

**REPUBLIC OF SOUTH AFRICA  
REPUBLIEK VAN SUID-AFRIKA**

**Vol. 531**

**Cape Town,  
Kaapstad, 30 September 2009**

**No. 32611**

**THE PRESIDENCY**

**No. 945 30 September 2009**

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

**No. 18 of 2009: Taxation Laws Second Amendment Act, 2009.**

**DIE PRESIDENSIE**

**No. 945 30 September 2009**

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

**No. 18 van 2009: Tweede Wysigingswet op Belastingwette, 2009.**

**GENERAL EXPLANATORY NOTE:**

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

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

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*(English text signed by the President.)*  
*(Assented to 29 September 2009.)*

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# ACT

To—

- provide for the allocation of payments;
- amend the Transfer Duty Act, 1949, so as to extend a time period;
- amend the Estate Duty Act, 1955, so as to amend a time period; and to repeal a section;
- amend the Income Tax Act, 1962, so as to insert new provisions; to amend the calculation of interest; to amend a definition; and to effect textual and consequential amendments;
- amend the Customs and Excise Act, 1964, so as to amend provisions empowering the withdrawal or amendment of a decision, notice or communication; to amend provisions regulating the removal in bond of goods; to amend provisions regulating the exportation of goods from a customs and excise warehouse; to insert special provisions regarding the storage and clearance of stores, spares and equipment supplied to foreign-going ships and aircraft; to insert a provision specifying circumstances in which goods free of duty may be entered under a rebate item of Schedule No. 4; to amend provisions under which a penalty may be mitigated or remitted; to amend provisions regulating payment of outstanding amounts and interest; to insert a provision empowering the making of rules for the purposes of modernising customs administration; and to effect textual and consequential amendments;
- amend the Value-Added Tax Act, 1991, so as to insert a definition; to insert new provisions; to amend the calculation of interest; and to effect textual and consequential amendments;
- amend the Skills Development Levies Act, 1999, so as to amend a definition; to insert new provisions; to amend the calculation of interest; and to effect textual and consequential amendments;
- amend the Unemployment Insurance Contributions Act, 2002, so as to amend a definition; to insert new provisions; to amend the calculation of interest; and to effect textual and consequential amendments;
- amend the Diamond Export Levy (Administration) Act, 2007, so as to amend a time period; to amend refunds; to amend the calculation of interest; and to effect textual and consequential amendments;
- amend the Diamond Export Levy Act, 2007, so as to clarify an existing provision;
- amend the Securities Transfer Tax Act, 2007, so as to extend a time period;

**ALGEMENE VERDUIDELIKENDE NOTA:**

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

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

(Engelse teks deur die President geteken.)  
(Goedgekeur op 29 September 2009.)

# WET

Tot—

- voorsiening vir die toewysing van betalings;
- wysiging van die Wet op Hereregte, 1949, ten einde voorsiening te maak vir die verlenging van 'n tydperk;
- wysiging van die Boedelbelastingwet, 1955, ten einde voorsiening te maak vir die wysiging van 'n tydperk; en om 'n artikel te herroep;
- wysiging van die Inkomstebelastingwet, 1962, ten einde nuwe bepalings in te voeg; om die berekening van rente te wysig; om 'n omskrywing te wysig; en om tekstuele en gevolglike wysigings aan te bring;
- wysiging van die Doeane- en Aksynswet, 1964, ten einde bepalings wat die intrekking of wysiging van 'n beslissing, kennisgewing of mededeling magtig, te wysig; om bepalings wat die verwydering van goedere onder waarborg reël, te wysig; om bepalings wat die uitvoer van goedere uit 'n doeane- en aksynspakhuis reël, te wysig; om spesiale bepalings betreffende die opslag en klaring van voorrade, onderdele en toerusting verskaf aan skepe en vliegtuie op vreemde vaart of vlug in te voeg; om 'n bepaling wat die omstandighede vermeld waarin goedere vry van reg ingevolge 'n kortingitem van Bylae No. 4 geklaar kan word, in te voeg; om bepalings te wysig waarvolgens 'n pene verminder of kwytsgekeld kan word; om bepalings wat betaling van uitstaande bedrae en rente reël, te wysig; om 'n bepaling wat die uitvaardiging van reëls magtig met die doel om doeane-administrasie te moderniseer, in te voeg; en om tekstuele en gevolglike wysigings aan te bring;
- wysiging van die Wet op Belasting op Toegevoegde Waarde, 1991, ten einde 'n omskrywing in te voeg; om nuwe bepalings in te voeg; om die berekening van rente te wysig; en om tekstuele en gevolglike wysigings aan te bring;
- wysiging van die "UMthetho Wezibizontela Wokuthuthukisa Amakhono, 1999," ten einde 'n omskrywing te wysig; om nuwe bepalings in te voeg; om die berekening van rente te wysig; en om tekstuele en gevolglike wysigings aan te bring;
- wysiging van die "Mulayo wa Lweŋolweŋo lwa Ndindakhombo ya u Shaya Mushumo wa, 2002," ten einde 'n omskrywing te wysig; om nuwe bepalings in te voeg; om die berekening van rente te wysig; en om tekstuele en gevolglike wysigings aan te bring;
- wysiging van die "Molao wa Lekgethwana la Thomkelontle (Tsamaiso) ya Taemane wa 2007" ten einde 'n tydperk te wysig; om terugbetalings te wysig; om die berekening van rente te wysig; en om tekstuele en gevolglike wysigings aan te bring;
- wysiging van die Wet op Belasting op Oordrag van Sekuriteite, 2007, ten einde 'n tydperk te wysig;

- amend the Mineral and Petroleum Resources Royalty (Administration) Act, 2008, so as to amend effective dates; to provide for nonbinding private opinions; and to effect textual amendments, and to provide for matters connected therewith.

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

**Allocation of payments received in terms of Acts administered by Commissioner of South African Revenue Service**

1. (1) Notwithstanding anything to the contrary contained in any Act administered by the Commissioner of the South African Revenue Service, in terms of the South African Revenue Service Act, 1997 (Act No. 34 of 1997), the Commissioner may, subject to subsection (5), allocate any payment made in terms of these Acts against the oldest amount of tax, duty, levy, penalty or interest outstanding at the time of the payment, other than amounts for which payment has been suspended in terms of any of those Acts.

(2) For purposes of subsection (1), the Commissioner may apply the first in first out principle in respect of a specific tax type, a group of tax types or all tax types in the manner as may be determined by the Commissioner.

(3) In the event a payment in subsection (1) is insufficient to extinguish all debts of the same age, the amount of the payment may be allocated among these debts as may be determined by the Commissioner.

(4) The age of a tax debt for purposes of subsection (1) is determined according to the duration from the date the debt became payable in terms of the applicable Act.

(5) This section does not apply to any payment by any person in respect of the clearance of goods for home consumption in terms of the Customs and Excise Act, 1964, where such a person designates that such payment must be allocated to the duty and other charges due in terms of that Act and value-added tax due in terms of the Value-Added Tax Act, 1991 (Act No. 89 of 1991), on the goods concerned.

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

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

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

**Amendment of section 9A of Act 45 of 1955, as inserted by section 7 of Act 86 of 1987 and amended by section 14 of Act 60 of 2001**

3. (1) Section 9A of the Estate Duty Act, 1955, is hereby amended by the substitution for paragraph (i) of the proviso of the following paragraph:

“(i) after the expiration of [five years from the date of the assessment notice in terms of which any value or amount which should have been assessed to duty under such assessment was not so assessed or in terms

- wysiging van die “Molao wa Royalithi (Tshepedišo) ya Methopo ya Diminerale le Petroliamo, wa 2008,” ten einde inwerkingtredingsdatums te wysig; om vir nie-bindende privaatmenings voorsiening te maak; en om tekstuele wysigings aan te bring, en om voorsiening te maak vir aangeleenthede wat daarmee in verband staan.

**D**AAR WORD BEPAAL deur die Parlement van die Republiek van Suid-Afrika, soos volg:—

**Toewysing van betalings ontvang ingevolge enige van die Wette deur die Kommissaris van die Suid-Afrikaanse Inkomstediens geadministreer**

1. (1) Nieteenstaande enigiets tot die teendeel vervat in enige Wet geadministreer deur die Kommissaris van die Suid-Afrikaanse Inkomstediens, ingevolge die Wet op die Suid-Afrikaanse Inkomstediens, 1997 (Wet No. 34 van 1997), kan die Kommissaris, onderhewig aan subartikel (5), enige betaling ingevolge hierdie Wette gemaak aan die oudste bedrag belasting, reg, heffing, boete of rente uitstaande op die datum van betaling toewys, buiten bedrae ten opsigte waarvan betaling ingevolge enige van daardie Wette, opgeskort is. 5 10

(2) Die Kommissaris kan, vir doeleindes van subartikel (1), die eerste in eerste uit beginsel ten opsigte van enige spesifieke belastingtipe, groep belastingtipes of alle belastingtipes toepas op die wyse soos deur die Kommissaris bepaal.

(3) Indien 'n betaling in subartikel (1) onvoldoende is om alle skulde van dieselfde ouderdom te delg, mag die bedrag van die betaling onder hierdie skulde toegewys word soos die Kommissaris bepaal. 15

(4) Vir doeleindes van subartikel (1), word die ouderdom van 'n belastingskuld bepaal ooreenkomstig die tydsverloop vanaf die datum wat die skuld ingevolge die toepaslike Wet betaalbaar geword het. 20

(5) Hierdie artikel is nie van toepassing nie op enige betaling deur enige persoon ten opsigte van die klaring van goedere vir binnelandse verbruik ingevolge die Doeane- en Aksynswet, 1964, indien daardie persoon bepaal dat daardie betaling toegewys moet word aan die reg en ander heffings ingevolge daardie Wet verskuldig en die belasting op toegevoegde waarde ingevolge die Wet op Belasting op Toegevoegde Waarde, 1991 (Wet No. 89 van 1991), op die betrokke goedere. 25

**Wysiging van artikel 2 van Wet 40 van 1949, soos gewysig deur artikel 1 van Wet 59 van 1951, artikel 1 van Wet 31 van 1953, artikel 1 van Wet 32 van 1954, artikel 2 van Wet 77 van 1964, artikel 1 van Wet 56 van 1966, artikel 2 van Wet 66 van 1973, artikel 3 van Wet 88 van 1974, artikel 5 van Wet 106 van 1980, artikel 3 van Wet 87 van 1988, artikel 2 van Wet 136 van 1992, artikel 3 van Wet 97 van 1993, artikel 1 van Wet 37 van 1995, artikel 9 van Wet 37 van 1996, artikel 2 van Wet 32 van 1999, artikel 2 van Wet 30 van 2002, artikel 31 van Wet 12 van 2003, artikel 1 van Wet 16 van 2004, artikel 1 van Wet 9 van 2005, artikel 1 van Wet 31 van 2005 en artikel 14 van Wet 9 van 2006** 30 35

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

“(3) Indien die Minister 'n aankondiging in subartikel (2) beoog maak, tree daardie vermindering of verandering in werking op die datum deur die Minister in daardie aankondiging bepaal en bly van toepassing vir 'n tydperk van [ses] 12 40 maande vanaf daardie datum, tensy die Parlement binne daardie tydperk van [ses] 12 maande wetgewing deurvoer om aan daardie aankondiging gevolg te gee.”.

**Wysiging van artikel 9A van Wet 45 van 1955, soos ingevoeg deur artikel 7 van Wet 86 van 1987 en gewysig deur artikel 14 van Wet 60 van 2001**

3. (1) Artikel 9A van die Boedelbelastingwet, 1955, word hierby gewysig deur paragraaf (i) van die voorbehoudsbepaling deur die volgende paragraaf te vervang: 45

“(i) na verstryking van [vyf jaar vanaf die datum van die aanslagkennisgewing ingevolge waarvan 'n waarde of bedrag onder so 'n aanslag vir belasting aangeslaan behoort te gewees het maar nie aldus aangeslaan is nie of ingevolge waarvan die aangeslane bedrag van 50

**of which the amount of duty assessed was less than the amount of such duty which was properly chargeable,]—**

(aa) three years from the date of a notice of assessment issued in terms of section 9(3) or 9(4)(c); or

(bb) five years from the date on which a notice of assessment is deemed to have been issued as contemplated in section 9(4)(a) or 9(4)(b), 5

unless the Commissioner is satisfied that the fact that the value or amount which should have been assessed to duty was not so assessed or the fact that the full amount of duty chargeable was not assessed, was due to fraud or misrepresentation or non-disclosure of material facts; or". 10

(2) Subsection (1) comes into operation on the date of promulgation of this Act.

#### **Amendment of section 12 of Act 45 of 1955**

4. (1) Section 12 of the Estate Duty Act, 1955, is hereby amended by the substitution for the proviso of the following proviso:

" : Provided that the liability under this section of any executor shall be a liability in his or her capacity as executor only and for an amount not exceeding the available assets in the estate, unless the liability is due to fraud." 15

(2) Subsection (1) comes into operation on the date of promulgation of this Act.

#### **Repeal of section 19 of Act 45 of 1955**

5. (1) The Estate Duty Act, 1955, is hereby amended by the repeal of section 19. 20

(2) Subsection (1) comes into operation on the date of promulgation of this Act.

**Amendment of section 4 of Act 58 of 1962, as amended by section 6 of Act 55 of 1966, section 4 of Act 104 of 1979, section 3 of Act 96 of 1981, section 3 of Act 85 of 1987, section 3 of Act 70 of 1989, section 4 of Act 21 of 1994, section 3 of Act 36 of 1996, section 34 of Act 34 of 1997, section 21 of Act 30 of 1998, section 11 of Act 53 of 1999, section 14 of Act 30 of 2000, section 19 of Act 60 of 2001, section 8 of Act 74 of 2002, section 34 of Act 12 of 2003, section 14 of Act 45 of 2003, section 9 of Act 10 of 2006 and section 3 of Act 21 of 2006,** 25

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

(a) by the addition to subsection (1)(c)(iii) of the word "or"; and 30

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

"(iv) disclosing to an employer (as defined in the Fourth Schedule) of an employee (as defined in the Fourth Schedule), the income tax reference number, identity number, physical or postal address of that employee and such other non-financial information in relation to that employee, as that employer may require in order to comply with its obligations in terms of this Act;" 35

**Amendment of section 6quat of Act 58 of 1962, as inserted by section 9 of Act 89 of 1969, repealed by section 5 of Act 94 of 1983, inserted by section 5 of Act 85 of 1987, and amended by section 5 of Act 8 of 1997, section 12 of Act 53 of 1999, section 16 of Act 30 of 2000, section 4 of Act 59 of 2000, section 8 of Act 5 of 2001, section 20 of Act 60 of 2001, section 9 of Act 74 of 2002, section 16 of Act 45 of 2003, section 4 of Act 32 of 2004, section 8 of Act 31 of 2005 and section 7 of Act 35 of 2007** 40

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

(a) by the substitution for subsection (4) of the following subsection: 45

"(4) For the purposes of this section the amount of any foreign tax proved to be payable as contemplated in subsection (1A) or (1C) in respect of any amount which is included in the taxable income of any resident during any year of assessment, shall be **[converted]** translated to

**belasting minder was as die bedrag van daardie belasting wat hefbaar was,]—**

(aa) drie jaar vanaf die datum waarop 'n aanslagkennisgewing ingevolge artikel 9(3) of 9(4)(c) uitgereik is; of

(bb) vyf jaar vanaf die datum waarop 'n aanslagkennisgewing geag word uitgereik te gewees het soos in artikel 9(4)(a) of 9(4)(b) bedoel, tensy die Kommissaris oortuig is dat die feit dat die waarde of bedrag wat vir belasting aangeslaan moes gewees het nie aldus aangeslaan is nie of die feit dat die volle bedrag van die hefbare belasting nie aangeslaan is nie, te wyte is aan bedrog of wanvoorstelling of verswyging van ter sake dienende feite; of”.

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

#### **Wysiging van artikel 12 van Wet 45 van 1955**

4. (1) Artikel 12 van die Boedelbelastingwet, 1955, word hierby gewysig deur die voorbehoudsbepaling deur die volgende voorbehoudsbepaling te vervang: 15

“: Met dien verstande dat die aanspreeklikheid ingevolge hierdie artikel van 'n eksekuteur 'n aanspreeklikheid slegs in sy of haar hoedanigheid van eksekuteur is en vir 'n bedrag van hoogstens die beskikbare bates in die boedel, tensy die aanspreeklikheid met bedrog verband hou.”.

(2) Subartikel (1) tree op die datum van afkondiging van hierdie Wet in werking. 20

#### **Herroeping van artikel 19 van Wet 45 van 1955**

5. (1) Die Boedelbelastingwet, 1955, word hierby gewysig deur artikel 19 te herroep.

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

**Wysiging van artikel 4 van Wet 58 van 1962, soos gewysig deur artikel 6 van Wet 55 van 1966, artikel 4 van Wet 104 van 1979, artikel 3 van Wet 96 van 1981, artikel 3 van Wet 85 van 1987, artikel 3 van Wet 70 van 1989, artikel 4 van Wet 21 van 1994, artikel 3 van Wet 36 van 1996, artikel 34 van Wet 34 van 1997, artikel 21 van Wet 30 van 1998, artikel 11 van Wet 53 van 1999, artikel 14 van Wet 30 van 2000, artikel 19 van Wet 60 van 2001, artikel 8 van Wet 74 van 2002, artikel 34 van Wet 12 van 2003, artikel 14 van Wet 45 van 2003, artikel 9 van Wet 10 van 2006 en artikel 3 van Wet 21 van 2006** 25 30

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

(a) deur die woord “of” aan die einde van subartikel (1)(c)(iii) by te voeg; en

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

“(iv) aan 'n werkgewer (soos in die Vierde Bylae omskryf) van 'n werknemer (soos in die Vierde Bylae omskryf), die inkomste-belastingverwysingsnommer, identiteitsnommer, fisiese- of posadres van daardie werknemer en enige ander nie-finansiële inligting met betrekking tot daardie werknemer, wat deur die werkgewer benodig mag word om sy verpligtinge ingevolge hierdie Wet na te kom, te verskaf nie;”.

**Wysiging van artikel 6quat van Wet 58 van 1962, soos ingevoeg deur artikel 9 van Wet 89 van 1969, herroep deur artikel 5 van Wet 94 van 1983, ingevoeg deur artikel 5 van Wet 85 van 1987 en gewysig deur artikel 5 van Wet 8 van 1997, artikel 12 van Wet 53 van 1999, artikel 16 van Wet 30 van 2000, artikel 4 van Wet 59 van 2000, artikel 8 van Wet 5 van 2001, artikel 20 van Wet 60 van 2001, artikel 9 van Wet 74 van 2002, artikel 16 van Wet 45 van 2003, artikel 4 van Wet 32 van 2004, artikel 8 van Wet 31 van 2005 en artikel 7 van Wet 35 van 2007** 45

7. Artikel 6quat van die Inkomstebelastingwet, 1962, word hierby gewysig—

(a) deur subartikel (4) deur die volgende subartikel te vervang: 50

“(4) By die toepassing van hierdie artikel word die bedrag van enige buitelandse belasting wat bewys word betaalbaar te wees soos in subartikel (1A) of (1C) beoog ten opsigte van enige bedrag wat gedurende enige jaar van aanslag in die belashbare inkomste van 'n inwoner ingesluit is, op die laaste dag van daardie jaar van aanslag na die 55

- the currency of the Republic on the last day of that year of assessment by applying the average exchange rate for that year of assessment.”; and
- (b) by the insertion after subsection (4) of the following subsection:
- “(4A) If the amount translated in accordance with subsection (4) includes a number of cents that is less than one rand, that amount must be rounded off to the nearest rand.”.

**Amendment of section 69 of Act 58 of 1962, as inserted by section 62 of Act 45 of 2003 and amended by section 8 of Act 34 of 2004**

8. Section 69 of the Income Tax Act, 1962, is hereby amended by the substitution in subsection (2)(a) for item (i) of the following item:
- “(i) the full names [and], address and income tax reference number, if that number is available; and”.

**Amendment of section 70 of Act 58 of 1962, as amended by section 11 of Act 6 of 1963, section 20 of Act 90 of 1964, section 43 of Act 85 of 1974, section 24 of Act 69 of 1975, section 26 of Act 28 of 1997, section 37 of Act 53 of 1999, section 42 of Act 30 of 2000, section 44 of Act 59 of 2000, section 63 of Act 45 of 2003 and section 10 of Act 4 of 2008**

9. Section 70 of the Income Tax Act, 1962, is hereby amended by the deletion of subsections (2), (3), (3A) and (3B).

**Amendment of section 70A of Act 58 of 1962, as substituted by section 40 of Act 74 of 2002**

10. (1) The Income Tax Act, 1962, is hereby amended by the substitution for section 70A of the following section:

**“Return of information by portfolio of collective investment scheme**

**70A.** Any portfolio of a collective investment scheme [contemplated in paragraph (e)(i) of the definition of ‘company’ in section 1] in securities, and any portfolio comprised in any collective investment scheme in property contemplated in Part V of the Collective Investment Schemes Control Act, 2002 (Act No. 45 of 2002), managed or carried on by a company registered under section 42 of that Act for the purposes of Part V of that Act, shall furnish to the Commissioner an annual return in such form and within such time and containing such information as the Commissioner may prescribe.”.

