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THE PRESIDENCY

No. 103 1 February 2006

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

No. 32 of 2005: Revenue Laws Second Amendment Act, 2005.

DIE PRESIDENSIE

No. 103 1 Februarie 2006

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

No. 32 van 2005: Tweede Wysigingswet op Inkomstewette, 2005.



AIDS HELPLINE: 0800-0123-22 Prevention is the cure

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 27 January 2006.)

ACT

To amend the Estate Duty Act, 1955, so as to amend a definition; to effect certain consequential amendments; to amend the Income Tax Act, 1962, so as to amend certain definitions and to insert further definitions; so as to amend the provisions relating to the taxation of royalties or similar payments paid to non-residents to delete provisions which have become obsolete; to further regulate the provisions relating to the withholding tax on foreign sellers of property in the Republic to make provision for the right of objection and appeal; to amend a definition for purposes of donations tax; to amend the provisions relating to submission of returns and payment; to amend the provisions relating to the registration of tax practitioners; to further regulate the returns relating to controlled foreign companies; to amend the provisions relating to offences; to amend the provisions relating to reportable arrangements to include the regulations issued in the Act; to further regulate amounts to be refunded; to make provision that the Minister of Finance may issue regulations prescribing the circumstances under which the Commissioner may waive, write off or compromise any amount of tax, duty, levy, charge or other amounts; to amend the Customs and Excise Act, 1964, so as to delete a provision for a right of appeal to the Minister where the Commissioner determines certain matters in respect of imported goods; to amend the definition of “circumvention” in provisions relating to the export of certain goods; to prescribe requirements in respect of the removal in bond of cigarettes for transit through the Republic; to amend the heading in respect of the provisions for limitation on refund claims; to further regulate internal administrative appeal; to amend the heading in respect of the provisions for administrative penalties; to amend provisions relating to notice of action and the period for bringing action; to delete certain restrictions in respect of the manufacture of excisable goods by natural persons for own use; to amend the long title to include Road Accident Fund levy and to effect certain consequential amendments; to amend the Stamp Duties Act, 1968, so as to amend and delete certain definitions; to provide for the phasing out of adhesive revenue stamps and impressed stamps; to amend the Value-Added Tax Act, 1991, so as to allow the Commissioner to prescribe the form and manner in which payment and returns must be submitted; to amend the Uncertificated Securities Tax Act, 1998, so as to effect certain consequential amendments resulting from the deletion of uncertificated securities tax on the issue of securities; and to provide for matters in connection therewith.

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

Amendment of section 1 of Act 45 of 1955, as amended by section 1 of Act 59 of 1957, section 1 of Act 65 of 1960, section 7 of Act 77 of 1964, section 3 of Act 92 of 1971, section 9 of Act 106 of 1980, section 5 of Act 86 of 1987, section 7 of Act 87 of 1988, section 6 of Act 97 of 1993, section 2 of Act 140 of 1993, section 8 of Act 88 of 1996, section 5 of Act 27 of 1997, section 34 of Act 34 of 1997, section 7 of Act 53 of 1999, section 6 of Act 30 of 2000, section 1 of Act 59 of 2000 and section 3 of Act 5 of 2001

1. (1) Section 1 of the Estate Duty Act, 1955, is hereby amended—
- (a) by the substitution in subsection (1) for the definition of “fair market value” of the following definition:
- “‘fair market value’, means—
- (a) the price which could be obtained upon a sale of the property between a willing buyer and a willing seller dealing at arm’s length in an open market; or
- (b) in relation to immovable property on which a *bona fide* farming undertaking is being carried on in the Republic, the amount determined by reducing the price which could be obtained upon a sale of the property between a willing buyer and a willing seller dealing at arm’s length in an open market by 30 per cent;”;
- (b) by the deletion of subsection (2).
- (2) Subsection (1) shall come into operation on the date of promulgation of this Act and applies in respect of the estate of any person who dies on or after that date.

Amendment of section 8 of Act 45 of 1955, as amended by section 4 of Act 59 of 1957 and section 12 of Act 77 of 1962

2. Section 8 of the Estate Duty Act, 1955, is hereby amended by the substitution for subsection (1) of the following subsection:
- “(1) If the Commissioner on receipt of any return referred to in section [seven]
- 7 —
- (a) is dissatisfied with any value at which any property [other than property whereof the fair market value has been determined in accordance with the provisions of subsection (2) of section one] is shown in any such return; or
- (b) is of the opinion that the amount claimed to represent the dutiable amount as disclosed in the return does not represent the correct dutiable amount, he or she shall adjust such value or amount and determine the dutiable amount accordingly.”.
- (2) Subsection (1) shall come into operation on the date of promulgation of this Act and applies in respect of the estate of any person who dies 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 34 of Act 34 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, section 3 of Act 19 of 2001, section 17 of Act 60 of 2001, section 9 of Act 30 of 2002, section 6 of Act 74 of 2002,

section 33 of Act 12 of 2003, section 12 of Act 45 of 2003, section 3 of Act 16 of 2004 and section 3 of Act 32 of 2004

