

# OFFICIAL GAZETTE

## EXTRAORDINARY

### OF SOUTH WEST AFRICA

### BUITENGEWONE

# OFFISIËLE KOERANT

## VAN SUIDWES-AFRIKA

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### Government Notice

### Goewermentskennisgewing

Office of the

Kantoor van die

ADMINISTRATOR-GENERAL FOR THE  
TERRITORY OF SOUTH WEST AFRICA

ADMINISTRATEUR-GENERAAL VIR DIE  
GEBIED SUIDWES-AFRIKA

DEPARTMENT OF THE COUNCIL OF  
MINISTERS

DEPARTEMENT VAN DIE MINISTERSRAAD

No. AG. 172

1981

No. AG. 172

1981

PROMULGATION OF ACT OF NATIONAL  
ASSEMBLY

AFKONDIGING VAN WET VAN NASIONALE  
VERGADERING

The following Act, which has been adopted by the National Assembly of South West Africa and signed by the Administrator-General in terms of the National Assembly Proclamation, 1979 (Proclamation AG. 21 of 1979), is hereby published in terms of section 19 of that Proclamation:—

No. 24 of 1981 : Income Tax Act, 1981

Die volgende Wet, wat ingevolge die Proklamasie op die Nasionale Vergadering, 1979 (Proklamasie AG. 21 van 1979), deur die Nasionale Vergadering van Suidwes-Afrika aangeneem en deur die Administrateur-generaal onderteken is, word hierby afgekondig ingevolge artikel 19 van daardie Proklamasie:—

No. 24 van 1981: Inkomstebelastingwet, 1981

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**INCOME TAX ACT, 1981**

*(Afrikaans text signed by the Administrator-General on  
21 December 1981)*

**ACT**

**To consolidate and amend the law relating to the taxation of  
income; and to provide for incidental matters.**

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Laws repealed.

**BE IT ENACTED** by the National Assembly of South West Africa, as follows:—

**PRELIMINARY**

Interpretation. 1. Unless the context otherwise indicates —

- (i) “agent” includes any partnership or company or any other body of persons corporate or unincorporate acting as an agent; (iv)
- (ii) “assessment” means the determination by the Secretary, by way of a notice of assessment served in a manner contemplated in section 98(2)—
  - (a) of an amount upon which any tax leviable under this Act is chargeable; or

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(b) of the amount of any such tax; or

(c) of any loss ranking for set-off,

and for the purposes of Part III of Chapter III includes any determination by the Secretary in respect of any income rebate referred to in section 7 and any decision of the Secretary which is in terms of this Act subject to objection and appeal; (ii)

(iii) "bonus debentures or securities" means debentures or securities issued by a company, whether by way of a bonus award or otherwise, in such manner that the company's reserves or unappropriated profits are in whole or in part applied in paying up such debentures or securities; (xiv)

(iv) "capitalization shares" means shares issued by a company, whether by way of a bonus award or otherwise, in such manner that the company's reserves (including any share premium account) or unappropriated profits are in whole or in part applied in paying up such shares; (xxx)

(v) "company" includes—

(a) any association, corporation or company incorporated or deemed to be incorporated by or under any law in force in the territory or in any part thereof, or any body corporate formed or established or deemed to be formed or established by or under any such law; or

(b) any association, corporation or company incorporated under the law of any country other than the territory or any body corporate formed or established under such law, if such association, corporation, company or body, as the case may be, carries on business or has an office or place of business in the territory or derives income from any source within or deemed to be within the territory or in which any person ordinarily resident or carrying on business in the territory is interested as a shareholder or member; or

(c) any association, corporation or company incorporated under the law of any country other than the territory or any body corporate formed or established under such law, if such association, corporation, company or body, as the case may be, is a shareholder in or member of any company as defined in paragraph (a) or (b), either directly, or indirectly by reason of the fact that it is a shareholder in or member of any other company; or

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- (d) any association (not being an association referred to in paragraph (a) or an association to which the provisions of paragraph (i) of subsection (1) of section 16 apply) formed in the territory to serve a specified purpose, beneficial to the public in the territory or a section of the public in the territory; or
- (e) any unit portfolio comprised in any unit trust scheme in securities other than property shares managed or carried on by any company registered as a management company under section 4 of the Unit Trusts Control Act, 1947 (Act 18 of 1947) and incorporated or deemed to be incorporated in the territory if —
  - (i) such portfolio was created on or after the date of commencement of the Unit Trusts Control Amendment Act, 1962 (Act 11 of 1962); or
  - (ii) such portfolio was created before that date and the relevant trust deed has after that date been amended in order to create further units in that portfolio; (xxxi)
- (vi) “date of assessment”, in relation to any assessment, means the date specified in the notice of such assessment as the due date or, where a due date is not so specified, the date of such notice; (xvii)
- (vii) “dividend” means any amount distributed by a company (not being a permanent building society or an association or institution to which section 16(1)(d) applies) to its shareholders or any amount distributed out of the assets pertaining to any unit portfolio referred to in paragraph (e) of the definition of “company” in this section to shareholders in relation to such unit portfolio (including, in the case of any co-operative society or company referred to in section 31, any amount distributed to its members, whether divided among the members in accordance with their rights as shareholders or according to the value of business transactions between individual members and such society or company or on some other basis), and in this definition the expression “amount distributed” includes —
  - (a) in relation to a company that is being wound up or liquidated, any profits distributed, whether in cash or otherwise, other than those of a capital nature, earned before or during the winding-up or liquidation (any such profits distributed by the liquidator of the company being deemed for the purposes of this definition to have been distributed by the company);



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- (b) in relation to a company that is not being wound up or liquidated, any profits distributed, whether in cash or otherwise, and whether of a capital nature or not, including an amount equal to the nominal value, at the time of issue thereof, of any capitalization shares awarded to shareholders and the nominal value of any bonus debentures or securities awarded to shareholders;
- (c) in the event of the partial reduction or redemption of the capital of a company, so much of the sum of any cash and the value of any asset given to a shareholder as exceeds the cash equivalent of the amount by which the nominal value of the shares of that shareholder is reduced; and
- (d) in the event of the reconstruction of a company, so much of the sum of any cash and the value of any asset given to a shareholder as exceeds the nominal value of the shares held by him before the reconstruction,

but does not include —

- (e) the nominal value of any capitalization shares awarded to a shareholder to the extent to which such shares have been paid up by means of the application of the whole or any portion of the share premium account of a company; or
- (f) subject to the provisions of the second proviso to this definition, any cash and the value of any asset given to a shareholder to the extent to which the cash and the value of the asset represents a reduction of the share premium account of a company; or
- (g) so much of the nominal value of any capitalization shares awarded to shareholders on or before 30 June 1975 as part of the equity share capital of a company by a company which during the period of ten years ending the day before the date of such award has made any partial reduction of its paid-up share capital involving a distribution to shareholders of cash or other assets, as exceeds the sum of the amounts which in the opinion of the Secretary were available for distribution to shareholders on each and every date on which the company made a partial reduction of its paid-up share capital during the said period, less the sum of so much of the nominal values of all capitalization shares awarded by such company during that period (excluding any portion of that period occurring prior to 1 July 1957) as constituted dividends for the purposes of this

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definition or the definition of "dividend" in section 1 of the Income Tax Act, 1941: Provided that for the purposes of this paragraph the amount available for distribution on any date on which the company made a partial reduction of its paid-up share capital shall, if that amount exceeds the nominal amount of such reduction, be deemed to be an amount equal to such nominal amount; or

- (h) the nominal value of any capitalization shares awarded to shareholders as part of the equity share capital of a company, if —
  - (i) such shares are or were awarded on or before 30 June 1975 and during the period of ten years ending the day before the date of such award the company has not made any partial reduction of its paid-up share capital involving a distribution to shareholders of cash or other assets; or
  - (ii) such shares are awarded on or after 1 July 1975;
- (i) any amount distributed by any co-operative society or company referred to in section 31 by way of a bonus, to the extent that such amount is allowable as a deduction from the income of such society or company under the provisions of section 31;

Provided that the provisions of paragraphs (g) and (h) shall not apply in respect of the nominal value (or any portion thereof) of any capitalization share awarded before 1 January 1974 by any company which is recognized as a private company in terms of section 38: Provided further that, for the purposes of this definition —

- (i) where a company has on or after 1 January 1974 transferred any amount from reserves (excluding any share premium account) or undistributed profits to the share capital or the share premium account of the company without applying the amount in paying up capitalization shares or has applied the amount in paying up capitalization shares the nominal value of which did not in whole or in part constitute an amount distributed as contemplated in the foregoing provisions of this definition, the amount so transferred (reduced by so much thereof as constitutes such an amount distributed) shall be deemed—

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- (aa) to the extent that such amount (as so reduced) is shown to consist of profits of a capital nature, to be a profit of a capital nature available for distribution by the company to shareholders who, in the event of a distribution by the company at any time (whether before or during the winding-up or liquidation of the company) of profits of a capital nature would be entitled to participate in such a distribution; and
- (bb) to the extent that subparagraph (aa) does not apply, to be a profit which is not of a capital nature and is available for distribution by the company to shareholders who, in the event of a distribution by the company at any time (whether before or during the winding-up or liquidation of the company) of profits which are not of a capital nature would be entitled to participate in such a distribution,

regardless of whether in either case the company in fact has or has not any profits available for distribution;

- (ii) where the share capital of the company consists of different classes of share capital, any amount deemed by paragraph (i) of this proviso to be available for distribution to shareholders shall, in applying that paragraph, be apportioned between such classes of share capital in accordance with the rights of the holders of the corresponding classes of shares to participate in distributions of profits of a capital nature or profits which are not of a capital nature, as the case may be, and the amount deemed by the said paragraph to be available for distribution to the shareholders in respect of any such class of shares shall be the amount allocated to the share capital of that class under such apportionment;
- (iii) where any amount is under the provisions of paragraph (i) of this proviso or that paragraph as applied by paragraph (ii) of this proviso, deemed to be a profit available for distribution to shareholders and any of the shares of any class (hereinafter referred to as the original shares) held by any such shareholders are converted into shares of any other class or the original shares are cancelled and shares of any other class are issued in place of the original shares, the said amount shall, to the extent that it relates to or may have been apportioned to the original shares be deemed to relate to

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and to be a profit available for distribution to the shareholders in respect of the shares of such other class and the provisions of this proviso shall, to the extent that the said amount is deemed to consist of a profit as aforesaid, apply in respect of such amount as though it were an amount referred to in paragraph (i) of this proviso, and the shareholders in respect of the shares of such other class shall, regardless of the rights attaching to such shares, be deemed as respects the said amount to be entitled to participate in profits of the same nature as the profit deemed by this paragraph to be available for distribution to the shareholders, whether such profit is of a capital nature or is not of a capital nature;

- (iv) subject to the provisions of paragraphs (iii) and (vi) of this proviso, where any amount is under the provisions of paragraph (i) of this proviso or that paragraph as applied by paragraph (ii) of this proviso, deemed to be a profit available for distribution to shareholders and any shares issued by the company are cancelled without a return of the share capital or any share premium relating to such shares, such share capital or share premium or any reserve created by reason of the cancellation of such shares shall, to the extent that the said profit may be apportioned to the said shares, be deemed to consist of a profit (of the same nature as the aforesaid profit) available for distribution to shareholders who are or may become interested in such share capital, share premium or reserve, and where any cash is or any assets are given to shareholders by way of a return of or a distribution out of such share capital, share premium or reserve, the sum of the amount of such cash and the value of such assets shall, to the extent that such sum does not exceed the amount deemed by this paragraph to consist of a profit available for distribution to shareholders, be deemed to be a profit (of the same nature as the first-mentioned profit) distributed to the shareholders;
- (v) if, in the event of the subsequent partial reduction or redemption of the share capital (including any share premium) of the company or the reconstruction of the company, any cash or any asset is given to shareholders and such cash or asset (or a portion thereof) represents a return of share capital or share premium, the amount of share capital or share premium so returned —

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- (aa) to shareholders entitled to participate in distributions of profits which are not of a capital nature and in respect of whom any amount is deemed under paragraph (i) (bb) of this proviso to be such a profit available for distribution to such shareholders, shall (to the extent that the amount returned to such shareholders does not exceed the aggregate of the amounts of the profits so deemed to be available for distribution to such shareholders) be deemed to be a profit, not of a capital nature, distributed to such shareholders, and the amounts so deemed to be available for distribution shall be deemed to have been reduced accordingly; or
- (bb) to shareholders entitled to participate in distributions of profits of a capital nature and in respect of whom any amount is deemed under paragraph (i)(aa) of this proviso to be such a profit available for distribution to such shareholders, shall (to the extent that the amount returned to such shareholders (less so much thereof as is deemed under sub-paragraph (aa) of this paragraph to be a profit, not of a capital nature, distributed to such shareholders) does not exceed the aggregate of the amounts of the profits deemed under the said paragraph (i)(aa) to be available for distribution to such shareholders) be deemed to be a profit of a capital nature distributed to such shareholders and the amounts so available for distribution shall be deemed to have been reduced accordingly;
- (vi) where the company has lost some of its paid-up share capital (including any share premium) as a result of losses actually incurred by it and such share capital is in consequence partially reduced to take account of such losses, any amounts which in terms of this proviso are at the date of such partial reduction of such share capital deemed to be profits available for distribution to shareholders shall be deemed to have been reduced to the extent that such losses are so accounted for and in such manner that, as far as possible and on the basis, where necessary, of an apportionment between different classes of share capital in accordance with the rights of shareholders —

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- (aa) any such profits which are of a capital nature and relate to shareholders entitled to participate in profits of that nature, are reduced by so much of the amount by which the said share capital is reduced as is attributable to losses of a capital nature; and
  - (bb) any such profits which are not of a capital nature and relate to shareholders entitled to participate in profits which are not of a capital nature, are reduced by so much of the amount by which the said share capital is reduced as is attributable to losses which are not of a capital nature;
- (vii) in the event of the winding-up or liquidation of the company —
- (aa) any profits which in terms of the preceding provisions of this proviso are, at the commencement of the winding-up or liquidation, deemed to be available for distribution to shareholders shall, if the company has lost some of its paid-up share capital (including any share premium) as a result of losses actually incurred by it, be deemed to have been reduced in such manner that, as far as possible and on the basis, where necessary, of an apportionment between different classes of share capital in accordance with the rights of shareholders —
  - (A) any such profits which are of a capital nature and relate to shareholders entitled to participate in profits of that nature, are reduced by so much of the loss of the said share capital as is attributable to losses of a capital nature; and
  - (B) any such profits which are not of a capital nature and relate to shareholders entitled to participate in profits which are not of a capital nature, are reduced by so much of the loss of the said share capital as is attributable to losses which are not of a capital nature; and
  - (bb) the aggregate of any cash and the value of any assets given to shareholders entitled to participate in profits not of a capital nature shall, to the extent that such aggregate exceeds so much of the sum of the share capital and any share

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premium contributed by such shareholders (less so much of such share capital and share premium as has been lost) as remains after deducting therefrom an amount equal to so much of any profits, not of a capital nature, which are deemed by this proviso (after applying subparagraph (aa) of this paragraph) to be available for distribution to such shareholders at the commencement of the winding-up or liquidation, as relates to the said share capital, be deemed to be a profit, not of a capital nature, distributed to such shareholders, but the amount of that profit shall not be determined at an amount which exceeds the aforesaid amount:

Provided further that for the purposes of this definition an asset shall be deemed to have been given to a shareholder of a company if any asset or any interest, benefit or advantage measurable in terms of money is given or transferred to such shareholder or if the shareholder is relieved of any obligation measurable in terms of money: Provided further that a reserve of any company which consists of or includes any amount transferred from the share premium account of the company shall, except to the extent to which the Secretary is satisfied that such reserve consists of any other amount, be deemed for the purposes of this definition to be a share premium account of, or share premium received by, such company; (xviii)

- (viii) "domestic company" means a South West African company or a company which is managed and controlled in the territory; (xii)
- (ix) "equity share capital" means, in relation to any company, its issued share capital excluding any part thereof which, neither as respects dividends nor as respects capital, carries any right to participate beyond a specified amount in a distribution, and the expression "equity shares" shall be construed accordingly; (xx)
- (x) "executor" ~~means~~ any person to whom letters of administration or executorship, as the case may be, have been granted by the Master in respect of the estate of a deceased person under any law relating to the administration of estates, and includes a person acting or authorised to act under letters of administration or executorship granted outside the territory but signed and sealed by such Master for use within the territory and, in any case where the estate is not required to be administered under the supervision of such Master, the person administering the estate; (xix)

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- (xi) "external company" means any company other than a domestic company; (xvi)
- (xii) "financial year" means —
- (i) the period, whether of twelve months or not, commencing upon the date of incorporation or creation of such company and ending upon the last day of February immediately succeeding such date or upon such other date as the Secretary having regard to the circumstances of the case may approve; or
  - (ii) any period subsequent to the period referred to in subparagraph (i), whether of twelve months or not, commencing immediately after the specified date of that company in respect of the immediately preceding year of assessment of that company and ending upon the first anniversary of the last-mentioned specified date or upon such other date as the Secretary having regard to the circumstances of the case may approve; (xiii)
- (xiii) "gross income", in relation to any year or period of assessment, means, in the case of any person, the total amount, in cash or otherwise, received by or accrued to or in favour of such person during such year or period of assessment from a source within or deemed to be within the territory, excluding receipts or accruals of a capital nature, but including, without in any way limiting the scope of this definition, such amounts (whether of a capital nature or not) so received or accrued as are described hereunder, namely —
- (a) any amount received or accrued by way of annuity;
  - (b) any amount, including any voluntary award, received or accrued in respect of services rendered or to be rendered;
  - (c) any amount, including any voluntary award, received or accrued in respect of the relinquishment, termination, loss, repudiation, cancellation or variation of any office or employment or of any appointment (or right or claim to be appointed) to any office or employment: Provided that the provisions of this paragraph shall not apply to any lump sum award from any pension fund, provident fund, retirement annuity fund or benefit fund;
  - (d) any amount (being a refund of contributions made to any pension fund and allowed as a deduction under this Act or any previous income tax law and interest on such contributions) received by or accrued to any employee



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or the holder of any office from such pension fund upon or because of the termination or relinquishment of the office or employment where the making of such contributions was a condition of the holding of such office or employment: Provided that the provisions of this paragraph shall not apply —

- (i) if the termination of such office or employment is due to the death of the employee or office holder concerned; or
  - (ii) if the Secretary is satisfied that the termination or relinquishment of such office or employment is due to superannuation or to ill-health or other infirmity; or
  - (iii) in the case of a female, if the Secretary is satisfied that she terminated or relinquished her office or employment in order to marry; or
  - (iv) in respect of so much of such amount as is proved to the satisfaction of the Secretary to have been paid, during the year of assessment during which such receipt or accrual occurred, into another pension fund or into a retirement annuity fund for the benefit of the employee or office holder concerned;
- (e) any amount received or accrued in commutation of amounts due under any contract of employment or service;
- (f) any amount received or accrued from another person, as premium or like consideration —
- (i) for the use or occupation or the right of use or occupation of land or buildings; or
  - (ii) for the use or the right of use of plant or machinery; or
  - (iii) for the use or the right of use of any motion picture film or any film or video tape or disc for use in connection with television or any sound recording or advertising matter connected with such motion picture film, film or video tape or disc; or
  - (iv) for the use or the right of use of any patent or design as defined in the Patents and Designs Proclamation, 1923 (Proclamation 17 of 1923), or any trade mark as defined in the Trade Marks in South West Africa Act, 1973 (Act 48 of 1973), or any copyright as defined in the Copyright Act, 1965 (Act 63 of 1965), or any other property which in the opinion of the Secretary is of a similar nature;

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- (g) the value during the year of assessment of any quarters or board or residence or of any other benefit or advantage granted in respect of employment;
- (h) any amount by which recoupments of capital expenditure which has been allowed to be deducted under section 18 of this Act or the corresponding provisions of any previous income tax law, exceed the capital expenditure allowable calculated in terms of section 36;
- (i) any amounts received or accrued by way of dividends, including any dividends distributed by a private company out of, or by way of the capitalization of, any profits of such company which had previously been apportioned among its shareholders in terms of the provisions of any previous income tax law as the taxable income or the income subject to super tax of such company: Provided that all dividends from sources outside the territory received by or accrued to or in favour of any person who is ordinarily resident in the territory shall be deemed to have been received by or to have accrued to or in favour of such person from a source within the territory;
- (j) any amount received or accrued by way of grant or subsidy in respect of any soil conservation works referred to in section 19 or any of the matters mentioned in paragraph 10(1)(a) to (j) inclusive, of Schedule 1;
- (k) any amount received or accrued from another person as consideration (or payment of like nature) for the imparting of or the undertaking to impart any scientific, technical, industrial or commercial knowledge or information for use in the territory, or for the rendering of or the undertaking to render any assistance or service in connection with the application or utilization of such knowledge or information;
- (l) in the case of any person to whom, in terms of any agreement relating to the grant to any other person of the right of use or occupation of land or buildings, or by virtue of the cession of any rights under any such agreement, there has accrued in any such year or period the right to have improvements effected on the land or to the buildings by any other person —
  - (i) the amount stipulated in the agreement as the value of the improvements or as the amount to be expended on the improvements; or

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- (ii) if no amount is so stipulated, an amount representing in the opinion of the Secretary the fair and reasonable value of the improvements;
- (m) any amount received or accrued under or upon the surrender or disposal of any policy of insurance upon the life of any person who, at any time while the policy was in force, was an employee of the taxpayer, or where the taxpayer is a company, was a director or employee of that company;
- (n) any amount which in terms of any other provision of this Act is specifically required to be included in the taxpayer's income, and for the purposes of this paragraph all amounts which in terms of subsection (4) of section 14 are required to be included in the taxpayer's income shall be deemed to have been received by or to have accrued to the taxpayer from a source within the territory notwithstanding that such amounts may have been recovered or recouped outside the territory; (xv)
- (xiv) "income" means the amount remaining of the gross income of any person for any year or period of assessment after deducting therefrom any amounts exempt from normal tax under Part 1 of Chapter II; (xxviii)
- (xv) "local authority" means the council of a municipality constituted or established in terms of the provisions of the Municipal Ordinance, 1963 (Ordinance 13 of 1963), a Village Management Board constituted in terms of the provisions of the Village Management Boards Ordinance, 1963 (Ordinance 14 of 1963) and the Peri-Urban Development Board established in terms of the provisions of the Peri-Urban Development Board Ordinance, 1970 (Ordinance 19 of 1970); (xxxvii)
- (xvi) "married" means married not only in the legal sense but also in accordance with any law or custom not recognised in the territory as valid, and "husband", "wife" or "spouse" shall be construed accordingly; (xxiii)
- (xvii) "married person" means any person who —
  - (a) during any portion of the period in respect of which any assessment is made, was married or was a widower or widow but does not include any person who, although married, was during the whole of such period separated from his spouse under a judicial order or written agreement; or

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- (b) during the whole of the period in respect of which an assessment is made was not married, provided such person was in respect of the said period entitled, under subsection (3) of section 7, to the rebate in respect of a child; (xxiv)
- (xviii) "Master" means the Master or any Deputy Master or Assistant Master of the Supreme Court appointed in respect of the area of jurisdiction of the South West Africa Division of the Supreme Court of South Africa under the Administration of Estates Act, 1913 (Act 24 of 1913), of the Republic of South Africa, as applied to the territory by the Better Administration of Justice Proclamation, 1921 (Proclamation 52 of 1921), or the Administration of Estates Act, 1965 (Act 66 of 1965), as the case may be; (xxxii)
- (xix) "mining for gold" or "to mine for gold" includes mining for uranium or to mine for uranium: (xxv)
- (xx) "mining operations" and "mining" include every method or process by which any mineral (including natural oil) is won from the soil or from any substance or constituent thereof; (xxxiii)
- (xxi) "natural oil" means any liquid or solid hydrocarbon or combustible gas existing in a natural condition in the earth's crust, but does not include coal or bituminous shales or other stratified deposits from which oil can be obtained by destructive distillation, or gas arising from marsh or other surface deposits; (iii)
- (xxii) "nominal value" means —
- (a) in relation to shares issued by a company —
- (i) if the shares have a par value, such par value; or
- (ii) if the shares do not have a par value, an amount equal to the amount at which the par value of those shares would be determined if the company were to convert the shares into shares having a par value:

Provided that in the case of capitalization shares the nominal value thereof at the time of the issue thereof shall be deemed to be the amount of the company's reserves (including any share premium account) and unappropriated profits applied in paying up such shares as contemplated in the definition of "capitalization shares" in this section and the amount of such reserves applied in paying up any share premium in respect of the said shares; or

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(b) in relation to bonus debentures or securities issued by a company, the amount of the company's reserves or unappropriated profits applied in paying up such debentures or securities as contemplated in the definition of "bonus debentures or securities" in this section; (xxxiv)

(xxiii) "pension fund" means a superannuation, pension, provident, widows' or orphans' fund or pension scheme established by law or any such fund established for the benefit of the employees of any local authority, and any fund (other than a retirement annuity fund) not so established which is approved by the Secretary in respect of the year of assessment in question: Provided that the Secretary may approve a fund subject to such limitations or conditions as he may determine, and shall not approve a fund in respect of any year of assessment unless he is in respect of that year of assessment satisfied —

(a) that the fund is a permanent fund *bona fide* established for the purpose of providing annuities for employees on retirement from employment or for widows, children, dependants or nominees of deceased employees, or mainly for the said purpose and also for the purpose of providing benefits other than annuities for the persons aforesaid; and

(b) that the rules of the fund provide —

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

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

(iii) that persons who immediately prior to the said date were employed by the employer and who on the said date fall within the said class or classes may, on application made within a period of not more than twelve months as from the said date, be permitted to become members of the fund on such conditions as may be specified in the rules;

(iv) that not more than one-third of the total value of the annuity or annuities to which any employee becomes entitled, may be commuted for a single payment, except where the annual amount of such annuity or annuities does not exceed one hundred and twenty rand;

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- (v) for the administration of the fund in such a manner as to preclude the employer, except in the case of a local authority, from controlling the management or assets of the fund and from deriving any monetary advantage from moneys paid into, or out of the fund, except that where the employer is a partnership, a member of the partnership may be permitted to derive such monetary advantage if he was previously an employee and, on becoming a partner, was permitted to retain his membership of the fund as though he had not ceased to be an employee, his contributions being based upon his pensionable emoluments during the twelve months which ended on the day on which he ceased to be an employee and his benefits from the fund being calculated accordingly; and
- (vi) that the Secretary shall be notified of all amendments of the rules; and
- (c) that the rules of the fund have been complied with; (xxxv)
- (xxiv) "person" includes the estate of a deceased person and such estate shall be deemed to have come into existence at the moment of death of the deceased person; (xxxvi)
- (xxv) "prescribed" means prescribed or deemed to be prescribed by or under this Act; (xliv)
- (xxvi) "regulation" means a regulation in force under this Act; (xxxviii)
- (xxviii) "relative" in relation to any person, means the spouse of such person or anybody related to him or his spouse within the third degree of consanguinity, or any spouse of anybody so related, and for the purpose of determining the relationship between any child and any other person, such child shall be deemed to be related to its adoptive parent within the first degree of consanguinity; (xxi)
- (xxviii) "representative taxpayer" means—
  - (a) in respect of the income of a company, the public officer thereof;
  - (b) in respect of the income under his management, disposition or control, the agent of any person, including an agent appointed as such under the provisions of section 91, and for the purposes of this paragraph the term "agent" includes every person in the territory having the receipt, management or control of income

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on behalf of any person permanently or temporarily absent from the territory or remitting or paying income to or receiving moneys for such person;

- (c) in respect of income the subject of any trust or in respect of the income of any minor or mentally disordered or defective person or any other person under legal disability, the trustee, guardian, curator or other person entitled to the receipt, management, disposal or control of such income or remitting or paying to or receiving moneys on behalf of such person under disability;
- (d) in respect of income paid under the decree or order of any court or judge to any receiver or other person, such receiver or person, whoever may be entitled to the benefit of such income, and whether or not it accrues to any person on a contingency or an uncertain event;
- (e) in respect of the income received by or accrued to any deceased person during his lifetime and the income received by or accrued to the estate of any deceased person, the executor or administrator of the estate of such deceased person,

but nothing in this definition shall be construed as relieving any person from any liability, responsibility or duty imposed upon him by this Act; (xliii)

(xxix) "retirement annuity fund" means any fund (other than a pension fund, provident fund or benefit fund) which is approved by the Secretary in respect of the year of assessment in question: Provided that the Secretary may approve a fund subject to such limitations or conditions as he may determine, and shall not approve any fund in respect of any year of assessment unless he is in respect of that year of assessment satisfied—

- (a) that the fund is a permanent fund *bona fide* established for the sole purpose of providing life annuities for the members of the fund or annuities for the widows, children, dependants or nominees of deceased members; and

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(b) that the rules of the fund provide —

- (i) for periodical contributions by the members or contributions made by way of transfer of members' interests in approved pension funds, provident funds or other retirement annuity funds;
- (ii) that not more than one-third of the total value of any annuities to which any person becomes entitled, may be commuted for a single payment, except where the annual amount of such annuities does not exceed one hundred and twenty rand;
- (iii) that no portion of any annuity payable to the widow, child, dependant or nominee of a deceased member may be commuted later than six months from the date of the death of such member;
- (iv) adequate security to safeguard the interests of persons who may become entitled to annuities;
- (v) that no member shall become entitled to the payment of any annuity after he reaches the age of seventy years or, except in the case of a member who becomes permanently incapable through infirmity of mind or body of carrying on his occupation, before he reaches the age of fifty-five years;
- (vi) that where a member dies before he becomes entitled to the payment of an annuity, the benefits shall not exceed a refund to his estate or to his widow, children, dependants or nominees of the sum of the amounts (with or without reasonable interest thereon) contributed by him and an annuity or annuities to his widow, children, dependants or nominees;



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- (vii) that where a member dies after he has become entitled to an annuity no further benefit shall be payable other than an annuity or annuities to his widow, children, dependants or nominees;
- (viii) that a member who discontinues his contributions prematurely shall be entitled either to an annuity (payable from the date on which he would have become entitled to the payment of an annuity if he had continued his contributions) determined in relation to his actual contributions or to be reinstated as a full member under conditions prescribed in the rules of the fund;
- (ix) that upon the winding-up of the fund a member's interest therein must either be used to purchase a policy of insurance which the Secretary is satisfied provides benefits similar to those provided by such fund or be paid for the member's benefit into another approved retirement annuity fund;
- (x) that save as is contemplated in subparagraph (ii), no member's rights to benefits shall be capable of surrender, commutation or assignment or of being pledged as security for any loan;
- (xi) that the Secretary shall be notified on all amendments of the rules; and
- (c) that the rules of the fund have been complied with; (xlii)
- (xxx) "scientific research" means any activity in the field of natural or applied science for the extension of knowledge; (xlv)
- (xxxi) "Secretary" means the Secretary for Finance; (xxxix)

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(xxxii) "shareholder" —

(a) in relation to any company referred to in paragraph (a), (b), (c) or (d) of the definition of "company" in this section, means the registered shareholder in respect of any share, except that where some person other than the registered shareholder is entitled, whether by virtue of any provision in the memorandum or articles of association of the company or under the terms of any agreement or contract, or otherwise, to all or part of the benefit of the rights of participation in the profits or income attaching to the share so registered, such other person shall, to the extent that he is entitled to such benefit, also be deemed to be a shareholder; or

(b) in relation to any company referred to in paragraph (e) of the said definition, the registered holder of any unit certificate issued in respect of a unit included in the relevant unit portfolio, except that where some person other than the registered holder of any unit is entitled, whether by virtue of any provision in the trust deed entered into for the purposes of the relevant unit trust scheme or under the terms of any agreement or contract, or otherwise, to all or part of the benefit of the rights of participation in the profits or income attaching to the unit certificate, such other person shall, to the extent that he is entitled to such benefit, also be deemed to be a shareholder; (i)

(xxxiii) "South West African company" means any association, corporation, company or body corporate referred to in paragraph (a) of the definition of "company" in this section or any association referred to in paragraph (d) of that definition or any unit portfolio referred to in paragraph (e) of that definition: (xl)

(xxxiv) "specified date", in relation to a year of assessment of any company, means the last day of such year of assessment; (x)

(xxxv) "specified period", in relation to a year of assessment of any company means —

(a) where such year of assessment is the first financial year of such company, the period commencing on the first day of such year and ending six months after the specified date in respect of such year; and

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- (b) where such year of assessment is a subsequent financial year of such company, the period commencing the day after the end of the specified period in respect of the immediately preceding year of assessment and ending six months after the specified date in respect of the year of assessment in question:

Provided that where by any reason of the amalgamation under section 94 of the Co-operative Societies Ordinance, 1946 (Ordinance 15 of 1946), of two or more agricultural co-operatives (as defined in section 31(4) of this Act), the assets and liabilities of such co-operatives have vested in a new agricultural co-operative (as so defined), the Secretary may, having regard to the circumstances of the case, direct that the specified period of each of the co-operatives which have so amalgamated, as applicable in relation to the final year of assessment of the co-operative in question be extended so as to end on such day as the Secretary may determine; (xi)

- (xxxvi) "tax" or "the tax" or "taxation" means any levy or tax leviable under this Act; and for the purposes of Part IV of Chapter III includes any levy or tax leviable under any previous income tax law; (viii)
- (xxxvii) "taxable amount" means the amount remaining after deducting from the taxable income of any person other than a company the sum of any amounts allowed to be deducted from such taxable income by way of income rebates under section 7; (vi)
- (xxxviii) "taxable income" means the amount remaining after deducting from the income of any person all the amounts (other than the sum of any amounts allowed by way of income rebates under section 7) allowed under Part I of Chapter II to be deducted from or set off against such income; (vii)

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- (xxxix) "taxpayer" means any person chargeable with any tax leviable under this Act and, for the purposes of any provision relating to any return, includes every person required by this act to furnish such return and for the purposes of Part IV of Chapter III includes any person chargeable with any tax leviable under any previous income tax law; (ix)
- (xl) "territory" means the territory of South West Africa including the Eastern Caprivi Zipfel; (xxii)
- (xli) "this Act" includes the regulations; (xxvii)
- (xlii) "trade" includes every profession, trade, business, employment, calling, occupation or venture, including the letting of any property, and the use of or the grant of permission to use any patent or design as defined in the Patents and Designs Proclamation, 1923 (Proclamation 17 of 1923), or any trade mark as defined in the Trade Marks in South West Africa Act, 1973 (Act 48 of 1973), or any copyright as defined in the Copyright Act, 1965 (Act 63 of 1965), or any other property which in the opinion of the Secretary is of a similar nature; (v)
- (xliii) "trading stock" includes anything produced, manufactured, purchased or in any other manner acquired by a taxpayer for purposes of manufacture, sale or exchange by him or on his behalf, or the proceeds from the disposal of which forms, or will form, part of his gross income; (xxvi)
- (xliv) "trustee" in addition to every person appointed or constituted as such by act of parties, by will, by order or declaration of court or by operation of law, includes an executor or administrator, tutor or curator, and any person having the administration or control of any property subject to a trust, usufruct, fidei-commissum or other limited interest, or acting in any fiduciary capacity or having, either in a

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private or an official capacity, the possession, direction, control or management of any property of any person under legal disability; (xli)

(xlv) "year of assessment" means any year or other period in respect of which any tax or duty leviable under this Act is chargeable. (xxix)

**CHAPTER I****ADMINISTRATION**

Act to be administered by Secretary.