- (2) Subsection (1) comes into operation as from the commencement of years of assessment commencing on or after 1 January 2010.

**Repeal of section 72 of Act 58 of 1962**

11. The Income Tax Act, 1962, is hereby amended by the repeal of section 72.

**Insertion of section 73C in Act 58 of 1962**

12. (1) The Income Tax Act, 1962, is hereby amended by the insertion after section 73B of the following section:

**“Record keeping in relation to declarations for purposes of dividends tax**

**73C.** Any person that submits, receives or relies on any written declaration contemplated in Part VIII of Chapter II must retain a copy of that declaration for a period of five years from the date on which that declaration was submitted, received or relied on by that person.”.



geldeenheid van die Republiek [omgeskakel] omgerek en deur die gemiddelde wisselkoers vir daardie jaar van aanslag toe te pas.”; en  
(b) deur die volgende subartikel na subartikel (4) in te voeg:

“(4A) Indien die bedrag ooreenkomstig subartikel (4) omgerek en, ’n aantal sente insluit wat minder is as een rand, moet daardie bedrag na die naaste rand afgerond word.”. 5

**Wysiging van artikel 69 van Wet 58 van 1962, soos ingevoeg deur artikel 62 van Wet 45 van 2003 en gewysig deur artikel 8 van Wet 34 van 2004**

8. Artikel 69 van die Inkomstebelastingwet, 1962, word hierby gewysig deur item (i) in subartikel (2)(a) deur die volgende item te vervang: 10

“(i) die volle naam [en], adres en inkomstebelastingverwysingsnommer, indien daardie nommer beskikbaar is; en”.

**Wysiging van artikel 70 van Wet 58 van 1962, soos gewysig deur artikel 11 van Wet 6 van 1963, artikel 20 van Wet 90 van 1964, artikel 43 van Wet 85 van 1974, artikel 24 van Wet 69 van 1975, artikel 26 van Wet 28 van 1997, artikel 37 van Wet 53 van 1999, artikel 42 van Wet 30 van 2000, artikel 44 van Wet 59 van 2000, artikel 63 van Wet 45 van 2003 en artikel 10 van Wet 4 van 2008** 15

9. Artikel 70 van die Inkomstebelastingwet, 1962, word hierby gewysig deur subartikels (2), (3), (3A) en (3B) te skrap.

**Wysiging van artikel 70A van Wet 58 van 1962, soos vervang deur artikel 40 van Wet 74 van 2002** 20

10. (1) Die Inkomstebelastingwet, 1962, word hierby gewysig deur artikel 70A deur die volgende artikel te vervang:

“Opgawe van inligting deur portefeulje van kollektiewe beleggings-skema 25

70A. Enige portefeulje in ’n kollektiewe beleggingskema [beoog in paragraaf (e)(i) van die omskrywing van ‘maatskappy’ in artikel 1] in sekuriteite, en enige portefeulje vervat in enige kollektiewe beleggingskema in eiendom in Deel V van die Wet op die Beheer van Kollektiewe Beleggingskemas, 2002 (Wet No. 45 van 2002), bedoel, wat deur ’n maatskappy wat ingevolge artikel 42 van daardie Wet vir doeleindes van Deel V van daardie Wet geregistreer is, bestuur of bedryf word, moet aan die Kommissaris ’n jaarlikse opgawe verstrek in sodanige vorm en binne sodanige tydperk en wat sodanige inligting vervat as wat die Kommissaris mag voorskryf.”. 30 35

(2) Subartikel (1) tree in werking met ingang van jare van aanslag wat op of na 1 Januarie 2010 begin.

**Herroeping van artikel 72 van Wet 58 van 1962, soos gewysig deur artikel 72 van Wet 59 van 2000 en artikel 12 van Wet 4 van 2008**

11. Die Inkomstebelastingwet, 1962, word hierby gewysig deur artikel 72 te herroep. 40

**Invoeging van artikel 73C in Wet 58 van 1962**

12. (1) Die Inkomstebelastingwet, 1962, word hierby gewysig deur die volgende artikel na artikel 73B in te voeg:

“Rekordhouding wat verband hou met verklarings vir doeleindes van dividendbelasting 45

73C. Enige persoon wat enige geskrewe verklaring beoog in Deel VIII van Hoofstuk II indien, ontvang of daarop steun, moet ’n afskrif van daardie verklaring vir ’n tydperk van vyf jaar, vanaf die datum waarop daardie verklaring ingedien, ontvang of op gesteun is, behou.”.

(2) Subsection (1) comes into operation on the date on which Part VIII of Chapter II of the Income Tax Act, 1962, comes into operation.

### Substitution of section 88 of Act 58 of 1962

13. (1) The Income Tax Act, 1962, is hereby amended by the substitution for section 88 of the following section:

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#### “Payment of tax pending objection and appeal

88. (1) Unless the Commissioner otherwise directs in terms of subsection (4)—

(a) the obligation to pay any tax chargeable under this Act; and  
(b) the right to receive and recover any tax chargeable under this Act, shall not be suspended by any objection or appeal or pending the decision of a court of law under section 86A. 10

(2) A taxpayer may request the Commissioner to suspend the payment of any tax or a portion thereof due under an assessment where the liability to pay that tax is disputed. 15

(3) The Commissioner may suspend payment of the disputed tax having regard to—

(a) the compliance history of the taxpayer;  
(b) the amount of tax involved;  
(c) the risk of dissipation of assets by the taxpayer concerned during the period of suspension; 20  
(d) whether the taxpayer is able to provide adequate security for the payment of the amount involved;  
(e) whether payment of the amount involved would result in irreparable financial hardship to the taxpayer; 25  
(f) whether sequestration or liquidation proceedings are imminent;  
(g) whether fraud is involved in the origin of the dispute; or  
(h) whether the taxpayer has failed to furnish any information requested by the Commissioner in terms of this Act for purposes of a decision under this section. 30

(4) The Commissioner may deny a request in terms of subsection (3) or revoke a decision to suspend payment in terms of that subsection with immediate effect whenever he or she is satisfied that—

(a) after the lodging of the objection or appeal, the objection or appeal is frivolous or vexatious; 35  
(b) the taxpayer is employing dilatory tactics in conducting the objection or appeal;  
(c) on further consideration of the factors contemplated in subsection (3), the suspension should not have been given; or  
(d) there is a material change in any of the factors described in subsection (3), upon which the decision to suspend the amount involved was based. 40

(5) Where any assessment is altered in accordance with—

(a) an objection or appeal;  
(b) a decision by a court of law under section 86A; or 45  
(c) a decision by the Commissioner to concede the appeal to the tax board or the tax court or that court of law,

a due adjustment must be made, amounts paid in excess refunded with interest at the prescribed rate, the interest being calculated from the date that excess was received by the Commissioner to the date the refunded tax is paid, and amounts short-paid being recoverable with interest calculated as provided in section 89. 50

(6) The payment by the Commissioner of any interest under the provisions of this section shall be deemed to be a drawback from revenue charged to the National Revenue Fund. 55

(2) Subartikel (1) tree in werking op die datum waarop Deel VIII van Hoofstuk II van die Inkomstebelastingwet, 1962, in werking tree.

### Vervanging van artikel 88 van Wet 58 van 1962

13. (1) Die Inkomstebelastingwet, 1962, word hierby gewysig deur artikel 88 deur die volgende artikel te vervang:

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#### “Betalings van belasting hangende beswaar en appèl

88. (1) Tensy die Kommissaris ingevolge subartikel (4) andersins bepaal, sal die—

(a) verpligting om enige belasting hefbaar ingevolge hierdie Wet te betaal; en

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(b) die reg om enige belasting hefbaar ingevolge hierdie Wet te ontvang en te in.

nie deur enige beswaar of appèl of hangende die beslissing van 'n geregshof ingevolge artikel 86A opgeskort word nie.

(2) 'n Belastingpligtige kan die Kommissaris versoek om die betaling van enige belasting of 'n gedeelte daarvan ingevolge 'n aanslag verskuldig, op te skort, waar die verpligting om daardie belasting te betaal betwis word.

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(3) Die Kommissaris kan betaling van die belasting wat betwis word opskort, na inagneming van—

(a) die nakomingsgeskiedenis van die belastingpligtige;

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(b) die bedrag van belasting ter sprake;

(c) die risiko dat die betrokke belastingpligtige bates van die hand sal sit gedurende die tydperk wat die opskorting geld;

(d) of die belastingpligtige in staat is om voldoende sekuriteit vir die betaling van die bedrag betrokke te verskaf;

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(e) of die betaling van die betrokke bedrag 'n onherstelbare finansiële ontbering vir die belastingpligtige tot gevolg sal hê;

(f) of sekwestrasie- of likwidasieprosesse onvermydelik is;

(g) of bedrog betrokke is by die ontstaan van die geskil; of

(h) of die belastingpligtige nagelaat het om enige inligting deur die Kommissaris ingevolge hierdie Wet gevra, vir doeleindes van 'n besluit ingevolge hierdie artikel, te verskaf.

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(4) Die Kommissaris kan weier om 'n versoek ingevolge subartikel (3) toe te staan of 'n besluit om betaling ingevolge daardie subartikel op te skort op enige tydstip en met onmiddellike effek herroep, indien hy of sy tevrede is dat—

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(a) na indiening van die beswaar of appèl, die beswaar of appèl beuselagtig of treiterend is;

(b) die belastingpligtige vertragingstaktieke in die hantering van die beswaar of appèl gebruik;

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(c) na verdere nabetrugting van die faktore soos bedoel in subartikel (3), die opskorting nie toegestaan moes word nie; of

(d) daar 'n wesenlike verandering is in enige van die faktore in subartikel (3) bedoel, waarop die besluit om die bedrag ter sprake op te skort gebaseer was.

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(5) Indien 'n aanslag ooreenkomstig—

(a) 'n beswaar of appèl;

(b) 'n beslissing van 'n geregshof ingevolge artikel 86A; of

(c) 'n beslissing van die Kommissaris om die appèl na die belastinggraad of die belastinghof of daardie geregshof toe te gee,

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verander word, moet 'n gepaste aansuiwering gemaak word, bedrae wat te veel betaal is terugbetaal word met rente teen die voorgeskrewe koers bereken vanaf die datum waarop daardie bedrae wat te veel betaal is deur die Kommissaris ontvang is, tot die datum wat die terugbetaalbare bedrae terugbetaal word, en bedrae wat te min betaal is met rente, bereken volgens voorskrif van artikel 89, verhaal kan word.

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(6) Die betaling deur die Kommissaris van enige rente ingevolge die bepaling van hierdie artikel word geag 'n terugtrekking van inkomste ten laste van die Nasionale Inkomstefonds te wees.

(7) The provisions of section 102(3) apply *mutatis mutandis* in respect of any amount refundable and any interest payable by the Commissioner under this section.”

(2) Subsection (1) shall come into operation on a date to be determined by the Minister of Finance in the *Gazette* and will apply to all amounts payable by or to the Commissioner on or after such date, and where payment was already suspended on such date, that suspension will lapse on the earlier of the expiry date thereof or six months from the date so determined by the Minister. 5

**Amendment of section 88A of Act 58 of 1962, as inserted by section 74 of Act 45 of 2003** 10

14. (1) Section 88A of the Income Tax Act, 1962, is hereby amended by the substitution for the definition of “dispute” of the following definition:

“‘dispute’ means a disagreement on the interpretation of either the relevant facts involved or the law applicable thereto, or of both the facts and the law which arises pursuant to the issue of an assessment.” 15

(2) Subsection (1) comes into operation on a date to be determined by the Minister of Finance by notice in the *Gazette*.

**Amendment of section 89quin of Act 58 of 1962, as inserted by section 34 of Act 121 of 1984 and amended by section 25 of Act 36 of 1996**

15. Section 89quin of the Income Tax Act, 1962, is hereby amended— 20

(a) by the renumbering of the current section to section 89quin(1); and

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

“(2) The Commissioner may prescribe by notice in the *Gazette* that any interest payable under this Act is calculated on the daily balance owing and compounded monthly, and such method of determining interest will apply to such tax types and from such date as the Commissioner may prescribe.” 25

**Amendment of section 105A of Act 58 of 1962, as inserted by section 23 of Act 65 of 1986**

16. Section 105A of the Income Tax Act, 1962, is hereby amended by the substitution for subsection (2) of the following subsection: 30

“(2) Where any person who carries on any profession, calling or occupation in respect of which a controlling body has been established has, in relation to the affairs of any taxpayer, including that person’s affairs, done or omitted to do anything which in the opinion of the Commissioner— 35

(a) was intended to enable or assist such taxpayer to avoid or unduly postpone the performance of any duty or obligation imposed on such taxpayer by or under this Act, or by reason of negligence on the part of such person resulted in the avoidance or undue postponement of the performance of any such duty or obligation; [and] or 40

(b) constitutes a contravention of any rule or code of conduct laid down by the controlling body which may result in disciplinary action being taken against such person by that body,

the Commissioner may lodge a complaint with the said controlling body.”.

(7) Die bepalings van artikel 102(3) is *mutatis mutandis* van toepassing ten opsigte van enige bedrag terugbetaalbaar en enige rente deur die Kommissaris ingevolge hierdie artikel betaalbaar.”

(2) Subartikel (1) sal in werking tree op 'n datum soos deur die Minister van Finansies in die *Staatskoerant* bepaal, en sal van toepassing wees op alle bedrae deur of aan die Kommissaris betaalbaar op of na daardie datum, en waar betaling alreeds op daardie datum opgeskort was, sal daardie opskorting op die vroegste van die vervaldatum daarvan of ses maande vanaf die datum aldus deur die Minister bepaal, verval.

#### **Wysiging van artikel 88A van Wet 58 van 1962, soos ingevoeg deur artikel 74 van Wet 45 van 2003**

14. (1) Artikel 88A van die Inkomstebelastingwet, 1962, word hierby gewysig deur die omskrywing van “geskil” deur die volgende omskrywing te vervang:

“ ‘geskil’ ’n verskil oor die uitleg van of die relevante feite wat betrokke is of die reg wat daarop van toepassing is, of van beide die feite en die reg wat ontstaan voortspuitend uit die uitreik van ’n aanslag;”.

(2) Subartikel (1) tree in werking op 'n datum soos deur die Minister van Finansies by kennisgewing in die *Staatskoerant* bepaal word.

#### **Wysiging van artikel 89quin van Wet 58 van 1962, soos ingevoeg deur artikel 34 van Wet 121 van 1984 en gewysig deur artikel 25 van Wet 36 van 1996**

15. Artikel 89quin van die Inkomstebelastingwet, 1962, word hierby gewysig—

(a) deur die huidige artikel na artikel 89quin(1) te hernoem; en

(b) deur die volgende subartikel na subartikel (1) in te voeg:

“(2) Die Kommissaris kan by kennisgewing in die *Staatskoerant* bepaal dat enige rente ingevolge hierdie Wet betaalbaar, bereken word op die daaglikse saldo verskuldig en maandeliks saamgestel word, en sodanige metode vir die berekening van rente sal op sodanige belastings en vanaf sodanige datum soos die Kommissaris mag bepaal, van toepassing wees.”.

#### **Wysiging van artikel 105A van Wet 58 van 1968, soos ingevoeg deur artikel 23 van Wet 65 van 1986**

16. Artikel 105A van die Inkomstebelastingwet, 1962, word hierby gewysig deur subartikel (2) deur die volgende subartikel te vervang:

“(2) Waar iemand wat ’n professie, nering of beroep beoefen ten opsigte waarvan ’n beheerliggaam ingestel is, met betrekking tot die sake van ’n belastingpligtige, ingesluit daardie persoon se sake, iets doen of versuim om iets te doen wat volgens die oordeel van die Kommissaris—

(a) bedoel is om die belastingpligtige in staat te stel of te help om die nakoming te vermy of oormatig uit te stel van ’n plig of verpligting wat by of kragtens hierdie Wet op bedoelde belastingpligtige gelê is, of vanweë die nalatigheid van so iemand tot die vermyding of oormatige uitstel van die nakoming van so ’n plig of verpligting gelei het; **[en]** of

(b) ’n oortreding uitmaak van ’n reël of gedragkode wat deur die beheerliggaam bepaal is wat kan lei tot die doen deur die beheerliggaam van tugstappe teen bedoelde persoon, kan die Kommissaris by genoemde beheerliggaam ’n klag indien.”.

Amendment of paragraph 1 of Fourth Schedule to Act 58 of 1962, as added by section 19 of Act 6 of 1963 and amended by section 22 of Act 72 of 1963, section 44 of Act 89 of 1969, section 24 of Act 52 of 1970, section 37 of Act 88 of 1971, section 47 of Act 85 of 1974, section 6 of Act 30 of 1984, section 38 of Act 121 of 1984, section 20 of Act 70 of 1989, section 44 of Act 101 of 1990, section 44 of Act 129 of 1991, section 33 of Act 141 of 1992, section 48 of Act 113 of 1993, section 16 of Act 140 of 1993, section 37 of Act 21 of 1995, section 34 of Act 36 of 1996, section 44 of Act 28 of 1997, section 52 of Act 30 of 1998, section 52 of Act 30 of 2000, section 53 of Act 59 of 2000, section 19 of Act 19 of 2001, section 32 of Act 30 of 2002, section 46 of Act 32 of 2004, section 49 of Act 31 of 2005, section 28 of Act 9 of 2006, section 39 of Act 20 of 2006, section 54 of Act 8 of 2007, section 64 of Act 35 of 2007, section 43 of Act 3 of 2008 and section 66 of Act 60 of 2008

17. (1) Paragraph 1 of the Fourth Schedule to the Income Tax Act, 1962, is hereby amended—

- (a) by the substitution for the definition of “provisional taxpayer” of the following definition:

“‘**provisional taxpayer**’ means—

- (a) any person (other than a company) who derives by way of income any amount which does not constitute remuneration or an allowance or advance contemplated in section 8(1);
- (b) any company; and
- (c) any person who is notified by the Commissioner that he or she is a provisional taxpayer, but shall exclude—
  - (aa) any public benefit organisation as contemplated in paragraph (a) of the definition of ‘public benefit organisation’ in section 30(1) that has been approved by the Commissioner in terms of section 30(3);
  - (bb) any recreational club as contemplated in the definition of ‘recreational club’ in section 30A(1) that has been approved by the Commissioner in terms of section 30A(2); and
  - (cc) any body or association contemplated in section 10(1)(e);”;

- (b) by the substitution in the definition of “remuneration” for paragraph (cA) of the following paragraph:

“(cA) [60] 80 per cent of the amount of any allowance or advance in respect of transport expenses referred to in section 8(1)(b), other than any such allowance or advance contemplated in section 8(1)(b)(iii) which is based on the actual distance travelled by the recipient, and which is calculated at a rate per kilometre which does not exceed the appropriate rate per kilometre fixed by the Minister of Finance under section 8(1)(b)(iii);”;

- (c) by the addition to the definition of “remuneration” of the following paragraph:

“(f) any amount deemed to be income accrued to that person in terms of section 7(11).”.

(2) Paragraph (a) of subsection (1) is deemed to have come into operation on 1 January 2009 and applies in respect of years of assessment ending on or after that date.

(3) Paragraph (b) of subsection (1) comes into operation on 1 March 2010 and applies in respect of years of assessment commencing on or after that date.