3. (1) Section 1 of the Income Tax Act, 1962, is hereby amended—
- (a) by the substitution for the definition of “average exchange rate” of the following definition: 5
- “**average exchange rate**’ in relation to a year of assessment means[—
- (a) the average determined by using the closing spot rates at the end of daily[, **weekly**] or monthly intervals during that year of assessment[; or 10
- (b) **the weighted average determined by using the closing spot rates at the end of daily, weekly or monthly intervals during that year of assessment during which income is received or accrued or expenditure is incurred, which average must be based on—**
- (i) **the net amount of receipts and accruals (excluding those of a capital nature) and deductible expenditure during each 15**
- such period; and**
- (ii) **the net amount of capital gains or capital losses determined in respect of any disposal of assets during that period,**
- which must be consistently applied within that year of assessment;”;
- (b) by the insertion after the definition of “average exchange rate” of the following definition: 20
- “‘beneficiary’ in relation to a trust means a person who has a vested or contingent interest in all or a portion of the receipts or accruals or the assets of that trust;”;
- (c) by the deletion in the definition of “connected person” of the words following paragraph (e); 25
- (d) by the substitution in the definition of “dividend” for paragraph (a) of the following paragraph:
- “(a) in relation to a company that is being wound up, [or] liquidated[, or 30
- deregistered or the corporate existence of which is finally terminated, any profits [**distributed, whether in cash or otherwise,**] (other than those of a capital nature earned before or during the winding-up, [or] liquidation, deregistration or final termination from the disposal of any asset before 1 October 2001) [**(any such profits distributed by the liquidator of the company being deemed for the purposes of this definition to have been distributed by the company)**] which are distributed, whether in cash or otherwise, in the course or in anticipation of the winding up, liquidation, deregistration or final termination of that company: Provided that— 35
- (i) any profits distributed by the liquidator of the company are deemed for purposes of this definition to have been distributed by the company; and 40
- (ii) the amount of any capital profits [**so**] distributed which are attributable to the disposal of any asset on or after 1 October 2001, but which was acquired by that company before that 45
- date [**shall**] must, for the purposes of this definition be limited to the amount of profit determined as if that asset had been acquired on 1 October 2001 for a cost equal to the market value of that asset as contemplated in paragraph 29 of the Eighth Schedule;”;
- (e) by the insertion after the definition of “**foreign equity instrument**” of the following definition: 50
- “**‘government grant’** means an appropriation, grant in aid, subsidy or contribution, in cash or kind, paid by a department listed in Schedule 1 to the Public Service Act, 1994 (Proclamation No. 103 of 1994), (other than a provincial administration), but does not include any amount paid in respect of the supply of any goods or services to that department;”;
- (f) by the deletion of paragraph (1B) of the definition of “gross income”; 55
- (g) by the substitution in the definition of “gross income” for paragraph (n) of the following paragraph: 60

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- “(n) any amount which in terms of any other provision of this Act is specifically required to be included in the taxpayer’s income and that amount must—
- (i) for the purposes of this paragraph [**all amounts which in terms of subsection (4) of section eight are required to be included in the taxpayer’s income shall**] be deemed to have been received by or to have accrued to the taxpayer; and 5
- (ii) in the case of any amount required to be included in the taxpayer’s income in terms of section 8(4), be deemed to have been received or accrued from a source within the Republic notwithstanding that such amounts may have been recovered or recouped outside the Republic:”;
- (h) by the substitution for the definition of “group of companies” of the following definition: 10
- “**‘group of companies’** means two or more companies in which one company (hereinafter referred to as the **‘controlling group company’**) directly or indirectly holds shares in at least one other company (hereinafter referred to as the **‘controlled group company’**), to the extent that— 15
- (a) at least **[75]** 70 per cent of the equity shares of each controlled group company are directly held by the controlling group company, one or more other controlled group companies or any combination thereof; and 20
- (b) the controlling group company directly holds **[75]** at least 70 per cent **[or more]** of the equity shares in at least one controlled group company:”;
- (i) by the substitution in the definition of “resident” for items (aa) and (bb) of subparagraph (ii) of paragraph (a) of the following items: 25
- “(aa) for a period or periods exceeding 91 days in aggregate during the relevant year of assessment, as well as for a period or periods exceeding 91 days in aggregate during each of the **[three]** five years of assessment preceding such year of assessment; and 30
- (bb) for a period or periods exceeding **[549]** 915 days in aggregate during **[such three]** those five preceding years of assessment,”;
- (j) by the substitution in the definition of “resident” for paragraph (A) of the proviso to subparagraph (ii) of paragraph (a) of the following paragraph: 35
- “(A) a day shall include a part of a day, but shall not include any day that a person is in transit through the Republic between two places outside the Republic and that person does not formally enter the Republic through a ‘port of entry’ as contemplated in section 9(1) of the Immigration Act, 2002 (Act No. 13 of 200), or at any other place **[in the case of a person authorised by]** as may be permitted by the Director General of the Department of Home Affairs or the Minister of Home Affairs in terms of **[section 31(2)(c) of]** that Act; and”;
- (k) by the deletion of the definition of “South African Revenue Service” and the insertion of the following definition after the definition of “shareholder”: 40
- “**‘South African Revenue Service’** means the South African Revenue Service established by section 2 of the South African Revenue Service Act, 1997:”;
- 50

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- (l) by the insertion after the definition of “specified period” of the following definition:

“**‘spot rate’** means the appropriate quoted exchange rate at a specific time by any authorised dealer in foreign exchange for the delivery of currency;”.

(2) (a) Subsection (1)(a) is deemed to have come into operation on 8 November 2005 and applies in respect of years of assessment ending on or after that date.

(b) Subsection (1)(d) shall come into operation on 8 November 2005 and applies in respect of any dividend declared on or after that date.

(c) Subsection (1)(h) is deemed to have come into operation on 8 November 2005.

