

DRAFT
REPUBLIC OF SOUTH AFRICA

**TAXATION LAWS
AMENDMENT BILL**

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

(MINISTER of FINANCE)

29 JULY 2022

[Bxx—2022]

GENERAL EXPLANATORY NOTE:

[] Words in bold type in square brackets indicate omissions from existing enactments.

_____ Words underlined with a solid line indicate insertions in existing enactments.

BILL

To amend the Income Tax Act, 1962, so as to amend certain definitions; to amend certain provisions; to make new provision; to amend certain Schedules; and to replace a Schedule; to amend the Customs and Excise Act, 1964, so as to make provision for continuations; to amend certain Schedules; to amend the Value-Added Tax Act, 1991, so as to amend certain provisions; to amend certain Schedules; and to make provision for continuations, to amend the Taxation Laws Amendment Act, 2013, so as to amend certain effective dates; to amend the Carbon Tax Act, 2019, so as to amend certain provisions; and to amend a Schedule; to amend the Taxation Laws Amendment Act, 2011 so as to amend certain provisions; to amend the Taxation Laws Amendment Act, 2013 so as to amend certain provisions; to amend the Taxation Laws Amendment Act, 2019 so as to amend certain provisions; to amend the Taxation Laws Amendment Act, 2021 so as to amend certain provisions; and to provide for matters connected therewith.

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

Amendment of section 1 of Act 58 of 1962, as amended by section 3 of Act 90 of 1962, section 1 of Act 6 of 1963, section 4 of Act 72 of 1963, section 4 of Act 90 of 1964, section 5 of Act 88 of 1965, section 5 of Act 55 of 1966, section 5 of Act 76 of 1968, section 6 of Act 89 of 1969, section 6 of Act 52 of 1970, section 4 of Act 88 of 1971, section 4 of Act 90 of 1972, section 4 of Act 65 of 1973, section 4 of Act 85 of 1974, section 4 of Act 69 of 1975, section 4 of Act 103 of 1976, section 4 of Act 113 of 1977, section 3 of Act 101 of 1978, section 3 of Act 104 of 1979, section 2 of Act 104 of 1980, section 2 of Act 96 of 1981, section 3 of Act 91 of 1982, section 2 of Act 94 of 1983, section 1 of Act 30 of 1984, section 2 of Act 121 of 1984, section 2 of Act 96 of 1985, section 2 of Act 65 of 1986, section 1 of Act 108 of 1986, section 2 of Act 85 of 1987, section 2 of Act 90 of 1988, section 1 of Act 99 of 1988, Government Notice R780 of 1989, section 2 of Act 70 of 1989, section 2 of Act 101 of 1990, section 2 of Act 129 of 1991, section 2 of Act 141 of 1992, section 2 of Act 113 of 1993, section 2 of Act 21 of 1994, Government Notice 46 of 1994, section 2 of Act 21 of 1995, section 2 of Act 36 of 1996, section 2 of Act 28 of 1997, section 19 of Act 30 of 1998, Government Notice 1503 of 1998, section 10 of Act 53 of 1999, section 13 of Act 30 of 2000, section 2 of Act 59 of 2000, section 5 of Act 5 of 2001, section 3 of Act 19 of 2001, section 17 of Act 60 of 2001, section 9 of Act 30 of 2002, section 6 of Act 74 of 2002, section 33 of Act 12 of 2003, section 12 of Act 45 of 2003, section 3 of Act 16 of 2004, section 3 of Act 32 of 2004, section 3 of Act 32 of 2005, section 19 of Act 9 of 2006, section 3 of Act 20 of 2006, section 3 of Act 8 of 2007, section 5 of Act 35 of 2007, section 2 of Act 3 of 2008, section 4 of Act 60 of 2008, section 7 of Act 17 of 2009, section 6 of Act 7 of 2010, section 7 of Act 24 of 2011, section 271 of Act 28 of 2011, read with item 23 of Schedule 1 to that Act, section 2 of Act 22 of 2012, section 4 of Act 31 of 2013, section 1 of Act 43 of 2014, section 3 of Act 25 of 2015, section 5 of Act 15 of 2016, section 2 of Act 17 of 2017, section 1 of Act 23 of 2018, section 34 of Act 34 of 2019, section 2 of Act 23 of 2020 and section 4 of Act 20 of 2021

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

(a) by the substitution in the definition of “foreign dividend” for item (i) of the following item:

“(i) constitutes a redemption or a disposal of a participatory interest in an arrangement or scheme contemplated in paragraph (e)(ii) of the definition of “company to that scheme or arrangement or to the management company of that scheme or arrangement”; or”;

(b) by the substitution in paragraph (a) of the definition of “gross income” of the following paragraph:

“(a) any amount received or accrued by way of an annuity, including any amount contemplated in the definition of “living annuity” or the definition of “annuity amount” in section 10A(1), other than an amount contemplated in paragraph (d)(ii);”;

(c) by the substitution in paragraph (eA) of the definition of “gross income” for subparagraphs (i), (ii) and (iii) of the following subparagraphs, respectively:

“(i) any amount in a fund contemplated in paragraph (a), (b) or (d) of the definition of ‘pension fund’ or paragraph (a), (b) or (c) of the definition of ‘provident fund’, the rules of which provide that on retirement of such member a portion of his benefit has to be taken in the form of an annuity, has been transferred to a fund, the rules of which entitle such member, or the dependents or nominees of a deceased member, to a benefit on retirement in the form of a lump sum exceeding one-third of the capitalised value of all benefits (including lump sum payments and annuities); or

(ii) a fund contemplated in paragraph (a), (b) or (d) of the definition of ‘pension fund’ or paragraph (a), (b) or (c) of the definition of ‘provident fund’, the rules of which provide that on retirement of such member a portion of his benefit has to be taken in the form of an annuity, is wholly or partially converted by way of an amendment to its rules or otherwise, to entitle such member, or the dependents or nominees of a deceased member, to a benefit on retirement in the form of a lump sum exceeding one-third of the capitalised value of all benefits (including lump sum payments and annuities); or

(iii) any amount in a fund contemplated in paragraph (a), (b) or (d) of the definition of ‘pension fund’ or paragraph (a), (b) or (c) of the definition of ‘provident fund’ has become payable to the member or is being utilised to redeem a debt,”;

(d) by the substitution in paragraph (b) of the definition of “identical security” of the following paragraph:

“(b) any other security that is substituted for the listed security in terms of arrangement that is announced and released as a corporate action as contemplated in the JSE Limited **[Listing] Listings Requirements** in the SENS (Stock Exchange News Service) as defined in the JSE Limited **[Listing] Listings Requirements**”;

(e) by the substitution in the definition of “living annuity” for the words preceding paragraph (a) of the following words:

“**“living annuity”** means a right of a member or a former member of a pension fund, pension preservation fund, provident fund, provident preservation fund or retirement annuity fund, or his or her dependant or nominee, or any subsequent nominee, to any annuity purchased from a person or provided by **[that] any** fund on or after the retirement date of that member or former member in respect of which—”

(f) by the deletion of the proviso to paragraph (c) of the definition of “pension fund”.

(g) by the addition to the definition of “pension fund” of the following further proviso:

“:Provided further that the Commissioner may recognise a fund contemplated in paragraph (a), (b) or (d) in respect of any year of assessment if the Commissioner is satisfied that the rules of the fund provide that in determining the value of retirement interest an amount calculated as follows must not be taken into account—

(i) in the case of a person who was a member of a provident fund or a provident preservation fund and who was 55 years of age or older on 1 March 2021—

(aa) any amount contributed to a provident fund or transferred to a provident preservation fund prior to, on and after 1 March 2021 of which that person was a member on 1 March 2021;

(bb) with the addition of any other amount credited to the member’s individual account or minimum individual reserve of the provident fund or provident preservation fund prior to, on and after 1 March 2021; and

(cc) where applicable, any fund return, as defined in the Pension Funds Act, in relation to the contributions or transfers contemplated in subparagraph (aa) or amounts credited contemplated in subparagraph (bb); or

(ii) in any other case of a person who was a member of a provident fund or a provident preservation fund on 1 March 2021—

(aa) any amount contributed to a provident fund or transferred to a provident preservation fund prior to 1 March 2021;

(bb) with the addition of any other amounts credited to the member's individual account or minimum individual reserve of the provident fund or provident preservation fund as a result of the value of the member's individual account or minimum individual reserve on 1 March 2021; and

(cc) where applicable, any fund return, as defined in the Pension Funds Act, in relation to the contributions or transfers contemplated in subparagraph (aa) or amounts credited contemplated in subparagraph (bb),

where applicable, reduced proportionally by any amount permitted to be deducted in terms of the Pension Funds Act from the member's individual account or minimum individual reserve of the provident fund or provident preservation fund prior to, on and after 1 March 2021;”;

(h) by the substitution in paragraph (a) of the definition of “pension preservation fund” for subparagraph (vi) of the following subparagraph:

“(vi) former members of a pension fund, pension preservation fund or provident fund or provident preservation fund or nominees or dependants of that former member in respect of whom an “unclaimed benefit” as defined in section 1 of the Pension Funds Act and as contemplated in section 37C of the Pension Funds Act is due and payable by that fund;”;

(i) by the substitution in paragraph (c) of the definition of “pension preservation fund” for the words preceding the proviso of the following words:

“with the exception of amounts transferred to any other pension fund, pension preservation fund provident preservation fund or retirement annuity fund, not more than one amount contemplated in paragraph

2(1)(b)(iii) of the Second Schedule is allowed to be paid to the member during the period of membership of the fund or any other preservation fund:”:

(j) by the addition to the definition of “provident fund” of the following further proviso:

“:Provided further that the Commissioner may recognise a fund contemplated in paragraph (a), (b) or (c) in respect of any year of assessment if the Commissioner is satisfied that the rules of the fund provide that in determining the value of retirement interest an amount calculated as follows must not be taken into account—

(i) in the case of a person who was a member of a provident fund or a provident preservation fund and who was 55 years of age or older on 1 March 2021—

(aa) any amount contributed to a provident fund or transferred to a provident preservation fund prior to, on and after 1 March 2021 of which that person was a member on 1 March 2021;

(bb) with the addition of any other amounts credited to the member’s individual account or minimum individual reserve of the provident fund or provident preservation fund prior to, on or after 1 March 2021; and

