereof, whichever is the least;

*(b*A*)* in the case of unpacked excisable spirits intended for export and which are removed in bond from a customs and excise manufacturing warehouse for temporary storage in a customs and excise warehouse **[approved]** licensed for that purpose as contemplated in section 19A(1)*(a)*(i)*(cc)*, such percentage, but not exceeding 1,25 per cent, of the quantity so removed as may represent a loss incurred while the spirits in question are so removed and stored for such period and subject to such conditions as the Commissioner may determine;"; and

(i) by the substitution for paragraphs *(d)*, *(d*A*)*, *(e)* and *(f)* of subsection (18) of the following paragraphs:

"*(d)* (i) in the case of imported crude petroleum naphtha for use in the refining of petroleum products or imported petrol, 0,25 per cent of the quantity landed and entered for storage in a customs and excise warehouse;

(ii) in the case of imported petroleum naphtha entered for use as fuel in the manufacture of ammonia, 0,25 per cent of the quantity landed and entered for storage in a customs and excise warehouse;

(iii) in the case of imported distillate fuel, 0,15 per cent of the quantity landed and entered for storage in a customs and excise warehouse;

(e) (i) in the case of petrol manufactured in the Republic, 0,25 per cent of any quantity entered for removal and removed from a customs and excise manufacturing warehouse;

(ii) in the case of distillate fuel manufactured in the Republic, 0,15 per cent of any quantity entered for removal and removed from a customs and excise manufacturing warehouse.".

(2) Subsection (1)*(h)* and (i) shall come into operation on a date fixed by the President by proclamation in the *Gazette*.

Amendment of section 89 of Act 91 of 1964, as amended by section 13 of Act 85 of 1968

131. The following section is hereby substituted for section 89 of the Customs and Excise Act, 1964:

"(1) Whenever any proceedings are instituted to claim any ship, vehicle, container or other transport equipment, plant, material or goods (in this section, section 43 and section 90 referred to as 'goods'), which have been seized under this Act, such claim must be instituted by the person from whom they were seized or the owner or the owner's authorised agent (in this section referred to as 'the litigant').

(2) Any litigant must give notice to the Commissioner in writing before serving any process for instituting any proceedings as contemplated in section 96(1)*(a)*—

(a) within 90 days after the date or seizure; or

(b) in the case of an administrative appeal, where such appeal is unsuccessful, within 90 days from the date contemplated in subsection 95A(7).

(3) Any proceedings must be instituted within 90 days of such notice.

(a) in die geval van wynspiritus (etielalkohol) in die Republiek vervaardig, en wat vir **[opslag]** gebruik in 'n doeane- en **[aksynsopslagpakhuis]** aksynsvervaardigingspakhuis geklaar is en gebruik is, uitgesonderd spiritus in paragraaf *(b*A*)* vermeld, **[1,5 persent]** in die vervaardiging van spiritusdranke, die werklike vervaardigingsverlies van **[die]** enige hoeveelheid aldus geklaar en gebruik of 1,5 persent daarvan, na gelang van wat die minste is;

(b) in die geval van ander spiritus (etielalkohol) as wynspiritus, in die Republiek vervaardig, **[1,5 persent van die hoeveelheid aldus vervaardig]** en geklaar vir gebruik en gebruik in 'n doeane- en aksynsvervaardigingspakhuis, vir **[gebruik by die maak]** die vervaardiging van spiritusdranke, die werklike vervaardigingsverlies vir enige hoeveelheid aldus geklaar en gebruik of 1,5 persent daarvan, na gelang van wat die minste is;

*(b*A*)* in die geval van onverpakte synsbare spiritus wat vir uitvoer bestem is en wat onder waarborg uit 'n doeane- en aksynsvervaardigingspakhuis verwyder word vir tydelike opslag in 'n doeane- en aksynspakhuis wat vir daardie doel **[goedgekeur]** gelisensieer is soos in artikel 19A(1)*(a)*(i)*(cc)* beoog, die persentasie, maar hoogstens 1,25 persent, van die hoeveelheid aldus verwyder wat 'n verlies verteenwoordig wat opgeloop is terwyl die betrokke spiritus vir die tydperk en onderworpe aan sodanige voorwaardes soos die Kommissaris bepaal aldus verwyder en opgeslaan is;"; en

(i) deur paragrawe *(d)*, *(d*A*)*, *(e)* en *(f)* van subartikel (18) deur die volgende paragrawe te vervang:

"*(d)* (i) in die geval van ingevoerde ru-petroleum nafta vir gebruik in die raffinering van petroleumprodukte of ingevoerde petrol, 0,25 persent van die hoeveelheid geland en vir opslag in 'n doeane- en aksynspakhuis geklaar;

(ii) in die geval van ingevoerde petroleum nafta vir gebruik as brandstof in die vervaardiging van ammonia geklaar, 0,25 persent van die hoeveelheid geland en vir opslag in 'n doeane- en aksynspakhuis geklaar;

(iii) in die geval van ingevoerde distillaatbrandstof, 0,15 persent van die hoeveelheid geland en vir opslag in 'n doeane- en aksynspakhuis geklaar;

(e) (i) in die geval van petrol in die Republiek vervaardig, 0,25 persent van enige hoeveelheid geklaar vir verwydering en van 'n doeane- en aksynsvervaardigingspakhuis verwyder;

(ii) in die geval van distillaatbrandstof in die Republiek vervaardig, 0,15 persent van enige hoeveelheid geklaar vir verwydering en van 'n doeane- en aksynsvervaardigingspakhuis verwyder.".

(2) Subartikel (1)*(h)* en *(i)* tree in werking op 'n datum deur die President by proklamasie in die *Staatskoerant* bepaal.

Wysiging van artikel 89 van Wet 91 van 1964, soos gewysig deur artikel 13 van Wet 85 van 1968

131. Artikel 89 van die Doeane- en Aksynswet, 1964, word hierby deur die volgende artikel vervang:

"(1) Wanneer enige geding ingestel word om enige skip, voertuig, houer of ander vervoertoerusting, installasie, materiaal of goedere (in hierdie artikel, artikel 43 en artikel 90 as 'goedere' vermeld) wat kragtens hierdie Wet op beslag gelê is, op te eis moet die eis deur die persoon van wie die goedere in beslag geneem is of die eienaar of die eienaar se gevolmagtigde agent (in hierdie artikel as die 'litigant' vermeld) ingestel word.

(2) Enige litigant moet voordat enige proses gedien word om enige geding in te stel, soos in artikel 96(1)*(a)* beoog word, die Kommissaris skriftelik kennis gee—

(a) binne 90 dae na die datum van beslaglegging; of

(b) in die geval van 'n administratiewe appèl, waar sodanige appèl onsuksesvol was, binne 90 dae vanaf die datum wat in subartikel 95A(7) beoog word.

(3) Enige geding moet binne 90 dae vanaf sodanige kennisgewing ingestel word.

(4) Whenever goods are seized and in consequence of the seizure—

(a) delivery thereof under section 93 is refused or the terms of delivery thereunder are not accepted;

(b) no internal administrative appeal under section 95A is filed or is filed and is not successful;

(c) no proceedings are instituted as contemplated in this section or have been instituted and have been dismissed in a final judgment of the High Court or a judgment by the Supreme Court of Appeal,

the goods concerned shall, subject to the provisions of section 90, be deemed to be condemned and forfeited.

(5) The provisions of section 96(1)*(c)* shall apply *mutatis mutandis* to any period contemplated in subsections (2) and (3).".

Amendment of section 90 of Act 91 of 1964

132. Section 90 of the Customs and Excise Act, 1964, is hereby amended—

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

"*(b)* Where any seized goods are of a perishable or dangerous nature, the Commissioner may, whenever it is not reasonably possible to obtain storage or according to the circumstances not possible to obtain storage at a reasonable cost for the preservation or safe keeping of such goods, cause such goods before being condemned and forfeited as contemplated in section 89(4) to be sold by any appropriate procedure or destroyed, whichever is, and at the time is, reasonably practicable in the circumstances."; and

(b) by the insertion of the following paragraphs:

"*(c)* Notwithstanding the provisions of section 89, the provisions of section 43(5), (6), (7) and (8) shall *mutatis mutandis* apply in respect of goods which are imported, exported, manufactured or used, or otherwise dealt with in contravention of this Act and any other law: Provided that such goods shall be deemed to be condemned and forfeited in accordance with the relevant provisions of section 43(5) or (6) and the provisions of section 89(4).

(d) Any person claiming the goods which were imported, exported or manufactured in contravention of any other law shall, for the purposes of sections 43, 89 and 96, join the authority administering such law in any proceedings.

(e) The provisions of section 43(7) shall *mutatis mutandis* apply in respect of goods which are condemned and forfeited as contemplated in section 89(4).

(f) The provisions of section 89(4) shall not affect the operation of section 93 in respect of the goods concerned which are condemned and forfeited as contemplated in that section.".

Amendment of section 91 of Act 91 of 1964

133. Section 91 of the Customs and Excise Act, 1964, is hereby amended by the deletion of subsection (2).

Insertion of section 93A in Act 91 of 1964

134. (1) The following section is hereby inserted in the Customs and Excise Act, 1964, after section 93:

"**Commissioner may settle or waive claims**

93A. (1) The Minister may by regulation prescribe the circumstances under which the Commissioner may, for purposes of the settlement of a dispute between the Commissioner and any person concerning any amount which may include duty, forfeiture, penalty, interest or charges payable under the provisions of this Act, waive any claim against such a person in whole or in part, where such a settlement would be to the best advantage of the state.

(4) Wanneer goedere op beslag gelê word en ten gevolge van die beslaglegging—

(a) aflewering daarvan kragtens artikel 93 geweier is of die terme van aflewering daarkragtens nie aanvaar is nie;

(b) geen interne administratiewe appèl kragtens artikel 95A ingedien is nie of is ingedien en is onsuksesvol;

(c) geen geding is ingestel soos in hierdie artikel beoog nie of is ingestel en is afgewys in 'n finale uitspraak van die Hoë Hof of 'n uitspraak van die Hoogste Hof van Appèl,

word die betrokke goedere, behoudens die bepalings van artikel 90, geag prysverklaar en verbeur te wees.

(5) Die bepalings van artikel 96(1)*(c)* is *mutatis mutandis* van toepassing ten opsigte van enige tydperk wat in subartikels (2) en (3) beoog word.".

Wysiging van artikel 90 van Wet 91 van 1964

132. Artikel 90 van die Doeane- en Aksynswet, 1964, word hierby gewysig—

(a) deur paragraaf *(b)* deur die volgende paragraaf te vervang:

"*(b)* Waar enige goedere waarop beslag gelê is van 'n bederfbare of gevaarlike aard is, kan die Kommissaris, wanneer dit nie redelik moontlik is om bergplek te kry nie of na gelang van die omstandighede nie moontlik is om bergplek teen 'n redelike koste vir die preservering of veilige bewaring van sodanige goedere te kry nie, sodanige goedere, voor prysverklaring en verbeuring soos in artikel 89(4) beoog, laat verkoop deur middel van enige toepaslike prosedure of laat vernietig, watter ook al en op daardie tydstip redelikerwys geskik in die omstandighede is."; en

(b) deur die volgende paragrawe in te voeg:

"*(c)* Ondanks die bepalings van artikel 89, is die bepalings van artikel 43(5), (6), (7) en (8) *mutatis mutandis* van toepassing ten opsigte van goedere wat in stryd met die bepalings van hierdie Wet en enige ander wet ingevoer, uitgevoer, vervaardig of gebruik is of andersins mee gehandel is: Met dien verstande dat die goedere ooreenkomstig die bepalings van artikel 43(5) of (6) en die bepalings van artikel 89(4) geag word prysverklaar of verbeur te wees.

(d) Iemand wat die goedere wat strydig met enige ander wet ingevoer, uitgevoer of vervaardig is, opeis, moet vir die doeleindes van artikels 43, 89 en 96 die owerheid wat sodanige wet administreer in enige geding voeg.

(e) Die bepalings van artikel 43(7) is *mutatis mutandis* van toepassing ten opsigte van goedere wat prysverklaar en verbeur is soos in artikel 89(4) beoog.

(f) Die bepalings van artikel 89(4) raak nie die werking van artikel 93 ten opsigte van die betrokke goedere wat prysverklaar en verbeur is soos in daardie artikel beoog nie.".

Wysiging van artikel 91 van Wet 91 van 1964

133. Artikel 91 van die Doeane- en Aksynswet, 1964, word hierby gewysig deur subartikel (2) te skrap.

Invoeging van artikel 93A in Wet 91 van 1964

134. (1) Die volgende artikel word hierby na artikel 93 in die Doeane- en Aksynswet, 1964, ingevoeg:

"**Kommissaris kan eise besleg of kwytskeld**

93A. (1) Die Minister kan by regulasie die omstandighede voorskryf waarkragtens die Kommissaris vir die doeleindes van beslegting van 'n dispuut tussen die Kommissaris en enige persoon betreffende enige bedrag, wat reg, verbeuring, pene, rente of ander heffings kan insluit, wat kragtens die bepalings van hierdie Wet betaalbaar is, enige eis teen sodanige persoon in geheel of gedeeltelik kan kwytskeld, waar sodanige beslegting tot die beste voordeel van die staat sal wees.

(2) The Minister must so prescribe the requirements for the reporting by the Commissioner of any claim against such person which has been waived in whole or in part by the Commissioner, as contemplated in subsection (1).".

(2) The provisions contained in the regulations prescribing the circumstances under which the Commissioner may waive any claim for purposes of the settlement of any dispute and the reporting requirements, as contemplated in section 93A of the Customs and Excise Act, 1964, must be incorporated into that Act within a period of 12 months from the date that the regulations come into operation.

Insertion of section 95A in Act 91 of 1964

135. (1) The following section is hereby inserted in the Customs and Excise Act, 1964, after section 95:

"Internal Administrative Appeal

95A. (1) For the purposes of this section—

'Commissioner' includes, except with regard to the decision or determination referred to in the wording preceding subsection (2)*(a)*, any committee to which the Commissioner has delegated any power or assigned any duty as contemplated in subsection (11).

(2) Any person who may institute proceedings in respect of any decision or determination by the Commissioner, a Controller or an officer made under this Act may file a notice of internal administrative appeal to the Commissioner—

(a) within 90 days from the date such person was notified of such decision or determination; or

(b) within 90 days after the date any such person became aware, or the date such person might reasonably be expected to have become aware of such decision or determination; or

(c) where the Commissioner is on good cause shown satisfied that such person was prevented from filing an internal administrative appeal as required in subparagraphs *(a)* and *(b)*, within a further period of 90 days.

(3) Any such internal administrative appeal may be brought by the appellant or by a duly authorised representative.

(4) Such appeal shall be in writing and must set forth specifically—

(a) the name and address of the person who brings the appeal;

(b) if the appeal is brought by an authorised representative, the name and address of such representative and proof of the authority to act on behalf of the appellant;

(c) full particulars of the decision or determination appealed against;

(d) the nature of the appeal and the reasons therefor including where appropriate—

(i) arguments and submissions relating to relevant factual matters supported by technical specifications, descriptive literature and statements or affidavits by technical experts;

(ii) arguments and submissions relating to the applicable legal provisions and principles;

(iii) any other relevant matter which such appellant considers appropriate; and

(iv) such other requirements as the Commissioner may prescribe by rule.

(5) An internal administrative appeal shall be considered by the Commissioner within 90 days after the date of the filing of the notice and he shall notify the appellant of the final determination or decision in writing.

(6) *(a)* No internal administrative appeal shall be considered by the Commissioner later than 180 days after an appealable decision or determination, unless the period is on good cause shown extended by the Commissioner.

(2) Die Minister moet aldus die vereistes vir verslaggewing deur die Kommissaris van enige eis teen sodanige persoon wat geheel of gedeeltelik kwytgeskeld is, soos in subartikel (1) beoog, voorskryf.".

(2) Die bepalings in die regulasies vervat wat die omstandighede waarkragtens die Kommissaris vir doeleindes van beslegting van enige dispuut enige eis kan kwytskeld en die verslaggewingvereistes, soos in artikel 93A van die Doeane- en Aksynswet, 1964, beoog, moet in daardie Wet geïnkorporeer word binne 'n tydperk van 12 maande vanaf die datum waarop die regulasies in werking tree.

Invoeging van artikel 95A in Wet 91 van 1964

135. (1) Die volgende artikel word hierby na artikel 95 in die Doeane- en Aksynswet, 1964, ingevoeg:

"**Interne Administratiewe Appèl**

95A. (1) By die toepassing van hierdie artikel beteken—

'Kommissaris', ook, behalwe met betrekking tot die beslissing of bepaling bedoel in die bewoording wat subartikel (2)*(a)* voorafgaan, enige komitee aan wie die Kommissaris enige bevoegdheid gedelegeer het of enige plig toegewys het soos in subartikel (11) beoog word.

(2) Iemand wat 'n hofgeding kan instel ten opsigte van enige beslissing of bepaling wat deur die Kommissaris, 'n Kontroleur of 'n beampte kragtens hierdie Wet gemaak is, kan 'n interne administratiewe appèl na die Kommissaris indien—

(a) binne 90 dae vanaf die datum waarop so 'n persoon van sodanige beslissing of bepaling in kennis gestel is; of

(b) binne 90 dae na die datum wat enige sodanige persoon bewus geword het of die datum waarop sodanige persoon redelikerwys verwag kon word om van sodanige beslissing of bepaling bewus te geword het; of

(c) binne 'n verdere tydperk van 90 dae, waar die Kommissaris op goeie gronde aangetoon oortuig is dat sodanige persoon verhoed is om 'n administratiewe appèl in te dien soos in paragrawe *(a)* en *(b)* vereis word.

(3) Enige sodanige interne administratiewe appèl kan deur die appellant of 'n behoorlik gemagtigde verteenwoordiger ingestel word.

(4) Sodanige appèl moet skriftelik wees en uitdruklik uiteensit—

(a) die naam en adres van die persoon wat die appèl instel;

(b) indien die appèl ingestel word deur 'n gemagtigde verteenwoordiger, die naam en adres van sodanige verteenwoordiger en bewys van die magtiging om namens die appellant op te tree;

(c) volledige besonderhede van die beslissing of bepaling waarteen geappelleer word;

(d) die aard van die appèl en die redes daarvoor met inbegrip van waar toepaslik—

(i) argumente en betoë in verband met die relevante feitlike aangeleenthede ondersteun deur tegniese spesifikasies, beskrywende literatuur en verklarings of beëdigde verklarings deur tegniese deskundiges;

(ii) argumente en betoë in verband met die toepaslike wetlike bepalings en regsbeginsels;

(iii) enige ander relevante aangeleentheid wat sodanige appellant toepaslik ag; en

(iv) sodanige ander vereistes wat die Kommissaris by reël voorskryf.

(5) Enige interne administratiewe appèl moet deur die Kommissaris binne 90 dae na die datum waarop die kennisgewing ingedien is, oorweeg word en hy moet die appellant van die finale bepaling of beslissing skriftelik in kennis stel.

(6) *(a)* Geen administratiewe appèl word deur die Kommissaris later as 180 dae na 'n appelleerbare beslissing of bepaling oorweeg nie, tensy die tydperk op goeie gronde aangetoon deur die Kommissaris verleng word.

(b) Where the Commissioner refuses to extend the said period it may be extended on application by the person concerned by the High Court.

(7) Whenever an internal administrative appeal has been considered by the Commissioner any period within which any person may prosecute an appeal against or institute any judicial proceedings in connection with such decision or determination shall commence on the date on which the Commissioner in writing advises the appellant of the final determination or decision of such appeal.

(8) The Commissioner may in respect of each internal administrative appeal considered as provided for in this section and notwithstanding the provisions of section 4(3)—

(a) maintain a public record of the proceedings containing at least—
  (i) copies of all submissions and contentions by interested parties;
  (ii) statements of essential facts relating to the appeal;
  (iii) copies of correspondence relevant to the matter;
  (iv) a copy of the final decision or determination, as the case may be;

(b) advise all parties of the existence of the record and their right to inspect that record;

(c) place any new determination or amendment of a previous determination or decision made consequent to such appeal on the SARS website as prescribed by rule.

(9) *(a)* Where the information submitted for purposes of an internal administrative appeal is on good cause shown claimed to be privileged or confidential and that the publication thereof would adversely affect a party's interests, a summary of that information may be supplied to the Commissioner for inclusion in the public record, which—

(i) contains sufficient detail to allow a reasonable understanding of the matter; but

(ii) does not breach the claimed privilege or confidentiality or adversely affect such interests.

(b) Whenever information is given orally the Commissioner may only include it in the public record if it is reduced to writing and if privileged or confidential conforms to the requirements of paragraph *(a)*.

(10) *(a)* The Commissioner may, whenever he considers an internal administrative appeal—

(i) confirm; or

(ii) amend such decision or determination or withdraw it and make a new decision or determination as the case may be with effect from—
  (aa) the date of the first entry of goods in question;
  (bb) the date of the determination or decision appealed against; or
  (cc) the date of the amendment of such determination or decision.

(b) Whenever any amendment of a determination or a new determination is effective from a date resulting in the person to whom the determination was issued—

(i) being entitled to a refund of duty, such refund shall be subject to the provisions of section 76B;

(ii) retrospectively incurring an increased liability for duty, such liability shall, subject to the provisions of section 44(11)*(c)*, be limited to goods entered for home consumption during a period of two years immediately preceding the date of such amendment or new determination.

(11) The Commissioner may make rules—

(a) to delegate any of the powers that may be exercised or assign any of the duties that shall be performed by the Commissioner in accordance with the provisions of this section and any other provision of this Act

(b) Waar die Kommissaris weier om die genoemde typderk te verleng kan dit by aansoek deur die betrokke persoon deur die Hoë Hof verleng word.

(7) Wanneer 'n interne administratiewe appèl deur die Kommissaris oorweeg is, begin enige tydperk waarbinne 'n persoon 'n appèl mag voortsit teen, of enige regsgeding mag instel in verband met, sodanige beslissing of bepaling op die datum waarop die Kommissaris die appellant skriftelik van die finale bepaling of beslissing van sodanige appèl in kennis stel.

(8) Die Kommissaris kan ten opsigte van enige interne administratiewe appèl wat soos bepaal in hierdie artikel oorweeg is en ondanks die bepalings van artikel 4(3)—

(a) 'n openbare rekord vir die verrigtinge in stand hou wat minstens—

(i) kopieë van alle voorleggings en betoë deur belanghebbende partye;

(ii) verklarings van die wesenlike feite in verband met die appèl;

(iii) kopieë van korrespondensie wat betrekking het op die aangeleentheid;

(iv) 'n kopie van die finale beslissing of bepaling, na gelang van die geval,

bevat;

(b) alle partye van die bestaan van die rekord en hul reg om die rekord na te gaan in kennis te stel;

(c) enige nuwe bepaling of wysiging van 'n vorige bepaling of beslissing wat na sodanige appèl gemaak is op die SAID-webwerf soos by reël voorgeskryf, te plaas.

(9) *(a)* Waar inligting wat vir doeleindes van 'n interne administratiewe appèl voorgelê is op goeie gronde aangetoon beweer word geprivilegieerd of vertroulik te wees en dat die publikasie daarvan 'n party se belange nadelig sal beïnvloed, kan 'n opsomming van daardie inligting aan die Kommissaris vir insluiting in die openbare rekord verskaf word, wat—

(i) genoegsame besonderhede bevat om 'n redelike begrip van die aangeleentheid daar te stel; maar

(ii) nie die beweerde privilegie of vertroulikheid verbreek nie of nie sodanige belange nadelig beïnvloed nie.

(b) Wanneer inligting mondelings verskaf word mag die Kommissaris dit alleenlik in die openbare rekord insluit indien dit op skrif gestel word en indien geprivilegieerd of vertroulik dit aan die vereistes van paragraaf *(a)* voldoen.

(10) *(a)* Die Kommissaris kan wanneer hy 'n interne administratiewe appèl oorweeg—

(i) sodanige beslissing of bepaling bevestig; of

(ii) dit wysig of intrek en 'n nuwe bepaling maak na gelang van die geval vanaf—

(aa) die datum van die eerste klaring van die betrokke goedere;

(bb) die datum van die bepaling of beslissing waarteen geappelleer is; of

(cc) die datum van die wysiging van sodanige bepaling of beslissing.

(b) Wanneer enige wysiging van 'n bepaling of 'n nuwe bepaling in werking is vanaf 'n datum wat tot gevolg het dat die persoon aan wie die bepaling uitgereik is—

(i) geregtig is op 'n terugbetaling van reg, is sodanige terugbetaling onderworpe aan die bepalings van artikel 76B;

(ii) terugwerkend 'n vergrote aanspreeklikheid vir reg oploop, word sodanige aanspreeklikheid, behoudens die bepalings van artikel 44(11)*(c)*, beperk tot goedere wat vir binnelandse verbruik gedurende 'n tydperk van twee jaar wat onmiddellik die datum van sodanige wysiging of nuwe bepaling voorafgaan, geklaar is.

(11) Die Kommissaris kan reëls uitvaardig—

(a) om enige van die bevoegdhede wat deur die Kommissaris uitgeoefen kan word of enige van die pligte wat verrig moet word, ooreenkomstig die bepalings van hierdie artikel en enige bepaling van hierdie Wet te

to any committee composed of officers or officers and other persons as may be determined in such rule;

(b) in respect of all matters which are required or permitted in terms of this section to be prescribed by rule;

(c) any other matter which the Commissioner may consider reasonably necessary and useful for the purposes of administering the provisions of this section;

(d) prescribing such forms as may be required to be completed for purposes of this section.

(12) The provisions of this section shall not be construed as preventing the Commissioner, any controller or any officer from appealing against or instituting any judicial proceedings in connection with any decision or determination comtemplated in subsection (11)*(a)*.".

(2) Subsection (1) shall come into operation on a date fixed by the President by proclamation in the *Gazette*.

Amendment of section 96 of Act 91 of 1964

136. The following section is hereby substituted for section 96 of the Customs and Excise Act, 1964:

"Notice of action and period for bringing action

96. (1)*(a)* No process by which any legal proceedings are instituted against the State, the Minister, the Commissioner or an officer for anything done in pursuance of this Act may be served before the expiry of a period of one month after delivery of a notice in writing setting forth clearly and explicitly the cause of action, the name and place of abode of the person who is to institute such proceedings (in this section referred to as the 'litigant') and the name and address of his or her attorney or agent, if any.

(b) Subject to the provisions of section 89, the period of extinctive prescription in respect of legal proceedings against the State, the Minister, the Commissioner or an officer on a cause of action arising out of the provisions of this Act shall be one year and shall, subject to the provisions of section 95A(7), begin to run on the date when the right of action first arose.

(c)(i) The State, the Minister, the Commissioner or an officer may on good cause shown reduce the period specified in paragraph *(a)* or extend the period specified in paragraph *(b)* by agreement with the litigant.

(ii) If the State, the Minister, the Commissioner or an officer refuses to reduce or to extend any period as contemplated in subparagraph (i), a High Court having jurisdiction may, upon application of the litigant, reduce or extend any such period where the interest of justice so requires.

(2) This section does not apply to the recovery of a debt contemplated in any law providing for the recovery from an organ of state of a debt described in such law.".

Amendment of section 97 of Act 91 of 1964

137. (1) The Customs and Excise Act, 1964, is hereby amended by the substitution for section 97 of the following section:

"Master, container operator or pilot may appoint agent

97. (1) Notwithstanding anything to the contrary in this Act contained—

(a) any container operator, master, pilot or other carrier may, and shall in the circumstances specified in paragraph *(b)*, instead of himself or herself performing any act, including the answering of questions

delegeer of toe te wys aan enige komitee van beamptes of beamptes en ander persone soos in sodanige reël bepaal word;

(b) ten opsigte van alle aangeleenthede wat ingevolge hierdie artikel by reël voorgeskryf moet of kan word;

(c) enige ander aangeleentheid wat die Kommissaris redelikerwys noodsaaklik en nuttig beskou vir die doeleindes om die bepalings van hierdie artikel te administrateer;

(d) om vorms voor te skryf wat vir die doeleindes van hierdie artikel voltooi moet word.

(12) Die bepalings van hierdie artikel word nie vertolk dat die Kommissaris, 'n Kontroleur of 'n beampte verbied word om te appelleer teen, of om enige regsprosesse in te stel in verband met, enige beslissing of bepaling deur enige komitee in subartikel (11)*(a)* beoog nie.".

(2) Subartikel (1) tree in werking op 'n datum deur die President by proklamasie in die *Staatskoerant* bepaal.