(d) Subsection (1)(i) shall—

- (i) in respect of any person who by virtue of paragraph (a)(ii) of the definition of “resident” was a resident on 28 February 2005, come into operation on 1 March 2006 and applies in respect of any year of assessment commencing on or after that date; and

- (ii) in respect of any other person, is deemed to have come into operation on 1 March 2005 and applies in respect of any year of assessment commencing on or after that date.

(e) Subsection (1)(j) is deemed to have come into operation on 1 July 2005.

(f) Subsection (1)(l) is deemed to have come into operation on 8 November 2005 and applies in respect of years of assessment ending on or after that date.

Amendment of section 35 of Act 58 of 1962, as amended by section 20 of Act 90 of 1962, section 20 of Act 65 of 1973, section 27 of Act 85 of 1974, section 24 of Act 94 of 1983, section 21 of Act 21 of 1994, section 39 of Act 59 of 2000, section 32 of Act 74 of 2002 and section 48 of Act 45 of 2003

4. Section 35 of the Income Tax Act, 1962, is hereby amended by the deletion in subsection (2) of paragraph (f).

Amendment of section 35A of Act 58 of 1962, as inserted by section 30 of Act 32 of 2004

5. (1) Section 35A of the Income Tax Act, 1962, is hereby amended by the substitution for subsection (10) of the following subsection:

“(10) (a) The Commissioner may having regard to the circumstances of the case remit the whole or any part of the penalty imposed under subsection (9)(b).

(b) Any decision by the Commissioner under paragraph (a) shall be subject to objection and appeal.”.

(2) Subsection (1) shall come into operation on the date that section 35A of the Income Tax Act, 1962, comes into operation.

Amendment of section 55 of Act 58 of 1962, as amended by section 25 of Act 90 of 1988, section 22 of Act 28 of 1997 and section 37 of Act 30 of 2000

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

- (a) by the substitution in subsection (1) for the definition of “fair market value” of the following definition:

“**‘fair market value’**, means—

- (a) the price which could be obtained upon a sale of the property between a willing buyer and a willing seller dealing at arm’s length in an open market; or

- (b) in relation to immovable property on which a *bona fide* farming undertaking is being carried on in the Republic, the amount determined by reducing the price which could be obtained upon a sale of the property between a willing buyer and a willing seller dealing at arm’s length in an open market by 30 per cent;”;

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

(2) Subsection (1) shall come into operation on the date of promulgation of this Act and applies in respect of any donation which takes effect on or after that date.

Amendment of section 62 of Act 58 of 1962, as amended by section 8 of Act 114 of 1977, section 36 of Act 101 of 1990, section 23 of Act 28 of 1997 and section 33 of Act 53 of 1999

7. (1) Section 62 of the Income Tax Act, 1962, is hereby amended by the substitution for subsection (4) of the following subsection:

“(4) If the Commissioner is of the opinion that the amount shown in any return as the fair market value of any property [**other than property whereof the fair market value has been determined in accordance with the provisions of subsection (2) of section fifty-five,**] is less than the fair market value of [such] that property, he or she may fix the fair market value of that property, and the value so fixed [shall] is, subject to the provisions of section [sixty-three] 63, [be] deemed for the purposes of this Part to be the fair market value of such property.”

(2) Subsection (1) shall come into operation on the date of promulgation of this Act and applies in respect of any donation which takes effect on or after that date.

Substitution of section 65 of Act 58 of 1962

8. The following section hereby substitutes section 65 of the Income Tax Act, 1962:

“Returns and payment to be in form and submitted at place prescribed by Commissioner

65. All forms of returns and other forms required for the administration of this Act [shall] and all payments required to be made in terms of this Act must be in such form and be submitted in such manner (including electronically) and at such place as may be prescribed by the Commissioner [from time to time].”

Amendment of section 66 of Act 58 of 1962, as amended by section 10 of Act 6 of 1963, section 19 of Act 90 of 1964, section 27 of Act 88 of 1971, section 22 of Act 91 of 1982, section 19 of Act 65 of 1986, section 23 of Act 85 of 1987, section 37 of Act 101 of 1990, section 26 of Act 21 of 1994, section 41 of Act 30 of 2000, section 19 of Act 5 of 2001, section 17 of Act 19 of 2001, section 26 of Act 30 of 2002, section 38 of Act 74 of 2002, section 61 of Act 45 of 2003, section 18 of Act 16 of 2004 and section 7 of Act 34 of 2004

9. (1) Section 66 of the Income Tax Act, 1962, is hereby amended—

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

“(1) The Commissioner must annually give public notice that all persons who are personally or in a representative capacity liable to taxation under this Act or who are required by the Commissioner to furnish returns for the assessment of tax, must furnish returns within the period prescribed in that notice, or such longer period as the Commissioner may allow, for the purposes of assessments in respect of the years of assessment specified in that notice.”;

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

“(1A) The Commissioner may, in the notice given in terms of subsection (1), exempt any person who would otherwise be required to furnish a return for the assessment of tax, from the obligation of furnishing such a return.”

(2) Subsection (1) is deemed to have come into operation on 1 January 2005 and applies in respect of any year of assessment ending on or after that date.

Amendment of section 67A of Act 58 of 1962, as inserted by section 9 of Act 34 of 2004

10. (1) Section 67A of the Income Tax Act, 1962, is hereby amended by the substitution in subsection (2) for paragraphs (a) and (b) of the following paragraphs:
- “(a) provides advice or completes or assists in completing any document, as contemplated in subsection (1), solely for no consideration to that person or his or her employer or a connected person in relation to that employer or that person;
- (b) provides advice contemplated in subsection (1) solely in anticipation of or in the course of any litigation to which the Commissioner is a party[, or in the course of such litigation] or where the Commissioner is a complainant;”.
- (2) Subsection (1) is deemed to have come into operation on 24 January 2005.