Wysiging van paragraaf 1 van die Vierde Bylae by Wet 58 van 1962, soos ingevoeg deur artikel 19 van Wet 6 van 1963 en gewysig deur artikel 22 van Wet 72 van 1963, artikel 44 van Wet 89 van 1969, artikel 24 van Wet 52 van 1970, artikel 37 van Wet 88 van 1971, artikel 47 van Wet 85 van 1974, artikel 6 van Wet 30 van 1984, artikel 38 van Wet 121 van 1984, artikel 20 van Wet 70 van 1989, artikel 44 van Wet 101 van 1990, artikel 44 van Wet 129 van 1991, artikel 33 van Wet 141 van 1992, artikel 48 van Wet 113 van 1993, artikel 16 van Wet 140 van 1993, artikel 37 van Wet 21 van 1995, artikel 34 van Wet 36 van 1996, artikel 44 van Wet 28 van 1997, artikel 52 van Wet 30 van 1998, artikel 52 van Wet 30 van 2000, artikel 53 van Wet 59 van 2000, artikel 19 van Wet 19 van 2001, artikel 32 van Wet 30 van 2002, artikel 46 van Wet 32 van 2004, artikel 49 van Wet 31 van 2005, artikel 28 van Wet 9 van 2006, artikel 39 van Wet 20 van 2006, artikel 54 van Wet 8 van 2007, artikel 64 van Wet 35 van 2007, artikel 43 van Wet 3 van 2008 en artikel 66 van Wet 60 van 2008

17. (1) Paragraaf 1 van die Vierde Bylae by die Inkomstebelastingwet, 1962, word hierby gewysig—

(a) deur die omskrywing van “voorlopige belastingpligtige” deur die volgende omskrywing te vervang:

“**‘voorlopige belastingpligtige’—**

(a) enige persoon (behalwe ’n maatskappy) wat by wyse van inkomste ’n bedrag verkry wat nie besoldiging of ’n toelae of voorskot in artikel 8(1) bedoel, uitmaak nie;

(b) enige maatskappy; en

(c) enige persoon wat deur die Kommissaris in kennis gestel word dat hy of sy ’n voorlopige belastingpligtige is, maar sluit nie in nie—

(aa) enige openbare weldaadsorganisasie soos in paragraaf (a) van die omskrywing van ‘openbare weldaadsorganisasie’ in artikel 30(1) bedoel wat deur die Kommissaris ingevolge artikel 30(3) goedgekeur is;

(bb) enige ontspanningsklub soos bedoel in die omskrywing van ‘ontspanningsklub’ in artikel 30A(1) wat deur die Kommissaris ingevolge artikel 30A(2) goedgekeur is; en

(cc) enige liggaam of vereniging in artikel 10(1)(e) beoog;”;

(b) deur paragraaf (cA) in die omskrywing van “besoldiging” deur die volgende paragraaf te vervang:

“(cA) [60] 80 persent van die bedrag van enige toelae of voorskot ten opsigte van reiskoste bedoel in artikel 8(1)(b), behalwe enige bedoelde toelae of voorskot beoog in artikel 8(1)(b)(iii) wat gebaseer is op die werklike afstand wat deur die ontvanger afgelê is, en wat bereken is teen ’n skaal per kilometer wat nie die toepaslike skaal per kilometer deur die Minister van Finansies ingevolge genoemde artikel 8(1)(b)(iii) bepaal, te bowe gaan nie;”;

(c) deur die volgende paragraaf tot die omskrywing van “besoldiging” by te voeg:

“(f) enige bedrag geag inkomste te wees wat aan daardie persoon ingevolge artikel 7(11) toegeval het.”.

(2) Paragraaf (a) van subartikel (1) word geag op 1 Januarie 2009 in werking te getree het en is van toepassing op jare van aanslag wat op of na daardie datum eindig

(3) Paragraaf (b) van subartikel (1) tree op 1 Maart 2010 in werking en is van toepassing op jare van aanslag wat op of na daardie datum begin.

Amendment of paragraph 2 of Fourth Schedule to Act 58 of 1962, as added by section 19 of Act 6 of 1963 and amended by section 23 of Act 72 of 1963, section 29 of Act 55 of 1966, section 38 of Act 88 of 1971, section 48 of Act 85 of 1974, section 30 of Act 103 of 1976, section 28 of Act 113 of 1977, section 29 of Act 104 of 1980, section 40 of Act 90 of 1988, section 21 of Act 70 of 1989, section 40 of Act 90 of 1988, section 21 of Act 70 of 1989, section 45 of Act 101 of 1990, section 45 of Act 129 of 1991, section 38 of Act 21 of 1995, section 45 of Act 28 of 1997, section 53 of Act 30 of 2000, section 54 of Act 59 of 2000, section 20 of Act 19 of 2001, section 21 of Act 16 of 2004, section 50 of Act 31 of 2005, section 40 of Act 20 of 2006, section 55 of Act 8 of 2007 and section 65 of Act 35 of 2007

18. (1) Paragraph 2 of the Fourth Schedule to the Income Tax Act, 1962, is hereby amended—

- (a) by the substitution in subparagraph (1) for the words following item (b) of the following words:
 

“(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 Commissioner has granted authority to the contrary, deduct or withhold from that amount, or, where that amount constitutes any lump sum contemplated in paragraph [2(b)] 2(1)(b) of the Second Schedule, deduct from the employees benefit or minimum individual reserve as contemplated in that paragraph, 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 married and such remuneration is under the provisions of section 7(2) of this Act deemed to be income of the employee’s spouse, in respect of such liability of that spouse, and shall pay the amount so deducted or withheld to the Commissioner 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 that person ceased to be an employer, or in either case within such further period as the Commissioner may approve.”;
- (b) by the substitution in subparagraph (4) for item (a) of the following item:
 

“(a) any contribution by the employee concerned to any pension fund [or retirement annuity fund] which the employer is entitled or required to deduct from that remuneration, but limited to the deduction to which the employee is entitled under section 11(k) [or (n), as the case may be,] having regard to the remuneration and the period in respect of which it is payable;”;
- (c) by the insertion in subparagraph (4) of the following item after item (b):
 

“(bA) any contribution made by the employer to any retirement annuity fund for the benefit of the employee, but limited to the deduction to which the employee is entitled under section 11(n) having regard to the remuneration and the period in respect of which it is payable;”.

(2) Paragraphs (b) and (c) of subsection (1) come into operation on 1 March 2010 and apply in respect of years of assessment commencing on or after that date.

#### Amendment of paragraph 5 of Fourth Schedule to Act 58 of 1962

19. Paragraph 5 of the Fourth Schedule to the Income Tax Act, 1962, is hereby amended—

- (a) by the substitution for subparagraph (1) of the following subparagraph:
 

“(1) Subject to the provisions of sub-paragraph (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 Commissioner of the amount of employees’ tax which he or she fails to



Wysiging van paragraaf 2 van die Vierde Bylae by Wet 58 van 1962, soos ingevoeg deur artikel 19 van Wet 6 van 1963 en gewysig deur artikel 23 van Wet 72 van 1963, artikel 29 van Wet 55 van 1966, artikel 38 van Wet 88 van 1971, artikel 48 van Wet 85 van 1974, artikel 30 van Wet 103 van 1976, artikel 28 van Wet 113 van 1977, artikel 29 van Wet 104 van 1980, artikel 40 van Wet 90 van 1988, artikel 21 van Wet 70 van 1989, artikel 40 van Wet 90 van 1988, artikel 21 van Wet 70 van 1989, artikel 45 van Wet 101 van 1990, artikel 45 van Wet 129 van 1991, artikel 38 van Wet 21 van 1995, artikel 45 van Wet 28 van 1997, artikel 53 van Wet 30 van 2000, artikel 54 van Wet 59 van 2000, artikel 20 van Wet 19 van 2001, artikel 21 van Wet 16 van 2004, artikel 50 van Wet 31 van 2005, artikel 40 van Wet 20 van 2006, artikel 55 van Wet 8 van 2007 en artikel 65 van Wet 35 van 2007

18. (1) Paragraaf 2 van die Vierde Bylae by die Inkomstebelastingwet, 1962, word hierby gewysig—

(a) deur in subparagraaf (1) die woorde wat volg op item (b) deur die volgende woorde te vervang:

“(ongeaag of hy ingevolge paragraaf 15 as ’n werkgewer geregistreer is, al dan nie) wat aan ’n werknemer ’n bedrag by wyse van besoldiging betaal of verskuldig word, moet, tensy die Kommissaris andersins gemagtig het, van daardie bedrag ’n bedrag aftrek of terughou, of waar daardie bedrag ’n enkelbedragvoordeel in paragraaf [2(b)] (2)(1)(b) van die Tweede Bylae beoog, uitmaak, van die werknemer se voordeel of minimum individuele reserwe soos in daardie paragraaf bedoel, aftrek, by wyse van werknemersbelasting wat volgens die bepalings van paragraaf 9, 10, 11 of 12, watter bepaling ook al van toepassing is, vasgestel word, ten opsigte van die aanspreeklikheid van daardie werknemer vir normale belasting, of indien bedoelde besoldiging betaal of verskuldig is aan ’n werknemer wat getroud is en daardie besoldiging ingevolge die bepalings van artikel 7(2) van hierdie Wet geag word inkomste van die werknemer se gade te wees, ten opsigte van bedoelde aanspreeklikheid van daardie gade, en moet die bedrag aldus afgetrek of teruggehou aan die Kommissaris betaal word binne sewe dae na die end van die maand waartydens die bedrag afgetrek of teruggehou is, of, in die geval van ’n persoon wat voor die end van daardie maand ophou om ’n werkgewer te wees, binne sewe dae na die dag waarop daardie persoon ophou om ’n werkgewer te wees, of, in die een of die ander geval, binne die verdere tydperk wat die Kommissaris goedkeur.”;

(b) deur item (a) in subparagraaf (4) deur die volgende item te vervang:

“(a) enige bydrae deur die betrokke werknemer aan ’n pensioenfonds [of uittredingannuïteitsfonds] wat die werkgewer geregtig of verplig is om van die besoldiging af te trek, maar beperk tot die aftrekking waartoe die werknemer kragtens artikel 11(k) [of (n), na gelang van die geval,] geregtig is, met inagneming van die besoldiging en die tydperk ten opsigte waarvan dit betaalbaar is;”;

(c) deur die volgende item na item (b) in subparagraaf (4) in te voeg:

“(bA) enige bydrae deur die werkgewer aan enige uittreding-annuïteitsfonds tot die voordeel van die werknemer gemaak, maar beperk tot die aftrekking waartoe die werknemer ingevolge artikel 11(n) geregtig is met inagneming van die besoldiging en die tydperk ten opsigte waarvan dit betaalbaar is;”.

(2) Paragrafe (b) en (c) van subartikel (1) tree op 1 Maart 2010 in werking en is van toepassing op jare van aanslag wat op of na daardie datum begin.

### Wysiging van paragraaf 5 van die Vierde Bylae by Wet 58 van 1962

19. Paragraaf 5 van die Vierde Bylae by die Inkomstebelastingwet, 1962, word hierby gewysig—

(a) deur subparagraaf (1) in deur die volgende subparagraaf te vervang:

“(1) Behoudens die bepalings van sub-paragraaf (6), is ’n werkgewer wat versuim om die volle bedrag van die werknemersbelasting volgens voorskrif van paragraaf 2 af te trek of terug te hou, persoonlik aanspreeklik vir betaling aan die Kommissaris van die bedrag van die werknemersbelasting wat hy of sy versuim om af te trek of terug te hou,

deduct or withhold, and shall, subject to the provisions of sub-paragraph (2), pay that amount to the Commissioner 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.”;

- (b) by the insertion after subparagraph (1) of the following subparagraph: 5

“(1A) The liability of the employer as contemplated in paragraph 2 must be deemed to have been discharged if the employer made payment of the outstanding employees' tax in terms of subparagraph (1).”; and

- (c) by the substitution for subparagraph (5) of the following paragraph: 10

“(5) Any amount which an employer is required to pay in terms of sub-paragraph (1) and which [he is entitled to] the employer does not recover from the employee [in terms of sub-paragraph (3)] shall, insofar as the employer only is concerned, for the purposes of section 23(d), be deemed to be a penalty due and payable by that employer.”.

**Amendment of paragraph 9 of Fourth Schedule to Act 58 of 1962, as amended by section 39 of Act 88 of 1971, section 32 of Act 103 of 1976, section 29 of Act 104 of 1980, section 46 of Act 101 of 1990, section 46 of Act 28 of 1977, section 55 of Act 59 of 2000, section 21 of Act 19 of 2001, section 41 of Act 20 of 2006, section 56 Act 8 of 2007, sections 66 and 116 of Act 35 of 2007, section 66 of Act 3 of 2008 and section 68 of Act 60 of 2008** 15 20

20. Paragraph 9 of the Fourth Schedule to the Income Tax Act, 1962, is hereby amended by the substitution for subparagraph (3) of the following subparagraph:

- “(3) (a) The amount to be deducted or withheld in respect of employees' tax from any lump sum to which paragraph (d) or (e) of the definition of ‘gross income’ in section 1 [of this Act] or section 7A [thereof] applies, shall be ascertained by the employer from the Commissioner before paying out such lump sum, and the Commissioner's determination of the amount to be deducted or withheld shall be final. 25

- (b) Paragraph (a) does not apply to any amount required to be included in the gross income of any person in terms of paragraph (e) of the definition of ‘gross income’ and paragraph 2(1)(b)(iB) of the Second Schedule as a result of a transaction contemplated in section 14(1) of the Pension Funds Act, 1956 (Act No. 24 of 1956), other than an amount that is transferred for the benefit of the person to any provident fund as defined in paragraph 1 of the Second Schedule from any pension fund or pension preservation fund as defined in that paragraph.”. 30 35

**Amendment of paragraph 14 of Fourth Schedule to Act 58 of 1962, as amended by section 40 of Act 88 of 1971, section 50 of Act 101 of 1990, section 57 of Act 74 of 2002, section 22 of Act 4 of 2008 and section 16 of Act 61 of 2008**

21. Paragraph 14 of the Fourth Schedule to the Income Tax Act, 1962, is hereby amended— 40

- (a) by the substitution for subparagraph (1) of the following subparagraph: 40

“(1) Every employer shall in respect of each employee maintain a record showing—

- (a) the amounts of remuneration paid or due by him or her to such employee; [and] 45

- (b) the amount of employees' tax deducted or withheld from [each such amount] the amounts of remuneration contemplated in item (a)[,]; 50

- (c) the income tax reference number of that employee where that employee is registered as a taxpayer in terms of section 67; and

- (d) such further information as the Commissioner may prescribe, and such record shall be retained by the employer and shall be available for scrutiny by the Commissioner.”; 50

en moet hy, behoudens die bepalings van sub-paragraaf (2), daardie bedrag aan die Kommissaris betaal nie later nie as die datum waarop betaling sou moes geskied het indien die werknemersbelasting wel ingevolge paragraaf 2 afgetrek of teruggehou was.”;

- (b) deur die volgende subparagraaf na subparagraaf (1) in te voeg: 5  
 “(1A) Die aanspreeklikheid van die werkgever soos in paragraaf 2 beoog, word geag nagekom te wees waar die werknemer die uitstaande werknemersbelasting bedoel in subparagraaf (1) betaal het.”; en  
 (c) deur subparagraaf (5) deur die volgende subparagraaf te vervang: 10  
 “(5) ’n Bedrag wat die werkgever ingevolge sub-paragraaf (1) moet betaal en wat [hy ingevolge sub-paragraaf (3) geregtig is om op] die werkgever nie van die werknemer [te] verhaal nie, word, alleen vir sover dit die werkgever betref, vir doeleindes van artikel 23(d), geag ’n boete te wees wat deur daardie werkgever verskuldig en betaalbaar is.”.

**Wysiging van paragraaf 9 van die Vierde Bylae by Wet 58 van 1962, soos gewysig 15**  
 deur artikel 39 van Wet 88 van 1971, artikel 32 van Wet 103 van 1976, artikel 29 van Wet 104 van 1980, artikel 46 van Wet 101 van 1990, artikel 46 van Wet 28 van 1977, artikel 55 van Wet 59 van 2000, artikel 21 van Wet 19 van 2001, artikel 41 van Wet 20 van 2006, artikel 56 van Wet 8 van 2007, artikels 66 en 116 van Wet 35 van 2007, artikel 66 van Wet 3 van 2008 en artikel 68 van Wet 60 van 2008 20

20. Paragraaf 9 van die Vierde Bylae by die Inkomstebelastingwet, 1962, word hierby gewysig deur subparagraaf (3) deur die volgende subparagraaf te vervang:

- “(3) (a) Die werkgever moet voordat hy ’n enkelbedrag waarop paragraaf (d) of (e) van die omskrywing van ‘bruto inkomste’ in artikel 1 [van hierdie Wet] of artikel 7A [daarvan] van toepassing is, uitbetaal, by die Kommissaris navraag 25  
 doen omtrent die bedrag wat by wyse van werknemersbelasting van bedoelde enkelbedrag afgetrek of teruggehou moet word, en die Kommissaris se bepaling van die bedrag wat aldus afgetrek of teruggehou moet word, is afdoende;  
 (b) Paragraaf (a) is nie op enige bedrag wat by die bruto inkomste van enige persoon ingevolge paragraaf (e) van die omskrywing van ‘bruto inkomste’ en 30  
 paragraaf 2(1)(b)(iB) van die Tweede Bylae as gevolg van ’n transaksie beoog in artikel 14(1) van die Wet op Pensioenfondse, 1956 (Wet No. 24 van 1956), ingesluit moet word, van toepassing nie, anders as ’n bedrag wat tot die voordeel van die persoon aan enige voorsorgfonds soos omskryf in paragraaf 1 van die Tweede Bylae oorgedra word vanaf enige pensioenbewaringsfonds of pensioen- 35  
 fonds soos omskryf in daardie paragraaf.”.

**Wysiging van paragraaf 14 van die Vierde Bylae by Wet 58 van 1968, soos gewysig 40**  
 deur artikel 40 van Wet 88 van 1971, artikel 50 van Wet 101 van 1990, artikel 57 van Wet 74 van 2002, artikel 22 van Wet 4 van 2008, artikel 22 van Wet 4 van 2008 en artikel 16 van Wet 61 van 2008

21. Paragraaf 14 van die Vierde Bylae by die Inkomstebelastingwet, 1962, word hierby gewysig—

- (a) deur subparagraaf (1) deur die volgende subparagraaf te vervang: 45  
 “(1) Elke werkgever moet ten opsigte van elke werknemer ’n aantekening hou aantonende—  
 (a) die bedrae by wyse van besoldiging deur hom of haar aan dié werknemer betaal of verskuldig; [en]  
 (b) die bedrag by wyse van werknemersbelasting van [elke sodanige bedrag van] die bedrae van besoldiging in item (a) bedoel afgetrek of teruggehou;]; 50  
 (c) die inkomstebelastingverwysingsnommer van daardie werknemer waar daardie werknemer as ’n belastingpligtige ingevolge artikel 67 geregistreer is; en  
 (d) sodanige verdere inligting as wat die Kommissaris mag bepaal, en so ’n aantekening moet deur die werkgever behou word en is vir 55  
 ondersoek deur die Kommissaris beskikbaar.”;

- (b) by the substitution for subparagraph (2) of the following subparagraph:  
 “(2) Every employer shall when making any payment of employees’ tax submit to the Commissioner such declaration containing such information as the Commissioner may prescribe.”; and
- (c) by the substitution for subparagraph (3) of the following subparagraph: 5  
 “(3) Every employer shall—  
 (a) **[within 60 days after the end of each period contemplated in paragraph 13(1A)]** by such date or dates as prescribed by the Commissioner by notice in the *Gazette*; and  
 (b) if **[during any such period he]** the employer ceases to carry on any 10  
 business or other undertaking in respect of which **[he]** the employer  
 has paid or becomes liable to pay remuneration to any employee or  
 otherwise ceases to be an employer, within 14 days after the date on  
 which **[he]** the employer has so ceased to carry on that business or  
 undertaking or to be an employer, as the case may be, 15  
 or within such longer time as the Commissioner may approve, render to  
 the Commissioner such return as the Commissioner may prescribe.”.

**Amendment of paragraph 18 of Fourth Schedule to Act 58 of 1962, as amended by section 28 of Act 90 of 1964, section 42 of Act 88 of 1971, section 49 of Act 58 of 1974, section 19 of Act 104 of 1979, section 26 of Act 65 of 1986, section 9 of Act 108 of 1986, section 24 of Act 19 of 2001, section 58 of Act 74 of 2002, section 34 of Act 30 of 2002, section 24 of Act 16 of 2004, section 47 of Act 32 of 2004, section 53 of Act 31 of 2005 and section 1 of Act 3 of 2008** 20

22. Paragraph 18 of the Fourth Schedule to the Income Tax Act, 1962, is hereby amended— 25

- (a) by the substitution in subparagraph (1)(d) for subitem (i) of the following subitem:  
 “(i) will not exceed **[R80 000] R120 000;**”; and
- (b) by the substitution in subparagraph (1)(d) for subitem (iii) of the following subitem: 30  
 “(iii) will not be derived otherwise than from remuneration, interest, dividends[, **dividends on shares in any mutual building society]** or rental from the letting of fixed property.”.