Vervanging van artikel 96 van Wet 91 van 1964

136. Artikel 96 van die Doeane- en Aksynswet, 1964, word hierby deur die volgende artikel vervang:

"**Kennis van proses en termyn vir instel van proses**

96. (1) *(a)* Geen proses waardeur enige regsgeding teen die Staat, Minister, die Kommissaris of 'n beampte ingestel word vir enigiets wat kragtens hierdie Wet gedoen is, mag gedien word voor die verloop van een maand na aflewering van 'n skriftelike kennisgewing waarin die eisoorsaak, die naam en verblyfplek van die persoon wat sodanige regsgeding gaan instel (in hierdie artikel as die 'litigant' vermeld) en die naam en adres van sy prokureur of agent, indien enige, duidelik en uitdruklik uiteengesit word.

(b) Behoudens die bepalings van artikel 89, is die termyn vir bevrydende verjaring ten opsigte van 'n regsgeding teen die Staat, die Minister, die Kommissaris of 'n beampte weens 'n eisoorsaak gegrond op die bepalings van hierdie Wet, een jaar wat behoudens die bepalings van artikel 95A(7), begin loop op die datum waarop die vorderingsreg vir die eerste maal ontstaan het.

(c) (i) Die Staat, die Minister, die Kommissaris of 'n beampte kan op goeie gronde aangetoon by ooreenkoms met die litigant die tydperk vermeld in paragraaf *(a)* verminder of die tydperk vermeld in paragraaf *(b)* verleng.

(ii) Indien die Staat, die Minister, die Kommissaris of 'n beampte weier om enige tydperk beoog in subparagraaf (i) te verminder of te verleng, kan 'n Hoë Hof wat jurisdiksie het, op aansoek van die litigant, sodanige tydperk verminder of verleng waar die regsbelang dit vereis.

(2) Hierdie artikel is nie van toepassing op die verhaling van 'n skuld wat in enige wet waarin voorsiening gemaak word vir die verhaling van 'n staatsorgaan van 'n skuld wat in sodanige wet beskryf word, beoog word nie.".

Vervanging van artikel 97 van Wet 91 van 1964

137. (1) Artikel 97 van die Doeane- en Aksynswet, 1964, word hierby deur die volgende artikel vervang:

"**Gesagvoerder, houerbediener of loods kan agent aanstel**

97. (1) Ondanks andersluidende bepalings van hierdie Wet—

(a) kan enige houerbediener, gesagvoerder, loods of ander karweier, en moet in die omstandighede in paragraaf *(b)* vermeld, in plaas van self 'n handeling, met inbegrip van die antwoord van vrae, te verrig wat hy of sy ingevolge enige bepaling van hierdie Wet moet verrig, 'n agent

required by or under any provision of this Act, appoint an agent registered under the provisions of this Act to perform any such act;

(b) where any means of carriage is not owned or chartered by, or the container operator is not, a legal person registered in the Republic in accordance with the laws of the Republic and which has its place of effective management in the Republic or by a natural person who is ordinarily resident in the Republic, such master, pilot or other carrier or container operator shall appoint an agent as contemplated in paragraph *(a)*.

(2)*(a)* Any such agent shall be a legal person registered in the Republic in accordance with the laws of the Republic and which has its place of effective management in the Republic or a natural person ordinarily resident in the Republic.

(b) Any act performed by such agent on behalf of such master, pilot or other carrier or container operator shall in all respects for the purposes of this Act be deemed to be the act of such master, pilot or other carrier or container operator.".

(2) Subsection (1) shall come into operation on a date fixed by the President by proclamation in the *Gazette*.

Amendment of section 99 of Act 91 of 1964, as amended by section 15 of Act 95 of 1965, section 17 of Act 85 of 1968, section 7 of Act 98 of 1970, section 34 of Act 112 of 1977, section 12 of Act 110 of 1979, section 24 of Act 86 of 1982, section 62 of Act 45 of 1995, section 71 of Act 30 of 1998 and section 68 of Act 53 of 1999

138. Section 99 of the Customs and Excise Act, 1964, is hereby amended by the substitution for subsection (1) of the following subsection:

"(1) An agent appointed by any master, container operator or pilot or other carrier, and any person who represents himself or herself to any officer as the agent of any master, container operator or pilot or other carrier, and is accepted as such by that officer, shall be liable for the fulfilment, in respect of the matter in question, of all obligations, including the payment of duty and charges, imposed on such master, container operator or pilot or other carrier by this Act and to any penalties or amounts demanded under section 88(2)*(a)* which may be incurred in respect of that matter.".

Amendment of section 109 of Act 91 of 1964, as amended by section 12 of Act 93 of 1978 and section 68 of Act 45 of 1995

139. Section 109 of the Customs and Excise Act, 1964, is hereby amended by the substitution for the words preceding paragraph *(a)* in subsection (1) of the following words:

"If it is necessary to give effect to any law for the safeguarding of public health or for the safety of the public or the State, the Commissioner may in concurrence with the authority administering such law at any time, and at the expense and risk of the importer, exporter, owner, master or pilot concerned, according as the Commissioner may determine—".

Amendment of section 114 of Act 91 of 1964, as substituted by section 33 of Act 105 of 1969, section 12 of Act 71 of 1975, as inserted by section 36 of Act 112 of 1977, as substituted by section 13 of Act 101 of 1985, section 32 of Act 84 of 1987, section 37 of Act 59 of 1990, section 34 of Act 34 of 1997 and section 71 of Act 53 of 1999

140. Section 114 of the Customs and Excise Act, 1964, is hereby amended by the addition to subsection (1) after paragraph *(b*B*)* of the following paragraph:

"*(a*C*)* Any dutiable goods of whatever nature, which are stored in any customs and excise warehouse licensed for any purpose under this Act shall be subject to a lien, as if the goods are detained in accordance with the provisions of subsection (2), as security for the duty on such goods from the time of receipt of such goods in such warehouse until such goods have been duly entered for any purpose under this Act

wat ingevolge hierdie Wet geregistreer is, aanstel om sodanige handeling te verrig;

(b) waar enige vervoermiddel nie besit word of gehuur word nie deur, of die houerbediener is nie, 'n regspersoon wat ooreenkomstig die wette van die Republiek in die Republiek geregistreer is nie en wat sy plek van effektiewe bestuur in die Republiek het nie of deur 'n natuurlike persoon wat gewoonlik in die Republiek woonagtig is nie, moet sodanige gesagvoerder, loods of ander karweier of houerbediener 'n agent soos beoog in paragraaf *(a)* aanstel.

(2) *(a)* Enige sodanige agent moet 'n regspersoon wees wat in die Republiek ooreenkomstig die wette van die Republiek geregistreer is en wat sy plek van effektiewe beheer in die Republiek het of 'n natuurlike persoon wat gewoonlik in die Republiek woonagtig is.

(b) Enige handeling verrig deur sodanige agent namens sodanige gesagvoerder, loods of ander karweier of houerbediener word in alle opsigte vir die doeleindes van die Wet geag om die handeling van sodanige gesagvoerder, loods of ander karweier of houerbediener te wees.".

(2) Subartikel (1) tree in werking op 'n datum deur die President by kennisgewing in die *Staatskoerant* bepaal.

Wysiging van artikel 99 van Wet 91 van 1964, soos gewysig deur artikel 15 van Wet 95 van 1965, artikel 17 van Wet 85 van 1968, artikel 7 van Wet 98 van 1970, artikel 34 van Wet 112 van 1977, artikel 12 van Wet 110 van 1979, artikel 24 van Wet 86 van 1982, artikel 62 van Wet 45 van 1995, artikel 71 van Wet 30 van 1998 en artikel 68 van Wet 53 van 1999

138. Artikel 99 van die Doeane- en Aksynswet, 1964, word hierby gewysig deur subartikel (1) deur die volgende subartikel te vervang:

"(1) 'n Agent wat deur enige gesagvoerder, houerbediener of loods of ander karweier aangestel is, en enigiemand wat aan 'n beampte voorgee dat hy die agent van 'n gesagvoerder, houerbediener of loods of ander karweier is, en as sodanig deur daardie beampte aanvaar word, is ten opsigte van die betrokke saak aanspreeklik vir die nakoming van alle verpligtinge, met inbegrip van die betaling van reg en vorderings wat sodanige gesagvoerder, houerbediener of loods of ander karweier ingevolge hierdie Wet opgelê is, en vir enige penes of bedrae wat kragtens artikel 88(2)*(a)* geëis word wat ten opsigte van daardie saak opgeloop word.".

Wysiging van artikel 109 van Wet 91 van 1964, soos gewysig deur artikel 12 van Wet 93 van 1978 en artikel 68 van Wet 45 van 1995

139. Artikel 109 van die Doeane-en Aksynswet, 1964, word hierby gewysig deur die woorde wat subartikel (1) paragraaf *(a)* voorafgaan deur die volgende woorde te vervang:

"Indien dit om gevolg te gee aan enige wet vir die beveiliging van die openbare gesondheid of vir die veiligheid van die publiek of die Staat nodig is, kan die Kommissaris in samewerking met die owerheid wat sodanige wet administreer te eniger tyd vir rekening en op risiko van die betrokke invoerder, uitvoerder, eienaar, gesagvoerder of loods, na gelang die Kommissaris bepaal—".

Wysiging van artikel 114 van Wet 91 van 1964, soos vervang deur artikel 33 van Wet 105 van 1969, artikel 12 van Wet 71 van 1975, soos ingevoeg deur artikel 36 van Wet 112 van 1977, soos vervang deur artikel 13 van Wet 101 van 1985, artikel 32 van Wet 84 van 1987, artikel 37 van Wet 59 van 1990, artikel 34 van Wet 34 van 1997 en artikel 71 van Wet 53 van 1999

140. Artikel 114 van die Doeane- en Aksynswet, 1964, word hierby gewysig deur die volgende paragraaf by subartikel (1) te voeg:

"*(a*C*)* Enige belasbare goedere van watter aard ook al, wat opgeslaan word in enige doeane- en aksynspakhuis wat vir enige doel kragtens hierdie Wet gelisensieer is, is aan 'n retensiereg onderhewig asof die goedere ooreenkomstig die bepalings van subartikel (2) aangehou word as sekerheid vir die reg op sodanige goedere vanaf die tydstip van die ontvangs van sodanige goedere in sodanige pakhuis totdat sodanige goedere behoorlik vir enige doel kragtens die Wet geklaar

and any liability for duty of the licensee of such warehouse in respect of such goods has ceased in terms of this Act.".

Amendment of section 1 of Act 77 of 1968, as amended by section 16 of Act 103 of 1969, section 5 of Act 66 of 1973, section 7 of Act 88 of 1974, section 19 of Act 106 of 1980, section 3 of Act 118 of 1984, section 17 of Act 87 of 1988, section 36 of Act 9 of 1989, section 3 of Act 69 of 1989, section 5 of Act 136 of 1991, section 4 of Act 20 of 1994, section 77 of Act 30 of 1998, section 74 of Act 53 of 1999, section 40 of Act 5 of 2001 and section 54 of Act 19 of 2001

141. Section 1 of the Stamp Duties Act, 1968, is hereby amended—

(a) by the substitution in subsection (1) for paragraphs *(a)* and *(b)* of the definition of "authorized revenue officer" of the following paragraphs:

"authorised **[revenue]** officer" means—

(a) the Commissioner, and any **[receiver of revenue]** officer or class of officers designated by the Commissioner **[and any magistrate in an area in which there is not an office of a receiver of revenue]**;

(b) any officer in the public service authorised by the Minister by notice in the *Gazette* to act as an authorised **[revenue]** branch officer for the purposes of this Act, either in respect of all instruments generally or in respect of such classes of instruments as may be specified in the notice;"; and

(b) by the substitution in subsection (1) for the definition of "public officer" of the following definition:

" 'public officer' means a person in the employ of the Government or a provincial administration and includes an authorised **[revenue]** branch officer;".

Amendment of section 9 of Act 77 of 1968, as amended by section 21 of Act 87 of 1988 and section 5 of Act 20 of 1994

142. Section 9 of the Stamp Duties Act, 1968, is hereby amended by the substitution for subsection (3) of the following subsection:

"(3) Whenever an authorised **[revenue]** branch officer deems it necessary, he may require evidence on oath or other satisfactory proof to be furnished to him of the date of affixing of any adhesive revenue stamp to any instrument or of the date of execution of any instrument or, if any instrument was executed outside the Republic, of the date when it was first received in the Republic.".

Amendment of section 24 of Act 77 of 1968, as amended by section 21 of Act 103 of 1969, section 1 of Act 88 of 1974, section 4 of Act 70 of 1975, section 12 of Act 114 of 1977, section 6 of Act 92 of 1983, section 26 of Act 87 of 1988, section 9 of Act 69 of 1989, section 82 of Act 89 of 1991, section 14 of Act 97 of 1993 and section 14 of Act 37 of 1996

143. Section 24 of the Stamp Duties Act, 1968, is hereby amended—

(a) by the substitution for the words preceding subparagraphs (i) and (ii) in paragraph *(a)* of subsection (4) for the following words:

"*(a)* deliver to **[a receiver of revenue]** the Commissioner a statement in such form as the Commissioner may prescribe, reflecting dutiable premiums for the said period of three months, being—";

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

"*(b)* pay to **[such receiver of revenue]** the Commissioner an amount of duty calculated at the rate prescribed in Item 18(6) of Schedule 1 on the amount of such dutiable premiums."; and

(c) by the substitution of paragraphs *(a)* and *(c)* of subsection (11) for the following paragraphs:

"*(a)* The total amount of duty chargeable in respect of policies of such class issued by the insurer during any payment period referred to in paragraph *(b)*, as calculated by means of the computer, shall be determined and paid to **[a receiver of revenue]** the Commissioner within 21 days after the end of such payment period or within such further period as the Commis-

is en enige aanspreeklikheid van die lisensiehouer van sodanige pakhuis ten opsigte van sodanige goedere ingevolge hierdie Wet eindig.".

Wysiging van artikel 1 van Wet 77 van 1968, soos gewysig deur artikel 16 van Wet 103 van 1969, artikel 5 van Wet 66 van 1973, artikel 7 van Wet 88 van 1974, artikel 19 van Wet 106 van 1980, artikel 3 van Wet 118 van 1984, artikel 17 van Wet 87 van 1988, artikel 36 van Wet 9 van 1989, artikel 3 van Wet 69 van 1989, artikel 5 van Wet 136 van 1991, artikel 4 van Wet 20 van 1994, artikel 77 van Wet 30 van 1998, artikel 74 van Wet 53 van 1999, artikel 40 van Wet 5 van 2001 en artikel 54 van Wet 19 van 2001

141. Artikel 1 van die Wet op Seëlregte, 1968, word hierby gewysig—

(a) deur paragrawe *(a)* en *(b)* van die omskrywing van "bevoegde belastingbeampte" in subartikel (1) deur die volgende paragrawe te vervang:

"bevoegde **[belastingbeampte]** beampte beteken—

(a) die Kommissaris, en 'n **[ontvanger van inkomste en 'n landdros in 'n gebied waar daar nie 'n kantoor van 'n ontvanger van inkomste is nie]** persoon of klas van persone deur die Kommissaris aangewys;

(b) 'n beampte in 'n Staatsdiens wat deur die Minister by kennisgewing in die *Staatskoerant* gemagtig is om vir die doeleindes van hierdie Wet as 'n bevoegde **[belastingbeampte]** beampte op te tree, hetsy ten opsigte van alle stukke in die algemeen of ten opsigte van stukke van die soorte wat in die kennisgewing vermeld word; en";

(b) deur die omskrywing van "openbare amptenaar" in subartikel (1) deur die volgende omskrywing te vervang:

"openbare amptenaar" iemand wat by die Regering of 'n provinsiale administrasie in diens is en ook 'n bevoegde **[belastingbeampte]** beampte;".

Wysiging van artikel 9 van Wet 77 van 1968, soos gewysig deur artikel 21 van Wet 87 van 1988 en artikel 5 van Wet 20 van 1994

142. Artikel 9 van die Wet op Seëlregte, 1968, word hierby gewysig deur subartikel (3) deur die volgende subartikel te vervang:

"(3) Wanneer 'n bevoegde **[belastingbeampte]** beampte dit nodig ag, kan hy vereis dat bewys onder eed of ander genoegsame bewys aan hom verstrek word van die datum waarop 'n inkomsteplakseël op 'n stuk geplak is of van die datum van verlyding van 'n stuk of, indien 'n stuk buite die Republiek verly is, van die datum waarop dit vir die eerste keer in die Republiek ontvang is.".

Wysiging van artikel 24 van Wet 77 van 1968, soos gewysig deur artikel 21 van Wet 103 van 1969, artikel 1 van Wet 88 van 1974, artikel 4 van Wet 70 van 1975, artikel 12 van Wet 114 van 1977, artikel 6 van Wet 92 van 1983, artikel 26 van Wet 87 van 1988, artikel 9 van Wet 69 van 1989, artikel 82 van Wet 89 van 1991, artikel 14 van Wet 97 van 1993 en artikel 14 van Wet 37 van 1996

143. Artikel 24 van die Wet op Seëlregte, 1968, word hierby gewysig—

(a) deur die woorde wat subparagrawe (i) en (ii) in paragraaf *(a)* van subartikel (4) voorafgaan deur die volgende woorde te vervang:

"*(a)* aan **['n ontvanger van inkomste]** die Kommissaris 'n opgawe in die deur die Kommissaris voorgeskrewe vorm verstrek, wat belasbare premies aantoon vir bedoelde tydperk van drie maande, synde—";

(b) deur paragraaf *(b)* van subartikel (4) deur die volgende paragraaf te vervang:

"*(b)* aan **[bedoelde ontvanger van inkomste]** die Kommissaris 'n bedrag aan seëlreg betaal bereken op die bedrag van bedoelde belasbare premies teen die skaal in Item 18 (6) van Bylae 1 voorgeskryf."; en

(c) deur paragrawe *(a)* en *(c)* van subartikel (11) deur die volgende paragrawe te vervang:

"*(a)* Die totaalbedrag van die seëlreg betaalbaar ten opsigte van polisse van bedoelde klas wat die versekeraar uitgereik het gedurende 'n in paragraaf *(b)* bedoelde betalingstydperk, soos deur middel van die rekenaar bereken, moet binne 21 dae na die end van daardie betalingstydperk of binne die verdere tydperk wat die Kommissaris, met inagneming van die

sioner, having regard to the special circumstances of the case, may approve;

(c) when payment of duty is made under this subsection the insurer shall at the same time furnish the **[receiver of revenue]** Commissioner with a statement in such form as the Commissioner may prescribe and an auditor's certificate testifying to the accuracy of the statement.".

Amendment of section 31 of Act 77 of 1968, as substituted by section 18 of Act 46 of 1996 and amended by section 81 of Act 30 of 1998

144. Section 31 of the Stamp Duties Act, 1968, is hereby amended by the substitution in subsection (1) for the definition of "authorisation letter" of the following definition:

" 'authorisation letter' means a written authorisation granted by the Commissioner, or by any **[chief director or chief revenue inspector under the control, direction or supervision of the Commissioner]** person designated by the Commissioner for this purpose or occupying a post designated by the Commissioner for this purpose, to an officer to inspect, audit, examine or obtain, as contemplated in section 31B, any information, documents or things;".

Insertion of section 32B in Act 77 of 1968

145. (1) The following section is hereby inserted in the Stamp Duties Act, 1968, after section 32A:

"Objection and Appeal procedures

32B. (1) Any person aggrieved by a decision of the Commissioner in terms of this Act may object and appeal against that decision to the tax board or the tax court, as the case may be, established in terms of the Income Tax Act, 1962 (Act No. 58 of 1962), in the manner and under the terms and within the period prescribed by that Act and the rules promulgated thereunder.

(2) The provisions of the Income Tax Act, 1962, relating to objections and appeals, as provided for in Part III of Chapter III and the rules promulgated thereunder, shall *mutatis mutandis* apply in respect of any decision issued in terms of this Act.

(3) Any decision of the Commissioner, contemplated in subsection (1) shall be deemed to be an assessment for purposes of the application of the provisions of the Income Tax Act, 1962, as contemplated in subsection (2).".

(2) Subsection (1) shall come into operation on a date fixed by the President by proclamation in the *Gazette*.

Amendment of Item 6 of Schedule 1 to Act 77 of 1968, as inserted by section 10 of Act 118 of 1984 and amended by section 4 of Act 71 of 1986, section 32 of Act 87 of 1988, section 7 of Act 136 of 1992, section 15 of Act 37 of 1996, section 78 of Act 53 of 1999 and section 62 of Act 19 of 2001

146. (1) Item 6 of Schedule 1 to the Stamp Duties Act, 1968, is hereby amended by the substitution in paragraph *(c)* for the words following subparagraph (ii) of the following words:

"into which the depositor may deposit money and from which the institution or the Postbank where the account is held, may make a payment to any other person or electronically transfer an amount to any other account of such depositor held at any other institution contemplated in subparagraph (i) or to the account of any other person.".

(2) Subsection (1) shall be deemed to have come into operation on 27 July 2001.

spesiale omstandighede van die geval, goedkeur, vasgestel en aan **['n ontvanger van inkomste]** die Kommissaris betaal word;

(c) wanneer betaling van seëlreg ingevolge hierdie subartikel geskied, moet die versekeraar terselfdertyd 'n opgawe in 'n deur die Kommissaris voorgeskrewe vorm en 'n ouditeur se sertifikaat wat die juistheid van die opgawe bevestig, aan die **[ontvanger van inkomste]** Kommissaris verstrek.".

Wysiging van artikel 31 van Wet 77 van 1968, soos vervang deur artikel 18 van Wet 46 van 1996 en gewysig deur artikel 81 van Wet 30 van 1998

144. Artikel 31 van die Wet op Seëlregte, 1968, word hierby gewysig deur die omskrywing van "magtigingsbrief" in subartikel (1) deur die volgende omskrywing te vervang:

" 'magtigingsbrief' 'n geskrewe magtiging verleen deur die Kommissaris, of **['n hoofdirekteur, ontvanger van inkomste of hoofinkomste-inspekteur onder die beheer, leiding of toesig van die Kommissaris]** deur 'n persoon wat vir die doel deur die Kommissaris aangewys is, of deur 'n persoon wat 'n pos beklee wat vir die doel deur die Kommissaris aangewys is, aan 'n amptenaar om enige inligting, dokumente of goed te inspekteer, ouditeer, ondersoek of verkry soos beoog in artikel 31B;".

Invoeging van artikel 32B in Wet 77 van 1968

145. (1) Die volgende artikel word hierby in die Wet op Seëlregte, 1968, na artikel 32A ingevoeg:

"Beswaar en appèlprosedures

32B. (1) Enige persoon deur 'n beslissing van die Kommissaris ingevolge hierdie Wet veronreg, mag beswaar en appèl teen daardie beslissing aanteken na die belastinghof of die belastingraad, na gelang van die geval, ingestel ingevolge die Inkomstebelastingwet, 1962 (Wet No. 58 van 1962), op die wyse en kragtens die voorwaardes en binne die tydperk voorgeskryf deur daardie Wet en die reëls daarkragtens uitgevaardig.

(2) Die bepalings van die Inkomstebelastingwet, 1962, met betrekking tot besware en appèlle, soos in Deel III van Hoofstuk III en die reëls daarkragtens uitgevaardig bepaal, is *mutatis mutandis* van toepassing ten opsigte van enige beswaar ingedien en appèl aangeteken ingevolge hierdie Wet.

(3) Enige beslissing van die Kommissaris in subartikel (1) bedoel, word vir doeleindes van die toepassing van die bepalings van die Inkomstebelastingwet, 1962, soos in subartikel (2) bedoel, geag 'n aanslag te wees.".

(2) Subartikel (1) tree in werking op 'n datum deur die President by proklamasie in die *Staatskoerant* bepaal.

Wysiging van Item 6 van Bylae 1 by Wet 77 van 1968, soos ingevoeg deur artikel 10 van Wet 118 van 1984 en gewysig deur artikel 4 van Wet 71 van 1986, artikel 32 van Wet 87 van 1988, artikel 7 van Wet 136 van 1992, artikel 15 van Wet 37 van 1996, artikel 78 van Wet 53 van 1999 en artikel 62 van Wet 19 van 2001

146. (1) Item 6 van Bylae 1 by die Wet op Seëlregte, 1968, word hierby gewysig deur in paragraaf *(c)* die woorde wat subparagraaf (ii) volg deur die volgende woorde te vervang:

"waarin die deposant geld kan deponeer en waaruit die instelling of die Posbank waar die rekening gehou is, 'n betaling aan enige ander persoon kan maak of elektronies 'n bedrag kan oordra na die rekening van enige ander persoon gehou by enige ander instelling in subparagraaf (i) bedoel.".

(2) Subartikel (1) word geag op 27 Julie 2001 in werking te getree het.

Amendment of item 15 of Act 77 of 1968, as substituted by section 13 of Act 89 of 1972 and amended by section 16 of Act 66 van 1973, section 21 of Act 88 of 1974, section 3 of Act 104 of 1976, section 20 of Act 114 of 1977, section 8 of Act 95 of 1978, section 8 of Act 102 of 1979, section 21 of Act 106 of 1980, section 9 of Act 99 of 1981, section 7 of Act 87 of 1982, section 14 of Act 92 of 1983, section 11 of Act 118 of 1984, section 11 of Act 81 of 1985, section 5 of Act 71 of 1986, section 13 of Act 108 of 1986, section 11 of Act 86 of 1987, section 33 of Act 87 of 1988, section 14 of Act 69 of 1989, section 9 of Act 136 of 1991, section 8 of Act 136 of 1992, section 17 of Act 97 of 1993, section 17 of Act 140 of 1993, section 8 of Act 20 of 1994, section 86 of Act 30 of 1998, section 79 of Act 53 of 1999, section 72 of Act 30 of 2000, section 63 of Act 59 of 2000 and section 42 of Act 5 of 2001

147. Item 15 of Schedule 1 to the Stamp Duties Act, 1968, is hereby amended—

(a) by the addition to *Exemptions from the duty under paragraph (1) or (2)* of the following paragraph:

"*(g)* The original issue of any share by a company to any other company in terms of an intra-group transaction contemplated in section 44 of the Income Tax Act, 1962 (Act No. 58 of 1962), where the public officer of that company has made a sworn affidavit or solemn declaration that such intra-group transaction complies with the provisions contained in section 44 of that Act;";

(b) by the addition to the *Exemptions from the duty under paragraph (3)* of the following paragraph:

"*(x)* Any registration of transfer of any marketable security acquired by a company in terms of a company formation transaction contemplated in section 42 of the Income Tax Act, 1962 (Act No. 58 of 1962), a share-for-share transaction contemplated in section 43 of that Act, an intra-group transfer contemplated in section 44 of that Act, in pursuance of a distribution *in specie* in the course of an unbundling transaction contemplated in section 45 of that Act, or in terms of a liquidation distribution contemplated in section 46 of that Act, where the public officer of that company has made a sworn affidavit or solemn declaration that such company formation transaction, share-for-share transaction, intra-group transfer, unbundling transaction or liquidation distribution complies with the provisions contained in section 42, 43, 44, 45 or 46, as the case may be, 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 22 of Act 97 of 1993, section 9 of Act 20 of 1994, section 18 of Act 37 of 1993, section 9 of Act 20 of 1994, section 18 of Act 37 of 1996, section 23 of Act 27 of 1997, section 81 of Act 53 of 1999, section 76 of Act 30 of 2000, section 64 of Act 59 of 2000 and section 65 of Act 19 of 2001

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

(a) by the substitution for the definition of "commercial accommodation" of the following definition:

" 'commercial accommodation' means—

(a) **[accommodation]** lodging or board and lodging, **[including]** together with domestic goods and services, in any house, flat, apartment, room, hotel, motel, inn, guesthouse, boarding house, residential establishment, holiday accommodation unit, chalet, tent, caravan, camping site, houseboat, or similar establishment, which is regularly or systematically **[let]** supplied and where the total annual receipts from the **[letting]** supply thereof exceeds R48 000 per annum or is reasonably expected to exceed R48 000 per annum but excluding a dwelling supplied in terms of an agreement for the letting and hiring thereof;

(b) **[accommodation]** lodging or board and lodging in a home for the aged, children, physically or mentally handicapped persons; and

(c) lodging or board and lodging in a hospice;";

Wysiging van item 15 van Wet 77 van 1968, soos vervang deur artikel 13 van Wet 89 van 1972 en gewysig deur artikel 16 van Wet 66 van 1973, artikel 21 van Wet 88 van 1974, artikel 3 van Wet 104 van 1976, artikel 20 van Wet 114 van 1977, artikel 8 van Wet 95 van 1978, artikel 8 van Wet 102 van 1979, artikel 21 van Wet 106 van 1980, artikel 9 van Wet 99 van 1981, artikel 7 van Wet 87 van 1982, artikel 14 van Wet 92 van 1983, artikel 11 van Wet 118 van 1984, artikel 11 van Wet 81 van 1985, artikel 5 van Wet 71 van 1986, artikel 13 van Wet 108 van 1986, artikel 11 van Wet 86 van 1987, artikel 33 van Wet 87 van 1988, artikel 14 van Wet 69 van 1989, artikel 9 van Wet 136 van 1991, artikel 8 van Wet 136 van 1992, artikel 17 van Wet 97 van 1993, artikel 17 van Wet 140 van 1993, artikel 8 van Wet 20 van 1994, artikel 86 van Wet 30 van 1998, artikel 79 van Wet 53 van 1999, artikel 72 van Wet 30 van 2000, artikel 63 van Wet 59 van 2000 en artikel 42 van Wet 5 van 2001

147. Item 15 van Bylae 1 by die Wet op Seëlregte, 1968, word hierby gewysig—

(a) deur die volgende paragraaf by die *Vrystellings van die seëlreg ingevolge paragraaf (1) of (2)* te voeg:

"*(g)* Die oorspronklike uitreiking van enige aandele deur 'n maatskappy aan enige ander maatskappy ingevolge 'n intragroeptransaksie in artikel 44 van die Inkomstebelastingwet, 1962 (Wet No. 58 van 1962) bedoel, waar die openbare amptenaar van daardie maatskappy onder eed of plegtige verklaring verklaar het dat daardie intragroeptransaksie aan die bepalings van artikel 44 van daardie Wet voldoen;";

(b) deur die volgende paragraaf by die *Vrystellings van die seëlreg ingevolge paragraaf (3)* te voeg:

"*(x)* Enige registrasie van oordrag van enige handelseffek deur 'n maatskappy verkry ingevolge van 'n maatskappyformasie-transaksie in artikel 42 van die Inkomstebelastingwet, 1962 (Wet No. 58 van 1962), bedoel, of 'n aandeel-vir-aandeeltransaksie in artikel 43 van daardie Wet bedoel, 'n intragroeptransaksie in artikel 44 van daardie Wet bedoel, ten gevolge van 'n uitkering *in specie* in die loop van 'n ontbondelingstransaksie in artikel 45 van daardie Wet bedoel of ingevolge 'n likwidasie-uitkering in artikel 46 van daardie Wet bedoel, waar die openbare amptenaar van daardie maatskappy onder eed of plegtige verklaring verklaar het dat daardie maatskappyformasie-transaksie, aandeel-vir-aandeeltransaksie, intragroeptransaksie, ontbondelingstransaksie of likwidasie-uitkering aan die bepalings van artikel 42, 43, 44, 45 of 46, na gelang van die geval, van daardie Wet voldoen.".