(cc) where applicable, any fund return, as defined in the Pension Funds Act, in relation to the contributions or transfers contemplated in subparagraph (aa) or amounts credited contemplated in subparagraph (bb); or

(ii) in any other case of a person who was a member of a provident fund or a provident preservation fund on 1 March 2021—

(aa) any amount contributed to a provident fund or transferred to a provident preservation fund prior to 1 March 2021;

(bb) with the addition of any other amounts credited to the member’s individual account or minimum individual reserve of the provident fund or provident preservation fund as a result of the value of the member’s individual account or minimum individual reserve on 1 March 2021; and

(cc) where applicable, any fund return, as defined in the Pension Funds Act, in relation to the contributions or transfers contemplated in subparagraph (aa) or amounts credited contemplated in subparagraph (bb),

where applicable, reduced proportionally by any amount permitted to be deducted in terms of the Pension Funds Act from the member's individual account or minimum individual reserve of the provident fund or provident preservation fund prior to, on and after 1 March 2021;";

(k) by the substitution in paragraph (a) of the definition of "provident preservation fund" for subparagraph (vi) of the following subparagraph:

"(vi) former members of a pension fund, pension preservation fund or provident fund or provident preservation fund or nominees or dependants of that former member in respect of whom an "unclaimed benefit" as defined in section 1 of the Pension Funds Act and as contemplated in section 37C of the Pension Funds Act is due and payable by that fund;";

(l) by the substitution in paragraph (b)(xii) of the definition of "retirement annuity fund" for item (bb) of the following item:

(bb) for the transfer of any member's **[total]** interest in any approved retirement annuity fund into another approved retirement fund: Provided that the value of each individual contract being transferred must exceed R495 000. Provided further that in the case where the total member's interest in any approved retirement annuity fund is not transferred into another approved retirement annuity fund, the value of the member's remaining interest after the transfer must exceed R495 000;";

(2) Paragraph (a) of subsection (1) comes into operation on 1 January 2023,

(3) Paragraph (c) of subsection (1) is deemed to have come into operation on 1 March 2021 and applies in respect of years of assessment commencing on or after that date.

(4) Paragraphs (g), (j) and (l) of subsection (1) come into operation on 1 March 2023 and apply in respect of years of assessment commencing on or after that date.

Amendment of section 7B of Act 58 of 1962, as inserted by section 8 of Act 22 of 2012 and amended by section 3 of Act 34 of 2019

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

(a) by the substitution in the definition of “variable remuneration” in subsection (1) for paragraph (e) of the following paragraph:

“(e) any standby allowance; **[or]**”;

(b) by the substitution to the definition of “variable remuneration” in subsection (1) for paragraph (f) of the following paragraph:

“(f) any amount paid or granted in reimbursement of any expenditure as completed in section 8(1)(a)(ii)[.]or”; and

(c) by the addition in the definition of “variable remuneration” in subsection (1) after paragraph (f) of the following paragraph—

“(g) any amount of “remuneration” as defined in paragraph 1 of the Fourth Schedule (other than bonus) that is determined based on units produced.”.

(d) by the addition in subsection (2) of the following proviso:

“:Provided that this section shall not apply in cases where the amount is paid to a deceased employee by the employer.”.

(2) Subsection (1) comes into operation on 1 March 2023 and applies in respect of amounts accrued or expenditure incurred on or after that date.

Amendment of section 7C of Act 58 of 1962, as inserted by section 12 of Act 15 of 2016 and amended by section 5 of Act 17 of 2017, section 9 of Act 23 of 2018, section 4 of Act 34 of 2019 and section 3 of Act 23 of 2020

3. Section 7C of the Income Tax Act, 1962, is hereby amended by the substitution for subsection (3) of the following subsection—

“(3) If a trust or a company incurs—

(a) no interest in respect of a loan, advance or credit referred to in subsection (1), (1A), or (1B); or

(b) interest at a rate lower than the official rate of interest, an amount equal to the difference between the amount incurred by that trust or company during a year of assessment as interest in respect of that loan, advance or credit and the amount that would have been incurred by that trust or company at the official rate of interest must, for purposes of Part V of Chapter II, be treated as a

donation made to that trust by the person referred to in subsection (1)(a), (1A), or (1B) on the last day of that year of assessment of that trust or company.” .

Amendment of section 9D of Act 58 of 1962, as inserted by section 9 of Act 28 of 1997 and amended by section 28 of Act 30 of 1998, section 17 of Act 53 of 1999, section 19 of Act 30 of 2000, section 10 of Act 59 of 2000, section 9 of Act 5 of 2001, section 22 of Act 60 of 2001, section 14 of Act 74 of 2002, section 22 of Act 45 of 2003, section 13 of Act 32 of 2004, section 14 of Act 31 of 2005, section 9 of Act 20 of 2006, sections 9 and 96 of Act 8 of 2007, section 15 of Act 35 of 2007, section 8 of Act 3 of 2008, section 13 of Act 60 of 2008, section 12 of Act 17 of 2009, sections 16 and 146 of Act 7 of 2010, section 25 of Act 24 of 2011, sections 14 and 156 of Act 22 of 2012, section 19 of Act 31 of 2013, section 12 of Act 43 of 2014, section 13 of Act 25 of 2015, section 20 of Act 15 of 2016, section 15 of Act 17 of 2017, section 18 of Act 23 of 2018, section 10 of Act 34 of 2019, section 6 of Act 23 of 2020 and section 10 of Act 20 of 2021

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

(a) by the substitution in paragraph (C)(i) of the proviso to subsection (2) for item (aa) of the following item:

“(aa) a policy as defined in section 29A, that is “linked” [policy] as defined in [section 1 of the Long-term Insurance Act] Schedule 2 of the Insurance Act; or”;

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

“For the purposes of this section the “**net income**” of a controlled foreign company in respect of a foreign tax year is an amount equal to the taxable income of that company determined in accordance with the provisions of this Act as if that controlled foreign company had been a taxpayer, and as if that company had been a resident for purposes of the definition of “gross income”, sections 7(8), 10(1)(h), 10(1)(l), 25B, 28 and paragraphs 2(1)(a), 24, 70, 71. 72 and 80 of the Eighth Schedule.”; and

(c) by the addition in subsection (9)(fA) after subparagraph (i) of the following subparagraph:

“(iA) an amount of income that accrued to that company, in respect of a foreign dividend from a hybrid equity instrument held in any other controlled foreign company, in terms of section 8E(2), including any similar amount adjusted in terms of section 31;”.

(2) Paragraphs (b) and (c) of subsection (1) come into operation on 1 January 2023 and apply in respect of years of assessment commencing on or after that date.

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

160 of Act 24 of 2011, section 271 of Act 28 of 2011, read with item 31 of Schedule 1 to that Act, sections 19, 144, 157 and 166 of Act 22 of 2012, section 23 of Act 31 of 2013, section 14 of Act 43 of 2014, section 16 of Act 25 of 2015, section 23 of Act 15 of 2016, section 16 of Act 17 of 2017 section 22 of Act 23 of 2018, section 13 of Act 34 of 2019 and section 10 of Act 23 of 2020

5.(1) Section 10 of the Income Tax Act, 1962, is hereby amended by the addition to subsection 1(*i*) of the following proviso:

“: Provided that where any person’s year of assessment is less than a period of 12 months, the amount that shall be exempt from normal tax under subparagraph (i) or (ii) shall be the amount that bears to the amount referred to in that subparagraph the same ratio as the number of days in that year of assessment bears to 365 days;”;

(2) Subsection (1) comes into operation on 1 March 2023 and applies in respect of years of assessment commencing on or after that date.

Amendment of section 10B of Act 58 of 1962, as inserted by section 29 of Act 24 of 2011 and amended by section 4 of Act 13 of 2012, section 20 of Act 22 of 2012, section 25 of Act 31 of 2013, section 15 of Act 43 of 2014, section 6 of Act 13 of 2015, section 25 of Act 15 of 2016, section 8 of Act 14 of 2017 and section 23 of Act 23 of 2018

6. (1) Section 10B of the Income Tax Act, 1962, is hereby amended by the substitution for subsection (7) for paragraph (a) of the following paragraph—

“(a) The Minister may announce in the national annual budget contemplated in section 27(1) of the Public Finance Management Act, that, with effect from a date or dates mentioned in that announcement, the numbers contemplated in subsection (3)(b)(ii)[**(aa) and (cc)**] will be altered to the extent mentioned in the announcement;”.

(2) Subsection (1) is deemed to have come into operation on 17 January 2019.

Amendment of section 10C of Act 58 of 1962, as inserted by section 21 of Act 22 of 2012 and amended by section 26 of Act 31 of 2013, section 16 of Act 43 of 2014, section 118 of Act 17 of 2017, section 24 of Act 23 of 2018 and section 14 of Act 34 of 2019 and section 12 of Act 23 of 2020

7. (1) Section 10C of the Income Tax Act, 1962, is hereby amended by the substitution in subsection (1) in the definition of “qualifying annuity” for paragraph (d) of the following paragraph:

“(d) as contemplated in paragraph [~~(b)(iv)~~](ii)(~~dd~~) of the proviso to the definition of ‘provident fund’ in section 1(1); or”;

(2) Subsection (1) is deemed to have come into operation on 1 March 2021.