2. The Secretary shall be responsible for carrying out the provisions of this Act.

Exercise of powers and performance of duties.

3. (1) The powers conferred and the duties imposed upon the Secretary by or under the provisions of this Act or any amendment thereof may be exercised or performed by the Secretary personally, or by any officer or employee carrying out the said provisions under the control, direction or supervision of the Secretary.

(2) Any decision made and any notice or communication issued or signed by any such officer or employee may be withdrawn or amended by the Secretary or by the officer or employee concerned, and shall for the purposes of the said provisions, until it has been so withdrawn, be deemed to have been made, issued or signed by the Secretary: Provided that a decision made by any such officer or employee in the exercise of any discretionary power under the provisions of this Act or of any previous income tax law shall not be withdrawn or amended after the expiration of two years from the date of the written notification of such decision or of the notice of assessment giving effect thereto, if all the material facts were known to the said officer or employee when he made his decision.

(3) Any written decision made by the Secretary personally in the exercise of any discretionary power under the provisions of this Act or of any previous income tax law shall not be withdrawn or amended by the Secretary if all the material facts were known to him when he made his decision.

Preservation of secrecy.

4. (1) Every person employed in carrying out the provisions of this Act shall preserve and aid in preserving secrecy with regard to all matters that may come to his knowledge in the performance of his duties in connection with those provisions, and shall not communicate any such matter to any person whatsoever other than the taxpayer concerned or his

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lawful representative nor suffer or permit any such person to have access to any records in the possession or custody of the Secretary except in the performance of his duties under this Act or by order of a competent court: Provided that —

- (a) any information obtained by the Secretary in the performance of his duties under the provisions of this Act or any previous income tax law may be used by him for the purposes of the performance of his duties in terms of the provisions of any other fiscal law administered by him; and
  - (b) the Auditor-General shall in the performance of his duties in terms of the provisions of any law have access to documents in the possession or custody of the Secretary.
- (2) (a) Every person so employed shall, before acting under this Act, take and subscribe before a magistrate or justice of the peace, or an officer or employee of the Department of Finance who is a commissioner of oaths, such oath of fidelity or secrecy as may be prescribed.
- (b) Any oath of fidelity or secrecy taken and subscribed under the provisions of any previous income tax law by any person who is employed in connection with carrying out the provisions of this Act shall be deemed to be an oath taken and subscribed in terms of this subsection.
- (3) Every person who in contravention of the provisions of this section or of the true intent of the oath of fidelity or secrecy taken by him, and without lawful excuse, reveals any matter or thing which has come to his knowledge in the course of his official duties to any person whatsoever or suffers or permits any person to have access to any records in the possession or custody of the Secretary, shall be guilty of an offence and liable on conviction to imprisonment for a period not exceeding two years.
- (4) Any person who takes up employment as contemplated in subsection (1) before taking the prescribed oath shall be guilty of an offence and liable on conviction to a fine not exceeding one hundred rand.

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**INCOME TAX ACT, 1981****CHAPTER II****THE TAXES****Part I****Normal tax**

Levy of normal tax for the benefit of the Central Revenue Fund and transfer of a part thereof to the revenue funds of representative authorities.

5. (1) (a) Subject to the provisions of Schedule 2 there shall be paid annually for the benefit of the Central Revenue Fund, an income tax (in this Act referred to as the normal tax) in respect of the taxable income received by or accrued to or in favour of —

(i) any person other than a company during the year of assessment ending on the last day of February, 1982, and every succeeding year of assessment; and

(ii) any company during every financial year thereof ending on or after 1 March 1982.

(b) All taxes paid by members of any particular population group in respect of the taxable income contemplated in paragraph (a)(i) of this subsection shall be transferred by the Secretary to the revenue fund of the representative authority concerned.

(2) Subject to the provisions of this Act with regard to the calculation of tax, the normal tax payable in respect of the taxable income of any person (other than a company) for any year of assessment shall be calculated on the taxable amount of such person for such year.

(3) For the purpose only of determining the rate of normal tax payable by any person (other than a person referred to in subsection (5)) whose income for the year of assessment in question includes any amount referred to in paragraph (d) of the definition of "gross income" in section 1, there shall be deducted from the taxable income of such person for such year of assessment the amount so included in his income, but in no case shall the rate of normal tax be less than that applicable to the first rand of taxable income and this subsection shall not be construed as relieving any person from liability for taxation in terms of this Act upon any portion of his taxable income.

(4) (a) In the case of any company which derives taxable income from mining for natural oil, the normal tax payable in respect of such taxable income shall be determined separately in respect of —

(i) taxable income which is derived by the company from mining for natural oil (excluding gas); and

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(ii) taxable income which is derived by the company from mining for natural oil in the form of gas.

(b) For the purposes of this subsection where sulphur, salt or any other mineral is won by any company in the course of mining for natural oil (excluding gas) or natural oil in the form of gas, the income derived from the mining of such sulphur, salt or other mineral shall be deemed to be derived from mining for natural oil (excluding gas) or natural oil in the form of gas, as the case may be.

(5) Where the provisions of paragraph 12 of Schedule 1 are applicable in respect of any taxpayer for any period of assessment, the normal tax payable by the taxpayer in respect of such period shall be determined in accordance with the formula —

$$A = \frac{B}{C - D - E} \times (C - E)$$

in which formula —

(a) 'A' represents the amount of normal tax to be determined;

(b) 'B' represents the amount of normal tax calculated at the relevant rate prescribed in section 6 in respect of a taxable amount equal to the amount represented by the expression 'C - D - E' in the formula;

(c) 'C' represents the taxpayer's taxable income for the said period;

(d) 'D' represents an amount equal to the sum of —

(i) the amount, if any, which in terms of paragraph (d) of the definition of "gross income" in section 1, is included in the taxpayer's income for the said period; and

(ii) the amount, if any, by which the taxable income derived by the taxpayer during the said period from farming operations exceeds the taxpayer's average taxable income from farming as determined in relation to such period in accordance with paragraph 12(2) of Schedule 1;

(e) 'E' represents the amount allowed to the taxpayer in terms of section 7 by way of income rebates against his taxable income for the said period:

Provided that the amount represented by the expression 'C - D - E' in the formula shall in no case be determined at an amount of less than one rand and this subsection



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shall not be construed as relieving any person from liability for taxation in terms of this Act upon any portion of his taxable income.

Rates of normal tax.

6. (1) The rates of normal tax to be levied in the case of persons (other than companies) shall be as prescribed in the Schedule below: Provided that where in determining the taxable amount of any such taxpayer there has, in terms of section 12(2), been taken into account any taxable income that his wife earned independently of him, separate calculations shall be made in accordance with the rates of normal tax —

(a) in respect of so much of such taxable amount as is attributable to the addition of any such taxable income earned by the taxpayer's wife; and

(b) in respect of so much of such a taxable amount as is arrived at by excluding therefrom the amount referred to in paragraph (a):

Provided further that notwithstanding any provisions to the contrary in this Act, no tax shall be levied in respect of the amount referred to in paragraph (a), if that amount does not exceed R2 000.

## SCHEDULE

Taxable amount	Rates of tax
Where the taxable amount —	
does not exceed R4 000	10 per cent of each R1 of the taxable amount;
exceeds R4 000 but does not exceed R6 000	R400 plus 13 per cent of the amount by which the taxable amount exceeds R4 000;
exceeds R6 000 but does not exceed R8 000	R660 plus 15 per cent of the amount by which the taxable amount exceeds R6 000;
exceeds R8 000 but does not exceed R10 000	R960 plus 17 per cent of the amount by which the taxable amount exceeds R8 000;
exceeds R10 000 but does not exceed R12 000	R1 300 plus 19 per cent of the amount by which the taxable amount exceeds R10 000;
exceeds R12 000 but does not exceed R14 000	R1 680 plus 21 per cent of the amount by which the taxable amount exceeds R12 000;

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exceeds R14 000 but does not exceed R16 000	R2 100 plus 23 per cent of the amount by which the taxable amount exceeds R14 000;
exceeds R16 000 but does not exceed R18 000	R2 560 plus 25 per cent of the amount by which the taxable amount exceeds R16 000;
exceeds R18 000 but does not exceed R20 000	R3 060 plus 27 per cent of the amount by which the taxable amount exceeds R18 000;
exceeds R20 000 but does not exceed R22 000	R3 600 plus 29 per cent of the amount by which the taxable amount exceeds R20 000;
exceeds R22 000 but does not exceed R24 000	R4 180 plus 31 per cent of the amount by which the taxable amount exceeds R22 000;
exceeds R24 000 but does not exceed R26 000	R4 800 plus 33 per cent of the amount by which the taxable amount exceeds R24 000;
exceeds R26 000 but does not exceed R28 000	R5 460 plus 35 per cent of the amount by which the taxable amount exceeds R26 000;
exceeds R28 000 but does not exceed R30 000	R6 160 plus 37 per cent of the amount by which the taxable amount exceeds R28 000;
exceeds R30 000	R6 900 plus 39 per cent of the amount by which the taxable amount exceeds R30 000.

(2) The rates of normal tax to be levied in respect of the taxable income derived by any company shall be as follows—

- (a) on each rand of the taxable income of any company (excluding taxable income derived from mining operations and taxable income referred to in paragraph (c)), forty cents;
- (b) on each rand of the taxable income derived by any company from mining for gold (but with the exclusion of so much of the taxable income as the Secretary determines to be attributable to the inclusion in the

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gross income of any amount referred to in paragraph (h) of the definition of "gross income" in section 1), a percentage determined in accordance with the formula:

$$y = 60 - \frac{480}{x},$$

in which formula (and in the formulae set out in the first proviso hereto)  $y$  represents such percentage and  $x$  the ratio expressed as a percentage which the taxable income so derived (with the said exclusion) bears to the income so derived (with the said exclusion): Provided that if the taxable income so derived (with the said exclusion) does not exceed forty thousand rand, the rate of tax shall not exceed a percentage determined in accordance with the formula:

$$y = 20 \left(1 - \frac{8}{x}\right),$$

and if such taxable income exceeds forty thousand rand, the rate of tax shall not exceed a percentage determined in accordance with a formula arrived at by increasing the number 20 in the formula

$$y = 20 \left(1 - \frac{8}{x}\right),$$

by one for each completed amount of two thousand five hundred rand by which the said taxable income exceeds forty thousand rand: Provided further that there shall be added to the amount of tax calculated in accordance with the preceding provisions of this paragraph a surcharge equal to five per cent of such amount;

- (c) on each rand of the taxable income of any company, the sole or principal business of which in the territory is or has been mining for gold and the determination of the taxable income of which for the period assessed does not result in an assessed loss, which the Secretary determines to be attributable to the inclusion in its gross income of any amount referred to in paragraph (h) of the definition of "gross income" in section 1, a rate equal to the average rate of normal tax or forty cents, whichever is higher: Provided that for the purposes of this paragraph, the average rate of normal tax shall be determined by dividing the total normal tax (excluding the tax determined in accordance with this paragraph for the period assessed) paid by the company

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in respect of its aggregate taxable income from gold mining for the period from the date of incorporation to the end of the period assessed, by the number of rands contained in the said aggregate taxable income;

(d) on each rand of the taxable income derived by any company from mining for diamonds, fifty cents;

(e) on each rand of the taxable income derived by any company from mining operations (other than mining for gold or diamonds), forty cents.

(3) For the purposes of subsection (2) income derived from mining for gold shall include any income derived from silver, osmiridium, uranium, pyrites or other minerals which may be won in the course of the mining for gold, and any income which, in the opinion of the Secretary, results directly from mining for gold.

(4) The tax determined in accordance with any of the paragraphs of subsection (2) shall be payable in addition to the tax determined in accordance with any other of the said paragraphs.

Income rebates.

7. (1) In determining the taxable amount derived during any year of assessment by a taxpayer who is a natural person, there shall be deducted from his taxable income for the year of assessment an amount, not exceeding such taxable income, equal to the sum of the amounts allowed to the taxpayer by way of income rebates under subsections (2), (3) and (4).

(2) Subject to the provisions of subsection (5), there shall, for the purposes of this section in respect of every taxpayer who is a natural person, be allowed by way of income rebate —

(a) an amount of R4 400, if such person is a married person; or

(b) an amount of R2 200, if such person is not a married person.

(3) Subject to the provisions of subsection (5), there shall, for the purposes of this section in respect of any taxpayer who is a natural person, be allowed by way of income rebate the amount of R2 200 in respect of his children or stepchildren who were alive during any part of the year of assessment, if at least one of them —

(a) was on the last day of the said year of assessment unmarried and not over the age of eighteen years (or would not have been, had he lived to that date); or was wholly or partially dependent for his maintenance upon the taxpayer, was not liable for the payment of normal tax in respect of such year, and was on the last day of the said year of assessment not over the age of twenty-one years (or would not have been, had he lived to that

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date); or was wholly or partially dependent for his maintenance upon the taxpayer, was not liable for the payment of normal tax in respect of such year, satisfied the Secretary that he was a full-time student at an educational institution of a public character, and was on the last day of the said year of assessment not over the age of twenty-six years (or would not have been, had he lived to that date); or

(b) not being a child or stepchild referred to in the preceding paragraph, was because of mental or physical infirmity incapable of maintaining himself, was wholly or partially dependent for his maintenance upon the taxpayer, and was not liable for the payment of normal tax in respect of such year of assessment.

(4) Subject to the provisions of subsection (5), there shall, for the purposes of this section in respect of any taxpayer who is a natural person, be allowed by way of income rebate the amount of R1 000 if, during any part of the year of assessment, such taxpayer was the owner of a house, or of a flat bought in terms of the Sectional Titles Act, 1971 (Act 66 of 1971), situated in the territory in an area under the control of a local authority, and occupied such house or flat himself.

(5) In any case in which the period assessed is less than twelve months, the deductions under subsections (2), (3) and (4) shall be such amounts as bear to the full amount of the respective deductions provided for under subsections (2), (3) and (4) the same ratio as the period assessed bears to twelve months, unless in the case of any such period, terminating at the death of the taxpayer, or commencing at the death of the spouse of the taxpayer, the Secretary, under the special circumstances of the case, otherwise directs.

Rebate in respect of taxes on dividends payable to the government of any country other than the territory.

8. There shall be deducted from the normal tax payable by any person in whose taxable income there is included any amount received by or accrued to him or in his favour in respect of any dividends referred to in the proviso to paragraph (i) of the definition of "gross income" in section 1, the sum of any taxes proved to the satisfaction of the Secretary to be payable, without any right of recovery, by such person to the government of any country other than the territory in respect of such dividends: Provided that the rebate under this section shall not exceed so much of the normal tax payable by the taxpayer as the Secretary determines to be attributable to the inclusion in his taxable income of the said amount.

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Rebate in respect of non-resident shareholders' tax.

9. There shall be deducted from the normal tax payable by any person in whose taxable income there is included any dividend in respect of which non-resident shareholders' tax has been paid in terms of this Act, so much of the normal tax as the Secretary determines to be attributable to the inclusion in such person's taxable income of taxable income from such dividend.

Rebate in respect of foreign income taxes on royalties and similar income.

10. There shall be deducted from the normal tax payable by any person, in whose taxable income there is included any amount received by or accrued to him in respect of the use or right of use in any country other than the territory or the grant of permission to use in such other country any patent or any design as defined in the Patents and Designs Proclamation, 1923 (Proclamation 17 of 1923), or any trade mark as defined in the Trade Marks in South West Africa Act, 1973 (Act 48 of 1973), or any copyright as defined in the Copyright Act, 1965 (Act 63 of 1965), or any model, pattern, plan, formula or process, or any other property or right of a similar nature, or any motion picture film, or any film or video tape or disc for use in connection with television, or any sound recording or advertising matter used or intended to be used in connection with such motion picture film, film, video tape or disc, the sum of any taxes on income proved to the satisfaction of the Secretary to be payable, without any right of recovery, by such person to the government of any country other than the territory in respect of the said amount: Provided that the rebate under this section shall not exceed so much of the normal tax payable by the taxpayer as the Secretary determines to be attributable to the inclusion in his taxable income of the said amount.

Rebate in respect of diamond profits tax.

11. There shall be deducted from the normal tax payable by any person in respect of taxable income derived from mining for diamonds any amount assessed in respect of any period coinciding with or forming part of the year of assessment as tax payable by such person under the provisions of section 4 of the Diamond Taxation Proclamation, 1941 (Proclamation 16 of 1941): Provided that the rebate under this section shall not exceed so much of the normal tax payable by the taxpayer as the Secretary determines to be attributable to the inclusion in his taxable income of the said amount.

When income is deemed to have accrued or to have been received.

12. (1) Income shall be deemed to have accrued to a person notwithstanding that such income has been invested, accumulated or otherwise capitalized by him or that such income has not been actually paid over to him but remains due and payable to him or has been credited in account or re-invested or accumulated or capitalized or otherwise dealt with in his name or on his behalf, and a complete statement of all such income shall be included by any person in the returns rendered by him under this Act.

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(2) Any income received by or accrued to or in favour of a woman married with or without community of property, shall be deemed for the purposes of this Act to be income accrued to her husband.

(3) Income shall be deemed to have been received by the parent of any minor child, if by reason of any donation, settlement or other disposition made by that parent of that child —

(a) it has been received by or has accrued to or in favour of that child or has been expended for the maintenance, education or benefit of that child; or

(b) it has been accumulated for the benefit of that child.

(4) Any income received by or accrued to or in favour of any minor child of any person, by reason of any donation, settlement or other disposition made by any other person, shall be deemed to be the income of the parent of such minor child, if such parent or his spouse has made a donation, settlement or other disposition or given some other consideration in favour directly or indirectly of the said other person or his family.

(5) If any person has made any donation, settlement or other disposition which is subject to a stipulation or condition, whether made or imposed by such person or anybody else, to the effect that the beneficiaries thereof or some of them shall not receive the income or some portion of the income thereunder until the happening of some event, whether fixed or contingent, so much of any income as would, but for such stipulation or condition, in consequence of the donation, settlement or other disposition be received by or accrued to or in favour of the beneficiaries, shall, until the happening of that event or the death of that person, whichever first takes place, be deemed to be the income of that person.

(6) If any deed of donation, settlement or other disposition contains any stipulation that the right to receive any income thereby conferred may, under powers retained by the person by whom that right is conferred, be revoked or conferred upon another, so much of any income as in consequence of the donation, settlement or other disposition is received by or accrues to or in favour of the person on whom that right is conferred, shall be deemed to be the income of the person by whom it is conferred, so long as he retains those powers.

Date of receipt or accrual of antedated salaries or pensions and of certain retirement gratuities.

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

“antedated salary or pension” means an amount of salary or pension which has become payable to any person under a permanent grant, made with retrospective effect, of a salary or pension or of an increase in a salary or pension, and which in terms of such grant is payable in respect of a period ending on or before the date on which the grant has become effective;

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"pension" means an annuity payable under any law or under the rules of a pension fund or provident fund or by an employer to a former employee of that employer or to the widow, child or dependant of a deceased person who was employed by such employer;

"salary" means salary, wages or similar remuneration payable by an employer to an employee, but does not include any bonus or any amount referred to in subsection (3).

(2) Where any antedated salary or pension has been received by or has accrued to any person during any year or period of assessment and the period in respect of which such antedated salary or pension has become payable (hereinafter referred to as the accrual period) commenced before the commencement of the said year or period of assessment, such antedated salary or pension shall at the option of the taxpayer be deemed —

(a) if the accrual period commenced not more than two years before the commencement of the said year or period of assessment, to have been received by or to have accrued to the said person in part during each of the years or periods of assessment in which any portion of the accrual period falls (the part of the said amount relating to any such year or period of assessment being determined on the basis of a reasonable apportionment of the whole of the said amount between all the said years or periods of assessment); or

(b) if the accrual period commenced more than two years before the commencement of the first-mentioned year or period of assessment, to have been received by or to have accrued to the said person in three equal annual instalments (the first and second instalments two years and one year respectively before the date on which the said amount accrued to the said person and the third instalment on the said date).

(3) Any amount received by or accrued to an employee or the holder of any office by way of bonus, gratuity or compensation upon or because of the termination of his services or because of the impending termination of his services within five years (or such longer period as the Secretary may approve) from the date of receipt or accrual of such amount (less so much thereof as is exempt from tax under section 16(1)(o)), shall at the option of the taxpayer be deemed to have been received or to have accrued in three successive equal annual instalments of which the first shall be deemed to have been received or to have accrued on the date of receipt or accrual of such amount and each of the other two on an appropriate anniversary of that date, if —



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- (a) the termination or impending termination of the services of such employee or office holder is due to superannuation, ill-health or other infirmity; or
- (b) the Secretary is satisfied that the circumstances of the case warrant this concession.

Certain amounts to be included in income or taxable income.

14. (1) So much of any amount which has been paid by any person as an allowance or advance to a director, manager, employee or other person in respect of expenses of travelling, entertainment or other service, as the Secretary is not satisfied was actually expended by the recipient on such travelling or entertainment or in the performance of such service, shall be deemed to be part of the taxable income of the recipient.

(2) If, prior to 1 January 1974 any company awarded any capitalization shares the nominal value of which in terms of paragraph (g) or (h) of the definition of "dividend" in section 1 did not wholly rank as a dividend, and, within the period of ten years from the date of such award, any cash or any asset is given to any shareholder of that company in consequence of the liquidation or reconstruction of the company or the partial reduction of its share capital, there shall, subject to the provisions of subsection (3), be included in the taxable income of the company —

- (a) in the case of the reconstruction of the company or the partial reduction of its share capital, an amount equal to the sum of the amount of any such cash and the value of any such asset; and

(b) in the case of the liquidation of the company —

- (i) if the Secretary is satisfied that such liquidation is *bona fide* and was not brought about solely or mainly for the purpose of avoiding liability for tax under this subsection, the amount by which the sum of all the amounts of any such cash and the value of all such assets so given to shareholders exceeds the sum of the paid-up capital of the company and the amount (if any) standing to the credit of the share premium account of the company immediately prior to the commencement of the liquidation of the company; or

- (ii) if the Secretary is not so satisfied, an amount determined as provided in paragraph (a);

Provided that the amounts included in the company's taxable income under this subsection shall not in total exceed so much of the nominal value of such capitalization shares as did not rank as a dividend as aforesaid, less any amount paid up on such shares by the application of the company's share premium

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account: Provided further that so much of the sum of the amount of any cash and the value of any asset so given to any shareholder of the company as by virtue of the provisions of the definition of "dividend" in section 1 constitutes a dividend in the hands of such shareholder, shall not be included in the company's taxable income under this subsection.

(3) (a) The provisions of subsection (2) shall not apply where any cash or asset referred to therein is given —

(i) in respect of any class of redeemable share capital issued before the first day of July, 1957, in pursuance of special provisions prescribed before that date for the repayment of such capital; or

(ii) in respect of any class of redeemable share capital issued on or after the first day of July, 1957, for the repayment of which special provisions are contained in the memorandum and articles of association of the company, if the holders of the equity share capital of the company were not either at the time of the award of such capitalization shares or at any time thereafter shareholders in that class of redeemable share capital.

(b) For the purposes of subsection (2) "paid-up capital" means the nominal value of the paid-up capital, excluding so much of the nominal value of any capitalization shares as did not rank as a dividend in terms of paragraph (g) or (h) of the definition of "dividend" in section 1 or the corresponding provisions of any previous income tax law.

(c) The decision of the Secretary in the exercise of his discretion under subsection (2) shall be subject to objection and appeal.

(4) There shall be included in the taxpayer's income all amounts allowed to be deducted or set off under the provisions of sections 17 to 21, inclusive, except section 17(n) and (r) and section 18(a), or under the corresponding provisions of any previous income tax law, whether in the current or any previous year of assessment, which have been recovered or recouped during the current year of assessment.

(5) (a) Any amount which has been paid, whether in the form of rent or otherwise, by any person for the right of use or occupation of any movable or immovable property and has been allowed as a deduction in the determination of such person's taxable income, and which or the equivalent of which is upon the subsequent

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acquisition of such property by that or any other person applied in reduction or towards settlement of the purchase price of such property, shall be included in the income of the person by whom the property is acquired as aforesaid for the year of assessment in which such person exercises the option or concludes the agreement, as the case may be, in consequence of which the property is acquired by him.

- (b) Where any amount has been paid by any person for the right of use or occupation of any property which is thereafter acquired by that or any other person for a consideration which in the opinion of the Secretary is not an adequate consideration, it shall for the purposes of paragraph (a) be deemed, unless the Secretary, having regard to the circumstances of the case otherwise decides, that the said amount, or so much thereof as does not exceed the difference between the fair market value of such property as determined by the Secretary and the amount of the consideration for which it has been acquired as aforesaid, has been applied in reduction or towards settlement of the purchase price of such property.

- (c) Any decision of the Secretary under paragraph (b) shall be subject to objection and appeal.

Circumstances in which amounts deemed to have accrued from sources within the territory.

15. (1) An amount shall be deemed to have accrued to any person from a source within the territory if it has been received by or has accrued to or in favour of such person by virtue of—

- (a) any contract made by him within the territory for the sale of goods, whether such goods have been delivered or are to be delivered in or out of the territory;
- (b) the use or right of use in the territory, or the grant of permission to use in the territory—

- (i) any patent or design as defined in the Patents and Designs Proclamation, 1923 (Proclamation 17 of 1923), or any trade mark as defined in the Trade Marks in South West Africa Act, 1973 (Act 48 of 1973), or any copyright as defined in the Copyright Act, 1965 (Act 63 of 1965), or any model, pattern, plan, formula or process or any other property or right of a similar nature; or

- (ii) any motion picture film, or any film or video tape or disc for use in connection with television, or any sound recording or advertising matter used or intended to be used in connection with such motion picture film, film or video tape or disc,

wheresoever such patent, design, trade mark, copyright, model, pattern, plan, formula, process, property, right, motion picture film, film, video tape or disc, sound recording or advertising matter has been produced

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or made or such right of use or permission has been granted or payment for such use, right of use or grant of permission has been made or is to be made and whether such payment has been made or is to be made by a person resident in or outside the territory: Provided that the provisions of this paragraph shall not apply in respect of any amount which is received by or accrued to any person (other than a company) who is not ordinarily resident in the territory, or to any external company, in respect of the use (otherwise than for advertising purposes in connection with any motion picture film or otherwise than in connection with television) in any printed publication of any copyright as aforesaid;

- (c) the imparting of or the undertaking to impart any scientific, technical, industrial or commercial knowledge or information for use in the territory, or the rendering of or the undertaking to render, any assistance or service in connection with the application or utilisation of such knowledge or information, wheresoever such knowledge or information has been obtained or such knowledge or information has been imparted or is to be imparted or such assistance or service has been rendered or is to be rendered or any such undertaking has been given, and whether payment for such knowledge, information, assistance, service or undertaking has been made or is to be made by a person resident in or out of the territory;
- (d) any business carried on by any such person who is ordinarily resident in the territory or in the case of a company is a domestic company, as owner or charterer of any ship or aircraft, or the disposal by such person of any commodity acquired in connection with the operation of such ship or aircraft, wheresoever such ship or aircraft may be operated or such disposal of the commodity may be effected;
- (e) any service rendered or work or labour done by such person in the carrying on in the territory of any trade, whether the payment for such service or work or labour is or is to be made by a person resident in or out of the territory and wheresoever payment for such service or work or labour is or is to be made;
- (f) any service rendered or work or labour done by such person outside the territory, during any temporary absence of such person from the territory, if such person is ordinarily resident in the territory and such service is rendered or such work or labour is done for or on behalf of any employer by whom such person is employed in the territory, whether the payment for

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such service or work or labour is or is to be made by a person resident in or out of the territory and wheresoever payment for such service or work or labour is or is to be made;

- (g) any services rendered by such person to or work or labour done by such person for or on behalf of the Government of the territory or the Council of Ministers or any Representative Authority or any local authority in the territory, notwithstanding that such services are rendered or that such work or labour is done outside the territory: Provided that such services are rendered or such work or labour is done in accordance with a contract of employment entered into with such Government, Council, Representative Authority or local authority: Provided further that nothing in this paragraph shall be construed as imposing liability for taxation under this Act upon any salary or emolument paid to any person in the employment of the Government of the territory in respect of any period for which such person is stationed in the Republic of South Africa;
- (h) any services rendered or work or labour done by any such person who is ordinarily resident in the territory, as an officer or a member of the crew of any ship or aircraft, notwithstanding that such services are rendered or such work or labour is done outside the territory and wheresoever payment for such services or work or labour is made or is to be made;
- (i) any pension or annuity granted to such person, wheresoever payment of that pension or annuity is made and wheresoever the funds from which payment is made are situate, by —
  - (i) the Government of the territory, or by any Representative Authority or local authority in the territory; or
  - (ii) the Government of the Republic of South Africa, including the Railway Administration, if any portion of the services in respect of which that pension or annuity was granted, was performed within the territory; or
  - (iii) any person whether residing or carrying on business in the territory or not, if the services in respect of which that pension or annuity was granted were performed within the territory for at least two years during the ten years immediately preceding the date from which the pension or annuity first became due:

Provided that if the pension or annuity was granted in respect of services which were rendered partly within and partly outside the territory, only so much of such

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pension or annuity as bears to the amount of such pension or annuity the same ratio as the period during which the services were rendered in the territory bears to the total period during which the services were rendered, shall be deemed to be derived from a source within the territory.

(2) Any interest which has been received by or has accrued to any person (other than a company) who is ordinarily resident in the territory in respect of any loan to or deposit in any building society registered under the Building Societies Act, 1965 (Act 24 of 1965), of the Republic of South Africa, or any dividend or share of profits distributed by any such society which has been received by or has accrued to any such person, shall be deemed to have been derived from a source within the territory, wheresoever such loan or deposit is made or held or any share to which such dividend or share of profits relates is subscribed for or held or such interest, dividend or share of profits is payable.

(3) Any interest which has been received by or has accrued to any person (other than a company) who is ordinarily resident in the territory in respect of any loan to or deposit in any banking institution registered under the Banks Act, 1965 (Act 23 of 1965), of the Republic of South Africa, or any similar institution whether or not registered, managed or controlled in the territory or the Republic of South Africa, shall be deemed to have been derived from a source within the territory, wheresoever such loan or deposit is made or held or such interest is payable.

(4) Any amount referred to in paragraph (d) of the definition of "gross income" in section 1 shall be deemed to have been received by or to have accrued to any employee or the holder of any office from a source within the territory, wheresoever payment of such amount is made and wheresoever the funds from which payment is made are situate.