Wysiging van artikel 1 van Wet 89 van 1991, soos gewysig deur artikel 21 van Wet 136 van 1991, paragraaf 1 van Goewermentkennisgewing 2695 van 8 November 1991, artikel 12 van Wet 136 van 1992, artikel 22 van Wet 97 van 1993, artikel 9 van Wet 20 van 1994, artikel 18 van Wet 37 van 1993, artikel 9 van Wet 20 van 1994, artikel 18 van Wet 37 van 1996, artikel 23 van Wet 27 van 1997, artikel 81 van Wet 53 van 1999, artikel 76 van Wet 30 van 2000, artikel 64 van Wet 59 van 2000 en artikel 65 van Wet 19 van 2001

148. (1) Artikel 1 van die Wet op Belasting op Toegevoegde Waarde, 1991, word hierby gewysig—

(a) deur die volgende omskrywing na die omskrywing van "Doeane- en Aksynswet" in te voeg:

" 'doeane beveiligdegebied' 'n doeane beveiligdegebied soos bepaal in die regulasies uitgevaardig deur die Minister van Handel en Nywerheid ingevolge artikel 10(1) van die Wet op Vervaardigingsontwikkeling, 1993 (Wet No. 187 van 1993);";

(b) deur die omskrywing van "huishoudelike goed en dienste" deur die volgende omskrywing te vervang:

" 'huishoudelike goed en dienste' goed en dienste **[die voorsiening aan 'n natuurlike persoon van die reg om die huisvesting]** wat in 'n **[kommersiële huurinrigting]** onderneming wat kommersiële huisvesting verskaf voorsien word **[in geheel of gedeeltelik vir woondoeleindes te okkupeer]**, met inbegrip van **[die verskaffing, waar dit as deel van die reg van okkupasie voorsien word, van]**—

(b) by the insertion of the following definition after the definition of "Customs and Excise Act":

" 'customs secured area' has the meaning assigned thereto in the regulations made by the Minister of Trade and Industry under section 10(1) of the Manufacturing Development Act, 1993 (Act No. 187 of 1993);";

(c) by the substitution for the definition of "domestic goods and services" of the following definition:

" 'domestic goods and services' means **[the provision to a natural person of the right to occupy for residential purposes the whole or part of the accommodation]** goods and services provided in any enterprise supplying commercial accommodation, including **[where it is provided as part of the right of occupation, the provision of]**—

(a) cleaning and maintenance;

(b) electricity, gas, air conditioning or heating;

(c) a telephone, television set, radio or other similar article;

(d) furniture and other fittings; or

(e) meals;";

(d) by the substitution for the definition of "dwelling" of the following definition:

" 'dwelling' means, except where it is used in the supply of commercial accommodation, any building, premises, structure, or any other place, or any part thereof, used predominantly as a place of residence or abode of any natural person or which is intended for use predominantly as a place of residence or abode of any natural person, **[together with any appurtenances]** including fixtures and fittings belonging thereto and enjoyed therewith **[but does not include the supply of domestic goods and services in an enterprise supplying commercial accommodation]**;";

(e) by the insertion of the following definition after the definition of "Income Tax:

" 'Industrial Development Zone' has the meaning assigned thereto in the regulations made by the Minister of Trade and Industry under section 10(1) of the Manufacturing Development Act, 1993 (Act No. 187 of 1993);";

(f) by the substitution for the definition of "public authority" of the following definition:

" 'public authority' means any department or division of the public service (including a provincial administration, the South African National Defence Force, the South African Police Service and **[the South African Prisons Services]** Correctional Services);";

(g) by the substitution for the definition of "transfer payment" of the following definition:

" 'transfer payment' means a transfer payment as contemplated in **[paragraph 1.2.9.3 of the Manual on Financial Planning and Budgeting System of the State]** regulation 8.4 of the Treasury Regulations published in **[terms of section 39 of the Exchequer Act, 1975 (Act No. 66 of 1975]** terms of the Public Finance Management Act, 1999 (Act No. 1 of 1999);"; and

(h) by the substitution for the definition of "welfare organisation" of the following definition:

" 'welfare organisation' means any association not for gain which is registered under the Nonprofit Organisations Act, 1997 (Act No. 71 of 1997) and is exempt from income tax in terms of section 30 of the Income Tax Act, if it carries on or intends to carry on any welfare activity determined by the Minister for purposes of this Act to be of a philanthropic or benevolent nature, having regard to the needs, interests and well-being of the general public, relating to those activities that fall under the headings—

(a) welfare and humanitarian;

(b) health care;

(c) land and housing;

(d) education and development; or

(e) conservation, environment and animal welfare.".

(*a*) skoonmaak en instandhouding;
(*b*) elektrisiteit, gas, lugreëling of verhitting;
(*c*) 'n telefoon, televisiestel, radio of ander soortgelyke artikel;
(*d*) meubels en ander toebehore; of
(*e*) maaltye;";

(*c*) deur die omskrywing van "kommersiële huisvesting" deur die volgende omskrywing te vervang:

" 'kommersiële huisvesting'—

(*a*) **[huisvesting]** inwoning of kos en inwoning, tesame met **[inbegrip van]** die verskaffing van huishoudelike goed en dienste, in enige huis, woonstel, **[kamer]** vertrek, hotel, motel, herberg, gastehuis, losieshuis, huishoudelike inrigting, vakansieverblyfeenheid, chalet, tent, karavaan, kampeerplek, huisboot, of soortgelyke inrigting, wat gereeld of stelselmatig **[verhuur]** verskaf word en waar die totale jaarlikse ontvangste uit die **[verhuring]** lewering daarvan R48 000 per jaar oorskry of redelikerwys verwag word R48 000 te oorskry, maar met uitsluiting van 'n woning wat ingevolge 'n ooreenkoms vir die huur en verhuring daarvan verskaf word;

(*b*) **[huisvesting]** inwoning of kos en inwoning in 'n tehuis vir bejaardes, kinders, of fisies of verstandelik gestremde persone;

(*c*) inwoning of kos en inwoning in 'n hospies;";

(*d*) deur die volgende omskrywing na die omskrywing van "motor" in te voeg:

" 'nywerheidsontwikkelingsone', 'n nywerheidsontwikkelingsone soos bepaal in in die regulasies uitgevaardig deur die Minister van Handel en Nywerheid ingevolge artikel 10(1) van die Wet op Vervaardigingsontwikkeling, 1993 (Wet No. 187 van 1993);";

(*e*) deur die omskrywing van "oordragbetaling" deur die volgende omskrywing te vervang:

" 'oordragbetaling' 'n oordragbetaling soos beoog in **[paragraaf 1.2.9.3 van die Handleiding oor die Staat se Finansiële Beplanning- en Begrotingstelsel]** regulasie 8.4 van die Tesourieregulasies wat ingevolge **[artikel 39 van die Skatkiswet, Wet No 66 van 1975)]**, die Wet op die Bestuur van Openbare Finansies, 1999 (Wet No. 1 van 1999) gepubliseer is;";

(*f*) deur die omskrywing van "openbare bestuur" deur die volgende omskrywing te vervang:

" 'openbare bestuur' 'n departement of afdeling van die Staatsdiens (met inbegrip van 'n provinsiale administrasie, die Suid-Afrikaanse Nasionale Weermag, die Suid-Afrikaanse **[Polisie]** Polisiediens en die **[Suid-Afrikaanse Gevangenisdiens]** Korrektiewe Dienste);";

(*g*) deur die omskrywing van "welsynsorganisasie" deur die volgende omskrywing te vervang:

" 'welsynsorganisasie' 'n vereniging sonder winsoogmerk wat ingevolge die Wet op Organisasies sonder Winsoogmerk, 1997 (Wet No. 71 van 1997), geregistreer is en vrygestel is van inkomstebelasting ingevolge artikel 30 van die Inkomstebelastingwet, indien dit enige welsynsaktiwiteit voortsit of van voorneme is om dit voort te sit wat deur die Minister vir doeleindes van hierdie Wet verklaar is van 'n filantropiese of welwillendheidsaard te wees, met inagneming van die behoeftes, belange en welvaart van die algemene publiek, met verwysing na die bedrywighede wat val onder die hoofde—

(*a*) welsyn en humanitêr;
(*b*) gesondheidsorg;
(*c*) grond en behuising;
(*d*) onderwys en ontwikkeling;
(*e*) bewaring, omgewing en dierewelsyn.";

(*h*) deur die woordomskrywing van "woning" deur die volgende woordomskrywing te vervang:

" 'woning', behalwe waar dit gebruik word in die verskaffing van kommersiële huisvesting, 'n gebou, perseel, struktuur of enige ander plek, of 'n deel daarvan, hoofsaaklik gebruik as 'n woon- of verblyfplek van 'n natuurlike persoon of wat bedoel is hoofsaaklik vir gebruik as 'n woon- of verblyfplek van 'n natuurlike persoon, **[tesame met enige]** met inbegrip van los en vaste toebehore daarby en daarmee geniet **[maar met uitsluiting van**

(2)*(a)* Subsection (1)*(a)*, *(c)* and *(d)* shall come into operation on 7 November 2001.

(b) Subsection (1)*(b)* and *(e)* shall come into operation on a date to be fixed by the President by proclamation in the *Gazette*.

Amendment of section 2 of Act 89 of 1991, as amended by section 22 of Act 136 of 1991, section 13 of Act 136 of 1992, section 10 of Act 20 of 1994, section 19 of Act 37 of 1996, section 24 of Act 27 of 1997, section 87 of Act 30 of 1998 and section 82 of Act 53 of 1999

149. Section 2 of the Value-Added Tax Act, 1991, is hereby amended by the substitution for paragraph (iii) of subsection (2) of the following paragraph:

"(iii) 'debt security' means—

(aa) **[any]** an interest in or right to be paid money; or

(bb) an obligation or liability to pay money

that is, or is to be, owing by any person, but does not include a cheque;".

Amendment of section 6 of Act 89 of 1991, as amended by section 20 of Act 37 of 1996, section 34 of Act 34 of 1997, section 88 of Act 30 of 1998 and section 66 of Act 19 of 2001

150. Section 6 of the Value-Added Tax Act, 1991 is hereby amended—

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

"Provided that—

(i) the Auditor-General in the performance of his duties in terms of section 3 of the Auditor-General Act, 1995 (Act 12 of 1995), shall have access to all records and documents in the possession or custody of the Commissioner for the purposes of this Act; and

(ii) the Commissioner shall disclose information in respect of any class of persons to the Director-General of the National Treasury, to the extent necessary for the purposes of tax policy design or revenue estimation.";

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

"(2A) The Commissioner may apply *ex parte* to a judge in chambers for an order allowing him or her to disclose to the National Commissioner of the South African Police Service, contemplated in section 6(1) of the South African Police Service Act, 1995 (Act No. 68 of 1995), or the National Director of Public Prosecutions, contemplated in section 5(2)*(a)* of the National Prosecuting Authority Act, 1998 (Act No. 32 of 1998), such information, which may reveal evidence—

(a) that an offence, other than an offence in terms of this Act or any other Act administered by the Commissioner or any other offence in respect of which the Commissioner is a complainant, has been or may be committed, or where such information may be relevant to the investigation or prosecution of such an offence, and such offence is a serious offence in respect of which a court may impose a sentence of imprisonment exceeding five years; or

(b) of an imminent and serious public safety or environmental risk,

and where the public interest in the disclosure of the information outweighs any potential harm to the taxpayer concerned should such information be disclosed: Provided that—

(i) any information, document or thing obtained in terms of section 57C(17)*(a)* may not be disclosed in terms of this subsection; and

(ii) any information, document or thing provided by a taxpayer in any return or document, or obtained from a taxpayer in terms of section 57A or 57B,

die verskaffing van huishoudelike goed en dienste in 'n onderneming wat kommersiële huisvesting verskaf];";

(2) *(a)* Subartikel 1*(b)*, *(c)* en *(h)* tree in werking op 7 November 2001.

(b) Subartikel 1*(a)* en *(d)* tree in werking op 'n datum deur die Staatspresident in die *Staatskoerant* bepaal.

Wysiging van artikel 2 van Wet 89 van 1991, soos gewysig deur artikel 22 van Wet 136 van 1991, artikel 13 van Wet 136 van 1992, artikel 10 van Wet 20 van 1994, artikel 19 van Wet 37 van 1996, artikel 24 van Wet 27 van 1997, artikel 87 van Wet 30 van 1998 en artikel 82 van Wet 53 van 1999.

149. Artikel 2 van die Wet op Belasting op Toegevoegde Waarde, 1991, word hierby gewysig deur paragraaf (v) van subartikel (2) deur die volgende paragraaf te vervang:

"(v) 'skuldobligasie'—

(aa) 'n belang in of aanspraak op geld; of

(bb) 'n verpligting of aanspreeklikheid om geld te betaal,

wat deur 'n persoon verskuldig is of verskuldig staan te wees, uitgesonderd 'n tjek;".

Wysiging van artikel 6 van Wet 89 van 1991, soos gewysig deur artikel 20 van Wet 37 van 1996, artikel 34 van Wet 34 van 1997, artikel 88 van Wet 30 van 1998 en artikel 66 van Wet 19 van 2001

150. Artikel 6 van die Wet op Belasting op Toegevoegde Waarde, 1991, word hierby gewysig—

(a) deur die voorbehoudsbepaling by subartikel (1) deur die volgende voorbehoudsbepaling te vervang:

"Met dien verstande dat—

(i) die Ouditeur-generaal, by die uitvoering van sy pligte ingevolge artikel 3 van die Wet op die Ouditeur-generaal 1995 (Wet 12 van 1995), toegang het tot alle aantekeninge en stukke in die besit of onder die bewaring van die Kommissaris vir doeleindes van hierdie Wet;

(ii) die Kommissaris enige inligting met betrekking tot enige klas van belastingpligtiges aan die Direkteur-generaal van die Nasionale Tesourie sal bekendmaak, tot die mate wat dit vir doeleindes van belastingbeleidsontwikkeling of inkomsteraming benodig word.";

(b) deur die volgende subartikels na subartikel (2) in te voeg:

"(2A) Die Kommissaris kan *ex parte* by 'n regter in kamers aansoek doen vir 'n bevel wat hom of haar magtig om aan die Nasionale Kommissaris van die Suid-Afrikaanse Polisiediens, in artikel 6(1) van die Wet op die Suid-Afrikaanse Polisiediens, 1995 (Wet No. 68 van 1995), bedoel of die Nasionale Direkteur van Openbare Vervolgings, in artikel 5(2)*(a)* van die Wet op die Nasionale Vervolgingsgesag, 1998 (Wet No. 32 van 1998), bedoel, daardie inligting bekend te maak, wat getuienis mag openbaar—

(a) dat 'n misdryf, behalwe 'n misdryf ingevolge hierdie Wet of enige ander Wet deur die Kommissaris geadministreer of enige ander misdryf ten opsige waarvan die Kommissaris 'n klaer is, gepleeg is of gaan word, of waar daardie inligting relevant mag wees by die ondersoek of vervolging van sodanige misdryf, en daardie misdryf 'n ernstige misdryf daarstel ten opsigte waarvan 'n hof gevangenisstraf van langer as vyf jaar kan oplê; of

(b) van 'n dreigende en ernstige openbare gevaar of omgewingsrisiko, en waar die openbare belang in die openbaarmaking van die inligting swaarder weeg as enige moontlike benadeling van die betrokke belastingpligtige indien die inligting bekend gemaak sou word: Met dien verstande dat—

(i) enige inligting, dokument of goed ingevolge artikel 57C(17)*(a)* verkry mag nie ingevolge hierdie subartikel geopenbaar word nie; en

(ii) enige inligting, dokument of goed deur 'n belastingpligtige in 'n opgawe of dokument verskaf, of vanaf 'n belastingpligtige

which is disclosed in terms of this subsection, shall not, unless a competent court otherwise directs, be admissible in any criminal proceedings against such taxpayer, to the extent that such information, document or thing constitutes an admission by such taxpayer of the commission of an offence contemplated in paragraph *(a)*.

(2B) For the purposes of subsection (2A), the Commissioner may delegate the powers vested in him or her by that subsection, to any other officer.

(2C) The National Police Commissioner or the National Director of Public Prosecutions or any person acting under the direction and control of such National Police Commissioner or National Director of Public Prosecutions, shall not disclose any information supplied under subsection (2A) to any other person or permit any other person to have access thereto, except in the exercise of his or her powers or the carrying out of his of her duties for purposes of any investigation of, or prosecution for, an offence contemplated in subsection (2A).

(2D) The Director-General or any person acting under the direction and control of such Director-General, as contemplated in subsection (2)*(e)*, shall not disclose any information supplied under to subsection (2)*(e)* to any other person or permit any other person to have access thereto.";

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

"(3) **[No]** A person **[shall]** may not in any manner publish or make known to any other person (not being an officer performing his or her duties under the control, direction or supervision of the Commissioner or the **[Postmaster-General]** Managing Director of the South African Post Office Limited) the contents or tenor of any instruction or communication given or made by the Commissioner or the **[Postmaster-General]** Managing Director of the South African Post Office Limited or any such officer in the performance of his or her or their duties in terms of this Act for or concerning the examination or investigation of the affairs of any person or class of persons or the fact that such instruction or communication has been given or made, or any information concerning the tax matters of a person or class of persons: Provided that the provisions of this subsection shall not be construed—

(a) as preventing any person or **[his]** a representative of such person who is or may be affected by any such examination, investigation or furnishing of information from publishing or making known information concerning **[his]** that person's own tax matters; or

(b) subject to the provisions of subsections (1) and (4), as in any way limiting the duties or powers of the Commissioner or the **[Postmaster-General]** Managing Director of the South African Post Office Limited or any such officer; or

(c) as preventing any person from publishing or making known anything which has been published or made known by that person or **[his]** a representative of that person as contemplated in paragraph *(a)* or by the Commissioner or the **[Postmaster-General]** Managing Director of the South African Post Office Limited or any such officer in the exercise of **[his]** the officer's duties or powers."; and

(d) by the insertion after subsection (3) of the following subsection:

"(3A) The provisions of this section shall not apply in respect of any information relating to any person, where that person has consented that such information may be published or made known to any other person.".

verkry ingevolge artikel 57A of 57B, wat ingevolge hierdie subartikel bekendgemaak is, tensy 'n bevoegde hof anders gelas, nie in enige kriminele vervolging teen daardie belastingpligtige toelaatbaar is nie, tot die mate wat daardie inligting, dokument of goed 'n erkenning deur daardie belastingpligtige daarstel van die pleeg van 'n misdryf in paragraaf *(a)* bedoel.

(2B) By die toepassing van subartikel (2A), kan die Kommissaris die magte in hom of haar gevestig deur daardie subartikel aan enige ander amptenaar delegeer.

(2C) Die Nasionale Kommissaris van die Polisiediens of die Nasionale Direkteur van Openbare Vervolgings of enige persoon wat onder die beheer en toesig van daardie Nasionale Kommissaris van die Polisiediens of die Nasionale Direkteur van Openbare Vervolgings optree, openbaar nie enige inligting kragtens subartikel (2A) voorsien aan enige persoon nie of laat nie toe dat enige persoon toegang daartoe verkry nie, behalwe in die uitoefening van sy of haar magte of uitvoering van sy of haar pligte vir doeleindes van enige ondersoek of vervolging van 'n misdryf in subartikel (2A) bedoel.

(2D) Die Direkteur-generaal of enige persoon wat optree onder beheer en toesig van daardie Direkteur-generaal openbaar nie enige inligting kragtens subartikel 2*(e)* voorsien aan enige ander persoon nie of laat enige ander persoon toe om toegang daartoe te hê nie bedoel.";

(c) deur subartikel (3) deur die volgende subartikel te vervang:

"(3) **[Niemand]** 'n Persoon mag op **[enige]** geen wyse aan enige ander persoon (wat nie 'n beampte is wat sy of haar pligte onder die beheer, leiding of toesig van die Kommissaris of die **[Posmeester-Generaal]** Besturende Direkteur van die Suid-Afrikaanse Posmaatskappy Beperk verrig nie) die inhoud of strekking van enige opdrag of mededeling wat die Kommissaris of die **[Posmeester-Generaal]** Besturende Direkteur van die Suid-Afrikaanse Poskantoor Beperk of so 'n beampte in die verrigting van sy of haar of hul pligte ingevolge hierdie Wet vir of betreffende die nagaan van die sake van enige persoon of enige klas persone gegee of gemaak het of die feit dat so 'n opdrag of mededeling gegee of gemaak is, of enige inligting betreffende die belastingaangeleenthede van 'n persoon of klas persone, publiseer of dit bekend maak nie: Met dien verstande dat die bepalings van hierdie subartikel nie vertolk word nie—

(a) dat dit 'n persoon of **[sy]** 'n verteenwoordiger van so 'n persoon wat deur so 'n nagaan of ondersoek of voorsiening van inligting geraak is of geraak mag word, belet om inligting betreffende **[sy]** die persoon se eie belastingaangeleenthede te publiseer of bekend te maak;

(b) behoudens die bepalings van subartikel (1) en (4), dat dit op enige wyse die pligte of bevoegdhede van die Kommissaris of die **[Posmeester-Generaal]** Besturende Direkteur van die Suid-Afrikaanse Poskantoor Beperk of enige sodanige beampte beperk; of

(c) dat dit iemand belet om enigiets te publiseer of bekend te maak wat deur so iemand of sy verteenwoordiger soos bedoel in paragraaf *(a)* of deur die Kommissaris of die **[Posmeester-Generaal]** Besturende Direkteur van die Suid-Afrikaanse Poskantoor Beperk of enige sodanige beampte by die uitoefening van **[sy]** die beampte se pligte of bevoegdhede gepubliseer of bekend gemaak is."; en

(d) deur die volgende subartikel na subartikel (3) in te voeg:

"(3A) Die bepalings van hierdie subartikel is nie van toepassing nie ten opsigte van inligting wat betrekking het op enige persoon, waar die betrokke persoon ingestem het dat die inligting gepubliseer of bekendgemaak mag word aan enige ander persoon.".

Amendment of section 8 of Act 89 of 1991, as amended by section 24 of Act 136 of 1991, section 15 of Act 136 of 1992, section 24 of Act 97 of 1993, section 11 of Act 20 of 1994, section 20 of Act 46 of 1996, section 25 of Act 27 of 1997, section 83 of Act 53 of 1999 and section 67 of Act 19 of 2001

151. Section 8 of the Value-Added Tax Act, 1991, is hereby amended by the addition of the following subsection:

"(21) For the purposes of this Act, compensation or any other payment, other than an amount contemplated in section 12*(a)*, received by a vendor in consequence of the expropriation of land, including an improvement thereto, is deemed to be received in respect of a supply of goods made in the course or furtherance of an enterprise unless that land or improvement thereto forms no part of the assets held or used by the vendor for the purposes of an enterprise.".

Amendment of section 10 of Act 89 of 1991, as amended by section 26 of Act 136 of 1991, section 16 of Act 136 of 1992, section 26 of Act 97 of 1993, section 12 of Act 20 of 1994, section 21 of Act 37 of 1996, section 22 of Act 46 of 1996, section 27 of Act 27 of 1997, section 84 of Act 53 of 1999 and section 68 of Act 19 of 2001

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

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

"(10) Where domestic goods and services are supplied at an all-inclusive charge in any enterprise supplying commercial accommodation for an unbroken period exceeding 28 days, the **[value of the supply]** consideration in money is **[shall be]** deemed to be 60 per cent of the **[value of the supply]** all-inclusive charge.";

(b) by the substitution for subsection (18) of the following subsection:

"(18) Where a right to receive goods or services to the extent of a monetary value stated on any token, voucher or stamp (other than a postage stamp as defined in section 1 of the **[Post Office Act, 1958]** Postal Services Act, 1998, and any token, voucher or stamp contemplated in subsection (19)) is granted for a consideration in money, the supply of such token, voucher or stamp **[shall be]** is disregarded for the purposes of this Act, except to the extent (if any) that such consideration exceeds such monetary value."; and

(c) by the substitution for subsection (19) of the following subsection:

"(19) Where any token, voucher or stamp (other than a postage stamp as defined in section 1 of the **[Post Office Act, 1958]** Postal Services Act, 1998) is issued for a consideration in money and the holder thereof is entitled on the surrender thereof to receive goods or services specified on such token, voucher or stamp or which by usage or arrangement entitles the holder to specified goods or services, without any further charge, the value of the supply of the goods or services made upon the surrender of such token, voucher or stamp **[shall be deemed to be]** is regarded as nil.".

(2) Subsection 1*(a)* shall come into operation on 7 November 2001.

Amendment of section 11 of Act 89 of 1991, as amended by section 27 of Act 136 of 1991, paragraph 6 of Government Notice No 2695 of 8 November 1991, section 17 of Act 136 of 1992, section 13 of Act 20 of 1994, section 28 of Act 27 of 1997 and section 85 of Act 53 of 1999.

153. Section 11 of the Value-Added Tax Act, 1991 is hereby amended—

(a) by the substitution for paragraph *(h*B*)* of subsection (1) of the following paragraph:

"*(h*B*)* the goods consist of anti-knock preparations referred to in Heading No. 3811.11 of paragraph **[1.4]** 8 of Schedule 1;";

(b) by the substitution for paragraph *(g)*(ii) of subsection (2) of the following paragraph:

"*(g)*(ii) goods temporarily admitted into the Republic from an export country which are exempt from tax on importation under Items 470 and 480 of paragraph **[1.12]** 8 of Schedule 1; or"; and

Wysiging van artikel 8 van Wet 89 van 1991, soos gewysig deur artikel 24 van Wet 136 van 1991, artikel 15 van Wet 136 van 1992, artikel 24 van Wet 97 van 1993, artikel 11 van Wet 20 van 1994, artikel 20 van Wet 46 van 1996, artikel 25 van Wet 27 van 1997, artikel 83 van Wet 53 van 1999 en artikel 67 van Wet 19 van 2001

151. Artikel 8 van die Wet op Belasting op Toegevoegde Waarde, 1991, word hierby gewysig deur die volgende subartikel by te voeg:

"(21) By die toepassing van hierdie Wet word kompensasie of enige ander betaling, uitgesonderd 'n bedrag bedoel in artikel 12*(a)*, deur 'n ondernemer ontvang ten gevolge van die onteiening van grond, met inbegrip van 'n verbetering daarop, geag ontvang te wees ten opsigte van 'n lewering van goed gemaak in die loop of ter bevordering van 'n onderneming, tensy daardie land of verbetering daarop nie deel vorm van die bates gehou of gebruik deur die ondernemer vir doeleindes van 'n onderneming nie.".