Amendment of section 11 of Act 58 of 1962, as amended by section 9 of Act 90 of 1962, section 8 of Act 72 of 1963, section 9 of Act 90 of 1964, section 11 of Act 88 of 1965, section 12 of Act 55 of 1966, section 11 of Act 95 of 1967, section 9 of Act 76 of 1968, section 14 of Act 89 of 1969, section 10 of Act 52 of 1970, section 10 of Act 88 of 1971, section 8 of Act 90 of 1972, section 9 of Act 65 of 1973, section 12 of Act 85 of 1974, section 9 of Act 69 of 1975, section 9 of Act 113 of 1977, section 5 of Act 101 of 1978, section 8 of Act 104 of 1979, section 8 of Act 104 of 1980, section 9 of Act 96 of 1981, section 7 of Act 91 of 1982, section 10 of Act 94 of 1983, section 11 of Act 121 of 1984, section 46 of Act 97 of 1986, section 10 of Act 85 of 1987, section 8 of Act 90 of 1988, section 8 of Act 70 of 1989, section 11 of Act 101 of 1990, section 13 of Act 129 of 1991, section 11 of Act 141 of 1992, section 9 of Act 113 of 1993, section 5 of Act 140 of 1993, section 10 of Act 21 of 1994, section 12 of Act 21 of 1995, section 9 of Act 36 of 1996, section 12 of Act 28 of 1997, section 30 of Act 30 of 1998, section 20 of Act 53 of 1999, section 22 of Act 30 of 2000, section 15 of Act 59 of 2000, section 10 of Act 19 of 2001, section 27 of Act 60 of 2001, section 14 of Act 30 of 2002, section 19 of Act 74 of 2002, section 27 of Act 45 of 2003, section 9 of Act 16 of 2004, section 16 of Act 32 of 2004, section 6 of Act 9 of 2005, section 18 of Act 31 of 2005, section 11 of Act 20 of 2006, section 11 of Act 8 of 2007, section 17 of Act 35 of 2007, sections 1 and 10 of Act 3 of 2008, section 18 of Act 60 of 2008, section 14 of Act 17 of 2009, section 19 of Act 7 of 2010, sections 30 and 161 of Act 24 of

2011, section 271 of Act 28 of 2011, read with item 33 of Schedule 1 to that Act, section 22 of Act 22 of 2012, section 27 of Act 31 of 2013, section 17 of Act 43 of 2014, section 18 of Act 25 of 2015, section 26 of Act 15 of 2016, section 19 of Act 17 of 2017, section 25 of Act 23 of 2018, section 15 of Act 34 of 2019 and section 13 of Act 23 of 2020

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

(a) by the substitution in paragraph (e) for subparagraph (vii) of the following paragraph:

“(vii) where the value of any such machinery, implements, utensils and articles acquired by the taxpayer on or after 15 March 1984 is for the purposes of this paragraph to be determined having regard to the cost of such machinery, implements, utensils and articles, such cost shall be deemed to be the cost which **[a person]** the taxpayer would, if **[he]** such taxpayer had acquired such machinery, implements, utensils and articles under a cash transaction concluded at arm’s length on the date on which the transaction for the acquisition of such machinery, implements, utensils and articles was in fact concluded, have incurred in respect of the direct cost of the acquisition of such machinery, implements, utensils and articles, including the direct cost of the installation thereof; **[and]**”;

(b) by the substitution in paragraph (e) for subparagraph (ix) of the following subparagraph:

“(ix) where any such machinery, plant, implement, utensil or article was used by the taxpayer during any previous year of assessment or years of assessment for the purposes of any trade carried on by such taxpayer, the receipts and accruals of which were not included in the income of such taxpayer during such year or years the period in use of such asset during such previous year or years shall be taken into account in determining the amount by which the value of such machinery, plant, implement, utensil or article has been diminished; and”;
and

(c) by the addition in paragraph (e) after subparagraph (ix) of the following subparagraph:

“(x) no allowance may be made in respect of any machinery, plant, implement, utensil or article acquired by the taxpayer as a government grant as defined in section 12P(1).”;

(2) Subsection (1) is deemed to have come into operation on the date that the Draft Taxation Laws Amendment Bill, 2022, is published for public comment and applies in respect of years of assessment ending on or after that date.

Amendment of section 12L of Act 58 of 1962, as inserted by section 27 of Act 17 of 2009, substituted by section 29 of Act 22 of 2012, amended by section 38 of Act 31 of 2013, section 24 of Act 25 of 2015 and section 19 of Act 34 of 2019

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

“(1) For the purpose of determining the taxable income derived by any person from carrying on any trade in respect of any year of assessment ending before 1 January **[2023]** 2026, there must be allowed as a deduction from the income of that person an amount in respect of energy efficiency savings by that person in respect of that year of assessment determined in accordance with subsection (2), subject to subsection (3).”.

(2) Subsection (1) comes into operation on 1 January 2023.

Amendment of section 19 of Act 58 of 1962, as substituted by section 32 of Act 17 of 2017 and amended by section 36 of Act 23 of 2018

10. (1) Section 19 of the Income Tax Act, 1962, is hereby amended by the substitution for subsection (6A) of the following subsection—

“(6A) Where—

- (a) a debt benefit arises during any year of assessment in respect of a debt owed by a person as contemplated in subsection (2); and
- (b) the amount of that debt is owed in respect of or was used as contemplated in paragraph (b) of that subsection to fund expenditure incurred in respect of an

allowance asset that was disposed of in a year of assessment prior to that in which that debt benefit arises, that person must, **[if the amount determined in respect of that disposal as a recovery or recoupment of a deduction or allowance is less than the amount that would have been so determined had that debt benefit been taken into account in the year of assessment in which the disposal occurred, treat the amount of that difference]** treat the amount of that debt benefit, less any amount, if any, previously determined in respect of that disposal as a recovery or recoupment of a deduction or allowance as an amount recovered or recouped for purposes of section 8(4)(a) in the year of assessment in which that debt benefit arises;”.

(2) Subsection (1) comes into operation on 1 January 2023 and applies in respect of years of assessment commencing on or after that date.

Amendment of section 23 of Act 58 of 1962, as amended by section 18 of Act 65 of 1973, section 20 of Act 121 of 1984, section 23 of Act 129 of 1991, section 20 of Act 141 of 1992, section 18 of Act 113 of 1993, section 15 of Act 21 of 1994, section 28 of Act 30 of 2000, section 21 of Act 30 of 2002, section 38 of Act 45 of 2003, section 13 of Act 16 of 2004, section 28 of Act 31 of 2005, section 17 of Act 20 of 2006, section 20 of Act 8 of 2007, section 37 of Act 60 of 2008, section 41 of Act 7 of 2010, sections 47 and 162 of Act 24 of 2011, section 271 of Act 28 of 2011, read with item 38 of Schedule 1 to that Act, section 42 of Act 22 of 2012, section 56 of Act 31 of 2013, section 33 of Act 43 of 2014, section 35 of Act 17 of 2017 and section 39 of Act 23 of 28

11. (1) Section 23 of the Income Tax Act, 1962, is hereby amended by the substitution in paragraph (o) for subparagraph (iii) of the following subparagraph—

“(iii) **[any expenditure incurred constituting]** which constitutes fruitless and wasteful expenditure as defined in section 1 of the Public Finance Management Act [,) and determined in accordance with that Act;”.

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

2016, section 39 of Act 17 of 2017, section 41 of Act 23 of 2018, section 28 of Act 34 of 2019 and section 19 of Act 20 of 2021

12.(1) Section 23M of the Income Tax Act, 1962, is hereby amended by the addition after subsection (6) of the following subsection:

“(6A) This section does not apply to interest incurred on a loan utilised for mining purposes during any period of non-production as contemplated in paragraph (b) of the definition of ‘capital expenditure’ in section 36(11).”

(2) Subsection (1) comes into operation on 31 March 2023 and applies in respect of years of assessment ending on or after that date.

Amendment of section 24 of Act 58 of 1962, as substituted by section 16 of Act 65 of 1986 and amended by section 6 of Act 108 of 1986, section 23 of Act 101 of 1990, section 17 of Act 28 of 1997, section 31 of Act 31 of 2005 and section 41 of Act 25 of 2015

13. (1) Section 24 of the Income Tax Act, 1962, is hereby amended by the addition after subsection (2) of the following subsection:

“(2A) In the case of a lay-by agreement as contemplated in section 62 of the Consumer Protection Act, 2008 (Act No. 68 of 2008), the taxpayer may, to the extent that an allowance was not made under section 11(j), make an allowance in respect of all amounts which are deemed to have accrued under such agreement but which have not been received by the end of the taxpayer’s year of assessment: Provided that any allowance so made shall be included in the income of that taxpayer in the following year of assessment.”

(2) Subsection (1) comes into operation on 1 January 2023 and applies in respect of years of assessment commencing on or after that date.

Amendment of section 28 of Act 58 of 1962, as amended by section 17 of Act 90 of 1962, section 22 of Act 55 of 1966, section 24 of Act 89 of 1969, section 21 of Act 88 of 1971, section 19 of Act 65 of 1973, section 19 of Act 91 of 1982, section 22 of Act 94 of 1983, section 17 of Act 65 of 1986, section 23 of Act 90 of 1988,

section 13 of Act 70 of 1989, section 25 of Act 101 of 1990, section 29 of Act 129 of 1991, section 24 of Act 113 of 1993, section 19 of Act 21 of 1994, section 33 of Act 30 of 2000, section 42 of Act 35 of 2007, section 40 of Act 60 of 2008, section 40 of Act 17 of 2009, section 51 of Act 7 of 2010, section 61 of Act 22 of 2012, section 76 of Act 31 of 2013, section 52 of Act 25 of 2015, section 49 of Act 15 of 2016, section 50 of Act 23 of 2018, section 33 of Act 34 of 2019 and section 21 of Act 20 of 2021

14. (1) Section 28 of the Income Tax Act, 1962, is hereby amended—

(a) by the substitution for subsection (3A) of the following subsection:

“(3A) Notwithstanding section 23(e), for the purpose of determining the taxable income derived during any year of assessment by any foreign reinsurer conducting insurance business through a branch in the Republic in terms of section 6 of the Insurance Act in respect of a branch policy, there shall be allowed as a deduction from the income of that foreign insurer in respect of liabilities determined in accordance with the formula—

$$I = (L + \text{LIC} + DL) - DC + DR$$

in which formula —

(a) “I” represents the amount to be determined,

(b) “L” represents the **[amount of the liabilities in respect of branch policies of the insurer, net of amounts recognised as]** aggregate amounts of—

(i) **[recoverable under policies of reinsurance]** insurance contract liabilities; [and]

(ii) **[negative liabilities]**, investment contract liabilities; and

(iii) reinsurance contract liabilities;

reduced by—

(aa) insurance contract assets;

(bb) reinsurance contract assets, and

(cc) liability for incurred claims contemplated in paragraph (c),

the amounts of which are determined in accordance with IFRS as annually reported by the insurer to shareholders in the audited annual financial statements in respect of branch policies, provided that the amount may not be less than zero;

(c) “LIC” represents the amount of the liability for incurred claims determined in accordance with IFRS 17 in respect of the policies of the insurer, net of amounts recognised in reinsurance contracts for liabilities for incurred claims, which are determined in accordance with IFRS as annually reported by the insurer to shareholders in the audited annual financial statements;

(d) “DL” represents the amount of deferred tax liabilities, determined in accordance with IFRS as annually reported by the insurer to shareholders in the audited annual financial statements, in respect of branch policies;

[(d)](e) “DC” represents the amount of differed acquisition cost determined in accordance with IFRS as annually reported by the insurer to shareholders in the audited financial statements, in respect of branch policies; and

[(e)](f) “DR” represents for a policyholder fund the amount of deferred revenue determined in accordance with IFRS as annually reported by the insurer to shareholders in the audited financial statements, in respect of branch policies.”.