## Exemptions.

16. (1) There shall be exempt from the tax —

- (a) the revenues of the Government of the territory, a Representative Authority in the territory, the Government of the Republic of South Africa (including the Railway Administration and any provincial administration), or of any other state;
- (b) the revenues of local authorities;
- (c) the salaries and emoluments payable to any person who holds office in the territory as an official of any government, other than the Government of the territory, any Representative Authority in the territory or the Government of the Republic of South Africa, provided such person is stationed in the territory for that purpose and is not ordinarily resident in the territory;

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- (d) the receipts and accruals (including receipts or accruals from investments) of any pension fund, provident fund, retirement annuity fund, or benefit fund, or of any institution which is, in the opinion of the Secretary, a mutual savings bank, a mutual loan association, a fidelity or indemnity fund, a trade union or a non-proprietary stock exchange;
- (e) the receipts and accruals of—
- (i) any institution, board or body (other than a company registered or deemed to be registered under the Companies Act, 1973 (Act 61 of 1973), or under any law repealed by that Act and any co-operative society or company registered under the Co-operative Societies Act, 1939 (Act 29 of 1939), or the Co-operative Societies Ordinance, 1946 (Ordinance 15 of 1946)), established by or under any law and which, in the furtherance of its sole object or one of its principal objects, conducts scientific, technical or industrial research or provides necessary or useful commodities, amenities or services to the Government of the territory, any Representative Authority in the territory, the Government of the Republic of South Africa (including the Railway Administration and any provincial administration) or members of the general public, or carries on activities (including the rendering of financial assistance by way of loans or otherwise) designed to promote commerce, industry or agriculture or any branch thereof, provided such institution, board or body is by law or under its constitution not permitted to distribute any of its profits or gains to any person and is required to utilize its funds solely for investment or the objects for which it has been established;
  - (ii) any South West African company all the shares of which are held by any such institution, board or body, if the Secretary is satisfied that the operations of such company are ancillary or complementary to the objects of such institution, board or body;
- (f) the receipts or accruals of any company, society or other association of persons, whether or not registered under any law (other than a co-operative society or company registered under the Co-operative Societies Act, 1939 (Act 29 of 1939), or the Co-operative Societies Ordinance, 1946 (Ordinance 15 of 1946)), if—

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- (i) the sole or principal object of such company, society or association is as follows, namely—
  - (aa) to conduct or promote scientific, technical or industrial research; or
  - (bb) to provide medical, dental, blood transfusion, hospital or nursing services; or
  - (cc) to engage in or promote nature conservation or animal protection activities; or
  - (dd) to engage in or promote activities which the Secretary is satisfied are of a cultural nature; or
  - (ee) to provide social or recreational amenities or facilities for the members of such company, society or association; or
  - (ff) to promote the common interests of persons carrying on any particular kind of business, profession or occupation by means other than the carrying on by such company, society or association of any trading or other profit-making activities, or the participation by such company, society or association in any business, profession or occupation carried on by any of its members, or the provision to any of its members of financial assistance or of any premises or continuous services or facilities required by its members for the purpose of carrying on any business, profession or occupation;
- (ii) the activities of such company, society or association are wholly or mainly directed to the furtherance of its sole or principal object;
- (iii) such company, society or association is under its constitution not permitted to distribute any of its profits or gains to any person and is required to utilize its funds solely for investment or the objects for which it has been established; and
- (iv) under the constitution of such company, society or association it will upon its winding-up or liquidation be obliged to give or transfer its assets remaining after the satisfaction of its liabilities to



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some other company, society or association with objects similar to those of the aforesaid company, society or association;

- (g) the receipts and accruals of any association which in the opinion of the Secretary is an amateur sporting association;
- (h) the receipts and accruals of any terminating building society, pension fund, provident fund, retirement annuity fund or benefit fund or of any institution which in the opinion of the Secretary is a mutual savings bank, a mutual loan association, a fidelity or indemnity fund, a trade union, a chamber of commerce or industries (or an association of such chambers), a local publicity association or a non-proprietary stock exchange;
- (i) the receipts and accruals of any company, society or other association of persons, whether or not registered under any law (other than a co-operative society or company registered under the Co-operative Societies Act, 1939 (Act 29 of 1939), or the Co-operative Societies Ordinance, 1946 (Ordinance 15 of 1946)), the profits or gains of which, other than profits or gains from investments (including the letting of property), are derived solely from transactions with or on behalf of its individual members, and the constitution of which does not admit of the distribution of its profits or gains to any persons other than the members with whom or on whose behalf the transactions took place, and does not confer upon any person any benefit other than benefits accruing to that person from transactions with or on behalf of that person, except as regards any receipts or accruals from investments (including the letting of property to non-members) by any such company, society or association: Provided that the provisions of this paragraph shall not be construed as requiring the taxable income of such company, society or association from investments (including the letting of property to non-members) to be determined at an amount greater than an amount determined to the satisfaction of the Secretary as representing the taxable income on which such company, society or association would have been taxable under this Act if the exemption conferred by this paragraph had not been applicable;
- (j) the receipts and accruals of all ecclesiastical, charitable and educational institutions of a public character, whether or not supported wholly or partly by grants from the public revenue;

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- (k) any amount received as a war pension, or as an award or a benefit under any law relating to the payment of compensation in respect of diseases contracted by persons employed in mining operations;
- (l) interest received by or accrued to any person (other than a company) or any external company not carrying on business in the territory, from stock or securities (including Treasury Bills) issued by the Government of the territory, or any Representative Authority or local authority in the territory;
- (m)
  - (i) interest received by or accrued to any person from any deposit in the South West Africa Post Office Savings Bank;
  - (ii) any amount credited as interest in respect of any subscription share in any building society in the territory;
  - (iii) in the case of a taxpayer who is a natural person, so much of the aggregate of the amounts received or accrued as dividends on Special Tax-Free Indefinite Period shares in building societies in the territory as does not in any year of assessment exceed so much of the dividends on such shares as are derived in respect of that portion of the total amount invested in such shares which is equal to the amount of R20 000;
- (n)
  - (i) dividends received by or accrued to or in favour of any person not ordinarily resident nor carrying on business in the territory;
  - (ii) dividends received by or accrued to or in favour of the deceased estate of any person who at date of death was not ordinarily resident nor carrying on business in the territory, if, but for this exemption, such deceased estate would have been liable for normal tax in respect of such dividends;
  - (iii) dividends received by or accrued to or in favour of any person ordinarily resident in the territory from any company not managed and controlled nor carrying on business in the territory in respect of shares acquired by such person —
    - (aa) before he became ordinarily resident in the territory for the first time;

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- (bb) by a donation if at the date of the donation the donor was a person (other than a company) not ordinarily resident in the territory;
- (cc) by inheritance from a person who on the date of his death was not ordinarily resident in the territory;
- (dd) out of funds derived by him from any trade carried on by him outside the territory;
- (ee) as capitalization shares awarded to him as the holder of shares the dividends on which are exempt from normal tax in terms of this subparagraph;
- (ff) out of funds derived by him from the disposal of shares the dividends on which were exempt from normal tax in terms of this subparagraph;
- (iv) dividends received by or accrued to or in favour of a company;
- (v) dividends from sources outside the territory received by or accrued to or in favour of any person ordinarily resident in the territory in respect of which the Secretary is satisfied that any taxes proved to his satisfaction to be payable, without any right of recovery, by such person to the government of any country other than the territory in respect of such dividends, would exceed so much of the normal tax as would be attributable to the inclusion of such dividends in such person's taxable income for the year of assessment in question;
- (o) so much of any amount (being a lump sum) referred to in paragraph (c) of the definition of "gross income" in section 1 or in section 13(3) as does not exceed twenty thousand rand less the sum of any other amounts which have been excluded from the taxpayer's income by virtue of the exemption conferred by this paragraph whether in the current or any previous year of assessment: Provided that the exemption under this paragraph shall not apply in respect of any amount received by or accrued to any person upon or because of the termination or because of the impending termination of the services required to be rendered by him as the holder of any office or employment in respect of the relinquishment, termination, loss, repudiation, cancellation or variation of his office or employment or in respect of his appointment (or right or claim to be appointed) to any office or employment, unless—

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- (i) such person has attained the age of fifty-five years in the case of a male or fifty years in the case of a female; or
  - (ii) the Secretary is satisfied that the termination or impending termination of such person's services or the relinquishment, termination, loss, repudiation, cancellation or variation of his office or employment or of his appointment (or right or claim to be appointed) to any office or employment is due to superannuation, ill-health or other infirmity; or
  - (iii) in the case of a female, the Secretary is satisfied that she relinquished or terminated her office or services in order to marry;
- (p) where an employee is as a condition of his employment required while on duty to wear a special uniform which is clearly distinguishable from ordinary clothing, the value of any such uniform given to the employee by his employer, or so much of any allowance made by the employer to the employee in lieu of any such uniform as the Secretary considers reasonable;
- (q) any amount received by or accrued to any person from such person's spouse or former spouse by way of alimony or allowance or maintenance of such person or any children under an order of divorce or a judicial order or written agreement of separation;
- (r) interest received by or accrued to any person (other than a company) who is ordinarily resident in the territory in respect of any loan to or deposit in any banking institution registered under the Banks Act, 1965 (Act 23 of 1965), of the Republic of South Africa, or any similar institution, if it is proved to the satisfaction of the Secretary—
- (i) (aa) that such loan or deposit has been made through and retained in a branch of such institution outside the territory for the purposes of any business carried on by such person outside the territory; and
  - (bb) that the said interest is subject to income tax under the laws of the country within which such loan or deposit is retained; or
  - (ii) that such loan or deposit has been made through and retained in a branch of such institution outside the territory, and that the full capital for such loan or deposit was obtained from a source outside the territory;

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- (s) interest received by or accrued to any person (other than a company) who is ordinarily resident in the territory, in respect of any loan to or deposit in any building society registered under the Building Societies Act, 1965 (Act 24 of 1965), of the Republic of South Africa, or any dividend or share of profits distributed by any such society which has been received by or has accrued to any such person, if it is proved to the satisfaction of the Secretary—
- (i) that such loan or deposit has been made through any branch of the said building society outside the territory, or that the share to which such dividend or share of profits relates has been subscribed for at any branch of the said building society outside the territory;
  - (ii) that such loan, deposit or share has been retained in the said branch of the said building society outside the territory; and
  - (iii) that the full capital for such loan, deposit or share was obtained from a source outside the territory;
- (t) the receipts and accruals of the Labour Promotion Fund, established under section 1 of Proclamation R.69 of 1975 by the State President of the Republic of South Africa;
- (u) the remuneration, allowances, bonuses and other benefits received by or accrued to any member of the citizen force or of the commandos in respect of his first period of compulsory military service under section 22(3)(a) or 44(3) of the Defence Act, 1957 (Act 44 of 1957), or any voluntary extension of such period without a break in service;
- (v) any amount received by or accrued to any member of the South African Defence Force whether in cash or otherwise, as an allowance for any uniform, ration or lodging;
- (w) so much of any amount received by or accrued to any person as is proved to the satisfaction of the Secretary to be a *bona fide* bursary granted to enable or assist such person to study at a recognized educational or research institution;
- (x) the receipts and accruals of the South West Africa Water and Electricity Corporation (Proprietary) Limited;

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- (y) an amount received or accrued as an occupation allowance in relation to the pursuit of farming operations in an area which is a designated area as contemplated in the Promotion of the Density of Population in Designated Areas Act, 1979 (Act 18 of 1979).

(2) Notwithstanding the exemptions provided for in subsection (1)(l), (m) and (n) —

- (a) all amounts falling within the scope of the said paragraphs shall be set out by the taxpayer in the return rendered by him; and
  - (b) the said exemptions shall not apply in respect of any portion of an annuity.
- (3) The exemptions provided by any paragraph of subsection (1) shall not extend to any payments out of the revenues, receipts, accruals or profits mentioned in such paragraph.
- (4) There shall be exempt from the tax —
- (a) every married person (other than a married woman in respect of whose taxable income separate calculations are to be made in terms of section 6(1)) whose taxable income does not exceed four thousand rand in any year of assessment, or, if the period of assessment is less than a full year, an amount which bears to four thousand rand the same ratio as the period assessed bears to one year; and
  - (b) every other person, except a company, whose taxable income does not exceed three thousand rand in any year of assessment, or, if the period of assessment is less than a full year, an amount which bears to three thousand rand the same ratio as the period assessed bears to one year.

General deductions allowed in determination of taxable income.

17. For the purpose of determining the taxable income derived by any person from carrying on any trade within the territory, there shall be allowed as deductions from the income of such person so derived —

- (a) expenditure and losses actually incurred in the territory in the production of the income, provided such expenditure and losses are not of a capital nature;
- (b) so much as the Secretary may allow of any expenditure ~~and~~ losses actually incurred outside the territory in the production of the income, provided such expenditure and losses are not of a capital nature;
- (c) any legal expenses (being fees for the services of legal practitioners, expenses incurred in procuring evidence or expert advice, court fees, witness fees and expenses, taxing fees, the fees and expenses of sheriffs or messengers of court and other expenses of litigation which are

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of an essentially similar nature to any of the said fees or expenses) actually incurred by the taxpayer during the year of assessment in respect of any claim, dispute or action at law arising in the course of or by reason of the ordinary operations undertaken by him in the carrying on of his trade: Provided that the amount to be allowed under this paragraph in respect of any such expenses shall be limited to so much thereof as -

- (i) is not of a capital nature; and
  - (ii) is not incurred in respect of any claim made against the taxpayer for the payment of damages or compensation if by reason of the nature of the claim or the circumstances any payment which is or might be made in satisfaction or settlement of the claim does not or would not rank for deduction from his income under paragraph (a) or (b); and
  - (iii) is not incurred in respect of any claim made by the taxpayer for the payment to him of any amount which does not or would not constitute income of the taxpayer; and
  - (iv) is not incurred in respect of any dispute or action at law relating to any such claim as is referred to in paragraph (ii) or (iii) of this proviso;
- (d) expenditure actually incurred during the year of assessment on repairs of property occupied for the purpose of trade or in respect of which income is receivable, including any expenditure so incurred on the treatment against attack by beetles of any timber forming part of such property and sums expended for the repair of machinery, implements, utensils and other articles employed by the taxpayer for the purposes of his trade;
- (e) save as provided in subparagraph (5) of paragraph 10 of Schedule 1, expenditure incurred during the year of assessment in respect of the acquisition of machinery, implements, utensils and articles (excluding any motor vehicle the sole or primary function of which is the conveyance of persons otherwise than for reward) used by the taxpayer for the purpose of his trade: Provided that where, at the commencement of the year of assessment ending on 28 February 1982, or, in the case of a company, at the commencement of the financial year ending on or after 1 March 1982, a taxpayer holds for purposes of his trade any machinery, implements, utensils or articles (excluding any motor vehicle the sole or primary function of which is the conveyance of persons otherwise than for reward) not previously disposed of

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or scrapped by him, the original cost to him of such asset less any deductions allowed to him in respect thereof in terms of sections 11(e), 12(1), 12A(2), 14 and 14bis of the Income Tax Act, 1962 (Act 58 of 1962) and sections 14(e) and 15(2) of the Income Tax Ordinance, 1974 (Ordinance 5 of 1974), shall be deemed to be expenditure incurred in respect of the acquisition of such machinery, implements, utensils and articles during that year of assessment;

- (f) save as provided in subparagraph (5) of paragraph 10 of Schedule 1, in respect of buildings used by the taxpayer for the purposes of his trade, an allowance equal to twenty per cent of the cost of erection of such buildings in the year of assessment during which such buildings are brought into use, and four per cent of such cost for each of the twenty years following on the year of erection;
- (g) an allowance in respect of any premium or consideration in the nature of a premium paid by a taxpayer for —
  - (i) the right of use or occupation of land or buildings used or occupied for the production of income or from which income is derived; or
  - (ii) the right of use of any plant or machinery used for the production of income or from which income is derived; or
  - (iii) the right of use of any motion picture film or any sound recording or advertising matter connected with such film, if such film, sound recording or advertising matter is used for the production of income or income is derived therefrom; or
  - (iv) the right of use of any patent or design as defined in the Patents and Designs Proclamation, 1923 (Proclamation 17 of 1923), or any trade mark as defined in the Trade Marks in South West Africa Act, 1973 (Act 48 of 1973), or any copyright as defined in the Copyright Act, 1965 (Act 63 of 1965), or of any other property which in the opinion of the Secretary is of a similar nature, if such patent, design, trade mark, copyright or other property is used for the production of income or income is derived therefrom; or
  - (v) the imparting of or the undertaking to impart any knowledge directly or indirectly connected with the use of such film, sound recording, advertising matter, patent, design, trade mark, copyright or other property as aforesaid:



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Provided that —

- (aa) the allowance under subparagraph (i), (ii), (iii) or (iv) shall not exceed for any one year such portion of the amount of the premium or consideration so paid as is equal to the said amount divided by the number of years for which the taxpayer is entitled to the use or occupation, or one twenty-fifth of the said amount, whichever is the greater;
- (bb) if the taxpayer is entitled to such use or occupation for an indefinite period he shall be deemed, for the purposes of this paragraph, to be entitled to such use or occupation for such period as in the opinion of the Secretary represents the probable duration of such use or occupation; and
- (cc) the allowance under subparagraph (v) shall not exceed for any one year such portion (not being less than one twenty-fifth) of the amount of the premium or consideration so paid as the Secretary may allow having regard to the period during which the taxpayer will enjoy the right to use such film, sound recording, advertising matter, patent, design, trade mark, copyright or other property as aforesaid and any other circumstances which in the opinion of the Secretary are relevant;
- (h) an allowance in respect of any expenditure actually incurred by the taxpayer, in pursuance of an obligation to effect improvements on land or to buildings, incurred under an agreement whereby the right of use or occupation of land or buildings is granted by any other person, where the land or buildings are used or occupied for the production of income or income is derived therefrom: Provided that —
  - (i) the aggregate of the allowances under this paragraph shall not exceed the amount stipulated in the agreement as the value of the improvements or as the amount to be expended on the improvements or, if no amount is so stipulated, an amount representing in the opinion of the Secretary the fair and reasonable value of the improvements;
  - (ii) any such allowance shall not exceed for any one year such portion of the aggregate of the allowances under this paragraph as is equal to the said

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aggregate divided by the number of years (calculated from the date on which the improvements are completed) for which the taxpayer is entitled to the use or occupation, or one twenty-fifth of the said aggregate, whichever is the greater; and

- (iii) if the taxpayer is entitled to such use or occupation for an indefinite period, he shall for the purposes of this paragraph be deemed to be entitled to such use or occupation for such period as in the opinion of the Secretary represents the probable duration of such use or occupation;
- (i) an allowance in respect of any expenditure (other than expenditure which has qualified in whole or part for deduction or allowance under any of the other provisions of this section or the corresponding provisions of any previous income tax law) actually incurred by the taxpayer —
  - (i) in devising or developing any invention, or in creating or producing any design as defined in the Patents and Designs Proclamation, 1923 (Proclamation 17 of 1923), or any trade mark as defined in the Trade Marks in South West Africa Act, 1973 (Act 48 of 1973), or any copyright as defined in the Copyright Act, 1965 (Act 63 of 1965), or any other property which in the opinion of the Secretary is of a similar nature; or
  - (ii) in obtaining any patent or the restoration of any patent or the registration of any design under the Patents and Designs Proclamation, 1923, or the registration of any trade mark under the Trade Marks in South West Africa Act, 1973; or
  - (iii) in acquiring by assignment from any other person any such patent, design, trade mark or copyright or in acquiring any other property which in the opinion of the Secretary is of a similar nature or any knowledge connected with the use of such patent, design, trade mark, copyright or other property or the right to have such knowledge imparted,

if such invention, patent, design, trade mark, copyright, other property or knowledge, as the case may be, is used by the taxpayer in the production of his income or income is derived by him therefrom: Provided that —

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- (aa) where such expenditure exceeds two hundred rand the allowance shall not exceed for any one year such portion of the amount of the expenditure as is equal to such amount divided by the number of years which, in the opinion of the Secretary, represents the probable duration of use of the invention, patent, design, trade mark, copyright, other property or knowledge, or one twenty-fifth of the said amount, whichever is the greater;
- (bb) where such expenditure was incurred before the commencement of the year of assessment in question the allowance shall be calculated on the amount of such expenditure, less an amount equivalent to the sum of the allowances to which the taxpayer was entitled under this paragraph and the allowances to which, in the opinion of the Secretary, the taxpayer would have been entitled under this paragraph if this paragraph had been applicable, in respect of such expenditure in respect of previous years of assessment, including any year of assessment under any previous income tax law;
- (j) expenditure (other than expenditure which has qualified in whole or part for deduction or allowance under any of the other provisions of this section) actually incurred by the taxpayer during the year of assessment in obtaining the extension of the term of any patent or the extension of the registration period of any design under the Patents and Designs Proclamation, 1923 (Proclamation 17 of 1923), or the renewal of the registration of any trade mark under the Trade Marks in South West Africa Act, 1973 (Act 48 of 1973), if such patent, design or trade mark is used by the taxpayer in the production of his income or income is derived by him therefrom;
- (k) such allowance in respect of any amounts included in the taxpayer's gross income under paragraph (f) or (l) of the definition of "gross income" in section 1 as the Secretary may deem reasonable having regard to any special circumstances of the case and, in the case of an amount so included under the said paragraph (l), to the original period for which the right of use or occupation was granted: Provided that where there has accrued to the taxpayer the right to have improvements effected on land or to buildings by any other person and an amount is required to be included in the taxpayer's

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gross income under the said paragraph (l) with respect to such improvements, no allowance shall be made to the taxpayer under this paragraph in respect of such amount, if—

- (i) the taxpayer or such other person is a company and such other person or the taxpayer, as the case may be, is interested in more than fifty per cent of any class of shares issued by such company, whether directly as a shareholder in that company or indirectly as a shareholder in any other company; or
- (ii) both the taxpayer and such other person are companies and any third person is interested in more than fifty per cent of any class of shares issued by one of those companies and in more than fifty per cent of any class of shares issued by the other company, whether directly as a shareholder in the company by which the shares in question were issued or indirectly as a shareholder in any other company;
- (l) the amount of any debts due to the taxpayer to the extent to which they are proved to the satisfaction of the Secretary to be bad, provided such amount is included in the current year of assessment or was included in the previous years of assessment in the taxpayer's income;
- (m) such an allowance as may be made each year by the Secretary in respect of such debts due to the taxpayer as he considers to be doubtful: Provided that such allowance shall be included in the income of the taxpayer in the following year of assessment, and for that purpose any allowance granted in terms of any previous income tax law, shall be deemed to be an allowance which was made in terms of this paragraph;
- (n) (i) any sum contributed during the year of assessment by way of current contribution to any pension fund by any person holding any office or employment where the making of such a contribution is a condition of the holding of such office or employment: Provided that the total deduction to be allowed in respect of contributions to a pension fund or funds not established by law or for the benefit of employees of any local authority shall not in the year of assessment exceed the sum of two thousand rand;

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- (ii) any sum paid during the year of assessment to any pension fund by any person who, as a member of that fund, has in terms of the rules governing such fund, undertaken to pay the said sum in order that any past period may also be reckoned as a period of pensionable service of that member: Provided that the deduction allowed in respect of any sums so paid shall in respect of the said year of assessment not exceed the sum of one thousand rand;
- (o) any sum contributed by the taxpayer during the year of assessment for the benefit of his employees to any pension fund: Provided that —
  - (i) in respect of any lump sum contribution, the Secretary may determine that the said sum shall be deducted in a series of annual instalments, so that only a portion thereof is deducted in the year of assessment in which it is contributed, and the residue in such subsequent years of assessment, and in such proportions as the Secretary may determine, until the contribution is extinguished;
  - (ii) if the contributions (including any lump sum payments) made by the taxpayer in respect of any employee during any year of assessment to such fund exceed an amount equal to ten per cent of the approved remuneration of such employee for such year of assessment, and the Secretary is satisfied that the aggregate of such contributions and the total remuneration accrued during such year of assessment to such employee in respect of his employment by the taxpayer is excessive or unjustifiable in relation to the value of the services rendered by such employee to the taxpayer, and having regard to other benefits, if any, derived by him from his employment by the taxpayer, only so much of such contributions as appears to the Secretary to be reasonable, but not less than an amount equal to ten per cent of the approved remuneration of such employee for such year of assessment, shall be allowed to be deducted under this paragraph:
  - (iii) any decision of the Secretary under this paragraph, not being a decision under paragraph (i) of this proviso, shall be subject to objection and appeal,

and for the purposes of paragraph (ii) of this proviso "approved remuneration", in relation to any employee for any year of assessment, means so much of the

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total remuneration accrued to such employee during such year of assessment in respect of his employment by the taxpayer concerned as the Secretary considers to be fair and reasonable in relation to the value of the services rendered by such employee during such year of assessment to the taxpayer and having regard to other benefits, if any, derived by him from his employment by the taxpayer;

(p) any amount paid by way of annuity during the year of assessment by any taxpayer —

- (i) to a former employee who has retired from the taxpayer's employ on grounds of old age, ill-health or infirmity; or
- (ii) to any person who is dependent for his maintenance upon a former employee or (where such former employee is deceased) was so dependent immediately prior to his death:

Provided that the deduction under subparagraph (ii) shall not exceed in respect of the persons so dependent on any one retired or deceased employee, the sum of two thousand rand;

(q) so much of the total current contributions to any retirement annuity fund or funds made by any taxpayer as a member of such fund or funds during a year of assessment during which such taxpayer has carried on any trade as does not exceed three thousand rand or, where the taxpayer is entitled to a deduction under paragraph (n), the amount by which the amount of the deduction under the said paragraph is less than three thousand rand: Provided that —

- (i) where any person has become a member of a retirement annuity fund before the date of commencement of the Income Tax Amendment Ordinance, 1972 (Ordinance 13 of 1972), such person's contributions to such fund during the year of assessment shall qualify for deduction under this paragraph in the same manner as the aforesaid contributions if the Secretary is satisfied that the contributions would in accordance with the general practice prevailing immediately prior to the said date, have qualified for deduction under section 11(2)(q) of the Income Tax Ordinance, 1961 (Ordinance 10 of 1961), before the amendment thereof by the said Ordinance;

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- (ii) the deduction under the foregoing provisions of this paragraph shall not exceed an amount equal to the amount remaining after deducting from the income derived by the taxpayer from trade during the year of assessment the deductions admissible against such income under this Act (excluding this paragraph);
- (iii) any amount disallowed as a deduction solely under proviso (ii) shall be carried forward and be deemed for the purposes of this paragraph to be current contributions made to the fund in question during the next succeeding year of assessment;
- (r) expenditure incurred during the year of assessment by any taxpayer —
  - (i) for the purpose of scientific research undertaken by him for the development of his business, if such expenditure is not of a capital nature; or
  - (ii) by way of contributions to any association, institute, college or university, for scientific research relating to the taxpayer's own business, if the Council for Scientific and Industrial Research certifies to the Secretary that it approves the proposals of such association, institute, college or university, in regard to such research and that it is satisfied that such contributions will be used in such research;
- (s) the amount donated by the taxpayer during the year of assessment to the Central Revenue Fund for the advancement of education and training;
- (t) such sum as the Secretary may think just and reasonable as representing the amount by which the value of any motor vehicle, the sole or primary function of which is the conveyance of persons otherwise than for reward, and which is used by the taxpayer for the purposes of his trade, has been diminished by reason of wear and tear during the year of assessment: Provided that where a deduction has been allowed under paragraph (d), the Secretary shall take into consideration the sum allowed under that paragraph in determining the sum to be allowed under this paragraph;
- (u) an allowance in respect of any motor vehicle referred to in paragraph (t) equal to the amount by which the original cost to the taxpayer of such motor vehicle exceeds the total amount arrived at by adding the

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allowances granted in respect of such motor vehicle under paragraph (i) to the amount or the value of any consideration accruing to the taxpayer in respect of the sale or disposal of such motor vehicle;

- (v) any amounts which in terms of any other provision in this Part, are allowed to be deducted from the income of the taxpayer.

Deductions from income  
derived from mining  
operations.

18. There shall be allowed to be deducted from the income derived by the taxpayer from mining operations —

- (a) an amount to be ascertained under the provisions of section 36, in lieu of the allowances in section 17(e), (f), (g) and (i);

- (b) any expenditure incurred by the taxpayer during the year of assessment on prospecting operations (including surveys, boreholes, trenches, pits and other exploratory work preliminary to the establishment of a mine) in respect of any area within the territory in respect of which a mining lease has not been granted by the Government of the territory or Representative Authority, together with any other expenditure which in the opinion of the Secretary is incidental to such operations: Provided that —

- (i) except in the case of any person who derives income from mining for diamonds in the territory, the Secretary may determine that any expenditure referred to in this paragraph shall be deducted in a series of annual instalments, so that only a portion of such expenditure is deducted in the year of assessment in which it is incurred, and the residue in such subsequent years of assessment and in such proportions as the Secretary may determine, until the expenditure is extinguished;

- (ii) in the case of any company which derives income from different classes of mining operations, the deduction under this paragraph shall be made from the income derived from such class or classes of mining operations and in such proportions as the Secretary may determine;

- (iii) any expenditure which has been allowed to be deducted from the income of any person in terms of this paragraph shall not be included in such person's capital expenditure as defined in subsection (3) of section 36.

Deduction of expenses incurred by a lessor of land let for farming purposes, in respect of soil conservation works.

19. (1) Subject to the provisions of subsection (2), there shall be allowed to be deducted from the income derived by any taxpayer from letting any land on which *bona fide* pastoral, agricultural or other farming operations were carried on during the year of assessment, the expenditure incurred by him during such year in respect of the construction of soil



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conservation works, provided a certificate by the Secretary for Agriculture and Nature Conservation is produced to the effect that such works have been approved under the provisions of the Soil Conservation Act, 1969 (Act 76 of 1969).

(2) Where expenditure incurred by the taxpayer during any year of assessment and ranking for deduction from income under subsection (1) exceeds the taxable income (as calculated before allowing any deduction under that subsection) derived by the taxpayer from letting land on which *bona fide* pastoral, agricultural or other farming operations were carried on during such year, the amount allowed to be deducted under subsection (1) in respect of the said year shall be limited to an amount equal to such taxable income (calculated as aforesaid), and the excess shall be carried forward and be deemed for the purposes of this section to be expenditure incurred by the taxpayer during the next succeeding year of assessment in respect of the construction of soil conservation works.

Deductions and set-off  
from income derived from  
dividends.

20. (1) The provisions of section 17(a) and (b) and section 21 shall, subject to the provisions of subsection (2) of this section, *mutatis mutandis* apply in relation to any income derived by any person in the form of dividends.

(2) In respect of expenditure and losses not of a capital nature incurred by any person in the production of his income from dividends, the amount to be deducted under section 17(a) and (b), as applied by subsection (1) of this section, shall be an amount which bears to the expenditure and losses, which but for this subsection would have been allowed to be deducted, the same ratio as the amount of such dividends as calculated after allowing the deduction under subsection (3) bears to the amount of such dividends as calculated before allowing such deduction.

(3) In respect of income in the form of dividends derived by any person there shall be allowed as a deduction in the determination of the taxable income of such person an amount representing one third of the amount of such dividends.

(4) In the case of a company which carries on long-term insurance business in the territory there shall, in the determination of the taxable income derived by such company during any year of assessment in the form of dividends, be deducted from the income so derived by such company during such year an amount determined in accordance with the formula—

$$Y = A \times \frac{B}{C},$$

in which formula—

(a) "Y" represents the amount to be determined;

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- (b) "A" represents the taxable income, as determined before any deduction is made under this subsection, derived by such company during such year in the form of dividends;
- (c) "B" represents an amount equal to so much of the income derived by the company during such year in the form of dividends as the Secretary is satisfied has been included in the amount determined under the provisions of section 32(1) as the taxable income derived by such company during such year from the carrying on of long-term insurance business; and
- (d) "C" represents the total income derived by the company during such year in the form of dividends.

(5) Subject to the provisions of subsection (6), income received by or accrued to any person by way of a dividend on indefinite period or fixed period shares in any permanent building society shall, notwithstanding the definition of "dividend" in section 1, be deemed for the purposes of this section to be income derived by such person in the form of dividends.

(6) Income received by or accrued to any person in the form of an annuity shall, notwithstanding the fact that such income may also be in the form of dividends or be income of the nature described in subsection (5), be deemed for the purposes of this section to be income derived otherwise than in the form of dividends.

Set-off of assessed losses.

21. (1) For the purpose of determining the taxable income derived by any person from carrying on any trade within the territory, there shall be set off against the income so derived by such person —

- (a) any balance of assessed loss incurred by the taxpayer in any previous year which has been carried forward from the preceding year of assessment: Provided that —
  - (i) no person, whose estate has been voluntarily or compulsorily sequestrated, shall, unless the order of sequestration has been set aside, be entitled to carry forward any assessed loss incurred prior to the date of sequestration;
  - (ii) the balance of assessed loss shall be reduced by the amount or value of any benefit received by or accruing to a person resulting from a concession granted by, or a compromise made with his creditors whereby his liabilities to them have been reduced or extinguished, provided such liabilities arose in the ordinary course of trade;

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- (b) any assessed loss incurred by the taxpayer during the same year of assessment in carrying on in the territory any other trade either alone or in partnership with others, otherwise than as a member of a company the capital whereof is divided into shares.

(2) For the purposes of this section "assessed loss" means any amount, as established to the satisfaction of the Secretary, by which the deductions admissible under sections 17, 18 and 20 or the corresponding provisions of any previous income tax law exceed the income in respect of which they are so admissible, or, if the context so requires, means an assessed loss as determined under the provisions of section 29 or the corresponding provisions of any previous income tax law.

Amounts to be taken into account in respect of values of trading stocks.

22. (1) The amount which shall, in the determination of the taxable income derived by any person during any year of assessment from carrying on any trade (other than farming), be taken into account in respect of the value of any trading stock held and not disposed of by him at the end of such year of assessment, shall be the cost price to such person of such trading stock, less such amount as the Secretary may think just and reasonable as representing the amount by which the value of such trading stock, not being shares held by any company in any other company has been diminished by reason of damage, deterioration, change in fashion, decrease in the market value or for any other reason satisfactory to the Secretary.

(2) The amount which shall in the determination of the taxable income derived by any person during any year of assessment from carrying on any trade (other than farming), be taken into account in respect of the value of any trading stock held and not disposed of by him at the beginning of any year of assessment, shall —

- (a) if such trading formed part of the trading stock of such person at the end of the immediately preceding year of assessment be the amount which was, in the determination of the taxable income of such person for such preceding year of assessment, taken into account in respect of the value of such trading stock at the end of such preceding year of assessment; or
- (b) if such trading stock did not form part of the trading stock of such person at the end of the immediately preceding year of assessment, be the cost price to such person of such trading stock.

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(3) For the purposes of this section the cost price at any date of any trading stock in relation to any person shall be the cost incurred by such person, whether in the current or any previous year of assessment in acquiring such trading stock, plus any further costs incurred by him up to and including the said date in getting such trading stock into its then existing condition or location.

(4) If any trading stock has been acquired by any person for no consideration or for a consideration which is not measurable in terms of money, such person shall for the purposes of subsection (3) be deemed to have acquired such trading stock at a cost equal to the price which in the opinion of the Secretary was the current market price of such trading stock on the date on which it was acquired by such person.

(5) (a) If, for the purpose of determining the cost price of any trading stock, any person wishes to adopt the basis of trading stock valuation whereunder the last item of any class of trading stock acquired by him on any date is deemed to be the first item of that class of trading stock disposed of by him on or after that date, and such person satisfies the Secretary that he will maintain records in respect of his trading stock which will be adequate for the purposes of applying the said basis and that his trading stock will be accounted for on the said basis in his records, any annual financial statements prepared for submission to shareholders or for proprietors and the financial statements furnished for income tax purposes, the said person may, with the written consent of the Secretary, obtained before such person renders his return of income for the first year of assessment in respect of which the said basis of trading stock valuation is to be adopted, and subject to such conditions as the Secretary, having regard to the circumstances of the case, may determine, adopt the said basis of trading stock valuation.

(b) Where the aforesaid basis of trading stock valuation has been adopted by any person in respect of any year of assessment as contemplated in this subsection, such basis and any conditions determined by the Secretary under this subsection in relation to the adoption of the said basis shall be binding upon such person in respect of the said year of assessment and all subsequent years of assessment and may not be varied by him save with the consent of the Secretary and subject to such conditions as the Secretary, having regard to the circumstances of the case, may determine, which conditions shall be binding upon such person for the year of assessment in respect of which the variation is made and all subsequent years of assessment.

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- (c) Any conditions determined by the Secretary under this subsection may include any conditions as to the manner in which the person concerned shall account for his trading stock, whether or not such condition may in some circumstances have the effect of deferring or accelerating liability for taxation.

(6) Any reference in this section to the beginning or end of a year of assessment includes—

- (i) where the period assessed is less than twelve months, a reference to the beginning or end, as the case may be, of the period assessed;

- (ii) where a return is accepted under the proviso to subsection (13) of section 56 to a date other than the last day of February, a reference to the beginning or end, as the case may be, of the period covered by the return.

(7) In this section any reference to a year of assessment includes a reference to a year of assessment under any previous income tax law.

Schemes of arrangement  
involving trading stock.

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

- (a) no consideration measurable in terms of money accrued from the transferee company to the transferor company; or
- (b) a consideration accrued from the transferee company to the transferor company the money value of which was less than the market value of such asset on the date on which the transferee company acquired such asset,

such asset shall for the purposes of this Act be deemed to be trading stock of the transferee company, and, where paragraph (a) is applicable—

- (i) the transferee company shall be deemed to have acquired such asset at a price equal to the cost price thereof to the transferor company; and

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- (ii) notwithstanding the provisions of section 22(2), no deduction shall, in the determination of the taxable income of the transferor company for the year of assessment of that company during which the transferee company acquired such asset, be made in respect of the value of such asset as trading stock.