Amendment of section 72A of Act 58 of 1962, as inserted by section 46 of Act 59 of 2000 and amended by section 42 of Act 74 of 2002 and substituted by section 65 of Act 45 of 2003

11. (1) Section 72A of the Income Tax Act, 1962, is hereby amended—
- (a) by the substitution in subsection (1) for the words preceding paragraph (a) of the following words:
- “(1) Every resident who on the last day of the foreign tax year of a controlled foreign company or immediately before a foreign company ceases to be a controlled foreign company directly or indirectly, together with any connected person in relation to that resident, holds at least 10 per cent of the participation rights in any controlled foreign company (otherwise than indirectly through a company which is a resident), must submit to the Commissioner together with the return contemplated in section 66 in respect of that year of assessment, a return containing[-] such information as may be prescribed by the Commissioner.”;
- (b) by the deletion in subsection (1) of paragraphs (a) to (f);
- (c) by the substitution for subsection (2) of the following subsection:
- “(2) A resident must [together with the return contemplated in subsection (1), submit] have available for submission to the Commissioner when so requested, a copy of the financial statements of the controlled foreign company [(prepared in accordance with generally accepted accounting practice)] for the relevant foreign tax year, as defined in section 9D, of that controlled foreign company [in respect of which there is an inclusion in the income of that resident in terms of section 9D].”;
- (d) by the deletion in subsection (3) of paragraph (a).
- (2) Subsection (1) is deemed to have come into operation on 8 November 2005 and applies in respect of foreign tax years ending on or after that day.

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, section 18 of Act 19 of 2001, section 52 of Act 60 of 2001, section 45 of Act 74 of 2002, section 68 of Act 45 of 2003, section 19 of Act 16 of 2004 and section 11 of Act 34 of 2004

12. Section 75 of the Income Tax Act, 1962, is hereby amended—
- (a) by the insertion in subsection (1) after paragraph (aB) of the following paragraphs:
- “(aC) fails to deduct or withhold any amount of tax on foreign entertainers and sportspersons or pay any amount deducted or withheld over as contemplated in section 47D and 47E;
- (aD) fails to inform the Commissioner of any specified activity as contemplated in section 47K.”;

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- (b) by the addition in subsection (1) of the word “or” at the end of paragraph (j);
and
- (c) by the addition to subsection (1) of the following paragraph:
- “(k) (i) is in a fiduciary capacity responsible for the management or control of the income and assets of any approved public benefit organisation contemplated in section 30 or an institution, board or body contemplated in section 18A; or
(ii) is the accounting officer or accounting authority contemplated in the Public Finance Management Act, 1999 (Act No. 1 of 1999), or the Local Government: Municipal Finance Management Act, 2003 (Act No. 56 of 2003), as the case may be, for any institution in respect of which that Act applies, who intentionally fails to comply with any provision of section 18A or 30, as the case may be, or a provision of the constitution, will or other written instrument under which such organisation is established to the extent that it relates to the provisions of section 18A or 30.”.

Amendment of section 76A of Act 58 of 1962, as inserted by section 69 of Act 45 of 2003**13. Section 76A of the Income Tax Act, 1962, is hereby amended—**

- (a) by the substitution in subsection (1) for the words in paragraph (a) of the definition of “reportable arrangement” following subparagraph (iii) of the following words:
“but does not include any arrangement contemplated in subsection (1A) or any arrangement identified by the Minister by notice in the *Gazette*, which is not likely to lead to any undue tax benefit;”;
- (b) by the substitution in subsection (1) for paragraph (b) of the definition of “reportable arrangement” of the following paragraph:
“(b) any arrangement contemplated in subsection (1B) or which has certain characteristics identified by the Minister by notice in the *Gazette* which are likely to lead to an undue tax benefit;”;
- (c) by the insertion after subsection (1) of the following subsections:
“(1A) Paragraph (a) of the definition of ‘reportable arrangement’ does not include any arrangement which constitutes—
(a) a loan, advance or debt in terms of which—
(i) the borrower receives an amount of cash and agrees to repay at least the same amount of cash to the lender at a determinable future date; or
(ii) the borrower receives a fungible asset and agrees to return an asset of the same kind and of the same or equivalent quantity and quality to the lender at a determinable future date;
(b) a lease;
(c) a transaction undertaken through an exchange regulated in terms of the Securities Services Act, 2004 (Act No. 36 of 2004);
(d) a transaction in participatory interests in a scheme regulated in terms of the Collective Investment Schemes Control Act, 2002 (Act No. 45 of 2002):
Provided that—
(i) the arrangement is—
(aa) undertaken on a stand-alone basis and is not directly or indirectly connected to, or directly or indirectly dependent upon, any other arrangement (whether entered into between the same or different parties); or
(bb) an arrangement that would have qualified as having been undertaken on a stand-alone basis as required by paragraph (aa), were it not for a connected arrangement that is entered

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- into for the sole purpose of providing security and no tax benefit is obtained or enhanced by entering into such security arrangement; and
- (ii) that arrangement is not entered into—
- (aa) with the main purpose of obtaining or enhancing a tax benefit; or
- (bb) in a specific manner or form with the main purposes of obtaining or enhancing a tax benefit.
- (1B) Paragraph (b) of the definition of ‘reportable arrangement’ includes—
- (a) any arrangement which would have qualified as a hybrid equity instrument as defined in section 8E, if the prescribed periods in that section had been five years; or
- (b) any arrangement which would have qualified as a hybrid debt instrument as defined in section 8F, if the prescribed periods in that section had been five years, but does not include any instrument listed on an exchange regulated in terms of the Securities Services Act, 2004 (Act No. 36 of 2004).”.