(b) by the addition after subsection (3B) of the following subsection:

“(3C)(a) Subject to subsection (3), for the purpose of determining the taxable income derived by any short-term insurer from carrying on short-term insurance business, there shall be allowed as a deduction from the income of that short-term insurer in respect of—

- (i) the first year of assessment commencing on or after 1 January 2023, 66.7 per cent of the phasing-in amount; and
- (ii) the second year of assessment commencing on or after 1 January 2023, 33.3 per cent of the phasing-in amount;

Provided where an insurer ceases to conduct business during any year of assessment contemplated in subparagraphs (i) to (ii), the amount to be deducted in respect of the phasing-in amount in respect of that year of assessment must be nil.”.

(b) Subject to subsection (3), for the purposes of determining the taxable income derived by any short-term insurer from carrying on any short-term insurance business, there shall be included in the income of that short-term

insurer, the phasing in amount determined under subparagraph (c) in respect of —

- (i) the first year of assessment commencing on or after 1 January 2023, 66.7 per cent of the phasing-in amount; and
- (ii) the second year of assessment commencing on or after 1 January 2023, 33.3 per cent of the phasing-in amount;

Provided where an insurer ceases to conduct business during any year of assessment contemplated in items (i) to (ii), the amount to be included in respect of the phasing-in amount in respect of that year of assessment must be nil.”.

“(c) For purposes of subparagraph (a), “**phasing-in amount**” means the amount by which the amount of the deduction under subsection (3), for the year of assessment commencing on or after 1 January 2022 but before 1 January 2023 exceeds the amount of the deduction under subsection (3) for the year of assessment commencing on or after 1 January 2022 but before 1 January 2023 had IFRS 17 and subsection (3A) as amended by the Taxation Laws Amendment Act, 2022, been applied at the end of that year of assessment.”.

“(d) For purposes of subparagraph (b), “**phasing-in amount**” means the amount by which the amount of the deduction under subsection (3) for the year of assessment commencing on or after 1 January 2022 but before 1 January 2023 had IFRS 17 and subsection (3A) as amended by the Taxation Laws Amendment Act, 2022, been applied at the end of that year of assessment exceeds the amount of the deduction under subsection (3), for the year of assessment commencing on or after 1 January 2022 but before 1 January 2023.”.

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

“(4)(a) The total of all amounts deducted from the income of a short-term insurer in respect of a year of assessment in terms of subsections (3) **[and]** (3A) and (3C)(a) shall, be included in the income of that short-term insurer in the immediately following year of assessment

“(b) The total of the amount included in the income of a short-term insurer in respect of a year of assessment in terms of subsection (3C)(b) shall, be deducted from the income of that short-term insurer in the immediately following year of assessment.”.

(2) Subsection (1) comes into operation on 1 January 2023 and applies in respect of years of assessment commencing on or after that date.

Amendment of section 29A of Act 58 of 1962, as inserted by section 30 of Act 53 of 1999 and amended by section 36 of Act 59 of 2000, section 15 of Act 5 of 2001, section 15 of Act 19 of 2001, section 39 of Act 60 of 2001, section 30 of Act 74 of 2002, section 16 of Act 16 of 2004, section 23 of Act 20 of 2006, section 21 of Act 3 of 2008, section 52 of Act 7 of 2010, section 62 of Act 22 of 2012, section 77 of Act 31 of 2013, section 47 of Act 43 of 2014, section 53 of Act 25 of 2015, section 50 of Act 15 of 2016, section 46 of Act 17 of 2017, section 51 of Act 23 of 2018, section 34 of Act 34 of 2019, section 30 of Act 23 of 2020 and section 22 of Act 20 of 2021

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

(a) by the substitution in subsection (1) of the definition of “adjusted IFRS value” for the following definition:

“**adjusted IFRS value**”, in respect of a policyholder fund or the risk policy fund, means an amount, which may not be less than zero, and which must be calculated in accordance with the formula —

$$I = (L + \underline{\text{LIC}} + DL + PF) - PT - DC + DR$$

in which formula —

(a) “I” represents the amount to be determined,

(b) “L” represents, **[the amount of the liabilities]** in respect of policies of the insurer, **[net of amounts recognised as]** the aggregate amounts of —

(i) **[recoverable under policies of reinsurance]** insurance contract liabilities; **[and]**

(ii) **[negative liabilities,]** investment contract liabilities; and

(iii) reinsurance contract liabilities;

reduced by—

(aa) insurance contract assets;

(bb) reinsurance contract assets, and

(cc) liability for incurred claims contemplated in paragraph (c).

the amounts of which are determined in accordance with IFRS as annually reported by the insurer to shareholders in the audited annual financial statements **[in respect of policies allocated to that fund]**, provided that the amount may not be less than zero;”;

(c) “LIC” represents the amount of the liability for incurred claims determined in accordance with IFRS 17 in respect of the policies of the insurer, net of amounts recognised in reinsurance contracts for liabilities for incurred claims, which are determined in accordance with IFRS as annually reported by the insurer to shareholders in the audited annual financial statements, in respect of policies allocated to that fund;

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

~~[(d)]~~ (e) “PF” represents the amount calculated in terms of subsection (14) if a phasing-in amount is determined in terms of subsection (15)(a);

~~[(e)]~~ (f) “PT” represents the amount calculated in terms of subsection (14) if a phasing-in amount is determined in terms of subsection (15)(b);

~~[(f)]~~ (g) “DC” represents for a policyholder fund the amount of differed acquisition cost determined in accordance with IFRS as annually reported by the insurer to shareholders in the audited financial statements; and

~~[(g)]~~ (h) “DR” represents for a policyholder fund the amount of deferred revenue determined in accordance with IFRS as annually reported by the insurer to shareholders in the audited financial statements;

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

“**value of liabilities**” means in respect of a policyholder fund and risk policy fund the adjusted IFRS value plus so much of **[the expenditure]** all other liabilities allocated to that fund that **[has not been paid by the last day of the**

year of assessment and has] have not been taken into account in determining the adjusted IFRS value”;

(c) by the addition after subsection (11C) of the following subsection:

“(11D)(a) For the purposes of determining the taxable income derived by an insurer in respect of its corporate fund, there shall be allowed as a deduction from the income of that corporate fund in respect of —

- (i) the first year of assessment commencing on or after 1 January 2023, 83.3 per cent of the phasing-in amount;
- (ii) the second year of assessment commencing on or after 1 January 2023, 66.7 per cent of the phasing-in amount;
- (iii) the third year of assessment commencing on or after 1 January 2023, 50 per cent of the phasing-in amount;
- (iv) the fourth year of assessment commencing on or after 1 January 2023, 33.3 per cent of the phasing-in amount; and
- (v) the fifth year of assessment commencing on or after 1 January 2023, 16.7 per cent of the phasing-in amount;

Provided where an insurer ceases to conduct business during any year of assessment contemplated in subparagraphs (i) to (v), the amount to be deducted in respect of the phasing-in amount in respect of that year of assessment must be nil.

(b) For the purposes of determining the taxable income derived by an insurer in respect of its corporate fund, there shall be included in the income of that corporate fund, the phasing in amount determined under paragraph (c) in respect of —

- (i) the first year of assessment commencing on or after 1 January 2023, 83.3 per cent of the phasing-in amount;
- (ii) the second year of assessment commencing on or after 1 January 2023, 66.7 per cent of the phasing-in amount;
- (iii) the third year of assessment commencing on or after 1 January 2023, 50 per cent of the phasing-in amount;
- (iv) the fourth year of assessment commencing on or after 1 January 2023,

- 33.3 per cent of the phasing-in amount; and
- (v) the fifth year of assessment commencing on or after 1 January 2023,
16.7 per cent of the phasing-in amount;

Provided where an insurer ceases to conduct business during any year of assessment contemplated in subparagraphs (i) to (v), the amount to be included in respect of the phasing-in amount in respect of that year of assessment must be nil.

(c) For purposes of paragraph (a), “phasing in amount” means the amount by which the “adjusted IFRS value” amount determined with reference to IFRS 4 at the end of the year of assessment commencing on or after 1 January 2022 but before 1 January 2023 exceeds the “adjusted IFRS value” amount had IFRS 17 and the definition of “adjusted IFRS value” as amended by the Taxation Laws Amendment Act, 2022, been applied at the end of that year of assessment.

(d) For purposes of paragraph (b), “phasing in amount” means the amount by which the “adjusted IFRS value” amount had IFRS 17 and the definition of “adjusted IFRS value” as amended by the Taxation Laws Amendment Act, 2022, been applied at the end of the year of assessment commencing on or after 1 January 2022, but before 1 January 2023 exceeds the “adjusted IFRS value” amount determined with reference to IFRS 4 at the of that year of assessment.

(e) The amount deducted from the income in respect of a year of assessment in terms of paragraph (a) shall be included in the income of the corporate fund of the insurer in the immediately following year of assessment.

(f) The amount included in the income in respect of a year of assessment in terms of paragraph (b) shall be deducted from the income of the corporate fund of the insurer in the immediately following year of assessment.”.

(2) Subsection (1) comes into operation on 1 January 2023 and applies in respect of years of assessment commencing on or after that date.