Wysiging van artikel 10 van Wet 89 van 1991, soos gewysig deur artikel 26 van Wet 136 van 1991, artikel 16 van Wet 136 van 1992, artikel 26 van Wet 97 van 1993, artikel 12 van Wet 20 van 1994, artikel 21 van Wet 37 van 1996, artikel 22 van Wet 46 van 1996, artikel 27 van Wet 27 van 1997, artikel 84 van Wet 53 van 1999 en artikel 68 van Wet 19 van 2001

152. (1) Artikel 10 van die Wet op Belasting op Toegevoegde Waarde, 1991, word hierby gewysig—

(a) deur subartikel (10) deur die volgende subartikel te vervang:

"(10) Waar huishoudelike goed en dienste gelewer word teen 'n alomvattende prys in 'n onderneming wat kommersiële huisvesting verskaf vir 'n ononderbroke tydperk van meer as 28 dae, word die **[waarde van die lewering]** vergoeding in geld geag 60 persent van die **[waarde van die lewering]** alomvattende prys te wees.";

(b) deur subartikel (18) deur die volgende subartikel te vervang:

"(18) Waar 'n reg om goed of dienste te ontvang tot 'n geldwaarde vermeld op 'n teken, bewys of seël (behalwe 'n posseël soos in artikel 1 van die **[Poswet, 1958]** Posdienstewet, 1998 omskryf en 'n teken, bewys of seël in subartikel (19) beoog) verleen word teen 'n vergoeding in geld, word die lewering van daardie teken, bewys of seël vir die doeleindes van hierdie Wet verontagsaam, behalwe vir sover bedoelde vergoeding bedoelde geldwaarde oorskry."; en

(c) deur subartikel (19) deur die volgende subartikel te vervang:

"(19) Waar 'n teken, bewys of seël (behalwe 'n posseël soos in artikel 1 van die **[Poswet, 1958]** Posdienstewet, 1998 omskryf) uitgegee word teen 'n vergoeding in geld en die besitter daarvan geregtig is, by die afgee daarvan, om goed of dienste te ontvang wat op daardie teken, bewys of seël aangedui word of wat volgens gebruik of reëling die besitter op aangeduide goed of dienste geregtig maak, sonder enige verdere betaling, word die waarde van die lewering van goed of dienste by die afgee van daardie teken, bewys of seël geag nul te wees.".

(2) Subartikel (1)*(a)* tree op 7 November 2001 in werking.

Wysiging van artikel 11 van Wet 89 van 1991, soos gewysig deur artikel 27 van Wet 136 van 1991, paragraaf 6 van Goewermentskennisgewing No 2695 van 8 November 1991, artikel 17 van Wet 136 van 1992, artikel 13 van Wet 20 van 1994, artikel 28 van Wet 27 van 1997 en artikel 85 van Wet 53 van 1999

153. Artikel 11 van die Wet op Belasting op Toegevoegde Waarde, 1991, word hierby gewysig—

(a) deur paragraaf *(h*B*)* van subartikel (1) deur die volgende paragraaf te vervang:

"*(h*B*)* die goed bestaan uit klopweerpreparate in **[subparagraaf 1.4.4 van]** Pos No. 3811.11 van paragraaf **[1.4]** 8 van Bylae 1 vermeld"; en

(b) deur paragraaf *(g)*(ii) van subartikel (2) deur die volgende paragraaf te vervang:

"*(g)* (ii) goed wat tydelik in die Republiek uit 'n uitvoerland toegelaat word wat kragtens Items 470 en 480 van paragraaf **[1.12]** 8 van Bylae 1 van belasting op invoer vrygestel is; of"; en

(c) by the addition to subsection (1) of the following paragraph:

"*(m)* a registered vendor supplies goods in terms of a sale or instalment credit agreement to a registered vendor in the customs secured area of an Industrial Development Zone and consigns or delivers the goods to that vendor in that area;".

(2) Subsection (1)*(c)* shall come into operation on a date fixed by the President by proclamation in the *Gazette*.

Amendment of section 12 of the Act 89 of 1991 as amended by section 28 of Act 136 of 1992, section 18 of Act 136 of 1992, section 28 of Act 97 of 1993, section 14 of Act 20 of 1994, section 22 of Act 37 of 1996, section 29 of Act 27 of 1997 and section 69 of Act 19 of 2001

154. (1) Section 12 of the Value-Added Tax Act, 1991, is hereby amended—

(a) by the substitution for paragraph *(c)* of the following paragraph:

"*(c)* the supply of **[any accommodation in]** a dwelling under an agreement for the letting and hiring **[of the accommodation]** thereof;";

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

"*(h)*(i) the supply of educational services—

(aa) provided by the State or a school registered under the South African Schools Act, 1996 (Act No 84 of 1996), or a further education and training institution established by the State or such institution registered under the Further Education and Training Act, 1998 (Act No. 98 of 1998);

(bb) by an institution that provides higher education on a full time, part-time or distance basis and which is established or deemed to be established as a public higher education institution under the Higher Education Act, 1997 (Act No. 101 of 1997), or is declared as a public higher education institution under that Act, or is registered or conditionally registered as a private higher education institution under that Act; or

"*(cc)* by an institution in the Republic which is exempt from income tax in terms of section 30 of the Income Tax Act and which has been formed for the—

(A) promotion of adult basic education and training including literacy and numeracy education, registered under the Adult Basic Education and Training Act, 2000 (Act No 52 of 2000), vocational training or technical education;

(B) promotion of the education and training of religious or social workers;

(C) training or education of persons with a permanent physical or mental impairment;

(D) training of unemployed persons with the purpose of enabling them to obtain employment; or

(E) provision of bridging courses to enable indigent persons to enter a higher education institution as envisaged in subparagraph *(bb)*; or

(ii) the supply by a school, university, technikon or college solely or mainly for the benefit of its learners or students of goods or services (including domestic goods and services) necessary for and subordinate and incidental to the supply of services referred to in subparagraph (i) of this paragraph, if such goods or services are supplied for a consideration in the form of school fees, tuition fees or board and lodging:

Provided that vocational or technical training provided by an employer to his employees and employees of an employer who is a connected person in relation to that employer does not constitute the supply of an educational service for the purposes of this paragraph;"; and

(c) by the addition of the following paragraph:

"(j) the service of caring for children by a creché or an after-school care centre.".

(c) deur die volgende paragraaf by subartikel (1) te voeg:

"*(m)* 'n geregistreerde ondernemer goed ingevolge 'n verkoop of paaiementkredietooreenkoms aan 'n geregistreerde ondernemer in die doeane beveiligdegebied van 'n Nywerheidsontwikkelingsone lewer en die goed aan die ondernemer in daardie gebied versend of aflewer.".

(2) Artikel 1*(c)* tree in werking op 'n datum deur die Staatspresident in die *Staatskoerant* bepaal.

Wysiging van artikel 12 van Wet 89 van 1991, soos gewysig deur artikel 28 van Wet 136 van 1991, artikel 18 van Wet 136 van 1992, artikel 28 van Wet 97 van 1993, artikel 14 van Wet 20 van 1994, artikel 22 van Wet 37 van 1996, artikel 29 van Wet 27 van 1997 en artikel 69 van Wet 19 van 2001

154. (1) Artikel 12 van die Wet op Belasting op Toegevoegde Waarde, 1991, word hierby gewysig—

(a) deur paragraaf *(c)* deur die volgende paragraaf te vervang:

"*(c)* die lewering van **[huisvesting in]** 'n woning ingevolge 'n ooreenkoms vir die huur en verhuring **[van die huisvesting]** daarvan;";

(b) deur paragraaf *(h)* deur die volgende paragraaf te vervang:

"*(h)* (i) die lewering van opvoedkundige dienste—

(aa) verskaf deur die Staat of 'n skool wat kragtens die Wet op Suid-Afrikaanse Skole, 1996 (Wet No. 84 van 1996) geregistreer is, of 'n verdere onderwys en opleidinginrigting ingestel deur die Staat, of sodanige inrigting wat geregistreer is onder die Wet op Verdere Onderwys en Opleiding, 1998 (Wet No. 98 van 1998);

(bb) deur 'n inrigting wat hoër onderwys verskaf op 'n voltydse, deeltyds of afstandgrondslag en wat ingestel is of geag word ingestel te wees as 'n openbare hoëronderwysinrigting ingevolge die Wet op Hoër Onderwys, 1997 (Wet No. 101 van 1997), of tot 'n openbare hoër onderwysinrigting verklaar is ingevolge genoemde Wet, of geregistreer of voorwaardelik geregistreer is as 'n privaat hoëronderwysinrigting ingevolge die genoemde Wet; of

(cc) deur 'n inrigting in die Republiek wat vrygestel is van inkomstebelasting ingevolge artikel 30 van die Inkomstebelastingwet en wat ingestel is vir die—

(A) bevordering van volwasse basiese onderrig en opleiding wat geletterdheids- en syferkennisonderrig insluit, geregistreer kragtens die Wet op Volwasse Basiese Onderrig- en Opleiding 2000 (Wet No. 52 van 2000), of beroepsopleiding of tegniese onderrig;

(B) bevordering van onderrig en opleiding van godsdienstige of maatskaplike werkers;

(C) onderrig of opleiding van persone met permanente liggaamlike of geestelik gestremdheid;

(D) opleiding van werklose persone met die oog daarop dat hulle werk kan bekom; of

(E) voorsiening van oorbruggingskursusse om behoeftige persone in staat te stel om by 'n hoëronderwysinrigting soos in subparagraaf *(bb)* bedoel, in te skryf; of

(ii) die lewering deur 'n skool, universiteit, technikon of kollege geheel en al of hoofsaaklik vir die voordeel van die leerlinge of studente van goed of dienste (met inbegrip van huishoudelike goed en dienste) nodig vir en ondergeskik aan en samehangend met die lewering van dienste beoog in subparagraaf (i) van hierdie paragraaf, waar die goed of dienste gelewer word teen 'n vergoeding in die vorm van skoolgelde, onderriggelde of losies of inwoning:

Met dien verstande dat beroeps- of tegniese onderrig gelewer deur 'n werkgewer aan sy werknemers en werknemers van 'n werkgewer wat 'n verbonde persoon met daardie werkgewer is, nie die lewering van 'n onderwysdiens vir die doeleindes van hierdie paragraaf is nie;"; en

(c) deur die volgende paragraaf by te voeg:

"*(j)* die diens van die versorging van kinders deur 'n crèche of naskool-versorgingsentrum.".

(2)*(a)* Subsection (1)*(a)* shall come into operation on 7 November 2001.
(b) Subsection (1)*(b)* and *(c)* shall come into operation on 1 March 2002.

Amendment of section 13 of Act 89 of 1991, as amended by section 29 of Act 136 of 1991, section 19 of Act 136 of 1992, section 15 of Act 20 of 1994, section 30 of Act 27 of 1997, section 86 of Act 53 of 1999 and section 70 of Act 19 of 2001

155. Section 13 of the Value-Added Tax Act, 1991 is hereby amended—

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

"(3) The importation of the goods set forth in Schedule 1 to this Act **[shall be]** is exempt from the tax imposed in terms of section 7(1)*(b)* **[Provided that the exemption in respect of the importation of goods contemplated in paragraphs 1.11 and 1.15 of Schedule 1 shall apply only to the extent of the value of the goods sent from the Republic on the day they left the Republic].** ";

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

"(4) Where tax is payable in respect of the importation of goods into the Republic but is not paid when the goods are imported, the importer must within 7 days of the importation of the goods—

(a) furnish the Commissioner with a declaration in the form the Commissioner may prescribe containing the information that may be required ; and

(b) calculate the tax payable on the relevant value at the rate of tax in force on the date of importation of the goods and pay such tax to the Commissioner."; and

(c) by the substitution for paragraph *(a)*(ii) of subsection (5) of the following paragraph:

"(ii) **[the postal company]** Managing Director of the South African Post Office Limited on behalf of the Commissioner,".

Amendment of section 16 of Act 89 of 1991, as amended by section 21 of Act 136 of 1992, section 30 of Act 97 of 1993, section 16 of Act No. 20 of 1994, section 23 of Act No. 37 of 1996, section 32 of Act 27 of 1997, section 91 of Act 30 of 1998, section 87 of Act 53 of 1999 and section 71 of Act 19 of 2001

156. Section 16 of the Value-Added Tax Act, 1991, is hereby amended—

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

"*(a)* a tax invoice or debit note or credit note in relation to that supply has been provided in accordance with section 20 or 21 and is held by the vendor making that deduction at the time that any return in respect of that supply is furnished: Provided that where the consideration for the supply exceeds R1 000, such invoice or debit or credit note must be in the legal or trading name of the vendor;";

(b) by the insertion of the expression "*(b)*" immediately after the expression "section 54(3)" in paragraph *(d)* and the addition of the word "or" at the end of the paragraph; and

(c) the addition to subsection (2) of the following paragraph:

"*(e)* a tax invoice or debit or credit note has been provided as contemplated in section 54(2), and a statement as contemplated in section 54(3)*(a)* is held by the vendor at the time a return in respect of the supply to the vendor is furnished: Provided that where the consideration for the supply exceeds R1 000, such invoice or debit or credit note must be in the legal or trading name of the agent:"; and

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

"*(l)* an amount as determined by the Commissioner in lieu of a refund in respect of the purchase and use of diesel paid by a vendor to a supplier of pastoral, agricultural or other farming products who is not a vendor, in terms of a scheme operated by the controlling body

(2) *(a)* Subartikel (1)*(a)* tree op 7 November 2001 in werking.
(b) Subartikel 1*(b)* en *(c)* tree op 1 Maart 2002 in werking.

Wysiging van artikel 13 van Wet 89 van 1991, soos gewysig deur artikel 29 van Wet 136 van 1991, artikel 19 van Wet 136 van 1992, artikel 15 van Wet 20 van 1994, artikel 30 van Wet 27 van 1997, artikel 86 van Wet 53 van 1999 en artikel 70 van Wet 19 van 2001.

155. Artikel 13 van die Wet op Belasting op Toegevoegde Waarde, 1991, word hierby gewysig—

(a) deur subartikel (3) deur die volgende subartikel te vervang:

"(3) Die invoer van goed wat in Bylae 1 by hierdie Wet uiteengesit word, is vrygestel van die belasting wat in artikel 7(1)*(b)* gehef word. **[met dien verstande dat die vrystelling ten opsigte van die uitvoer van goed beoog in paragrawe 1.11 en 1.15 van Bylae 1 slegs van toepassing is tot die bedrag van die waarde van die goed uit die Republiek gestuur op die dag waarop dit die Republiek verlaat het]**.";

(b) deur subartikel (4) in geheel te vervang deur die volgende subartikel:

"(4) Waar belasting betaalbaar is ten opsigte van die invoer van goed in die Republiek maar nie betaal is toe die goed ingevoer is nie, moet die invoerder binne sewe dae na die invoer van die goed—

(a) 'n verklaring in die vorm deur die Kommissaris voorgeskryf aan die Kommissaris verstrek wat die inligting bevat wat nodig mag wees; en

(b) die belasting wat op die betrokke waarde betaalbaar is, bereken teen die belastingkoers van krag op die datum van invoer van die goed, en die belasting aan die Kommissaris betaal."; en

(c) deur paragraaf *(a)*(ii) van subartikel (5) deur die volgende paragraaf te vervang:

"(ii) die **[posmaatskappy]** Besturende Direkteur van die Suid-Afrikaanse Poskantoor Beperk ten behoewe van die Kommissaris.".

Wysiging van artikel 16 van Wet 89 van 1991, soos gewysig deur artikel 21 van Wet 136 van 1992, artikel 30 van Wet 97 van 1993, artikel 16 van Wet 20 van 1994, artikel 23 van Wet 37 van 1996, artikel 32 van Wet 27 van 1997, artikel 91 van Wet 30 van 1998, artikel 87 van Wet 53 van 1999 en artikel 71 van Wet 19 van 2001

156. Artikel 16 van die Wet op Belasting op Toegevoegde Waarde, 1991, word hierby gewysig—

(a) deur paragraaf *(a)* van subartikel (2) deur die volgende paragraaf te vervang:

"*(a)* 'n belastingfaktuur of 'n debetnota of kreditnota met betrekking tot bedoelde lewering verstrek is ooreenkomstig artikel 20 of 21 en deur die ondernemer wat die aftrekking maak, gehou word wanneer 'n opgawe ten opsigte van bedoelde lewering verstrek word: Met dien verstande dat waar die vergoeding vir die lewering R1 000 oorskry, die faktuur of debet- of kreditnota in die regs- of handelsnaam van die ondernemer moet wees;";

(b) deur die uitdrukking "*(b)*" onmiddellik na die uitdrukking "artikel 54(3)" in paragraaf *(d)* in te voeg en die woord "of" aan die einde van die paragraaf by te voeg; en

(c) deur die volgende paragraaf by subartikel (2) te voeg:

"*(e)* 'n belastingfaktuur of debet- of kreditnota uitgereik is soos bedoel in artikel 54(2), en 'n staat soos bedoel in artikel 54(3)*(a)* deur die ondernemer gehou word wanneer 'n opgawe ten opsigte van die lewering aan die ondernemer verstrek word: Met dien verstande dat waar die vergoeding vir die lewering R1 000 oorskry, die faktuur of debiet- of kreditnota in die regs- of handelsnaam van die agent moet wees:"; en

(d) deur die volgende paragraaf by subartikel (3) te voeg:

"*(l)* 'n bedrag soos deur die Kommissaris bepaal in plaas van 'n terugbetaling ten opsigte van die aankoop en gebruik van diesel wat deur 'n ondernemer betaal is aan 'n leweraar van vee-, landbou- of ander boerderyprodukte wat nie 'n ondernemer is nie, ingevolge 'n skema

of an industry for the development of small-scale farmers approved by the Minister with the concurrence of the Minister of Agriculture and Land Affairs to compensate that supplier for an amount refundable in the production of such goods;".

Amendment of section 20 of Act 89 of 1991, as amended by section 25 of Act 136 of 1992, section 33 of Act 97 of 1993, section 35 of Act 27 of 1997, section 94 of Act 30 of 1998 and section 91 of Act 53 of 1999.

157. Section 20 of the Value-Added Tax Act, 1991 is hereby amended—

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

"(1A) Notwithstanding anything in subsection (1) a vendor must, whether requested to do so or not, issue a tax invoice as contemplated in subsection (4) or (5), where the consideration for a supply exceeds R1 000;";

(b) by the substitution in subsection (4) for the words preceding paragraph (*a*) of the following words:

"(4) Except as the Commissioner may otherwise allow, and subject to this section, a tax invoice (full tax invoice) shall be in the currency of the Republic and shall contain the following particulars:";

(c) by the substitution for paragraph *(e)* of subsection (4) of the following paragraph:

"*(e)***[a]** full and proper description of the goods or services supplied;";

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

"Notwithstanding anything in subsection (4), where the consideration in money for a supply does not exceed **[R500]** R1 000, a tax invoice (abridged tax invoice) shall be in the currency of the Republic and shall contain the particulars specified in that subsection or the following particulars:"; and

(e) by the substitution for the amount "R20" in subsection (6) of the amount "R50".

Amendment of section 28 of Act 89 of 1991, as amended by section 29 of Act 136 of 1992, section 79 of Act 30 of 2000 and section 44 of Act 17 of 2001

158. Section 28 of the Value-Added Tax Act, 1991, is hereby amended by the addition of the following paragraph to the proviso to subsection (1):

"(iii) a vendor registered with the Commissioner to submit returns and payments electronically, must furnish the return within the period ending on the last business day of the month during which that twenty-fifth day falls.".

Amendment of section 32 of Act 89 of 1991, as amended by section 38 of Act 27 of 1997, section 97 of Act 30 of 1998 and section 95 of Act 53 of 1999.

159. Section 32 of the Value-Added Tax Act, 1991, is hereby amended—

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

"(2A) The period prescribed in the rules issued in terms of section 107A of the Income Tax Act within which objections must be made may be extended by the Commissioner where the Commissioner is satisfied that reasonable grounds exist for the delay in lodging the objection."; and

(b) by the substitution for subsections (3), (4) and (5) of the following subsections:

"(3) A decision by the Commissioner in the exercise of his or her discretion under subsection (2A) is subject to objection and appeal.

(4) The Commissioner may on receipt of a notice of objection to an assessment alter the assessment or may disallow the objection and must

bedryf deur die beherende liggaam van 'n nywerheid vir die ontwikkeling van kleinskaalboere goedgekeur deur die Minister met die instemming van die Minister van Landbou en Grondsake, om die leweraar te vergoed vir 'n bedrag wat terugbetaalbaar is in die produksie van die betrokke goed.".

Wysiging van artikel 20 van Wet 89 van 1991, soos gewysig deur artikel 25 van Wet 136 van 1992, artikel 33 van Wet 97 van 1993, artikel 35 van Wet 27 van 1997, artikel 94 van Wet 30 van 1998 en artikel 91 van Wet 53 van 1999.

157. Artikel 20 van die Wet op Belasting op Toegevoegde Waarde, 1991, word hierby gewysig—

(a) deur die volgende subartikel na subartikel (1) in te voeg:

"*(1A)* Nieteenstaande enigiets in subartikel (1) moet 'n ondernemer, hetsy daartoe versoek al dan nie, 'n belastingfaktuur uitreik soos in subartikel (4) of (5) bedoel, waar die vergoeding vir 'n lewering R1 000 te bowe gaan,";

(b) deur in subartikel (4) die woorde wat paragraaf *(a)* voorafgaan deur die volgende woorde te vervang:

"Behalwe waar die Kommissaris anders toelaat, en behoudens hierdie artikel, moet 'n belastingfaktuur (volle belastingfaktuur) in die geldeenheid van die Republiek wees en moet dit die volgende besonderhede bevat:"

(c) deur paragraaf *(e)* van subartikel (4) deur die volgende paragraaf te vervang:

"*(e)* 'n volledige en behoorlike beskrywing van die goed of dienste gelewer;";

(d) deur in subartikel (5) die woorde wat paragraaf *(a)* voorafgaan deur die volgende woorde te vervang:

"Ondanks die bepalings van subartikel (4), waar 'n vergoeding in geld hoogstens **[R500]** R1 000 is, moet 'n belastingfaktuur (verkorte belastingfaktuur) in die geldeenheid van die Republiek wees en moet dit die besonderhede vermeld in daardie subartikel of die volgende besonderhede bevat:"

(e) deur in subartikel (6) die bedrag "R20" deur die bedrag "R50" te vervang.

Wysiging van artikel 28 van Wet 89 van 1991, soos gewysig deur artikel 29 van Wet 136 van 1992, artikel 79 van Wet 30 van 2000 en artikel 44 van Wet 19 van 2001

158. Artikel 28 van die Wet op Belasting op Toegevoegde Waarde, 1991, word hierby gewysig deur die volgende paragraaf by die voorbehoudsbepaling by subartikel (1) te voeg:

"(iii) 'n ondernemer wat by die Kommissaris geregistreer is om opgawes en betalings elektronies te doen, die opgawe moet verstrek binne die tydperk eindigende op die laaste besigheidsdag van die maand waarin genoemde vyf-en-twintigste dag val.".

Wysiging van artikel 32 van Wet 89 van 1991, soos gewysig deur artikel 38 van Wet 27 van 1997, artikel 97 van Wet 30 van 1998 en artikel 95 van Wet 53 van 1999

159. Artikel 32 van die Wet op Belasting op Toegevoegde Waarde, 1991, word hierby gewysig—

(a) deur die volgende subartikel na subartikel (2) in te voeg:

"(2A) Die periode voorgeskryf in die reëls uitgevaardig ingevolge artikel 107A van die Inkomstebelastingwet waarin besware gemaak moet word, kan deur die Kommissaris verleng word waar die Kommissaris tevrede is dat grondige redes bestaan vir die vertraging van indiening van die beswaar;

(b) deur subartikels (3), (4) en (5) deur die volgende subartikels te vervang:

(3) 'n Besluit deur die Kommissaris in die uitoefening van sy of haar diskresie onder subartikel (2A) is onderhewig aan beswaar en appèl.

(4) Die Kommissaris kan by ontvangs van 'n kennisgewing van beswaar teen 'n belastingaanslag die belastingaanslag wysig of die beswaar van die hand wys en moet 'n kennisgewing van die wysiging of

send the taxpayer notice of such alteration or disallowance, and record any alteration or disallowance made in the assessment.

(5) Where no objection is lodged against any decision or assessment by the Commissioner as contemplated in subsection (1), or where any objection has been disallowed or withdrawn or any decision has been altered or any assessment has been altered **[or reduced]**, as the case may be, such decision or altered decision or such assessment or altered **[or reduced]** assessment, as the case may be, is **[subject to the right of appeal hereinafter provided]** final and conclusive.".

Amendment of section 33 of Act 89 of 1991, as amended by section 35 of Act 136 of 1991.

160. Section 33 of the Value-Added Tax Act, 1991, is hereby amended—

(a) by the substitution for the heading of the following heading:

"Appeal to [special] tax court";

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

"(1) Subject to the provisions of section 33A, an appeal against any decision or assessment of the Commissioner, as notified in terms of section 32(4), shall lie to the **[special]** tax court **[for hearing income tax appeals]** constituted under the provisions of section 83 of the Income Tax Act within the period prescribed and the rules issued in terms of section 107A of the Income Tax Act for the area in which the appellant resides or carries on business or, if the appellant and the Commissioner agree for any other area.";

(c) by the insertion after subsection (1) of the following subsections:

"(1A) The period prescribed in the rules promulgated in terms of section 107A of the Income Tax Act within which appeal must be noted may be extended by the Commissioner where the Commissioner is satisfied that reasonable grounds exist for the delay in noting the appeal: Provided that any decision by the Commissioner in the exercise of his or her discretion under this is subject to objection and appeal.

(1B) A notice of appeal is of no force or effect whatsoever which is not delivered at the Commissioner's office or posted in sufficient time to reach the Commissioner within the period prescribed for noting appeal or within such extended period as contemplated in subsection (1A).";

(d) by the deletion of subsection (2);

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

"(3) At the hearing by the tax court of any appeal to that court, the tax court may inquire into and consider the matter before it and may confirm, cancel or vary any decision of the Commissioner under appeal or make any other decision which the Commissioner was empowered to make at the time the Commissioner made the decision under appeal or, in the case of any assessment order that assessment to be altered or confirm the assessment or, if it thinks fit, refer such matter back to the Commissioner for further investigation and reconsideration in the light of principles laid down by the court."; and

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

"(4) The provisions of sections 83(8), **[(9), (10),]** (11), (12), (14), **[(15), (16),]** (17), (18), **[and]** (19), **[and]** 84, **[and]** 85 and 107A of the Income Tax Act and any regulations under that Act relating to any appeal to the **[special]** tax court shall *mutatis mutandis* apply with reference to any appeal under this section which is or is to be heard by that court.".

afwysing aan die belastingbetaler stuur en enige wysiging of afwysing van die belastingaanslag aanteken;

(5) Waar geen beswaar ingedien word nie teen 'n beslissing of aanslag deur die Kommissaris soos in subartikel (1) beoog of waar 'n beswaar van die hand gewys of teruggetrek is, of 'n beslissing gewysig is of 'n aanslag gewysig **[of verminder]** is, na gelang van die geval, is die beslissing of gewysigde beslissing of die aanslag of gewysigde **[of verminderde]** aanslag, na gelang van die geval, **[behoudens die reg van appél hieronder bepaal]**, finaal en afdoende.".

Wysiging van artikel 33 van Wet 89 van 1991, soos gewysig deur artikel 35 van Wet 136 van 1991

160. Artikel 33 van die Wet op Belasting op Toegevoegde Waarde, 1991, word hierby gewysig—

(a) deur die vervanging van die opskrif deur die volgende:
"Appèlle na [spesiale hof] belastinghof";

(b) deur subartikel (1) deur die volgende subartikel te vervang:
"(1) Behoudens die bepalings van artikel 33A, kan 'n appèl teen enige beslissing of aanslag van die Kommissaris waarvan kennis gegee is ingevolge artikel 32(4), aangeteken word by die **[spesiale hof]** belastinghof **[vir die verhoor van inkomstebelastingappèlle]** wat ingestel is ingevolge die bepalings van artikel 83 van die Inkomstebelastingwet binne die periode voorgeskryf in die reëls uitgevaardig ingevolge artikel 107A van die Inkomstebelastingwet vir die gebied waarin die appellant woonagtig is of besigheid bedryf of, indien die appellant en die Kommissaris ooreenstem, vir enige ander gebied.";

(c) deur die volgende subartikels na subartikel (1) in te voeg:
"(1A) Die periode voorgeskryf in die reëls uitgevaardig ingevolge artikel 107A van die Inkomstebelastingwet waarbinne appèl aangeteken moet word kan deur die Kommissaris verleng word waar die Kommissaris tevrede is dat grondige redes bestaan vir die vertraging in die aanteken van appèl: Met dien verstande dat enige besluit deur die Kommissaris by die uitoefening van sy of haar diskresie hieronder aan beswaar en appèl onderworpe is.