(2) Any amount which is received by or accrues to the transferee company from the disposal of the said asset (or of any interest therein) shall be included in that company's income, whether such amount is derived in carrying on any trade or otherwise or is derived from a source within or outside the territory.

Deductions not allowed in determination of taxable income.

24. No deductions shall in any case be made in respect of the following matters, namely —

- (a) the cost incurred in the maintenance of any taxpayer, his family or establishment;
- (b) domestic or private expenses, including the rent of or cost of repairs of or expenses in connection with any premises not occupied for the purposes of trade or of any dwellinghouse or domestic premises except in respect of such part as may be occupied for the purposes of trade;
- (c) any loss or expense, the deduction of which would otherwise be allowable, to the extent to which it is recoverable under any contract of insurance, guarantee, security or indemnity;
- (d) the taxation levied on incomes;
- (e) income carried to any reserve fund or capitalized in any way;
- (f) any expenses incurred in respect of any amounts received or accrued which do not constitute income as defined in section 1;
- (g) any moneys claimed as a deduction from income derived from trade, which are not wholly or exclusively laid out or expended for the purposes of trade;
- (h) interest which might have been made on any capital employed in trade.

Credit agreements providing for the postponement of the passing of ownership.

25. If any taxpayer has entered into any agreement with any other person in respect of any property, the effect of which is that, in the case of movable property, the ownership shall pass or, in the case of immovable property, transfer shall be effected from the taxpayer to that other person, upon or after the receipt by the taxpayer of the whole or a certain portion of the amount payable to the taxpayer under the agreement, the whole of that amount shall for the purposes of

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this Act be deemed to have accrued to the taxpayer on the day on which the agreement was entered into: Provided that the Secretary, taking into consideration any allowance he has made under paragraph (m) of section 17, may make such further allowance as under the special circumstances of the trade of the taxpayer seems to him reasonable, in respect of all amounts which are deemed to have accrued under such agreements but which have not been received at the close of the taxpayer's accounting period: Provided further that any allowance so made shall be included as income in the taxpayer's returns for the following year of assessment and shall form part of his income and for that purpose any allowance granted in terms of the corresponding provisions of a previous income tax law shall be deemed to be an allowance which was made in terms of this section in respect of a year of assessment under this Act.

Income of beneficiaries  
and estates of deceased  
persons.

26. (1) Any income received by or accrued to or in favour of any person in his capacity as executor of the estate of a deceased person, and any amount so received or accrued which would have been income in the hands of the deceased person had it been received by or accrued to or in favour of such deceased person during his lifetime, shall, to the extent that the Secretary is satisfied that such income or amount has been derived for the immediate, or future benefit of any ascertained heir or legatee of such deceased person, be deemed to be income received by or accrued to such heir or legatee, and shall, to the extent that the Secretary is not so satisfied, be deemed to be income of the estate of such deceased person.

(2) So much of the amount of any expenditure incurred by or on behalf of the estate of any deceased person during any year of assessment as, in the opinion of the Secretary, relates to any amount of income deemed to be income received by or accrued to an heir or legatee of such deceased person in terms of subsection (1) shall —

- (a) not be taken into account in the determination of the taxable income of such estate; and
- (b) be deemed to be expenditure incurred by such heir or legatee during such year, and shall, to the extent that the deduction of expenditure of the same nature is authorised by this Act, be taken into account in the determination of the taxable income of such heir or legatee.

(3) Nothing in subsection (1) shall be construed as imposing liability for tax in respect of the same amount both in the hands of the estate or heir or legatee of a deceased person, and in the hands of such deceased person.

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(4) The decision of the Secretary in the exercise of his discretion under subsection (1) or (2) shall be subject to objection and appeal.

Determination of taxable income derived from farming.

27. The taxable income of any person carrying on pastoral, agricultural or other farming operations shall, in so far as it is derived from such operations, be determined in accordance with the provisions of this Act but subject to the provisions of Schedule 1.

Taxable income of public servants.

28. The taxable income received by or accrued to or in favour of any person from employment in the government service of the territory, or employment in the South African Railways and Harbours or the public service of the Republic of South Africa in the territory, in respect of such employment, shall include any payment made by way of allowance but shall not include payments to meet expenditure incurred by such person in connection with his official duties, and any payment made by way of allowance in respect of any quarters or residence or the value of any benefit or advantage granted in respect thereof.

Persons carrying on business which extends beyond the territory.

29. When the business of any person, other than any person in respect of whose business outside the territory special provision is made under this Act, extends to any country outside the territory, the taxable income or assessed loss of such person shall be a sum which shall bear the same proportion to his total net profits or total loss from all sources, as the case may be, calculated in the manner provided in this Act for the determination of taxable income or assessed loss, as his assets in the territory bear to his total assets: Provided that if accounts satisfactory to the Secretary can be furnished, the secretary or the taxpayer may claim that the actual taxable income derived from sources within the territory or loss incurred within the territory shall be assessed in the manner otherwise provided in this Act.

Assessment of persons not ordinarily resident in the territory who derive income from film business.

30. Where any person who is not ordinarily resident in the territory derives income under or by virtue of any contract or agreement with any other person in relation to the carrying on in the territory by such other person of any business of distributing, exhibiting or exploiting motion picture films, or of leasing such films to other persons, or of licensing other persons to exhibit or display such films, or in relation to the acquisition of any advertising matter for use in connection with such films, such first-mentioned person shall be deemed to have derived under or by virtue of such contract or agreement a taxable income equal to an amount arrived at by deducting from an amount equal to ten per cent of the income derived by him as aforesaid any expenditure and losses (other than expenditure or losses of a capital nature) actually incurred by him in the territory during the year of assessment under or by virtue of such contract or agreement.



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Determination of taxable income of co-operative societies and companies.

31. (1) In the determination of the taxable income of any co-operative trading society, as defined in the Co-operative Societies Ordinance, 1946 (Ordinance 15 of 1946), derived by that society from its transactions, whether with persons who are members or with persons who are not members of the society, the amount of any bonus distributed in any year of assessment to its members by any such society which is a closed society as defined in section 97 of that Ordinance shall be allowed as a deduction from the income of that society in so far as such bonus does not exceed an amount equivalent to one-tenth of the aggregate value of the business of such society with its members during such year of assessment, but no such deduction shall be allowed in the case of any such co-operative trading society which is not such a closed society.

(2) In the determination of the taxable income of any agricultural co-operative, there shall be allowed as deductions from the income of such agricultural co-operative for the year of assessment in question the amounts of any profits distributed by it during the specified period in relation to the year of assessment by way of bonuses to persons entitled to participate in such distribution: Provided that the amounts allowed as deductions under this subsection shall not in the aggregate exceed an amount equal to the taxable income of such agricultural co-operative for the year of assessment, as calculated before allowing any deductions under this subsection and before setting off any balance of assessed loss brought forward from a previous year of assessment.

(3) (a) The full amount of any bonus distributed by any agricultural co-operative shall, to the extent that such amount qualifies for deduction from the income of such co-operative under subsection (2), be included in the gross income of the person who has become entitled thereto and shall be deemed to have accrued to such person on the date of the distribution of the bonus by such co-operative.

(b) For the purposes of this section the amount of any bonus distributed by way of capitalization shares or bonus debentures or securities shall be deemed to be the nominal value of such shares, debentures or securities, as the case may be.

(4) In this section —

“agricultural co-operative” means any co-operative agricultural society or company or any farmers’ special co-operative company, as defined in the Co-operative Societies Ordinance, 1946;

“bonus” means any amount distributed by any co-operative society or company referred to in this section out of its profits or surplus for any year of assessment, whether such amount is distributed in cash or by way of a credit or an award of capitalization shares or bonus debentures or securities, if such amount —

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- (a) is divided among the persons entitled thereto in such manner that the amount accruing to each such person is determined in accordance with the value of the business transactions between such society or company and such person; and
- (b) is distributed during the specified period in relation to such year of assessment.

Determination of taxable  
income derived from in-  
surance business.

32. (1) Notwithstanding anything contained in this Act the taxable income derived from the carrying on of long-term insurance business by any taxpayer who carries on such business in the territory (whether on mutual principles or otherwise), shall be deemed to be an amount equivalent to thirty per cent of the sum of—

- (a) the gross amounts which the Secretary is satisfied have been derived by the taxpayer during the year of assessment from the investment (including the letting of any property) of so much of his funds as are invested within or outside the territory in respect of any long-term insurance business carried on by him in the territory and of so much of his funds as are invested within the territory in respect of any long-term insurance business carried on by him outside the territory, but excluding—

- (i) amounts proved to the satisfaction of the Secretary to have been derived by the taxpayer from the investment of funds attributable to any long-term insurance business carried on by him in the territory with any pension fund or retirement annuity fund;

- (ii) amounts proved to the satisfaction of the Secretary to have been derived by the taxpayer from the investment of funds attributable to individual annuity contracts entered into by him in respect of which annuities are being paid and which are not connected with any business carried on by him in the territory with any fund referred to in subparagraph (i); and

- (iii) interest on the loan portion of the normal tax imposed under any income tax law; and

- (b) where the taxpayer is a company, the gross amounts which have been derived by the taxpayer during the year of assessment by way of remuneration for managerial or secretarial or other services from subsidiary companies of the taxpayer (including any company in

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which the taxpayer is directly or indirectly interested, if the beneficial interest of the taxpayer in the issued share capital or the issued equity share capital of such company is a direct interest or is equivalent to a direct interest, in at least ten per cent of such issued share capital or such equity share capital, but excluding any company the sole or principal function of which is, in the opinion of the secretary, the rendering of services).

(2) Subject to the provisions of this Act the taxable income derived by any taxpayer from the carrying on in the territory of short-term insurance business (whether on mutual principles or otherwise) shall be determined by charging against the sum of all premiums (including premiums on reinsurance) received by or accrued to such taxpayer in respect of the insurance of any risk, and other amounts derived from the carrying on of such business of insurance in the territory, the sum of —

- (a) the total amount of the liability incurred in respect of premiums on reinsurance;
- (b) the total amount of the liability incurred in respect of any claims during the year of assessment in respect of that business of insurance, less the value of any claims recovered or recoverable under any contract of insurance, guarantee, security or indemnity;
- (c) the expenditure, not being expenditure falling under paragraph (a) or (b), incurred in respect of that business of insurance;
- (d) such allowance as may be made each year by the Secretary in respect of unexpired risks: Provided that the allowance granted under this paragraph in respect of any year of assessment shall be included in the income of the taxpayer in the following year of assessment, and for that purpose any allowance granted in terms of the corresponding provisions of any previous income tax law shall be deemed to be an allowance which was granted under this paragraph;
- (e) such allowance as may be made each year by the Secretary in respect of claims which have been intimated but not paid: Provided that the allowance granted under this paragraph in respect of any year of assessment shall be included in the income of the taxpayer in the following year of assessment, and for that purpose any allowance granted in terms of the corresponding provisions of any previous income tax law shall be deemed to be an allowance which was granted under this paragraph: and

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- (f) such allowance as may be made each year by the Secretary in respect of claims which have not been intimated or paid: Provided that the allowance granted under this paragraph in respect of any year of assessment shall be included in the income of the taxpayer in the following year of assessment and for that purpose any allowance granted in terms of the corresponding provisions of any previous income tax law shall be deemed to be an allowance which was granted under this paragraph.

(3) Nothing in this section contained shall be construed as relieving any taxpayer from the obligation to render returns of any income derived otherwise than from the carrying on of long-term or short-term insurance business or in the form of dividends (notwithstanding the inclusion of such dividends or of a portion thereof in the gross amounts referred to in subsection (1)(a)) or from any liability for taxation in respect of any taxable income so derived or as depriving the taxpayer of the right to set off against the taxable income derived from the business of insurance any loss incurred in respect of any other business or any balance of loss so incurred which the taxpayer would be entitled to set off under the provisions of section 21.

(4) In this section —

“insurance” includes reinsurance;

“long-term insurance business” means long-term insurance business as defined in the Insurance Act, 1943 (Act 27 of 1943), and includes any business which is for the purposes of the said Act dealt with by the Registrar of Insurance as long-term insurance business and any business which in the opinion of the Secretary is medical aid insurance business conducted on a non-cancellable basis;

“short-term insurance business” means any insurance business other than long-term insurance business.

Assessments on transfer of business undertaking by foreign company to South West African subsidiary.

33. If the Secretary is satisfied that the circumstances warrant a concession and it is proved to his satisfaction —

- (a) that any company (hereinafter referred to as the subsidiary) which is incorporated, managed and controlled in the territory has under an arrangement with any other company (hereinafter referred to as the foreign company) which is incorporated, managed and controlled outside the territory, acquired all the assets and assumed all the liabilities of the foreign company relating to any industrial, commercial or other business undertaking of the foreign company in the territory which has been transferred by the foreign company to the subsidiary as a going concern; and

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- (b) that at the time the arrangement was implemented, all the issued shares of the subsidiary were held for its own benefit by the foreign company or a company which was incorporated, managed and controlled outside the territory and was controlled by or controlled the foreign company,

any taxable income derived or any assessed loss incurred by the foreign company prior to the discontinuance by it of the said undertaking and any taxable income derived or assessed loss incurred by the subsidiary after the transfer to it of such undertaking shall, subject to any conditions imposed by the Secretary, be determined in accordance with the provisions of this act as though, so far as the foreign company is concerned, such undertaking had not been discontinued by it and, so far as the subsidiary is concerned, such undertaking had belonged to and had been carried on by it prior to the transfer to it of such undertaking.

Assessment of owners or charterers of ships or aircraft not ordinarily resident or registered, managed or controlled in the territory.

34. (1) Any person (not being a person ordinarily resident in the territory or a domestic company) who embarks passengers or loads livestock, mails or goods in the territory, as an owner or charterer of any ship or aircraft, shall be deemed to have derived therefrom (apart from any taxable income derived by him from other sources) a taxable income of twenty rand for every two hundred rand payable to him or to any agent on his behalf, whether the amount be payable in or outside the territory, in respect of passengers, livestock, mails and goods so embarked or loaded, but the provisions of this section shall not apply to any such person who renders accounts which in the opinion of the Secretary satisfactorily disclose the taxable income derived by him from the embarking of passengers or the loading of livestock, mails and goods as aforesaid.

(2) Where the person so embarking passengers or loading livestock, mails or goods has no recognized agent in the territory other than the master of the ship or the pilot of the aircraft in connection with which any such amounts are payable, or where the agent fails to make returns of any such amounts payable in respect of any ship or aircraft—

- (a) the secretary may make the assessment from such information as may be available to him;
- (b) the tax thereon shall be payable to the Secretary prior to the clearance of the ship or aircraft;
- (c) the principal officer of customs at the port or airport where such ship or aircraft is being cleared shall have power to detain the clearance until such payment is made; and

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- (d) upon such payment the master, pilot or agent (as the case may be) shall be entitled to a certificate from such officer of customs that the amount so paid has been paid under the provisions of this Act, and such certificate shall be sufficient warrant to such master, pilot or agent of the amount so paid.

Assessment of persons not ordinarily resident or registered, managed or controlled in the territory who derive income from royalties or similar payments.

35. (1) Any person (not being a person who is ordinarily resident in the territory or a domestic company) to whom any amount referred to in paragraph (b) or (c) of subsection (1) of section 15 is deemed to accrue from a source within the territory, shall (apart from taxable income derived by him from other sources) be deemed to have derived from that amount a taxable income equal to thirty per cent of that amount.

- (2) (a) Any person who incurs a liability to pay to any other person (not being a person who is ordinarily resident in the territory or a domestic company) any amount referred to in paragraph (b) or (c) of subsection (1) of section 15, or who receives payment of any such amount on behalf of such other person, shall within fourteen days after the end of the month during which the said liability is incurred or the said payment is received, as the case may be, or within such further period as the Secretary may approve, make a payment (which shall be deemed to be an advance payment made on behalf of such other person) to the Secretary in respect of such other person's obligation to pay normal tax for the year of assessment during which the said amount accrues to or is received by such other person, calculated on a sum equal to thirty per cent of the said amount at the rate of tax (excluding any loan portion) applicable to the taxable income (other than taxable income derived from mining operations) of companies, and shall submit to the Secretary at the time of such tax payment a declaration in such form as the Secretary may prescribe: Provided that —

- (i) if the Secretary is satisfied that the tax payment required to be made in terms of this paragraph in respect of the said amount has been or will be made by any person, the secretary may direct that any other person who is in terms of this paragraph required to make a tax payment in respect of the said amount, shall be relieved of the duty to make such payment;

- (ii) for the purposes of this subsection a person having an address outside the territory shall until the contrary is proved be deemed to be not ordinarily resident in the territory or, in the case of a company, to be a company which is not a domestic company.

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- (b) Any person making a payment to the Secretary in terms of paragraph (a) shall, notwithstanding any agreement to the contrary, be entitled to deduct or withhold the amount of such payment from the amount which he is liable to pay to the aforesaid other person, or to recover the amount so paid from such other person or to retain out of any money that may be in his possession or may come to him as the agent of such other person an amount equal to the amount of such payment.
- (c) A taxpayer on whose behalf a payment has been made to the Secretary in terms of paragraph (a) shall not be entitled to recover the amount of such payment from the person who under the provisions of paragraph (b) deducts, withholds or retains the amount of such payment and shall be deemed to have received the amount so deducted or withheld.
- (d) Every person who is required to make a payment to the Secretary in terms of paragraph (a) shall be personally liable for making such payment, and the amount so payable shall be deemed to be a tax due by such person and shall be recoverable from him in the manner prescribed in section 83.
- (e) Nothing in this section contained shall be construed as relieving any person to whom the provisions of subsection (1) apply from the obligation to render a return of income for any year of assessment or from paying any tax for which he may be liable or as depriving him of the right to prove for the purposes of section 94 that payments made on his behalf in terms of paragraph (a) in respect of any year of assessment were in excess of the amount of normal tax properly chargeable under this Act in respect of income received by or accrued to him during such year.

Calculation of redemption allowances of capital expenditure in connection with mining operations.

36. (1) The amounts to be deducted under section 18(a) from income derived during a year of assessment from the working of any mine shall be, where such mine commences production during any such year of assessment, the amount of capital expenditure incurred up to the close of that year of assessment, and thereafter in respect of each succeeding year of assessment, the capital expenditure incurred during such succeeding year of assessment.

(2) Where separate and distinct mining operations are carried on in mines that are not contiguous, the allowance for redemption of capital expenditure shall be computed separately.

(3) For the purposes of this section —

“capital expenditure” means —

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(a) expenditure on shaft sinking and mine equipment and, in the case of a natural oil mine, the cost of laying pipelines from the mining block to the marine terminal or the local refinery, as the case may be; and

(b) expenditure on development, general administration and management (including any interest and other charges payable on loans utilized for mining purposes) prior to the commencement of production or during any period of non-production;

“capital expenditure incurred”, for the purpose of determining the amount of capital expenditure incurred during any period in respect of any mine, means the amount (if any) by which the expenditure that is incurred during such period in respect of such mine and is capital expenditure, exceeds the sum of the amounts received or accrued during the said period from disposals of assets the cost of which has in whole or in part been included in capital expenditure taken in account (whether under this Act or any previous income tax law) for the purposes of any deduction in respect of such mine under section 18(a) of this Act or the corresponding provisions of any previous income tax law;

“expenditure on shaft sinking” includes the expenditure on sumps, pumpchambers, stations and ore bins accessory to a shaft;

“expenditure” means net expenditure after taking into account any rebates or returns from expenditure, regardless of when such last-mentioned expenditure was incurred.

(4) The balance of capital expenditure unredeemed at the commencement of the first year of assessment chargeable under this Act, shall in the case of a mine which has not commenced production yet or commenced therewith in the said first year of assessment be the balance shown to be unredeemed at the end of the last year of assessment chargeable under a previous income tax law.

Calculation of capital expenditure on change of ownership of mining property.

37. (1) Whenever there takes place a change of ownership of a mining property the Secretary shall allow to rank as capital expenditure by the new owner the effective value to him at the time the change of ownership takes place, of the preliminary surveys, boreholes, shafts, development and equipment included in the assets passing by such change of ownership: Provided that if, in a case in which consideration is given, the effective value of the assets so passing exceeds the consideration, the amount allowed to rank for deduction by the new



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owner shall be such proportion of the consideration as such effective value of the preliminary surveys, boreholes, shafts, development and equipment bears to the effective value of all the assets passing.

(2) The amount allowed to rank as capital expenditure by the new owner under the provisions of subsection (1) shall for the purposes of paragraph (h) of the definition of "gross income" in section 1 be deemed to be a recoupment from capital expenditure by the person from whom ownership was acquired.

(3) If the value of the consideration given or of the property passing where no consideration is given is in dispute, it may be fixed by the Secretary if the new owner consents thereto, otherwise the value shall be determined in the same manner as if transfer duty were payable.

(4) The effective value, at the time the change of ownership takes place, of the assets passing shall be determined by an Inspector of Mines who for the purposes of such determination, notwithstanding the repeal of the Transvaal Mining Leases and Mineral Law Amendment Act, 1918 (Act 30 of 1918), shall *mutatis mutandis* have all the powers which were conferred upon the Government Mining Engineer by the provisions of the Second Schedule thereof.

**Part II****Special Provisions Relating to Companies**

Classification of  
companies.

38. (1) For the purposes of this Act a company shall in respect of each year of assessment be recognized as either a public or a private company, and the Secretary shall upon the request of any company inform that company whether it is recognized as a public company or as a private company.

(2) The following companies shall, subject to the provisions of section 39, be recognized as public companies, namely —

(a) Any company all classes of whose equity shares are publicly quoted on the specified date by a stock exchange in the list issued under its authority, provided the Secretary is satisfied —

(i) that the stock exchange is a recognized and *bona fide* stock exchange under adequate control;

(ii) that the rules and regulations of the stock exchange for granting and continuing a quotation for the purchase and sale of shares provide for full protection of the interests of the public in regard to dealings in the shares of the company;

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- (iii) that the memorandum and articles of association of the company contain no such restrictions on the right to acquire or transfer any of its shares as are likely to preclude members of the general public from becoming shareholders in any class of the company's shares; and
  - (iv) that the general public was throughout the year of assessment in question interested either directly as shareholders in the company or indirectly as shareholders in any other company, in more than forty per cent of every class of equity shares issued by the company;
- (b) any other company, not being a private company as defined in section 20 of the Companies Act, 1973 (Act 61 of 1973), in respect of which the Secretary is satisfied —
- (i) that the general public was throughout the year of assessment in question interested either directly as shareholders in the company or indirectly as shareholders in any other company, in more than fifty per cent of every class of equity shares issued by the company; and
  - (ii) that the business of the company is conducted and its profits are distributed in such manner that no person enjoys or receives or is entitled to enjoy or receive, by reason of shareholding, participation in the management or otherwise, any advantage which would not be enjoyed or received by him if the company had been under the control of a board of directors acting in the best interests of all its shareholders and had been one which could have been recognized as a public company under paragraph (a);
- (c) any company which the Secretary is satisfied was incorporated to serve a specified purpose, beneficial to the public or a section of the public, if under the constitution of the company no shareholder is entitled to participate in the profits or income of the company to an extent greater than seven per cent of the nominal value of his shareholding;
- (d) any society or company registered under the Co-operative Societies Ordinance, 1946 (Ordinance 15 of 1946);
- (e) any insurance society or company subject to assessment in terms of section 32;
- (f) any public utility company, established by law;

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(g) any company the sole or principal business of which in the territory is mining for gold or diamonds;

(h) any company to which the provisions of section 34 apply; and

(i) any unit portfolio referred to in paragraph (e) of the definition of "company" in section 1.

(3) A company which is not recognized as a public company shall be recognized as a private company.

(4) For the purposes of this section —

(a) the general public in relation to any company (in this paragraph referred to as the company) shall be deemed not to include —

(i) any director of the company; or

(ii) any relative of any director of the company, unless it is shown to the satisfaction of the Secretary that such relative, if he is not the spouse or minor child of such director, has at all times which the Secretary considers relevant exercised his rights as a shareholder in the company or in any other company through which such relative is interested in the shares of the company, independently of such director; or

(iii) the executor of the deceased estate or the trustee of the insolvent estate of any person referred to in subparagraph (i) or (ii); or

(iv) any person to the extent that he acts in a fiduciary capacity, or as a nominee, for the benefit of any person who is not in fact or in terms of any other provision of this subsection a member of the general public in relation to the company; or

(v) any man or his wife or any minor child of any man or his wife, if one or more of such persons are directly or indirectly interested (otherwise than by virtue of any shareholding in any public company or any private company which is interested in the shares of the company through a direct or indirect interest in the issued share capital of a public company) in altogether more than fifteen per cent of any class of equity shares issued by the company;

(b) the general public in relation to any company (in this paragraph referred to as the company) shall be deemed to include —

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- (i) any benefit fund, pension fund, provident fund or retirement annuity fund or any trust or institution which in the opinion of the Secretary is of a public character; and
  - (ii) any person to the extent that he acts in a fiduciary capacity, or as a nominee, for the benefit of any person who is in fact or in terms of any other provision of this subsection a member of the general public in relation to the company;
- (c) where any person —
- (i) being a public company, is indirectly interested in any shares of any other company; or
  - (ii) being a member of the general public in relation to any company, is indirectly interested in any shares of that company,

by virtue of his being a shareholder in any private company and such interest is not attributable to a direct or indirect interest of such private company in the issued share capital of a public company, the said person shall be deemed to be interested in only that portion of such shares as the Secretary is satisfied such person would be entitled to receive if every company through which that person is interested in those shares were to be wound up or liquidated and the assets of each such company were, without regard to its liabilities, to be distributed among its shareholders;

- (d) where persons are jointly interested, whether directly or indirectly, but otherwise than through a direct or indirect interest in the issued share capital of a public company, in the shares of any company, each such person shall be deemed to be interested in only such proportion of those shares as the Secretary is satisfied he would be entitled to receive if the joint interest of all such persons in such shares were to be divided between such persons.

Redetermination of  
company's status.

39. If owing to changes in the constitution or shareholding of any company which has been recognized as a public company under paragraph (a), (b) or (c) of subsection (2) of section 38, or for any other reason, the Secretary is no longer satisfied of the matters of which he is in terms of the applicable paragraph required to be satisfied, or the company ceases to comply with the requirements of that paragraph, the Secretary may notify the public officer of the company that it will as from the next succeeding specified date be recognized as a private company

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Objection and appeal.

40. The decision of the Secretary in the exercise of his discretion under paragraph (a), (b) or (c) of subsection (2) of section 38 shall be subject to objection and appeal.

## Part III

## Non-resident shareholders' tax

Levy of non-resident shareholders' tax.

41. There shall be paid for the benefit of the Central Revenue Fund, a tax (referred to in this Act as the non-resident shareholders' tax) in respect of the amounts specified in section 42.

Income subject to tax.

42. (1) The non-resident shareholders' tax shall be paid in respect of the amount of any dividend (including an interim dividend) which has been declared by any company if the shareholder to whom the dividend or interim dividend has been paid or is payable is —

- (i) a person, other than a company, and not ordinarily resident nor carrying on business in the territory; or
- (ii) a deceased estate referred to in section 16(1)(n)(ii) and such dividend is in terms of that section exempt from normal tax; or
- (iii) a company neither managed nor controlled in the territory; or
- (iv) a company (whether or not managed and controlled in the territory) more than fifty per cent of the issued share capital or equity share capital (as defined in section 1 of the Companies Act, 1973 (Act 61 of 1973)), of which is held, either directly or through a nominee or some other company or companies, for the direct or indirect benefit of one or more companies neither managed nor controlled in the territory; or
- (v) the holder of bearer scrip, irrespective of whether he is resident within or outside the territory,

and was a shareholder as at the date of declaration of the dividend, or if some date other than the date of declaration of the dividend is specified as the date at which a shareholder is required to be registered to be entitled to the dividend, as at such other date.

(2) For the purposes of this Part, where any cash is given or any assets are given —

- (a) by a company to shareholders of that company otherwise than by way of a formal declaration of a dividend; or

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- (b) by the liquidator of a company to the shareholders of that company in the course of the winding-up or liquidation of that company,

and the amount of such cash or the value of such assets in whole or in part constitutes a dividend in terms of the definition of "dividend" in section 1, such dividend shall be deemed to have been declared by the company concerned on the date on which the shareholders became entitled to such cash or such assets.

Person liable for tax.

43. The person liable for the tax shall be the person to whom or in whose favour the amounts described in section 42 accrue or are deemed to accrue.

Recovery of tax.

44. (1) Notwithstanding the provisions of section 43 the tax shall be payable by and recoverable from the persons set out hereunder, namely—

- (a) in the case of dividends distributable by any company to any person whose address appearing in the share register of the company is outside the territory, or to any holder of bearer scrip, the company by which the dividend is declared; or
- (b) in the case of dividends received by any agent in the territory on behalf of any shareholder referred to in section 42, the agent so receiving the dividend; or
- (c) in the case of dividends distributable by any company to any shareholder referred to in section 42(1)(iii) or (iv), the company by which the dividend is declared.

(2) For the purposes of this section a person shall be deemed to be the agent of a shareholder referred to in section 42 and shall be deemed to have received a dividend on behalf of that shareholder if that person's address appears in the share register of the company as the registered address of the shareholder and the dividend warrant or cheque in payment of the dividend distributable to the shareholder is delivered at that address: Provided that any person so deemed to be the agent of any shareholder shall as regards such shareholder and in respect of any income received by or accruing to him or in his favour have and exercise all the powers, duties and responsibilities of an agent for a taxpayer absent from the territory.

(3) Nothing contained in subsection (2) shall be construed as relieving any company by which a dividend is declared from the duties and responsibilities imposed upon it by section 90 as the agent of any shareholder or member absent from the territory.

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(4) Any tax payable in terms of this section by any company or agent for any shareholder may be recovered by such company or such agent, as the case may be, from the shareholder concerned.

## Rate of tax.

45. The rate of tax shall be twelve and one-half per cent of the amounts specified in section 42.

## Determination of tax if company also operates outside the territory.

46. (1) If any amount specified in section 42 has been received or is deemed to have been received from a company which derives income from sources within and outside the territory, the tax payable in respect of that amount shall be calculated upon an amount which bears to that amount the same ratio as the sum of the net profits of the company derived from sources in the territory bears to the total sum of the net profits derived from all sources as last determined by the Secretary, or in cases in which there has been no previous determination by the Secretary, as estimated by the Secretary according to such information as is available to him.

(2) Where such company is a company referred to in section 42(1)(iv), any dividend derived by such company on which the non-resident shareholders' tax has been paid, shall, for the purposes of this section, be deemed to have been derived by such company from a source outside the territory.

## Date of payment of tax.

47. (1) The company which in terms of section 44(1)(a) or (c) is required to pay the tax on any dividend shall pay to the Secretary the tax due on such dividend within thirty days of the date on which the dividend is payable or within such further period as may be approved by the Secretary and shall furnish him with a return showing the names and addresses of the persons (with the amount in each case) to whom the dividend accrues and in the case of dividends payable in respect of bearer scrip the total dividends distributable to holders of such scrip.

(2) The agent in the territory by whom the tax is payable in terms of section 44(1)(b) shall, within thirty days of the date of delivery of the dividend warrant or cheque in payment of the dividend at his address, or within such further period as may be approved by the Secretary, pay the tax to the Secretary and furnish him with a return showing the amount of the dividend and the name and address of the person to whom it has accrued.

(3) The provisions of subsections (1) and (2) shall not prevent the Secretary from recovering from the person liable any tax which has not been paid and which the Secretary may ascertain to be due, after the dates specified in the said subsections.

## Exemptions.

48. The non-resident shareholders' tax shall not be charged in respect of—

(a) dividends received or deemed to have been received from—

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- (i) any society or company registered under the Co-operative Societies Ordinance, 1946 (Ordinance 15 of 1946), as amended; or
  - (ii) any insurance society or company subject to assessment in terms of section 32 of this Act; or
  - (iii) any public utility company, established by law;
- (b) so much of the amount of any dividend declared by any company as is proved to the satisfaction of the Secretary to have been distributed—
- (i) out of taxable income derived by such company from mining for natural oil in the territory; or
  - (ii) out of dividends received by such company from any other company all the issued shares of which are held for its own benefit by the first-mentioned company, to the extent that such dividends are proved to the satisfaction of the Secretary to have been distributed by such other company out of taxable income derived by such other company from mining for natural oil in the territory;
- (c) dividends accruing to any person in the form of an annuity derived from a source within the territory.

**Part IV****Undistributed Profits Tax**

Levy of undistributed  
profits tax and rate  
thereof.

49. (1) Subject to the provisions of section 51 there shall be paid for the benefit of the Central Revenue Fund in respect of each year of assessment (including any period which is a financial year of the company concerned), by every company which is a South West African company or is carrying on business in the territory, a tax (in this Act referred to as undistributed profits tax) calculated on the amount (hereinafter referred to as the distributable balance) by which the distributable income of such company exceeds the amount of the dividends distributed by it during the specified period, at the rate of thirty-three and one-third per cent of such distributable balance.

(2) Where the Secretary is satisfied that a dividend distributed by a company shortly before the commencement of the specified period has been distributed out of profits made by the company during the year of assessment, the Secretary may, in his discretion and on the application of the company, treat such dividend as having been distributed on a date falling within the specified period, and in such case the dividend shall for the purposes of this Part be deemed to have been distributed on such date.



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Definitions for purposes of this Part.