Amendment of section 45 of Act 58 of 1962, as substituted by section 34 of Act 74 of 2002 and amended by section 53 of Act 45 of 2003, section 35 of Act 32 of

2004, section 41 of Act 31 of 2005, section 35 of Act 8 of 2007, section 56 of Act 35 of 2007, section 28 of Act 3 of 2008, section 51 of Act 60 of 2008, section 64 of Act 7 of 2010, section 70 of Act 24 of 2011, section 77 of Act 22 of 2012, section 94 of Act 31 of 2013, section 64 of Act 25 of 2015, section 53 of Act 17 of 2017, section 57 of Act 23 of 2018, section 42 of Act 34 of 2019, section 33 of Act 23 of 2020 and section 26 of Act 20 of 2021

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

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

“(a) This subsection applies where a debt or share is issued or used for purposes of directly or indirectly facilitating or funding the acquisition of an asset that is acquired as contemplated in subsection (3A), and subsequent to that acquisition—

- (i) the transferee company, **[and the transferor company cease]** within a period of six years after the acquisition ceases in relation to the transferor company, as contemplated in [terms of] subsection (4), or the transferee company and the transferor company are deemed to have ceased in terms of subsection (4B), to form part of any group of companies as contemplated in subsection (4);
- (ii) the transferee company and the transferor company still form part of the same group of companies on the sixth anniversary of that acquisition; **[or]**
- (iii) the transferee company disposes of an asset as contemplated in subsection (5)**[.]; or**
- (iv) the transferee company disposes of an asset after a period of 18 months after the acquisition in terms of any transaction other than a transaction contemplated under this Part;”.

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

“(b) Where the holder of a debt or a holder of a share acquired that debt or share as a result of the issue or use of a debt or share as contemplated in paragraph (a), the holder of that debt or the holder of that share must, on the

day on which the circumstances contemplated in paragraph[s] (a) [(i) or (a) (ii)] occur [or the transferee company disposes of an asset as contemplated in paragraph (a) (iii)], be deemed to have incurred expenditure—

(c) by the substitution in subsection (4)(a) for subparagraph (ii) of the following subparagraph:

“(ii) in terms of one or more disposals subsequent to the disposal contemplated in subparagraph (i);

and no capital gain or capital loss was determined in respect of any of those disposals as a result of the application of this Part;”

(2) Paragraphs (a) and (b) of subsection (1) come into operation on 1 January 2023 and apply in respect of years of assessment ending on or after that date.

Amendment of section 64FA of Act 58 of 1962, as inserted by section 79 of Act 24 of 2011, amended by section 87 of Act 22 of 2012 and amended by section 6 of Act 33 of 2019

17. Section 64FA of the Income Tax Act, 1962, is hereby amended by the substitution in subsection (1)(a) for subparagraph (i) of the following subparagraph:

“(i) a declaration by the beneficial owner in such form as may be prescribed by the Commissioner that the portion of the dividend that constitutes a distribution of an asset *in specie* would, if that portion had not constituted a distribution of an asset *in specie*, have been exempt from the dividend tax in terms of section 64F or an agreement for the avoidance of double taxation; and”;

Amendment of section 64K of Act 58 of 1962, as inserted by section 56 of Act 60 of 2008 and amended by section 53 of Act 17 of 2009, section 84 of Act 24 of 2011, section 271 of Act 28 of 2011 read with paragraph 55 of Schedule 1 to that Act, section 14 of Act 21 of 2012, section 5 of Act 39 of 2013, section 5 of Act 44 of 2014, section 4 of Act 23 of 2015, section 3 of Act 16 of 2016, section 4 of Act 13 of 2017 and section 1 of Act 22 of 2018

18. Section 64K of the Income Tax Act, 1962, is hereby amended—

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

“(a) has, in terms of section 64G(2)(a) or 64H(2)(a), withheld no dividends tax in respect of the payment of any dividend, or in terms of section 64G(3) or 64H(3), withheld dividends tax in accordance with a reduced rate in respect of the payment of any dividend; or;”;

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

“(b) that is a company which was, in terms of section 64FA(1)(a), not liable for dividends tax, or in terms of section 64FA(2), liable for dividends tax at a reduced rate in respect of the declaration and of any dividend,”,

Amendment of paragraph 4 of Second Schedule to Act 58 of 1962, as amended by section 20 of Act 72 of 1963, section 24 of Act 90 of 1964, section 36 of Act 21 of 1995, section 41 of Act 3 of 2008, section 60 of Act 17 of 2009, section 83 of Act 7 of 2010, section 91 of Act 24 of 2011, section 97 of Act 22 of 2012, section 71 of Act 43 of 2014, section 85 of Act 25 of 2015 and section 63 of Act 17 of 2016

19.(1) Paragraph 4 of the Second Schedule to the Income Tax Act, 1962, is hereby amended by the deletion of by the deletion of subparagraph (3).

(2) Subsection (1) comes into operation on 1 March 2023.

Amendment of paragraph 11 of Fourth Schedule to Act 58 of 1962, as amended by section 39 of Act 21 of 1995, section 84 of Act 45 of 2003, section 42 of Act 20 of 2006, section 69 of Act 60 of 2008 and section 9 of Act 16 of 2016

20. (1) Paragraph 11 of the Fourth Schedule to the Income Tax Act, 1962, is hereby amended by the substitution for subparagraph (a) of the following subparagraph:

“(a) to an employer authorising that employer—

- (i) to refrain from deducting or withholding any amount under paragraph 2 by way of employees’ tax from any remuneration due to any employee of that employer; or
- (ii) to deduct or withhold by way of employees’ tax from any remuneration in terms of paragraph 2, a specified amount or an amount to be determined in accordance with a specified rate or scale,

in order to alleviate hardship to that employee due to circumstances outside the control of the employee or to correct any error in regard to the calculation of employees' tax, or in the case of remuneration constituting commission or where the remuneration is paid or payable to a personal service provider and that directive must be complied with [; or].”.

Amendment of paragraph 3 of Seventh Schedule to Act 58 of 1962, as amended by section 23 of Act 8 of 2010 and section 15 of Act 16 of 2016

21. Paragraph 3 of the Seventh Schedule to the Income Tax Act, 1962, is hereby amended by the substitution for subparagraph (3) of the following subparagraph:

“(3) If the employee concerned is dissatisfied with any determination or proposed determination by his or her employer of the cash equivalent of the value of any taxable benefit included in the remuneration of the employee for employees' tax purposes, the employee or the employer may refer the matter to the Commissioner and the Commissioner may, if it appears to him or her that the determination or proposed determination should be adjusted, issue a directive to the employer as to the manner in which such determination should be made and the employer shall be obliged to act upon such directive: Provided that nothing in this subparagraph contained shall be construed as preventing the Commissioner from making a re-determination of such cash equivalent under the provisions of subparagraph (2).”.

Amendment of paragraph 5 of Eighth Schedule to Act 58 of 1962, as amended by section 32 of Act 9 of 2006, section 2 of Act 8 of 2007, section 1 of Act 3 of 2008, section 67 of Act 17 of 2009, section 107 of Act 24 of 2011, section 8 of Act 13 of 2012 and section 75 of Act 23 of 2018

22.(1) Paragraph 5 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended by the addition to subparagraph (1) of the following proviso:

“:Provided that where any person's year of assessment is less than a period of 12 months, the annual exclusion shall be the amount that bears to R40 000 the same ratio as the number of days in that year of assessment bears to a period of 365 days:”;

(2) Subsection (1) comes into operation on 1 March 2023 and applies in respect of years of assessment commencing on or after that date.

Amendment of Eleventh Schedule to Act 58 of 1962, as added by section 140 of Act 22 of 2012, amended by section 161 of Act 31 of 2013 and substituted by section 125 of Act 25 of 2015, section 56 of Act 23 of 2020 and section 47 of Act 20 of 2021

23. (1) The following Schedule is hereby substituted for the Eleventh Schedule to the Income Tax Act, 1962:

"ELEVENTH SCHEDULE

GOVERNMENT GRANTS EXEMPT FROM NORMAL TAX

(Section 12P)

1. Agro-Processing Support Scheme received or accrued from the Department of Trade, Industry and Competition;
2. Aquaculture Development and Enhancement Programme received or accrued from the Department of Trade, Industry and Competition;
3. Automotive Production and Development Programme received or accrued from the International Trade Administration Commission of South Africa;
4. Automotive Investment Scheme received or accrued from the Department of Trade, Industry and Competition;
5. Black Business Supplier Development Programme received or accrued from the Department of Small Business Development;
6. Black Industrialists Scheme received or accrued from the Department of Trade, Industry and Competition;
7. Business Process Services received or accrued from the Department of Trade, Industry and Competition;
8. Business Viability Programme received or accrued from the Department of Small Business Development;
9. Capital Projects Feasibility Programme received or accrued from the Department of Trade, Industry and Competition;
10. Capital Restructuring Grant received or accrued from the Department of Human Settlements;

11. Clothing and Textiles Competitiveness Programme received or accrued from the Industrial Development Corporation;
12. Cluster Development Programme received or accrued from the Department of Trade, Industry and Competition;
13. Comprehensive Agricultural Support Programme received or accrued from the Department of Agriculture;
14. Co-operative Incentive Scheme received or accrued from the Department of Small Business Development;
15. Critical Infrastructure Programme received or accrued from the Department of Trade, Industry and Competition;
16. Eastern Cape Jobs Stimulus Fund received or accrued from the Department of Economic Development, Environmental Affairs and Tourism of the Eastern Cape;
17. Enterprise Incubation Programme received or accrued from the Department of Small Business Development;
18. Enterprise Investment Programme received or accrued from the Department of Trade, Industry and Competition;
19. Equity Fund received or accrued from the Department of Science and Technology;
20. Export Marketing and Investment Assistance received or accrued from the Department of Trade, Industry and Competition;
21. Film Production Incentive received or accrued from the Department of Trade, Industry and Competition;
22. Food Fortification Grant received or accrued from the Department of Health;
23. Green Technology Incentive Programme received or accrued from the Department of Tourism;
24. Idea Development Fund received or accrued from the Department of Science and Technology;
25. Incubation Support Programme received or accrued from the Department of Trade, Industry and Competition;
26. Industrial Development Zone Programme received or accrued from the Department of Trade, Industry and Competition;

27. Industry Matching Fund received or accrued from the Department of Science and Technology;
28. Integrated National Electrification Programme Grant: Non-grid electrification service providers received or accrued from the Department of Energy;
29. Integrated National Electrification Programme: Electricity connection to households received or accrued from the Department of Energy;
30. Interest Make-Up Programme received or accrued from the Department of Trade, Industry and Competition;
31. Jobs Fund received or accrued from the National Treasury;
32. Manufacturing Competitiveness Enhancement Programme received or accrued from the Department of Trade, Industry and Competition;
33. Sector Specific Assistance Scheme received or accrued from the Department of Trade, Industry and Competition;
34. Shared Economic Infrastructure Facility received or accrued from the Department of Small Business Development;
35. Small Enterprise Manufacturing Support Programme received or accrued from the Department of Small Business Development;
36. Small, Medium Enterprise Development Programme received or accrued from the Department of Trade, Industry and Competition;
37. Small/Medium Manufacturing Development Programme received or accrued from the Department of Trade, Industry and Competition;
38. Social Employment Fund received or accrued from the Department of Trade, Industry and Competition
39. South African Research Chairs Initiative received or accrued from the Department of Science and Technology;
39. Strategic Partnership Programme received or accrued from the Department of Trade, Industry and Competition;
40. Support Programme for Industrial Innovation received or accrued from the Department of Trade, Industry and Competition;
42. Taxi Recapitalisation Programme received or accrued from the Department of Transport;
43. Technology Development Fund received or accrued from the Department of Science and Technology;

44. Technology and Human Resources for Industry Programme received or accrued from the Department of Trade, Industry and Competition;
45. The Blended Finance Facility received or accrued from the Department of Small Business Development;
46. The COVID-19 Emergency Fund received or accrued from the Department of Small Business Development;
47. The Small Business and Innovation Fund received or accrued from the Department of Small Business Development;
48. Township and Rural Entrepreneurship Programme (TREP) received or accrued from the Department of Small Business Development;
49. Transfers to the South African National Taxi Council received or accrued from the Department of Transport;
50. Transfers to the University of Pretoria, University of KwaZulu-Natal and University of Stellenbosch received or accrued from the Department of Transport;
51. Youth Technology Innovation Fund received or accrued from the Department of Science and Technology.”