**Amendment of paragraph 19 of Fourth Schedule to Act 58 of 1962, as amended by section 28 of Act 88 of 1965, section 46 of Act 89 of 1969, section 43 of Act 88 of 1971, section 50 of Act 85 of 1974, section 49 of Act 94 of 1983, section 52 of Act 101 of 1990, section 44 of Act 21 of 1995, section 37 of Act 5 of 2001, section 87 of Act 45 of 2003, section 54 of Act 31 of 2005, section 46 of Act 3 of 2008 and section 18 of Act 61 of 2008** 35

23. Paragraph 19 of the Fourth Schedule to the Income Tax Act, 1962, is hereby amended by the addition to item (d) of subparagraph (1) of the following proviso: 40

“: Provided that, if an estimate under item (a) or (b) must be made in respect of a period that ends more than one year after the end of the latest preceding year of assessment in relation to such estimate, the basic amount determined in terms of sub-item (i) and (ii) shall be increased by an amount equal to eight per cent per annum of that amount, from the end of such year to the end of the year of assessment in respect of which the estimate is made.” 45

- (b) deur subparagraaf (2) deur die volgende subparagraaf te vervang:  
 “(2) Elke werkgewer moet wanneer daardie werkgewer ’n bedrag by wyse van werknemersbelasting betaal, aan die Kommissaris die verklaring met die inligting verstrek wat die Kommissaris voorskryf.”; en 5
- (c) deur subparagraaf (3) deur die volgende subparagraaf te vervang:  
 “(3) Elke werkgewer moet—
- (a) **[binne 60 dae na die einde van elke tydperk bedoel in paragraaf 13 (1A)]** teen sodanige datum of datums soos die Kommissaris by kennisgewing in die *Staatskoerant* bepaal; en 10
- (b) indien daardie werkgewer **[gedurende bedoelde tydperk]** ophou om ’n besigheid of ander onderneming te **[dryf]** beoefen ten opsigte waarvan daardie werkgewer aan ’n werknemer besoldiging betaal of verskuldig geword het, of indien daardie werkgewer andersins ophou om ’n werkgewer te wees, binne 14 dae na die datum waarop daardie werkgewer aldus die besigheid of onderneming gestaak het of opgehou het om ’n werkgewer te wees, na gelang van die geval, of binne so ’n langer tyd as wat die Kommissaris goedkeur, die opgawe aan die Kommissaris indien wat die Kommissaris voorskryf.”. 15

**Wysiging van paragraaf 18 van Vierde Bylae by Wet 58 van 1962, soos gewysig deur artikel 28 van Wet 90 van 1964, artikel 42 van Wet 88 van 1971, artikel 49 van Wet 58 van 1974, artikel 19 van Wet 104 van 1979, artikel 26 van Wet 65 van 1986, artikel 9 van Wet 108 van 1986, artikel 24 van Wet 19 van 2001, artikel 58 van Wet 74 van 2002, artikel 34 van Wet 30 van 2002, artikel 24 van Wet 16 van 2004, artikel 47 van Wet 32 van 2004, artikel 53 van Wet 31 van 2005 en artikel 1 van Wet 3 van 2008** 20 25

22. Paragraaf 18 van die Vierde Bylae by die Inkomstebelastingwet, 1962, word hierby gewysig—

- (a) deur subitem (i) in subparagraaf (1)(d) deur die volgende subitem te vervang:  
 “(i) **[R80 000] R120 000** nie te bowe sal gaan nie;”; en 30
- (b) deur subitem (iii) in subparagraaf (1)(d) deur die volgende subitem te vervang:  
 “(iii) nie anders verkry sal word nie as uit besoldiging, rente, dividende**[, dividende op aandele in ’n onderlinge houerening]** of huurgeld uit die verhuring van vaste eiendom.”. 35

**Wysiging van paragraaf 19 van Vierde Bylae by Wet 58 van 1962, soos gewysig deur artikel 28 van Wet 88 van 1965, artikel 46 van Wet 89 van 1969, artikel 43 van Wet 88 van 1971, artikel 50 van Wet 85 van 1974, artikel 49 van Wet 94 van 1983, artikel 52 van Wet 101 van 1990, artikel 44 van Wet 21 van 1995, artikel 37 van Wet 5 van 2001, artikel 87 van Wet 45 van 2003, artikel 54 van Wet 31 van 2005, artikel 46 van Wet 3 van 2008 en artikel 18 van Wet 61 van 2008** 40

23. Paragraaf 19 van die Vierde Bylae by die Inkomstebelastingwet, 1962, word hierby gewysig deur die volgende voorbehoudsbepaling by item (d) van subparagraaf (1) te voeg:

- “: Met dien verstande dat, indien ’n skatting ingevolge item (a) of (b) met betrekking tot ’n tydperk ten aansien waarvan daardie skatting gemaak word, gemaak moet word ten aansien van ’n jaar van aanslag wat eindig meer as een jaar na die einde van die onmiddellik voorafgaande jaar waarvoor daar ’n aanslag gemaak is, sal die basiese bedrag ingevolge subitems (i) en (ii) bepaal met ’n bedrag gelykstaande aan agt persent per jaar van daardie bedrag, vanaf die einde van sodanige jaar tot die einde van die jaar van aanslag ten aansien waarvan daardie skatting gemaak word, verhoog word.”. 45 50

**Amendment of paragraph 20 of Fourth Schedule to Act 58 of 1962, as amended by section 25 of Act 72 of 1963, section 29 of Act 88 of 1965, section 47 of Act 89 of 1969, section 44 of Act 88 of 1971, section 51 of Act 85 of 1974, section 36 of Act 69 of 1975, section 50 of Act 94 of 1983, section 39 of Act 121 of 1984 and section 19 of Act 61 of 2008**

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24. (1) Paragraph 20 of the Fourth Schedule to the Income Tax Act, 1962, is hereby amended—

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

“(1) If the actual taxable income, as finally determined under this Act,  
for the year of assessment in respect of which the final or last estimate of  
his or her taxable income is submitted in terms of paragraph 19(1)(a) by  
a provisional taxpayer other than a company, or the estimate of its taxable  
income in respect of the period contemplated in paragraph 23(b) is  
submitted in terms of paragraph 19(1)(b) by a company which is a  
provisional taxpayer, in respect of any year of assessment [discloses an  
estimated amount of taxable income which] is— 10 15

(a) more than R1 million and such estimate is less than 80 per cent of  
the amount of the actual taxable income [in respect of which the  
estimate was made, as finally determined for that year under  
this Act, the taxpayer shall] the Commissioner may, if he or she is  
not satisfied that the amount of such estimate was seriously  
calculated with due regard to the factors having a bearing thereon or  
was not deliberately or negligently understated, subject to the  
provisions of [subparagraphs (2),] subparagraph (3), [and (4), be  
required to pay to the Commissioner] impose, in addition to the  
normal tax chargeable in respect of [his or her] the taxpayer's  
taxable income for such year of assessment, an amount by way of  
additional tax [equal] up to 20 per cent of the difference between  
the amount of normal tax as calculated in respect of [the amount of  
taxable income as so disclosed] such estimate and the amount of  
normal tax calculated, at the rates applicable in respect of [the said]  
such year of assessment, in respect of a taxable income equal to 80  
per cent of [the said] such actual taxable income; and 20 25 30

(b) in any other case, less than 90 per cent of the amount of such actual  
taxable income and is also less than the basic amount applicable to  
the estimate in question, as contemplated in paragraph 19(1)(d), the  
taxpayer shall, subject to the provisions of subparagraphs (2) and  
(3), be liable to pay to the Commissioner, in addition to the normal  
tax chargeable in respect of his or her taxable income for such year  
of assessment, an amount by way of additional tax equal to 20 per  
cent of the difference between the amount of normal tax as  
calculated in respect of such estimate and the lesser of the following  
amounts, namely— 35 40

(i) the amount of normal tax calculated, at the rates applicable in  
respect of such year of assessment, in respect of a taxable  
income equal to 90 per cent of such actual taxable income; and  
 (ii) the amount of normal tax calculated in respect of a taxable  
income equal to such basic amount, at the rates applicable in  
respect of such year of assessment.”; 45

(b) by the substitution for subparagraph (2) of the following subparagraph: 50

“(2) Where the Commissioner is satisfied that the amount of any  
 estimate referred to in subparagraph (1)(b) was seriously calculated with  
due regard to the factors having a bearing thereon and was not  
deliberately or negligently understated [and was seriously calculated  
with due regard to the factors having a bearing thereon], or if the 55”

Wysiging van paragraaf 20 van Vierde Bylae by Wet 58 van 1962, soos gewysig deur artikel 25 van Wet 72 van 1963, artikel 29 van Wet 88 van 1965, artikel 47 van Wet 89 van 1969, artikel 44 van Wet 88 van 1971, artikel 51 van Wet 85 van 1974, artikel 36 van Wet 69 van 1975, artikel 50 van Wet 94 van 1983, artikel 39 van Wet 121 van 1984 en artikel 19 van Wet 61 van 2008

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24. (1) Paragraaf 20 van die Vierde Bylae by die Inkomstebelastingwet, 1962, word hierby gewysig—

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

“(1) Indien die werklike belasbare inkomste, soos finaal ingevolge hierdie Wet bepaal, vir die jaar van aanslag ten aansien waarvan die finale of laaste skatting van sy of haar belasbare inkomste ingevolge paragraaf 19(1)(a) deur ’n voorlopige belastingpligtige behalwe ’n maatskappy, of die skatting van sy belasbare inkomste ten opsigte van die in paragraaf 23(b) bedoelde tydperk ingevolge paragraaf 19(1)(b) deur ’n maatskappy wat ’n voorlopige belastingpligtige is, verstrek is, ten opsigte van ’n jaar van aanslag [**verstrek ’n geskatte bedrag van belasbare inkomste toon wat**]—

(a) meer as R1 miljoen is en sodanige geskatte bedrag minder is as 80 persent van die bedrag van die werklike belasbare inkomste [ten opsigte waarvan die skatting gemaak is soos vir daardie jaar finaal ingevolge hierdie Wet vasgestel, moet die belastingpligtige] kan die Kommissaris, indien hy of sy nie oortuig is dat die bedrag van die skatting in erns bereken is met inagneming van die faktore wat daarop betrekking het of nie opsetlik of uit nalatigheid te min geskat is nie, behoudens die bepalinge van [subparagraaf (2),] subparagraaf (3) [en (4)], by wyse van addisionele belasting bo en behalwe die normale belasting wat ten opsigte van [sy of haar] die belastingpligtige se belasbare inkomste vir bedoelde jaar van aanslag hefbaar is, ’n bedrag [aan die Kommissaris betaal gelyk aan] tot en met 20 persent van die verskil tussen die bedrag aan normale belasting ten opsigte van die [aldus getoonde bedrag aan belasbare inkomste] sodanige skatting bereken en die bedrag aan normale belasting bereken, teen die toepaslike skale ten opsigte van [bedoelde] sodanige jaar van aanslag, ten opsigte van ’n belasbare inkomste gelyk aan 80 persent van [bedoelde] sodanige werklike belasbare inkomste; en

(b) in enige ander geval, minder is as 90 persent van die bedrag van die sodanige werklike belasbare inkomste en ook minder as die basiese bedrag van toepasing op die sodanige skatting, soos in paragraaf 19(1)(d) beoog, moet die belastingpligtige, behoudens die bepalinge van subparagraaf (2) en (3), by wyse van addisionele belasting bo en behalwe die normale belasting wat ten opsigte van sy belasbare inkomste vir bedoelde jaar van aanslag hefbaar is, ’n bedrag aan die Kommissaris betaal gelyk aan 20 persent van die verskil tussen die bedrag aan normale belasting ten opsigte van sodanige geskatte bedrag bereken en die minste van die volgende bedrae, naamlik—

(i) die bedrag van normale belasting bereken, teen die toepaslike skale ten opsigte van bedoelde jaar van aanslag, ten opsigte van ’n belasbare inkomste gelykstaande aan 90 persent van bedoelde werklike belasbare inkomste; en

(ii) die bedrag van normale belasting bereken ten opsigte van ’n belasbare inkomste gelykstaande aan bedoelde basiese bedrag, teen die toepaslike skale ten opsigte van die bedoelde jaar van aanslag.”;

(b) deur subparagraaf (2) deur die volgende subparagraaf te vervang:

“(2) Waar die Kommissaris oortuig is dat die bedrag van ’n [in subartikel] skatting bedoel in subparagraaf (1)(b) [bedoelde skatting nie opsetlik of uit nalatigheid te min geskat is nie en] in erns bereken is met behoorlike inagneming van die faktore wat daarop betrekking het, en nie opsetlik of uit nalatigheid te min geskat is nie, of indien die Kommissaris ten dele aldus oortuig is, kan die Kommissaris na

- Commissioner is partly so satisfied, the Commissioner may in his or her discretion remit the additional tax or a part thereof.”; and
- (c) by the substitution for subparagraph (4) of the following subparagraph:
- “(4) Any decision of the Commissioner in the exercise of his or her discretion under [subparagraph] subparagraphs (1)(a) and (2) shall be subject to objection and appeal.”.
- (2) Subsection (1) will apply to years of assessment ending on or after 1 March 2009.

**Amendment of section 3 of Act 91 of 1964, as amended by section 114 of Act 60 of 2001, section 42 of Act 30 of 2002 and section 132 of Act 45 of 2003**

25. (1) Section 3 of the Customs and Excise Act, 1964, is hereby amended by the substitution in subsection (2) for paragraph (a) of the following paragraph:

- “(a) (i) Any decision made and any notice or communication signed or issued by such an officer or person may be withdrawn or amended by—
- (aa) the officer or person concerned;
- (bb) any supervisor of the officer or person contemplated in item (aa);
- (cc) an officer who withdraws or amends such decision, notice or communication under a delegation from, or under the control or direction of, the Commissioner; or
- (dd) the Commissioner,
- in each case according to any division of powers to so withdraw or amend as may be prescribed by rule.
- (ii) Any rule contemplated in subparagraph (i) may in addition specify to whom and the period within which a request for withdrawal or amendment of a decision, notice or communication may first be submitted and after which decision, notice or communication no further request shall be considered for the purposes of this subsection.
- (iii) The provisions of subparagraph (ii) shall not be construed as affecting the powers of any officer, person, supervisor or the Commissioner to withdraw or amend on own initiative any decision, notice or communication as contemplated in subparagraph (i).
- (iv) Any decision, notice or communication may be withdrawn or amended as contemplated in subparagraph (i) with effect from the date of making such decision or signing or issuing such notice or communication or the date of withdrawal or amendment thereof and shall, until it has been so withdrawn, be deemed, except for the purpose of this subsection, to have been made, signed or issued by the Commissioner.”.

(2) Subsection (1) or any part thereof comes into operation on the date or dates determined by the Minister of Finance by notice in the *Gazette*.

**Amendment of section 18 of Act 91 of 1964, as amended by section 2 of Act 95 of 1965, section 6 of Act 105 of 1969, section 4 of Act 71 of 1975, section 3 of Act 105 of 1976, section 3 of Act 112 of 1977, section 4 of Act 84 of 1987, section 13 of Act 59 of 1990, section 11 of Act 45 of 1995, section 48 of Act 53 of 1999, section 37 of Act 19 of 2001, section 119 of Act 60 of 2001, section 102 of Act 74 of 2002 and section 21 of Act 34 of 2004**

26. Section 18 of the Customs and Excise Act, 1964, is hereby amended—
- (a) by the substitution for subsection (3) of the following subsection:
- “(3) (a) Subject to [the provisions of] subsection (4), any liability for duty in terms of subsection (2) shall cease [when it is proved by the person concerned] if—
- (i) goods destined for a place in the common customs area, have been duly entered at that place; or
- (ii) (aa) goods destined for a place beyond the borders of the common customs area have been duly taken out of that area; or
- (bb) in circumstances and in accordance with procedures which the Commissioner may determine by rule the goods have been duly accounted for in the country of destination.



goedduke die addisionele belasting of 'n gedeelte daarvan kwytgeld.'";  
en

(c) deur subparagraaf (4) deur die volgende subparagraaf te vervang:

“(4) 'n Beslissing van die Kommissaris by die uitoefening van sy diskresie ingevolge [sub-paragraaf] subparagrafe (1)(a) en (2) is aan beswaar en appèl onderhewig.”.

(2) Subartikel (1) is van toepassing op jare van aanslag wat op of na 1 Maart 2009 eindig.

**Wysiging van artikel 3 van Wet 91 van 1964, soos gewysig deur artikel 114 van Wet 60 van 2001, artikel 42 van Wet 30 van 2002 en artikel 132 van Wet 45 van 2003**

25. (1) Artikel 3 van die Doeane- en Aksynswet, 1964, word hierby gewysig deur in subartikel (2) paragraaf (a) deur die volgende paragraaf te vervang:

“(a) (i) Enige beslissing gegee en enige kennisgewing of mededeling onderteken of uitgereik deur sodanige beampte of persoon kan ingetrek of gewysig word deur—

(aa) die betrokke beampte of persoon;

(bb) enige toesighouer van die beampte of persoon in item (aa) beoog;

(cc) 'n beampte wat sodanige beslissing, kennisgewing of mededeling intrek of wysig ingevolge 'n delegasie van, of onder die beheer of toesig van, die Kommissaris; of

(dd) die Kommissaris,

in elke geval ooreenkomstig enige verdeling van bevoegdheid om aldus in te trek of te wysig soos by reël voorgeskryf word.

(ii) Enige reël in subparagraaf (i) beoog, kan daarbenewens bepaal aan wie en die tydperk waarbinne 'n versoek om intrekking of wysiging van 'n beslissing, kennisgewing of mededeling eers ingedien mag word en waarna watter beslissing, kennisgewing of mededeling geen verdere versoek vir die doeleindes van hierdie subartikel oorweeg word nie.

(iii) Die bepalinge van subparagraaf (ii) word nie vertolk as 'n uitwerking te hê op die bevoegdhede van enige beampte, persoon, toesighouer of die Kommissaris om op eie inisiatief enige beslissing, kennisgewing of mededeling soos beoog in subparagraaf (i) in te trek of te wysig nie.

(iv) Enige beslissing, kennisgewing of mededeling kan ingetrek of gewysig word soos in subparagraaf (i) beoog met ingang van die datum waarop sodanige beslissing gegee of sodanige kennisgewing of mededeling onderteken of uitgereik is of die datum van intrekking of wysiging daarvan en word, totdat dit aldus ingetrek is, behalwe vir doeleindes van hierdie subartikel, geag deur die Kommissaris gegee, onderteken of uitgereik te gewees het.”.

(2) Subartikel (1) of enige deel daarvan tree in werking op die datum of datums deur die Minister van Finansies by kennisgewing in die *Staatskoerant* bepaal.

**Wysiging van artikel 18 van Wet 91 van 1964, soos gewysig deur artikel 2 van Wet 95 van 1965, artikel 6 van Wet 105 van 1969, artikel 4 van Wet 71 van 1975, artikel 3 van Wet 105 van 1976, artikel 3 van Wet 112 van 1977, artikel 4 van Wet 84 van 1987, artikel 13 van Wet 59 van 1990, artikel 11 van Wet 45 van 1995, artikel 48 van 53 van 1999, artikel 37 van Wet 19 van 2001, artikel 119 van Wet 60 van 2001, artikel 102 van Wet 74 van 2002 en artikel 21 van Wet 34 van 2004**

26. Artikel 18 van die Doeane- en Aksynswet, 1964, word hierby gewysig—

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

“(3)(a) Behoudens [die bepalinge van] subartikel (4), eindig enige aanspreeklikheid vir reg kragtens subartikel (2) [wanneer daar deur die betrokke persoon bewys word] indien—

(i) goedere bestem vir 'n plek in die gemeenskaplike doeanegebied, behoorlik by daardie plek geklaar is; of

(ii) (aa) goedere bestem vir 'n plek buite die grense van die gemeenskaplike doeanegebied, wel uit daardie gebied geneem is; of

(bb) in omstandighede en ooreenkomstig prosedures wat die Kommissaris by reël bepaal, die goedere in die land van bestemming behoorlik verantwoord is.