**50. In this Part—**

“adjusted total net profits”, in relation to any company in respect of any year of assessment, means the amount remaining after the deduction from the total net profits of that company for such year of assessment of an amount equal to any allowance made to the company in respect of such year under paragraph (iv) of the definition of “distributable income”;

“deficit” for the purposes of the definition of “total net profits” means any amount, as established to the satisfaction of the Secretary, by which the sum of the deductions admissible in the determination of total net profits under this Act or any previous income tax law, exceeds the sum of the amounts from which they are so deductible, and in relation to any year of assessment in respect of which the company was not subject to undistributed profits tax, means any amount, as established to the satisfaction of the Secretary, by which the sum of the deductions which would have been admissible in the determination of total net profits exceeds the sum of the amounts from which they would have been so deductible if in respect of the said year of assessment the company had been subject to undistributed profits tax;

“distributable income”, in relation to any company in respect of any year of assessment, means the amount arrived at by deducting from the total net profits of the company for the year of assessment, the sum of—

- (i) any taxes on income (excluding undistributed profits tax) payable by the company in respect of all amounts included in its total net profits;
- (ii) an allowance equal to fifty-five per cent of the sum of so much of the adjusted total net profits of the company for the year of assessment as is not attributable to the inclusion therein of any dividends received by or accrued to the company;
- (iii) in the case of a public company, an allowance equal to thirty-five per cent of so much of the adjusted total net profits of the company for the year of assessment as is attributable to the inclusion therein of any dividends received by or accrued to it;
- (iv) an allowance in respect of investments (including investments in the form of shares or loans) made during the year of assessment by the company in any other company, if the Secretary is satisfied that the amounts invested were intended to be used by such other company to defray expenditure incurred or to be incurred by it on prospecting operations (including surveys, boreholes, trenches, pits and other exploratory work prepara-

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tory to the establishment of a mine) in any area within the territory or within such other country as the Council of Ministers may by notice in the *Official Gazette* approve for the purposes of this paragraph, and that such amounts have been or will be so used: Provided that the allowance under this paragraph shall not exceed fifty per cent of an amount equal to the first-mentioned company's distributable income for such year, as determined before the deduction of any allowances under this paragraph or paragraph (ii) or (iii) of this definition;

"fair value", in relation to any asset, means the fair market value of such asset, and in the determination of the fair market value of any asset regard shall be had, *inter alia* —

- (a) to any sworn valuation of the asset which may be furnished by or on behalf of the company concerned;
- (b) to any valuation of the asset made by any competent and disinterested person appointed by the Secretary; and
- (c) to any other relevant facts within the knowledge of the Secretary or the company concerned which either of them considers could reasonably be taken into account;

"paid-up capital" (except where that expression is used in paragraph (a) of subsection (2) of section 53), in relation to any company, means the amount of the paid-up capital (including any share premium account) of that company, reduced as provided in the said paragraph, and further reduced by —

- (a) so much of the nominal value (at the time of issue) of any capitalization shares awarded on or before 31 December 1973 as did not rank as a dividend in terms of paragraph (g) or (h) of the definition of "dividend" in section 1 or the corresponding provisions of any previous income tax law; and
- (b) any amounts deemed by the second proviso to the said definition to be profits available for distribution by the company;

"total net profits", in relation to any company in respect of any year of assessment, means the net profits of that company for such year of assessment calculated in the manner prescribed for the determination for normal tax purposes of taxable income in respect of that year of assessment (without applying the provisions of paragraph (a) of subsection (1) of section 21), but irrespective of whether the profits are derived

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from a source within or outside the territory, and subject to the inclusion in the profits of such company of all dividends from whatever source and any amounts referred to in paragraphs (l) and (m) of subsection (1) of section 16 received by or accrued to such company during such year of assessment, and all amounts deducted in terms of paragraph (a) of this definition or the corresponding provisions of any previous income tax law in the determination of the company's total net profits, whether in the current or any previous year of assessment, which have been recovered or recouped by it during the current year of assessment, less the following amounts, namely—

- (a) any expenditure (other than expenditure of a capital nature) which is proved to the satisfaction of the Secretary to have been actually and necessarily incurred by the company during the year of assessment in the course and by reason of its ordinary business operations and which but for this paragraph would not have been allowable as a deduction in the determination of the company's total net profits; and
- (b) any deficit incurred by the company which has been brought forward from the preceding year of assessment: Provided that the deficit shall be reduced by the amount or value of any benefit received by or accruing to the company resulting from a concession granted by or a compromise made with such company's creditors whereby its liabilities to them have been reduced or extinguished, if such liabilities arose in the ordinary course of trade:

Provided that the provisions of section 20(4) shall not be applied in the determination of the total net profits of any company which has derived any dividends.

**Exemptions.**

51. There shall be exempt from undistributed profits tax—

- (a) any association referred to in paragraph (d) of the definition of "company" in section 1;
- (b) companies referred to in section 38(2)(c), (d) and (f);
- (c) any association incorporated under section 21 of the Companies Act, 1973 (Act 61 of 1973), or deemed by that section so to have been incorporated;
- (d) companies in respect of which the provisions of sections 32, 34, 35 and 36 are by virtue of the definition of "total net profits" in section 50 applicable to the determination of that portion of their total net profits which is derived from their principal business;

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- (e) any company in which shares representing not less than seventy-five per cent of such company's issued capital are held by one or more companies in respect of which the provisions of section 36 are by virtue of the definition of "total net profits" in section 50 applicable to that portion of their total net profits which is derived from their principal business;
- (f) any company which satisfies the Secretary that shares representing not less than fifty per cent of its equity share capital were throughout the specified period held by one or more persons (other than companies) not ordinarily resident nor carrying on business in the territory, or by one or more companies which are not South West African companies and derive the greater portion of their profits for the year of assessment in question from sources not within or deemed to be within the territory or by one or more such persons (other than companies) and one or more such companies: Provided that where any of the said shares were held by any private company (being a company deriving the greater portion of its profits for the year of assessment in question from sources within or deemed to be within the territory) and the Secretary is satisfied that more than fifty per cent of the equity share capital of such private company was throughout the specified period held by one or more persons (other than companies) not ordinarily resident nor carrying on business in the territory, whether directly or indirectly, through one or more private companies controlled by such persons, for the ultimate benefit of such persons, each of the said persons shall, for the purposes of this paragraph, be deemed to have held such portion of the said shares as is proved to the satisfaction of the Secretary to be represented by such person's direct or indirect interest in the said equity share capital: Provided further that for the purpose of determining the portion of its profits which has been derived by any company from sources within or deemed to be within the territory for any year of assessment there shall be included in the profits derived by such company from sources within or deemed to be within the territory as well as in the profits derived by it from all sources during such year of assessment the amount, if any, by which the dividends received by or accrued to such company during such year of assessment from any South West African company, are less than the dividends which would have been received by or would have accrued to such first-mentioned company from such South West African company if the latter had distributed by way of dividends during such year of assessment an amount equal to not less than thirty per cent of its total net profits for the said year of assessment;

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- (g) any company (other than a South West African Company) which carries on business in the territory and satisfies the Secretary that not more than fifty per cent of its total net profits for the year of assessment in question was derived from sources within or deemed to be within the territory;
- (h) any company (other than a company whose total net profits are derived solely or mainly from dividends) which satisfies the Secretary that the amount derived at by deducting from the company's accumulated profits (being the sum of all its reserves (excluding any share premium account) and balance of profits unappropriated as at the specified date, together with an amount equal to so much of the nominal value of any capitalization shares (at the time of issue thereof) awarded to shareholders on or after 1 July 1957 and on or before 31 December 1973 as did not rank as a dividend in terms of paragraph (g) or (h) of the definition of "dividend" in section 1 or the corresponding provisions of any previous income tax law and any amounts deemed by the second proviso to the said definition to be profits available for distribution by the company), the sum of the dividends distributed by such company during the last six months of the specified period and the taxes on income (excluding undistributed profits tax) payable by such company in respect of all amounts included in its total net profits for the year of assessment in question did not exceed the greater of the following amounts, namely—
- (i) fifty thousand rand; or
- (ii) forty per cent of such company's paid-up capital as at the specified date;
- (i) any company (other than a company whose total net profits are derived solely or mainly from dividends) whose total net profits for the year of assessment in question did not exceed five per cent of its paid-up capital as at the specified date;
- (j) the South African Reserve Bank, any building society and any company registered as a banking institution under the Banks Act, 1965 (Act 23 of 1965);
- (k) any company all of whose equity shares were throughout the specified period held by the Government of the territory or by one or both of the following classes of shareholders, namely—
- (i) companies which are themselves exempt from undistributed profits tax in terms of this section excluding paragraphs (h) and (i);

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- (ii) benefit funds, pension funds, provident funds or retirement annuity funds:

Provided that the exemption under this paragraph shall not apply in the case of any company all of whose equity shares were at any time during the specified period held by one or more companies which during the year of assessment carried on long-term insurance business in the territory.

Assessment of undistributed profits tax.

52. The Secretary shall after the close of the specified period issue an assessment to the public officer of the company of the amount by which the distributable income for any year of assessment exceeds the dividends distributed by such company during such specified period and shall state in such assessment the amount of tax payable and the place where and the date on which such tax shall be paid.

Special provisions to apply in certain cases.

53. (1) The liability for undistributed profits tax for any year of assessment of any company (other than a South West African company) which carries on business in the territory shall be determined as if —

- (a) that portion of the total net profits which was derived by the company during such year of assessment from sources within or deemed to be within the territory represented the company's total net profits for that year of assessment;
  - (b) the accumulated profits of the company contemplated in section 51(h) consisted only of so much of the amounts included therein as in the opinion of the Secretary is attributable to the company's business in the territory;
  - (c) the paid-up capital of the company as at the specified date were equal to an amount which bears to such company's paid-up capital the same ratio as its assets in the territory bear to its total assets;
  - (d) the company had distributed by way of dividends during the specified period or any portion thereof an amount which bears to the amount of the dividends, if any, actually distributed by it during such period or such portion thereof, as the case may be, the same ratio as that portion of the total net profits which was derived by the company during such year of assessment from sources within or deemed to be within the territory bears to the company's total net profits for that year of assessment.
- (2) (a) If any company has received as consideration for the issue by it of any share in such company an asset other than cash and the Secretary considers that the fair value of such asset as at the date of the issue of the

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share was less than the amount accounted for as share capital and any share premium in respect of such share, the paid-up capital (including any share premium account) of such company shall for the purposes of this Part be reduced by the amount by which in the opinion of the Secretary the amount so accounted for exceeded the fair value of such asset as at the said date.

- (b) The provisions of paragraph (a) shall apply *mutatis mutandis* where any company has received any asset as consideration for the payment by it of any amount in cash and the issue by it of any share in such company.
- (c) If in terms of any agreement the purchase price (or any portion thereof) paid by any company for any asset acquired by it had to be applied in the acquisition by any person of any shares to be issued by such company, that company shall, to the extent to which the said purchase price was required to be applied in the acquisition of such shares, be deemed for the purposes of paragraphs (a) and (b) to have received such asset as consideration for the issue by it of such shares.

## Objection and appeal.

54. The decision of the Secretary in the exercise of his discretion under paragraph (a) of the definition of "total net profits" in section 50, paragraph (f), (g) or (h) of section 51 or paragraph (a) or (b) of subsection (2) of section 53 shall be subject to objection and appeal.

## CHAPTER III

## GENERAL PROVISIONS

## Part I

## Returns

Returns to be in form prescribed by Secretary.

55. All forms of returns and other forms required for the administration of this Act shall be in such form as may be prescribed by the Secretary from time to time.

Notice by Secretary requiring returns for assessment of taxes and manner of furnishing returns and interim returns.

56. (1) (a) The Secretary shall annually give public notice that all persons liable to taxation under the provisions of this Act, whether personally or in any representative capacity, are required to furnish within sixty days after the date of such notice, or within such further time as the Secretary may for good cause allow, returns for the assessment of the tax: Provided that any taxpayer (other than a company) who has not previously furnished returns, shall, unless the Secretary, by way of written

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notice addressed to such taxpayer or his representative, requires him to furnish returns, not be obliged to furnish such returns if his taxable income during that year of assessment consisted —

(i) only of interest or dividends or interest and dividends not exceeding R200, and salary; or

(ii) only of salary,

and the total amount of such —

(aa) interest or dividends or interest and dividends, and salary; or

(bb) salary,

did not exceed R8 000.

(b) For the purposes of this subsection, persons liable to taxation under the provisions of this Act shall be deemed to include —

(i) any person who rendered, under this Act or any previous income tax law, a return in respect of the last preceding year of assessment and who has not been advised by the Secretary in writing that he is not required to render a return in respect of the year of assessment under charge;

(ii) any person, other than a company, whose gross income for the year of assessment under charge exceeded the amount to be stated by the Secretary in the notice referred to in paragraph (a);

(iii) any company which derived gross income during the year of assessment under charge.

(2) Such notice shall state the places at which the prescribed forms may be obtained, and it shall be the duty of all such persons, and of all persons required by this Act to furnish such returns, to apply for the prescribed forms of returns.

(3) Any such person failing to furnish such returns shall not be relieved from any penalty by reason only of his having received no notice to furnish the same or of the prescribed form not having been delivered to him, but the Secretary may, if he deems it advisable, cause forms to be delivered or sent by post to any person.

(4) The Secretary may, prior to the issue of any such annual notice, require any person by notice in writing to render interim returns for any period he may designate in such notice, and may proceed to make an assessment in respect to that period.



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- (5) (a) Every person shall on publication of the annual notice or on receipt of a form delivered or sent by post as provided in subsection (3) or of a notice issued in terms of subsection (4), prepare and deliver in the prescribed manner within the time mentioned in any such notice or form to the person appointed to receive the same, a return in the form prescribed, giving the particulars required and all other details in relation thereto which may be prescribed.
- (b) Any such return shall be signed by the taxpayer or by his agent duly authorized in that behalf.
- (6) Any person signing any such return shall be deemed for all purposes in connection with this Act to be cognizant of all statements made in that return.
- (7) Any return made or purporting to be made or signed by or on behalf of any person for the purposes of this Act, shall be deemed to be duly made and signed by the person affected unless such person proves that such return was not made or signed by him or on his behalf.
- (8) If any person fails to make such a return, the Secretary may appoint a person to make a return on behalf of such person, and the return made by the person so appointed shall for all purposes of this Act be deemed to be the return of the person liable to make the same.
- (9) The returns furnished by or on behalf of any person required to furnish returns under this Act shall contain such particulars, be in such form, and be furnished to the person appointed to receive the same at such time as may be prescribed by the Secretary.
- (10) The Secretary may, when and as often as he thinks necessary, require any person to make further or more detailed returns respecting any matter of which a return is required or prescribed by this Act.
- (11) All returns required to be furnished under this Act shall be delivered at, or sent by post to, the prescribed address.
- (12) Any such return shall, if marked with the words "Income Tax" and "Official" be carried and delivered free of postal or other charges by the Department of Posts and Telecommunications.
- (13) The return of income to be made by any person in respect of any year of assessment under this Act shall be a full and true return for the whole period of twelve months ending upon the last day of the year of assessment under charge: Provided that where it is established to the satisfaction of the Secretary that the income of a person cannot be conveniently returned for that period, the Secretary may accept returns made up to the date agreed to by him which returns shall be deemed for all purposes of this Act to be returns for the

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periods covered by the years of assessment under charge, and the taxpayer shall not without the consent of the Secretary be entitled to make a return in respect of any subsequent year of assessment to a date other than the date so agreed to.

(14) The return of income to be made by any company in respect of any year of assessment shall be a full and true return for the whole period of the relevant financial year of such company comprising the year of assessment.

(15) If any person when called upon to furnish a return under this Act is unable to furnish such return, the Secretary may accept a return of estimated income for assessment, and such assessment shall be adjusted by the Secretary if and when an actual return of income is furnished.

(16) Persons carrying on any business in partnership shall make a joint return as partners in respect of such business, together with such particulars as may from time to time be prescribed, and each partner shall be separately and individually liable for the rendering of the joint return.

Half-yearly returns by persons engaged in gold mining.

57. (1) Notwithstanding anything contained in this Act, the Secretary may require any person whose sole or principal business is mining for gold, to furnish, in respect of each year of assessment, half-yearly returns for the assessment of the taxes leviable under this Act.

(2) Any such return shall be furnished within two months of the close of the half-year to which it refers, and the person furnishing it shall simultaneously pay to the Secretary the amount of any tax appearing therefrom to be payable.

(3) Any return furnished and any payment made in respect of the first half-year of any year of assessment shall be treated by the Secretary as a provisional return and a provisional payment respectively, and the Secretary in making his assessment in respect of the year of assessment as a whole shall make such adjustments as he considers necessary to bring the assessment into accord with the liability of the taxpayer for such year of assessment.

(4) The Secretary shall recover from or repay to any such person any amount whereby the assessment in respect of the year of assessment as a whole exceeds or falls short of any payment made by such person in respect of the tax for the year of assessment.

Income of married women and minor children.

58. (1) The income received by or accrued to or in favour of, or deemed to have been received by or accrued to or in favour of, a woman married with or without community of

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property and not separated from her husband under a judicial order or written agreement shall be included by him in returns of income required to be rendered by him under this Act: Provided that —

- (i) if either spouse makes written application therefor to the Secretary, and the Secretary considers it desirable; or
- (ii) if in any other case the Secretary considers it desirable,

returns of income shall be required to be rendered by both spouses separately.

(2) In the event of the death of the husband during any year in respect of which such income is chargeable, the income of the wife for the period elapsing between the date of such death and the last day of the year of assessment shall be returned as the separate income of such wife.

- (3) (a) Every parent shall be required to include in his return any income received by or accrued to or in favour of, or deemed to have been received by or accrued to or in favour of any of his minor children either directly or indirectly from himself or his wife, together with such particulars as may be required by the Secretary.
- (b) Every parent shall be required to include in his return any income deemed to be his in terms of section 12(3) or (4).

Duty to furnish returns as to employees, their earnings and other matters.

59. (1) Every person shall, if required by the Secretary, furnish to him, in such form and within such time as may be prescribed or as the Secretary may direct, returns showing —

- (a) the names and addresses of all persons or of all persons of any particular class employed by him, and the earnings, salary, wages, allowances or pensions, whether in money or otherwise, received by or accrued to or in favour of each such person in respect of such employment;
- (b) all amounts received by or accrued to or in favour of any person in respect of any share or interest in any business carried on by the person furnishing the return;
- (c) all moneys received by the person furnishing the return from any person for investment or on loan or on deposit with or without interest;
- (d) all interest or rent received by or accrued to or in favour of any person from the person furnishing the return or from any business carried on by the last-named person in the territory;

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(e) all interest, rent or dividends collected for or on behalf of any person by the person furnishing the return;

(f) all such other information in his possession with regard to the income received by or accrued to or in favour of himself or of any other person as may be required by the Secretary.

(2) In addition to the returns specified in subsection (1), every person, whether a taxpayer or not, shall, if required by the Secretary, supply such information and furnish such returns or such further or other returns as the Secretary may require.

(3) Every person to whom a form of return or a written request for information is sent by the Secretary shall complete the form of return or comply with the written request for information in accordance with the requirements of the Secretary and shall return the completed form or furnish the information to the Secretary at such place and within such time as the Secretary may direct.

Duty of companies to furnish returns.

60. (1) Where, during any period of twelve months ending on the last day of February in any year, any interest has become due by any company upon or in respect of debentures, debenture stock, loans or advances, the company shall, within thirty days after the end of such period or within such further period as the Secretary may allow, furnish the Secretary with a return giving the full name and address of each person to whom such interest became due and the amount of such interest.

(2) Where, during any period of twelve months ending on the last day of February in any year, any cash or any asset the amount or value of which in whole or part constitutes a dividend as defined in section 1, is given to shareholders in any company or a company distributes to shareholders any amount which constitutes a dividend so defined, whether by way of an award of capitalization shares or bonus debentures or securities or otherwise, the company concerned shall, within thirty days after the end of the said period, or within such further period as the Secretary may allow, furnish the Secretary with a return giving the full name and address of each shareholder and the amount of the dividend accruing to such shareholder.

(3) Every company which has transferred from its reserves (excluding any share premium account) or unappropriated profits to its share capital or share premium account any amount which is in whole or part deemed by the second proviso to the definition of "dividend" in section 1 to be a profit available for distribution to shareholders of the company, shall, when rendering the annual return of the company's income, furnish the Secretary with a statement (which may be included in the accounts or statements accompanying such return) showing the profits of a capital nature and those not of a capital nature so deemed to be available for distribution on the last day of the year of assessment in question.

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(4) Where any cash or any asset (including any asset, interest, benefit or advantage referred to in the third proviso to the definition of "dividend" in section 1) is given to any shareholder of a company in consequence of the winding-up, liquidation or reconstruction of the company or the partial reduction or redemption of its share capital (including any share premium), and the amount of such cash or the value of such asset or a portion of such amount or value constitutes a dividend in terms of the said definition the company shall, before payment to the shareholders is effected or within such period as the Secretary may approve, calculate the amount of such dividend and furnish the Secretary with a written statement setting forth the facts necessary for a determination by the Secretary of the amount of such dividend and giving details of the company's calculation of that amount.

(5) Within thirty days after the date of an advice by the Secretary of the amount of any dividend determined by him as contemplated in subsection (4) or within such further period as the Secretary may approve, the company shall, on the basis of the Secretary's determination, calculate the amount accruing to each shareholder by way of such dividend and notify the shareholder accordingly.

(6) Every company shall file with the Secretary a copy of the memorandum and articles of association constituting the company and copies of all amendments thereto.

(7) Every company shall, within thirty days of the registration by the Registrar of Companies of any prospectus proposed to be issued by it, file with the Secretary a copy of the prospectus.

Return of payments in respect of bearer warrants.

61. Every bank carrying on business in the territory or company dealing in or negotiating bearer warrants shall keep a record of all payments in respect of interest or dividends made to any person by means of bearer warrants, and shall in such manner and form and at such times as may be prescribed or as the Secretary may require, furnish particulars of such payments.

Return as to shareholdings.

62. Every person who makes a return of his own income or in a representative capacity makes a return of the income of some other person, shall attach to such return a statement showing fully—

- (a) the number of shares in any company registered in the name of the taxpayer for whom the return is rendered;
- (b) the dividends from any company received by or accrued to the taxpayer for whom the return is rendered;
- (c) the name and address of the person, if the taxpayer for whom the return is rendered is not entitled to retain the dividends received or accrued from any company, or, in the case of a private company, to participate in the

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profit or income of any such company, who, under any agreement or arrangement, is entitled to receive and retain such dividends or to participate in such profit or income;

(d) the number of shares in any company which are not registered in the name of the taxpayer for whom the return is rendered but in respect of which such taxpayer under an agreement or arrangement with the registered owner obtains all dividends payable by such company or in the case of a private company the rights of the registered owner to participate in the profit or income of such company;

(e) the dividends so received by the taxpayer for whom the return is rendered from the person in whose name such shares are registered.

Duty of persons submitting accounts in support of returns or preparing accounts for other persons.

63. (1) If any person submits in support of any return furnished by him under this Act any balance sheet, statement of assets and liabilities or account prepared by any other person, he shall, if the Secretary so requires, submit a certificate or statement by such other person recording the extent of the examination by such other person of the books of account and of the documents from which the books of account were written up, and recording in so far as may be ascertained by such examination, whether or not the entries in such books and documents disclose the true nature of any transaction, receipt, accrual, payment or debit.

(2) Any person who has prepared any balance sheet, statement of assets and liabilities or account for any other person shall, at the request of such other person, furnish him with the certificate or statement required under subsection (1).

Production of documents and evidence on oath.

64. (1) For the purpose of obtaining full information in respect of any income of any taxpayer or of any part thereof, the Secretary may require any person to produce for examination by the Secretary, or by any person appointed by him for that purpose, at such time and place as may be appointed by the Secretary in that behalf, any deeds, plans, instruments, books, accounts, trade lists, stock lists or documents which the Secretary may deem necessary for the purposes of this Act, and if any such deeds, plans, instruments, books, accounts, lists or documents are not in the English or the Afrikaans language, the Secretary may by notice in writing require the taxpayer to produce at his own expense and at such time and place as may be appointed, a translation in either the English or the Afrikaans language prepared and certified by a sworn translator or a person other than a sworn translator approved by the Secretary.

(2) (a) The Secretary may by notice in writing require any person entitled to or in receipt of any income (whether on his own behalf or as the representative of any person) or any person whom the Secretary may deem able to furnish information, to attend at a time and

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place to be named by the Secretary for the purpose of being examined on oath respecting the income of any such person or any transactions or matters affecting the same or any of them or any part thereof.

- (b) Any person so attending may be allowed by the Secretary any reasonable expenses necessarily incurred by him in so attending.
- (3) Any officer or employee engaged in carrying out the provisions of this Act who has in relation to the affairs of a particular person been authorized thereto by the Secretary in writing or by telegram, may, for the purposes of the administration of this Act—
  - (a) without previous notice, at any time during the day enter any premises whatsoever and on such premises search for any moneys, books, records, accounts or documents;
  - (b) in carrying out any such search, open or cause to be opened or removed and opened, any article in which he suspects any moneys, books, records, accounts or documents to be contained;
  - (c) seize any such books, records, accounts or documents as in his opinion may afford evidence which may be material in assessing the liability of any person for any tax;
  - (d) retain any such books, records, accounts or documents for as long as they may be required for any assessment or for any criminal or other proceedings under this Act.
- (4) Any authorized person exercising any power under subsection (3) shall on demand produce the written authority furnished to him by the Secretary.
- (5) The person to whose affairs any books, records, accounts or documents seized under subsection (3) relate, shall be entitled to examine and make extracts from them during office hours under such supervision as the Secretary may determine.

Penalty on default.

**65. (1) Any person who—**

- (a) fails or neglects to furnish, file or submit any return or document as and when required by or under this Act; or
- (b) without just cause shown by him, refuses or neglects to furnish any information or reply or to attend and give evidence as and when required by the Secretary or any officer or employee duly authorized by him or to answer truly and fully any questions put to him or to produce any books or papers required of him by the Secretary or any such officer or employee; or

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- (c) fails to show in any return made by him any portion of the gross income received by or accrued to or in favour of himself or fails to disclose to the Secretary, when making such return, any material facts which should have been disclosed; or
- (d) fails to show in any return prepared or rendered by him on behalf of any other person any portion of the gross income received by or accrued to or in favour of such other person or fails to disclose to the Secretary, when preparing or making such return, any facts which, if so disclosed, might result in increased taxation; or
- (e) obstructs or hinders any officer or employee in the discharge of his duties; or
- (f) not being a person whose gross income consists solely of salary, wages or similar compensation for personal service, without just cause shown by him fails to retain for a period of five years from the date of the last entry therein all ledgers, cash books, journals, cheque books, bank statements, deposit slips, paid cheques, invoices, stock lists and all other books of account relating to any trade carried on by him and recording the details from which his returns for assessment of taxes under this Act or any previous income tax law were prepared; or
- (g) submits or furnishes a false certificate or statement under section 63.

shall be guilty of an offence and liable on conviction to a fine not exceeding three hundred rand or to imprisonment for a period not exceeding three months or to both such fine and such imprisonment.

(2) The Secretary may, subject to such conditions as he may determine, and in respect of such books (other than ledgers, cash books and journals) or documents as he may specify, authorize the retention of a microfilm copy of any book or document referred to in subsection (1) in lieu of the original thereof.

(3) Any person who has been convicted under subsection (1) of failing to furnish any return, information or reply shall, if he fails within any period deemed by the Secretary to be reasonable and of which notice has been given to him by the Secretary, to furnish the return, information or reply in respect of which the offence was committed, be guilty of an offence and liable on conviction to a fine of thirty rand for each day during which such default continues or to imprisonment without the option of a fine for a period not exceeding three months.



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Additional tax in the event  
of default or omission.

66. (1) A taxpayer shall be required to pay in addition to the tax chargeable in respect of his taxable income —

- (a) if he makes default in rendering a return in respect of any year of assessment, an amount equal to twice the tax chargeable in respect of his taxable income for that year of assessment; or
- (b) if he omits from his return any amount which ought to have been included therein, an amount equal to twice the difference between the tax as calculated in respect of the taxable income returned by him and the tax properly chargeable in respect of his taxable income as determined after including the amount omitted;
- (c) if he makes an incorrect statement in any return rendered by him which results or would if accepted result in the assessment of the normal tax at an amount which is less than the tax properly chargeable, an amount equal to twice the difference between the tax as assessed in accordance with the return made by him and the tax which would have been properly chargeable.

(2) (a) The Secretary may remit the additional charge imposed under subsection (1) or any part thereof as he may think fit: Provided that, unless he is of the opinion that there were extenuating circumstances, he shall not so remit if he is satisfied that any act or omission of the taxpayer referred to in paragraph (a), (b) or (c) of subsection (1) was done with intent to evade taxation.

(b) In the event of the Secretary deciding not to remit the whole of the additional charge imposed under subsection (1), his decision shall be subject to objection and appeal.

(c) Notwithstanding the provisions of this subsection, the Secretary may either before or after an assessment is issued agree with the taxpayer on the amount of the additional charge to be paid, and the amount so agreed upon shall not be subject to any objection and appeal.

(3) The additional amounts of tax for which provision is made under this section shall be chargeable in cases where the taxable income or any part thereof is estimated by the Secretary in terms of section 68 or agreed upon with the taxpayer in terms of the proviso to subsection (2) of the said section as well as in cases where such taxable income or any part thereof is determined from accounts rendered by the taxpayer.

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(4) The powers conferred upon the Secretary by this section shall be in addition to any right conferred upon him by this Act to take proceedings for the recovery of any penalties for evading or avoiding assessment or the payment of tax, or attempting to do so.

(5) Any taxpayer who in determining his taxable income as disclosed by his return, deducts or sets off any amount the deduction or set-off whereof is not permissible under the provisions of this Act, or shows as an expenditure or loss any amount which he has not in fact expended or lost, shall be deemed for the purposes of this section to have omitted such amount from his return.

(6) Any taxpayer who wilfully fails to disclose in any return made by him any facts which should be disclosed and the disclosure of which would result in the taxation of the taxpayer's income on an amount which is higher than the amount upon which such income would be taxable on such return, shall for the purpose of this section be deemed to have omitted from his return the amount by which the former amount exceeds the latter.

(7) If in any year of assessment in which the determination of the taxable income of the taxpayer does not result in an assessed loss, he is entitled to the set-off of a balance of assessed loss from the previous year of assessment and such balance is less than it would have been had it been calculated on the basis of the returns rendered by him, he shall for the purposes of this section be deemed to have omitted from his return for the first-mentioned year of assessment an amount equal to the difference between the amount at which such balance is finally determined and the amount at which it would have been determined on the said basis.

**Part II****Assessments**

Assessments and recording thereof.

67. (1) All assessments required to be made under this Act shall, subject to the provisions of section 3, be made by the Secretary or under his direction.

(2) The particulars of every assessment and the amount of tax payable thereon shall be recorded or filed and kept in the office of the Secretary: Provided that any assessment so recorded or filed may be destroyed by the Secretary after the expiration of such period from date of recording or filing as may be approved by the Auditor-General.

(3) Upon recording or filing the particulars of any assessment the Secretary shall give notice of the assessment to the taxpayer assessed.

(4) The Secretary shall, in the notice of assessment, give notice to the taxpayer that any objection to the assessment made must be sent to him within twenty-one days after the date of the assessment.

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(5) Any separate returns which may be rendered by spouses in terms of the proviso to section 58(1) shall be separately assessed and separate notices of assessment shall be sent to the respective spouses: Provided that the total tax payable in respect of the separate assessments so issued shall not be less than the total amount which would have been payable by the husband alone if the incomes of both husband and wife had been assessed as the income of the husband alone.

(6) Separate assessments shall, notwithstanding the provisions of subsection (16) of section 56, be made upon partners.

## Estimated assessments.

68. (1) In every case in which any person makes default in furnishing any return or information or the Secretary is not satisfied with the return or information furnished by any person, the Secretary may estimate either in whole or in part the taxable income in relation to which the return or information is required.

(2) Any such estimate of the taxable income shall be subject to objection and appeal: Provided that if it appears to the Secretary that any person is unable from any cause to furnish an accurate return of his income, the Secretary may agree with such person as to what amount of such income shall be taxable income and any amount so agreed upon shall not be subject to any objection or appeal.

## Additional assessments.

69. (1) If at any time the Secretary is satisfied —

(a) that any amount (including any amount the incorporation of which in an assessment would result in the reduction of any loss ranking for set-off or in only a portion of such amount becoming chargeable with tax) which was subject to tax and should have been assessed to tax has not been assessed to tax either under this Act or any previous income tax law; or

(b) that any amount of tax which was chargeable and should have been assessed under this Act or any previous income tax law has not been assessed; or

(c) that, as respects any tax which is chargeable and has become payable under this Act or any previous income tax law otherwise than under an assessment, such tax has not been paid in respect of any amount upon which such tax is chargeable or an amount is owing in respect of such tax,

he shall raise an assessment or assessments in respect of the said amount or amounts, notwithstanding that an assessment or assessments may have been made upon the person concerned in respect of the year of assessment in respect of which the amount or amounts in question is or are assessable, and notwithstanding the provisions of section 71(5) and 73(18) or

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the corresponding provisions of any previous income tax law: Provided that save to correct any error of calculation the Secretary shall not raise an assessment under this subsection in respect of any amount, if any previous assessment made upon the person concerned has in respect of that amount been amended or reduced pursuant to any order made by a special court for hearing income tax appeals constituted under the provisions of this Act or any previous income tax law, unless the Secretary is satisfied that the order in question was obtained by fraud or misrepresentation or non-disclosure of material facts.

(2) The provisions of sections 66 and 68 shall apply to any assessments or additional assessments made by the Secretary under the powers conferred by this section.

Inspection of record of assessments

70. The record of assessments shall not be open to public inspection, but every taxpayer shall be entitled to copies certified by or on behalf of the Secretary of such recorded particulars as relate to him.

**Part III****Objections and Appeals**

Time and manner of lodging objections

71. (1) Objections to any assessment made under this Act may be made within twenty-one days after the date of the assessment, in the manner and under the terms prescribed by this Act by any taxpayer who is aggrieved by any assessment in which he is interested.

(2) No objection shall be entertained by the Secretary which is not delivered at his office or posted to him in sufficient time to reach him on or before the last day appointed for lodging objections, unless the Secretary is satisfied that reasonable grounds exist for delay in lodging the objection.

(3) Every objection shall be in writing and shall specify in detail the grounds upon which it is made.

(4) On receipt of a notice of objection to an assessment the Secretary may reduce or alter the assessment or may disallow the objection and shall send the taxpayer notice of such alteration, reduction or disallowance, and record any alteration or reduction made in the assessment.

(5) Where no objections are made to any assessment or where objections have been allowed or withdrawn, such assessment or altered or reduced assessment, as the case may be, shall, subject to the right of appeal hereinafter provided, be final and conclusive.

Burden of proof in respect of exemptions, deductions and rebates.

72. The burden of proof that any amount is exempt from or not liable to any tax chargeable under this Act or is subject to any deduction, rebate or set-off in terms of this Act, shall be upon the person claiming such exemption, non-liability.

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deduction, rebate or set-off, and upon the hearing of any appeal from any decision of the Secretary, the decision shall not be reversed or altered unless it is shown by the appellant that the decision is wrong.

Appeal to special court  
against Secretary's deci-  
sion.

73. (1) Any person entitled to make an objection who is dissatisfied with any decision of the Secretary as notified to him in terms of section 71(4) may appeal therefrom to a special court for hearing income tax appeals, constituted in accordance with the provisions of this section.

(2) Every court so constituted shall consist of a judge of the South West Africa Division of the Supreme Court of South Africa, who shall be the President of the court, an accountant of not less than ten years' standing, and a representative of the commercial community: Provided that in all cases relating to the business of mining, if the appellant so prefers, such third member shall be a mining engineer registered in terms of the Professional Engineers' Act, 1968 (Act 81 of 1968).