(2) Subsection (1) is, in respect of any grant, deemed to have come into operation on the date on which that grant was awarded to the recipient thereof and applies in respect of any amount received or accrued in respect of that grant on or after that date.

Amendment of section 48 of Act 91 of 1964, as amended by section 6 of Act 57 of 1966, section 18 of Act 105 of 1969, section 3 of Act 98 of 1970, section 1 of Act 68 of 1973, section 8 of Act 105 of 1976, section 11 of Act 112 of 1977, sections 10 and 15 of Act 98 of 1980, section 9 of Act 86 of 1982, section 18 of Act 84 of 1987, section 7 of Act 68 of 1989, section 23 of Act 59 of 1990, section 4 of Act 61 of 1992, section 3 of Act 19 of 1994, section 39 of Act 45 of 1995, section 64 of Act 30 of 1998, section 54 of Act 53 of 1999, section 140 of Act 45 of 2003 and section 91 of Act 31 of 2005 and section 58 of Act 23 of 2020

24. (1) Section 48 of the Customs and Excise Act, 1964, is hereby amended—
(a) by the substitution for subsection (2) of the following subsection:

“(2) The Minister may from time to time by like notice amend or withdraw or, if so withdrawn, insert Part 2, Part 3, Part 4, Part 5A **[or]** Part 5B or Part 7 of Schedule No. 1, whenever he deems it expedient in the public interest to do so: Provided that the Minister may, whenever he deems it expedient in the public interest to do so, reduce any duty specified in the said Parts with retrospective effect from such date and to such extent as may be determined by him in such notice.”.

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

“(b) amend Part 6, including to withdraw or reduce any export duty imposed in terms of paragraph (a) with or without retrospective effect, or increase such export duty, from a date and to such extent as may be determined by the Minister in such notice.”.

Amendment of Schedule 1 and 6 to Act 91 of 1964, as amended by section 19 of Act 95 of 1965, section 15 of Act 57 of 1966, section 2 of Act 96 of 1967, section 22 of Act 85 of 1968, section 37 of Act 105 of 1969, section 9 of Act 98 of 1970, section 2 of Act 89 of 1971, section 12 of Act 103 of 1972, section 6 of Act 68 of 1973, section 3 of Act 64 of 1974, section 13 of Act 71 of 1975, section 13 of Act 105 of 1976, section 38 of Act 112 of 1977, section 3 of Act 114 of 1981, section 27 of Act 86 of 1982, section 10 of Act 89 of 1984, section 14 of Act 101 of 1985, section 11 of Act 69 of 1988, section 19 of Act 68 of 1989, section 40 of Act 59 of 1990, section 3 of Act 111 of 1991, section 15 of Act 105 of 1992, section 13 of Act 98 of 1993, section 12 of Act 19 of 1994, section 74 of Act 45 of 1995, section 8 of Act 44 of 1996, section 15 of Act 27 of 1997, section 75 of Act 30 of 1998, section 7 of Act 32 of 1999, section 64 of Act 30 of 2000, section 52 of Act 19 of 2001, section 53 of Act 30 of 2002, section 41 of Act 12 of 2003, section 155 of Act 45 of 2003, section 36 of Act 16 of 2004, section 14 of Act 9 of 2005, section 36 of Act 9 of 2006, section 76 of Act 8 of 2007, section 66 of Act 3 of 2008, section 88 of Act 17 of 2009, section 117 of Act 7 of 2010, section 127 of Act 24 of 2011, section 14 of Act 13 of 2012, section 9 of Act 23 of 2013, section 7 of Act 42 of 2014, section 8 of Act 13 of 2015, section 13 of Act 13 of 2016, section 18 of Act 14 of 2017, section 7 of Act 21 of 2018, section 4 of Act 32 of 2019, section 9 of Act 22 of 2020 and section 5 of Act 19 of 2021

25. (1) Schedule No. 1 to the Customs and Excise Act, 1964 (Act No. 91 of 1964), is hereby amended as set out in Schedule I Part I to this Act.

(2) Schedule No. 6 to the Customs and Excise Act, 1964 (Act No. 91 of 1964), is hereby amended as set out in Schedule I Part II to this Act.

(3) Subject to section 58(1) of the Customs and Excise Act, 1964, the amendments set out in Schedule I to this Act will come into operation on 1 June 2023.

Continuation of certain amendments of Schedules to Act 91 of 1964 and Act 89 of 1991

26. Every amendment or withdrawal of or insertion in Schedules No. 1 to 6, 8 and 10 to the Customs and Excise Act, 1964, made under section 48, 49, 56, 56A, 57, 60 or 75(15) of that Act during the period 1 October 2021 up to and including 31 October 2022, shall not lapse by virtue of section 48(6), 49(5A), 56(3), 56A(3), 57(3), 60(4) or 75(16) of that Act and in Schedule No.1 to the Value Added Tax Act, 1991, made under section 74(3)(a) of that Act during the period 1 October 2021 up to and including 31 October 2022, shall not lapse by virtue of section 74(3)(b) of that Act.

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

with item 108 of Schedule 1 to that Act, section 145 of Act 22 of 2012, section 165 of Act 31 of 2013, section 95 of Act 43 of 2014, section 128 of Act 25 of 2015, section 83 of Act 15 of 2016, section 77 of Act 17 of 2017, section 89 of Act 28 of 2018, section 66 of Act 34 of 2019 and section 61 of Act 23 of 2020

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

(a) by the substitution in subsection (1) for the words in paragraph (xiii) of the proviso to the definition of “enterprise” preceding subparagraph (aa) of the following words:

“(xiii) where a person is neither a resident of the Republic, nor a registered vendor and that person supplies or intends to supply to a recipient solely the use or the right of use of ships, aircraft, **[and]** rolling stock and parts directly in connection thereto under any rental agreement, that activity shall be deemed not to be the carrying on of an enterprise, notwithstanding that those goods are supplied for use in the Republic, if—”

(b) by the addition in subsection (1) to the proviso of the definition of “enterprise” of the following paragraph:

“(xiv) where goods are supplied by a ‘qualifying purchaser’ to another ‘qualifying purchaser’ on a ‘flash title’ basis as respectively defined in the regulation referred to in paragraph (d) of the definition of ‘exported’ in section 1(1), the activity of such first-mentioned qualifying purchaser shall be deemed not to be carrying on an enterprise in the Republic provided that the documentary requirements prescribed in regulation 10 of the regulation referred to in paragraph (d) of the definition of ‘exported’ in section 1(1) are complied with;”

(2) Subsection (1) comes into operation on 1 January 2023.

Amendment of section 9 of Act 89 of 1991, as amended by section 25 of Act 136 of 1991, section 25 of Act 97 of 1993, section 21 of Act 46 of 1996, section 26 of Act 27 of 1997, section 167 of Act 45 of 2003, section 96 of Act 32 of 2004, section 103 of Act 31 of 2005, section 172 of Act 34 of 2005, section 28 of Act 36 of 2007, section 27 of Act 8 of 2010, section 167 of Act 39 of 2013, section 130 of Act 25 of 2015, section 79 of Act 17 of 2017 and section 50 of Act 20 of 2021

28. (1) Section 9 of the Value-Added Tax Act, 1991, is hereby amended by the substitution of subsection (13) of the following subsection:

“(13) Where any supply of goods or services is deemed to be made as contemplated in section 18D(2) the time of supply shall be deemed to be the date within the tax period in which the agreement for the letting and hiring of the accommodation in a dwelling comes into effect.”.

(2) Subsection (1) is deemed to have come into operation on 1 April 2022.

Amendment of section 16 of Act 89 of 1991, as amended by section 30 of Act 136 of 1991, section 21 of Act 136 of 1992, section 30 of Act 97 of 1993, section 16 of Act 20 of 1994, section 23 of Act 37 of 1996, section 32 of Act 27 of 1997, section 91 of Act 30 of 1998, section 87 of Act 53 of 1999, section 71 of Act 19 of 2001, section 156 of Act 60 of 2001, section 172 of Act 45 of 2003, section 107 of Act 31 of 2005, section 47 of Act 9 of 2006, section 83 of Act 20 of 2006, section 83 of Act 8 of 2007, section 106 of Act 35 of 2007, section 30 of Act 36 of 2007, section 29 of Act 8 of 2010, section 137 of Act 24 of 2011, section 271 of Act 28 of 2011, read with item 115 of Schedule 1 to that Act, section 148 of Act 22 of 2012, section 173 of Act 31 of 2013, section 98 of Act 43 of 2014, section 25 of Act 23 of 2015, section 26 of Act 16 of 2016, section 83 of Act 17 of 2017 and section 53 of Act 20 of 2021

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

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

“(c) records are maintained as required by section 20(8) or 20(8A) where the supply is a supply of second-hand goods or a supply of goods as contemplated in section 8(10) and in either case is a supply to which that section relates; or;”;

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

“(f) the vendor, in the case where an amount is deducted from the sum of the amounts of output tax which are attributable to that period in terms of subsection (3)(c),(d),(dA), (e), (f), (g), (h), (i), (j), (k),(l), (m) **[or]** (n) or (o), is in possession of documentary proof, as is prescribed by the Commissioner,

substantiating the vendor's entitlement to the deduction at the time a return in respect of the deduction is furnished; or”;

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

“(o) an amount equal to the tax fraction of the amount calculated in accordance with section 10(29):”.