- (b) Any person who is liable for duty as contemplated in subsection (2) must—
- (i) obtain valid proof that liability has ceased as specified in paragraph (a)(i) or (ii) within the period and in compliance with such requirements as may be prescribed by rule; 5
  - (ii) keep such proof and other information and documents relating to such removal as contemplated in section 101 and the rules made thereunder available for inspection by an officer; and
  - (iii) submit such proof and other information and documents to the Commissioner at such time and in such form and manner as the Commissioner may require; or 10
  - (iv) (aa) notify the Commissioner immediately if liability has not ceased as required in terms of paragraph (a)(i) or (ii) or valid proof has not been obtained as contemplated in subparagraph (i); and 15
  - (bb) submit payment of duty and value-added tax payable in terms of the Value-Added Tax Act, 1991 (Act No. 89 of 1991), together with such notification as if the goods were entered for home consumption on the date of entry for removal in bond. 20
- (c) Subject to subsection (4), there shall be no liability for duty on any goods where such liability was discovered as a result of, or following upon any such inspection by an officer or a request by the Commissioner as contemplated in paragraph (b)(ii) and (iii), respectively, where that liability occurred on a date earlier than two years prior to the date on which such inspection commenced or such request was made.”; 25
- (b) by the substitution for subsection (4) of the following subsection:
- “(4) If—
- (a) liability has not ceased as contemplated in subsection (3)(a); or
  - (b) the goods have been diverted or deemed to have been diverted as contemplated in subsection (13), 30
- such person shall, except if payment has been made as contemplated in subsection (3)(b)(iv), upon demand pay—
- (i) the duty and value-added tax due in terms of the Value-Added Tax Act, 1991 (Act No. 89 of 1991), as if the goods were entered for home consumption on the date of entry for removal in bond; 35
  - (ii) any amount that may be due in terms of section 88(2); and
  - (iii) any interest due in terms of section 105:
- Provided that such payment shall not indemnify a person against any fine or penalty provided for in this Act.”; 40
- (c) by the substitution in subsection (13) for paragraph (a) of the following paragraph:
- “(a) (i) No person shall, without the permission of the Commissioner, divert any goods removed in bond to a destination other than the destination declared on entry for removal in bond or deliver such goods or cause such goods to be delivered in the Republic except into the control of the Controller at the place of destination. 45
- (ii) Goods shall be deemed to have been so diverted where—
- (aa) no permission to divert such goods has been granted by the Commissioner as contemplated in subparagraph (i) and the person concerned fails to produce valid proof and other information and documents for inspection to an officer or to submit such proof, information and documents to the Commissioner as required in terms of subsection (3)(b)(ii) and (iii), respectively; 50
  - (bb) any such proof is the result of fraud, misrepresentation or non-disclosure of material facts; or 55

- (b) 'n Persoon wat aanspreeklik is vir reg soos in subartikel (2) beoog, moet—
- (i) geldige bewys verkry dat aanspreeklikheid geëindig het soos vermeld in paragraaf (a)(i) of (ii) binne die tydperk en ooreenkomstig sodanige vereistes soos by reël voorgeskryf word; 5
  - (ii) sodanige bewys en ander inligting en dokumente betreffende sodanige verwydering soos in artikel 101 beoog en die reëls wat daarkragtens uitgevaardig is vir inspeksie deur 'n beampte beskikbaar hou; en
  - (iii) sodanige bewys en ander inligting en dokumente aan die Kommissaris voorlê op sodanige tydstip en in sodanige vorm en op die wyse soos die Kommissaris vereis; of 10
  - (iv) (aa) die Kommissaris onmiddellik in kennis stel indien aanspreeklikheid nie geëindig het soos ingevolge paragraaf (a)(i) of (a)(ii) vereis word nie of geldige bewys nie verkry is soos in subparagraaf (i) beoog nie; en 15
  - (bb) betaling van reg en belasting op toegevoegde waarde ingevolge die Wet op Belasting op Toegevoegde Waarde, 1991 (Wet No. 89 van 1991), betaalbaar tesame met sodanige kennisgewing voorlê asof die goedere op die datum van klaring vir vervoer onder waarborg vir binnelandse verbruik geklaar was. 20
- (c) Behoudens subartikel (4), is daar geen aanspreeklikheid nie vir reg op enige goedere waar sodanige aanspreeklikheid ontdek is weens of na afloop van enige sodanige inspeksie deur 'n beampte of 'n versoek deur die Kommissaris soos onderskeidelik in paragraaf (b)(ii) en (iii) beoog, waar daardie aanspreeklikheid geskied het op 'n datum vroeër as twee jaar voor die datum waarop sodanige inspeksie 'n aanvang geneem het of sodanige versoek gedoen is.”; 25
- (b) deur subartikel (4) deur die volgende subartikel te vervang: 30
- “(4)(a) Indien—
- (a) aanspreeklikheid nie geëindig het soos in subartikel (3)(a) beoog nie; of
  - (b) die goedere afgewend is of geag word afgewend te wees soos in subartikel (13) beoog, 35
- moet sodanige persoon, behalwe as betaling gemaak is soos in subartikel (3)(b)(iv) beoog, op aanvraag betaal—
- (i) die reg en belasting op toegevoegde waarde verskuldig ingevolge die Wet op Toegevoegde Waarde, 1991 (Wet No 89 van 1991), asof die goedere op die datum van klaring vir verwydering onder waarborg vir binnelandse verbruik geklaar was; 40
  - (ii) enige bedrag wat ingevolge artikel 88(2) verskuldig is; en
  - (iii) enige rente ingevolge artikel 105 verskuldig;
- Met dien verstande dat sodanige betaling nie 'n persoon teen enige boete of pene waarvoor in hierdie Wet voorsiening gemaak word, vrywaar nie.”; 45
- (c) deur in subartikel (13) paragraaf (a) deur die volgende paragraaf te vervang:
- (a) (i) Niemand mag, sonder die toestemming van die Kommissaris, enige goedere wat onder waarborg vervoer word na 'n ander bestemming as die bestemming wat by klaring vir vervoer onder waarborg aangegee is, afwend nie, of sodanige goedere in die Republiek, behalwe in die beheer van die Kontroleur op die plek van bestemming, aflewer of laat aflewer nie. 50
  - (ii) Goedere word geag aldus afgewend te wees waar—
  - (aa) geen toestemming om die goedere af te wend deur die Kommissaris soos in paragraaf (i) beoog, verleen is nie en die betrokke persoon versuim om geldige bewys en ander inligting en dokumente vir inspeksie aan 'n beampte te lewer of sodanige bewys, inligting en dokumente aan die Kommissaris voor te lê soos ingevolge subartikel (3)(b)(ii) en (iii), onderskeidelik, vereis; 55
  - (bb) enige sodanige bewys die gevolg is van bedrog, wanvoorstelling of nie-openbaring van wesenlike feite; of 60

- (cc) such person makes a false declaration for the purpose of this section.
- (iii) Where any person fails to comply with or contravenes any provision of this subsection the goods shall be liable to forfeiture in accordance with this Act.”; and
- (d) by the substitution in subsection (13) for subparagraph (i) of paragraph (b) of the following subparagraph:
- “(i) Notwithstanding the provisions of paragraph (a), the Commissioner may, in such circumstances and subject to such conditions as the Commissioner may prescribe by rule permit goods in transit through the Republic or any class or kind of such goods to be delivered to any place approved by him for the purposes of **[sorting or repacking]**—
- (aa) carrying out activities for the purpose of preserving or maintaining the goods;
- (bb) inspection of the goods;
- (cc) cleaning the goods;
- (dd) sorting the goods;
- (ee) tallying the goods;
- (ff) re-packing the goods;
- (gg) sealing the goods or the transport unit;
- (hh) exercising control over the movement of goods into, in and from such place; and
- (ii) any other activity that may be necessary to prepare and forward the goods for transit.”.

**Amendment of section 18A of Act 91 of 1964, as inserted by section 5 of Act 84 of 1987 and amended by section 12 of Act 45 of 1995, section 38 of Act 19 of 2001 and section 120 of Act 60 of 2001**

27. Section 18A of the Customs and Excise Act, 1964, is hereby amended—

- (a) by the substitution for subsection (1) of the following subsection:
- “(1) Notwithstanding any liability for duty incurred thereby by any person in terms of any other provision of this Act, any person who exports any goods from a customs and excise warehouse to any place outside the common customs area shall, subject to the provisions of subsection (2), be liable for the duty on all goods which he or she so exports.”;
- (b) by the substitution for subsection (2) of the following subsection:
- “(2) (a) Subject to the provisions of subsection (3), any liability for duty in terms of subsection (1) shall cease **[when it is proved by the exporter that] if—**
- (i) the said goods have been duly taken out of the common customs area; or
- (ii) in circumstances and in accordance with procedures which the Commissioner may determine by rule, **[that]** the goods have been duly accounted for in the **[county]** country of destination.
- (b) An exporter who is liable for duty as contemplated in subsection (1) must—
- (i) obtain valid proof that liability has ceased as specified in paragraph (a)(i) or (ii) within the period and in compliance with such requirements as may be prescribed by rule;
- (ii) keep such proof and other information and documents relating to such export as contemplated in section 101 and the rules made thereunder available for inspection by an officer; and
- (iii) submit such proof and other information and documents to the Commissioner at such time and in such form and manner as the Commissioner may require; or
- (iv) (aa) notify the Commissioner immediately if liability has not ceased as required in terms of paragraph (a)(i) or (ii) or valid proof has not been obtained as contemplated in subparagraph (i); and

- (cc) sodanige persoon vir doeleindes van hierdie artikel 'n vals verklaring maak.
- (iii) Waar enige persoon versuim om aan enige bepaling van hierdie subartikel te voldoen of dit oortree, is die goedere ooreenkomstig hierdie Wet aan verbeuring onderhewig.”; en 5
- (d) deur in subartikel (13) subparagraaf (i) van paragraaf (b) deur die volgende subparagraaf te vervang:
- (i) Ondanks die bepalings van paragraaf (a), kan die Kommissaris in die omstandighede en behoudens die voorwaardes wat die Kommissaris by reël voorskryf, toelaat dat goedere wat in transito 10 deur die Republiek is of enige klas of soort van sodanige goedere afgelewer word by enige plek deur hom goedgekeur vir doeleindes van [sortering of herverpakking.]—
- (aa) uitvoering van aktiwiteite vir die doel om die goedere te preserveer of in stand te hou; 15
- (bb) inspeksie van die goedere;
- (cc) skoonmaak van die goedere;
- (dd) sortering van die goedere;
- (ee) tel van die goedere;
- (ff) herverpakking van die goedere; 20
- (gg) verseëling van die goedere of die vervoereenheid;
- (hh) uitoefening van kontrole oor die beweging van goedere tot in, binne en vanaf sodanige plek; en
- (ii) enige ander aktiwiteit wat nodig is om die goedere vir transito voor te herei en te versend.”. 25

**Wysiging van artikel 18A van Wet 91 van 1964, soos ingevoeg deur artikel 5 van Wet 84 van 1987 en gewysig deur artikel 12 van Wet 45 van 1995, artikel 38 van Wet 19 van 2001 en artikel 120 van Wet 60 van 2001**

27. Artikel 18A van die Doeane- en Aksynswet, 1964, word hierby gewysig—
- (a) deur subartikel (1) deur die volgende subartikel te vervang: 30
- “(1) Ondanks enige aanspreeklikheid vir reg deur enige persoon ingevolge enige ander bepaling van hierdie Wet opgeleë, is enige persoon wat goedere uit 'n doeane- en aksynspakhuis na enige plek buite die gemeenskaplike doeanegebied uitvoer, behoudens die bepalings van subartikel (2) aanspreeklik vir die reg op alle goedere wat hy of sy aldus 35 uitvoer.”;
- (b) deur subartikel (2) deur die volgende subartikel te vervang:
- “(2) (a) Behoudens die bepalings van subartikel (3) eindig enige aanspreeklikheid vir reg ingevolge subartikel (1) [**wanneer daar deur die uitvoerder bewys word**] indien— 40
- (i) die genoemde goedere wel uit die gemeenskaplike doeanegebied geneem is; of [,]
- (ii) in omstandighede en ooreenkomstig die prosedures wat die Kommissaris by reël bepaal, [**dat**] die goedere in die land van bestemming behoorlik veantwoord is.” 45
- (b) 'n Uitvoerder wat aanspreeklik is vir reg soos in subartikel (1) beoog, moet—
- (i) geldige bewys verkry dat aanspreeklikheid geëindig het soos vermeld in paragraaf (a)(i) of (ii) binne die tydperk en ooreenkomstig sodanige vereistes soos by reël voorgeskryf word; 50
- (ii) sodanige bewys en ander inligting en dokumente betreffende sodanige uitvoer soos in artikel 101 beoog en die reëls wat daarkragtens uitgevaardig is vir inspeksie deur 'n beampte beskikbaar hou; en
- (iii) sodanige bewys en ander inligting en dokumente aan die Kommissaris voorlê op sodanige tydstip en in sodanige vorm en op die wyse soos die Kommissaris vereis; of 55
- (iv) (aa) die Kommissaris onmiddellik in kennis stel indien aanspreeklikheid nie geëindig het soos ingevolge paragraaf (a)(i) of (ii) vereis word nie of geldige bewys nie verkry is soos in subparagraaf (i) beoog nie; en 60

- (bb) submit payment of duty and value-added tax payable in terms of the Value-Added Tax Act, 1991 (Act No. 89 of 1991), together with such notification as if the goods were entered for home consumption on the date of entry for export.
- (c) Subject to subsection (3), there shall be no liability for duty on any goods where such liability was discovered as a result of, or following upon, any such inspection by an officer or a request by the Commissioner as contemplated in paragraph (b)(ii) and (iii), respectively, where that liability occurred on a date earlier than two years prior to the date on which such inspection commenced or such request was made.”;
- (c) by the substitution for subsection (3) of the following subsection:
- “(3) If—
- (a) the liability has not ceased as contemplated in subsection (2)(a); or
- (b) the goods have been diverted or deemed to have been diverted as contemplated in subsection (9),
- such person shall, except if payment has been made as contemplated in subsection (2)(b)(iv), upon demand pay—
- (i) the duty and value-added tax due in terms of the Value-Added Tax Act 1991 (Act No. 89 of 1991), as if the goods were entered for home consumption on the date of entry for export;
- (ii) any amount that may be due in terms of section 88(2); and
- (iii) any interest due in terms of section 105;
- Provided that such payment shall not indemnify a person against any fine or penalty provided for in this Act.”; and
- (d) by the substitution for subsection (9) of the following subsection:
- “(9) (a) No person shall, without the permission of the Commissioner, divert any goods for export to a destination other than the destination declared on entry for export or deliver such goods or cause such goods to be delivered in the Republic or any other country in the common customs area.
- (b) Goods shall be deemed to have been so diverted where—
- (i) no permission to divert such goods has been granted by the Commissioner as contemplated in paragraph (a) and the person concerned fails to produce valid proof and other information and documents for inspection to an officer or to submit such proof, information and documents to the Commissioner as required in terms of subsection (2)(b)(ii) and (iii), respectively;
- (ii) any such proof is the result of fraud, misrepresentation or non-disclosure of material facts; or
- (iii) such person makes a false declaration for the purpose of this section.
- (c) Where any person fails to comply with or contravenes any provision of this subsection the goods shall be liable to forfeiture in accordance with this Act.”.

#### Insertion of section 38A in Act 91 of 1964

28. The following section is hereby inserted in the Customs and Excise Act, 1964, after section 38:

#### **“Special provisions in respect of storage and clearance and release of stores or spares and equipment supplied to foreign-going ships and aircraft**

- “38A. (1) (a) This section applies to stores or spares and equipment—
- (i) stored in a licensed special customs and excise storage warehouse contemplated in section 21(1) and supplied by the licensee; or

(bb) betaling van reg en belasting op toegevoegde waarde ingevolge die Wet op Belasting op Toegevoegde Waarde, 1991 (Wet No. 89 van 1991), betaalbaar tesame met sodanige kennisgewing voorlê asof die goedere op die datum van klaring vir uitvoer vir binnelandse verbruik geklaar was.

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(c) Behoudens subartikel (3), is daar geen aanspreeklikheid nie vir reg op enige goedere waar sodanige aanspreeklikheid ontdek is weens of na afloop van enige sodanige inspeksie deur 'n beampte of 'n versoek deur die Kommissaris soos onderskeidelik in paragraaf (b)(ii) en (iii) beoog, waar daardie aanspreeklikheid geskied het op 'n datum vroeër as twee jaar voor die datum waarop sodanige inspeksie 'n aanvang geneem het of sodanige versoek gedoen is.”;

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

“(3) Indien—

(a) aanspreeklikheid nie geëindig het soos in subartikel (2)(a) beoog nie; of

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(b) die goedere afgewend is of geag word afgewend te wees soos in subartikel (9) beoog,

moet sodanige persoon, behalwe waar betaling gemaak is soos in subartikel (2)(b)(iv) beoog, op aanvraag betaal—

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(i) die reg en belasting op toegevoegde waarde verskuldig ingevolge die Wet op Toegevoegde Waarde, 1991 (Wet No. 89 van 1991), asof die goedere op die datum van klaring vir uitvoer vir binnelandse verbruik geklaar was;

(ii) enige bedrag wat ingevolge artikel 88(2) verskuldig is;

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(iii) enige rente ingevolge artikel 105 verskuldig;

Met dien verstande dat sodanige betaling nie 'n persoon teen enige boete of pene waarvoor in hierdie Wet voorsiening gemaak word, vrywaar nie.”; en

(d) deur subartikel (9) deur die volgende subartikel te vervang:

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“(9) (a) Niemand mag, sonder die toestemming van die Kommissaris, enige goedere vir uitvoer na 'n ander bestemming as die bestemming wat by klaring vir uitvoer aangegee is, afwend nie, of sodanige goedere in die Republiek of enige ander land in die gemeenskaplike doeanegebied aflewer of laat aflewer nie.

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(b) Goedere word geag aldus afgewend te wees waar—

(i) geen toestemming om die goedere af te wend deur die Kommissaris soos in paragraaf (a) beoog, verleen is nie en die betrokke persoon versuim om geldige bewys en ander inligting en dokumente vir inspeksie aan 'n beampte te lewer of sodanige bewys, inligting en dokumente aan die Kommissaris voor te lê soos ingevolge subartikel (2)(b)(ii) en (iii), onderskeidelik, vereis;

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(ii) enige sodanige bewys die gevolg is van bedrog, wanvoorstelling of nie-openbaring van wesenlike feite; of

(iii) sodanige persoon vir doeleindes van hierdie artikel 'n vals verklaring maak.

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(c) Waar enige persoon versuim om aan enige bepaling van hierdie subartikel te voldoen of dit oortree, is die goedere ooreenkomstig die Wet aan verbeuring onderhewig.”.

#### Invoeging van artikel 38A van Wet 91 van 1964

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28. Die volgende artikel word hierby in die Doeane- en Aksynswet, 1964, na artikel 38 ingevoeg:

**“Spesiale bepalings ten opsigte van opslag en klaring en lossing van voorrade of onderdele en toerusting verskaf aan skepe en vliegtuie op buitelandse vaart of vlug**

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“38A (1)(a) Hierdie artikel is van toepassing op voorrade of onderdele en toerusting—

(i) opgeslaan in 'n gelisensieerde spesiale doeane- en aksynsopslag-pakhuis beoog in artikel 21(1) en deur die lisensiehouer verskaf; of

- (ii) if goods in free circulation, supplied by any person, including a person who is the licensee of such warehouse (referred to in this section as the 'exporter'), to foreign-going ships or aircraft.
- (b) Notwithstanding anything to the contrary contained in this Act, stores or spares and equipment free of duty may be stored in such a warehouse as may be prescribed by rule.
- (c) Unless otherwise specified by rule, stores or spares and equipment in such a warehouse may only be removed and delivered by the licensee.
- (d) Except as otherwise provided in this section or any rules made thereunder, any provision relating to a special customs and excise storage warehouse contemplated in section 21(1) and of sections 18A, 38, 59A, 60, 64E and 101 shall, as may be applicable, apply *mutatis mutandis* to the storage in, and the removal of goods from, such warehouse.
- (e) (i) In this section and any provision of any Schedule or rule relating to stores or stores or spares and equipment for foreign-going ships or aircraft, 'foreign-going ship', 'foreign-going aircraft', 'goods in free circulation', 'spares and equipment', 'stores' and any other expression required to be defined shall, unless the context otherwise indicates, have the meaning assigned thereto in the rules for this section.
- (ii) In this section, unless the context otherwise indicates, 'goods' means the 'stores or spares and equipment' contemplated in this section.
- (2) (a) Notwithstanding anything to the contrary contained in this Act, the Commissioner may by rule permit the licensee of such a warehouse or an exporter to supply goods to foreign-going ships or aircraft on the issuing by that licensee or exporter of a dispatch and delivery note or such other document as the Commissioner may prescribe or approve by rule, if the licensee or exporter—
- (i) is accredited in terms of section 64E;
  - (ii) for the purpose of electronic communication with the Commissioner, is a registered user in accordance with the provisions of section 101A and the rules made thereunder;
  - (iii) complies with such conditions as the Commissioner may prescribe generally by rule or require in a specific instance; and
  - (iv) keeps such books, accounts or other documents or data created by a computer of goods received, including goods returned, and removals as the Commissioner may prescribe generally by rule or require in a specific instance.
- (b) Any document issued by the licensee or exporter as contemplated in paragraph (a) shall, for the purpose of section 20(4) and subject to paragraph (c), be deemed to be due entry for export from the time of removal of such goods from the special customs and excise storage warehouse or the place from where the goods in free circulation are exported, as the case may be.
- (c) (i) Any licensee who removes such goods from such a warehouse, or an exporter who exports such goods, by means of the issuing of a dispatch and delivery note or other document referred to in paragraph (a) shall deliver to the Controller a validating bill of entry export declaring those goods at the time, in the manner and containing such particulars as may be specified by rule in respect of such dispatch and delivery note or other document.
- (ii) Where any goods for which such a dispatch and delivery note or other document is issued is lost, destroyed, stolen or damaged after removal the licensee or exporter must at the same time pay the duty due on the goods.