(3) The Administrator-General may, by proclamation in the *Official Gazette*, constitute such court or courts, and may from time to time by such proclamation abolish any existing court or courts or constitute such additional courts as circumstances may require.

(4) Any court constituted or deemed to be constituted under the provisions of this Act may, subject to the regulations, hear and determine any appeal lodged under the provisions of this Act or any previous income tax law.

(5) (a) The members of any such court other than judges shall be appointed by the Administrator-General by proclamation in the *Official Gazette*, and shall hold office for five years from the date of the relevant proclamation: Provided that the appointment of any such member may at any time be terminated by the Administrator-General for any reason which he considers good and sufficient, and shall lapse in the event of the abolition of the court in terms of subsection (3).

(b) Any person so appointed shall be eligible for re-appointment for such further period or periods as the Administrator-General may think fit.

(6) The Judge-President of the South West Africa Division of the Supreme Court shall nominate and second a judge or an acting judge of such division to be the President of such court, and such secondment shall be for such period or for the hearing of such cases as the said Judge-President shall determine.

(7) (a) Every notice of appeal shall be in writing and shall be lodged with the Secretary within a period of thirty days after the date of the notice mentioned in section 71(4), and no such notice of appeal shall be of any force or effect whatsoever unless it is lodged within the said period.

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- (b) At any such appeal the person who made the objection shall be limited to the grounds stated in his notice of objection.
- (8) If an assessment has been altered or reduced, the assessment as altered or reduced shall be deemed to be the assessment against which the appeal is made.
- (9) At least ten days before the date fixed for the hearing of an appeal the Secretary shall send to the person who made the objection or to his duly authorized attorney or representative a written notice of the time and place appointed for the hearing of such appeal.
- (10) The hearing of an appeal may be adjourned by the court from time to time to any time and place that may seem convenient.
- (11) The sittings of the court for the hearing of such appeals shall not be public, and the court shall at any time on the application of the appellant exclude from such sitting or require to withdraw therefrom all or any persons whomsoever whose attendance is not necessary for the hearing of the appeal under consideration.
- (12) The Secretary or any person authorized by him may appear in support of the assessment on the hearing of any appeal, and the appellant and any person who is interested in such appeal may appear in person or by his counsel, attorney or agent.
- (13) Subject to the provisions of this Act, the court may —
- (a) in the case of any assessment under appeal, order such assessment to be amended, reduced or confirmed, or may if it thinks fit refer the assessment back to the Secretary for further investigation and assessment;
- (b) in the case of any appeal against the amount of the additional charge imposed by the Secretary under section 66(1), reduce, confirm or increase the amount of the additional charge so imposed;
- (c) in the case of any other decision of the Secretary which is subject to appeal, confirm or amend such decision.
- (14) Any assessment made by the Secretary on reference under subsection (13) shall be subject to objection and appeal as in this Part provided.
- (15) Any matter of law arising for decision before the court, and any question as to whether a matter for decision is a matter of fact or a matter of law, shall be decided by the President of the court, and the other members shall have no voice in such decision.
- (16) Any decision of the court shall be recorded by the Secretary.
- (17) The court shall not make any order as to costs save when the claim of the Secretary is held to be unreasonable or the grounds of appeal therefrom to be frivolous.

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(18) Any decision of the court under this section shall, subject to the provisions of section 76, be final.

(19) (a) The President of the court may indicate which judgments or decisions of the court he considers ought to be published for general information.

(b) A copy of any judgment or decision of the court so indicated by the President of the court shall be referred by the registrar of the court to the appellant or his representative concerned in the case in such form as does not reveal the identity of such appellant, with a written request that the appellant give his consent in writing to the publication thereof in that form or any other suitable form which the appellant may approve.

(c) Where the appellant fails to give his written consent to such publication within 30 days after being requested by the registrar of the court to do so, or after the expiry of any extension of that period which the registrar may grant, the registrar shall refer the matter to the President of the court who, if he is satisfied —

(i) that the appellant's consent to publication of the relevant judgment or decision in a suitable form has been unreasonably withheld; and

(ii) that such judgment or decision is in a form which does not reveal the identity of the appellant concerned in the case,

may authorize the publication of such judgment or decision in that form or any other form which he may deem fit.

Summoning of witnesses  
and penalty for non-attendance.

74. (1) The Secretary, the appellant or the President of a special court may procure the attendance of any witness in the manner prescribed in the regulations.

(2) If any person who has been duly subpoenaed to give evidence at the hearing of an appeal or to produce any book, record, document or thing in his possession or under his control, fails without reasonable cause to attend or to give evidence or to produce that book, record, document or thing according to the subpoena or, unless excused by the President of the court, to remain in attendance throughout the proceedings, the President of the court may, upon being satisfied upon oath or by the return of the person by whom the subpoena was served, that such person has been duly subpoenaed and that his reasonable expenses have been paid or offered to him, impose upon the said person a fine not exceeding three hundred rand or in default of payment imprisonment for a period not exceeding three months.

(3) If any person so subpoenaed fails to appear or, unless duly excused, to remain in attendance throughout the proceedings, the President of the court may also, upon being satisfied as aforesaid and in case no lawful excuse for such

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failure seems to him to exist, issue a warrant for the apprehension of that person in order that he may be brought up to give evidence or to produce any book, record, document or thing according to the subpoena, and on failure so to give evidence or produce that book, record, document or thing, to be dealt with in the manner prescribed in subsection (2).

(4) The President of the court may, on cause shown, remit the whole or any part of any fine or imprisonment which he may have imposed under this section.

(5) The President of the court may order the costs of any postponement or adjournment occasioned by the default of a witness, or any portion of those costs, to be paid out of any fine imposed under this section.

(6) A penalty imposed under subsection (2) or (3) shall be enforced *mutatis mutandis* as if it were a penalty imposed by a magistrate's court in circumstances such as are described in the relevant subsection, and the provisions of any law which are applicable in respect of such a penalty imposed by a magistrate's court shall *mutatis mutandis* apply in respect of a penalty imposed under either of the said subsections.

Contempt of special court.

75. (1) If during the sitting of a special court, any person wilfully insults a member of the court or any officer of the court attending at the sitting, or wilfully interrupts the proceedings of the court or otherwise misbehaves himself in the place where the court is held, the President of the court may make an order committing that person to imprisonment for any period not exceeding three months or order that person to pay a fine not exceeding three hundred rand or in default of payment thereof to be imprisoned for such a period.

(2) An order made under subsection (1) shall be executed *mutatis mutandis* as if it were an order made by a magistrate's court under circumstances such as are described in that subsection, and the provisions of any law which are applicable in respect of such an order made by a magistrate's court shall *mutatis mutandis* apply in respect of an order made under the subsection.

Appeals against decisions of a special court.

76. (1) The appellant in a special court or the Secretary may in the manner hereinafter provided appeal under this section against any decision of that court.

(2) Such appeal shall lie to the South West Africa Division of the Supreme Court of South Africa.

(3) Any party who in terms of subsection (1) has a right to appeal against a decision of a special court and intends to lodge an appeal against such decision under this section shall, within twenty-one business days after the date of the notice issued by the registrar of the special court notifying such deci-



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sion or within such further period as the President of that court may on good cause shown allow, lodge with the said registrar and the opposite party or his attorney or agent a notice of his intention to appeal against such decision.

(4) Any such notice of an intention to appeal shall state whether, for the purposes of preparing the record on appeal, a transcript is required of the evidence given at the hearing of the case by the special court or, if only a part of such evidence is required, what part is required.

(5) If the person nominated as President of the special court cannot act in that capacity for the purposes of this section by reason of his having ceased to be a judge or acting judge or if such person has died or if it is inconvenient for such person to act in the said capacity by reason of his absence or illness or for some other reason, the Judge President of the South West Africa Division of the Supreme Court of South Africa may nominate and second another judge or acting judge to act as President of the special court for the purposes of this section in the place of the said person.

(6) Any person who was entitled under this section to appeal against a decision of the special court but has not within the time allowed by subsection (3) lodged a notice of his intention to appeal against such decision as required by that subsection, shall be deemed to have abandoned his right of appeal against such decision: Provided that he shall be entitled as the respondent in an appeal noted by the opposite party in the same case, to note in the manner hereinafter provided a cross-appeal in that case.

(7) Any person who has in terms of subsection (3) lodged a notice of his intention to appeal against a decision of the special court but has subsequently withdrawn such notice shall be deemed to have abandoned his right to note any appeal or cross-appeal against such decision.

(8) (a) After the expiry of the time allowed under subsection (3) for the lodging of a notice of intention to appeal against a decision of the special court the registrar of that court shall —

(i) give notice to any person who has lodged a notice of intention in terms of the said subsection and has not withdrawn such notice, that if it is decided to appeal the appeal should be noted within twenty-one business days after the date of the registrar's notice; and

(ii) where the opposite party is not also an intending appellant in the same case, supply to the opposite party a copy of the notice given under subparagraph (i).

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- (b) Where an intending appellant requires a transcript of evidence given at the hearing of the case by the special court to enable him to prepare the record on appeal, the registrar of that court shall not give notice under paragraph (a)(i) until such transcript has been completed.
- (9) Any appeal under this section against a decision of a special court shall be noted by lodging a written notice of such appeal with the registrar of the special court, the opposite party or his attorney and the registrar of the appeal court.
- (10) Such notice of appeal shall be lodged within the period referred to in subsection (8)(a)(i) or within such longer period as may be allowed under the rules of the appeal court.
- (11) Any cross-appeal against a decision of the special court in any case in which an appeal has been lodged under this section shall be noted by lodging a written notice of such cross-appeal with the registrar of the special court, the opposite party or his attorney and the registrar of the appeal court.
- (12) Such notice of cross-appeal shall be lodged within twenty-one business days after the date of the noting of the appeal or within such longer period as may be allowed under the rules of the appeal court.
- (13) A notice of appeal or cross-appeal lodged under this section shall state —
- (a) whether the whole or part only of the judgment is appealed against, and if part only, then what part;
  - (b) the grounds of appeal or cross-appeal specifying the findings of fact or rulings of law appealed against; and
  - (c) any further particulars that may be required under the rules of the appeal court.
- (14) (a) A party may, by notice in writing lodged with the opposite party or his attorney or agent and the registrar of the special court, abandon the whole or any part of a judgment of that court in his favour.
- (b) Such notice of abandonment shall become part of the record.
- (15) The record lodged with an appeal court in an appeal against a decision of a special court shall include any documents placed before the special court in terms of the regulations: Provided that merely formal documents and, if the parties consent, such other documents as do not relate to the matters in dispute in the appeal, may be excluded from the record.

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(16) Any application or notice which may in terms of this section be lodged with the registrar of the special court shall be delivered to the registrar or an assistant registrar of that court personally during office hours or shall be despatched to the registrar by registered post at his official address in Windhoek.

(17) Service of any notice which the registrar of the special court is required to give to any person under this section or of any notice which any party may under this section lodge with an opposite party or his attorney or agent shall be effected by the registrar or the party lodging the notice, as the case may be, or by some person acting on the instructions of the registrar or such party, in the manner prescribed by law for the service of process of the Supreme Court, or by despatching such notice to the person to whom it is addressed by registered post addressed to such person's residential or business address.

(18) For the purposes of this section —

(a) any application or notice duly despatched by registered post as contemplated in subsection (16) or (17) shall be deemed to have been given or lodged at the time of posting;

(b) any notice served by or on behalf of the Secretary or the registrar of the special court upon the public officer of a company in his capacity as such shall be deemed to have been served upon the company;

(c) "business day" means any day which is not a Saturday, Sunday or public holiday.

Members of courts not disqualified from adjudicating.

77. A member of any special court or a judge of the South West Africa Division of the Supreme Court of South Africa shall not solely on account of his liability to be assessed under this Act be deemed to be interested in any matter upon which he may be called upon to adjudicate thereunder.

Payment of tax pending appeal.

78. The obligation to pay and the right to receive and recover any tax chargeable under this Act shall not, unless the Secretary so directs, be suspended by any appeal or pending the decision of a court of law under section 76, but if any assessment is altered on appeal or in conformity with any such decision a due adjustment shall be made, amounts paid in excess being refunded with interest at the rate of seven and a half per cent per annum calculated from the date proved to the satisfaction of the Secretary to be the date on which such excess was received and amounts short-paid being recoverable with interest calculated as provided in section 79.

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## Part IV

## Payment and Recovery of Tax

Appointment of day for payment of tax and interest on overdue payments.

79. (1) Subject to the provisions of section 80 any tax chargeable shall be paid on such days and at such places as may be notified by the Secretary or as specified in this Act, and may be paid in one sum or in instalments of equal or varying amounts as may be determined by the Secretary having regard to the circumstances of the case.

(2) If the taxpayer fails to pay any tax in full within the period for payment notified by the Secretary in the notice of assessment or any extension of such period which the Secretary may grant having regard to the circumstances of the case, or within the period for payment prescribed by this Act, as the case may be, interest shall be paid by the taxpayer at the rate of seven and a half per cent per annum on the outstanding balance of such tax in respect of each completed month (reckoned from the date for payment specified in the notice of assessment or the date on which the tax has become payable in terms of this Act, as the case may be) during which any portion of the tax has remained unpaid: Provided that the Council of Ministers may at any time and from a date determined by it, vary the said rate of interest, and shall, in such event make known such variation and such date by notice in the *Official Gazette*.

Payment of employees' tax and provisional tax and interest on overdue payments of such taxes.

80. (1) Payments by way of employees' tax and provisional tax shall be made in accordance with the provisions of Schedule 2 and shall be made at such place as may be notified by the Secretary, and any such payments which relate to a taxpayer shall, for the purposes of this Act and subject to the provisions of paragraph 29 of the said Schedule, be deemed to have been made in respect of his liability for taxes as defined in subsection (3), whether or not such liability has been ascertained or determined at the date of any payment.

(2) If any amount of employees' tax is not paid in full within the period of seven days prescribed for payment of such amount by subparagraph (1) of paragraph 2 of Schedule 2 or if any amount of provisional tax is not paid in full within the relevant period prescribed for payment of such amount by paragraph 22, 23 or 24 or by subparagraph (1) of paragraph 26 of that Schedule, interest shall, unless the Secretary having regard to the circumstances of the case otherwise directs, be paid by the person liable to pay the amount in question at the rate of seven and a half per cent per annum on so much of such amount as remains unpaid in respect of the period (reckoned from the end of the relevant period prescribed as aforesaid for payment of such amount) during which the amount underpaid remains unpaid: Provided that the Council of Ministers may at any time and from a date determined by it, vary the said rate of interest, and shall, in such event, make known such variation and such date by notice in the *Official Gazette*.

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(3) For the purposes of this section "taxes" means the taxes comprehended in the definition of "tax" in section 1, excluding non-resident shareholders' tax and undistributed profits tax.

Accounts and recovery  
proceedings in respect of  
certain taxes.

81. (1) Where any taxes as defined in subsection (3) are owing by the taxpayer in respect of more than one year of assessment or more than one of such taxes are owing by the taxpayer, whether for one or more years of assessment, the Secretary shall not be required to maintain a separate account in respect of each year of assessment or each of such taxes, but may maintain one tax account for the taxpayer recording details of the assessed amounts of the said taxes and the interest payable in respect of such taxes in terms of section 79(2) for which the taxpayer has from time to time become liable, the amounts of the payments made in respect of such taxes or interest (excluding payments made by way of provisional tax in terms of Schedule 2), any credit in respect of any amount of employees' tax or provisional tax which the taxpayer is under that Schedule entitled to have set off against his liability for such taxes and such other details as may be required to establish the total amount owing by the taxpayer from time to time in respect of such taxes or interest, and any such payment or credit shall be deemed to have been made or to have accrued in respect of the total amount reflected in such tax account as owing by the taxpayer at the time such payment is made or such credit is passed.

(2) The total amount owing by the taxpayer after the deduction of the relevant payments or other credits in respect of any taxes as defined in subsection (3) and of interest in respect of such taxes payable by the taxpayer in terms of section 79 shall for the purposes of any proceedings for recovery (including proceedings under section 83) be deemed to be a debt due to the Government of the territory, and in any such proceedings the Secretary shall not be required to furnish particulars of the amount claimed: Provided that the Secretary shall at the request of the taxpayer furnish the taxpayer with copies of any notices of assessment relating to the taxpayer as the taxpayer may require.

(3) For the purposes of this section "taxes" means the taxes comprehended in the definition of "tax" in section 1, excluding non-resident shareholders' tax and undistributed profits tax.

Persons by whom normal  
tax is payable.

82. Subject to the provisions of this Act, any tax (~~other than~~ non-resident shareholders' tax and undistributed profits tax) and any interest payable in terms of section 79, shall be payable—

- (a) by any representative taxpayer, liable to assessment or for the payment of such tax or interest under this Act or under any previous income tax law;

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- (b) by any spouse upon whom any separate assessment notice has been served, where separate assessments have been made upon two spouses under the provisions of section 67(5);
- (c) in respect of any other income and in all other cases, by the person by whom the income is received or to whom or in whose favour it accrues or who is legally entitled to the receipt thereof:

Provided that any person may recover so much of the taxation paid by him under this Act as is due to the inclusion in his income of any income deemed to have been received by him or to be his income, as the case may be, in terms of subsection (3), (4), (5) or (6) of section 12, from the person entitled, whether on his own behalf or in a representative capacity, to the receipt of the income so included: Provided further that nothing herein contained shall be construed as relieving any person required to make any payment by way of employees' tax under the provisions of Schedule 2 from any liability, responsibility or duty imposed upon him by this Act.

**Recovery of tax.**

- 83. (1) (a) Any tax or any interest payable in terms of section 79 shall, when such tax or interest becomes due or is payable, be deemed to be a debt due to the Government of the territory and shall be payable to the Secretary in the manner and at the place prescribed.
- (b) If any person fails to pay any tax or any interest payable in terms of section 79 when such tax or interest becomes due or is payable by him, the Secretary may file with the clerk or registrar of any competent court a statement certified by him as correct and setting forth the amount of the tax or interest so due or payable by that person, and such statement shall thereupon have all the effects of, and any proceedings may be taken thereon as if it were, a civil judgment lawfully given in that court in favour of the Secretary for a liquid debt of the amount specified in the statement.
- (c) The Secretary may by notice in writing addressed to the aforesaid clerk or registrar, withdraw the statement referred to in paragraph (b) and such statement shall thereupon cease to have any effect: Provided that, in the circumstances contemplated in the said paragraph, the Secretary may institute proceedings afresh under that paragraph in respect of any tax or interest referred to in the withdrawn statement.

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- (d) The Secretary may institute proceedings for the sequestration of the estate of any taxpayer and shall for the purposes of such proceedings be deemed to be the creditor in respect of any tax due by such taxpayer or any interest payable by him in terms of section 79.

(2) Notwithstanding anything contained in the Magistrates' Courts Act, 1944 (Act 32 of 1944), a statement for any amount whatsoever may be filed in terms of paragraph (b) of subsection (1) with the clerk of the court of the magistrate having jurisdiction in respect of the person by whom such amount is payable in accordance with the provisions of this Act.

(3) Any tax due and payable or any interest payable in terms of section 79 by any person married without community of property may be recovered from the assets of his wife in so far as the tax is payable in respect of the income of his wife deemed to be his under the provisions of section 12(2) or the interest is payable in respect of such portion of the tax as is so payable in respect of the income of his wife, as the case may be.

(4) So much of any tax payable by any person as is due to the inclusion in his income of any income deemed to have been received by him or to be his income, as the case may be, in terms of subsection (3), (4), (5) or (6) of section 12, may be recovered from the assets by which the income so included was produced.

(5) So much of any interest payable in terms of section 79 as relates to such portion of any tax as is in terms of subsection (4) recoverable from the assets referred to in that subsection may also be recovered from such assets.

Correctness of assessment  
cannot be questioned.

84. It shall not be competent for any person in any proceedings in connection with any statement filed in terms of paragraph (b) of subsection (1) of section 83 to question the correctness of any assessment on which such statement is based, notwithstanding that objection and appeal may have been lodged thereto.

Collection of taxes under  
arrangements made under  
section 100.

85. (1) If the Secretary has, in accordance with any arrangements made with the government of the Republic of South Africa by an agreement entered into under section 100 or the corresponding provisions of any previous income tax law with a view to rendering reciprocal assistance in the collection of taxes, received a request for the collection from any person in the territory of an amount alleged to be due by him under the income tax laws of such Republic, the Secretary may, by notice in writing, call upon such person to state, within a period specified in the notice, whether or not he admits liability for the said amount or for any lesser amount.

(2) The Secretary may —

- (a) if such person so admits liability; or

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- (b) if such person fails to comply with the notice or in answer to the notice denies his liability for the said amount or for any part thereof, and the President of the special court has certified that he has afforded the person concerned an opportunity of presenting his case, and that on the information submitted to him by the Secretary and by such person (if any), the amount specified in the certificate appears to be payable by such person in terms of a final determination under the income tax laws of such Republic,

by notice in writing require such person to pay the amount for which he has admitted liability or the amount so specified, as the case may be, on a date, at a place and to a person specified in the notice, for transmission to the proper authority in such Republic.

- (3) If such person fails to comply with the notice under subsection (2) the amount in question may, subject, in the case of any amount to which any such certificate relates, to the outcome of any proceedings which such person may institute in such Republic for determining his liability for the said amount, be recovered for transmission to the said authority as if it were a tax payable by such person under this Act.

- (4) No steps taken in the Republic of South Africa under any arrangements referred to in subsection (1); for the collection of an amount alleged to be due by any person under the income tax laws of the territory, and no judgment given against any such person in pursuance of such arrangements in such Republic for any such amount, shall affect his right to have his liability for any such amount determined in the territory in accordance with the provisions of the relevant law.

Evidence as to assessments.

86. The production of any document under the hand of the Secretary purporting to be a copy of or an extract from any notice of assessment shall be conclusive evidence of the making of such assessment and, except in the case of proceedings on appeal against the assessment, shall be conclusive evidence that the amount and all the particulars of such assessment appearing in such document are correct.

## Part V

## Representative Taxpayers

Liability of representative taxpayer.

87. (1) Every representative taxpayer shall as regards the income to which he is entitled in his representative capacity, or of which in such capacity he has the management, receipt, disposal, remittance, payment or control, be subject in all respects to the same duties, responsibilities and liabilities as if the income were income received by or accruing to or in



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favour of him beneficially and shall be liable to assessment in his own name in respect of that income, but any such assessment shall be deemed to be made upon him in his representative capacity only.

(2) Every representative taxpayer referred to in paragraph (e) of the definition of "representative taxpayer" in section 1 shall as regards the income received by or accrued to any deceased person during his lifetime be subject in all respects to the same duties, responsibilities and liabilities as if the income were income received by or accrued to or in favour of him beneficially and shall be liable to assessment in his own name in respect of that income, but any such assessment shall be deemed to be made upon him in his representative capacity only.

(3) Any rebate, deduction, exemption or right to set off a loss which could be claimed by the person represented by him shall be allowed in the assessment made upon the representative taxpayer in his capacity as such.

(4) Any tax payable in respect of any such assessment shall, save in the case of an assessment upon the public officer of a company, be recoverable from the representative taxpayer, but to the extent only of any assets belonging to the person whom he represents which may be in his possession or under his management, disposal or control.

(5) Any tax payable in respect of any assessment made upon a public officer of a company in his capacity as such shall be recoverable from the company of which he is the public officer.

Right of representative taxpayer to indemnity.

88. (1) Every representative taxpayer who, as such, pays any tax shall be entitled to recover the amount so paid from the person on whose behalf it is paid, or to retain out of any moneys that may be in his possession or may come to him in his representative capacity, an amount equal to the amount so paid.

(2) Every representative taxpayer referred to in paragraph (e) of the definition of "representative taxpayer" in section 1 who, as such, pays any tax in respect of the taxable income of any deceased person shall be entitled to recover the amount so paid from the estate of such deceased person or to retain out of any moneys of the estate of such deceased person that may be in his possession or that may come to him as executor of such estate, an amount equal to the amount so paid.

Personal liability of representative taxpayer.

89. Every representative taxpayer shall be personally liable for any tax payable by him in his representative capacity, if, while it remains unpaid —

(a) he alienates, charges or disposes of the income in respect of which the tax is chargeable; or

(b) he disposes of or parts with any fund or money, which is in his possession or comes to him after the tax is payable, if the tax could legally have been paid from or out of such fund or money.

Company regarded as agent for absent shareholder.

90. Where a shareholder or a member of a company is absent from the territory, such company shall for the purposes of this Act be deemed to be the agent for such shareholder or member, and shall as regards such shareholder or member and

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in respect of any income received by or accruing to him or in his favour as a shareholder or member, have and exercise all the powers, duties and responsibilities of an agent for a taxpayer absent from the territory.

Power to appoint agent.

91. The Secretary may, if he thinks necessary, declare any person to be the agent of any other person, and the person so declared an agent shall be the agent for the purposes of this Act and may be required to make payment of any tax due from any moneys, including pensions, salary wages or any other remuneration, which may be held by him for or due by him to the person whose agent he has been declared to be.

Remedies of Secretary against agent or trustee.

92. The Secretary shall have the same remedies against all property of any kind vested in or under the control or management of any agent or trustee as he would have against the property of any person liable to pay any tax and in as full and ample a manner.

Public officers of companies.

93. (1) Every company carrying on business or having an office in the territory and every unit portfolio constituting a company in terms of paragraph (e) of the definition of "company" in section 1 shall at all times be represented by an individual residing therein.

(2) Such individual shall be a person approved by the Secretary and shall be appointed by the company or by an agent or attorney who has authority to appoint such a representative for the purposes of this Act: Provided that in the event of any company being placed in voluntary or compulsory liquidation the liquidator or liquidators duly appointed shall be required to exercise in respect of that company all the functions and assume all the responsibilities of a public officer under this Act during the continuance of the liquidation: Provided further that in the case of any unit portfolio referred to in subsection (1) the public officer of the relevant management company shall be the public officer except in the event of the winding-up of the management company, in which event the trustee under the relevant unit trust scheme shall be the public officer.

(3) The representative shall be called the public officer of the company and shall be appointed within one month after the company begins to carry on business or acquires an office in the territory.

(4) In default of any such appointment the public officer of any company shall be such managing director, director, secretary or other officer of the company, as the Secretary may designate for that purpose.

(5) Every company shall also within the period prescribed by subsection (3) appoint a place within the territory approved by the Secretary at which any notices or other documents under this Act affecting the company may be served or delivered or to which any such notices or documents may be sent: Provided that in the case of any unit portfolio referred to in subsection (1) the place at which any such notice or other document may be served or delivered or to which any such

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notice or document may be sent shall be the place appointed by the relevant management company in regard to any notice or other document affecting itself, or, in the event of the trustee under the relevant unit trust scheme becoming the public officer, the place within the territory appointed by the trustee and approved by the Secretary: Provided further that such trustee shall appoint such place within one month after becoming the public officer.

(6) No appointment shall be deemed to have been made under subsection (3) or (5), until notice thereof specifying the name of the public officer and an address for service or delivery of notices and documents has been given to the Secretary.

(7) Every company shall keep the office of public officer constantly filled and shall at all times maintain a place for the service or delivery of notices in accordance with subsection (5), and every change of public officer or of the place for the service or delivery of notices shall be notified to the Secretary within fourteen days of such change taking effect and every trustee referred to in subsection (5) shall at all times maintain a place for the service or delivery of such notices and shall within fourteen days of any change in such place taking effect notify the Secretary thereof.

(8) Any company which makes default in appointing a public officer or appointing a place for service or delivery of notices in accordance with this Act, or in keeping the office of public officer constantly filled, or in maintaining a place for the service or delivery of notices, or which fails to notify to the Secretary any change of public officer or of the place for the service or delivery of notices, and every person who acts within the territory as agent or manager or representative of such company, shall incur a penalty not exceeding two rand for every day during which the default continues, and any such penalty shall be recoverable by the Secretary by action in any competent court.

(9) Every notice, process or proceeding which under this Act may be given to, served upon or taken against any company, may be given to, served upon or taken against its public officer, or if at any time there is no public officer, any officer or person acting or appearing to act in the management of the business or affairs of such company or as agent for such company.

(10) Every public officer shall be answerable for the doing of all such acts, matters or things as are required to be done under this Act by a taxpayer and in case of default shall be liable to the penalties provided in respect of defaults by a taxpayer.

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(11) Everything done by a public officer which he is required to do in his representative capacity shall be deemed to have been done by the company which he represents.

(12) The absence or non-appointment of a public officer shall not exonerate any company from the necessity of complying with the provisions of this Act, but the company shall in all respects be subject to and liable to comply with the provisions of this Act as if there were no requirement to appoint such officer.

(13) Any public officer appointed or deemed to have been appointed under the provisions of any previous income tax law, and holding office at the commencement of this Act shall, provided no objection to his continuance in office is raised by the Secretary, be deemed to be a public officer appointed under this Act.

## Part VI

## Miscellaneous

Refunds.

94. (1) If it is proved to the satisfaction of the Secretary that any amount paid by a taxpayer was in excess of the amount properly chargeable under this Act, the Secretary may authorize a refund to such taxpayer of any tax overpaid: Provided that no amount paid in respect of an assessment accepted by the taxpayer and made in accordance with the practice generally prevailing at the date of that assessment shall be deemed to have been otherwise than properly so chargeable.

(2) The Secretary shall not authorize any refund under this section unless the claim therefor is made within three years after the date of the assessment under which such tax was payable or, where such tax was chargeable and was payable under this Act otherwise than under an assessment, the date of payment of such tax (which date shall for the purposes of this subsection be deemed to be the date of the official receipt acknowledging such payment or, where more than one such payment was made, the date of the official receipt acknowledging the latest of such payments).

Transactions, operations or schemes for purposes of avoiding or postponing liability for or reducing amounts of taxes on income.

95. (1) Whenever the Secretary is satisfied that any transaction, operation or scheme (whether entered into or carried out before or after the commencement of this Act, and including a transaction, operation or scheme involving the alienation of property) —

(a) has been entered into or carried out which has the effect of avoiding or postponing liability for the payment of any tax, duty or levy imposed by this Act or any previous income tax law, or of reducing the amount thereof; and

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- (b) having regard to the circumstances under which the transaction, operation or scheme was entered into carried out —
- (i) was entered into or carried out by means or in a manner which would not normally be employed in the entering into or carrying out of a transaction, operation or scheme of the nature of the transaction, operation or scheme in question; or
  - (ii) has created rights or obligations which would not normally be created between persons dealing at arm's length under a transaction, operation or scheme of the nature of the transaction, operation or scheme in question; and
- (c) was entered into or carried out solely or mainly for the purposes of the avoidance or the postponement of liability for the payment of any tax, duty or levy (whether imposed by this Act or any previous income tax law or any other law administered by the Secretary) or the reduction of the amount of such liability,

the Secretary shall determine the liability for any tax, duty or levy imposed by this Act, and the amount thereof, as if the transaction, operation or scheme had not been entered into or carried out, or in such manner as in the circumstances of the case he deems appropriate for the prevention or diminution of such avoidance, postponement or reduction.

(2) Whenever the Secretary is satisfied that any agreement affecting any company or any change in the shareholding in any company, as a direct or indirect result of which income has been received by or has accrued to that company during any year of assessment, has at any time before or after the commencement of this Act been entered into or effected by any person solely or mainly for the purpose of utilizing any assessed loss or any balance of assessed loss incurred by the company, in order to avoid liability on the part of that company or any other person for the payment of any tax, duty or levy on income, or to reduce the amount thereof, the set-off of any such assessed loss or balance of assessed loss against any such income shall be disallowed.

(3) For the purposes of subsection (1) any transaction, operation or scheme (whether entered into or carried out before or after the commencement of this Act) whereby any person (other than a company) who is ordinarily resident or carrying on business in the territory or any company registered or carrying on business in the territory, has disposed of shares held by such person or such company in any company registered or incorporated in the territory to any person

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(other than a company) not ordinarily resident nor carrying on business in the territory or to any company registered outside the territory, shall, unless it is proved to the satisfaction of the Secretary that the parties are independent persons dealing at arm's length with each other, be deemed to be a transaction, operation or scheme entered into or carried out by means or in a manner not normally employed in the entering into or carrying out of such a transaction, operation or scheme of the nature of the transaction, operation or scheme in question.

(4) Any decision of the Secretary under subsection (1), (2) or (3) shall be subject to objection and appeal, and whenever in proceedings relating thereto it is proved that the transaction, operation, scheme, agreement or change in shareholding in question would result in the avoidance or the postponement of liability for payment of any tax, duty or levy imposed by this Act or any previous income tax law or any other law administered by the Secretary, or in the reduction of the amount thereof, it shall be presumed, until the contrary is proved—

- (a) in the case of any such transaction, operation or scheme, that it was entered into or carried out solely or mainly for the purposes of the avoidance or the postponement of such liability or the reduction of the amount of such liability; or
- (b) in the case of any such agreement or change in shareholding, that it has been entered into or effected solely or mainly for the purpose of utilizing the assessed loss or balance of assessed loss in question in order to avoid or postpone such liability or to reduce the amount thereof.

**Offences and penalties**

96. (1) Any person who with intent to evade assessment or taxation or to assist any other person to evade assessment or taxation—

- (a) makes or causes or allows to be made any false statement or entry in any return rendered in terms of this Act, or signs any statement or return so rendered without reasonable grounds for believing the same to be true; or
- (b) gives any false answer, whether verbally or in writing, to any request for information made under this Act by the Secretary or any person duly authorized by him or any officer or employee referred to in section 3; or
- (c) prepares or maintains or authorizes the preparation or maintenance of any false books of account or other records or falsifies or authorizes the falsification of any books of account or other records; or

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- (d) makes use of any fraud, art or contrivance whatsoever, or authorizes the use of any such fraud, art or contrivance.

shall be guilty of an offence and liable on conviction to a fine not exceeding two thousand rand or to imprisonment for a period not exceeding two years or to both such fine and imprisonment.

(2) Whenever in any proceedings under this section it is proved that any false statement or entry is made in any return rendered under this Act by or on behalf of any taxpayer or in any books of account or other records of any taxpayer, that taxpayer shall be presumed, until the contrary is proved, to have made that false statement or entry or to have caused that false statement or entry to be made or to have allowed it to be made with intent to evade assessment or taxation, and any other person who made any such false statement or entry shall be presumed, until the contrary is proved, to have made such false statement or entry with intent to assist the taxpayer to evade assessment or taxation.

Jurisdiction of courts.

97. Any person charged with an offence under this Act may, notwithstanding anything to the contrary contained in any law, be tried in respect of that offence by any court having jurisdiction within any area in which he resides or carries on business.

Authentication and service of documents.