(1B) Geen kennisgewing van appèl het enige uitwerking of krag hoegenaamd nie wat nie by die Kommissaris se kantoor afgelewer is binne die tydperk voorgeskryf vir die aantekening van appèl, of binne sodanige verlengde tydperk soos in subartikel (1A) bedoel, nie."

(d) deur subartikel (2) te skrap;

(e) deur subartikel (3) deur die volgende subartikel te vervang:
"(3) By die verhoor deur die belastinghof van 'n appèl na daardie hof kan die belastinghof die saak wat voor hom dien ondersoek en oorweeg en enige beslissing van die Kommissaris waarteen geappelleer word bevestig, kanselleer of wysig of enige ander beslissing maak waartoe die Kommissaris gemagtig was toe die Kommissaris die beslissing waarteen geappelleer word, gemaak het, of in die geval van 'n aanslag, beveel dat daardie aanslag gewysig word of die aanslag bekragtig, of na goeddunke die saak na die Kommissaris terugverwys vir verdere ondersoek en heroorweging in die lig van beginsels deur die hof neergelê."; en

(f) deur subartikel (4) deur die volgende subartikel te vervang:
(4) Die bepalings van artikels 83(8), **[(9), (10),]** (11), (12), (14), **[(15), (16),]** (17), (18) **[en]** (19), 84, **[en]** 85 en 107A van die Inkomstebelastingwet en enige regulasies kragtens daardie Wet uitgevaardig met betrekking tot enige appèl na die **[spesiale hof]** belastinghof **[bedoel in subartikel (1) van hierdie artikel],** is *mutatis mutandis* van toepassing met betrekking tot enige appèl kragtens hierdie artikel wat verhoor word of verhoor staan te word deur daardie hof.".

Amendment of section 33A of Act 89 of 1991, as amended by section 36 of Act 136 of 1991 and section 96 of Act 53 of 1999

161. Section 33A of the Value-Added Tax Act, 1991, is hereby amended by the substitution for the proviso to subsection (1) of the following proviso:

"Provided that where the Commissioner at any time prior to the hearing of such appeal, or the **[Chairman]** Chairperson of the Board at any time prior to or during the hearing of such appeal, is of the opinion that on the ground of the disputes or legal principles arising or that may arise out of such appeal, such appeal should rather be heard by the **[special]** tax court referred to in section 33, such appeal **[shall]** must be set down for hearing *de novo* before the **[special]** tax court.".

Amendment of section 34 of Act 89 of 1991

162. Section 34 of the Value-Added Tax Act, 1991 is hereby amended—

(a) by the substitution for the heading of the following heading:

"Appeals against decisions of [special] tax court"; and

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

"(1) The appellant in proceedings before the **[special]** tax court referred to in section 33 or the Commissioner may in the manner provided in section 86A of the Income Tax Act appeal against any decision of that court.".

Amendment of section 35 of Act 89 of 1991

163. Section 35 of the Value-Added Tax Act, 1991, is hereby amended—

(a) by the substitution for the heading of the following heading:

"Members of [special] tax court not disqualified from adjudicating"; and

(b) by the substitution for section 35 of the following section:

"**35.** A member of a **[special]** tax court referred to in section 33 **[shall]** will not solely on account of any liability imposed upon him under this Act be **[deemed to be]** regarded as interested in any matter upon which he may be called upon to adjudicate thereunder.".

Amendment of section 36 of Act 89 of 1991 as amended by section 2 of Act 61 of 1993, section 18 of Act 140 of 1993, section 22 of Act 20 of 1994, section 33 of Act 37 of 1996 and section 39 of Act 27 of 1997

164. Section 36 of the Value-Added Tax Act, 1991, is hereby amended by the substitution for subsection (1) of the following subsection:

"(1) The obligation to pay and the right to receive and recover any tax, additional tax, penalty or interest chargeable under this Act shall not, unless the Commissioner so directs, be suspended by any appeal or pending the decision of a court of law, but if any assessment is altered on appeal or in conformity with any such decision or a decision by the Commissioner to concede the appeal to the **[special]** tax board or the **[special]** tax court or such court of law, a due adjustment **[shall]** must be made, amounts paid in excess being refunded with interest at the prescribed rate (but subject to the provisions of sections 45(1) and 45A)) and calculated from the date proved to the satisfaction of the Commissioner to be the date on which such excess was received and amounts short-paid being recoverable with penalty and interest calculated as provided in section 39(1).".

Wysiging van artikel 33A van Wet 89 van 1991, soos gewysig deur artikel 36 van Wet 136 van 1991 en artikel 96 van Wet 53 van 1999

161. Artikel 33A van die Wet op Belasting op Toegevoegde Waarde, 1991, word hierby gewysig deur die voorbehoudsbepaling by subartikel (1) met die volgende voorbehoudsbepaling te vervang:

"Met dien verstande dat waar die Kommissaris te eniger tyd voor die verhoor van bedoelde appèl, of die Voorsitter van die Raad te eniger tyd voor of tydens die verhoor van bedoelde appèl, van mening is dat op grond van die geskilpunte of regsbeginsels wat uit bedoelde appèl voortspruit of mag voortspruit, bedoelde appèl eerder deur die **[spesiale hof]** belastinghof bedoel in artikel 33 verhoor moet word, bedoelde appèl *de novo* voor die **[spesiale hof]** belastinghof vir verhoor geplaas word.";

Wysiging van artikel 34 van Wet 89 van 1991

162. Artikel 34 van die Wet op Belasting op Toegevoegde Waarde, 1991, word hierby gewysig—

(a) deur die vervanging van die opskrif met die volgende opskrif:
"Appèlle teen beslissings van [spesiale hof] belastinghof";

(b) deur subartikel (1) deur die volgende subartikel te vervang:

"(1) Die appellant in verrigtinge voor die **[spesiale hof]** belastinghof bedoel in artikel 33 of die Kommissaris kan op die wyse in artikel 86A van die Inkomstebelastingwet voorgeskryf, appelleer teen 'n beslissing van daardie hof.".

Wysiging van artikel 35 van Wet 89 van 1991

163. Artikel 35 van die Wet op Belasting op Toegevoegde Waarde, 1991, word hierby gewysig—

(a) deur die opskrif met die volgende opskrif te vervang:
"Lede van die [spesiale hof] belastinghof nie onbevoeg om te beslis nie"; en

(b) deur artikel 35 deur die volgende artikel te vervang:

"**35.** 'n Lid van 'n in artikel 33 bedoelde **[spesiale hof]** belastinghof word nie, bloot omrede hy 'n aanspreeklikheid ingevolge hierdie Wet opgelê is, geag 'n belang te hê by 'n saak wat daarvolgens aan hom ter beslissing voorgelê word nie.".

Wysiging van artikel 36 van Wet 89 van 1991, soos gewysig deur artikel 2 van Wet 61 van 1993, artikel 18 van Wet 140 van 1993, artikel 22 van Wet 20 van 1994, artikel 33 van Wet 37 van 1996 en artikel 39 van Wet 27 van 1997

164. Artikel 36 van die Wet op Belasting op Toegevoegde Waarde, 1991, word hierby gewysig deur subartikel (1) deur die volgende subartikel te vervang:

"(1) Die verpligting om 'n belasting, addisionele belasting, boete of rente hefbaar ingevolge hierdie Wet te betaal, en die reg om dit te ontvang en te verhaal, word nie, tensy die Kommissaris aldus beveel, deur 'n appèl of hangende die beslissing van 'n geregshof opgeskort nie, maar indien 'n aanslag op appèl of ooreenkomstig so 'n beslissing of 'n beslissing van die Kommissaris om die appèl na die **[spesiale raad]** belastingraad of die **[spesiale hof]** belastinghof of bedoelde geregshof toe te gee, verander word, vind 'n behoorlike aansuiwering plaas waarby bedrae wat te veel betaal is, terugbetaal moet word met rente teen die voorgeskrewe koers (maar behoudens die bepalings van artikels 45(1) en 45(A) bereken vanaf die datum wat, **[na]** ten genoeë van die Kommissaris bewys word die datum **[is]** te wees waarop die bedrae wat te veel betaal is, ontvang is, en bedrae wat te min betaal is met boete en rente, bereken volgens voorskrif van artikel 39(1), verhaal kan word.".

Amendment of section 38 of Act 89 of 1991

165. Section 38 of the Value-Added Tax Act, 1991, is hereby amended by the substitution for subsection (1) of the following subsection:

"(1) Subject to the provisions of section 7(3)**[***(c)* **and]** (*d*) and section 13(5) and (6), the tax payable under this Act **[shall]** must be paid in full within the time allowed by section 13(4) or section 14 or section 28 or section 29, whichever is applicable.".

Amendment of section 39 of Act 89 of 1991, as amended by section 37 of Act 136 of 1991, section 30 of Act 136 of 1992, section 3 of Act 61 of 1993, section 23 of Act 20 of 1994, section 40 of Act 27 of 1997

166. Section 39 of the Value-Added Tax Act, 1991, is hereby amended by the deletion of subsection (5).

Amendment of section 41 of Act 89 of 1991, as amended by section 32 of Act 136 of 1992, section 36 of Act 97 of 1993, section 41 of Act 27 of 1997 and section 98 of Act 30 of 1998

167. Section 41 of the Value-Added Tax Act, 1991, is hereby amended by the substitution in paragraph (*d*) for the words preceding subparagraph (*aa*) of the following words:

"and in consequence thereof an amount of tax which should have been paid to the Commissioner **[the Commissioner for Customs and Excise]** or the **[Postmaster-General]** Managing Director of the South African Post Office Limited in terms of this Act has not been paid, that amount shall not be recoverable by the Commissioner after the expiration of a period of five years reckoned from the date on which that amount became payable in terms of this Act, if it is shown—".

Amendment of section 44 of Act 89 of 1991, as amended by section 37 of Act 97 of 1993, section 27 of Act 37 of 1996, section 42 of Act 27 of 1997 section 100 of Act 30 of 1998 and section 98 of Act 53 of 1999

168. Section 44(3) of the Value-Added Tax Act, 1991 is hereby amended—

(*a*) by the addition of the word "or" at the end of paragraph (*c*); and

(*b*) the addition of the following paragraph:

"(*d*) the vendor has furnished the Commissioner in writing with particulars of the enterprise's banking account or account with a similar institution to enable the Commissioner to transfer a refund or other amount due to the vendor to such account: Provided that should the vendor request that a refund or other amount be transferred to a bank account or an account with a similar institution other than that of the vendor, the vendor must notify the Commissioner in writing and must indemnify the Commissioner against any loss by the vendor or the State as a result of such instruction.".

Amendment of section 45 of Act 89 of 1991, as amended by section 33 of Act 136 of 1992, section 4 of Act 61 of 1993, section 19 of Act 140 of 1993, section 24 of Act 20 of 1994, section 33 of Act 37 of 1996, section 43 of Act 27 of 1997 and section 101 of Act 30 of 1998

169. Section 45 of the Value-Added Tax Act, 1991, is hereby amended—

(*a*) by the substitution for the words preceding proviso (i) of subsection (1) of the following words:

"(1) Where the Commissioner does not within the period of 21 business days after the date on which the vendor's return in respect of a tax period is received by **[a Receiver of Revenue]** an office of the South African Revenue Service **[who is under the control, direction or**

Wysiging van artikel 38 van Wet 89 van 1991

165. Artikel 38 van die Wet op Belasting op Toegevoegde Waarde, 1991, word hierby gewysig deur subartikel (1) deur die volgende subartikel te vervang:

"(1) Behoudens die bepalings van artikel 7(3)**[*(c)* en *(d)*]** en artikel 13(5) en (6), moet die belasting wat ingevolge hierdie Wet betaalbaar is, ten volle betaal word binne die tyd toegelaat deur artikel 13(4) of artikel 14 of artikel 28 of artikel 29, watter ookal van toepassing is.".

Wysiging van artikel 39 van Wet 89 van 1991, soos gewysig deur 37 van Wet 136 van 1991, artikel 30 van Wet 136 van 1992, artikel 3 van Wet 61 van 1993, artikel 23 van Wet 20 van 1994 en artikel 40 van Wet 27 van 1997

166. Artikel 39 van die Wet op Belasting op Toegevoegde Waarde, 1991, word hierby gewysig deur die skrapping van subartikel (5).

Wysiging van artikel 41 van Wet 89 van 1991, soos gewysig deur artikel 32 van Wet 136 van 1992, artikel 36 van Wet 97 van 1993, artikel 41 van Wet 27 van 1997 en artikel 98 van Wet 30 van 1998

167. Artikel 41 van die Wet op Belasting op Toegevoegde Waarde, 1991, word hierby gewysig deur in paragraaf *(d)* die woorde wat subparagraaf *(aa)* voorafgaan deur die volgende woorde te vervang:

"en as gevolg daarvan 'n bedrag belasting wat na behore ingevolge hierdie Wet aan die Kommissaris **[van Doeane en Aksyns]** of die **[Posmeester-generaal]** Besturende Direkteur van die Suid-Afrikaanse Poskantoor Beperk betaal moes gewees het, nie betaal is nie, is daardie bedrag nie deur die Kommissaris verhaalbaar nie na verstryking van 'n tydperk van vyf jaar gereken vanaf die datum waarop daardie bedrag ingevolge hierdie Wet betaalbaar geword het, indien daar bewys word—".

Wysiging van artikel 44 van Wet 89 van 1991, soos gewysig deur artikel 37 van Wet 97 van 1993, artikel 27 van Wet 37 van 1996, artikel 42 van Wet 27 van 1997, artikel 100 van Wet 30 van 1998 en artikel 98 van Wet 53 van 1999

168. Artikel 44(3) van die Wet op Belasting op Toegevoegde Waarde, 1991, word hierby gewysig—

(a) deur die woord "of" aan die einde van paragraaf *(c)* by te voeg; en

(b) deur die volgende paragraaf by te voeg:

"*(d)* die ondernemer die Kommissaris op skrif voorsien het van besonderhede van die onderneming se bankrekening of rekening by 'n soortgelyke instelling ten einde die Kommissaris in staat te stel om 'n terugbetaling of ander bedrag verskuldig aan die ondernemer na sodanige rekening oor te plaas: Met dien verstande dat, sou die ondernemer versoek dat 'n terugbetaling of ander bedrag na 'n bankrekening of rekening by 'n soortgelyke instelling behalwe dié van die ondernemer oorgeplaas moet word, die ondernemer die Kommissaris skriftelik in kennis moet stel en die Kommissaris skadeloos moet stel teen enige verlies deur die ondernemer of die Staat as gevolg van sodanige instruksie.".

Wysiging van artikel 45 van Wet 89 van 1991, soos gewysig deur artikel 33 van Wet 136 van 1992, artikel 4 van Wet 61 van 1993, artikel 19 van Wet 140 van 1993, artikel 24 van Wet 20 van 1994, artikel 33 van Wet 37 van 1996, artikel 43 van Wet 27 van 1997 en artikel 101 van Wet 30 van 1998

169. Artikel 45 van die Wet op Belasting op Toegevoegde Waarde, 1991, word hierby gewysig—

(a) deur die woorde wat voorbehoudsbepaling (i) van subartikel (1) voorafgaan deur die volgende woorde te vervang:

"(1) Waar die Kommissaris nie binne die tydperk van 21 besigheidsdae na die datum waarop 'n ondernemer se opgawe ten opsigte van 'n belastingtydperk deur **['n Ontvanger van Inkomste]** 'n kantoor van die Suid-Afrikaanse Inkomstediens **[wat onder die beheer, leiding**

supervision of the Commissioner] refund any amount refundable in terms of section 44(1), interest shall be paid on such amount at the prescribed rate (but subject to the provisions of section 45A) and calculated for the period commencing at the end of the first-mentioned period to the date of payment of the amount so refundable: Provided that—"; and

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

"(iA) where the vendor is in default in respect of any of his obligations under this Act or any other Act administered by the Commissioner, to furnish a return **[for any tax period]** as required by **[this]** such Act, the said period of 21 business days shall be reckoned from the date on which any such outstanding return or returns furnished by the vendor as required by **[this]** such Act are received by **[such a Receiver of Revenue]** an office of the South African Revenue Service;".

Amendment of section 47 of Act 89 of 1991

170. Section 47 of the Value-Added Tax Act, 1991, is hereby amended by the addition of the following proviso:

"Provided that a person so declared an agent who, is unable to comply with a requirement of the notice of appointment as agent, must advise the Commissioner in writing of the reasons for not complying with that notice within the period specified in the notice.".

Amendment of section 52 of Act 89 of 1991, as amended by section 39 of Act 136 of 1991 and section 45 of Act 27 of 1997.

171. Section 52 of the Value-Added Tax Act, 1991, is hereby amended—

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

"(1) Any pool managed by any **[board or]** body for the sale of agricultural, pastoral or other farming products, being a pool contemplated in section 17 of the Marketing of Agricultural Products Act, 1996 (Act No. 47 of 1996) may on written application by such **[board or]** body, for the purposes of this Act be deemed to be an enterprise or part of an enterprise carried on by that **[board or]** body separately from the members of such **[board or]** body: Provided that such **[board or]** body may—

(i) elect in writing that the pool be treated as a separate enterprise for the purposes of this Act and may apply for such pool to be registered separately in terms of section 50; and

(ii) notwithstanding the provisions of section 54(1) and (2), if it makes an election in writing, be treated for the purposes of this Act as a principal and not as an agent of its members."; and

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

"(2) Notwithstanding the provisions of section 54, any rental pool scheme operated and managed by any person for the benefit of some or all of—

(a) the owners of time-sharing interests in a property time-sharing scheme as defined in section 1 of the Property Timesharing Control Act, 1983 (Act 75 of 1983);

(b) the owners of sectional title interests in a sectional title scheme as defined in section 1 of the Sectional Title Act, 1986 (Act No. 95 of 1986); or

(c) the shareholders in a Shareblock Company as defined in section 1 of the Shareblocks Control Act, 1980 (Act No 59 of 1980),

[shall be deemed] is regarded for the purposes of this Act **[to be]** as a separate enterprise carried on by such person separately from the owners and shall be registered separately under section 50: Provided that—

(i) the owners or shareholders must elect in writing that the rental pool be treated separately; and

of toesig van die Kommissaris is], ontvang word, 'n terugbetaling maak nie van 'n bedrag wat ingevolge artikel 44(1) terugbetaalbaar is, word rente teen die voorgeskrewe koers (maar behoudens die bepalings van artikel 45A) op dié bedrag betaal ten opsigte van die tydperk wat begin onmiddellik na eersbedoelde tydperk tot die datum van betaling van die aldus terugbetaalbare bedrag: Met dien verstande dat—"; en

(b) deur paragraaf (iA) van subartikel (1) deur die volgende paragraaf te vervang:

"(iA) waar die ondernemer in gebreke is ten opsigte van enige van sy verpligtinge ingevolge hierdie Wet of enige ander Wet wat deur die Kommissaris geadministreer word om 'n opgawe **[vir 'n belastingtydperk]** volgens die voorskrifte van **[hierdie]** bedoelde Wet te verstrek, bedoelde tydperk van 21 besigheidsdae bereken word vanaf die datum waarop enige bedoelde opgawe of opgawes wat deur die ondernemer verstrek word volgens die voorskrifte van **[hierdie]** bedoelde Wet, deur **[so 'n Ontvanger van Inkomste]** 'n kantoor van die Suid-Afrikaanse Inkomstediens ontvang word;".

Wysiging van artikel 47 van Wet 89 van 1991

170. Artikel 47 van die Wet op Belasting op Toegevoegde Waarde, 1991 word hierby gewysig deur die volgende voorbehoudsbepaling by te voeg:

"Met dien verstande dat 'n persoon wat aldus tot agent verklaar is wat nie in staat is om aan 'n vereiste van die kennisgewing van aanstelling as agent te voldoen nie die Kommissaris binne die tydperk in die kennisgewing verstrek skriftelik moet verwittig van die redes waarom daar nie aan die kennisgewing voldoen word nie.".

Wysiging van artikel 52 van Wet 89 van 1991, soos gewysig deur artikel 39 van Wet 136 van 1991 en artikel 45 van Wet 27 van 1997

171. Artikel 52 van die Wet op Belasting op Toegevoegde Waarde, 1991, word hierby gewysig—

(a) deur subartikel (1) deur die volgende subartikel te vervang:

"(1) 'n Poel wat deur 'n **[raad of]** liggaam vir die verkoop van landbou-, veeboerdery- of ander plaasprodukte bestuur word en wat 'n poel beoog in artikel 17 van die Wet op Bemarking van Landbouprodukte, 1996 (Wet No. 47 van 1996) is, kan, op skriftelike aansoek deur daardie **[raad of]** liggaam, by toepassing van hierdie Wet geag word 'n onderneming of deel van 'n onderneming te wees wat deur daardie **[raad of]** liggaam afsonderlik van die lede van daardie **[raad of]** liggaam bedryf word: Met dien verstande dat—

(i) daardie liggaam skriftelik kan verkies dat die poel by die toepassing van hierdie Wet as 'n afsonderlike onderneming behandel word en aansoek kan doen dat daardie poel afsonderlik ingevolge artikel 50 geregistreer word; en

(ii) daardie liggaam, ondanks die bepalings van artikel 54(1) en (2), indien hy dit skriftelik kies, by die toepassing van hierdie Wet as prinsipaal en nie as 'n agent van sy lede nie behandel kan word."; en

(b) deur subartikel (2) deur die volgende subartikel te vervang:

"(2) Ondanks die bepalings van artikel 54 word enige huurpoelskema bedryf en bestuur deur enige persoon vir die voordeel van sommige of al—

(a) die eienaars van tydsdelingsbelange in 'n eiendomstydsdelingskema soos omskryf in artikel 1 van die Wet op die Beheer van Eiendomstydsdeling, 1983 (Wet No. 75 van 1983), of

(b) die eienaars van deeltitelbelange in 'n deeltitelskema soos omskryf in artikel 1 van die Wet op Deeltitels, 1986 (Wet No. 95 van 1986); of

(c) die aandeelhouers in 'n aandeleblokmaatskappy soos omskryf in artikel 1 van die Wet op die Beheer van Aandeleblokke, 1980 (Wet No. 59 van 1980)

vir die doeleindes van hierdie Wet **[geag]** beskou word as 'n afsonderlike onderneming **[te wees]** wat deur bedoelde persoon afsonderlik van die eienaars bedryf word en word dit ingevolge artikel 50 afsonderlik geregistreer: Met dien verstande dat—

(i) die eienaars of aandeelhouers skriftelik moet aandui dat die huurpoel afsonderlik hanteer moet word; en

(ii) such a rental pool scheme **[shall]** is, notwithstanding the provisions of section 54(1) and (2), **[be]** treated for the purposes of this Act as a principal and not as an agent of the owners or shareholders.".

Amendment of section 57 of Act 89 of 1991, as amended by section 24 of Act 46 of 1996 and section 47 of Act 27 of 1997.

172. Section 57 of the Value-Added Tax Act, 1991, is hereby amended by the substitution in subsection (1) for the definition of "authorisation letter" of the following definition:

" 'authorisation letter' means a written authorisation granted by the Commissioner, or any **[chief director, receiver of revenue or chief revenue inspector]** General Manager, South African Revenue Service under the control, direction or supervision of the Commissioner, to an officer to inspect, audit, examine or obtain, as contemplated in section 57B, any information, documents or things;".

Amendment of Section 58 of Act 89 of 1991, as amended by section 41 of Act 136 of 1991, section 39 of Act 97 of 1993, section 25 of Act 46 of 1996, section 102 of Act 53 of 1999 and section 72 of Act 19 of 2001

173. Section 58 of the Value-Added Tax Act, 1991, is hereby amended by the addition of the following paragraphs:

"*(n)* issues a document purporting to be a tax invoice, or bearing the words 'tax invoice', if that document does not meet the requirements of section 20(4), (5) or (7), as the case may be; or

(o) without lawful cause fails to comply with a notice of appointment as agent in terms of section 47 within the period specified in such notice.".

Amendment of Section 65 of Act 89 of 1991, as amended by section 37 of Act 136 of 1992

174. Section 65 of the Value-Added Tax Act, 1991, is hereby amended by the addition of the following paragraph to the proviso thereto:

"(iv) a vendor may not state or imply that any form of trade, cash or any other form of discount or refund is in lieu of the tax chargeable in terms of section 7(1)*(a)*.".

Amendment of Section 66 of Act 89 of 1991

175. The following section is hereby substituted for section 66 of the Value-Added Tax Act, 1991:

"Rounding-off [tables] of the tax

66. [Any] An amount of tax determinable under this Act **[shall]** must be calculated **[in accordance with such rounding-off tables as the Commissioner may from time to time prescribe]** by—

(a) where the tax fraction is expressed as—

(i) a proportion, rounding it off to the fifth decimal place namely 0,12280; or

(ii) a percentage, rounding it off to the third decimal place, namely 12,280; and

(b) rounding fractions of—

(i) less than half a cent, down to the last cent; or

(ii) half a cent or more, up to the next cent.".

Insertion of section 86A into Act 89 of 1991

176. The Value-Added Tax Act, 1991 is hereby amended by insertion of the following section:

(ii) bedoelde huurpoelskema, ondanks die bepalings van artikel 54(1) en (2) as prinsipaal en nie as 'n agent van die eienaars of aandeelhouers **[nie behandel]** beskou word nie."

Wysiging van artikel 57 van Wet 89 van 1991, soos gewysig deur artikel 24 van Wet 46 van 1996 en artikel 47 van Wet 27 van 1997

172. Artikel 57 van die Wet op Belasting op Toegevoegde Waarde, 1991, word hierby gewysig deur in subartikel (1) die omskrywing van "magtigingsbrief" deur die volgende omskrywing te vervang:

" 'magtigingsbrief' 'n geskrewe magtiging verleen deur die Kommissaris, of 'n **[hoofdirekteur, ontvanger van inkomste of hoofinkomste-inspekteur]** Algemene Bestuurder, Suid-Afrikaanse Inkomstediens onder die beheer, leiding of toesig van die Kommissaris, aan 'n beampte om enige inligting, dokumente of goed te inspekteer, ouditeer, ondersoek of verkry soos beoog in artikel 57B;".

Wysiging van artikel 58 van Wet 89 van 1991, soos gewysig deur artikel 41 van Wet 136 van 1991, artikel 39 van Wet 97 van 1993, artikel 25 van Wet 46 van 1996, artikel 102 van Wet 53 van 1999 en artikel 72 van Wet 19 van 2001

173. Artikel 58 van die Wet op Belasting op Toegevoegde Waarde, 1991 word hierby gewysig deur die volgende paragrawe by te voeg:

"*(n)* 'n dokument uitreik wat voorgee 'n belastingfaktuur te wees, of die woord 'belastingfaktuur' bevat, as die dokument nie aan die vereistes van artikel 20(4), (5) of (7), na gelang van die geval, voldoen nie; of

(o) sonder wettige gronde versuim om aan 'n kennisgewing van aanstelling as agent ingevolge artikel 47 te voldoen binne die tydperk deur sodanige kennisgewing neergelê.".

Wysiging van artikel 65 van Wet 89 van 1991, soos gewysig deur artikel 37 van Wet 136 van 1992

174. Artikel 65 van die Wet op Belasting op Toegevoegde Waarde, 1991 word hierby gewysig deur die volgende paragraaf by die voorbehoudsbepaling te voeg:

"(iv) 'n ondernemer nie mag verklaar of daarop sinspeel dat enige vorm van handels-, kontant of enige ander vorm van korting of 'n terugbetaling die plek inneem van die belasting hefbaar ingevolge artikel 7(1)*(a)* nie.".

Wysiging van artikel 66 van Wet 89 van 1991

175. Artikel 66 van die Wet op Belasting op Toegevoegde Waarde, 1991 word hiermee deur die volgende artikel vervang:

"66. [Afrondingstabelle] Afronding van belasting.

'n Bedrag aan belasting wat ingevolge hierdie Wet vasgestel kan word, word bereken **[ooreenkomstig die afrondingstabelle wat die Kommissaris van tyd tot tyd voorskryf]** deur—

(a) waar die belastingbreukdeel uitgedruk word—

(i) as 'n verhouding, dit tot die vyfde desimale plek naamlik 0,12280 af te rond; of

(ii) as 'n persentasie, dit tot die derde desimale plek naamlik 12,280 af te rond; en

(b) breukdele van—

(i) minder as 'n halwe sent, tot die laaste sent na onder af te rond; of

(ii) 'n halwe sent of meer, tot die volgende sent na bo af te rond.".