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, section 14 of Act 140 of 1993 and section 60 of Act 60 of 2001

14. Section 88 of the Income Tax Act, 1962, is hereby amended by the addition of the following subsection:
- “(3) The provisions of section 102(3) apply *mutatis mutandis* in respect of any amount refundable and any interest payable by the Commissioner under subsection (1).”.

Insertion of section 91A in Act 58 of 1962

15. The following section is hereby inserted in the Income Tax Act, 1962, after section 91:

“Waiver, write off or compromise of amounts payable

- 91A.** (1) The Minister may by regulation prescribe the circumstances under which the Commissioner may waive, write off or compromise in whole or in part any amount of tax, duty, levy, charge or other amount payable by a person in terms of any Act administered by the Commissioner, where that waiver, write off or compromise would be to the best advantage of the State.
- (2) The Minister must in the regulations contemplated in subsection (1) prescribe—
- (a) the procedures to be followed by the Commissioner in waiving, writing off or compromising any amount; and
- (b) the requirements for reporting by the Commissioner of any amounts which have been waived, written off or compromised.
- (3) Before the regulations contemplated in this section are published, the Minister must—
- (a) publish the draft regulations in the *Gazette* for public comment; and
- (b) submit the regulations to Parliament for parliamentary scrutiny at least 30 days before their promulgation.”.

Amendment of section 93 of Act 58 of 1962, as amended by section 34 of Act 28 of 1997

16. Section 93 of the Income Tax Act, 1962, is hereby amended by the substitution in subsection (2) for paragraph (b) of the following paragraph:
- “(b) if such person fails to comply with the notice or in answer to the notice denies his liability for the said amount or for any part thereof, and the President of the [special] tax court has certified that he has afforded the person concerned an

opportunity of presenting his case, and that on the information submitted to him by the Commissioner and by such person (if any), the amount specified in the certificate appears to be payable by such person in terms of a final determination under the income tax laws of such other country.”.

Amendment of section 41 of Act 91 of 1964, as amended by section 15 of Act 105 of 1969, section 6 of Act 112 of 1977, section 3 of Act 93 of 1978, section 5 of Act 86 of 1982, section 2 of Act 85 of 1986, section 2 of Act 84 of 1987, section 20 of Act 59 of 1990, section 31 of Act 45 of 1995 and section 41 of Act 45 of 1995 5

17. Section 41 of the Customs and Excise Act, 1964, is hereby amended by the substitution in subsection (4) for paragraph (c) of the following paragraph: 10

“(c) If any particulars referred to in paragraph (a) of any imported goods are not declared in the prescribed invoice or certificate in respect thereof or if any change in the particulars declared in any prescribed invoice or certificate relating to any imported goods which occurs after the date of issue of any such invoice or certificate is not forthwith reported to the Controller by the importer of such goods 15 or if the Commissioner has reason to believe that an offence referred to in section 86(f) or (g) has been committed in respect of any imported goods the Commissioner may determine a transaction value, origin, date of purchase, quantity, description or the characteristics of such goods according to the best information available to him, which shall, subject to the provisions of this Act, [a 20 **right of appeal to the Minister,**] be deemed to be the transaction value, origin, date of purchase, quantity, description or the characteristics of such goods.”.

Amendment of section 46A of Act 91 of 1964, as inserted by section 61 of Act 59 of 2000

18. Section 46A of the Customs and Excise Act, 1964, is hereby amended by the substitution in subsection (1) for the definition of “circumvention” of the following definition: 25

“**‘circumvention’** includes any circumvention of any provision of an enactment by—
 (a) trans-shipment, rerouting, false declaration concerning the country or place of origin or falsification of official documents; or 30
 (b) making any false declaration concerning fibre content, quantities, description or classification of goods[, **as provided in Article 5 of the Agreement on Textiles and Clothing included in Annex 1A of the Agreement established by the World Trade Organisation, 35 kept by the Commissioner as contemplated in subsection (2);**”.

Amendment of section 54 of Act 91 of 1964, as amended by section 3 of Act 85 of 1968 and substituted by section 13 of Act 112 of 1977 and amended by section 43 of Act 45 of 1995 and substituted by section 141 of Act 45 of 2003

19. Section 54 of the Customs and Excise Act, 1964 is hereby amended by the insertion after subsection (3) of the following subsection: 40

“(4) (a) No cigarettes in containers bearing the stamp impression referred to in subsection (2), may be entered for removal in bond as contemplated in section 18 for transit through the Republic.
 (b) Any cigarettes in containers bearing such stamp impression so entered for removal in bond shall be liable to forfeiture in accordance with the provisions of this Act.”. 45

Amendment of section 76B of Act 91 of 1964, as inserted by section 67 of Act 30 of 1998 and substituted by section 29 of Act 34 of 2004

20. Section 76B of the Customs and Excise Act, 1964, is hereby amended by the substitution for the heading of the following heading: 50

“Limitation on the period for which refund and drawback claims will be considered and the period within which [such claims] applications therefor must be received by the [Commissioner] Controller [-]”.