- (ii) indien goedere in vrye sirkulasie, deur enige persoon verskaf, met inbegrip van 'n persoon wat die lisensiehouer van sodanige pakhuis is (in hierdie artikel as die 'uitvoerder' vermeld), aan skepe of vliegtuie op buitelandse vaart of vlug.
- (b) Ondanks andersluidende bepalings van hierdie Wet, kan voorrade of onderdele en toerusting vry van reg in sodanige pakhuis opgeslaan word soos by reël voorgeskryf word. 5
- (c) Tensy anders by reël vermeld, mag voorrade of onderdele en toerusting in sodanige pakhuis slegs deur die lisensiehouer verwyder en afgelewer word. 10
- (d) Behalwe soos in hierdie artikel of enige reëls daarkragtens uitgevaardig anders bepaal word, is enige bepaling in verband met 'n spesiale doeane-en aksynsopslagpakhuis beoog in artikel 21(1) en van artikels 18A, 38, 59A, 60, 64E en 101, soos toepaslik *mutatis mutandis* op die opslag in, en die verwydering van goedere vanaf, sodanige pakhuis van toepassing. 15
- (e) (i) In hierdie artikel en enige bepaling van enige Bylae of reël in verband met voorrade, of voorrade of onderdele en toerusting vir skepe of vliegtuie op buitelandse vaart of vlug, het 'skip op buitelandse vaart', 'vliegtuig op buitelandse vlug', 'goedere in vrye sirkulasie', 'onderdele en toerusting', 'voorrade' en enige ander uitdrukking wat nodig is om omskryf te word, tensy uit die samehang anders blyk, die betekenis wat in die reëls vir hierdie artikel daaraan toegewys is. 20
- (ii) In hierdie artikel, tensy uit die samehang anders blyk, beteken 'goedere' die 'voorrade of onderdele en toerusting' in hierdie artikel beoog. 25
- (2) (a) Ondanks andersluidende bepalings van hierdie Wet, kan die Kommissaris by reël die lisensiehouer van sodanige pakhuis of 'n uitvoerder toelaat om goedere aan skepe of vliegtuie op buitelandse vaart of vlug te verskaf by die uitreiking deur daardie lisensiehouer of uitvoerder van 'n versending- en afleveringsnota of sodanige ander dokument wat die Kommissaris by reël voorskryf of goedkeur, indien die lisensiehouer of uitvoerder— 30
- (i) ingevolge artikel 64E geakkrediteer is;
- (ii) vir die doeleindes van elektroniese kommunikasie met die Kommissaris, 'n geregistreerde gebruiker is ooreenkomstig die bepalings van artikel 101A en die reëls daarkragtens uitgevaardig; 35
- (iii) voldoen aan sodanige voorwaardes wat die Kommissaris algemeen by reël voorskryf of in 'n spesifieke geval vereis; en
- (iv) sodanige boeke, rekeninge of ander dokumente of data deur 'n rekenaarstelsel voortgebring hou van goedere ontvang, met inbegrip van goedere teruggebring, en verwyderings wat die Kommissaris algemeen by reël voorskryf of in 'n spesifieke geval vereis. 40
- (b) Enige dokument uitgereik deur die lisensiehouer of uitvoerder soos in paragraaf (a) beoog, word, by die toepassing van artikel 20(4) en behoudens paragraaf (c), geag behoorlike klaring vir uitvoer vanaf die tydstop van verwydering van daardie goedere van die spesiale doeane- en aksynsopslagpakhuis of die plek waarvandaan die goedere in vrye sirkulasie uitgevoer word, al na die geval, te wees. 45
- (c) (i) Enige lisensiehouer wat sodanige goedere van sodanige pakhuis verwyder, of 'n uitvoerder wat sodanige goedere uitvoer, deur middel van die uitreiking van 'n versending- en afleveringsnota of ander dokument in paragraaf (a) bedoel, moet aan die Kontroleur 'n bekragtende uitvoerklaringsbrief voorlê wat daardie goedere verklaar op die tydstop, op die wyse en wat sodanige besonderhede bevat ten opsigte van sodanige versending- en afleveringsnota of ander dokument soos by reël vermeld word. 50
- (ii) Waar enige goedere waarvoor so 'n versending- en afleveringsnota of ander dokument uitgereik is verloor, vernietig gesteel of beskadig is na verwydering, moet die lisensiehouer terselfdertyd die reg verskuldig op die goedere betaal. 55 60

- (3) The Commissioner may—
- (a) permit the return of stores or spares and equipment supplied by the licensee or exporter as contemplated in this section to the licensed premises or other place, as the case may be;
  - (b) require the submission of dispatch and delivery notes or other documents electronically by such a person or class of persons in respect of such goods, in such circumstances and on such conditions and subject to compliance with such procedures as may be prescribed by rule.
- (4) The Commissioner may by rule prescribe for the purposes of this section or section 21(1)—
- (a) definitions as contemplated in subsection (1);
  - (b) goods to which this section relates and any requirement to control the storage, removal and return of such goods;
  - (c) (i) the form of and the particulars to be stated on the dispatch and delivery note, any invoice or other document;
  - (ii) the documents that must accompany the movement in each case of any stores, spares and equipment when removed for delivery by the licensee or exporter;
  - (d) books, accounts and other documents and data to be kept;
  - (e) all matters required or permitted by this section to be prescribed by rule;
  - (f) any other matter which the Commissioner may consider reasonably necessary and useful for the effective administration of the provisions contained in this section.”.

#### Insertion of section 75A in Act 91 of 1964

29. The following section is hereby inserted in the Customs and Excise Act, 1964, after section 75:

#### “Circumstances in which imported goods free of duty are admissible under a rebate item of Schedule No. 4

- 75A. Notwithstanding section 75, imported goods free of duty that are—
- (a) exempt from value-added tax in terms of any item in paragraph 8 to Schedule 1 to the Value-Added Tax Act (Act No. 89 of 1991); and
  - (b) identified by the item number and description identical to any item in Schedule No. 4 to this Act,
- may be entered under the item in paragraph 8 of Schedule 1 to the Value-Added Tax Act, 1991, but the goods shall, in addition to any relevant provision of the Value-Added Tax Act, 1991, be subject to compliance with the provisions of section 75 of this Act and the corresponding item of Schedule No. 4 as if the goods were entered thereunder.”.

#### Amendment of section 93 of Act 91 of 1964, as substituted by section 67 of Act 53 of 1999 and section 150 of Act 45 of 2003

30. (1) Section 93 of the Customs and Excise Act, 1964, is hereby amended by the substitution for subsection (2) of the following subsection:

- “(2) The Commissioner or an officer—
- (a) may subject to section 3(2), on [good cause shown] such conditions as may be considered necessary; or
  - (b) must as a result of the finalisation of any procedure contemplated in Chapter XA,
- mitigate or remit any penalty incurred under this Act [on such conditions as the Commissioner may determine].”.

(2) Subsection (1) comes into operation on the date determined by the Minister of Finance by notice in the *Gazette*.

- (3) Die Kommissaris kan—
- (a) die terugbring van voorrade of onderdele en toerusting deur die lisensiehouer of uitvoerder verskaf soos in hierdie artikel beoog na die gelisensieerde persele of ander plek, na gelang van die geval, toelaat;
  - (b) die elektroniese indiening van versending- en afleweringssnotas of ander dokumente deur sodanige persoon of klas van persone ten opsigte van sodanige goedere vereis, in sodanige omstandighede en op sodanige voorwaardes en onderhewig aan die nakoming van sodanige prosedures soos by reël voorgeskryf word. 5
  - (4) Die Kommissaris kan vir doeleindes van hierdie artikel of artikel 21(1) by reël voorskryf— 10
    - (a) omskrywings soos in subartikel (1) beoog;
    - (b) goedere waarop hierdie artikel betrekking het en enige vereiste om die opslag, verwydering en terugbring van sodanige goedere te beheer;
    - (c) (i) die vorm van die versending- en afleweringssnota, enige faktuur of ander dokument en die besonderhede wat daarop vermeld moet word; 15
    - (ii) die dokumente wat in elke geval die beweging van enige voorrade, onderdele en toerusting moet vergesel wanneer dit vir aflewering deur die lisensiehouer of uitvoerder verwyder word; 20
    - (d) boeke, rekeninge en ander dokumente en data wat gehou moet word;
    - (e) alle aangeleenthede wat deur hierdie artikel by reël voorgeskryf moet of kan word;
    - (f) enige ander aangeleentheid wat die Kommissaris vir die effektiewe administrasie van die bepalings van hierdie artikel redelikerwys nodig en nuttig ag.”. 25

#### Invoeging van artikel 75A van Wet 91 van 1964

29. Die volgende artikel word hierby in die Doeane- en Aksynswet, 1964, na artikel 75 ingevoeg:

**“Omstandighede waarin ingevoerde goedere vry van reg ingevolge ’n kortingitem van Bylae No. 4 toelaatbaar is** 30

**75A.** Ondanks die bepalings van artikel 75, kan ingevoerde goedere vry van reg wat—

- (a) vrygestel is van die belasting op toegevoegde waarde ingevolge enige item in paragraaf 8 by Bylae 1 van die Wet op Belasting op Toegevoegde Waarde (Wet No. 89 van 1991); en 35
  - (b) geïdentifiseer is deur die itemnommer en beskrywing wat dieselfde is as enige item in Bylae No.4 van hierdie Wet, 40
- geklaar word ingevolge die item in paragraaf 8 van Bylae 1 by die Wet op Belasting op Toegevoegde Waarde, 1991, maar die goedere is, benewens enige relevante bepaling van die Wet op Belasting op Toegevoegde Waarde, 1991, onderhewig aan die nakoming van die bepalings van artikel 75 van hierdie Wet en die ooreenstemmende item van Bylae No. 4 asof die goedere daarvolgens geklaar is.”.

#### Wysiging van artikel 93 van Wet 91 van 1964, soos vervang deur artikel 67 van Wet 53 van 1999 en artikel 150 van Wet 45 van 2003 45

30. (1) Artikel 93 van die Doeane-en Aksynswet, 1964, word hierby gewysig deur subartikel (2) deur die volgende subartikel te vervang:

“(2) Die Kommissaris of ’n beampte—

- (a) kan, behoudens artikel 3(2), op [op goeie gronde aangetoon] die voorwaardes wat nodig geag word; of 50
- (b) moet, weens die finalisering van enige prosedure in Hoofstuk XA beoog, enige pene wat ingevolge hierdie Wet opgeloopt is, [op die voorwaardes wat die Kommissaris bepaal] verminder of kwytgeld.”.

(2) Subartikel (1) tree in werking op die datum deur die Minister van Finansies by kennisgewing in die Staatskoerant bepaal. 55

**Amendment of section 105 of Act 91 of 1964, as substituted by section 2 of Act 111 of 1991 and amended by section 65 of Act 45 of 1995, section 72 of Act 30 of 1998, section 6 of Act 32 of 1999, section 63 of Act 30 of 2000, section 111 of Act 74 of 2002, section 35 of Act 16 of 2004, section 93 of Act 31 of 2005 and section 72 of Act 20 of 2006**

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31. (1) The Customs and Excise Act, 1964, is hereby amended by the substitution for section 105 of the following section:

**“[Interest on outstanding amounts] Payment of outstanding amounts and interest and mitigation or remission of interest**

**105.** (1) Notwithstanding anything to the contrary in any law contained— 10

- (a) interest shall be payable from such date and for such period as the Commissioner may prescribe by rule on any outstanding amount payable in terms of this Act; 15
- (b) interest shall be payable by the Commissioner on any drawback or refund contemplated in section 75 or 76 from such date and for such period as the Commissioner may prescribe by rule; 15
- (c) the interest so payable shall be paid at a rate the Minister determines in terms of section 80(1)(b) of the Public Finance Management Act, 1999 (Act No. 1 of 1999): Provided that where the Minister fixes a new rate in terms of that Act, that new rate applies for purposes of this Act from the first day of the second month following the date on which that new rate came into operation; 20
- (d) the Commissioner— 25
  - (i) may subject to section 3(2), on such conditions as the Commissioner may consider necessary; or
  - (ii) must as a result of the finalisation of any procedure contemplated in Chapter XA, 30
 

mitigate or remit any interest for which any person is liable by virtue of this section. 30
- (e) the Commissioner may permit payment of any amount referred to in paragraph (a) by instalments of such amounts and at such times and subject to such conditions as the Commissioner may determine; 35
- (f) any such interest— 35
  - (i) shall be calculated on the daily balance owing and compounded monthly; and
  - (ii) when recovered, shall be paid into the National Revenue Fund; 40
- (g) the Commissioner may prescribe by rule— 40
  - (i) all matters which by this section are required or permitted to be prescribed by rule;
  - (ii) any other matter which the Commissioner may consider reasonably necessary and useful to achieve the efficient and effective administration of this section. 45

(2) (a) Interest contemplated in paragraph (b), shall be payable in respect of any such drawback or refund for which a duly completed application is received by the Commissioner after the date this section comes into operation. 45

(b) Interest shall not be compounded on outstanding amounts in respect of which the Commissioner on a date before this section comes into operation permitted payment by instalments in terms of subsection (1)(e).” 50

(2) Subsection (1) or any part thereof comes into operation on the date or dates determined by the Minister of Finance by notice in the *Gazette*.

Wysiging van artikel 105 van Wet 91 van 1964, soos vervang deur artikel 2 van Wet 111 van 1991 en gewysig deur artikel 65 van Wet 45 van 1995, artikel 72 van Wet 30 van 1998, artikel 6 van Wet 32 van 1999, artikel 63 van Wet 30 van 2000, artikel 111 van Wet 74 van 2002, artikel 35 van Wet 16 van 2004, artikel 93 van Wet 31 van 2005 en artikel 72 van Wet 20 van 2006

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31. Die Doeane- en Aksynswet, 1964, word hierby gewysig deur artikel 105 deur die volgende artikel te vervang:

**“[Rente op uitstaande bedrae] Betaling van uitstaande bedrae en rente en vermindering of kwyt skelding van rente**

- 105.** (1) Ondanks andersluidende bepalings van die een of ander Wet— 10
- (a) is rente betaalbaar vanaf die datum en vir die tydperk wat die 10  
Kommissaris by reël voorskryf op enige uitstaande bedrag wat  
ingevolge hierdie Wet betaalbaar is;
  - (b) is rente deur die Kommissaris betaalbaar op enige teruggawe of 15  
terugbetaling beoog in artikel 75 of 76 vanaf die datum en vir die  
tydperk wat die Kommissaris by reël bepaal;
  - (c) word die rente aldus betaalbaar betaal teen ’n koers deur die Minister 20  
ingevolge die bepalings van artikel 80(1)(b) van die Wet op Openbare  
Finansiële Bestuur, 1999 (Wet No. 1 van 1999), bepaal: Met dien  
verstande dat waar die Minister ’n nuwe koers ingevolge daardie Wet  
bepaal, daardie nuwe koers by die toepassing van hierdie Wet geld  
vanaf die eerste dag van die tweede maand wat volg op die datum  
waarop daardie nuwe koers in werking tree;
  - (d) (i) kan die Kommissaris, behoudens artikel 3(2), op sodanige 25  
voorwaardes wat hy nodig ag; of  
(ii) moet die Kommissaris weens finalisering van enige prosedure  
in Hoofstuk XA beoog,  
enige rente waarvoor iemand uit hoofde van hierdie artikel  
aanspreeklik is, verminder of kwyt skeld;
  - (e) kan die Kommissaris toelaat dat ’n bedrag in paragraaf (a) bedoel, 30  
betaal word by wyse van paaiement van die bedrae en op die tye en  
onderhewig aan die voorwaardes wat die Kommissaris bepaal;
  - (f) word enige sodanige rente—  
(i) bereken op die daaglikse balans verskuldig en maandeliks 35  
saamgestel; en  
(ii) wanneer gevorder, in die Nasionale Inkomstefonds gestort;
  - (g) kan die Kommissaris by reël voorskryf—  
(i) alle aangeleenthede wat ingevolge hierdie artikel by reël 40  
voorgeskryf moet of kan word;  
(ii) enige ander aangeleentheid wat die Kommissaris redelikerwys  
nodig en nuttig ag om die doeltreffende en effektiewe  
administrasie van die artikel te bewerkstellig.
- (2) (a) Rente in paragraaf (b) beoog, is betaalbaar ten opsigte van enige 45  
sodanige teruggawe of terugbetaling waarvoor ’n behoorlik voltooide  
aansoek deur die Kommissaris ontvang word na die datum dat hierdie  
artikel in werking tree.
- (b) Rente word nie saamgestel op uitstaande bedrae ten opsigte waarvan 50  
die Kommissaris op ’n datum voordat hierdie artikel in werking tree  
betaling in paaiement ingevolge subartikel (1)(e) toegelaat het nie.”.
- (2) Subartikel (1) of enige deel daarvan tree in werking op die datum of datums deur 50  
die Minister van Finansies by kennisgewing in die *Staatskoerant* bepaal.

**Insertion of section 119A in Act 91 of 1964**

32. The following section is hereby inserted in the Customs and Excise Act, 1964, after section 119:

**“Special provisions for customs modernisation**

- 119A.** (1) Notwithstanding anything to the contrary contained in this Act, for the purposes of modernising customs administration where—
- (a) enabling provisions for the implementation of any part of a modernisation program are urgently required; and
  - (b) it is not possible to effect timeously the necessary amendment to any relevant section of this Act,
- the Commissioner may by rule, in respect of any person or class of persons or any class or kind of goods, ship or vehicle or any activity regulated by this Act—
- (i) adapt any existing power, duty or function contemplated in this Act for purposes of establishing alternative or revised administrative policies and procedures that will give effect to the modernisation program;
  - (ii) include in such rules any requirement, process or procedure relating to—
    - (aa) any electronic communication contemplated in sections 7, 7A, 8, 101A or 101B, or as may be reasonably necessary in respect of any other activity which is required to be regulated by this Act;
    - (bb) the processing of travellers;
    - (cc) the clearance of goods;
    - (dd) the import, export or handling of goods;
    - (ee) the licensing and the operation of licensed premises;
    - (ff) the control over the movement of any person, ship, vehicle or goods;
    - (gg) the manufacture of goods;
    - (hh) the administration of any international agreement; and
    - (ii) any other activity regulated by this Act.
- (2) Any rule contemplated in subsection (1)—
- (a) must be consistent with the objectives of this Act;
  - (b) may exempt any person or class of persons or any class or kind of goods, ship or vehicle or any activity regulated by this Act from the application of such rule in the circumstances and for the period as may be specified in such rule.
- (3) Any rule made or any amendment or withdrawal of or insertion in such rule under this section in any calendar year shall, unless Parliament otherwise provides, lapse on the last day of the next calendar year, but without detracting from the validity of such rule or any amendment, withdrawal or insertion before it has so lapsed.”.

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

33. (1) Section 1 of the Value-Added Tax Act, 1991, is hereby amended by the insertion before the definition of “business day” of the following definition:

**Invoeging van artikel 119A in Wet 91 van 1964**

**32.** Die volgende artikel word hierby in die Doeane- en Aksynswet, 1964, na artikel 119 ingevoeg:

**“Spesiale bepalings vir doeane-modernisering**

- 119A.** (1) Ondanks andersluidende bepalings van hierdie Wet, met die 5  
doel om doeane-administrasie te moderniseer—
- (a) waar magtigende bepalings om enige deel van 'n moderniserings- 10  
program te implementeer dringend vereis word; en
  - (b) dit nie moontlik is om betyds die nodige wysiging aan enige betrokke 10  
artikel van die Wet aan te bring nie,  
kan die Kommissaris by reël, ten opsigte van enige persoon of klas van  
persone of enige klas of soort van goedere, skip of voertuig of enige  
aktiwiteit wat deur die Wet gereël word—
  - (i) enige bestaande bevoegdheid, plig of funksie beoog in hierdie Wet 15  
aanpas vir die doel om alternatiewe of gewysigde administratiewe  
beleidsrigtings of prosedures te vestig wat aan die moderniserings-  
program uitvoering gee;
  - (ii) in sodanige reëls enige vereiste, proses of prosedure insluit met 20  
betrekking tot—
    - (aa) enige elektroniese kommunikasie beoog in artikels 7, 7A, 8, 20  
101A of 101B of wat redelikerwys nodig is ten opsigte van  
enige ander aktiwiteit wat deur die Wet gereël word;
    - (bb) die prosessering van reisigers;
    - (cc) die klaring van goedere;
    - (dd) die invoer, uitvoer of hantering van goedere; 25
    - (ee) lisensiering en die werksaamhede van gelisensieerde persele;
    - (ff) die beheer oor die beweging van enige persoon, skip of  
voertuig of goedere;
    - (gg) die vervaardiging van goedere;
    - (hh) die administrasie van enige internasionale ooreenkomse; en 30
    - (ii) enige ander aktiwiteit wat deur hierdie Wet gereël word.
  - (2) Enige reël in subartikel (1) beoog—
  - (a) moet in ooreenstemming met die oogmerke van hierdie Wet wees;
  - (b) kan enige persoon of klas van persone of enige klas of soort van 35  
goedere, skip of voertuig of enige aktiwiteit wat deur hierdie Wet  
gereël word van die toepassing van sodanige reël in die  
omstandighede en vir die tydperk in sodanige reël vermeld, vrystel.
  - (3) Enige reël uitgevaardig of enige wysiging of intrekking van of 40  
invoeging in sodanige reël kragtens hierdie artikel in 'n kalenderjaar verval,  
tensy die Parlement anders bepaal, op die laaste dag van die volgende  
kalenderjaar, maar sonder om afbreuk te doen aan die geldigheid van  
sodanige reël of enige wysiging, intrekking of invoeging voordat dit aldus  
verval het.”.