(2) Subsection (1) is deemed to have come into operation on 1 April 2022.

Amendment of section 18D in Act 89 of 1991, as inserted by section 54 of Act 20 of 2021

30. (1) Section 18D of the Value-Added Tax Act, 1991, is hereby amended by the substitution in subsection (5) for paragraph (c) of the following paragraph:

“(c) contemplated in the proviso to the definition of “[**temporary**] temporarily applied” in subsection (1) is subject to the adjustment in section 18(1),”

(2) Subsection (1) is deemed to have come into operation on 1 April 2022.

Amendment of section 20 of Act 89 of 1991, as amended by section 25 of Act 136 of 1992, section 33 of Act 97 of 1993, section 35 of Act 27 of 1997, section 94 of Act 30 of 1998, section 91 of Act 53 of 1999, section 157 of Act 60 of 2001, section 175 of Act 45 of 2003, section 47 of Act 16 of 2004, section 104 of Act 32 of 2004, section 38 of Act 21 of 2006, section 14 of Act 9 of 2007, section 1 of Act 3 of 2008, section 35 of Act 18 of 2009, section 30 of Act 8 of 2010, section 29 of Act 21 of 2012, section 176 of Act 31 of 2013, section 99 of Act 43 of 2014, section 26 of Act 23 of 2015, section 7 of Act 22 of 2018, section 19 of Act 33 of 2019 and section 20 of Act 24 of 2020

31. (1) Section 20 of the Value-Added Tax Act, 1991, is hereby amended—

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

“(8) Notwithstanding anything in this section, where a supplier makes a supply (not being a taxable supply) of second-hand goods [**or of goods as contemplated in section 8(10)**] to a recipient, being a registered vendor, the recipient shall in the form as the Commissioner may prescribe, maintain a

declaration by the supplier stating whether the supply is a taxable supply or not and shall further maintain sufficient records to enable the following particulars to be ascertained:

(a) (i) The name of the supplier and—

(aa) where the supplier is a natural person, his identity number; or

(bb) where the supplier is not a natural person, the name and identity number of the natural person representing the supplier in respect of the supply and any legally allocated registration number of the supplier:

Provided that the recipient—

(A) shall verify such name and identity number of any such natural person with reference to his identity card, as contemplated in section 1 of the Identification Act, 1997 (Act No. 68 of 1997), and retain a photocopy of such name and identity number appearing in such identity card; or

(B) shall verify such name and registration number of any supplier other than a natural person with reference to its business letterhead or other similar document and retain a photocopy of such name and registration number appearing on such letterhead or document; and

(ii) the address of the supplier;

(b) the date upon which the second-hand goods were acquired **[or the goods were repossessed or surrendered, as the case may be];**

(c) a description of the goods;

(d) the quantity or volume of the goods;

(e) the consideration for the supply; and

(f) proof and date of payment.”.

(b) by the addition after subsection (8) of the following subsection:

“(8A) Notwithstanding anything in this section, where a supplier makes a deemed supply (not being a taxable supply) of goods contemplated in section 8(10) to a recipient, being a registered vendor, the recipient shall maintain sufficient records to enable the following particulars to be ascertained:

- (a) the date upon which the goods were repossessed or surrendered as the case may be;
- (b) particulars referred to in paragraphs (a), (c) (d) and (e) of subsection 8; and
- (c) further particulars in the form and manner as the Commissioner may prescribe.”.

(2) Subsection (1) comes into operation on 1 January 2023.

Amendment of 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, section 9 of Act 10 of 2005, section 36 of Act 32 of 2005, section 14 of Act 10 of 2006, section 24 of Act 4 of 2008, section 113 of Act 60 of 2008, section 93 of Act 17 of 2009, section 23 of Act 7 of 2010, section 141 of Act 24 of 2011, section 178 of Act 31 of 2013 and section 11 of Act 21 of 2018

32. (1) Section 23 of the Value-Added Tax Act, 1991, is hereby amended by the addition after subsection (2) of the following subsection:

“(2A)(a) Notwithstanding subsection (2) every person who is not a resident of the Republic, and who in terms of subsection (1) or section 50A, becomes liable to be registered in accordance with Chapter 3 of the Tax Administration Act, shall be deemed to be a branch of the registered vendor upon written application for registration by that registered vendor: Provided that:

- (i) where there is more than one holding company or subsidiary that is not a resident of the Republic and those holding companies or subsidiaries form part of the same “group of companies” as defined in section 1 of the Income Tax Act as the registered vendor, all those holding companies or subsidiaries will be deemed to constitute a single branch registration;
- (ii) the branch shall be treated as a separate enterprise from the registered vendor for the purposes of this Act;
- (iii) the Commissioner may with effect from a date determined by the Commissioner, cancel the registration of the separate branch contemplated in paragraph (a) if—

(aa) the registered vendor referred to in paragraph (a) has applied to the Commissioner in writing for such registration to be cancelled; or

(bb) it appears to the Commissioner that the duties or obligations of such separate branch have not been satisfactorily performed or carried out,

and any activity carried on by that separate branch shall as from the said date be deemed to be carried on by that holding company or subsidiary that is not a resident of the Republic that constituted a single branch registered separately in terms of paragraph (a);

(iv) the Commissioner shall cancel the separate registration of any separate branch on the cancellation of the registration of the registered vendor referred to in paragraph (a) and any activity carried on by that separate branch shall as from the said date be deemed to be carried on by that holding company or subsidiary that is not a resident of the Republic that constituted a single branch registered separately in terms of paragraph (a);

(v) where any separate branch separately registered under paragraph (a) fails to do anything required to be done under this Act, the liability for the doing of that thing shall revert to the registered vendor referred to in paragraph (a);

(vi) any decision or determination of the Commissioner made under section 15 or 27 in respect of the registered vendor referred to in paragraph (a) shall, for the purposes of this Act, apply equally to the separate branch which is separately registered under paragraph (a): Provided further that where a decision or determination is made by the Commissioner under subsection (2) of section 27 which applies in respect of any such separate branch, this paragraph shall not be construed as preventing the Commissioner from making a separate decision or determination under subsection (4) of the said section in the circumstances contemplated in that subsection in respect of any other separate branch of the said registered vendor; and

(vii) notwithstanding the provisions of this section, any amount that is refundable under section 190 of the Tax Administration Act (including interest thereon) to the registered vendor referred to in paragraph (a) or

the separate branch which is registered separately in terms of paragraph (a), may be set off against the outstanding tax debt of the registered vendor referred to in paragraph (a) or the separate branch which is registered separately in terms of paragraph (a), as the case may be.

(b) For the purposes of this Act, where a decision is made under this section, the registered vendor and each of the holding companies and subsidiaries shall be jointly and severally liable for any tax due by such branch.”.

(2) Subsection (1) comes into operation on 1 January 2023.

Amendment of section 52 of Act 89 of 1991, as amended by section 39 of Act 136 of 1991, section 45 of Act 27 of 1997 and Act 171 of Act 60 of 2001

33. (1) Section 52 of the Value-Added Tax Act, 1991, is hereby amended by the addition of the following subsection:

“(3)(a) Any pool managed by any person for the benefit of shareholders of a company or partners in a partnership or any body, not being a pool contemplated in subparagraphs (1) and (2), may on written application by such person or body, for the purposes of this Act be deemed to be an enterprise carried on by that person separately from the shareholders or partners or by that body separately from the members of such body: Provided that—

- (i) the pooling arrangement is established in order to comply with the provisions of the laws of the Republic or regulations or rules promulgated by a professional body;
- (ii) such person or body must elect in writing that the pool be treated as a separate enterprise for the purposes of this Act and applies for such pool to be registered separately in terms of section 50; and
- (iii) notwithstanding the provisions of section 54(1) and (2), the pool is treated for the purposes of this Act as a principal and not as an agent of shareholders, partners or members of such body.

(b) Failure to comply with the provisions of this Act will result in the pooling arrangement and shareholders, partners or members of such body being held jointly and severally liable for any VAT loss suffered by the fiscus.”.

(2) Subsection (1) comes into operation on 1 January 2023.

Amendment of section 1 of Act 25 of 2011 as amended by section 31 of Act 21 of 2012

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

“(2) Subsection (1) comes into operation on 1 October 2012 and applies in respect of research and development on or after 1 October 2012, but on or before **[1 October 2022]** 1 January 2024.”.

(2) Subsection (1) is deemed to have come into operation on 14 December 2011.

Amendment of section 13 of Act 31 of 2013, as amended by section 144 of Act 25 of 2015, section 98 of Act 15 of 2016, section 93 of Act 17 of 2017, section 98 of Act 23 of 2018, section 82 of Act 34 of 2019, section 71 of Act 23 of 2020 and section 60 of Act 20 of 2021

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

“(2) Subsection (1) comes into operation on 1 January **[2023]** 2024 and applies in respect of amounts incurred on or after that date.”.

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

Amendment of section 15 of Act 31 of 2013, as amended by section 145 of Act 25 of 2015, section 99 of Act 15 of 2016, section 94 of Act 17 of 2017 section 99 of Act 23 of 2018, section 83 of Act 34 of 2019, section 72 of Act 23 of 2020 and section 61 of Act 20 of 2021

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

“(2) Subsection (1) comes into operation on 1 January **[2023]** 2024 and applies in respect of amounts incurred on or after that date.”.

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

Amendment of section 62 of Act 31 of 2013 as amended by section 148 of Act 25 of 2015, section 100 of Act 15 of 2016, section 100 of Act 23 of 2018, section 84 of Act 34 of 2019, section 73 of Act 23 of 2020 and section 62 of Act 20 of 2021

37. (1) Section 62 of the Taxation Laws Amendment Act, 2013, is hereby amended by the substitution for subsection (2) of the following subsection:

“(2) Subsection (1) comes into operation on 1 January **[2023]** 2024 and applies in respect of amounts of interest incurred on or after that date.”.