Amendment of section 77C of Act 91 of 1964, as inserted by section 147 of Act 45 of 2003 5

21. (1) Section 77C of the Customs and Excise Act, 1964, is hereby amended by the substitution for subsection (1) of the following subsection:

“(1) Any person who intends submitting an appeal as provided for in this Part must do so within such time as may be prescribed by the Commissioner by rule—”.

(2) Subsection (1) shall come into operation on the date Part A of Chapter XA comes into operation. 10

Amendment of section 77D of Act 91 of 1964, as inserted by section 147 of Act 45 of 2003

22. (1) Section 77D of the Customs and Excise Act, 1964, is hereby amended—

(a) by the substitution for the heading of the following heading: 15

“Request for reasons and [Time] time within which a request or an appeal must be considered”;

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

“(1) (a) Any person contemplated in section 77B may request reasons for a decision.

(b) The Commissioner may prescribe by rule—

(i) the procedures to be complied with when reasons are requested and the time within which such request must be delivered to the Commissioner;

(ii) the period within which—

(aa) a request for reasons; or

(bb) an appeal,

must be considered. 20

(c) The Commissioner must notify in writing the person who—

(i) requested reasons, of those reasons; or

(ii) lodged an appeal, of the final decision,

within the periods prescribed in such rule.”; and 25

(c) by the deletion of subsection (2). 30

(2) Subsection (1) shall come into operation on the date Part A of Chapter XA comes into operation. 35

Amendment of section 77F of Act 91 of 1964, as inserted by section 147 of Act 45 of 2003

23. (1) Section 77F of the Customs and Excise Act, 1964, is hereby amended by the deletion of subsection (2).

(2) Subsection (1) shall come into operation on the date Part A of Chapter XA comes into operation. 40

Insertion of section 77HA in Act 91 of 1964

24. (1) The Customs and Excise Act, 1964 is hereby amended by the insertion after section 77H of the following section:

“Implementation of Part A in respect of decisions 45

77HA. This Part applies in respect of any decision made on or after the date on which this Part comes into operation.”.

(2) Subsection (1) shall come into operation on the date Part A of Chapter XA comes into operation.

Amendment of section 91 of Act 91 of 1964, as amended by section 133 of Act 60 of 2001

25. Section 91 of the Customs and Excise Act, 1964, is hereby amended by the substitution for the heading of the following heading:

“[Admission of guilt] **Administrative penalties**”.

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Amendment of section 96 of Act 91 of 1964, as amended by section 136 of Act 60 of 2001 and section 30 of Act 34 of 2004

26. (1) Section 96 of the Customs and Excise Act, 1964, is hereby amended —

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

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“(a) (i) 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.

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(ii) Such notice shall be in such form and shall be delivered in such manner and at such places as may be prescribed by rule.

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(iii) No such notice shall be valid unless it complies with the requirements prescribed in this section and such rules.”; and

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

“(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 begin to run on the date when the right of action first arose[.] : Provided that where any proceedings are instituted concerning any decision defined in section 77A(1), such date shall begin to run on the date—

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(i) of a final decision as contemplated in the rules for Part A of Chapter XA;

(ii) when the Commissioner advises the person who made use of the alternative dispute resolution procedures contemplated in the rules for Part B of Chapter XA that agreement has not been achieved at the conclusion or termination of such procedures; or

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(iii) on the date a dispute is not settled and the Commissioner advises the person concerned as contemplated in section 77O(5) of Part C of Chapter XA.”.

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

(b) Subsection (1)(b) shall come into operation on the date Part A and Part B of Chapter XA come into operation.

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Amendment of section 116 of Act 91 of 1964, as amended by section 18 of Act 95 of 1965 and section 72 of Act 45 of 1995

27. Section 116 of the Customs and Excise Act, 1964, is hereby amended by the substitution in subsection (1) for the words preceding paragraph (a) of the following words:

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“Notwithstanding anything to the contrary in this Act contained, the Commissioner may, in respect of any excisable goods [(except ethyl alcohol)] manufactured by natural persons [(except under item 604.00 of Schedule No. 6)] for their own use and not for sale or disposal in any manner—”.

Substitution of the long title of Act 91 of 1964, as substituted by section 42 of Act 59 of 1990, section 66 of Act 30 of 2000 and section 72 of Act 32 of 2004

28. (1) The long title for the Customs and Excise Act, 1964 is hereby substituted with the following title:

“**To provide for the levying of customs and excise duties and a surcharge; for a fuel levy, for a Road Accident Fund levy, for an air passenger tax and an environmental levy; the prohibition and control of the importation, export, manufacture or use of certain goods; and for matters incidental thereto.**” 5

(2) Subsection (1) shall come into operation on a date fixed by the President by proclamation in the *Gazette*. 10

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 16 of Act 27 of 1997, section 34 of Act 34 of 1997, section 77 of Act 30 of 1998, section 74 of Act 53 of 1999, section 40 of Act 5 of 2001, section 54 of Act 19 of 2001, section 141 of Act 60 of 2001, section 42 of Act 12 of 2003, section 37 of Act 16 of 2004, section 73 of Act 32 of 2004 and section 4 of Act 10 of 2005 15

29. (1) Section 1 of the Stamp Duties Act, 1968, is hereby amended—

(a) by the deletion of the definition of “**die**”; 20

(b) by the substitution of the definition of “**duly stamped**” of the following definition:

“**‘duly stamped’** in relation to any instrument requiring to be stamped under this Act, means that such instrument has been stamped as required by this Act for the proper amount of duty and the amount of any interest, penalty or additional duty incurred under sections 9, 9A and 9B [**and, where adhesive stamps have been used, that such stamps have been defaced as required by this Act**];”; and 25

(c) by the deletion in the definition of “**stamp**” of subparagraphs (i) and (ii) of paragraph (a); 30

(2) Subsections (1)(a), (b) and (c) shall come into operation on a date fixed by the President by proclamation in the *Gazette*.