Invoeging van artikel 86A in Wet 89 van 1991

176. Die Wet op Belasting op Toegevoegde Waarde, 1991, word hierby gewysig deur die invoeging van die volgende artikel:

"Provisions relating to industrial development zones

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

Substitution of Schedule 1 to the Value-Added Tax Act, 1991, as amended by section 48 of Act 136 of 1991, paragraph 24 of Government Notice 2695 of 8 November 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 and section 53 of Act 27 of 1997

177. The following Schedule is hereby substituted for Schedule 1 to the Value-Added Tax Act, 1991:

"**Schedule 1**

(SECTION 13(3) OF THIS ACT)

Exemption: Certain Goods Imported into the Republic

Goods imported, as contemplated in section 13(1), including imports from or via Botswana, Lesotho, Namibia or Swaziland, into the Republic and in respect of which the exemption under the provisions of section 13(3) applies, are set forth below.

1. Any of the following items imported into the Republic in respect of which the Controller of Customs and Excise has, in terms of the proviso to section 38(1)*(a)* of the Customs and Excise Act and which shall apply also to imports from or via Botswana, Lesotho, Namibia or Swaziland, granted permission that entry need not be made:
   (i) Containers temporarily imported;
   (ii) human remains;
   (iii) goods which in the opinion of the Commissioner are of no commercial value;
   (iv) goods imported under an international carnet; and
   (v) goods of a value for customs duty purposes not exceeding R500.00, and on which no such duty is payable in terms of Schedule 1 to the said Act.

2. Goods, being printed books, newspapers, journals and periodicals, imported into the Republic by post of a value not exceeding R100 per parcel.

3. Goods, being gold coins imported as such and which the Reserve Bank has issued in the Republic in accordance with the provisions of section 14 of the South African Reserve Bank Act, 1989 (Act 90 of 1989), or which remain in circulation as contemplated in the proviso to subsection (1) of that section.

4. Goods temporarily exported from the Republic which are, at the time of export, registered as such with the Controller of Customs and Excise, in such form as the Commissioner may prescribe, and thereafter returned to the exporter, no change of ownership having taken place, and which can be identified on re-importation.

"Bepalings met betrekking tot Nywerheidsontwikkelingsones

86A. Waar 'n bepaling van die Doeane- en Aksynswet of die Wet op Vervaardigingsontwikkeling, 1993 (Wet No. 187 van 1993) of 'n regulasie daarkragtens uitgevaardig wat die administrasie van Nywerheidsontwikkelingsones beheer, met inbegrip van 'n aangeleentheid met betrekking tot die aanspreeklikheid vir of die heffing van belasting op toegevoegde waarde of 'n terugbetaling daarvan of 'n lewering van goed of dienste onderworpe aan belasting teen die nulkoers, nie in ooreenstemming of in stryd is met 'n bepaling van hierdie Wet, sal die bepaling van hierdie Wet geld."

Vervanging van Bylae 1 by die Wet op Belasting op Toegevoegde Waarde, 1991, soos gewysig deur artikel 48 van Wet 136 van 1991, paragraaf 24 van Goewermentskennisgewing 2695 van 8 November 1991, artikel 43 van Wet 136 van 1992, Goewermentskennisgewing 2244 van 31 Julie 1992, artikel 44 van Wet 97 van 1993, Goewermentskennisgewing 1955 van 7 Oktober 1993, artikel 32 van Wet 20 van 1994, artikel 32 van Wet 37 van 1996 en artikel 53 van Wet 27 van 1997

177. Bylae 1 by die Wet op Toegevoegde Waarde, 1991 word hierby deur die volgende Bylae vervang:

"Bylae 1

(ARTIKEL 13(3) VAN HIERDIE WET)

Vrystelling: Sekere Goed in die Republiek Ingevoer

Goed in die Republiek ingevoer, soos beoog in artikel 13(1), met inbegrip van invoere van of via Botswana, Lesotho, Namibië of Swaziland, en ten opsigte waarvan die vrystelling ingevolge die bepalings van artikel 13(3) van toepassing is, word hieronder uiteengesit.

1. Enige van die volgende items in die Republiek ingevoer ten opsigte waarvan die Kontroleur van Doeane en Aksyns ingevolge die voorbehoudsbepaling by artikel 38(1)*(a)* van die Doeane- en Aksynswet en wat ook van toepassing sal wees op invoere van of via Botswana, Lesotho, Namibië of Swaziland, toestemming verleen het dat klaring nie gemaak hoef te word nie:

(i) Houers tydelik ingevoer;

(ii) die stoflike oorskot van mense;

(iii) goed wat volgens die oordeel van die Kommissaris van geen kommersiële waarde is nie;

(iv) goed wat kragtens 'n internasionale carnet ingevoer is; en

(v) goed met 'n waarde vir doeaneregdoeleindes van hoogstens R500, en waarop geen sodanige reg ingevolge Bylae 1 by daardie Wet betaalbaar is nie.

2. Goed, wat gedrukte boeke, koerante, joernale en tydskrifte is, wat per pos in die Republiek ingevoer word, met 'n waarde wat nie R100 per pakket oorskry nie.

3. Goed, wat goudmuntstukke is, wat as sodanig ingevoer word en wat die Reserwebank in die Republiek uitgereik het ooreenkomstig die bepalings van artikel 14 van die Wet op die Suid-Afrikaanse Reserwebank, 1989 (Wet No. 90 van 1989), of wat in sirkulasie bly soos in die voorbehoudsbepaling by subartikel (1) van daardie artikel beoog.

4. Goed tydelik uitgevoer vanaf die Republiek en wat, ten tyde van die uitvoer, as sodanig geregistreer is by die Kontroleur van Doeane en Aksyns in die vorm wat die Kommissaris mag voorskryf en waarna dit na die uitvoerder teruggestuur word sonder dat verandering in eiendomsreg plaasgevind het, en by herinvoer uitgeken kan word.

5. Goods forwarded unsolicited and free of charge by a non-resident to—
   (a) a public authority or a local authority; or
   (b) any association not for gain which satisfies the Commissioner that such goods will be used by that association exclusively—
      (i) for educational, religious or welfare purposes; or
      (ii) in the furtherance of that association's objectives directed to the provision of educational, medical or welfare services or medical or scientific research; or
      (iii) for issue to or treatment of indigent persons, free of charge.

6. Goods which are shipped or conveyed to the Republic for transshipment or conveyance to any export country: Provided that the Controller of Customs and Excise ensures that the tax is secured, in part or in full, by the lodging of a provisional payment or bond except where the Commissioner, in exceptional circumstances, otherwise directs, or in the circumstances contemplated in rule 120A.01(c) of Chapter XIIA of the Rules under the Customs and Excise Act. If proof is not furnished to the Commissioner that the goods have been duly taken out of the Republic within a period of 30 days or within such further period as the Commissioner may in exceptional circumstances allow, this exemption shall be withdrawn and tax, penalty and interest must be paid.

7. Goods consisting of such foodstuffs as are set forth in Part B of Schedule 2 to this Act, but subject to such conditions as may be prescribed in the said Part.

8. In this paragraph, goods exempt from the levying of tax, are identified by heading numbers or rebate items and the descriptions as contemplated in Schedule 1 and Schedule 4 to the Customs and Excise Act, respectively. In some instances the exemptions below contain additional requirements or limitations or relaxations which differ from the Customs and Excise Act. Where any provisions of the Customs and Excise Act and the Schedules thereto provide otherwise, the provisions of this Schedule shall prevail.

   In order to qualify for an exemption—
   (i) the goods must fall under one of the descriptions below;
   (ii) any requirements or limitations contained in that particular description must be complied with; and
   (iii) the Notes below must be complied with,
   regardless of whether or not the goods are required to be entered, customs duty is payable or a rebate of customs duty is granted in terms of the Customs and Excise Act.

SUBHEADING	DESCRIPTION
	NOTES: 1. The following exemptions, identified by Subheadings, shall be subject to the Notes as contemplated in Schedule 1 to the Customs and Excise Act.
2709.00	Petroleum oils and oils obtained from bituminous minerals, crude
2710.00.12	Petrol

5. Goed wat ongevraagd en gratis deur 'n nie-inwoner versend word aan—

(a) 'n openbare bestuur of 'n plaaslike bestuur; of

(b) enige vereniging sonder winsoogmerk wat die Kommissaris oortuig het dat sodanige goed deur daardie vereniging gebruik gaan word uitsluitlik—

(i) vir opvoedkundige, godsdienstige of welsynsdoeleindes; of

(ii) by die uitvoering van daardie vereniging se doelstellings gerig op die lewering van opvoedkundige, mediese of welsynsdienste of mediese of wetenskaplike navorsing; of

(iii) vir gratis uitreiking aan of behandeling van behoeftiges.

6. Goed wat na die Republiek verskeep of vervoer word vir herverskeping of vervoer na enige uitvoerland: Met dien verstande dat die Kontroleur van Doeane en Aksyns verseker dat die belasting, gedeeltelik of ten volle, gedek is deur die betaling van 'n voorlopige betaling of die lewering van sekuriteit behalwe waar die Kommissaris in uitsonderlike omstandighede anders opdrag gee, of in die omstandighede soos beoog in reël 120A.01*(c)* van Hoofstuk XIIA van die Reëls kragtens die Doeane- en Aksynswet. Indien bewys nie aan die Kommissaris voorgelê kan word dat die goed inderdaad uit die Republiek verwyder is binne 'n tydperk van 30 dae nie, of binne sodanige verdere tydperk soos die Kommissaris in buitengewone omstandighede mag toelaat, sal hierdie vrystelling teruggetrek word en moet belasting, boete en rente betaal word.

7. Goed bestaande uit daardie voedingsmiddele soos uiteengesit in Deel B van Bylae 2 van hierdie Wet, maar behoudens daardie voorwaardes wat in genoemde Deel voorgeskryf word.

8. In hierdie paragraaf word die goed wat vrygestel is van die heffing van BTW geïdentifiseer deur posnommers of kortingitems en die beskrywings soos beoog in Bylae 1 en Bylae 4 by die Doeane- en Aksynswet. In sommige gevalle bevat die ondergemelde vrystellings addisionele vereistes of beperkings of verslappings wat verskil van die Doeane- en Aksynswet. Waar enige bepalings van die Doeane- en Aksynswet en die Bylaes daartoe anders bepaal, sal die bepalings van hierdie Bylae van krag wees.

Ten einde vir 'n vrystelling te kwalifiseer moet—

(i) die goed onder een van die ondergenoemde beskrywings resorteer;

(ii) enige vereistes of beperkings vervat in daardie spesifieke beskrywing nagegekom word; en

(iii) die ondergenoemde Opmerkings nagekom word,

ongeag of dit ingevolge die Doeane- en Aksynswet vereis word dat die goed geklaar moet word, doeanereg betaalbaar is of 'n korting op doeanereg toegestaan is, of nie.

SUBPOS	BESKRYWING
	OPMERKINGS:
	1. Die volgende vrystellings, soos geïdentifiseer deur subposte, sal onderhewig wees aan die Opmerkings soos beoog in Bylae 1 tot die Doeane- en Aksynswet.
2709.00	Petroleumolie en olies verkry van bitumineuse minerale, ru
2710.00.12	Petrol

2710.00.16	Distillate fuels
3811.11	Anti-knock preparations: based on lead compounds
4907.00.30	Travellers' cheques and bills of exchange, denominated in a foreign currency
4911.10.20	Publications and other advertising matter relating to fairs, exhibitions and tourism in foreign countries

ITEM NO.	**DESCRIPTION**
406.00	**GOODS FOR DIPLOMATIC AND OTHER FOREIGN REPRESENTATIVES:**

NOTES:

1. This exemption (excluding item 406.03) is conditional upon reciprocal treatment accorded by the government of the mission or person requiring this exemption.

2. This exemption (excluding item 406.03) is allowed only if the Director-General: Foreign Affairs has certified that a person requiring this exemption is listed in the register maintained by the Department of Foreign Affairs in accordance with the Diplomatic Immunities and Privileges Act, 1989.

3. For the purposes of item 406.03, "an organisation or institution" means an organisation which the Director-General: Foreign Affairs has certified as an organisation or institution with which the Republic has concluded a formal agreement, which provides, *inter alia*, for the granting of such exemption.

4. This exemption is not allowed to South African citizens or permanent residents of the Republic, unless the Government of the Republic has, by agreement with an organisation or institution contemplated in Note 3, undertaken to grant an exemption to a South African citizen who is a representative, member, agent or officer, but excluding a delegate, with or to such organisation or institution.

2710.00.16	Distillaatbrandstowwe
3811.11	Klopweerpreparate: gebaseer op loodverbindinge
4907.00.30	Reisigerstjeks en wissels, gedenomineer in 'n buitelandse geldeenheid
4911.10.20	Publikasies en ander reklamemateriaal wat op handelskoue, tentoonstellings en toerisme in die buiteland betrekking het

ITEM NO.	**BESKRYWING**
406.00	**GOED VIR DIPLOMATIEKE EN ANDER BUITELANDSE VERTEENWOORDIGERS:**

OPMERKINGS:

1. Hierdie vrystelling (uitgesonderd item 406.03) is voorwaardelik op die wederkerige behandeling deur die regering van die missie of persoon wat op hierdie vrystelling aanspraak maak.

2. Hierdie vrystelling (uitgesonderd item 406.03) sal slegs van toepassing wees indien die Direkteur-generaal: Buitelandse Sake gesertifiseer het dat 'n persoon wat op hierdie vrystelling aanspraak maak, by die Department van Buitelandse Sake gelys is volgens die register wat bygehou word in ooreenstemming met die Wet op Diplomatieke Immuniteite en Voorregte, 1989.

3. Vir doeleindes van item 406.03 beteken "'n organisasie of instelling" dié wat deur die Direkteur-generaal: Buitelandse Sake, gesertifiseer is as 'n organisasie of instelling met wie die Republiek 'n formele ooreenkoms aangegaan het wat, onder andere, voorsiening maak vir die toestaan van sodanige vrystelling.

4. Hierdie vrystelling is nie van toepassing op Suid-Afrikaanse burgers of permanente inwoners van die Republiek nie tensy die regering van die Republiek kragtens 'n ooreenkoms met 'n organisasie of instelling soos in Opmerking 3 beoog, onderneem het om 'n vrystelling toe te staan aan 'n Suid-Afrikaanse burger wat 'n verteenwoordiger, lid, agent of beampte, maar uitgesonderd 'n afgevaardigde, is van sodanige organisasie of instelling.

5. A motor vehicle exempted in terms of items 406.02, 406.03, 406.05 or 406.07, may not be offered, advertised, lent, hired, leased, pledged, given away, exchanged, sold or otherwise disposed of within a period of two years from the date of importation: Provided that any of the foregoing acts with this vehicle within a period of two years from the date of importation renders the importer of the vehicle liable to pay tax as determined by the Commissioner in consultation with the Director-General: Foreign Affairs.

6. For the purposes of items 406.02, 406.03 and 406.05 "members of their families" means the spouse, any unmarried child under the age of 21 years, any unmarried child between the ages of 21 and 23 years who is undertaking full-time studies at an educational institution, and any unmarried child who is due to physical or mental disability incapable of self-support, and any other relative specially approved by the Minister of Foreign Affairs, who forms part of the household of any such member or person, as the case may be, or who joins any such household during visits to the Republic.

7. For the purposes of Note 6 "spouse" means the partner of such person—

   (a) in a marriage or customary union recognised in terms of the laws of the Republic;

   (b) in a union recognised as a marriage in accordance with the tenets of any religion; or

   (c) in a same-sex or heterosexual union which the Commissioner is satisfied is intended to be permanent.

406.02/00.00/01.00 Goods for the official use by a diplomatic mission and goods for the personal or official use by diplomatic representatives accredited to a diplomatic mission and members of their families

5. 'n Motorvoertuig wat vrygestel is ingevolge items 406.02, 406.03, 406.05 of 406.07, mag nie binne 'n tydperk van 2 jaar na die datum van invoer aangebied, geadverteer, geleen, verhuur, verpag, verpand, weggegee, verruil, verkoop of andersins vervreem word nie: Met dien verstande dat enigeen van voormelde handelinge met die voertuig binne 'n tydperk van 2 jaar na die datum van invoer die invoerder van die voertuig aanspreeklik sal wees vir die betaling van belasting soos deur die Kommissaris bepaal in oorleg met die Direkteur-generaal: Buitelandse Sake.

6. Vir doeleindes van items 406.02, 406.03 en 406.05 beteken "lede van hulle gesinne" die gade, enige ongetroude kind onder die ouderdom van 21 jaar, enige ongetroude kind tussen die ouderdomme van 21 en 23 jaar wat voltyds studeer aan 'n opvoedkundige inrigting, en enige ongetroude kind wat, as gevolg van 'n fisiese of geestelike gebrek, nie in staat tot selfversorging is nie, en enige ander familielid uitdruklik deur die Minister van Buitelandse Sake goedgekeur, wat deel vorm van die huishouding van so 'n lid of persoon, wat ook al die geval is, of wat by sodanige huishouding aansluit tydens besoeke aan die Republiek.

7. Vir die doeleindes van Opmerking 6 beteken "gade" die maat van so 'n persoon—

   (a) in 'n huwelik of gewoonte-verbintenis wat ingevolge die Wette van die Republiek erken word;

   (b) in 'n verbintenis wat ingevolge die leerstellings van enige godsdiens as 'n huwelik erken word; of

   (c) in 'n dieselfde-geslag of heteroseksuele verbintenis wat die Kommissaris oortuig is bedoel is om permanent te wees.

406.02/00.00/01.00 Goed vir die amptelike gebruik deur 'n diplomatieke missie en goed vir die persoonlike of amptelike gebruik deur diplomatieke verteenwoordigers verbonde aan 'n diplomatieke missie en lede van hulle gesinne

406.03/00.00/01.00	Goods for the personal or official use by members, agents, officers, delegates or permanent representatives of, to, or with an organisation or institution, and members of their families
406.05/00.00/01.00	Goods for the official use by a consular mission and goods for the personal or official use by consular representatives accredited to a consular mission and foreign representatives (excluding those referred to in items 406.02 and 406.03), and members of their families
406.06/00.00/01.00	Stationery, uniforms, furniture and equipment for the official use by a consular post headed by an honorary consular officer
406.07/00.00/01.00	Goods (excluding food, drink and tobacco in any form) imported by administrative and technical representatives accredited to diplomatic or consular missions, on their first entry on appointment by their governments, for their personal or official use, provided the said goods are imported with the approval of the Director-General: Foreign Affairs
407.00	**GOODS IMPORTED BY IMMIGRANTS, TOURISTS, RETURNING RESIDENTS AND OTHER PASSENGERS, FOR THEIR PERSONAL USE:**

NOTES:

1. The exemption in terms of item 407.01/00.00/01.02 is allowed only if the goods can be identified as being the same goods which were taken from the Republic.

2. The exemption in terms of item 407.02 is not allowed for firearms acquired abroad or at any duty-free shop and imported by residents of the Republic returning after an absence of less than 6 months.

3. *(a)* The exemption in terms of item 407.02 is allowed only once per person during a period of 30 days and is not allowed for goods imported by persons returning after an absence of less than 48 hours.

406.03/00.00/01.00	Goed vir die persoonlike of amptelike gebruik deur lede, agente, beamptes, afgevaardigdes of permanente verteenwoordigers van, tot of met, 'n organisasie of instelling, en die lede van hulle gesinne
406.05/00.00/01.00	Goed vir die amptelike gebruik deur 'n konsulêre missie en goed vir die persoonlike of amptelike gebruik deur konsulêre verteenwoordigers verbonde aan 'n konsulêre missie en buitelandse verteenwoordigers (uitgesonderd dié wat in items 406.02 en 406.03 vermeld word), en lede van hulle gesinne
406.06/00.00/01.00	Skryfbehoeftes, uniforms, meubels en toerusting vir die amptelike gebruik deur 'n konsulêre pos waarvan 'n erekonsul aan die hoof staan
406.07/00.00/01.00	Goed (uitgesonderd voedsel, drank en tabak in enige vorm) ingevoer deur administratiewe en tegniese verteenwoordigers verbonde aan diplomatieke of konsulêre missies, by hulle eerste aankoms by aanstelling deur hulle regerings, vir hulle persoonlike of amptelike gebruik, op voorwaarde dat bedoelde goed ingevoer word met die goedkeuring van die Direkteur-generaal: Buitelandse Sake
407.00	**GOED INGEVOER DEUR IMMIGRANTE, TOERISTE, TERUGKERENDE INWONERS EN ANDER PASSASIERS, VIR HULLE PERSOONLIKE GEBRUIK:**

OPMERKINGS:

1. Die vrystelling ingevolge item 407.01/00.00/01.02 sal slegs toegestaan word op voorwaarde dat die goed geïdentifiseer kan word as dieselfde goed wat uit die Republiek geneem is.

2. Die vrystelling ingevolge item 407.02 is nie van toepassing op vuurwapens in die buiteland of by enige belastingvrye winkel verkry en ingevoer deur terugkerende inwoners van die Republiek na 'n afwesigheid van minder as 6 maande nie.

3. *(a)* Die vrystelling ingevolge item 407.02 mag slegs een keer per persoon gedurende 'n tydperk van 30 dae toegestaan word, en is nie van toepassing op goed ingevoer deur persone wat terugkeer van 'n afwesigheid van minder as 48 uur nie.

(b) The exemption in terms of item 407.02, with the exception of the exemption in respect of tobacco and alcoholic products, is allowed to children under 18 years of age, whether or not they are accompanied by their parents or guardians, provided the goods are for use by the children themselves.

4. A member of the crew of a ship or aircraft (including the master or pilot) is, subject to the conditions laid down by the Commissioner—

(a) only entitled to the exemptions in terms of items 407.02/22.00/01.00, 407.02/22.00/02.00, 407.02/24.02/01.00, 407.02/24.03/01.00 and 407.02/33.03/01.00 if such member returns to the Republic permanently; and

(b) only entitled to the exemption in terms of item 407.02/00.00/01.00 if the total value of the goods declared under this item does not exceed R200.

5. For the purposes of item 407.04/87.00/01.00 (i) the vehicle in question shall not be deemed to be personally owned and used personally by the importer unless such importer was, at all reasonable times, personally present at the place where the vehicle was used by him, and the importer shall be deemed to have used that vehicle from the date on which he took physical delivery of the vehicle until the date on which the vehicle was delivered by him to the shippers or other agent for the purpose of shipment or dispatch.

6. For the purposes of item 407.04, the importer shall, if he is absent for a continuous period of longer than 3 months from the place where the vehicle is usually used in the Republic, not be deemed to have imported the vehicle for his personal or own use, and tax as determined by the Commissioner is payable as from the date of such absence.

7. The exemption in terms of item

(b) Die vrystelling ingevolge item 407.02 mag, met die uitsondering van dié ten opsigte van tabak en alkoholiese produkte, opgeëis word deur kinders onder die ouderdom van 18 jaar, hetsy deur hul ouers of voogde vergesel al dan nie, op voorwaarde dat die goed vir die kinders self bedoel is.

4. 'n Lid van die bemanning van 'n skip of vliegtuig (met inbegrip van die gesagvoerder of loods) is, onderworpe aan die voorwaardes deur die Kommissaris neergelê—

(a) slegs geregtig op die vrystelling ingevolge items 407.02/22.00/01.00, 407.02/22.00/02.00, 407.02/24.02/01.00, 407.02/24.03/01.00 en 407.02/33.03/01.00, wanneer sodanige lid permanent na die Republiek terugkeer; en

(b) slegs geregtig op die vrystelling ingevolge item 407.02/00.00/01.00, op voorwaarde dat die totale waarde van die goed wat ingevoer word, nie R200 te bowe gaan nie.

5. Vir doeleindes van item 407.04/87.00/01.00*(i)* word die betrokke voertuig geag nie persoonlik deur die invoerder persoonlik besit en gebruik te gewees het nie tensy sodanige invoerder te alle redelike tye persoonlik aanwesig was op die plek waar die voertuig deur hom gebruik is, en word die invoerder geag daardie voertuig te gebruik het vanaf die datum waarop hy fisies aflewering van die voertuig geneem het tot op die datum waarop die voertuig deur hom aan die verskepers of ander agent vir doeleindes van verskeping of afsending afgelewer is.

6. Vir doeleindes van item 407.04, word die invoerder, indien hy vir 'n aaneenlopende tydperk van langer as 3 maande afwesig is van die plek waar die voertuig gewoonlik in die Republiek gebruik word, geag die voertuig nie vir sy persoonlike of eie gebruik in te gevoer het nie, en is die belasting soos deur die Kommissaris bepaal, betaalbaar met ingang van die datum van sodanige afwesigheid.

7. Die vrystelling ingevolge item 407.04 mag slegs een keer per gesin

	407.04 is allowed only once per family during a period of 3 years.

Personal effects and sporting and recreational equipment, new or used:

407.01/00.00/01.01	Imported either as accompanied or unaccompanied passengers' baggage by non-residents of the Republic for their own use during their stay in the Republic
407.01/00.00/01.02	Exported by residents of the Republic for their own use while abroad and subsequently re-imported either as accompanied or unaccompanied passengers' baggage by such residents

Goods imported as accompanied passengers' baggage either by non-residents or residents of the Republic and cleared at the place where such persons disembark or enter the Republic:

407.02/22.00/01.00	Wine not exceeding 2 litres per person
407.02/22.00/02.00	Spirituous and other alcoholic beverages, a total quantity not exceeding 1 litre per person
407.02/24.02/01.00	Cigarettes not exceeding 400 and cigars not exceeding 50 per person
407.02/24.03/01.00	250g Cigarette or pipe tobacco per person
407.02/33.03/01.00	Perfumery not exceeding 50 ml and toilet water not exceeding 250 ml per person
407.02/00.00/01.00	Other new or used goods, of a total value not exceeding R1 250 per person

Motor vehicles imported by natural persons on change of permanent residence:

407.04/87.00/01.00	One motor vehicle per family, imported by a natural person for his or her personal or own use, who permanently changes his or her residence to the Republic and—
	(i) provided the vehicle so imported is the personal property of the importer and has personally been owned and used by him or her for a period of not less than 12 months prior to his or her departure to the Republic; and
	(ii) provided the vehicle is not offered, advertised, lent, hired, leased, pledged, given away, exchanged, sold or otherwise disposed of within a period of 20 months from the date of importation

gedurende 'n tydperk van 3 jaar toegestaan word.