98. (1) Any form, notice, demand or other document issued or given by or on behalf of the Secretary or any other officer or employee under this Act shall be sufficiently authenticated if the name or official designation of the Secretary or other officer or employee by whom the same is issued or given is stamped or printed thereon.

(2) Any form, notice, demand, document or other communication required or authorized under this Act to be issued, given or sent to or served upon any person by the Secretary or any other officer or employee under this Act shall, except as otherwise provided in this Act, be deemed to have been effectually issued, given, sent or served —

- (a) if delivered to him; or
- (b) if left with some adult person apparently residing at or occupying or employed at his last known abode or office or place of business in the territory; or
- (c) if despatched by registered or any other kind of post addressed to him at his last known address, which may be any such place or office as is referred to in paragraph (b) or his last known post office box number or private bag number or that of his employer; and
- (d) in the case of a company —

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(i) if delivered to the public officer of the company;  
or

(ii) if left with some adult person apparently residing at or occupying or employed at the place appointed by the company under subsection (5) of section 93 or, in the case of any unit portfolio referred to in paragraph (e) of the definition of "company" in section 1, the public officer of which is the trustee referred to in the said subsection (5), by such trustee, or where no such place has been appointed by the company or trustee, as the case may be, if left with some adult person apparently residing at or occupying or employed at the last known office or place of business of the company or trustee, as the case may be, in the territory; or

(iii) if despatched by registered or any other kind of post addressed to the company or its public officer at its or his last known address, which may be any such office or place as is referred to in subparagraph (ii) or its or his last known post office box number or private bag number or that of his employer.

(3) Any form, notice, demand, document or other communication referred to in subsection (2) which has been issued, given, sent or served in the manner contemplated in paragraph (c) or (d)(iii) of that subsection shall be deemed to have been received by the person to whom it was addressed at the time when it would, in the ordinary course of post, have arrived at the place to which it was addressed, unless the Secretary is satisfied that it was not so received or was received at some other time or, where the time at which it was received or the fact that it was received is in dispute in proceedings under this Act in any court having jurisdiction to decide the matter, the court is so satisfied: Provided that the preceding provisions of this subsection shall not apply where any person is in criminal proceedings charged with the commission of an offence under this Act by reason of his failure, refusal or neglect to do anything which he is required to do in terms of the said form, notice, demand, document or other communication, unless it was despatched to such person by registered or certified post.

(4) If the Secretary is satisfied that any form, notice, demand, document or other communication (other than a notice of assessment) issued, given, sent or served in a manner contemplated in paragraph (b), (c) or (d)(ii) or (iii) of subsection (2), has not been received by the person to whom it was addressed or has been received by such person considerably later than it should have been received by him and that such person has in consequence been placed at a disadvantage, the Secretary may, if he is satisfied that the circumstances warrant such action, direct that such form, notice, demand, document or other communication be withdrawn and be issued, given, sent or served anew.



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Regulations.

99. (1) The Council of Ministers may make regulations —

- (a) prescribing the duties of all persons engaged or employed in the administration of this Act;
- (b) defining the limits of areas within which such persons are to act;
- (c) prescribing the nature of the accounts to be rendered by any taxpayer in support of any returns rendered under this Act and the manner in which such accounts shall be authenticated;
- (d) prescribing the procedure to be followed in the consideration of objections by the Secretary and at the hearing of appeals by the special court;
- (e) fixing the standard values of livestock,

and generally for giving effect to the objects and purposes of this Act.

(2) The regulations may prescribe penalties for any contravention thereof or failure to comply therewith, not exceeding a fine of one hundred rand.

Prevention of or relief from double taxation.

100. (1) The Administrator-General may enter into an agreement with the government of the Republic of South Africa whereby arrangements are made with a view to the prevention, mitigation or discontinuance of the levying, under the laws of the territory and of the said Republic, of income tax in respect of the same income, or to the rendering of reciprocal assistance in the administration of and the collection of taxes under the income tax laws of the territory and of the said Republic.

(2) As soon as may be after the conclusion of any such agreement the arrangements thereby made shall be notified by proclamation by the Administrator-General in the *Official Gazette*, whereupon until such proclamation is revoked by the Administrator-General, the arrangements notified therein shall, so far as they relate to immunity, exemption or relief in respect of such tax in the territory, have effect as if enacted in this Act, but only if and for so long as such arrangements, in so far as they relate to immunity, exemption or relief in respect of such tax levied or leviable in the Republic of South Africa, have the effect of law in the said Republic.

(3) The Administrator-General may at any time revoke any such proclamation by proclamation in the *Official Gazette*, and the arrangements notified in such earlier proclamation shall cease to have effect upon a date fixed in such latter proclamation, but the revocation of any proclamation shall not affect the validity of anything previously done thereunder.

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(4) As soon as may be after announcement in the *Official Gazette* of any agreement under this section copies thereof shall be laid upon the Table in the National Assembly.

(5) The duty imposed by any law to preserve secrecy with regard to such tax shall not prevent the disclosure to any authorized officer of the said Republic of the facts, knowledge of which is necessary to enable it to be determined whether immunity, exemption or relief ought to be given or which it is necessary to disclose in order to render or receive assistance in accordance with the arrangements notified in such proclamation.

Repeal of laws.

101. (1) Subject to the provisions of subsections (2), (3) and (4), the laws specified in Schedule 3 are hereby repealed to the extent indicated in the third column of that Schedule.

(2) The laws purporting to be repealed under subsection (1), shall, in relation to every financial year of a company ending before 1 March, 1982, be deemed not to have been so repealed.

(3) Any tax or other amount which, but for the repeal of the laws specified in Schedule 3, would have been capable of being levied, assessed or recovered and which has, at the commencement of this Act, not been levied, assessed or recovered, may be levied, assessed or recovered as if such repeal had not been effected.

(4) Subject to the provisions of subsection (2), any notice or proclamation issued or regulation made or anything done under any provision of any law repealed by subsection (1), shall be deemed to have been issued, made or done in terms of the corresponding provisions of this Act.

Short title.

102. This Act shall be called the Income Tax Act, 1981.

**SCHEDULE 1****COMPUTATION OF TAXABLE INCOME DERIVED  
FROM PASTORAL, AGRICULTURAL OR OTHER  
FARMING OPERATIONS**

(Section 27 of this Act)

**1. In this Schedule —**

- (a) a reference to a year of assessment shall in the case of any taxpayer who has under the provisions of subsection (13) of section 56 of this Act been permitted to furnish accounts in respect of the income derived by him from pastoral, agricultural or other farming operations made up to a date other than the last day of the relevant year of assessment, be construed as a reference to the period covered by such accounts; and

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- (b) a reference to the end of a year of assessment includes, where the period assessed ends on a date other than the last day of the year of assessment, a reference to the end of that period.

2. Every farmer shall include in his return rendered for income tax purposes the value of all livestock or produce held and not disposed of by him at the beginning and the end of each year of assessment.

3. (1) Subject to the provisions of subparagraphs (2) and (3), the value of livestock or produce held and not disposed of at the end of the year of assessment shall be included in income for such year of assessment, and there shall be allowed as a deduction from such income the value of livestock or produce, as determined in accordance with the provisions of paragraph 4, held and not disposed of at the beginning of the year of assessment.

(2) For the purposes of subparagraph (1), the value of livestock or produce held and not disposed of at the end of any year of assessment by any person who discontinued farming operations during such year, shall be included in his income for such year and for all subsequent years of assessment so long as such livestock or produce, or any portion thereof, is so held and not disposed of.

(3) Any livestock which is the subject of any "sheep lease" or similar agreement concerning livestock and any produce which is the subject of a similar agreement, shall be deemed to be held and not disposed of by the grantor of such lease or agreement.

4. (1) The values of livestock and produce held and not disposed of at the beginning of any year of assessment shall, subject to the provisions of subparagraph (2), be deemed to be —

- (a) in the case of a farmer who was carrying on farming operations on the last day of the year immediately preceding the year of assessment, the sum of —

(i) the values of livestock and produce held and not disposed of by him at the end of the year immediately preceding the year of assessment; and

(ii) such value as the Secretary may allow in respect of livestock or produce acquired by such farmer during the current year of assessment otherwise than by purchase or natural increase or in the ordinary course of farming operations; or

- (b) in the case of any person commencing or recommencing farming operations during the year of assessment, the sum of —

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- (i) the value of any livestock or produce held and not disposed of by him at the end of the day immediately preceding the date of such commencement or recommencement; and
  - (ii) such value as the Secretary may allow in respect of livestock or produce (other than livestock or produce to which subitem (i) refers) acquired by such person during the year of assessment otherwise than by purchase or natural increase or in the ordinary course of farming operations.
- (2) (a) For the purposes of any assessment in respect of a year of assessment ending 28 February, 1982, the value of livestock held and not disposed of by a farmer at the beginning of that year of assessment shall, if such farmer is not a company, for the purposes of subparagraph (1)(a)(i) be deemed to be the value of the livestock held by him at the end of the year of assessment ending 28 February, 1981, as determined in accordance with the provisions of either —

(i) paragraphs 5 to 7 of Schedule 2 to the Income Tax Ordinance, 1974 (Ordinance 5 of 1974); or

(ii) paragraphs 5 to 7 of this Schedule:

Provided that in any case in which subitem (ii) is applicable, there shall, notwithstanding anything to the contrary contained in this Act, be included in the income of such farmer for each of the years of assessment ending on 28 February, 1982, 28 February, 1983 and 29 February, 1984, an amount equal to one-third of the difference in the value of such livestock as determined in relation to such farmer in terms of subitem (i) and (ii) respectively: Provided further that should such farmer discontinue farming operations or die during any of the said years of assessment, any balance of the amount to be included in his income which has not yet been so included, shall be included in his income for the year of assessment during which such discontinuance or death takes place.

- (b) For the purposes of any assessment in respect of the first financial year to which this Act applies, of a company carrying on farming operations, the value of livestock held and not disposed of by such company at the beginning of that financial year shall, for the purposes of subparagraph (1)(a)(i) be deemed to be the value of the livestock held by it at the end of the previous financial year as determined in accordance with the provisions of paragraphs 5 to 7 of the First Schedule to the

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Income Tax Act, 1962 (Act 58 of 1962) to the extent that the said Act was applicable in the territory on 1 July, 1981.

5. (1) The value to be placed upon livestock for the purposes of this Schedule shall, subject to the provisions of paragraph 4(1) and the provisions of subparagraph (2) of this paragraph, be the standard value applicable to the livestock.

(2) The value to be placed on livestock held and not disposed of by any farmer at the end of the period of assessment terminating at the date of the sequestration of his estate under the law relating to insolvency shall be the current market price of the livestock.

6. (1) The standard value applicable to any class of livestock shall be —

(a) in the case of any farmer (other than a company or the estate of a deceased person) who in respect of a year of assessment ending before the first day of March, 1981, rendered returns of income in respect of farming operations —

(i) the standard value which in relation to such farmer applied to that class of livestock in accordance with the provisions of paragraph 6 of Schedule 2 to the Income Tax Ordinance, 1974 (Ordinance 5 of 1974); or

(ii) such standard value as may be fixed for that class of livestock by regulation made under this Act; or

(iii) such other standard value as the farmer may, subject to the provisions of subparagraph (3), adopt for that class of livestock when rendering his first return of income on or after the said date in respect of farming operations, or when so including in any return of income such a class of livestock for the first time;

(b) in the case of any other farmer (other than a company or the estate of a deceased person) or in the case of any farmer (other than a company or the estate of a deceased person) who in respect of a year of assessment beginning on or after 1 March 1981 includes that class of livestock in his return of income for the first time, either —

(i) such standard value as may be fixed for that class of livestock by regulation made under this Act; or

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- (ii) such other standard value as the farmer may, subject to the provisions of subparagraphs (2) and (3), adopt for that class of livestock when rendering his first return of income on or after the said date in respect of farming operations, or when so including in any return of income such a class of livestock for the first time;
- (c) in the case of any company or estate of a deceased person the return of income of which in respect of farming operations for the first year of assessment of that company or estate ending, in the case of that company, on or after 1 March, 1982, or in the case of that estate on or after 1 March, 1981 includes that class of livestock, either —
  - (i) such standard value as may be fixed for that class of livestock by regulation made under this Act; or
  - (ii) such other standard value as such company or the executor of such estate, as the case may be, may, subject to the provisions of subparagraphs (2) and (3), adopt for that class of livestock when rendering the said return of income;
- (d) in the case of any company or estate of a deceased person the return of income of which in respect of farming operations for a year of assessment subsequent to the year of assessment in respect of such company or estate referred to in item (c), includes that class of livestock for the first time, either —
  - (i) such standard value as may be fixed for that class of livestock by regulation made under this Act; or
  - (ii) such other standard value as such company or the executor of such estate, as the case may be, may, subject to the provisions of subparagraphs (2) and (3), adopt for that class of livestock when rendering the said return of income.
- (2) Any standard value adopted by any farmer under subparagraph (1)(a)(ii) or (1)(a)(iii) shall apply to the livestock referred to in paragraph 4(2)(a) in relation to such farmer, and notwithstanding anything to the contrary contained in this Act, the Secretary shall not give his consent to or approve any variation of any standard value which will affect the amounts referred to in the provisos to paragraph 4(2)(a).
- (3) Any farmer who classifies any kind of his livestock on a basis other than that applied by a regulation referred to in subparagraph (1)(a)(ii), (1)(b)(i), (1)(c)(i) or (1)(d)(i), may

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adopt in respect of any class into which he so classifies that livestock such a standard value as may be approved by the Secretary with due regard to the values fixed by regulation.

7. The exercise of an option under subparagraph (1)(a)(iii), (1)(b)(ii), (1)(c)(ii) or (1)(d)(ii) of paragraph 6 shall be binding upon the farmer in respect of all subsequent returns for income tax purposes, and no standard value adopted by any farmer whether under this Act or any previous income tax law, may be varied by him in respect of any subsequent year of assessment, save with the consent and approval of the Secretary and upon such terms as the Secretary may impose.

8. The value to be placed upon produce included in any return shall be such fair and reasonable value as the Secretary may fix.

9. If during any year of assessment livestock or produce has been donated by any farmer or has, for purposes other than that of the production to him of income from sources within the territory, been removed by him from the territory, there shall be included in the income of such farmer for that year of assessment an amount equal to the price which in the opinion of the Secretary is the current market price of such livestock or produce.

10. (1) Subject to the provisions of subparagraphs (2), (3), (4), (5), (6), (7) and (8) there shall be allowed as deductions in the determination of the taxable income derived by any farmer, the expenditure incurred by him during the year of assessment in respect of—

- (a) dipping tanks;
- (b) dams, wells, drinking troughs, irrigation schemes, boreholes and pumping plants;
- (c) the prevention of soil erosion;
- (d) the erection of buildings used in connection with farming operations other than those used for domestic purposes of persons who are not employees of such farmer;
- (e) wire and stone, brick or concrete kraals;
- (f) fences;
- (g) fire breaks;
- (h) the eradication of bush and noxious plants;
- (i) the establishment of orchards and vineyards;
- (j) the building of roads and bridges used for farming operations;

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- (k) the acquisition of machinery, implements, utensils and articles used by the farmer for farming purposes, except any motor vehicle the sole or primary function of which is the conveyance of persons or anything the cost of which is deductible from the farmer's income under the preceding items of this subparagraph or under any other provision of this Act.

(2) Where any farmer (other than a company) would, in respect of the year of assessment ending 28 February, 1982, have been entitled under paragraph 10(1A) of Schedule 2 to the Income Tax Ordinance, 1974 (Ordinance 5 of 1974), to a deduction with regard to machinery, implements, utensils or articles, such deduction shall in respect of the said year of assessment be granted as though the said Ordinance were not repealed.

- (3) (a) Where any asset in respect of which any deduction has been allowed to a farmer under the provisions of subparagraph (1) or (2) or the corresponding provisions of any previous income tax law (whether in the current or any previous year of assessment) and which is or has become a movable asset, is disposed of by the farmer, there shall be included in his income so much of the amounts received by or accrued to or in favour of the farmer in respect of such disposal as does not exceed the expenditure in respect of such asset allowed under subparagraph (1) or the original cost to him of such asset taken into account under subparagraph (2), as the case may be.

- (b) Where any allowance was granted in respect of such asset under the provisions of section 17(e) of this Act the provisions of section 14(4) of this Act shall not apply in respect of any amount recovered or recouped in respect of such allowance.

(4) For the purposes of this paragraph, where any asset in respect of which any deduction has been allowed to a farmer under the provisions of subparagraph (1) or (2) or the corresponding provisions of any previous income tax law (whether in the current or any previous year of assessment) and which is or has become a movable asset, is disposed of by the farmer to any other person by way of donation or for a consideration, which, in the opinion of the Secretary, is not an adequate consideration or is not readily capable of valuation, a consideration equal in value to an amount determined by the Secretary as the fair value of such asset shall be deemed to have been received by the farmer in respect of his disposal of the asset and to have been paid by such other person in respect of his acquisition of the asset: Provided that the amount so determined shall not exceed the cost to the farmer of such asset.



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(5) No deduction under section 17(e) of this Act, shall be allowed in respect of any machinery, articles or plant for which a deduction has been allowed under subparagraph (1) or (2) of this paragraph or the corresponding provisions of any previous income tax law.

(6) The total amount allowable as deductions to any farmer under items (a) to (k), inclusive, of subparagraph (1) and under subparagraph (2) in any year of assessment shall not exceed the taxable income (as calculated before allowing the said deductions) derived by him from farming operations during that year of assessment: Provided that the amount by which the total expenditure incurred by any farmer during any year of assessment in respect of the matters referred to in the said items exceeds the taxable income (calculated as afore-said) derived by him from farming operations during that year of assessment shall be carried forward and be deemed for the purposes of subparagraph (1) to be expenditure which has been incurred by him during the next succeeding year of assessment and for the purposes of this proviso any amount which has been carried forward from the year of assessment ended the last day of February, 1981, in the case of a farmer that is not a company, or from the financial year ended before 1 March, 1982, in the case of a farmer that is a company, in terms of the corresponding provisions of any previous income tax law, shall be deemed to be an amount which has been so carried forward in terms of this proviso.

(7) (a) For the purposes of this paragraph "employees", in relation to any farmer, means persons employed by that farmer in connection with his farming operations, but does not include his relatives or, where the farmer is a company, the shareholders (or the relatives of shareholders) in that company or in any company which is associated with it by virtue of shareholding.

(b) For the purposes of item (a) "shareholders" in relation to any company does not include persons who hold all their shares in that company solely because they are employed by that company and who will, in terms of the articles of association of that company, not be entitled to hold those shares after they cease to be so employed.

(8) The aggregate of all the deductions allowed under item (d) of subparagraph (1) or the corresponding provisions of any previous income tax law to any farmer in respect of the erection of any buildings used for the domestic purposes of any one of his employees shall not exceed the sum of four thousand rand.

11. (1) If it is proved to the satisfaction of the Secretary that any farmer —

(i) has in any year of assessment sold livestock on account of drought, stock disease or damage to grazing by fire or plague; and

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- (ii) has within four years after the close of the said year of assessment purchased livestock to replace the livestock so sold,

the cost of the livestock so purchased shall notwithstanding anything in this Schedule contained, be allowed, at the option of such farmer, as a deduction in the determination of his taxable income for the year of assessment during which the livestock was so sold, provided the claim for such deduction is made within five years after the close of that year of assessment.

(2) The cost of livestock so allowed as a deduction shall not be allowed as a deduction in the year of assessment in which the purchases were made.

(3) Every farmer who desires to claim a deduction in terms of subparagraph (1), shall with his return of income for the year of assessment in which he sold livestock on account of drought, stock disease or damage to grazing by fire or plague or within such period as the Secretary may allow notify the Secretary accordingly and furnish full particulars in regard to the livestock so sold.

(4) Notwithstanding anything contained in the preceding provisions of this paragraph, the Secretary shall, until proof has been submitted to him as provided in subparagraph (1), assess and recover any tax payable by a farmer in respect of any year of assessment in which livestock has been sold as aforesaid, as if the said paragraph had not been enacted: Provided that if proof is submitted to the satisfaction of the Secretary in terms of the said paragraph he shall revise the assessment concerned and refund to the farmer so much of the amount paid by him as exceeds the amount found to be payable after allowing the deduction referred to in the said paragraph.

12. (1) Where any taxpayer —

- (a) who is a natural person; or
- (b) who is the executor of the estate of any deceased person or the trustee of the insolvent estate of a natural person and who in his capacity as such has during the period of assessment commencing immediately after the death or insolvency of the said person continued farming operations commenced by such deceased or insolvent person prior to his death or insolvency,

has derived taxable income from farming operations during any period of assessment commencing on or after the first day of March, 1975 (hereinafter referred to as the relevant period) during which such person or his wife or such estate, as the case may be, has carried on farming operations or has derived

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income from the operations so carried on, and such taxable income exceeds the taxpayer's average taxable income from farming (as determined in relation to the relevant period in accordance with subparagraph (2)), the normal tax chargeable in the case of the taxpayer for the relevant period shall, subject to the provisions of section 5 of this Act, be determined in accordance with the provisions of subsection (5) of that section.

(2) For the purposes of subparagraph (1) the taxpayer's average taxable income from farming in relation to the relevant period shall be deemed to be —

(a) where the taxpayer or his wife carried on farming operations before the commencement of the relevant period, such amount as the Secretary may determine as representing the taxpayer's annual average taxable income (if any) from farming in respect of the periods of assessment —

(i) for which the taxpayer was assessable under this Act or any previous income tax law (but excluding in the case of a woman any period assessable under section 67(5) of this Act or the corresponding provisions of any previous income tax law) and which fall within the period of five years ending on the last day of the relevant period; and

(ii) during which such farming operations were carried on or farming income was derived by the taxpayer:

Provided that in the case of the estate of a deceased person or of an insolvent natural person any farming operations carried on by such person prior to his death or insolvency, any income derived by him from such operations and any deductions allowable against such income under this Act or any previous income tax law shall, so far as such estate is concerned, be deemed for the purposes of this item to be respectively operations, income or deductions of such estate, and the annual average taxable income derived by such estate from farming shall be determined accordingly but subject to such adjustments as the Secretary may make; or

(b) where the taxpayer is a natural person and neither he nor his wife carried on farming operations (whether before or after their marriage) before the commencement of the relevant period and —

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- (i) the taxpayer's taxable income from farming for the relevant period does not exceed three thousand rand, the amount of such taxable income; or
- (ii) the taxpayer's taxable income from farming for the relevant period exceeds three thousand rand but not four thousand five hundred rand, the amount of three thousand rand; or
- (iii) the taxpayer's taxable income from farming for the relevant period exceeds four thousand five hundred rand, an amount equal to two-thirds of such taxable income.

(3) Where the taxpayer's assessment for a relevant period has in terms of section 71(5) of this Act become final and conclusive, the Secretary shall not, merely by reason of the fact that the amount determined under subparagraph (2)(a), as the taxpayer's annual average taxable income from farming in relation to such period is incorrect, be required to make a further assessment upon the taxpayer for such period in terms of section 69 of this Act or to authorize a refund under section 94 of this Act of any tax overpaid in respect of such period, unless it appears that such annual average taxable income from farming should be increased or reduced by at least six hundred rand.

**SCHEDULE 2****AMOUNTS TO BE DEDUCTED OR WITHHELD BY  
EMPLOYERS AND PROVISIONAL PAYMENTS IN  
RESPECT OF NORMAL TAX**

(Section 80 of this Act)

**Part I****Definitions**

1. For the purposes of this Schedule, unless the context otherwise indicates —

“employee” means any person (other than a company) who receives any remuneration or to whom any remuneration accrues;

“employees' tax” means the tax required to be deducted or withheld by an employer in terms of paragraph 2 from remuneration paid or payable to an employee;

“employees' tax certificate” means a certificate required to be issued by an employer in terms of paragraph 13;

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"employer" means any person (excluding any person not acting as a principal, but including any person acting in a fiduciary capacity or in his capacity as a trustee in an insolvent estate, an executor or an administrator of a benefit fund, pension fund, provident fund, retirement annuity fund or any other fund) who pays or is liable to pay to any person other than a company any amount by way of remuneration, and any person responsible for the payment of any amount by way of remuneration to any person other than a company under the provisions of any law or out of public funds (including the funds of the Government of the territory or of a Representative Authority in the territory, or of the Government or any provincial council of the Republic of South Africa, or any administration or undertaking thereof) or out of funds voted by the National Assembly or the Legislative Authority of a Representative Authority, or by the Parliament or a provincial council of the said Republic;

"provisional tax" means any payment required to be made in terms of paragraph 17;

"provisional taxpayer" means —

- (a) any person (other than a company or a person referred to in paragraph 18) who derives by way of income any amount which does not constitute remuneration in terms of the definition of that expression in this paragraph;
- (b) unless the Secretary in the particular case otherwise directs, any director of a company which is recognised as a private company under section 38 of this Act, if such director is ordinarily resident in the territory or such company is managed or controlled or has a registered office in the territory;
- (c) any person who is notified by the Secretary that he is a provisional taxpayer; and
- (d) any company;

"remuneration" means any amount of income which is paid or is payable to any person by way of any salary, leave pay, allowance, wage, overtime pay, bonus, gratuity, commission, fee, emolument, pension, superannuation allowance, retiring allowance or stipend, whether in cash or otherwise and whether or not in respect of services rendered, including —

- (a) any amount referred to in paragraph (a), (b), (c), (d) or (e) of the definition of gross income in section 1 of this Act; and

- (b) any amount required to be included in such person's gross income under paragraph (g) of that definition,

but not including —

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- (i) any amount paid or payable to any person in respect of services rendered or to be rendered by him as a domestic or private servant or farm labourer if such amount is calculated at a rate not exceeding eight hundred and forty rand per annum;
- (ii) any amount paid or payable in respect of services rendered or to be rendered by any person (other than a person not ordinarily resident in the territory) in the course of any trade carried on by him independently of the person by whom such amount is paid or payable and of the person to whom such services have been or are to be rendered: Provided that for the purposes of this paragraph a person shall be deemed not to carry on a trade independently as aforesaid —
  - (aa) if he is subject to the control or supervision of any other person as to the manner in which his duties are performed or to be performed or as to his hours of work; or
  - (bb) if the amounts paid or payable for his services consist of or include earnings of any description which are payable at regular daily, weekly, monthly or other intervals;
- (iii) any pension or allowance under the Social Pensions Act, 1973 (Act 37 of 1973), or any grant or contribution under the provisions of section 89 of the Children's Act, 1960 (Act 33 of 1960);
- (iv) any amount paid or payable to any director referred to in paragraph (b) of the definition of "provisional taxpayer" in respect of services rendered or to be rendered by such director to a company referred to in that paragraph, unless the Secretary in the particular case otherwise directs;
- (v) any amount paid or payable to any employee wholly in reimbursement of expenditure actually incurred by such employee in the course of his employment including such payments made to meet expenditure as are referred to in section 28 of this Act;
- (vi) any amount paid or payable to any employee by way of allowance in respect of quarters or residence or the value of any benefit or advantage granted in respect thereof as is referred to in section 28 of this Act;

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- (vii) any amount of directors' fees paid or payable by a public company to any person who is ordinarily resident in the territory, if no other amounts constituting remuneration in terms of this definition have been paid or become payable to such person by such company;
- (viii) any annuity under an order of divorce or a judicial order or written agreement of separation;

"representative employer" means —

- (a) in the case of any company, the public officer of that company, or, in the event of such company being placed in liquidation or under judicial management, the liquidator or judicial manager, as the case may be;
- (b) in the case of any municipality, village management board, the Peri-urban Development Board or like authority, or any body corporate or unincorporate (other than a company or a partnership) any town clerk, secretary, manager, officer or other person responsible for paying remuneration on behalf of such municipality, board, authority or body;
- (c) in the case of a person under legal disability, any guardian, curator, administrator or other person having the management or control of the affairs of the person under legal disability; or
- (d) in the case of any employer who is not ordinarily resident in the territory, any agent of such employer having authority to pay remuneration;

but nothing in this definition shall be construed as relieving any person from any liability, responsibility or duty imposed upon him by this Schedule.

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## Part II

## Employees' Tax

*Employers to Deduct Tax*

2. (1) Every employer (whether or not registered as an employer under paragraph 15) who pays or becomes liable to pay any amount by way of remuneration to any employee shall, unless the Secretary has granted authority to the contrary, deduct or withhold from that amount by way of employees' tax an amount which shall be determined as provided in paragraph 9, 10, 11 or 12, whichever is applicable, in respect of the liability for normal tax of that employee, or, if such remuneration is paid or payable to an employee who is a married woman and such remuneration is under the provisions of section 12(2) of this Act deemed to be income of her husband and she is not separately assessed from her husband in terms of section 67(5) of this Act, in respect of such liability of her husband, and shall pay the amount so deducted or withheld to the Secretary within seven days after the end of the month during which the amount was deducted or withheld, or in the case of a person who ceases to be an employer before the end of such month, within seven days after the day on which he ceased to be an employer, or in either case within such further period as the Secretary may approve.

(2) Any employer may, at the written request of any employee, deduct or withhold from any amount of remuneration an amount by way of employees' tax greater than that required to be deducted or withheld in terms of subparagraph (1), and shall remit such amount to the Secretary, and the provisions of this Schedule relating to employees' tax shall *mutatis mutandis* apply in respect of such amount.

(3) For the purposes of this paragraph "month" means any of the twelve portions into which any calendar year is divided.

(4) Any amount required to be deducted or withheld from any amount of remuneration under this Schedule by way of employees' tax shall be calculated on the balance of such amount of remuneration remaining after deducting any current contribution by the employee concerned to any pension fund or retirement annuity fund (excluding so much of such contribution to a pension fund not established by law or for the benefit of employees of any local authority as is made at a rate exceeding two thousand rand per annum and so much of such contribution to a retirement annuity fund as, taken together with any current contribution to any pension fund deducted as aforesaid, is made at a rate exceeding three thousand rand per annum) which is calculated with reference to such amount of remuneration or to a portion of that amount or to the period in respect of which the amount of remunera-



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tion is paid or payable and which the employer is *vis-à-vis* the employee concerned, entitled or required to deduct or withhold from such amount of remuneration.

3. (1) The liability of any employer to deduct or withhold any amount of employees' tax in terms of paragraph 2 shall not be reduced or extinguished by reason of the fact that the employer has a right or is otherwise than in terms of any law under an obligation to deduct or withhold any other amount from the employees' remuneration, and such right or obligation shall notwithstanding anything to the contrary in any other law contained, for all purposes be deemed to have reference only to the amount of the remuneration remaining after the amount of employees' tax referred to in that paragraph has been deducted or withheld.

(2) The provisions of paragraph 2 shall apply in respect of all amounts payable by way of remuneration, notwithstanding the provisions of any law which provide that any such amount shall not be reduced or shall not be subject to attachment.

4. Any amount required to be deducted or withheld in terms of paragraph 2 shall be a debt due to the Government of the territory and the employer concerned shall, save as otherwise provided, be absolutely liable for the due payment thereof to the Secretary.

5. (1) Subject to the provisions of subparagraph (6) any employer who fails to deduct or withhold the full amount of employees' tax as provided in paragraph 2 shall be personally liable for the payment to the Secretary of the amount which he fails to deduct or withhold, and shall, subject to the provisions of subparagraph (2), pay that amount to the Secretary not later than the date on which payment should have been made if the employees' tax had in fact been deducted or withheld in terms of paragraph 2.

(2) Where the employer has failed to deduct or withhold employees' tax in terms of paragraph 2 and the Secretary is satisfied that the failure was not due to an intent to postpone payment of the tax or to evade the employer's obligations under this Schedule, the Secretary may, if he is satisfied that there is a reasonable prospect of ultimately recovering the tax from the employee, absolve the employer from his liability under subparagraph (1) of this paragraph.

(3) An employer who has not been absolved from liability as provided in subparagraph (2) shall have a right of recovery against the employee in respect of the amount paid by the employer in terms of subparagraph (1) in respect of that employee, and such amount may in addition to any other right of recovery be deducted from future remuneration which may become payable by the employer to that employee, in such manner as the Secretary may determine.

(4) Until such time as an employee pays to his employer any amount which is due to the employer in terms of subparagraph (3), such employee shall not be entitled to receive from the employer an employees' tax certificate in respect of that amount.

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(5) Any amount which an employer is required to pay in terms of subparagraph (1) and which he is entitled to recover from the employee in terms of subparagraph (3) shall, insofar as the employer only is concerned, be deemed to be a penalty due and payable by that employer.

(6) The provisions of subparagraph (1) shall not apply in respect of any amount or any portion of any amount of employees' tax which an employer has failed to deduct or withhold and in respect of which the provisions of paragraph 29(4) apply.

6. (1) If an employer fails to pay any amount of employees' tax for which he is liable within the period allowed for payment thereof in terms of paragraph 2 he shall, in addition to any other penalty or charge for which he may be liable under this Act, pay a penalty equal to ten per cent of such amount.

(2) The Secretary may, if he is satisfied that the employer's failure to pay the amount of employees' tax was not due to an intent to postpone payment of such tax or otherwise evade his obligations under this Act and was not designed to enable the employee concerned to evade such employee's obligations under this Act, remit the whole or any part of the penalty imposed under subparagraph (1).

(3) The penalty imposed under subparagraph (1) shall be paid to the Secretary when payment is made of the amount of employees' tax to which it refers or within such further period as the Secretary may approve.

7. Any agreement between an employer and an employee whereby the employer undertakes not to deduct or withhold employees' tax shall be void.

8. An employee shall not be entitled to recover from an employer any amount deducted or withheld by the employer from the employee's remuneration in terms of paragraph 2.

9. (1) The Secretary may from time to time, having regard to the rates of normal tax prescribed in section 6 of this Act, or as foreshadowed by the Chairman of the Council of Ministers in his budget statement, to the rebates applicable in terms of section 7(2) and (3) of this Act and to any other factors having a bearing upon the probable liability of taxpayers for normal tax, prescribe deduction tables applicable to such classes of employees as he may determine, and the manner in which such tables shall be applied, and the amount of employees' tax to be deducted from any amount of remuneration shall subject to the provisions of subparagraph (3) of this paragraph and paragraphs 10, 11 and 12, be determined in accordance with such tables or where subparagraph (3) is applicable, in accordance with that subparagraph.

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(2) Any tables prescribed by the Secretary in accordance with subparagraph (1) shall come into force on such date as may be notified by the Secretary in the *Official Gazette*, and shall remain in force until withdrawn by the Secretary.

(3) The amount to be deducted or withheld in respect of employees' tax from any lump sum to which paragraph (d) of the definition of "gross income" in section 1 of this Act applies, shall be ascertained by the employer from the Secretary before paying out such lump sum, and the Secretary's determination of the amount to be so deducted or withheld shall be final.