Amendment of section 5 of Act 77 of 1968, as amended by section 9 of Act 89 of 1972, section 7 of Act 66 of 1973, section 9 of Act 114 of 1977, section 5 of Act 118 of 1984, section 10 of Act 86 of 1987, section 19 of Act 87 of 1988, section 6 of Act 136 of 1991, section 6 of Act 136 of 1992, section 79 of Act 30 of 1998, section 68 of Act 30 of 2000 and section 74 of Act 32 of 2004 35

30. (1) Section 5 of the Stamp Duties Act, 1968, is hereby amended—

(a) by the substitution in subsection (1) for the words preceding subparagraph (i) of the following words: 40

“(1) The payment of any duty, interest, penalty or additional duty incurred under sections 9, 9A or 9B shall, [**save as is otherwise specially provided in this Act,**] be denoted by means of [**adhesive revenue stamps**] a stamp for the amount of that duty, interest, penalty or additional duty[, **and those stamps must be affixed to the instrument chargeable with the duty, interest, penalty or additional duty and be defaced as prescribed by this Act**]: Provided that—”; 45

(b) by the deletion in subsection (1) of paragraph (i);

(c) by the substitution in subsection (1) for paragraph (ii) of the following paragraph: 50

“(ii) [**the Commissioner may in his discretion, in lieu of the requirement that adhesive stamps be affixed to any such instrument, authorize**] upon the issue of a special receipt for the duty, interest, penalty or additional duty paid in respect of [**such**] an instrument[, and [**upon**] the issue of [**such**] that receipt, the person by whom or under whose supervision [**the said**] that 55

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receipt is issued, [shall] must endorse upon the instrument concerned a certificate of the due payment of [the said] that duty, interest, penalty or additional duty;”;

- (d) by the substitution in subsection (1) for paragraph (iii) of the following paragraph: 5

“(iii) [where] the Commissioner [is satisfied that any person or class of persons cannot conveniently denote the duty in respect of any instrument in respect of which stamp duty is payable by means of stamps affixed to such instrument, he] may, subject to [such] those conditions as he or she may impose and subject to the exercise of such control as he or she considers necessary, agree that payment of [such] that duty, interest, penalty or additional duty may be acknowledged by means of the issue of a special receipt, and [any such] that an instrument which bears on its face the words ‘duty paid’, shall for the purposes of this Act be deemed to be duly stamped.”; and 10 15

- (e) by the deletion in subsection (1) of paragraph (v).

(2) (a) Subsections (1)(a), (b) and (e) shall come into operation on a date fixed by the President by proclamation in the *Gazette*.

(b) Subsection (1)(c) shall— 20

(i) to the extent that it inserts a reference to interest, penalty or additional duty, come into operation on the date of promulgation of this Act.

(ii) to the extent that it amends the rest of paragraph (ii), come into operation on a date fixed by the President by proclamation in the *Gazette*.

(c) Subsection (1)(d) shall— 25

(i) to the extent that it inserts a reference to interest, penalty or additional duty, come into operation on the date of promulgation of this Act; and

(ii) to the extent that it amends the rest of paragraph (iii), come into operation on a date fixed by the President by proclamation in the *Gazette*.

Amendment of section 10 of Act 77 of 1968, as amended by section 5 of Act 95 of 1978, section 56 of Act 19 of 2001 and section 81 of Act 32 of 2004 30

31. (1) Section 10 of the Stamp Duties Act, 1968, is hereby repealed.

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

Amendment of section 26 of Act 77 of 1968, as amended by section 26 of Act 87 of 1988 35

32. (1) Section 26 of the Stamp Duties Act, 1968, is hereby amended by the substitution in subsection (1) for paragraph (a) of the following paragraph:

“(a) in relation to the stamping of any instrument [or the defacement of any stamp on any instrument], without lawful excuse uses, enters or attests any date other than the true date; or” 40

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

Amendment of section 27 of Act 77 of 1968, as amended by section 28 of Act 87 of 1988 and section 69 of Act 30 of 2000 45

33. (1) Section 27 of the Stamp Duties Act, 1968, 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 28 of Act 77 of 1968

34. (1) Section 28 of the Stamp Duties Act, 1968, is hereby repealed. 50

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

Amendment of section 28A of Act 77 of 1968, as inserted by section 12 of Act 88 of 1974 and amended by section 29 of Act 87 of 1988 and section 70 of Act 30 of 2000

35. (1) Section 28A of the Stamp Duties Act, 1968, is hereby repealed.

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

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Amendment to section 23 of Act 89 of 1991, as amended by section 20 of Act 20 of 1994, section 37 of Act 27 of 1997, section 92 of Act 53 of 1999, section 178 of Act 45 of 2003 and section 9 of Act 10 of 2005

36. Section 23 of the Value-Added Tax Act, 1991, is hereby amended by the substitution in subsection (3) for paragraph (a) of the following paragraph:

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“(a) that person is carrying on any enterprise as contemplated in paragraph (b)(ii), [or] (iii) or (v) or (c) of the definition of ‘enterprise’ in section 1; or”.