Persoonlike artikels en sport- en ontspanningstoerusting, nuut of gebruik:

407.01/00.00/01.01	Ingevoer óf as vergeselde óf as onvergeselde passasiersbagasie deur nie-inwoners van die Republiek vir hul eie gebruik tydens hul verblyf in die Republiek
407.01/00.00/01.02	Uitgevoer deur inwoners van die Republiek vir hul eie gebruik terwyl in die buiteland en daarna heringevoer óf as vergeselde óf as onvergeselde passasiers-bagasie deur sodanige inwoners

Goed wat as vergeselde passasiersbagasie deur óf nie-inwoners óf inwoners van die Republiek ingevoer word en by die plek waar sodanige persone aan wal gaan of die Republiek binnekom geklaar word:

407.02/22.00/01.00	Wyn, hoogstens 2 liter per persoon
407.02/22.00/02.00	Spiritus- en ander alkoholiese dranke, 'n totale hoeveelheid van hoogstens 1 liter per persoon
407.02/24.02/01.00	Hoogstens 400 sigarette en 50 sigare per persoon
407.02/24.03/01.00	Hoogstens 250g sigaret- of pyptabak per persoon
407.02/33.03/01.00	Hoogstens 50 ml parfuum en hoogstens 250 ml toiletwater per persoon
407.02/00.00/01.00	Ander nuwe of gebruikte goed met 'n totale waarde van hoogstens R1 250 per persoon

Motorvoertuie ingevoer deur natuurlike persone by verandering van permanente verblyf:

407.04/87.00/01.00	Een motorvoertuig per gesin, ingevoer deur 'n natuurlike persoon vir sy of haar persoonlike of eie gebruik wat permanent van verblyf verander na die Republiek en—
	(i) op voorwaarde dat die voertuig aldus ingevoer die persoonlike eiendom van die invoerder en persoonlik deur hom of haar besit en gebruik is vir 'n tydperk van minstens 12 maande voor sy of haar vertrek na die Republiek; en
	(ii) op voorwaarde dat die voertuig nie binne 'n tydperk van 20 maande na die datum van invoer aangebied, geadverteer, geleen, verhuur, verpag, verpand, weggeggee, verruil, verkoop of andersins vervreem word nie

Goods imported by natural persons for own use on change of residence to the Republic:

407.06/00.00/01.00	Household furniture, other household effects and other removable articles, including equipment necessary for the exercise of the calling, trade or profession of the person, other than industrial, commercial or agricultural plant and excluding motor vehicles, alcoholic beverages and tobacco goods, the bona fide property of a natural person (including a returning resident of the Republic after an absence of six months or more) and members of his or her family, imported for own use on change of his or her residence to the Republic: Provided that these goods are not disposed of within a period of six months from the date of importation
409.00	**RE-IMPORTED GOODS:**

NOTES:

1. The importer must, at the time of entry of the goods upon re-importation, attach a statement to the bill of entry or other document prescribed in terms of the Customs and Excise Act, which indicates—

   (a) the reasons for the goods being returned;

   (b) whether any change in the ownership of the goods took place after their exportation from the Republic;

   (c) whether the goods have been subjected to any process of manufacture or manipulation after their exportation from the Republic and if so, to what extent;

   (d) the number and date of the bill of entry or other document prescribed in terms of the Customs and Excise Act, relating to the export of the goods and the place where such entry was made or the document on which the goods were registered prior to export of such goods for the purposes of the subsequent re-importation thereof; and

   (e) the place where and the number and date of the bill of entry or other document prescribed in

Goed ingevoer deur 'n natuurlike persoon vir eie gebruik by verandering van sy of haar woonplek na die Republiek:

407.06/00.00/01.00 Huisraad, ander huishoudelike goed en ander verplaasbare artikels, met inbegrip van toerusting nodig vir die uitoefening van die roeping, ambag of beroep van die persoon, maar nie industriële, kommersiële of landbou toerusting nie en uitgesonderd motorvoertuie, alkoholiese dranke en tabakware, die *bona fide* eiendom van 'n natuurlike persoon (met inbegrip van 'n terugkerende inwoner van die Republiek) na 'n afwesigheid van minstens ses maande en lede van sy of haar gesin, ingevoer vir eie gebruik by verandering van sy of haar woonplek na die Republiek: Met dien verstande dat hierdie goed nie binne 'n tydperk van ses maande vanaf die datum van invoer daarvan vervreem word nie

409.00 **HERINGEVOERDE GOED:**

OPMERKINGS:

1. Die invoerder moet ten tyde van klaring van die goed by herinvoer 'n verklaring aan die betrokke klaringsbrief of ander dokument wat ingevolge die Doeane- en Aksynswet voorgeskryf is, heg, waarin aangetoon word—

   (a) die redes waarom die goed teruggestuur word;

   (b) of enige verandering in die eiendomsreg van die goed plaasgevind het sedert hul uitvoer uit die Republiek;

   (c) of die goed enige vervaardigings- of bewerkingsproses sedert hul uitvoer uit die Republiek ondergaan het en indien wel, in watter mate;

   (d) die nommer en datum van die klaringsbrief of ander dokument wat ingevolge die Doeane- en Aksynswet voorgeskryf is met betrekking tot die uitvoer van die goed en die plek waar bedoelde klaring gedoen is of die dokument waarop die goed voor uitvoer daarvan vir doeleindes van latere herinvoer daarvan geregistreer is; en

   (e) die plek waar en die nommer en datum van die klaringsbrief of ander dokument wat ingevolge

terms of the Customs and Excise Act, on which tax was paid on the goods upon their first importation into the Republic or other documents, if applicable, to prove that the goods were previously imported and tax due was paid thereon.

2. This exemption (excluding item 409.07) is allowed only if the goods can be identified as being the same goods which were exported.

3. For the purposes of item 409.07—

(a) "compensating products" means the products obtained abroad during or as a result of the manufacturing, processing or repair of the goods temporarily exported for outward processing; and

(b) "temporarily exported for outward processing" means the customs procedure whereby goods which may be disposed of without customs restriction, are temporarily exported for manufacturing, processing or repair abroad and then re-imported.

409.01/00.00/01.00 Imported goods (including packing containers) re-exported and thereafter returned to or brought back by the exporter or any other party, without having been subjected to any process of manufacture or manipulation, no change of ownership having taken place subsequent to their exportation from the Republic, and which can be identified on re-importation as being the same goods: Provided that this exemption shall not apply if—

i) the supply of those goods was charged with tax at the rate of zero per cent in terms of section 11; or

ii) a refund in terms of section 44(9) is granted

409.02/00.00/01.00 Goods (including packing containers) produced or manufactured in the Republic, exported therefrom and thereafter returned to or brought back by the exporter

die Doeane- en Aksynswet voorgeskryf is waarop belasting op die goed ten tyde van hul eerste invoer in die Republiek betaal is of ander dokumente, indien van toepassing, om te bewys dat die goed voorheen ingevoer en die verskuldigde belasting daarop betaal is.

2. Hierdie vrystelling (uitgesonderd item 409.07) sal slegs toegestaan word op voorwaarde dat die goed geïdentifiseer kan word as dieselfde goed wat uitgevoer is.

3. Vir doeleindes van item 409.07 beteken—

(a) "kompenserende produkte" die produkte in die buiteland verkry gedurende of as gevolg van die vervaardiging, prosessering of reparasie van die goed tydelik uitgevoer vir buitewaartse prosessering; en

(b) "tydelik uitgevoer vir buitewaartse prosessering" die doeaneprosedure waarvolgens goed wat sonder doeanebeperking van die hand gesit mag word, tydelik uitgevoer word vir vervaardiging, prosessering of reparasie in die buiteland en daarna heringevoer word.

409.01/00.00/01.00 Ingevoerde goed (met inbegrip van verpakkingshouers) wat uitgevoer word en daarna deur die uitvoerder of enige ander party teruggestuur of teruggebring word, sonder dat dit enige proses van vervaardiging of bewerking ondergaan het, geen verandering in die eiendomsreg daarvan plaasgevind het sedert die uitvoer daarvan uit die Republiek nie en wat by herinvoer geïdentifiseer kan word as dieselfde goed: Met dien verstande dat hierdie vrystelling nie van toepassing is nie indien—

i) die lewering van daardie goed aan belasting teen die koers van nul present ingevolge artikel 11 onderworpe was; of

ii) 'n terugbetaling ingevolge artikel 44(9) toegestaan word

409.02/00.00/01.00 Goed (met inbegrip van verpakkingshouers) wat in die Republiek geproduseer of vervaardig is, wat daarvandaan uitgevoer word en daarna deur die

or any other party, without having been subjected to any process of manufacture or manipulation (excluding excisable goods exported ex a customs and excise warehouse), no change of ownership having taken place subsequent to their exportation from the Republic, and which can be identified on re-importation as being the same goods: Provided that this exemption shall not apply if—

i) the supply of those goods was charged with tax at the rate of zero per cent in terms of section 11; or

ii) a refund in terms of section 44(9) is granted

409.04/00.00/01.00 Imported or locally manufactured articles sent abroad for processing or repair, provided they are exported under customs and excise supervision, retain their essential character, are returned to the exporter, no change of ownership having taken place subsequent to their exportation from the Republic, and can be identified on re-importation: Provided that this exemption shall apply only to the extent of the value of the goods sent from the Republic on the day such goods left the Republic

409.06/00.00/01.00 Excisable goods exported ex a customs and excise warehouse and thereafter returned to or brought back by the exporter, without having been subjected to any process of manufacture or manipulation and no change of ownership having taken place subsequent to their exportation from the Republic: Provided that this exemption shall not apply if—

i) the supply of those goods was charged with tax at the rate of zero per cent in terms of section 11; or

ii) a refund in terms of section 44(9) is granted

409.07/00.00/01.00 Compensating products obtained abroad from goods temporarily exported for outward processing, in terms of a specific permit issued by the Director-General: Trade and Industry on the recommenda-

uitvoerder of enige ander party teruggestuur of teruggebring word, sonder dat dit enige proses van vervaardiging of bewerking ondergaan het (uitgesonderd synsbare goed wat uit 'n doeane- en aksynspakhuis uitgevoer is), geen verandering in die eiendomsreg daarvan plaasgevind het sedert die uitvoer daarvan uit die Republiek nie en wat by herinvoer geïdentifiseer kan word as dieselfde goed: Met dien verstande dat hierdie vrystelling nie van toepassing is nie indien—

i) die lewering van daardie goed aan belasting teen die koers van nul present ingevolge artikel 11 onderworpe was; of

ii) 'n terugbetaling ingevolge artikel 44(9) toegestaan word

409.04/00.00/01.00 Ingevoerde of plaaslik vervaardigde artikels wat na die buiteland gestuur word vir verwerking of reparasie, op voorwaarde dat dit uitgevoer word onder doeane- en aksynstoesig, sy wesenlike aard behou, na die uitvoerder teruggestuur word sonder dat verandering in eiendomsreg plaasgevind het sedert die uitvoer daarvan uit die Republiek en by herinvoer uitgeken kan word: Met dien verstande dat hierdie vrystelling slegs van toepassing is tot die bedrag van die waarde van die goed uit die Republiek gestuur op die dag waarop dit die Republiek verlaat het

409.06/00.00/01.00 Synsbare goed wat uit 'n doeane- en aksynspakhuis uitgevoer word en daarna na die uitvoerder teruggestuur of deur hom teruggebring word, sonder dat dit enige proses van vervaardiging of bewerking ondergaan het en sonder dat daar 'n permanente verandering in eiendomsreg plaasgevind het sedert die uitvoer daarvan uit die Republiek: Met dien verstande dat hierdie vrystelling nie van toepassing is nie indien—

i) die lewering van daardie goed aan belasting teen die koers van nul present ingevolge artikel 11 onderworpe was; of

ii) 'n terugbetaling ingevolge artikel 44(9) toegestaan word

409.07/00.00/01.00 Kompenserende produkte wat in die buiteland bekom is van goed wat tydelik uitgevoer is vir buitewaartse prosessering, ingevolge 'n bepaalde permit uitgereik deur die Direkteur-generaal: Handel en Nywerheid op aanbeveling van die Raad

tion of the Board of Trade and Industry, provided—

(i) the specific permit is obtained before the temporary exportation of the goods;

(ii) if the ownership of the compensating products is transferred prior to entry for customs purposes, such goods are entered in the name of the person who exported the goods;

(iii) any additional conditions which may be stipulated in the said permit, are complied with; and

(iv) that this exemption shall apply only to the extent of the value of the goods sent from the Republic on the day such goods left the Republic

412.00 **GENERAL:**

NOTES:

1. For the purposes of items 412.03 and 412.04, the bill of entry or other document prescribed in terms of the Customs and Excise Act must be supported by an inventory of the goods and documentary proof that the goods qualify for exemption under these items.

2. For the purposes of items 412.26 and 412.27, such exemptions are subject to compliance with sections 39 and 40 of the Customs and Excise Act and which shall apply also to imports from or via Botswana, Lesotho, Namibia or Swaziland.

412.03/00.00/01.00 Used personal or household effects (excluding motor vehicles) bequeathed to persons residing in the Republic

412.04/00.00/01.00 Used property of a person normally resident in the Republic who died while temporarily outside the Republic

412.10/00.00/01.00 Bona fide unsolicited gifts of not more than two parcels per person per calendar year and of which the value per parcel does not exceed R400 (excluding goods contained in passengers' baggage, wine, spirits and manufactured tobacco (including cigarettes and cigars)) consigned by

op Handel en Nywerheid, op voorwaarde dat—

(i) die bepaalde permit verkry word voor die tydelike uitvoer van die goed;

(ii) indien die eienaarskap van die kompenserende produkte oorgedra word voordat klaring vir doeanedoeleindes gemaak word en sodanige goed in die naam van die persoon wat die goed uitgevoer het, geklaar word;

(iii) enige bykomende voorwaardes wat in die genoemde permit gestel is, nagekom word; en

(iv) hierdie vrystelling slegs van toepassing is tot die bedrag van die waarde van die goed uit die Republiek gestuur op die dag waarop dit die Republiek verlaat het

412.00 **ALGEMEEN:**

OPMERKINGS:

1. Vir die doeleindes van items 412.03 en 412.04 moet die klaringsbrief of ander dokument wat ingevolge die Doeane- en Aksynswet voorgeskryf is, gesteun word deur 'n inventaris van die goed en dokumentêre bewys dat die gemelde goed vir toelating onder die betrokke items kwalifiseer.

2. Vir die doeleindes van items 412.26 en 412.27 is sodanige vrystellings onderhewig aan die nakoming van artikels 39 en 40 van die Doeane- en Aksynswet, wat ook van toepassing sal wees op invoere van of via Botswana, Lesotho, Namibië of Swaziland.

412.03/00.00/01.00 Gebruikte persoonlike of huishoudelike artikels (uitgesonderd motorvoertuie) wat bemaak is aan persone wat in die Republiek woonagtig is

412.04/00.00/01.00 Gebruikte eiendom van 'n persoon wat gewoonlik in die Republiek woonagtig is en sterf terwyl tydelik buite die Republiek

412.10/00.00/01.00 Bona fide ongevraagde geskenke van nie meer as twee pakkies per persoon per kalenderjaar nie en waarvan die waarde per pakkie nie R400 oorskry nie (uitgesonderd goed ingesluit in passasiersbagasie, wyn, spiritus en bewerkte tabak (met inbegrip van sigarette en sigare)) versend deur natuurlike

natural persons abroad to natural persons in the Republic

412.11/00.00/01.00 Goods imported—

(a) for the relief of distress of persons in cases of famine or other national disaster;

(b) under any technical assistance agreement; or

(c) in terms of an obligation under any multilateral international agreement to which the Republic is a party:

Provided that—

(i) the importation of any goods under this item shall be subject to a certificate issued by the Director-General: Trade and Industry and to such other conditions as may be agreed upon by the Governments of the Republic, Botswana, Lesotho, Namibia and Swaziland; and

(ii) goods imported under this item shall not be sold or disposed of to any party who is not entitled to any privileges under the item, or be removed to the area of Botswana, Lesotho, Namibia or Swaziland without the permission of the Director-General: Trade and Industry

412.12/00.00/01.00 Goods imported for any purpose agreed upon between the Governments of the Republic, Botswana, Lesotho, Namibia and Swaziland: Provided that—

(i) the provisions of this item shall not apply in respect of any consignment or quantity or class of goods unless the prior approval of the Governments of Botswana, Lesotho, Namibia and Swaziland has been obtained for the application of such provisions in respect of every such consignment or quantity or class of goods;

(ii) the importation of any goods under this item shall be subject to a certificate issued by the Director-General: Trade and Industry and to such other conditions as may be agreed upon by

persone in die buiteland aan natuurlike persone in die Republiek

412.11/00.00/01.00 Goed ingevoer—

(a) vir die verligting van menslike nood in gevalle van hongersnood of ander nasionale rampe;

(b) ingevolge enige tegniese hulp-ooreenkoms;

(c) ingevolge 'n verpligting ooreenkomstig enige multilaterale internasionale ooreenkoms waarby die Republiek 'n party is:

Met dien verstande dat—

(i) die invoer van enige goed onder hierdie item onderworpe is aan 'n sertifikaat uitgereik deur die Direkteur-generaal: Handel en Nywerheid en aan sodanige ander voorwaardes waaromtrent deur die Regerings van die Republiek, Botswana, Lesotho, Namibië en Swaziland ooreengekom mag word; en

(ii) goed wat onder hierdie item ingevoer is nie verkoop of van die hand gesit mag word aan enige party wat nie op die voorregte kragtens die item geregtig is nie, of na die gebied van Botswana, Lesotho, Namibië of Swaziland verwyder mag word sonder die toestemming van die Direkteur-generaal: Handel en Nywerheid nie

412.12/00.00/01.00 Goed ingevoer vir enige doel soos ooreengekom deur die Regerings van die Republiek, Botswana, Lesotho, Namibië en Swaziland: Met dien verstande dat—

(i) die bepalings van hierdie item nie van toepasing is op enige besending of hoeveelheid of soort goed nie, tensy die voorafgaande goedkeuring van die Regerings van Botswana, Lesotho, Namibië en Swaziland vir die toepassing van sodanige bepalings ten opsigte van elke sodanige besending of hoeveelheid of soort goed verkry is;

(ii) die invoer van enige goed onder hierdie item onderworpe is aan 'n sertifikaat uitgereik deur die Direkteur-generaal: Handel en Nywerheid en aan sodanige ander voorwaardes waaromtrent deur die

	the Governments of the Republic, Botswana, Lesotho, Namibia and Swaziland; and
	(iii) goods imported under this item shall not be sold or disposed of to any party who is not entitled to any privileges under the item, or be removed to the area of Botswana, Lesotho, Namibia or Swaziland without the permission of the Commissioner
412.26/00.00/01.00	Goods (excluding goods for upgrading) supplied free of charge to replace defective goods which are covered by a warranty agreement: Provided that—
	(a) a copy of the bill of entry or other document prescribed in terms of the Customs and Excise Act and the documents submitted in support of such document under which the goods were originally entered for home consumption are submitted;
	(b) the goods are supplied by the original supplier; and
	(c) proof that the replaced goods have been exported to the original supplier is submitted or the replaced goods are disposed of as directed by the Commissioner
412.27/00.00/01.00	Goods for upgrading supplied free of charge to replace parts which are covered by a warranty agreement: Provided that—
	(a) a specific permit issued by the Director-General: Trade and Industry, on recommendation of the Board on Tariffs and Trade, is submitted;
	(b) a copy of the bill of entry or other document prescribed in terms of the Customs and Excise Act and the documents submitted in support of such document under which the goods were originally entered for home consumption are submitted;
	(c) the goods are supplied by the original supplier; and
	(d) proof that the replaced goods have been exported to the original supplier

Regerings van die Republiek, Botswana, Lesotho, Namibië en Swaziland ooreengekom mag word; en

(iii) goed onder hierdie item ingevoer nie verkoop of van die hand gesit mag word aan enige party wat nie op die voorregte kragtens die item geregtig is nie, of na die gebied van Botswana, Lesotho, Namibië of Swaziland sonder die toestemming van die Kommissaris verwyder mag word nie

412.26/00.00/01.00 Goed (uitgesonderd goed vir opgradering) wat gratis verskaf word om defekte goed te vervang wat onder 'n waarborg-ooreenkoms gedek is: Met dien verstande dat—

(a) 'n afskrif van die klaringsbrief of ander dokument wat ingevolge die Doeane- en Aksynswet voorgeskryf is en die dokumente voorgelê ter stawing van sodanige dokument waarmee die goed oorspronklik vir binnelandse gebruik geklaar is, voorgelê word;

(b) die goed verskaf word deur die oorspronklike verskaffer; en

(c) bewys ingedien word dat die vervangde goed na die oorspronklike verskaffer uitgevoer is of dat die vervangde goed oor beskik word soos deur die Kommissaris bepaal

412.27/00.00/01.00 Goed vir opgradering, wat gratis verskaf word om onderdele te vervang wat onder 'n waarborgooreenkoms gedek is: Met dien verstande dat—

(a) 'n bepaalde permit uitgereik deur die Direkteur-generaal: Handel en Nywerheid, op aanbeveling van die Raad op Tariewe en Handel, voorgelê word;

(b) 'n afskrif van die klaringsbrief of ander dokument wat ingevolge die Doeane- en Aksynswet voorgeskryf is en die dokumente voorgelê ter stawing van sodanige dokument waarmee die goed oorspronklik vir binnelandse gebruik geklaar is, voorgelê word;

(c) die goed verskaf word deur die oorspronklike verskaffer; en

(d) bewys ingedien word dat die vervangde goed na die oorspronklike

is submitted or the replaced goods are disposed of as directed by the Commissioner

470.00 **GOODS TEMPORARILY ADMITTED FOR PROCESSING, REPAIR, CLEANING, RECONDITIONING OR FOR THE MANUFACTURE OF GOODS EXCLUSIVELY FOR EXPORT:**

NOTES:

1. The Commissioner may require the importer to register a rate of yield of the processed or manufactured goods that will be obtained per unit of the imported goods.

2. *(a)* The exemption in terms of items 470.01 or 470.03 is allowed only for goods to be used for the processing or manufacture of goods for export and the processed or manufactured goods must be exported within 12 months from the date of importation thereof.

   (b) The exemption in terms of item 470.02 is allowed only for parts to be used and the goods submitted for repair, cleaning or reconditioning must be exported within 6 months from the date of importation thereof:

   Provided that—

   (i) the Commissioner may, in exceptional circumstances, extend the period specified in each case for a further period as deemed reasonable; and

   (ii) the application for such extension is made prior to the expiry of the period of 12 months or 6 months, as the case may be.

3. This exemption is allowed only if the Controller of Customs and Excise ensures that the tax is secured, in part or in full, by the lodging of a provisional payment or bond except where the Commissioner, in exceptional circumstances, otherwise directs, or in

verskaffer uitgevoer is of dat die vervangde goed oor beskik word soos deur die Kommissaris bepaal

470.00 **GOED TYDELIK TOEGELAAT VIR VERWERKING, HERSTEL, SKOONMAAK, OPKNAPPING OF VIR DIE VERVAARDIGING VAN GOED UITSLUITLIK VIR UITVOER:**

OPMERKINGS:

1. Die Kommissaris mag van die invoerder verlang om 'n skaal van opbrengs van die verwerkte of vervaardigde goed te registreer wat verkry sal word per eenheid van die ingevoerde goed.

2. *(a)* Die vrystellings ingevolge items 470.01 of 470.03 sal slegs toegestaan word vir goed wat gebruik word vir die verwerking of vervaardiging van goed vir uitvoer en die verwerkte of vervaardigde goed moet binne 12 maande vanaf die datum van invoer daarvan uitgevoer word.

   (b) Die vrystelling ingevolge item 470.02 sal slegs toegestaan word vir parte wat gebruik word en goed bestem vir herstel, skoonmaak, of opknapping moet binne ses maande vanaf die datum van invoer daarvan uitgevoer word:

   Met dien verstande dat—

   (i) die Kommissaris in buitengewone omstandighede die tydperk in elke geval genoem vir 'n verdere redelike tydperk mag uitstel; en

   (ii) die aansoek om sodanige uitstel gedoen word voordat die tydperk van 12 maande of 6 maande na gelang van die geval, verstryk.

3. Hierdie vrystelling sal slegs toegestaan word indien die Kontroleur van Doeane en Aksyns verseker dat die belasting, gedeeltelik of ten volle, gedek is deur die betaling van 'n voorlopige betaling of die lewering van sekuriteit behalwe waar die Kommissaris in uitsonderlike omstandighede anders opdrag gee, of

the circumstances contemplated in rule 120A.01(c) of Chapter XIIA of the Rules under the Customs and Excise Act.

4. If proof is not furnished to the Commissioner that the goods imported have been repaired, cleaned, reconditioned, processed or used in repairing, cleaning, reconditioning or processing and have been duly exported within the time period prescribed in note number 2, this exemption shall be withdrawn and tax, penalty and interest must be paid.

470.01/00.00/01.00	Goods for processing, provided such goods do not become the property of the importer
470.02/00.00/01.00	Goods (including parts therefore) for repair, cleaning or reconditioning
470.02/00.00/02.00	Parts for goods temporarily imported for repair, cleaning or reconditioning
470.03/00.00/01.00	Goods for use in the manufacturing, processing, finishing, equipping or packing of goods exclusively for export
480.00	**GOODS TEMPORARILY ADMITTED FOR SPECIFIC PURPOSES:**

NOTES:

1. The exemption in terms of item 480.35 is allowed—

   (a) only if the samples are imported by—

      (i) commercial travellers and other representatives of firms abroad who visit the Republic temporarily with their samples for the purpose of securing orders;

      (ii) persons or firms established in the Republic, including agents for foreign firms, to whom samples may be sent by firms abroad, free of charge, for the same purpose; or

      (iii) a prospective customer in the Republic to whom a sample is sent on free loans for inspection and demonstration with a view to ob-

in die omstandighede soos beoog in reël 120A.01*(c)* van Hoofstuk XIIA van die Reëls kragtens die Doeane- en Aksynswet.

4. Indien bewys nie aan die Kommissaris voorgelê kan word dat die goedere so ingevoer herstel, skoongemaak, opgeknap of verwerk en behoorlik uitgevoer is binne die tydperk voorgeskryf in opmerking nommer 2 nie, sal hierdie vrystelling teruggetrek word en moet belasting, boete en rente betaal word.

470.01/00.00/01.00 Goed vir verwerking, op voorwaarde dat die bedoelde goed nie die eiendom van die invoerder word nie

470.02/00.00/01.00 Goed vir herstel, skoonmaak of opknapping

470.02/00.00/02.00 Onderdele vir goed tydelik ingevoer vir herstel, skoonmaak of opknapping

470.03/00.00/01.00 Goed vir gebruik by die vervaardiging, verwerking, afwerking, uitrusting of verpakking van goed uitsluitlik vir uitvoer

480.00 **GOED TYDELIK TOEGELAAT VIR BEPAALDE DOELEINDES:**

OPMERKINGS:

1. Die vrystelling ingevolge item 480.35 word toegelaat—

   (a) slegs indien die monsters ingevoer word deur—

      (i) handelsreisigers en ander verteenwoordigers van firmas in die buiteland wat die Republiek tydelik besoek met hulle monsters vir die doel om bestellings te werf;

      (ii) persone of firmas wat in die Republiek gevestig is, met inbegrip van agente van buitelandse firmas, aan wie monsters vry van koste gestuur mag word deur firmas in die buiteland vir dieselfde doel;

      (iii) 'n voornemende klant in die Republiek aan wie 'n monster kosteloos uitgeleen word vir inspeksie en demonstrasie met die doel om 'n bestelling te

taining an order for similar goods;

(b) except with the permission of the Commissioner, for only one sample of each description, range, type or colour of an article; and

(c) only if each sample is an article representative of a particular category of goods already produced abroad, imported solely for the purpose of being shown or demonstrated free of charge to prospective customers.

2. Goods shall be re-exported—

(a) in the case of goods under an international carnet within the period of validity of such carnet; and

(b) in the case of other goods within 6 months from the date of importation, thereof or within such further period as the Commissioner may in exceptional circumstances, allow.

3. This exemption is allowed only if the Controller of Customs and Excise ensures that the tax is secured, in part or in full, by the lodging of a provisional payment or bond except where the Commissioner, in exceptional circumstances, otherwise directs, or in the circumstances contemplated in rule 120A.01*(c)* of Chapter XIIA of the Rules under the Customs and Excise Act.

4. If proof is not furnished to the Commissioner that the goods have been duly re-exported within the time period prescribed in note number 2, this exemption shall be withdrawn and tax, penalty and interest must be paid.

5. Notwithstanding this exemption, the importer shall remain liable for tax, until he proves that the goods have been duly re-exported or that the goods have been exported under the supervision of an officer, as defined in

verkry vir soortgelyke goed;

(b) behalwe met die toestemming van die Kommissaris, vir slegs een monster van elke beskrywing, reeks, tipe of kleur van 'n artikel; en

(c) slegs indien elke monster 'n verteenwoordigende artikel is van 'n spesifieke kategorie van goed wat reeds in die buiteland vervaardig word, of sal word, uitsluitlik ingevoer vir die doel om kosteloos vertoon of gedemonstreer te word aan voornemende klante.

2. Goed moet heruitgevoer word—

(a) in die geval van goed onder 'n internasionale carnet, binne die geldigheidsduur van daardie carnet; en

(b) in die geval van ander goed, binne 6 maande vanaf die datum van invoer daarvan of binne sodanige verdere tydperk soos die Kommissaris, in buitengewone omstandighede mag toelaat.

3. Hierdie vrystelling sal slegs toegestaan word indien die Kontroleur van Doeane en Aksyns verseker dat die belasting, gedeeltelik of ten volle, gedek is deur die betaling van 'n voorlopige betaling of die lewering van sekuriteit behalwe waar die Kommissaris in uitsonderlike omstandighede anders opdrag gee, of in die omstandighede soos beoog in reël 120A.01*(c)* van Hoofstuk XIIA van die Reëls kragtens die Doeane- en Aksynswet.

4. Indien bewys nie aan die Kommissaris voorgelê kan word dat die goedere so ingevoer behoorlik uitgevoer is binne die tydperk voorgeskryf in opmerking nommer 2 nie, sal hierdie vrystelling teruggetrek word en moet belasting, boete en rente betaal word.

5. Nieteenstaande hierdie vrystelling bly die invoerder aanspreeklik vir die belasting, totdat hy bewys lewer dat die goed heruitgevoer is of dat die goed uitgevoer is onder die toesig van

section 1 of the Customs and Excise Act.

6. On request by the importer, and subject to the permission of the Commissioner, temporary admission may be terminated by entering the goods for home consumption or by abandonment or destruction of the goods whereupon tax must be paid.