10. (1) If the Secretary is satisfied that the circumstances warrant a variation of the basis provided in paragraph 9 for the determination of amounts of employees' tax to be deducted or withheld from remuneration of employees in the case of any employer he may agree with such employer as to the basis of determination of the said amounts to be applied by that employer, and the amounts to be deducted or withheld by that employer in terms of paragraph 2 shall, subject to the provisions of paragraphs 11 and 12, be determined accordingly.

(2) Any agreement made in terms of subparagraph (1) shall remain in force indefinitely, but the Secretary or the employer concerned may give notice of termination thereof and upon the expiration of a period of three months from the date of such notice such agreement shall terminate.

11. In order to alleviate hardship to an employee due to illness or other circumstances or to correct any error in regard to the calculation of employees' tax, whether arising from the furnishing to an employer by an employee of a false or incorrect return of personal particulars or otherwise, or where the employee has in terms of paragraph 12(2) applied to the Secretary for the issue of a directive to his employer, to enable the employer to deduct or withhold the correct amount by way of employees' tax, the Secretary may, having regard to the circumstances of the case, issue a directive to the employer concerned authorizing the employer to refrain from deducting or withholding any amount under paragraph 2 by way of employees' tax from any remuneration due to the employee or to deduct or withhold by way of employees' tax a specified amount or an amount to be determined in accordance with a specified rate or scale, and the employer shall comply with such directive.

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***Employees to furnish returns of personal particulars to employers***

12. (1) Subject to the provisions of subparagraph (2) every employee shall furnish his employer with a return of personal particulars in such form as the Secretary may prescribe, and shall furnish a fresh return within seven days of the date on which any change in the particulars previously furnished

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occurs: Provided that until a new return is received or a directive is received from the Secretary in terms of paragraph 11, the employer shall regard the latest return submitted to him by the employee concerned as correct, and shall continue to determine the amounts to be deducted or withheld by way of employees' tax in accordance with the particulars disclosed therein.

(2) If for any reason an employee does not wish to furnish the return referred to in subparagraph (1) he may instead apply to the Secretary in such form as the Secretary may prescribe for the issue of a directive to his employer and in such case the Secretary may issue a directive to the employer as provided in paragraph 11.

(3) If an employer has not at any time received any return of personal particulars whatsoever from an employee as required by subparagraph (1), or has not in respect of that employee received a directive from the Secretary as provided in paragraph 11, he shall, until such return or directive is received, deduct or withhold employees' tax under the provisions of paragraph 9 or 10, whichever may be applicable, at the rate applicable to a person who is not a married person and who is not entitled to have any child or stepchild taken into account in the determination of the amount of employees' tax to be deducted or withheld.

(4) If the latest return of personal particulars furnished by any employee to his employer in terms of subparagraph (1) discloses that the employee is a divorced person or is a person who has been separated under a judicial order or written agreement the employer shall until he has in respect of that employee received a directive from the Secretary issued under paragraph 11 deduct or withhold employees' tax under the provisions of paragraph 9 or 10, whichever may be applicable, at the rate applicable to a person who is not a married person and with due regard to the number of children or stepchildren of the employee disclosed by the said return who will not have attained the age of eighteen years on the last day of the employee's year of assessment during which the employees' tax is deducted or withheld.

*Furnishing and obtaining of employees' tax certificates*

13. (1) Subject to the provisions of paragraphs 5 and 29, every employer who during the period of twelve months ending the last day of February, 1982, ~~or any succeeding~~ period of twelve months, deducts or withholds any amount by way of employees' tax as required by paragraph 2 shall within the time allowed by subparagraph (2) of this paragraph deliver to each employee or former employee to whom remuneration has during the period in question been paid or become due by such employer, an employees' tax certificate in such form as the Secretary may prescribe or approve, which shall show the

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total remuneration of such employee or former employee and the sum of the amounts of employees' tax deducted or withheld by such employer from such remuneration during the said period, excluding any amount of remuneration or employees' tax included in any other employees' tax certificate issued by such employer unless such other certificate has been surrendered to such employer by the employee or former employee and has been cancelled by such employer and dealt with by him as provided in subparagraph (10).

(2) The employees' tax certificate referred to in subparagraph (1) shall be delivered —

- (a) if the employer who is required to deliver the certificate has not ceased to be an employer in relation to the employee concerned, within fourteen days after the end of the period to which the certificate relates;
- (b) if the said employer has ceased to be an employer in relation to the employee concerned but has continued to be an employer in relation to other employees, within fourteen days of the date on which he has so ceased; or
- (c) if the said employer has ceased to be an employer, within seven days of the date on which he has so ceased,

or in any particular case within such further period as the Secretary may approve.

(3) For the purposes of subparagraph (2) an employer shall, if the Secretary having regard to the circumstances of the case so directs be deemed not to have ceased to be an employer in relation to any of his casual employees who is likely from time to time to be re-employed by such employer.

(4) Notwithstanding the provisions of subparagraphs (1) and (2) any employer who has deducted or withheld employees' tax from the remuneration of any employee shall as and when required by the Secretary deliver to such employee an employees' tax certificate in such form as the Secretary may prescribe or approve, which shall show the total remuneration of such employee or former employee and the sum of the amounts of employees' tax deducted or withheld by such employer from such remuneration during any period specified by the Secretary but excluding any amount of remuneration or employees' tax included in any other employees' tax certificate issued by such employer unless such other certificate has been surrendered to such employer by the employee or former employee and has been cancelled by such employer and dealt with by him as provided in subparagraph (10).

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(5) It shall be the duty of any employee or former employee who has not received an employees' tax certificate within the time allowed by subparagraph (2) forthwith to apply to the employer for such certificate.

(6) Every taxpayer shall when rendering a return of income under the provisions of section 56 of this Act, attach to such return all employees' tax certificates in his possession which disclose information in respect of the year of assessment to which the return relates.

(7) It shall be sufficient compliance with the provisions of subparagraph (1) or (4) in regard to the delivery of any employees' tax certificate to any employee or former employee if such certificate is delivered to the employee's authorised agent or the representative taxpayer in respect of the remuneration shown in such certificate or, where delivery cannot conveniently be effected by personal delivery, if such certificate is sent to the employee or former employee or such agent or representative taxpayer by registered post.

(8) An employer may at the request of the employee or former employee issue a duplicate employees' tax certificate but any such duplicate shall be clearly marked as such and shall disclose full details of the original certificate.

(9) Unless authorized thereto by the Secretary no duplicate employees' tax certificate may be issued by an employer otherwise than as provided in subparagraph (8).

(10) Any cancelled or spoiled employees' tax certificate shall not be destroyed by the employer concerned but shall be retained by him until the Secretary requires it to be surrendered to him.

(11) The Secretary shall control the issue to employers of stocks of unused employees' tax certificates and may prescribe conditions in regard to the manner in which such unused certificates may be used or as to the surrender of unused stocks of such certificates and every employer shall account to the Secretary for used, unused, cancelled or spoiled certificates as and when required by the Secretary.

(12) In the case of any employer who has a mechanised accounting system the Secretary may subject to such conditions as he may impose approve the use by such employer of employees' tax certificates in a form other than the form prescribed for general use and if any such employer fails to comply with the conditions imposed by the Secretary, the Secretary may withdraw his consent for the use of such certificates and the employer shall forthwith or from any date specified by the Secretary cease to use such certificates and shall within such period as the Secretary may prescribe surrender to the Secretary all unused stocks of such certificates.

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(13) Every person who ceases to be an employer shall, unless the Secretary otherwise directs, within fourteen days of his ceasing to be an employer surrender to the Secretary all unused employees' tax certificates in his possession.

(14) If any person fails to surrender any unused employees' tax certificates as required by subparagraph (12) or (13), any officer or employee engaged in carrying out the provisions of this Act who has in relation to such person been authorized thereto by the Secretary in writing or by telegram may without previous notice, at any time during the day enter any premises whatsoever and on such premises search for and seize such certificates and in carrying out such search, open or cause to be opened or removed and opened any article in which he suspects any such certificates to be contained.

(15) For the purposes of this Schedule any employees' tax certificate on which appears the name or any trade name of any employer shall until the contrary is proved be deemed to have been issued by such employer if such certificate is in a form prescribed by the Secretary for general use and was supplied by the Secretary to such employer for use by him or is in a form approved by the Secretary under subparagraph (12) for use by such employer.

*Employers to keep records and furnish returns*

14. (1) Every employer shall in respect of each employee maintain a record showing the amounts of remuneration paid or due by him to such employee and the amount of employees' tax deducted or withheld from each such amount of remuneration, and such record or a duplicate original or a true copy thereof shall be retained by the employer at an address in the territory and shall be available for scrutiny by the Secretary.

(2) Every employer shall when making any payment of employees' tax submit to the Secretary a declaration in such form as the Secretary may prescribe.

(3) Every employer shall

(a) in respect of the period of twelve months ending the last day of February, 1982, and each succeeding period of twelve months; and

(b) if he ceases to carry on any business or other undertaking in respect of which he has paid or becomes liable to pay remuneration to any employee or otherwise ceases to be an employer, in respect of the period from the first day of March immediately preceding the date on which he has ceased to carry on such business or other undertaking or to be an employer, as the case may be, to the date on which he has so ceased to carry on such business or undertaking or to be an employer, as the case may be;

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within fourteen days after the end of the period in question, or within such longer time as the Secretary may approve, render to the Secretary a return in such form as the Secretary may prescribe showing the names and addresses of all the persons who during such period were employees in relation to such employer and the total remuneration paid to or accrued to each employee in respect of such period and the total amount of employees' tax deducted or withheld from the remuneration of each such employee during such period.

*Registration of employers*

15. (1) Every person who is an employer shall apply to the Secretary in such form as the Secretary may prescribe for registration as an employer within fourteen days after becoming an employer, or within such further period as the Secretary may approve.

(2) Every person who has applied for registration under subparagraph (1) shall within fourteen days after changing his address or ceasing to be an employer, notify the Secretary in writing of his new address or of the fact of his having ceased to be an employer, as the case may be.

(3) The Secretary may at such times as he may decide issue public notices drawing attention to the provisions of this paragraph.

*Liability of representative employers and others*

16. (1) Every representative employer shall as regards the remuneration which he pays or is liable to pay to any employee in his representative capacity, be subject in all respects to the same duties, responsibilities and liabilities under this Schedule as if that remuneration were remuneration paid or liable to be paid by him in his personal capacity.

(2) Any employees' tax or interest on employees' tax or any penalty imposed under this Part shall be recoverable from the person who in terms of the definition of "employer" in paragraph 1 is an employer by virtue of his having paid or become liable to pay remuneration in a fiduciary capacity or in his capacity as a trustee in an insolvent estate, an executor, or an administrator of a benefit fund, pension fund, provident fund, retirement annuity fund or any other fund, or from the representative employer, but to the extent only of any assets belonging to the person, body, trust, estate or fund represented or administered by him which may be in his possession or under his management, disposal or control, and the provisions of sections 88 and 89 of this Act shall *mutatis mutandis* apply in the case of such first-mentioned person or representative employer as if he were a representative taxpayer.



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(3) The executor of the estate of any deceased employer or the trustee of the insolvent estate of any employer shall fulfil such obligations of the deceased or insolvent employer under paragraphs 13 and 14 as arise in consequence of that employer ceasing to be an employer because of his death or insolvency, or as have not been fulfilled by such employer before his death or insolvency.

## Part III

## Provisional Tax

*Payment of provisional tax*

17. (1) Every provisional taxpayer shall in the manner provided in this Part make payments (called provisional tax) to the Secretary in respect of his liability for normal tax in respect of every year of assessment to which this Act relates.

(2) Where for the purposes of determining any amount of provisional tax required to be paid by any provisional taxpayer in respect of any year of assessment the liability of such taxpayer for normal tax is required to be estimated in respect of such year, such liability shall be deemed to be the amount of normal tax which, calculated at the relevant rate referred to in subparagraph (3), would be payable by the provisional taxpayer in respect of the amount of taxable income estimated by such taxpayer in terms of paragraph 19(1) during the period prescribed by this Schedule for the payment of the said amount of provisional tax, or any extension of such period granted in terms of paragraph 26(2), or if the amount so estimated has been increased by the Secretary in terms of paragraph 19(3), the amount of normal tax which, calculated at the said rate, would be payable by the provisional taxpayer in respect of the amount of taxable income as so increased, or if the Secretary has estimated the provisional taxpayer's taxable income in terms of paragraph 19 (2), the amount of normal tax which, calculated at the said rate, would be payable by the provisional taxpayer in respect of the amount of taxable income so estimated.

(3) For the purposes of any calculation of normal tax under subparagraph (2) the rate at which such tax is to be calculated shall be the relevant rate prescribed in section 6 of this Act in respect of the year of assessment in respect of which such provisional tax is required to be paid under this Schedule, or the relevant rate in respect of that year foreshadowed by the Chairman of the Council of Ministers in his budget statement.

(4) The Secretary may from time to time, having regard to the rates of normal tax prescribed in section 6 of this Act or foreshadowed by the Chairman of the Council of Ministers in his budget statement, to the rebates applicable in terms of

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section 7(2) and (3) of this Act and to any other factors having a bearing upon the probable liability of taxpayers for normal tax, prescribe tables for optional use by provisional taxpayers falling within any category specified by the Secretary, or by provisional taxpayers generally, for the purpose of estimating the liability of such taxpayers for normal tax, and the Secretary may prescribe the manner in which such tables shall be applied.

(5) Any tables prescribed by the Secretary in accordance with subparagraph (4) shall come into force on such date as may be notified by the Secretary in the *Official Gazette*, and shall remain in force until withdrawn by the Secretary.

(6) The provisions of subparagraphs (2) and (3) shall not apply where the liability of a provisional taxpayer for normal tax is estimated in accordance with any tables prescribed for his use under the provisions of subparagraph (4) and not withdrawn under the provisions of subparagraph (5).

*Exemptions*

18. There shall be exempt from payment of provisional tax —

- (a) in respect of any period in respect of which provisional tax would but for the provisions of this item be payable by him any person (other than a company or a director of a private company) who satisfies the Secretary that apart from any taxable income which he may derive by way of remuneration or any amount referred to in paragraph (i), (iii) or (v) of the definition of "remuneration" in paragraph 1, he will not during that period derive any taxable income in excess of R1 000;
- (b) any person in respect of whose liability for normal tax for the relevant year of assessment payments are required to be made under section 34 or 35 of this Act.

*Estimates of taxable income to be made by Provisional Taxpayers*

19. (1) Every provisional taxpayer shall, during every period within which provisional tax is payable as provided in this part or any extension of such period granted in terms of paragraph 26(2), submit to the Secretary, in such form as the Secretary may prescribe, an estimate of the total taxable income which will be derived by the taxpayer in respect of the year of assessment in respect of which provisional tax is payable: Provided that the amount of any estimate submitted by a provisional taxpayer during any relevant period referred to in paragraph 22(1)(a) or any extension of any such period granted in terms of paragraph 26(2) shall, unless the Secretary, having regard to the circumstances of the case, agrees to

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accept an estimate of a lower amount; not be less than the amount of the provisional taxpayer's taxable income as assessed by the Secretary, for the latest year of assessment preceding the year of assessment in question in respect of which an assessment has been issued by the Secretary not less than fourteen days before the date on which such estimate is submitted by the provisional taxpayer.

(2) If the provisional taxpayer fails to submit any estimate as required by subparagraph (1) the Secretary may estimate the said taxable income, and such estimate shall be final and conclusive.

(3) The Secretary may call upon any provisional taxpayer to justify any estimate made by him in terms of subparagraph (1), or to furnish particulars of his income and expenditure or any other particulars that may be required, and, if the Secretary is dissatisfied with the said estimate, he may increase the amount thereof to such amount as he considers reasonable, and the estimate as increased shall be final and conclusive.

(4) For the purposes of subparagraph (1) the expression "year of assessment preceding" shall be deemed to include any year of assessment under any previous income tax law.

(5) Any estimate made by the Secretary under the provisions of subparagraph (2) or (3) shall be deemed to take effect in respect of the relevant period within which the provisional taxpayer is required to make any payment of provisional tax in terms of this Part, or within any extension of such period granted in terms of paragraph 26(2).

## *Additional Tax in the event of Taxable Income being Underestimated*

20. (1) If the final or last estimate of his taxable income made in terms of paragraph 19(1) by a provisional taxpayer in respect of any year of assessment discloses his estimated taxable income in respect of that year of assessment in an amount which is less than ninety per cent of the amount of his taxable income as finally determined for that year, and which is also less than the basic amount in relation to such year of assessment, as determined in accordance with subparagraph (2), the taxpayer shall, subject to the provisions of subparagraphs (3), (4) and (5) be required to pay to the Secretary, in addition to the normal tax chargeable in respect of his taxable income for such year of assessment, an amount by way of additional tax equal to twenty per cent of the difference between the amount of normal tax as calculated in respect of the taxable income as so estimated by the taxpayer and the lesser of the following amounts, namely:

(a) the amount of normal tax calculated, at the rates applicable in respect of the said year of assessment, in respect of a taxable income equal to ninety per cent of his taxable income as finally determined for the said year of assessment; and

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(b) the amount of normal tax calculated in respect of a taxable income equal to the basic amount in relation to the said year of assessment at the rates applicable in respect of that year.

(2) (a) For the purposes of subparagraph (1) the basic amount in relation to any year of assessment shall be deemed to be an amount equal to the amount of the taxpayer's taxable income as assessed by the Secretary for the latest preceding year of assessment.

(b) For the purposes of item (a) the expression "latest preceding year of assessment" shall be deemed to include any year of assessment under any previous income tax law, in respect of which an assessment has been issued by the Secretary not less than fourteen days before the date on which the final or last estimate of his taxable income is submitted by the taxpayer in terms of paragraph 19(1) in respect of the year of assessment in question.

(3) Where the Secretary is satisfied that the taxpayer has become liable to pay additional tax under subparagraph (1) by reason of the fact that his taxable income for the year of assessment in question is affected by circumstances of which he was not aware at the time of making the estimate referred to in subparagraph (1), the Secretary may in his discretion remit the additional tax or a part thereof.

(4) The provisions of subparagraph (1) of this paragraph shall not apply in any case where the Secretary has under the provisions of paragraph 19 (3) increased the final or last estimate made by the taxpayer in respect of the relevant year of assessment.

(5) Any decision of the Secretary in the exercise of his discretion under subparagraph (3) shall be subject to objection and appeal.

#### *Additional Tax in the event of failure to submit an Estimate of Taxable Income timely*

21 (1) Subject to the provisions of subparagraphs (2) and (3) where any provisional taxpayer is liable for the payment of normal tax in respect of any amount of taxable income derived by him during any year of assessment and he has not on or before the last day of that year or, if the period for the final or last payment of provisional tax by him in respect of such taxable income has under paragraph 26(2) been extended to a date later than the end of such year, on or before such date, submitted to the Secretary an estimate of such taxable income as required under paragraph 19(1), the taxpayer shall, unless the Secretary has estimated the said taxable income under paragraph 19(2), be required to pay to the Secretary, in addition to the normal tax chargeable in respect of such taxable income, an amount by way of additional tax equal

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(b) the normal tax payable by him in respect of such taxable income exceeds the sum of any amounts of provisional tax paid by him in respect of such taxable income within any period allowed for the payment of such provisional tax under this Part or within any extension of such period under paragraph 26(2) and any amounts of employees' tax deducted or withheld from his remuneration by his employer during such year.

(2) The Secretary may, if he is satisfied that the provisional taxpayer's failure to submit such an estimate timeously was not due to an intent to evade or postpone the payment of provisional tax or normal tax, remit the whole or any part of the additional tax imposed under subparagraph (1).

(3) Any decision of the Secretary in the exercise of his discretion under subparagraph (2) shall be subject to objection and appeal.

*Payment of Provisional Tax by Provisional Taxpayers (other than Companies) whose Income is not normally derived wholly or mainly from Farming*

22. (1) Provisional tax shall be paid by every provisional taxpayer (other than a company) whose income is not normally derived wholly or mainly from farming in the following manner, namely—

(a) within the period of six months reckoned from the commencement of the year of assessment in question, one half of an amount equal to the total estimated liability of such taxpayer (as determined in accordance with paragraph 17) for normal tax in respect of that year, less the total amount of any employees' tax deducted by the taxpayer's employer from the taxpayer's remuneration during such period, and

(b) not later than the last day of the year of assessment in question, an amount equal to the total estimated liability of such taxpayer (as finally determined in accordance with paragraph 17) for normal tax in respect of that year, less the sum of the amounts of any employees' tax deducted by the taxpayer's employer from the taxpayer's remuneration during such year and the amount paid in terms of item (a).

(2) The provisions of this paragraph shall not apply in the case of any provisional taxpayer in respect of whom the Secretary has under item (a) of paragraph 17 directed that the provisions of paragraph 23 shall apply.

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23. Every provisional taxpayer (other than a company) whose income is normally derived wholly or mainly from farming and in respect of whom the Secretary has directed that the provisions of this paragraph shall apply shall not later than the last day of the year of assessment in question pay by way of provisional tax an amount equal to the total estimated liability of such taxpayer (determined in accordance with paragraph 17) for normal tax in respect of that year less the sum of the amounts of any employees' tax deducted by the taxpayer's employer from the taxpayer's remuneration during that year.

*Provisional Tax Payments by Companies*

24. Provisional tax shall be paid by every company which is a provisional taxpayer in the following manner, namely—

- (a) within six months of the commencement of the year of assessment in question, one half of an amount equal to the total estimated liability of such company (as determined in accordance with paragraph 17) for normal tax in respect of that year on taxable income so derived; and
- (b) not later than the last day of the year of assessment in question, an amount equal to the total estimated liability of such company (as finally determined in accordance with paragraph 17) for normal tax in respect of that year on taxable income so derived, less the amount paid in terms of item (a) of this paragraph.

25. The Secretary may absolve any provisional taxpayer from making payment of any amount of provisional tax payable in terms of paragraph 23(1)(a) or paragraph 23 or paragraph 24(a), if he is satisfied that the taxable income which may be derived by such taxpayer for the year of assessment in question cannot be estimated on the facts available at the time when payment of the amount in question has to be made.

*Extension of Time for Payment of Provisional Tax*

26. (1) If at the end of any period within which provisional tax is payable in terms of this Act the Secretary has under the provisions of subparagraph (b) of paragraph 19 increased the amount of any estimate of taxable income submitted by any provisional taxpayer during such period, any additional provisional tax payable as a result of the Secretary having made such increase shall, notwithstanding the provisions of paragraphs 22, 23 and 24, be payable within such period as the Secretary may determine.

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(2) The Secretary may, having regard to the circumstances of the case, extend the period within which any amount of provisional tax is to be paid, or may agree to accept payment of any such amount in equal or varying amounts.

## Certain Matters to be Decided by the Secretary

27. The Secretary's decision or direction in regard to the following matters shall be final and conclusive, namely—

(a) the question whether any provisional taxpayer (other than a company) should, from time to time, pay provisional tax in the manner provided in paragraph 22 or in the manner provided in paragraph 23;

(b) the question as to what amount of provisional tax should for the purposes of paragraph 22 or paragraph 23 be payable by any spouse whose returns are separately assessed in terms of subsection (5) of section 67 of this Act.

## Penalty on Late Payment of Provisional Tax

28. (1) If any provisional taxpayer fails to pay any amount of provisional tax for which he is liable within the period allowed for payment thereof in terms of paragraph 22, 23 or 24, or subparagraph (h) of paragraph 26, or within such extended period as the Secretary may allow in terms of subparagraph (2) of paragraph 26, he shall, in addition to any other penalty or charge incurred by him under this Act, pay to the Secretary a penalty equal to ten per cent of the amount not paid.

(2) The Secretary may, if he is satisfied that the provisional taxpayer's failure to pay the amount of provisional tax was not due to an intent to evade or postpone payment of the tax, or otherwise evade his obligations under this Act, remit the whole or any part of the penalty imposed under subparagraph (1).

## Part IV

### General

## Set-off of Employees' Tax and Certain Provisional Tax against Tax Liability

29. (1) There shall be set-off against the liability of the taxpayer in respect of any taxes (as defined in subparagraph (9)) due by the taxpayer, the amounts of employees' tax deducted or withheld by the taxpayer's employer during any year of assessment for which the taxpayer's liability for normal tax has been assessed by the Secretary and the amounts of provisional tax paid by the taxpayer, and—

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(a) if, in the case of a taxpayer who is not a provisional taxpayer, the sum of the said amounts of employees' tax exceeds the amount of the taxpayer's total liability for the said taxes, the excess amount shall be refunded to the taxpayer;

(b) if, in the case of any provisional taxpayer, the sum of the said amounts of employees' tax and provisional tax exceeds the taxpayer's total liability for the said taxes, the Secretary shall not be required to make any refund of the excess amount (or any portion thereof) standing to the taxpayer's credit unless the Secretary is satisfied, having regard to the circumstances of the case, that a refund of such excess amount (or a portion thereof) is warranted, and any amount (after the deduction of any amount refunded to the taxpayer) standing to the taxpayer's credit shall be set off against the taxpayer's liability for any of the said taxes for which he is subsequently assessed by the Secretary or may be set off in whole or in part against any amount of provisional tax which the taxpayer is required to pay under this Schedule; and

(c) if, in the case of any taxpayer, the taxpayer's total liability for the aforesaid taxes exceeds the sum of the said amounts of employees' tax and provisional tax, the amount of the excess shall be payable by the taxpayer to the Secretary.

(2) The provisions of subparagraph (1) shall not be construed as requiring any amount of provisional tax paid in respect of any year of assessment to be set off against any liability of the taxpayer before the taxpayer's liability for normal tax in respect of that year is determined by the Secretary or, where such last-mentioned liability has not been determined by the Secretary, before the expiration of a period determined by the Secretary.

(3) The burden of proof that any amount of employees' tax has been deducted or withheld by his employer shall be upon the taxpayer and any employees' tax certificate shall be *prima facie* evidence that the amount of employees' tax reflected therein has been deducted by the employer.

(4) If the Secretary is satisfied that the amount or any portion of the amount of employees' tax shown in an employees' tax certificate has not been deducted or withheld by the employer and the amount of employees' tax shown in such tax certificate has been applied as provided in subparagraph (1), the employer and the employee shall be jointly and severally



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(a) in the event that the amount which should not have been so applied and such amount shall be recoverable under this Act as if it were a tax.

(5) An employer who has under subparagraph (4) paid to the Secretary an amount which has not been applied under the provisions of subparagraph (1), may, if the amount is included in the certificate because of a bona fide error, recover the amount so paid from the employee concerned, and in that case the provisions of subparagraph (3) of paragraph 5 shall apply.

(6) No employee's tax certificate shall be issued by the employer in respect of any amount recovered by him from the employee in terms of subparagraph (5) nor shall any such amount be included in any return rendered in terms of subparagraph (3) of paragraph 14.

(7) If the Secretary is satisfied that the employee to whom an employee's tax certificate refers was directly or indirectly responsible for an incorrect amount being shown on such certificate he may absolve the employer from the liability imposed upon him by subparagraph (4), and in that case the employee shall be solely liable under that subparagraph.

(8) If the Secretary, purporting to act under the provisions of this paragraph, pays to any person by way of a refund any amount which was not properly payable to that person under those provisions or which was in excess of the amount due to such person by way of a refund under those provisions, such amount or the excess, as the case may be, shall forthwith be repaid by the person concerned to the Secretary and shall be recoverable by the Secretary under this Act as if it were a tax.

(9) For the purposes of this paragraph, the normal taxes levied under the Income Tax Act and the normal land and surtaxes levied under any previous income tax law.

30. No refund of any amount of employees' tax or provisional tax shall be made to the taxpayer concerned otherwise than as provided in paragraph 29.

## Offences

31. (1) Any person who

(a) makes or becomes liable to make any payment of remuneration and who fails to deduct or withhold therefrom any amount of employees' tax or to pay such amount to the Secretary as and when required by paragraph 2, or

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- (b) uses or applies any amount deducted or withheld by him by way of employees' tax for purposes other than the payment of such amount to the Secretary; or
- (c) makes or issues or causes or allows to be made or issued or knowingly possesses or uses or causes to be used any employees' tax certificate which is false; or
- (d) without just cause shown by him fails to comply with any directive issued to him by the Secretary in terms of paragraph 11; or
- (e) furnishes to his employer or the Secretary a false or misleading return of personal particulars or gives any false information or misleads his employer in relation to any matter affecting the amount of employees' tax to be deducted in his case; or
- (f) fails or neglects to deliver to any employee or former employee any employees' tax certificate as required by paragraph 13; or
- (g) fails to comply with any condition prescribed by the Secretary in terms of subparagraph (11) of paragraph 13 in regard to the manner in which employees' tax certificates may be used or as to the surrender of unused stocks of such certificates, or to account for used, unused or spoiled employees' tax certificates when required by the Secretary under that paragraph or on ceasing to be an employer fails to surrender unused employees' tax certificates in his possession as required by subparagraph (13) of that paragraph; or
- (h) fails to comply with any condition prescribed by the Secretary by which he is bound in terms of subparagraph (12) of paragraph 13; or
- (i) fails or neglects to maintain any record as required by paragraph 14 or to retain such record or a duplicate original or a true copy thereof at an address in the territory for a period of five years from the date of the last entry therein or to furnish to the Secretary any declaration as required by that paragraph; or
- (j) fails or neglects to apply to the Secretary for registration as an employer as required by subparagraph (1) of paragraph 15, or having so applied fails or neglects to notify the Secretary of any change of his address or the fact of his having ceased to be an employer as required by subparagraph (3) of that paragraph; or

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- (k) alters any employees' tax certificate made or issued by any other person or falsely pretends to be the employee named in any employees' tax certificate or for his own advantage or benefit obtains credit with respect to or payment of the whole or any part of any amount of employees' tax deducted or withheld from remuneration received by another person; or
- (l) not being an employer and without being duly authorized by any person who is an employer, issues or causes to be issued any document purporting to be an employees' tax certificate; or
- (m) fails to submit to the Secretary any estimate of his taxable income as required under paragraph 19,

shall be guilty of an offence and liable on conviction to a fine not exceeding five hundred rand or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

(2) For the purposes of item (b) of subparagraph (1) an amount which has been deducted or withheld by any person from remuneration shall until the contrary is proved be deemed to have been used or applied by such person for purposes other than the payment of such amount to the Secretary if such amount is not paid to the Secretary within the period allowed for payment under paragraph 2.

*Recovery of Employees' Tax, Provisional Tax, Penalty, Additional Tax and Interest*

32. Any amount of employees' tax, provisional tax, penalty or additional tax payable in terms of this Schedule, and any amount of interest payable in terms of section 80 of this Act shall when it becomes due or is payable be a debt due to the Government of the territory and may be recovered by the Secretary in the manner prescribed in section 83 for the recovery of tax and interest due or payable under this Act.

*Extension of Scope of Certain Provisions of Act for Purposes of this Schedule*

33. For the purposes of this Schedule —

- (a) any reference in subsection (1) or (2) of section 64 of this Act to the income of any person shall be deemed to include a reference to any remuneration paid or payable by any employer and to any employees' tax required to be deducted or withheld and paid by any employer;
- (b) any reference in subsection (4) of section 87 of this Act to any tax payable in respect of any assessment shall be deemed to include a reference to any provisional tax payable in terms of this Schedule and any reference in subsection (5) of that section to any tax payable in respect of any assessment made upon any public officer in his capacity as such shall be deemed to include a reference to any provisional tax payable by any public officer in his capacity as such;
- (c) any reference in sections 88 to 92, inclusive, of this Act, to tax shall be deemed to include a reference to provisional tax.

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**INCOME TAX ACT, 1981****SCHEDULE 3****LAWS REPEALED**

<i>Number and year of Law</i>	<i>Short Title</i>	<i>Extent of Repeal</i>
Act 58 of 1962	Income Tax Act, 1962	The whole
Act 90 of 1962	Income Tax Amendment Act, 1962	The whole
Act 6 of 1963	Income Tax Amendment Act, 1963	The whole
Act 72 of 1963	Income Tax Act, 1963	The whole
Act 90 of 1964	Income Tax Act, 1964	The whole
Act 88 of 1965	Income Tax Act, 1965	The whole
Act 55 of 1966	Income Tax Act, 1966	The whole
Act 95 of 1967	Income Tax Act, 1967	The whole
Act 76 of 1968	Income Tax Act, 1968	The whole
Act 89 of 1969	Income Tax Act, 1969	The whole
Act 52 of 1970	Income Tax Act, 1970	The whole
Act 88 of 1971	Income Tax Act, 1971	The whole
Act 90 of 1972	Income Tax Act, 1972	The whole
Act 65 of 1973	Income Tax Act, 1973	The whole
Act 85 of 1974	Income Tax Act, 1974	The whole
Ordinance 5 of 1974	Income Tax Ordinance, 1974	The whole
Act 69 of 1975	Income Tax Act, 1975	The whole
Ordinance 6 of 1975	Income Tax Amendment Ordinance, 1975	The whole
Act 103 of 1976	Income Tax Act, 1976	The whole
Ordinance 3 of 1976	Income Tax Amendment Ordinance, 1976	The whole
Act 113 of 1977	Income Tax Act, 1977	The whole
Act 114 of 1977	Revenue Laws Amendment Act, 1977	Section 8
Ordinance 2 of 1977	Income Tax Amendment Ordinance, 1977	The whole
Act 101 of 1978	Income Tax Act, 1978	The whole
Proclamation AG. 44 of 1978	Rates of Normal Tax (Companies) Proclamation, 1978	The whole
Proclamation AG. 58 of 1978	Income Tax (Eastern Caprivi Zipfel) Proclamation, 1978	The whole
Proclamation AG. 67 of 1978	Income Tax Act Amendment Proclamation, 1978	The whole
Proclamation AG. 72 of 1978	Income Tax Amendment Proclamation, 1978	The whole
Ordinance 6 of 1979	Income Tax Amendment Ordinance, 1979	The whole
Act 11 of 1979	Rates of Normal Tax (Companies) Act, 1979	The whole
Ordinance 3 of 1980	Income Tax Amendment Ordinance, 1980	The whole
Ordinance 8 of 1980	Second Income Tax Amendment Ordinance, 1980	The whole
Act 16 of 1980	Rates of Normal Tax (Companies) Act, 1980	The whole
Act 1 of 1981	Income Tax Amendment Act, 1981	The whole
Proclamation AG. 1 of 1981	Income Tax Ordinance (Whites) Amendment Proclamation, 1981	The whole
Proclamation AG. 2 of 1981	Income Tax Ordinance (Coloureds) Amendment Proclamation, 1981	The whole
Proclamation AG. 3 of 1981	Income Tax Ordinance (Namas) Amendment Proclamation, 1981	The whole