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

Amendment of section 5 of Act 15 of 2019, as amended by section 10 of Act 22 of 2020 and section 6 of Act 19 of 2021

38. (1) Section 5 of the Carbon Tax Act, 2019, is hereby amended—

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

“(2) The rate of tax specified in subsection (1) must be increased successively by the amount of: [equal to a percentage equal to the change in the November consumer price index as determined by Statistics South Africa that falls within the previous tax period compared with the November consumer price index that falls within the tax period, until 31 December 2022, plus two percentage points]

(a) US\$1/tCO₂e rand equivalent using the average exchange rate as defined in section 1 of the Income Tax Act, 1962 (Act No.58 of 1962), until 31 December 2023;

(b) US\$2/tCO₂e rand equivalent using the average exchange rate as defined in section 1 of the Income Tax Act, 1962 (Act No.58 of 1962), until 31 December 2024; and

(c) US\$3/tCO₂e rand equivalent using the average exchange rate as defined in section 1 of the Income Tax Act, 1962 (Act No.58 of 1962), until 31 December 2025.”.

(b) by the addition after subsection (2) of the following subsection:

“(2A) The rate of tax specified in subsection (1) must be increased to the amount of US\$20/tCO₂e rand equivalent using the average exchange rate as defined in section 1 of the Income Tax Act, 1962 (Act No.58 of 1962) from 1 January 2026.”.

(c) by the addition after subsection (2A) of the following subsection:

“(2B) The rate of tax specified in subsection (1) must be successively increased by the amount of US\$2.50/tCO₂e rand equivalent using the average exchange rate as defined in section 1 of the Income Tax Act, 1962 (Act No.58 of 1962) from 1 January 2027 until 31 December 2029.”.

(d) by the addition after subsection (2B) of the following subsection:

“(2C) The rate of tax specified in subsection (1) must be increased to the amount of US\$30/tCO₂e rand equivalent using the average exchange rate as defined in section 1 of the Income Tax Act, 1962 (Act No.58 of 1962) from 1 January 2030.”.

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

“(3) The rate of tax must be increased after 31 December ~~[2022]~~ 2030 by the amount [equal to a percentage equal to the change in the November consumer price index as determined by Statistics South Africa that falls within the previous tax period compared with the November consumer price index that falls within the tax period prior to the previous tax year.] announced by the Minister in the national annual budget contemplated in section 27(1) of the Public Finance Management, 1999, (Act No. 1 of 1999).”.

(2) Subsection (1) comes into operation on 1 January 2023.

Amendment of section 6 of Act 15 of 2019, as amended by section 93 of Act 34 of 2019, section 77 of Act 23 of 2020 and section 63 of Act 20 of 2021

39. (1) Section 6 of Carbon Tax Act, 2019, is hereby amended—

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

“(2) The amount of tax payable by a taxpayer in respect of the generation of electricity from fossil fuels conducting activities under the IPCC codes 1A1 for energy industries and 1A2 for manufacturing industries and construction in respect of a tax period must be calculated in accordance with the formula:”:

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

“(c) ‘**B**’ represents an amount equal to the quantity of renewable electricity (kWh) purchased under a power purchase agreement multiplied by the renewable energy premium determined by the Minister by notice in the *Gazette* in respect of a tax period, until 31 December ~~[2022]~~ 2025; and”;

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

“(d) ‘**C**’ represents an amount equal to the environmental levy contemplated in respect of electricity generated in the Republic in Section B of Part 3 of Schedule 1 to the Customs and Excise Act, 1964 (Act No. 91 of 1964), paid in respect of a tax year, until 31 December ~~[2022]~~ 2025.”.

(d) by the substitution in subsection (4) of the following subsection:

“(4) For the purposes of this section, “**sequesterate**” means—

(a) the process storing a greenhouse gas in forestry plantations and harvested wood products within the operational control of the taxpayer in respect of fuel combustion emissions declared in terms of IPCC code 1A2d for pulp, paper and print in terms of section 4(1);
or

(b) the process of storing a greenhouse gas in forestry plantations and harvested wood products within the operational control of the taxpayer in respect of fuel combustion emissions declared in terms of IPCC code 1A2d for pulp, paper and print or increasing the carbon content of a carbon reservoir other than the atmosphere in respect of fuel combustions emissions declared in terms of section 4(2)(a).”.

(2) Paragraphs (a), (b) and (c) of subsection (1) comes into operation on 1 January 2023,

(3) Paragraph (d) of subsection (1) is deemed to have come into operation on 1 January 2022.

Amendment of section 50 of Act 34 of 2019

40. Section 50 of the Taxation Laws Amendment Act, 2019, is hereby amended by the substitution for subsection (3) of the following subsection:

(3) Paragraph (b) of subsection (1) is deemed to have come into operation on 1 March 2021 and applies in respect of **[contributions]** transfers made on or after that date.

Amendment of section 4 of Act 20 of 2021

41. (1) Section 4 of the Taxation Laws Amendment Act, 2021 is hereby amended by the substitution in subsection (1) for paragraph (c) of the following paragraph:

“(c) by the addition to the definition of “contributed tax capital” of the following further proviso:

“: Provided further that an amount transferred by a company as contemplated in paragraph (a) or (b) must not comprise a transfer of contributed tax capital unless all holders of shares in that class to which transfers are made within a period of 91 days before or after the date of that transfer are actually allocated an amount of contributed tax capital based on their proportional shareholding within that class of shares:”.

(2) Subsection (1) is deemed to have come into operation on 19 January 2022.

Amendment of section 18 of Act 20 of 2021

42. (1) Section 18 of the Taxation Laws Amendment Act, 2021, is hereby amended by the substitution for subsection (1) of the following subsection:

“(1) Section 20 of the Income Tax Act, 1962, is hereby amended by the substitution in subsection (1) for paragraph (a) of the following paragraph:

“(a)(i) that is a company, other than a company referred to in subparagraph (ii), any balance of assessed loss incurred by that person in any previous year which has been carried forward from the preceding year of assessment, to the extent that the amount of such set-off does not exceed the higher of R1 million and 80 per cent of the amount of taxable income determined before taking into account the application of this section;

(ii) that is a company carrying on mining operations as contemplated in section 15, any balance of assessed loss incurred by that person in any previous year which has been carried forward from the preceding year of assessment, to the extent that the amount of such set-off does not exceed the higher of R1 million and 80 per cent of the amount of taxable income determined before taking into account the application of–

(A) this section; and

(B) the provisions of sections 36(7E), (7F) and (7G); or

(iii) that is not a company, any balance of assessed loss incurred by that person in any previous year which has been carried forward from the preceding year of assessment: Provided that no person whose estate has been voluntarily or compulsorily sequestrated shall be entitled to carry forward any assessed loss incurred prior to the date of sequestration, unless the order of sequestration has been set aside, in which case the amount to be carried forward shall be reduced by an amount which was allowed to be set off against the income of the insolvent estate of such person from the carrying on of trade.”.

(2) Subsection (1) is deemed to have come into operation on 19 January 2022.

Short title

43. This Act is called the Taxation Laws Amendment Act, 2022.

Schedule I

PART I

Amendment to Part 2A of Schedule No. 1 to Customs and Excise Act, 1964

(1) Part 2A of Schedule No. 1 to the Customs and Excise Act, is hereby amended—

(a) by the deletion of the following tariff items:

Tariff Item	Tariff Subheading	Article Description	Rate of Excise Duty
104.37.15	2404.19.20	Other, put up for retail sale in the form of sticks	R7.43/10 sticks
104.37.17	2404.19.90	Other	R929.33/kg

(b) by the addition of the following tariff items under tariff subheading 2404.12 and 2404.19:

Tariff Item	Tariff Subheading	Article Description	Rate of Excise Duty
104.37.14	2404.12	Other, containing nicotine	R2.90/ml
104.37.16	2404.19.10	Containing nicotine substitutes	R2.90/ml
104.37.19	2404.19.20	Other, put up for retail sale in the form of sticks	R7.43/10 sticks
104.37.21	2404.19.90	Other	R929.33/kg

PART II**Amendment to Part 1E of Schedule No. 6 to Customs and Excise Act, 1964**

(2) Part 1E of Schedule No. 6 to the Customs and Excise Act, is hereby amended—

(a) by the deletion of the following tariff items to rebate items 622.08, 622.13 and 622.23:

Rebate Item	Tariff Item	Rebate Code	CD	Description	Extent of Rebate	Extent of Refund
622.08	104.37.15	05.01	75	Other, put up for retail sale in the form of sticks	Full duty	As provided in Note 4 to this section As provided in Note 4 to this section
622.08	104.37.17	06.01	73	Other	Full duty	
622.13	104.37.15	05.01	74	Other, put up for retail sale in the form of sticks	Full duty	
622.13	104.37.17	06.01	72	Other	Full duty	
622.23	104.37.15	05.01	72	Other, put up for retail sale in the form of sticks		
622.23	104.37.17	06.01	70	Other		

(b) by the addition of the following tariff items to rebate item 622.08:

Rebate Item	Tariff Item	Rebate Code	CD	Description	Extent of Rebate	Extent of Refund
622.08	104.37.14	05.01	73	Other, containing nicotine	Full duty	
622.08	104.37.16	06.01	71	Containing nicotine substitutes	Full duty	
622.08	104.37.19	07.01	71	Other, put up for retail sale in the form of sticks	Full duty	
622.08	104.37.21	08.01	75	Other	Full duty	

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(c) By the addition of the following tariff items to rebate item 622.13:

Rebate Item	Tariff Item	Rebate Code	CD	Description	Extent of Rebate	Extent of Refund
622.13	104.37.14	05.01	72	Other, containing nicotine	Full duty	
622.13	104.37.16	06.01	70	Containing nicotine substitutes	Full duty	
622.13	104.37.19	07.01	70	Other, put up for retail sale in the form of sticks	Full duty	
622.13	104.37.21	08.01	79	Other	Full duty	

(d) by the addition of the following tariff items to rebate item 622.23:

Rebate Item	Tariff Item	Rebate Code	CD	Description	Extent of Rebate	Extent of Refund
622.23	104.37.14	05.01	70	Other, containing nicotine		As provided in Note 4 to this Section
622.23	104.37.16	06.01	79	Containing nicotine substitutes		As provided in Note 4 to this Section
622.23	104.37.19	07.01	79	Other, put up for retail sale in the form of sticks		As provided in Note 4 to this Section
622.23	104.37.21	08.01	77	Other		As provided in Note 4 to this Section