480.05/00.00/01.00	Containers and other articles used as packing, whether or not filled at the time of importation: Provided that such articles do not become the property of the importer
480.10/00.00/01.00	Goods for display or use at exhibitions, fairs, meetings or similar events
480.15/00.00/01.00	Professional equipment (including ancillary apparatus and accessories) owned by persons resident abroad, for use solely by or under the supervision of a visiting person
480.20/00.00/01.00	Welfare material for seafarers for cultural, educational, recreational, religious or sporting activities
480.25/00.00/01.00	Instruments, apparatus and machines (including accessories therefore), for use by institutions approved by the Commissioner, for scientific research or education
480.30/00.00/01.00	Models, instruments, apparatus, machines and other pedagogic material (including accessories therefore) imported by institutions approved by the Commissioner, for educational or vocational training
480.35/00.00/01.00	Commercial samples owned abroad and imported for the purpose of being shown or demonstrated in the Republic for the soliciting of orders for goods to be supplied from abroad
490.00	**GOODS TEMPORARILY ADMITTED SUBJECT TO EXPORTATION IN THE SAME STATE:**

NOTES:

1. Goods shall be re-exported—

   (a) in the case of goods under an international carnet within the

'n beampte soos in artikel 1 van die Doeane- en Aksynswet omskryf.

6. Op versoek van die invoerder, en onderhewig aan die toestemming van die Kommissaris, mag die tydelike toelating beëindig word deur die goed vir binnelandse gebruik te klaar, of deur afstanddoening of vernietiging van die goed waarná belasting betaal moet word.

480.05/00.00/01.00	Houers en ander artikels gebruik as verpakking, hetsy ten tyde van invoer gevul al dan nie: Met dien verstande dat sodanige artikels nie die eiendom van die invoerder word nie
480.10/00.00/01.00	Goed vir vertoon of gebruik by tentoonstellings, handelskoue, byeenkomste of dergelike geleenthede
480.15/00.00/01.00	Professionele toerusting (met inbegrip van aanvullende apparate en bykomstighede) besit deur persone wat in die buiteland woonagtig is, vir die gebruik uitsluitlik deur of onder die toesig van 'n besoekende persoon
480.20/00.00/01.00	Welsynsmateriaal vir seevaarders vir kulturele, opvoedkundige, ontspannings-, godsdienstige of sportaktiwiteite
480.25/00.00/01.00	Instrumente, apparate en masjiene (met inbegrip van bykomstighede daarvoor), vir gebruik deur inrigtings goedgekeur deur die Kommissaris, vir wetenskaplike navorsing of opvoeding
480.30/00.00/01.00	Modelle, instumente, apparate, masjiene en ander pedagogiese materiaal (met inbegrip van bykomstighede daarvoor) ingevoer deur inrigtings goedgekeur deur die Kommissaris, vir opvoedkundige of vakopleiding
480.35/00.00/01.00	Handelsmonsters met buitelandse eiendomsreg en ingevoer vir doeleindes van vertoning of demonstrasie in die Republiek vir die werf van bestellings vir goed uit die buiteland
490.00	**GOED TYDELIK TOEGELAAT ONDERHEWIG AAN UITVOER IN DIESELFDE TOESTAND:**

OPMERKINGS:

1. Goed moet heruitgevoer word—

   (a) in die geval van goed onder 'n internasionale carnet, binne die

period of validity of such carnet; and

(b) in the case of other goods within 6 months from the date of importation thereof or within such further period as the Commissioner may in exceptional circumstances, allow.

2. This exemption is allowed only if the Controller of Customs and Excise ensures that the tax is secured, in part or in full, by the lodging of a provisional payment or bond except where the Commissioner, in exceptional circumstances, otherwise directs, or in the circumstances contemplated in rule 120A.01*(c)* of Chapter XIIA of the Rules under the Customs and Excise Act.

3. If proof is not furnished to the Commissioner that the goods have been duly re-exported within the time period prescribed in note number 1, this exemption shall be withdrawn and tax, penalty and interest must be paid.

4. Notwithstanding this exemption, the importer shall remain liable for tax, until he proves that the goods have been duly re-exported or that the goods have been exported under the supervision of an officer, as defined in section 1 of the Customs and Excise Act.

5. On request by the importer, and subject to the permission of the Commissioner, temporary admission may be terminated by entering the goods for home consumption or by abandonment or destruction of the goods whereupon tax must be paid.

490.03/87.00/01.00 Private motor vehicles belonging to a person taking up temporary residence in the Republic

490.05/00.00/01.00 Postcards and other mail matter, imported in bulk, for despatch to addresses beyond the borders of the Republic

490.10/00.00/01.00 Models or prototypes, to be used in the manufacture of goods

geldigheidsduur van daardie carnet; en

(b) in die geval van ander goed, binne 6 maande vanaf die datum van klaring daarvan of binne sodanige verdere tydperk soos die Kommissaris, in buitengewone omstandighede mag toelaat.

2. Hierdie vrystelling sal slegs toegestaan word indien die Kontroleur van Doeane en Aksyns verseker dat die belasting, gedeeltelik of ten volle, gedek is deur die betaling van 'n voorlopige betaling of die lewering van sekuriteit behalwe waar die Kommissaris in uitsonderlike omstandighede anders opdrag gee, of in die omstandighede soos beoog in reël 120A.01*(c)* van Hoofstuk XIIA van die Reëls kragtens die Doeane- en Aksynswet.

3. Indien bewys nie aan die Kommissaris voorgelê kan word dat die goedere so ingevoer behoorlik uitgevoer is binne die tydperk voorgeskryf in opmerking nommer 1 nie, sal hierdie vrystelling teruggetrek word en moet belasting, boete en rente betaal word.

4. Nieteenstaande hierdie vrystelling bly die invoerder aanspreeklik vir die belasting, totdat hy bewys lewer dat die goed heruitgevoer is of dat die goed uitgevoer is onder die toesig van 'n beampte soos in artikel 1 van die Doeane- en Aksynswet omskryf.

5. Op versoek van die invoerder, en onderhewig aan die toestemming van die Kommissaris, mag die tydelike toelating beëindig word deur die goed vir binnelandse gebruik te klaar, of deur afstanddoening of vernietiging van die goed waarná belasting betaal moet word.

490.03/87.00/01.00	Privaat motorvoertuie wat behoort aan 'n persoon wat tydelik in die Republiek kom woon
490.05/00.00/01.00	Poskaarte en ander postukke, in grootmaat ingevoer, vir versending na adresse buite die grense van die Republiek
490.10/00.00/01.00	Modelle of prototipes, vir gebruik by die vervaardiging van goed

490.11/00.00/01.00	Matrices, blocks, plates, and similar articles, on loan or hire, for printing illustrations in periodicals or books
490.12/00.00/01.00	Matrices, blocks, plates, moulds and similar articles, on loan or hire, to be used in the manufacture of articles that are to be delivered abroad
490.13/00.00/01.00	Instruments, apparatus, machines and other articles to be tested by the South African Bureau of Standards
490.14/00.00/01.00	Instruments, apparatus and machines, made available free of charge to a customer by or through a supplier, pending delivery or repair of similar goods
490.15/00.00/01.00	Costumes, scenery and other theatrical equipment on loan or hire to dramatic societies or theatres
490.20/00.00/01.00	Animals and sport requisites (including yachts and motor vehicles) belonging to a person resident abroad, for use by that person or under his supervision in sports contests (including motor car rallies and transcontinental excursions)
490.25/00.00/01.00	Photographs and transparencies to be shown in a public exhibition or competition for photographers
490.30/00.00/01.00	Specialised equipment arriving by ship and used on shore at ports of call for the loading, unloading or handling of containers of tariff heading No. 86.09 of Schedule No. 1 to the Customs and Excise Act
490.35/00.00/01.00	Pallets, whether or not laden with cargo at importation
490.40/00.00/01.00	Machinery or plant (excluding tower cranes) for use on contract in civil engineering or construction work, in such quantities and at such times and subject to such conditions as the Commissioner, on the recommendation of the Board of Trade and Industry, may allow by specific permit
490.50/00.00/01.00	Motor vehicles, yachts and other removable articles (including spare parts and normal accessories and equipment therefore) imported by foreign tourists and travellers resident in foreign countries for their own use

490.11/00.00/01.00	Matryse, blokke, plate en dergelike artikels, geleen of gehuur, vir die druk van illustrasies in tydskrifte of boeke
490.12/00.00/01.00	Matryse, blokke, plate en dergelike artikels geleen of gehuur, vir gebruik by die vervaardiging van artikels wat in die buiteland afgelewer moet word
490.13/00.00/01.00	Instrumente, apparate, masjiene en ander artikels wat deur die Suid-Afrikaanse Buro vir Standaarde getoets moet word
490.14/00.00/01.00	Instrumente, apparate en masjiene, kosteloos beskikbaar gestel aan 'n klant deur of deur middel van 'n leweransier, hangende aflewering of herstel van dergelike goed
490.15/00.00/01.00	Kostuums, décor en ander toneel-toerusting wat geleen of verhuur is aan toneelverenigings of teaters
490.20/00.00/01.00	Diere en sportbenodigdhede (met inbegrip van jagte en motorvoertuie) wat behoort aan 'n persoon in die buiteland woonagtig, vir gebruik deur daardie persoon of onder sy toesig in sportwedstryde (met inbegrip van motor tydrenne en transkontinentale ekskursies)
490.25/00.00/01.00	Foto's en diapositiewe vir vertoon op 'n openbare tentoonstelling of kompetisie vir fotograwe
490.30/00.00/01.00	Gespesialiseerde toerusting wat per skip arriveer en by aanloophawens aan wal gebruik word vir die laai, aflaai of hantering van houers van tariefpos No. 86.09 van Bylae 1 tot die Doeane- en Aksynswet
490.35/00.00/01.00	Palette, hetsy by invoer gelaai met vrag al dan nie
490.40/00.00/01.00	Masjinerie of installasies (uitgesonderd toringhyskrane) vir gebruik op kontrak by siviele ingenieurs- of konstruksiewerk in die hoeveelhede en op die tye en onderworpe aan die voorwaardes wat die Kommissaris, op aanbeveling van die Raad van Handel en Nywerheid, by bepaalde permit toelaat
490.50/00.00/01.00	Motorvoertuie, jagte en ander verplaasbare artikels (insluitende onderdele en die normale bykomstighede en toerusting daarvoor) wat vir eie gebruik deur buitelandse toeriste en reisigers wat in die buiteland woonagtig is, ingevoer word

490.60/00.00/01.00	Commercial road vehicles used in the conveyance of imported merchandise
490.90/00.00/01.00	Machinery or plant (excluding tower cranes) for use on contract other than for purposes of civil engineering or construction work, in such quantities and at such times and subject to such conditions as the Commissioner, on the recommendation of the Board of Trade and Industry, may allow by specific permit
490.90/00.00/02.00	Goods not specified in items 470.00, 480.00 or 490.00, temporarily admitted for purposes approved by the Commissioner.".

Amendment of section 60 of Act 113 of 1993, as amended by section 20 of Act 140 of 1993, section 4 of Act 168 of 1993, section 34 of Act 20 of 1994, section 6 of Act 37 of 1995, section 34 of Act 37 of 1995, section 55 of Act 27 of 1997, section 105 of Act 30 of 1998, section 107 of Act 53 of 1999 and section 84 of Act 30 of 2000

178. Section 60 of the Income Tax Act, 1993, is hereby amended by the substitution for subsection (2) of the following subsection:

"(2) The Commissioner may, subject to such conditions as he may deem necessary, approve any proposed transaction as an unbundling transaction for the purposes of this section, if a written application containing such details of the transaction as the Commissioner may require is submitted to him before 1 December 2001 by an unbundling company before the commencement of the implementation of such transaction.".

Amendment of section 39 of Act 20 of 1994, as amended by section 7 of Act 37 of 1995, section 35 of Act 37 of 1996, section 56 of Act 27 of 1997 and section 108 of Act 53 of 1999

179. (1) Section 39 of the Taxation Laws Amendment Act, 1994, is hereby amended—

(a) by the insertion after the definition of "marketable security" of the following definition:

" 'marketable securities tax' means the marketable securities tax leviable under the Marketable Securities Tax Act, 1948 (Act No. 32 of 1948);";

(b) by the addition to subsection (1) of the following definition:

" 'uncertificated securities tax' means the uncertificated securities tax leviable under the Uncertificated Securities Tax Act, 1998 (Act No. 32 of 1998);";

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

"*(c)* there shall be exempt from—

(i) duty the consequent registration of transfer to such transferee company of such marketable security or the cession of such bond or the substitution of the debtor in terms of the agreement, in terms of such scheme;

(ii) **[and there shall be exempt from]** transfer duty the acquisition by the transferee company of the property in terms of such scheme, **[as the case may be]**;

(iii) marketable securities tax the purchase of any marketable security, in terms of such scheme; and

(iv) uncertificated securities tax the change in beneficial owner of any marketable security, in terms of such scheme."; and

(d) by the substitution for paragraph *(a)* of subsection (3) of the following paragraph:

"*(a)* the agreement referred to in the definition of 'rationalisation scheme' and a written statement setting forth details of the

490.60/00.00/01.00	Kommersiële padvoertuie gebruik by die vervoer van ingevoerde koopware
490.90/00.00/01.00	Masjinerie of installasies (uitgesonderd toringhyskrane) vir gebruik op kontrak vir ander doeleindes as siviele ingenieurs- of kontruksiewerk, in die hoeveelhede en op die tye en onderworpe aan die voorwaardes wat die Kommissaris, op aanbeveling van die Raad van Handel en Nywerheid, by bepaalde permit toelaat
490.90/00.00/02.00	Goed nie vermeld in items 470.00, 480.00 of 490.00 nie, tydelik toegelaat vir doeleindes wat die Kommissaris goedkeur.".

Wysiging van artikel 60 van Wet 113 van 1993, soos gewysig deur artikel 20 van Wet 140 van 1993, artikel 4 van Wet 168 van 1993, artikel 34 van Wet 20 van 1994, artikel 6 van Wet 37 van 1995, artikel 34 van Wet 37 van 1995, artikel 55 van Wet 27 van 1997, artikel 105 van Wet 30 van 1998, artikel 107 van Wet 53 van 1999 and artikel 84 van Wet 30 van 2000

178. Artikel 60 van die Inkomstebelastingwet, 1993, word hierby gewysig deur subartikel (2) deur die volgende subartikel te vervang:

"(2) Die Kommissaris kan, behoudens die voorwaardes wat hy nodig ag, 'n beoogde transaksie as 'n ontbondelingstransaksie goedkeur by die toepassing van hierdie artikel, indien 'n skriftelike aansoek wat die besonderhede van die transaksie bevat wat die Kommissaris mag vereis, voor die implementering van bedoelde transaksie deur 'n ontbondelingsmaatskappy voor 1 Desember 2001 aan hom verstrek word.

Wysiging van artikel 39 van Wet 20 van 1994, soos gewysig deur artikel 7 van Wet 37 van 1995, artikel 35 van Wet 37 van 1996, artikel 56 van Wet 27 van 1997 en artikel 108 van Wet 53 van 1999

179. (1) Artikel 39 van die Wysigingswet op Belastingwette, 1994, word hierby gewysig—

(a) deur die volgende omskrywing na die omskrywing van "handelseffek" in te voeg:

" 'handelseffekbelasting' beteken die handeleffektebelasting hefbaar onder die Handelseffektebelastingswet, 1948 (Wet No. 32 of 1948);";

(b) deur die volgende omskrywing in subartikel (1) in te voeg:

" 'belasting op sertifikaatlose aandele' beteken die belasting op sertifikaatlose aandele hefbaar onder die Wet op Belasting op Sertifikaatlose Aandele, 1998 (Wet No. 32 van 1998);";

(c) deur paragraaf *(c)* van subartikel (2) deur die volgende paragraaf te vervang:

"*(c)* word—

(i) die gevolglike registrasie van oordrag van bedoelde handelseffek aan bedoelde oordragnemende maatskappy of die sessie van bedoelde verband of die vervanging van die skuldenaar ingevolge die ooreenkoms, ingevolge bedoelde skema van seëlreg vrygestel; en

(ii) **[word]** die verkryging van bedoelde eiendom deur die oordragnemende maatskappy ingevolge bedoelde skema van hereregte vrygestel, **[na gelang van die geval]**

(iii) die aankoop van 'n handelseffek ingevolge so 'n skema van handelseffektebelasting vrygestel; en

(iv) die verandering in voordelige eienaarskap ingevolge so 'n skema van belasting op sertifikaatlose aandele vrygestel.";

(d) deur paragraaf *(a)* van subartikel (3) deur die volgende paragraaf te vervang:

"*(a)* die ooreenkoms bedoel in die omskrywing van "rasionalisasieskema" en 'n skriftelike verklaring waarin

rationalisation scheme and any subsequent variation thereof, have been submitted by or on behalf of the controlling company of the relevant group of companies to the Commissioner before 1 March 2002, together with a mandate from each controlled company in such group which is a party to the agreement to act on its behalf for the purposes of this section, supported by a resolution of the directors or shareholders of such controlled company; and".

(2) Subsections (1)*(a)*, *(b)* and *(c)* shall be deemed to have come into operation on 1 September 2001.

Amendment of section 6 of Act 31 of 1998, as amended by section 15 of Act 32 of 1999, section 87 of Act 30 of 2000 and section 75 of Act 19 of 2001

180. Section 6 of the Uncertificated Securities Tax Act, 1998, is hereby amended by the addition to subsection (1) of the following paragraph:

"(ix) if the beneficial ownership is acquired by a company in terms of a a company formation transaction contemplated in section 42 of the Income Tax Act, 1962 (Act No. 58 of 1962), a share-for-share transaction contemplated in section 43 of the Act, an intra-group transaction contemplated in section 44, or in pursuance of a distribution *in specie* in the course of an unbundling transaction or in terms of a liquidation transaction contemplated in section 46 of that Act, where the public officer of that company has made a sworn affidavit or solemn declaration that such company formation transaction, share-for-share transaction, unbundling transaction or liquidation transaction complies with the provisions contained in section 42, 43, 45 or 46, as the case may be, of that Act.".

Amendment of section 13 of Act 31 of 1998

181. Section 13 of the Uncertificated Securities Tax Act, 1998, is hereby amended by the substitution in subsection (1) for the definition of "authorisation letter" of the following definition:

" 'authorisation letter' means a written authorisation granted by the Commissioner, or by any **[chief director or chief revenue inspector under the control, direction or supervision of the Commissioner]** person designated by the Commissioner for this purpose or occupying a post designated by the Commissioner, to an officer to inspect, audit, examine or obtain, as contemplated in section 15, any information, documents or things;".

Insertion of section 17A in Act 31 of 1998

182. (1) Section 17A is hereby inserted in the Uncertificated Securities Tax Act, 1998 after section 17:

"Objection and Appeal Procedures

17A. (1) Any person aggrieved by a decision of the Commissioner in terms of this Act may object and appeal against that decision to the tax board or the tax court, as the case may be, established in terms of the Income Tax Act, 1962 (Act No. 58 of 1962), in the manner and under the terms and within the period prescribed by that Act and the rules promulgated thereunder.

(2) The provisions of the Income Tax Act, 1962, relating to objections and appeals, as provided for in Part III of Chapter III and the rules promulgated thereunder, shall *mutatis mutandis* apply in respect of any decision issued in terms of this Act.

(3) Any decision of the Commissioner, contemplated in subsection (1) shall be deemed to be an assessment for the purposes of the application of the provisions of the Income Tax Act, 1962, as contemplated in subsection (2).".

besonderhede van die rasionalisasieskema en enige daaropvolgende verandering daarvan deur of namens die beherende maatskappy van die tersaaklike groep maatskappye aan die Kommissaris voor 1 Maart 2002 voorgelê is tesame met 'n volmag van elke beheerde maatskappy in bedoelde groep wat 'n party by die ooreenkoms is om namens hom vir die doeleindes van hierdie artikel op te tree, gestaaf deur 'n besluit van die direkteure of aandeelhouers van bedoelde beheerde maatskappy; en".

(2) Subartikel (1)*(a)*, *(b)* en *(c)* word geag op 1 September 2001 in werking te getree het.

Wysiging van artikel 6 van Wet 31 van 1998, soos gewysig deur artikel 15 van Wet 32 van 1999, artikel 87 van Wet 30 van 2000 en artikel 75 van Wet 19 van 2001

180. Artikel 6 van die Wet op Sertifikaatlose Aandele, 1998, word hierby gewysig deur die volgende paragraaf by subartikel (1) in te voeg:

"(ix) indien die voordelige eienaarskap verkry word deur 'n maatskappy ingevolge 'n maatskappyformasie-transaksie in artikel 42 van die Inkomstebelastingwet, 1962 (Wet No. 58 van 1962), bedoel, 'n aandeel-vir-aandeeltransaksie in artikel 43 van die Wet bedoel, 'n intragroeptransaksie in artikel 44 bedoel, of ten gevolge van 'n uitkering *in specie* in die loop van 'n ontbondelingstransaksie of ingevolge 'n likwidasie-uitkering in artikel 46 van daardie Wet bedoel, waar die openbare amptenaar van daardie maatskappy onder eed of plegtige verklaring verklaar het dat daardie maatskappyformasie-transaksie, aandeel-vir-aandeeltransaksie, intragroeptransaksie, ontbondelings-transaksie of likwidasie-uitkering aan die bepalings van artikel 42, 43, 44, 45 of 46, na gelang van die geval, van daardie Wet voldoen.".

Wysiging van artikel 13 van Wet 31 van 1998

181. Artikel 13 van die Wet op Sertifikaatlose Aandele, 1998, word hierby gewysig deur die omskrywing van "magtigingsbrief" in subartikel (1) deur die volgende omskrywing te vervang:

" 'magtigingsbrief' 'n geskrewe magtiging verleen deur die Kommissaris, of **['n hoofdirekteur, ontvanger van inkomste of hoofinkomste-inspekteur onder die beheer, leiding of toesig van die Kommissaris]** deur 'n persoon wat vir die doel deur die Kommissaris aangewys is, of deur 'n persoon wat 'n pos beklee wat vir die doel deur die Kommissaris aangewys is, aan 'n amptenaar om enige inligting, dokumente of goed te inspekteer, ouditeer, ondersoek of verkry soos beoog in artikel 15;".

Invoeging van artikel 17A in Wet 31 van 1998

182. (1) Die volgende artikel word hierby in die Wet op Sertifikaatlose Aandele, 1998, na artikel 17 ingevoeg:

"Beswaar en appèlprosedures

17A. (1) Enige persoon deur 'n beslissing van die Kommissaris ingevolge hierdie Wet veronreg, kan beswaar en appèl teen daardie beslissing na die belastingraad of die belastinghof, na gelang van die geval, ingevolge die Inkomstebelastingwet, 1962 (Wet No. 58 van 1962) ingestel, aanteken op die wyse en kragtens die voorwaardes en binne daardie tydperk deur daardie Wet en die reëls daarkragtens uitgevaardig, voorgeskryf.

(2) Die bepalings van die Inkomstebelastingwet, 1962, met betrekking tot besware en appèlle, soos in Deel III van Hoofstuk III en die reëls daarkragtens uitgereik bepaal, is *mutatis mutandis* van toepassing ten opsigte van enige beswaar ingedien of appèl aangeteken ingevolge hierdie Wet.

(3) Enige beslissing van die Kommissaris in subartikel (1) bedoel word vir doeleindes van die toepassing van die bepalings van die Inkomstebelastingwet, 1962, soos in subartikel (2) bedoel, geag 'n aanslag te wees.".

(2) Subsection (1) shall come into operation on a date fixed by the President by proclamation in the *Gazette*.

Amendment of section 85 of Act 53 of 1999

183. Section 85 of the Revenue Laws Amendment Act, 1999, is hereby amended by the deletion of paragraphs (*d*) and (*e*) of subsection (1).

Amendment of section 86 of Act 53 of 1999

184. Section 86 of the Revenue Laws Amendment Act, 1999, is hereby amended by the deletion of paragraph (*c*) of subsection (1).

Repeal of section 106 of Act 53 of 1999

185. Section 106 of the Revenue Laws Amendment Act, 1999, is hereby repealed.

Amendment of section 15 of Act 5 of 2001

186. Section 15 of the Taxation Laws Amendment Act, 2001, is hereby amended by the substitution for subsection (2) of the following subsection:

"(2) Subsections (1)*(a)* and *(b)* shall **[apply in respect of any year of assessment that commences on or after]** come into operation on 1 October 2001.".

Repeal of section 43 of Act 19 of 2001

187. Section 43 of the Revenue Laws Amendment Act, 2001, is hereby repealed.

Amendment of section 45 of Act 19 of 2001

188. Section 45 of the Revenue Laws Amendment Act, 2001 (Act No. 19 of 2001), is hereby amended by the substitution for subsection (2) of section 59A of the Customs and Excise Act, 1964, of the following subsection:

"(2)*(a)* The Commissioner may—

(i) before registration require any person or class of persons to furnish such security and enter into such agreement as the Commissioner may determine;

(ii) at any time require that the form, nature or amount of such security shall be altered or renewed in such manner as the Commissioner may determine.

(b) The Commissioner may refuse any application for registration or cancel or suspend any registration.

(c) The provisions of section 60(2) shall apply *mutatis mutandis* for the purposes of paragraph *(a)*.".

Amendment of section 50 of Act 19 of 2001

189. Section 50 of the Revenue Laws Amendment Act, 2001 (Act No. 19 of 2001), is hereby amended—

(a) by the deletion in subsection (1) of paragraphs *(h)* to *(l)*; and

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

"(2) Subsection (1)*(a)*, *(b)*, *(c)*, *(d)*, *(e)*, *(f)* and *(g)* shall be deemed to have come into operation on 4 July 2001.".

Short title

190. (1) This Act shall be called the Second Revenue Laws Amendment Act, 2001.

(2) Whenever any provision of any amendment to the Customs and Excise Act, 1964, refers to section 95A or any subsection thereof, such provision shall with regard to the effect of such reference operate from the date section 95A of that Act comes into operation.

(2) Subartikel (1) tree in werking op 'n datum deur die President by proklamasie in die *Staatskoerant* bepaal.

Wysiging van artikel 85 van Wet 53 van 1999

183. Artikel 85 van die Wysigingswet op Inkomstewette, 1999, word hierby gewysig deur paragrawe *(d)* en *(e)* van subartikel (1) te skrap.

Wysiging van artikel 86 van Wet 53 van 1999

184. Artikel 86 van die Wysigingswet op Inkomstewette, 1999, word hierby gewysig deur paragraaf *(c)* van subartikel (1) te skrap.

Herroeping van artikel 106 van Wet 53 van 1999

185. Artikel 106 van die Wysigingswet op Inkomstewette, 1999, word hierby herroep.

Wysiging van artikel 15 van Wet 5 van 2001

186. Artikel 15 van die Wysigingswet op Belastingwette, 2001, word hierby gewysig deur subartikel (2) deur die volgende subartikel te vervang:

"(2) Subartikel (1) *(a)* en *(b)* **[is van toepassing ten opsigte van enige jaar van aanslag wat op of na]** tree op 1 Oktober 2001 **['n aanvang neem]** in werking.

Herroeping van artikel 43 van Wet 19 van 2001

187. Artikel 43 van die Wysigingswet op Inkomstewette, 2001, word hierby herroep.

Wysiging van artikel 45 van Wet 19 van 2001

188. Artikel 45 van die Wysigingswet op Inkomstewette, 2001 (Wet No. 19 van 2001), word hierby gewysig deur subartikel (2) van artikel 59A van die Doeane- en Aksynswet, 1964, deur die volgende subartikel te vervang:

"(2)*(a)* Die Kommissaris kan—

(i) voor registrasie vereis dat enige persoon of klas van persone sodanige sekerheid moet verskaf en so 'n ooreenkoms moet aangaan soos die Kommissaris bepaal;

(ii) te enige tyd vereis dat die vorm, aard of bedrag van sodanige sekerheid gewysig of hernuwe moet word op so 'n wyse soos die Kommissaris bepaal.

(b) Die Kommissaris kan enige aansoek om registrasie weier of enige registrasie kanselleer of opskort.

(c) Die bepalings van artikel 60(2) is vir die doeleindes van paragraaf *(a) mutatis mutandis* van toepassing.".

Wysiging van artikel 50 van Wet 19 van 2001

189. Artikel 50 van die Wysigingswet op Inkomstewette, 2001 (Wet No. 19 van 2001), word hierby gewysig—

(a) deur in subartikel (1) paragrawe *(h)* tot *(l)* te skrap; en

(b) deur subartikel (2) deur die volgende subartikel te vervang:

"(2) Subartikel (1)*(a)*, *(b)*, *(c)*, *(d)*, *(e)*, *(f)* en *(g)* word geag op 4 Julie 2001 in werking te getree het.".

Kort titel

190. (1) Hierdie Wet heet die Tweede Wysigingswet op Inkomstewette, 2001.

(2) Wanneer enige bepaling van, of enige wysiging aan, die Doeane- en Aksynswet, 1964, na artikel 95A of enige subartikel daarvan verwys, tree sodanige bepaling met betrekking tot die uitwerking van sodanige verwysing in werking vanaf die datum waarop artikel 95A van daardie Wet in werking tree.

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