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, section 44 of Act 5 of 2001, section 158 of Act 60 of 2001, section 118 of Act 74 of 2002 and section 179 of Act 45 of 2003

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37. Section 28 of the Value-Added Tax Act, 1991, is hereby amended—

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

“(a) furnish the Commissioner with a return [(in such form as the Commissioner may prescribe)] reflecting such information as may be required for the purpose of the calculation of tax in terms of section 16; and”; and

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

“(v) the Commissioner may prescribe the form and manner (including electronically) in which returns must be submitted and payments must be made by a vendor.”.

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Amendment of section 31 of Act 89 of 1991, as amended by section 80 of Act 30 of 2000, section 180 of Act 45 of 2003 and section 41 of Act 34 of 2004

38. Section 31 of the Value-Added Tax Act, 1991, is hereby amended by the substitution in subsection (1) for paragraph (a) of the following paragraph:

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“(a) any person fails to furnish any return as required by section 28, 29 or 30 or fails to furnish any declaration as required by section [13(4) or] 14; or”.

Amendment of section 38 of Act 89 of 1991, amended by section 165 of Act 60 of 2001

39. (1) Section 38 of the Value-Added Tax Act, 1991, is hereby amended by the substitution for subsections (1) and (2) of the following subsections, respectively:

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“(1) Subject to the provisions of section 7(3)(d) and section 13(5) and (6), the tax payable under this Act 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.

(2) Where the Commissioner is satisfied that due to circumstances beyond the control of the person liable for the payment of the tax the amount of tax due cannot be accurately calculated within the time allowed by [section 13(4) or] section 14 or section 28 or section 29, whichever is applicable, the Commissioner may in his or her discretion and subject to such conditions as he or she may impose, agree to accept a payment of a deposit by such person of an amount equal to the estimated liability of such person for such tax.”.

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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, section 98 of Act 30 of 1998 and section 167 of Act 60 of 2001

40. Section 41 of the Value-Added Tax Act, 1991, is hereby amended by the substitution in paragraph (d) for subparagraph (ii) of the following subparagraph: 5

- “(ii) any amount of tax chargeable under this Act in respect of the importation of goods was not paid[—
 (A)
 (B) **if payment of such amount was required to be made within the period allowed in terms of section 13(4), within that period];** 10
 or”.

Amendment of section 46 of Act 89 of 1991, as amended by section 185 of Act 45 of 2003

41. Section 46 of the Value-Added Tax Act, 1991, is hereby amended by the addition of the following paragraph: 15

- “(j) on a foreign donor funded project shall be any person responsible for accounting for the receipt and payment of moneys or funds on behalf of such foreign donor funded project.”.

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, section 72 of Act 19 of 2001, section 173 of Act 60 of 2001, section 119 of Act 74 of 2002 and section 43 of Act 34 of 2004 20

42. Section 58 of the Value-Added Tax Act, 1991, is hereby amended by the substitution for paragraph (d) of the following paragraph:

- “(d) fails to comply with the provisions of [**section 13(4) or**] section 14 or section 25
 28(1) or (2), section 29 or section 30; or”.

Substitution of the long title of Act 31 of 1998

43. (1) The following long title hereby substitutes the long title of the Uncertificated Securities Tax Act, 1998:

- “To provide for the levying of an uncertificated securities tax in respect of [**the issue of, and**] every change in beneficial ownership in[,] any securities which are transferable without a written instrument and are not evidenced by a certificate; and to provide for matters connected therewith.”. 30

(2) Subsection (1) comes into operation on 1 January 2006.

Amendment of section 13 of Act 31 of 1998, as amended by section 181 of Act 60 of 2001 and section 193 of Act 45 of 2003 35

44. (1) Section 13 of the Uncertificated Securities Tax Act, 1998, is hereby amended by the substitution in subsection (1) for paragraph (a) of the definition of “**administration of this Act**” of the following paragraph:

- “(a) obtaining of full information in relation to [**the issue of, or**] every change in beneficial ownership in[,] any security;” 40

(2) Subsection (1) comes into operation on 1 January 2006 and applies in respect of the issue of any security on or after that date.

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Substitution of section 14A of Act 31 of 1998, as inserted by section 194 of Act 45 of 2003

45. (1) The following section hereby substitutes section 14A of the Uncertificated Securities Tax Act, 1998:

“Records

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14A. Any [issuer,] member, [or] participant or person who acquires the beneficial ownership in securities, must keep such records of every [issue of, or] change in beneficial ownership [in, any securities issued by the issuer or in respect of] which [a change in beneficial ownership] has been effected by the member, or [any transfer of securities] by the participant, or by the person that has acquired the beneficial ownership in the securities, for a period of five years as may be required to enable the [issuer,] member, [or] participant[,], or the person that has acquired the beneficial ownership in the securities, as the case may be, to observe the requirements of this Act and to enable the Commissioner to be satisfied that those requirements have been observed.”

(2) Subsection (1) comes into operation on 1 January 2006 and applies in respect of every change in beneficial ownership in any security on or after that date.

Repeal of section 6B of Act 9 of 1999

46. Section 6B of the Skills Development Levies Act, 1999, is hereby repealed. 20

Short title and commencement

47. (1) This Act is called the Revenue Laws Second Amendment Act, 2005.

(2) Save in so far as is otherwise provided in this Act or where the context indicates otherwise, the amendments effected to the Income Tax Act, 1962, by this Act shall for purposes of assessments in respect of normal tax under the Income Tax Act, 1962, be deemed to have come into operation as from the commencement of years of assessment ending on or after 1 January 2006. 25