**Wysiging van artikel 1 van Wet 89 van 1991, soos gewysig deur artikel 21 van Wet 136 van 1991, paragraaf 1 van Goewermentskennisgewing 2695 van 8 November 45  
1991, artikel 12 van Wet 136 van 1992, artikel 1 van Wet 61 van 1993, artikel 22 van  
Wet 97 van 1993, artikel 9 van Wet 20 van 1994, artikel 18 van Wet 37 van 1996,  
artikel 23 van Wet 27 van 1997, artikel 34 van Wet 34 van 1997, artikel 81 van Wet  
53 van 1999, artikel 76 van Wet 30 van 2000, artikel 64 van Wet 59 van 2000, artikel  
65 van Wet 19 van 2001, artikel 148 van Wet 60 van 2001, artikel 114 van Wet 74 50  
van 2002, artikel 47 van Wet 12 van 2003, artikel 164 van Wet 45 van 2003, artikel  
43 van Wet 16 van 2004, artikel 92 van Wet 32 van 2004, artikel 8 van Wet 10 van  
2005, artikel 101 van Wet 31 van 2005, artikel 40 van Wet 9 van 2006, artikel 77 van  
Wet 20 van 2006, artikel 81 van Wet 8 van 2007, artikel 104 van Wet 35 van 2007,  
artikel 68 van Wet 3 van 2008 en artikel 104 van Wet 60 van 2008 55**

**33.** (1) Artikel 1 van die Wet op Belasting op Toegevoegde Waarde, 1991, word hierby gewysig deur die volgende omskrywing na die omskrywing van “beslote korporasie” in te voeg:

## Act No. 18, 2009 TAXATION LAWS SECOND AMENDMENT ACT, 2009

**‘biometrical information’** means the biological data to authenticate the identity of a natural person, and includes—

- (a) facial recognition;
- (b) fingerprint recognition;
- (c) vocal recognition; and
- (d) iris or retina recognition.”

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(2) Subsection (1) comes into operation on a date determined by the Minister of Finance by notice in the *Gazette*.

**Amendment of section 6 of Act 89 of 1991, as amended by section 20 of Act 37 of 1996, section 34 of Act 34 of 1997, section 88 of Act 30 of 1998, section 66 of Act 19 of 2001, section 150 of Act 60 of 2001, section 116 of Act 74 of 2002, section 48 of Act 12 of 2003, section 45 of Act 16 of 2004, section 13 of Act 10 of 2006, section 36 of Act 21 of 2006 and section 36 of Act 21 of 2006,**

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**34.** (1) Section 6 of the Value-Added Tax Act, 1991, is hereby amended—

(a) by the insertion after subsection (5) of the following subsection:

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“(5A) Notwithstanding anything to the contrary contained in this section, any ‘biometrical information’ of a vendor may not be disclosed by the Commissioner to any person except to the National Commissioner of the South African Police Service or the National Director of Public Prosecutions where such information relates to, and constitutes material information for, the proving of any offence in terms of this Act or a related common law offence.”; and

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

“(6) Any person who contravenes the provisions of subsection (1), (3), (4) [or] (5) or (5A) shall be guilty of an offence and liable on conviction to a fine not exceeding R5 000 or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.”.

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(2) Subsection (1) comes into operation on a date determined by the Minister of Finance by notice in the *Gazette*.

**Amendment of section 20 of Act 89 of 1991**

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**35.** Section 20 of the Value-Added Tax Act, 1991, is hereby amended by the insertion after subsection (5) of the following subsection:

“(5A) Notwithstanding anything to the contrary in subsections (4) and (5), where a vendor acquires an enterprise from another vendor and as a result of that acquisition, the supplying vendor immediately ceases to be a vendor, and the purchasing vendor, within a period of six months from the date of the acquisition, issues or receives a tax invoice in respect of the acquired enterprise, that tax invoice may reflect the name, address and VAT registration number of the supplying vendor.”.

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**Amendment of section 21 of Act 89 of 1991, as amended by section 26 of Act 136 of 1992, section 34 of Act 97 of 1993, section 176 of Act 45 of 2003 and section 48 of Act 16 of 2004**

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**36.** Section 21 of the Value-Added Tax Act, 1991, is hereby amended by the addition after subsection (7) of the following subsection:

“(8) Notwithstanding anything to the contrary in subsection (3), where a vendor acquires an enterprise from another vendor and as a result of that acquisition, the supplying vendor immediately ceases to be a vendor, and the purchasing vendor,

45



“**‘biometriese inligting’** beteken die biologiese data om die identiteit van ’n natuurlike persoon vas te stel, en sluit in—

- (a) gesigsherkenning;
- (b) vingerafdruk herkenning;
- (c) stemherkenning; en
- (d) iris of retina herkenning.”.

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(2) Subartikel (1) tree in werking op ’n datum deur die Minister van Finansies by kennisgewing in die *Staatskoerant* bepaal.

**Wysiging van artikel 6 van Wet 89 van 1991, soos gewysig deur artikel 20 van Wet 37 van 1996, artikel 34 van Wet 34 of 1997, artikel 88 van Wet 30 van 1998, artikel 66 van Wet 19 van 2001, artikel 150 van Wet 60 van 2001, artikel 116 van Wet 74 van 2002, artikel 48 van Wet 12 van 2003, artikel 45 van Wet 16 van 2004, artikel 13 van Wet 10 van 2006, artikel 36 van Wet 21 van 2006, artikel 36 van Wet 21 van 2006**

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**34.** (1) Artikel 6 van die Wet op Belasting op Toegevoegde Waarde, 1991, word hierby gewysig— 15

(a) deur die volgende subartikel na subartikel (5) in te voeg:

“(5A) Nieteenstaande enigiets tot die teendeel in hierdie artikel vervat, mag geen ‘biometriese inligting’ van ’n ondernemer deur die Kommissaris aan enige persoon openbaar word nie, behoudens die Nasionale Kommissaris van die Suid-Afrikaanse Polisie of the Direkteur-generaal van die Openbare Vervolger, waar bedoelde inligting verband hou met, en materiële inligting daarstel vir, die bewys van enige oortreding ingevolge hierdie Wet of ’n soortgelyke gemeenregtelike oortreding.”; en

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

“(6) Iemand wat die bepalings van subartikel (1), (3), (4), [of] (5) of (5A) oortree, is aan ’n misdryf skuldig en by skuldigbevinding strafbaar met ’n boete van hoogstens R5 000 of met gevangenisstraf vir ’n tydperk van hoogstens twee jaar of met sodanige boete sowel as sodanige gevangenisstraf.”.

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(2) Subartikel (1) tree in werking op ’n datum deur die Minister van Finansies by kennisgewing in the *Staatskoerant* bepaal.

**Wysiging van artikel 20 van Wet 89 van 1991, soos gewysig deur paragraaf 8 van Staatskennisgewing 2695 van 8 November 1991, artikel 25 van Wet 136 van 1992, artikel 33 van Wet 97 van 1993, artikel 35 van Wet 27 van 1997, artikel 94 van Wet 30 van 1998, artikel 91 van Wet 53 van 1999, artikel 157 van Wet 60 van 2001, artikel 175 van Wet 45 van 2003, artikel 47 van Wet 16 van 2004, artikel 104 van Wet 32 van 2004 en artikel 38 van Wet 21 van 2006**

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**35.** Artikel 20 van die Wet op Belasting op Toegevoegde Waarde, 1991, word hierby gewysig deur die volgende subartikel na subartikel (5) in te voeg: 40

“(5A) Ondanks enigiets tot die teendeel in subartikels (4) en (5), waar ’n ondernemer ’n onderneming van ’n ander ondernemer verkry en as gevolg van daardie verkryging, die oordraggewende ondernemer onmiddellik ophou om ’n ondernemer te wees, en die oordragnemende ondernemer, binne ’n tydperk van ses maande vanaf die datum van die oordrag, ’n belastingfaktuur, ten aansien van die verkrygte onderneming uitreik of ontvang, mag daardie belastingfaktuur die naam, adres en BTW registrasienommer van die oordraggewende ondernemer bevat.”.

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**Wysiging van artikel 21 van Wet 89 van 1991, soos gewysig deur artikel 26 van Wet 136 van 1992, artikel 34 van Wet 97 van 1993, artikel 176 van Wet 45 van 2003 en artikel 48 van Wet 16 van 2004**

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**36.** Artikel 21 van die Wet op Belasting of Toegevoegde Waarde, 1991, word hierby gewysig deur die volgende subartikel na subartikel (7) in te voeg:

“(8) Ondanks enigiets tot die teendeel in subartikels (3), waar ’n ondernemer ’n onderneming van ’n ander ondernemer verkry en as gevolg van daardie verkryging, die oordraggewende ondernemer onmiddellik ophou om ’n ondernemer te wees, en

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within a period of six months from the date of acquisition, issues or receives a credit note or debit note, as the case may be, in respect of the acquired enterprise, that credit note or debit note may reflect the name, address and VAT registration number of the supplying vendor.”.

**Amendment of section 23 of Act 89 of 1991, as amended by section 20 of Act 20 of 1994, section 37 of Act 27 of 1997, section 92 of Act 53 of 1999, section 178 of Act 45 of 2003, section 9 of Act 10 of 2005, section 36 of Act 32 of 2005, section 14 of Act 10 of 2006, section 24 of Act 4 of 2008 and section 113 of Act 60 of 2008**

37. (1) Section 23 of the Value-Added Tax Act, 1991, is hereby amended—

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

“(2) Every person who, in terms of subsection (1) or section 50A, becomes liable to be registered shall not later than 21 days after becoming so liable apply to the Commissioner for registration in such [application] form as the Commissioner may direct and provide the Commissioner with such further particulars and any documentation as the Commissioner may require in such [application] form for the purpose of registering that person.”;

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

“may apply to the Commissioner [**in the approved form for registration under this Act**] for registration in such form as the Commissioner may direct and provide the Commissioner with such further particulars and any documentation as the Commissioner may require in such form for the purpose of registering that person.”; and

(c) by the insertion of the following subsection after subsection (3):

“(3A) For the purposes of subsections (2) and (3), the Commissioner may require a person to submit biometrical information, in such manner and form as may be prescribed by the Commissioner, to ensure—  
(a) the proper identification of the person; or  
(b) the counteracting of identity theft or fraud.”.

(2) Subsection 1(c) comes into operation on a date determined by the Minister of Finance by notice in the *Gazette*.

#### **Substitution of section 36 of Act 89 of 1991**

38. (1) The Value-Added Tax Act, 1991, is hereby amended by the substitution for section 36 of the following section:

#### **“Payment of tax pending objection and appeal**

**36. (1) Unless the Commissioner otherwise directs in terms of subsection (4)—**

(a) the obligation to pay; and  
(b) the right to receive and recover,  
any tax, additional tax, penalty or interest chargeable under this Act shall not be suspended by any objection or appeal or pending the decision of a court of law.

(2) A vendor may request the Commissioner to suspend the payment of any tax or a portion thereof due under an assessment where the liability to pay that tax is disputed.

(3) The Commissioner may suspend payment of the disputed tax having regard to—

(a) the compliance history of the vendor;  
(b) the amount of tax involved;  
(c) the risk of dissipation of assets by the vendor concerned during the period of suspension;

die oordragnemende ondernemer, binne 'n tydperk van ses maande vanaf die datum van die oordrag, 'n kredietnota of debietnota, na gelang van die geval, uitreik of ontvang, ten aansien van die verkrygte onderneming, mag daardie kredietnota of debietnota die naam, adres en BTW registrasienommer van die oordraggewende ondernemer bevat.”.

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**Wysiging van artikel 23 van Wet 89 van 1991, soos gewysig deur artikel 20 van Wet 20 van 1994, artikel 37 van Wet 27 van 1997, artikel 92 van Wet 53 van 1999, artikel 178 van Wet 45 van 2003, artikel 9 van Wet 10 van 2005, artikel 36 van Wet 32 van 2005, artikel 14 van Wet 10 van 2006, artikel 24 van Wet 4 van 2008 en artikel 113 van Wet 60 van 2008**

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**37.** Artikel 23 van die Wet op Belasting op Toegevoegde Waarde, 1991, word hierby gewysig—

(a) deur die woorde wat die voorbehoudsbepaling tot subartikel (2) voorafgaan deur die volgende woorde te vervang:

“(2) Elke persoon wat ingevolge subartikel (1) of artikel 50A aanspreeklik word om geregistreer te wees, moet nie later nie as 21 dae nadat hy aldus aanspreeklik word by die Kommissaris aansoek doen om registrasie in die [aansoekvorm] vorm wat die Kommissaris beveel en aan die Kommissaris die nadere besonderhede en enige dokumentasie verstrek wat die Kommissaris in daardie [aansoekvorm] vorm vereis ten einde daardie persoon te registreer.”;

(b) deur in subartikel (3) die woorde wat op paragraaf (d) volg deur die volgende woorde te vervang:

“[in die goedgekeurde vorm] by die Kommissaris aansoek doen, in die vorm deur die Kommissaris bepaal, om registrasie ingevolge hierdie Wet, en die verdere besonderhede en enige dokumentasie verstrek wat die Kommissaris in daardie vorm vereis ten einde daardie persoon te registreer.”; en

(c) deur die volgende subartikel na subartikel (3) in te voeg:

“(3A) Vir doeleindes van subartikels (2) en (3), kan die Kommissaris vereis dat 'n persoon biometriese inligting, op so 'n wyse en in so 'n vorm as wat die Kommissaris mag bepaal, indien, ten einde—

(a) die behoorlike identifikasie; of

(b) die bekamping van identiteitsdiefstal of bedrog, te verseker.”.

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#### **Vervanging van artikel 36 van Wet 89 van 1991**

**38.** (1) Die Wet op Belasting op Toegevoegde Waarde, 1991, word hierby gewysig deur artikel 36 deur die volgende artikel te vervang:

#### **“Betaling van belasting hangende beswaar en appèl**

**36.** (1) Tensy die Kommissaris ingevolge subartikel (4) andersins bepaal, sal die—

(a) verpligting; en

(b) die reg,

om enige belasting, addisionele belasting, boete of rente hefbaar ingevolge hierdie Wet te betaal, te ontvang en te in, nie deur enige beswaar of appèl of hangende die beslissing van 'n geregshof ingevolge artikel 86A opgeskort word nie.

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(2) 'n Ondernemer kan die Kommissaris versoek om die betaling van enige belasting of 'n gedeelte daarvan ingevolge 'n aanslag verskuldig, op te skort, waar die verpligting om daardie belasting te betaal betwis word.

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(3) Die Kommissaris kan betaling van die belasting wat betwis word opskort, na inagneming van—

(a) die nakomingsgeskiedenis van die ondernemer;

(b) die bedrag van belasting ter sprake;

(c) die risiko dat die betrokke ondernemer bates van die hand sal sit gedurende die tydperk wat die opskorting geld;

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- (d) whether the vendor is able to provide adequate security for the payment of the amount involved;
- (e) whether payment of the amount involved would result in irreparable financial hardship to the vendor;
- (f) whether sequestration or liquidation proceedings are imminent;
- (g) whether fraud is involved in the origin of the dispute; or
- (h) whether the vendor has failed to furnish any information requested by the Commissioner in terms of this Act for purposes of a decision under this section.
- (4) The Commissioner may deny a request in terms of subsection (3) or revoke a decision to suspend payment in terms of that subsection with immediate effect whenever he or she is satisfied that—
- (a) after the lodging of the objection, the objection or appeal is frivolous or vexatious;
- (b) the vendor is employing dilatory tactics in conducting the objection or appeal;
- (c) on further consideration of the factors contemplated in subsection (3), the suspension should not have been given; or
- (d) there is a material change in any of the factors described in subsection (3), upon which the decision to suspend the amount involved was based.
- (5) Where any assessment is altered in accordance with—
- (a) an objection or appeal;
- (b) a decision by a court of law; or
- (c) a decision by the Commissioner to concede the appeal to the tax board or the tax court of that court of law,
- a due adjustment must be made, amounts paid in excess refunded with interest at the prescribed rate (but subject to the provisions of sections 45(1) and 45(A)), the interest being calculated from the date that excess was received by the Commissioner to the date the refunded tax is paid, and amounts short-paid being recoverable with penalty and interest calculated as provided in section 39(1).
- (6) The payment by the Commissioner of any interest under the provisions of this section shall be deemed to be a drawback from revenue charged to the National Revenue Fund.”.

(2) Subsection (1) shall come into operation on a date determined by the Minister of Finance by notice in the *Gazette* and applies in respect of all amounts payable by or to the Commissioner on such date, and where payment was already suspended on such date, that suspension will lapse on the earlier of the expiry date thereof or six months from the date so determined by the Minister.

**Amendment of section 39 of Act 89 of 1991, as amended by section 37 of Act 136 of 1991, section 30 of Act 136 of 1992, section 3 of Act 61 of 1993, section 23 of Act 20 of 1994, section 40 of Act 27 of 1997, section 166 of Act 60 of 2001, section 184 of Act 45 of 2003, section 50 of Act 16 of 2004, section 105 of Act 32 of 2004, section 22 of Act 9 of 2005 and section 114 of Act 60 of 2008**

39. (1) Section 39 of the Value-Added Tax Act, 1991, is hereby amended—

(a) by the substitution for subsection (7) of the following subsection:

“(7) [To the extent that] Where the Commissioner is satisfied that the failure on the part of the person concerned or any other person under the control or acting on behalf of that person to make payment of the tax within the period for payment contemplated in subsection (1)(a), (2), (3), (4), (6) [or], (6A) or (8) or on the date referred to in subsection (5), as the case may be—

(a) was due to circumstances beyond the control of the said person  
 [(i) did, having regard to the output tax and input tax relating to the supply in respect of which interest is payable, not

- (d) of die belastingpligtige in staat is om voldoende sekuriteit vir die betaling van die bedrag betrokke te verskaf;
- (e) of die betaling van die betrokke bedrag 'n onherstelbare finansiële ontbering vir die ondernemer tot gevolg sal hê;
- (f) of sekwestrasie- of likwidasieprosesse onvermydelik is; 5
- (g) of bedrog betrokke is by die ontstaan van die geskil; of
- (h) of die ondernemer nagelaat het om enige inligting deur die Kommissaris ingevolge hierdie Wet gevra, vir doeleindes van 'n besluit ingevolge hierdie artikel, te verskaf.
- (4) Die Kommissaris kan weier om 'n versoek ingevolge subartikel (3) toe te staan of 'n besluit om betaling ingevolge daardie subartikel op te skort op enige tydstop en met onmiddellike effek herroep, indien hy of sy tevrede is dat— 10
- (a) na indiening van die beswaar of appèl, die beswaar of appèl beuselagtig of treiterend is; 15
- (b) die belastingpligtige verdragingsaktie in die hantering van die beswaar of appèl gebruik;
- (c) na verdere nabetracting van die faktore soos bedoel in subartikel (3), die opskorting nie toegestaan moes word nie; of
- (d) daar 'n wesenlike verandering is in enige van die faktore in subartikel (3) bedoel, waarop die besluit om die bedrag ter sprake op te skort gebaseer was. 20
- (5) Indien 'n aanslag ooreenkomstig—
- (a) 'n beswaar of appèl;
- (b) 'n beslissing van 'n geregshof ingevolge artikel 86A; of 25
- (c) 'n beslissing van die Kommissaris om die appèl na die belastingraad of die belastinghof of daardie geregshof toe te gee, verander word, moet 'n gepaste aansuiwering gemaak word, bedrae wat te veel betaal is terugbetaal word met rente teen die voorgeskrewe koers (maar behoudens die bepalinge van artikels 45(1) en 45A) bereken vanaf die datum waarop daardie bedrae wat te veel betaal is, deur die Kommissaris ontvang is, tot die datum wat die terugbetaalbare bedrae terugbetaal word, en bedrae wat te min betaal is met boete en rente, bereken volgens voorskrif van artikel 39(1), verhaal kan word. 30
- (6) Die betaling deur die Kommissaris van enige rente ingevolge die bepalinge van hierdie artikel word geag 'n terugtrekking van inkomste ten laaste van die Nasionale Inkomstefonds te wees.”. 35

(2) Subartikel (1) sal in werking tree op 'n datum deur die Minister van Finansies in die *Staatskoerant* bepaal, en sal van toepassing wees op alle bedrae deur of aan die Kommissaris betaalbaar op of na daardie datum, en waar betaling alreeds op daardie datum opgeskort was, sal daardie opskorting op die vroegste van die vervaldatum daarvan of ses maande vanaf die datum aldus deur die Minister bepaal, verval. 40

**Wysiging van artikel 39 van Wet 89 van 1991, soos gewysig deur artikel 37 van Wet 136 van 1991, artikel 30 van Wet 136 van 1992, artikel 3 van Wet 61 van 1993, artikel 23 van Wet 20 van 1994, artikel 40 van Wet 27 van 1997, artikel 166 van Wet 60 van 2001, artikel 184 van Wet 45 van 2003, artikel 50 van Wet 16 van 2004, artikel 105 van Wet 32 van 2004, artikel 22 van Wet 9 van 2005 en artikel 114 van Wet 60 van 2008** 45

**39.** (1) Artikel 39 van die Wet op Belasting op Toegevoegde Waarde, 1991, word hierby gewysig— 50

(a) deur subartikel (7) deur die volgende subartikel te vervang:

“(7) [In die mate wat] Indien die Kommissaris oortuig is dat die versuim aan die kant van die betrokke persoon of enige ander persoon onder die beheer van of wat namens daardie persoon optree om betaling van die belasting binne die tydperk vir betaling beoog in subartikel (1)(a), (2), (3), (4), (6) [of], (6A) of (8) of op die datum in subartikel (5) bedoel, na gelang van die geval, te doen— 55

(a) die gevolg was van omstandighede buite die beheer van daardie persoon

[(i) met inagneming van die uitsetbelasting en insetbelasting met betrekking tot die lewering ten opsigte waarvan rente 60

result in any financial loss (including any loss of interest) to the State; or

- (ii) such person did not benefit financially (taking interest into account) by not making such payment within the said period or on the said date].

he or she may remit, in whole or in part, the interest payable in terms of this section; or

- (b) was not due to an intent not to make payment or to postpone liability for the payment of the tax, he or she may remit, in whole or in part, any penalty payable in terms of this section.”; and

- (b) by the addition after subsection (7) of the following subsection:

“(8) Notwithstanding anything to the contrary in this section, the Commissioner may prescribe, by notice in the *Gazette*, that any interest on any outstanding amount payable in terms of this Act, is calculated on the daily balance owing and compounded monthly from such date and for such period as the Commissioner may prescribe.”.

(2) Subsection (1)(a) comes into operation on 1 April 2010, and applies to interest imposed in terms of section 39 of the Value-Added Tax Act, 1991, on or after that date.

**Amendment of section 41B of Act 89 of 1991, as inserted by section 40 of Act 21 of 2006, section 17 of Act 9 of 2007 and section 42 of Act 61 of 2008**

40. Section 41B of the Value-Added Tax Act, 1991, is hereby amended by the substitution for subparagraph (aa) of paragraph (ii) of the proviso in subsection (1) of the following subparagraph:

- “(aa) is for an **[advanced]** advance tax ruling that qualifies for acceptance in terms of section 41A; and”.

**Amendment of section 58 of Act 89 of 1991, as amended by section 41 of Act 136 of 1991, section 39 of Act 97 of 1993, section 25 of Act 46 of 1996, section 102 of Act 53 of 1999, section 72 of Act 19 of 2001, section 173 of Act 60 of 2001, section 119 of Act 74 of 2002, section 43 of Act 34 of 2004 and section 42 of Act 32 of 2005**

41. Section 58 of the Value-Added Tax Act, 1991, is hereby amended—

- (a) by the substitution for paragraph (p) of the following paragraph:

“(p) uses an electronic or digital signature of any other person in any electronic communication to the Commissioner for any purpose, without the consent and authority of such person[.];”;

- (b) by the insertion after paragraph (p) of the following paragraph:

“(q) makes or causes or allows to be made any false statement or entry in any form rendered in terms of this Act, or signs any statement or form so rendered without reasonable grounds for believing the same to be true.”.

**Amendment of section 1 of Act 9 of 1999**

42. (1) Section 1 of the Skills Development Levies Act, 1999, is hereby amended by the substitution for the definition of “levy” of the following definition:

“‘levy’ means the skills development levy referred to in section 3 and any administrative penalty leviable under this Act;”.

(2) Subsection (1) comes into operation on a date determined by the Minister of Finance by notice in the *Gazette*.

- betalbaar is, nie enige finansiële verlies (met inbegrip van rente) vir die Staat tot gevolg gehad het nie; of
- (ii) daardie persoon nie finansiël bevoordeel is (met inagneming van rente) deur nie bedoelde betaling binne genoemde tydperk of op genoemde datum te doen nie], 5
- kan hy of sy die rente betaalbaar ingevolge hierdie artikel in geheel of gedeeltelik kwytgeld; of
- (b) nie te wyte was aan 'n bedoeling om nie te betaal nie of om die aanspreeklikheid vir die betaling van die belasting uit te stel nie, kan hy of sy enige boete wat ingevolge hierdie artikel betaalbaar is, in geheel of gedeeltelik kwytgeld.”; en 10
- (b) deur die volgende subartikel na subartikel (7) in te voeg:
- “(8) Nienteenstaande enigiets tot die teendeel in hierdie artikel, kan die Kommissaris by kennisgewing in die *Staatskoerant* bepaal dat enige rente op enige bedrag uitstaande ingevolge hierdie Wet, op die daaglikse saldo verskuldig bereken word en maandeliks saamgestel word vanaf 'n datum en vir 'n tydperk soos die Kommissaris mag bepaal.”. 15
- (2) Subartikel (1)(a) tree op 1 April 2010 in werking, en is van toepassing op rente ingevolge artikel 39 van die Wet op Belasting op Toegevoegde Waarde, 1991, gehef, op of na daardie datum. 20

**Wysiging van artikel 41B van Wet 89 van 1991, soos ingevoeg deur artikel 40 van Wet 21 van 2006, artikel 17 van Wet 9 van 2007 en artikel 42 van Wet 61 van 2008**

40. Artikel 41B van die Wet op Belasting op Toegevoegde Waarde, 1991, word hierby gewysig deur in subartikel (1) subparagraaf (aa) van paragraaf (ii) van die voorbehoudsbepaling deur die volgende subparagraaf te vervang: 25
- “(aa) om 'n [vooraf] vooruit belastingbeslissing is wat kwalifiseer vir aanvaarding ingevolge artikel 41A; en”.

**Wysiging van artikel 58 van Wet 89 van 1991, soos gewysig deur artikel 41 van Wet 136 van 1991, artikel 39 van Wet 97 van 1993, artikel 25 van Wet 46 van 1996, artikel 102 van Wet 53 van 1999, artikel 72 van Wet 19 van 2001, artikel 173 van Wet 60 van 2001, artikel 119 van Wet 74 van 2002, artikel 43 van Wet 34 van 2004 en artikel 42 van Wet 32 van 2005** 30

41. Artikel 58 van die Wet op Belasting op Toegevoegde Waarde, 1991, word hierby gewysig—
- (a) deur paragraaf (p) deur die volgende paragraaf te vervang: 35
- “(p) 'n elektroniese of digitale handtekening van enige ander persoon in enige elektroniese kommunikasie aan die Kommissaris vir enige doeleindes gebruik sonder die instemming en magtiging van daardie persoon[.]”; en
- (b) deur die volgende paragraaf na paragraaf (p) in te voeg: 40
- “(q) enige valse verklaring of inskrywing maak, daartoe aanleiding gee of toelaat dat dit gemaak word in enige vorm ingevolge hierdie Wet ingedien, of enige verklaring of vorm aldus ingedien teken, sonder redelike gronde om te glo dat dit korrek is.”.

**Wysiging van artikel 1 van Wet 9 van 1999** 45

42. (1) Artikel 1 van die “UMthetho Wezibizontela Wokuthuthukisa Amakhono, 1999,” word hierby gewysig deur die omskrywing van “**isibizontela**” deur die volgende omskrywing te vervang:
- “‘**isibizontela**’ kusho isibizontela sokuthuthukisa amakhono okubhekiswe kuso kwisigaba 3 nayo yonke inhlawulo yokomthetho ebizwa ngaphansi kwalo Mthetho.”. 50
- (2) Subartikel (1) tree in werking op 'n datum deur die Minister van Finansies by kennisgewing in die *Staatskoerant* bepaal.

**Amendment of section 6 of Act 9 of 1999, as amended by section 76 of Act 19 of 2001**

**43.** Section 6 of the Skills Development Levies Act, 1999, is hereby amended by the insertion after subsection (2) of the following subsection:

“(2A) Every employer shall—

- |     |   |    |
|-----|---|----|
| (a) | by such date or dates as prescribed by the Commissioner by notice in the <i>Gazette</i> ; and   | 5  |
| (b) | if the employer ceases to carry on any business or other undertaking in respect of which the employer has paid or becomes liable to pay a levy as prescribed in terms of section 3, or otherwise ceases to be an employer, within 14 days after the date on which the employer has so ceased to carry on that business or undertaking or to be an employer, as the case may be, | 10 |
|     | or within such longer time as the Commissioner may approve, render to the Commissioner such return as the Commissioner may prescribe.”.   |    |

**Insertion of section 7A in Act 9 of 1999**

**44.** The Skills Development Levies Act, 1999, is hereby amended by the insertion of the following section after section 7: 15

**“Estimated assessments**

**7A.** (1) Where any employer who is required to pay the levy in terms of section 6 or section 7—

- |     |   |    |
|-----|---|----|
| (a) | has failed to submit a statement as required in terms of section 6(2) or section 7(4);  | 20 |
| (b) | has submitted a statement as required in terms section 6(2A) or 7(4A) but the Commissioner is not satisfied with the statement; or  |    |
| (c) | has failed to pay such levy,  | 25 |
|     | and such employer has not been absolved from his or her liabilities in terms of the provisions of this Act, the Commissioner or the SETA, as the case may be, may make a reasonable estimate of the amount of any levy due in terms of this Act and issue to the employer a notice of assessment for the unpaid amount. |    |

(2) Any estimate of the amount of the levy payable by an employer in terms of the provisions of subparagraph (1), shall be subject to objection or appeal.”.	30
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**Amendment of section 11 of Act 9 of 1999, as amended by section 123 of Act 74 of 2002**

**45.** The Skills Development Levies Act, 1999, is hereby amended by the substitution for section 11 of the following section: 35

**“Interest on late payment**

**11.** (1) If an employer fails to pay a levy or any portion thereof on the last day for payment thereof, as contemplated in section 6(2) or 7(4), interest is payable on the outstanding amount at the rate contemplated in paragraph (b) of the definition of ‘prescribed rate’ in section 1 of the Income Tax Act, calculated from the day following that last day for payment to the day that payment is received by the Commissioner, SETA or approved body, as the case may be. 40

(2) The Commissioner may prescribe by notice in the <i>Gazette</i> that any interest payable in terms of this section be calculated on the daily balance owing and compounded monthly, and such method of determining interest will apply from such date as the Commissioner may prescribe.”.	45
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**Wysiging van artikel 6 van Wet 9 van 1999, soos gewysig deur artikel 76 van Wet 19 van 2001**

43. Artikel 6 van die “UMthetho Wezibizontela Wokuthuthukisa Amakhono, 1999,” word hierby gewysig deur die volgende subartikel na subartikel (2) in te voeg:

“(2A) Wonke umqashi—

- (a) ngalolo suku noma izinsuku eziqokwe nguKhomishinali ngesaziso kwi-*Gazette*; futhi
- (b) uma umqashi eyeka ukuqhubeka nebhizinisi noma omunye umsebenzi umqashi awukhokhele noma okufanele awukhokhele isibizontela okubhekiswe kuso kwisigaba 3, noma eyeka ukuba ngumqashi, ezinsukwini ezingu-14 emva kosuku umqashi eyeke kanjalo ukuqhubeka nebhizinisi noma umsebenzi noma ukuba ngumqashi, kuye ngokuthi yini eyenzekayo, Noma kuleso sikhathi eside uKhomishinali asivumelayo, uzoletsha kuKhomishinali leyo ntela ebekwe nguKhomishinali.”.

**Invoeging van artikel 7A in Wet 9 van 1999**

44. “UMthetho Wezibizontela Wokuthuthukisa Amakhono, 1999,” word hierby gewysig deur die volgende artikel na artikel 7 in te voeg:

**“Isilinganiso esikaliwe**

**7A. (1)** Lapho noma yimuphi umqashi okufanele akhokhe isibizontela ngokwesigaba 6 noma isigaba 7—

- (a) ehlulekile ukuthumela isitatimende esidingekayo ngokwesigaba 6(2) noma isigaba 7(4);
- (b) esithumele isitatimende esifunekayo ngokwesigaba 6(2A) noma 7(4A) kodwa iKhomishinali ingagculisekile ngesitatimende; noma
- (c) ehlulekile ukukhokhela leso sibizontela, futhi lowo mqashi engakhululiwe ezibosheni zakhe ngokwemigomo yalo Mthetho, iKhomishinali noma i-SETA, kuye ngokuthi yikuphi okwenzekayo, ingabeka isibalo senani elilingene sanoma isiphi isibizontela okufanele sikhokhwe ngokwalo Mthetho ebese bekiphela umqashi isaziso sokubuyekeza inani elingakakhokhwa.

(2) Noma isiphi isilinganiso senani le sibizontela okufanele likhokhwe ngumqashi ngokwemigomo yesigatshana (1), linganqatshwa noma likhalazelwe.”.

**Wysiging van artikel 11 van Wet 9 van 1999, soos gewysig deur artikel 123 van Wet 74 van 2002**

45. Artikel 11 van die “UMthetho Wezibizontela Wokuthuthukisa Amakhono, 1999,” word hierby gewysig deur artikel 11 deur die volgende artikel te vervang:

**“Inzuzo yokuphuza ukukhokha**

**11. (1)** Uma umqashi ehluleka ukukhokha isibizontela noma isiphi isigamu sayo ngosuku lokugcina lokukhokha sona, njengoba kucatshangwe kusigaba 6(2) no 7(4), inzuzo iyakhokhwa esambeni esingakhokhiwe ngesilinganiso esicatshangwe kundima (b) yencazelo, yesilinganiso esinqunyiwe” kusigaba 1 soMthetho weNtela wemali eNgenayo, sibalwe kusukela kulolo suku lokugcina lokukhokha kuya osukwini leyonkokhelo emukelwe ngalo uKhomishinali, iSETA noma umgwamanda ovumelwe, kuye ngesimo.

“(2) IKhomishinali ingabeka ngesaziso kwi-*Gazette* ukuba inzuzo ekhokhwayo ngokwalesi sigaba ibalwe ngokwebhalansi yosuku nosuku ekwelctwayo neqokeleleka nyangazonke, futhi leyo ndlela yokubheka inzuzo izoqala ukusebenza ngalolo suku oluqokwa iKhomishinali.”.

**Amendment of section 12 of Act 9 of 1999, as amended by section 113 of Act 53 of 1999 and section 197 of Act 45 of 2003**

**46.** (1) Section 12 of the Skills Development Levies Act, 1999, is hereby amended—

(a) by the deletion of subsection (1); and

(b) by the addition after subsection (4) of the following subsection:

“(5) Any decision by the Commissioner not to remit any penalty under subsection (2) or to impose any penalty under subsection (3), shall be subject to objection and appeal as contemplated in section 13(1)(d).”.

(2) Subsection (1)(a) comes into operation on a date determined by the Minister of Finance by notice in the *Gazette*.

**Amendment of section 1 of Act 4 of 2002, as amended by section 207 of Act 45 of 2003**

**47.** (1) Section 1 of the Unemployment Insurance Contributions Act, 2002, is hereby amended by the substitution for the definition of “contribution” of the following definition:

“‘**contribution**’ means the contribution determined in terms of section 6 and any administrative penalty levied in terms of this Act;”.

(2) Subsection (1) comes into operation on a date determined by the Minister of Finance by notice in the *Gazette*.

**Amendment of section 8 of Act 4 of 2002, as amended by section 81 of Act 30 of 2002**

**48.** Section 8 of the Unemployment Insurance Contributions Act, 2002, is hereby amended by the insertion after subsection (2) of the following subsection:

“(2A) Every employer shall—

(a) by such date or dates as prescribed by the Commissioner by notice in the *Gazette*; and

(b) if during any such period the employer ceases to carry on any business or other undertaking in respect of which the employer has paid or becomes liable to pay a contribution as determined in terms of section 6, or otherwise ceases to be an employer, within 14 days after the date on which the employer has so ceased to carry on that business or undertaking or to be an employer, as the case may be, or within such longer time as the Commissioner may approve, render to the Commissioner such return as the Commissioner may prescribe.”.

**Insertion of section 9A in Act 4 of 2002**

**49.** The Unemployment Insurance Contributions Act, 2002, is hereby amended by the insertion of the following section after section 9:

**“Estimated assessments**

**9A.** (1) Where any employer who is required to pay the amount of all employees’ contributions and the employer’s contributions in respect of every employee in the employment of that employer to the Commissioner in terms of section 8 or to the Unemployment Insurance Commissioner in terms of section 9—

(a) has failed to submit a statement as required in terms of section 8(2) or section 9(2);

(b) has furnished a return as required in terms of section 8(2A) or section 9(2A) but the Commissioner is not satisfied with the return;

(c) has failed to deduct or withhold employees’ contributions; or

(d) has failed to pay over any contributions deducted or withheld,

**Wysiging van artikel 12 van Wet 9 van 1999, soos gewysig deur artikel 113 van Wet 53 van 1999 en artikel 197 van Wet 45 van 2003**

46. (1) Artikel 12 van die “UMthetho Wezibizontela Wokuthuthukisa Amakhono, 1999,” word hierby gewysig—

(a) deur subartikel (1) te skrap; en

(b) deur die volgende subartikel na subartikel (4) in te voeg:

“(5) Noma isiphi isinqumo esithathwa iKhomishinali sokuxolela noma iyiphi inhlawulo ngaphansi kwesigatshana (2) noma ukufaka inhlawulo ngaphansi kwesigatshana (3), singenqatshwa noma sikhalezwe njengoba kubekwe kwisigaba 13(1)(d).”

(2) Subartikel (1)(a) tree in werking op 'n datum deur die Minister van Finansies by kennisgewing in die *Staatskoerant* bepaal.

**Wysiging van artikel 1 van Wet 4 van 2002, soos gewysig deur artikel 207 van Wet 45 van 2003**

47. (1) Artikel 1 van die “Mulayo wa Zwibviswa zwa Ndindakhombo ya u Shaya Mushumo wa, 2002,” word hierby gewysig deur die omskrywing van “Lweŋolweŋo” deur die volgende omskrywing te vervang:

“‘Lweŋolweŋo’ zwi amba lweŋolweŋo lwo tiwaho u ya nga khethekanyo 6 na ndatiso inwe ya ndaulo ye ya theliswa u ya nga uyu Mulayo;”.

(2) Subartikel (1) tree in werking op 'n datum deur die Minister van Finansies by kennisgewing in die *Staatskoerant* bepaal.

**Wysiging van artikel 8 van Wet 4 van 2002, soos gewysig deur artikel 81 van Wet 30 van 2002**

48. Artikel 8 van die “Mulayo wa Zwibviswa zwa Ndindakhombo ya u Shaya Mushumo wa, 2002,” word hierby gewysig deur die volgende subartikel na subartikel (2) in te voeg:

“(2A) Mutholi muŋwe na muŋwe u fanela u—

(a) nga yeneyo datumu kana datumu dzo randelwaho nga Khomishinari nga ndivhadzo i re kha Gazethe; na

(b) arali nga tshenetsho tshifhinga mutholi a sa tsha bvela phanḁa na vhubindudzi vhuŋwe na vhuŋwe kana mushumo he mutholi a badela kana o vha o tea u badela lweŋolweŋo lwo tiwaho u ya nga khethekanyo 6, kana nga inwe ndila o ima u vha mutholi, kha maḁuvha a 14 nga murahu ha datumu ine mutholi a tea u ima u bvela phanḁa na vhubindudzi kana mushumo kana u vha mutholi, u ya nga ndila ye zwa imisa ngayo, kana lwa tshifhinga tshilapfu u ya nga he Khomishinari a themendela, u ḡetshedza Khomishinari fomo yeneyo u ya nga he Khomishinari a zwi randelisa ngaho.”.

**Invoeging van artikel 9A in Wet 4 van 2002**

49. Die “Mulayo wa Lweŋolweŋo lwa Ndindakhombo ya u Shaya Mushumo wa, 2002,” word hierby gewysig deur die volgende artikel na artikel 9 in te voeg:

**“Asesimennde dzine dza khou anganyelwa**

**9A.** (1) Hune mutholi ane a tea u badela mutengo wa lweŋolweŋo lwa mutholwa na lweŋolweŋo lwoḡhe lwa mutholi u ya nga mutholwa muŋwe na muŋwe kha mushumo wa mutholi kha Khoimishinari u ya nga khethekanyo 8 kana kha Khomishinari wa Ndindakhombo ya u Shaya Mushumo u ya nga khethekanyo 9—

(a) o kundelwa u ḡetshedza tshitamennde sa zwine zwa ṭoḁea u ya nga khethekanyo 8(2) kana khethekanyo 9(2);

(b) o ḁadza fomo sa zwine zwa ṭoḁea u ya nga khethekanyo 8(2A) kana khethekanyo 9(2A) fhedzi Khomishinari ha ngo fushca nga Zwibviswa;

(c) o kundelwa u ṭusa kana u fara lweŋolweŋo lwa mutholwa; kana

(d) o kundelwa u badela lweŋolweŋo luŋwe na luŋwe lune lwa ṭuswa kana u farwa,

and such employer has not been absolved from his or her liabilities in terms of the provisions of this Act, the Commissioner or the Unemployment Insurance Commissioner, as the case may be, may make a reasonable estimate of the amount of any contributions due in terms of section 6 and issue to the employer a notice of assessment for the unpaid amount.

(2) An employer shall be liable to the Commissioner for the payment of the amount of any employees' contribution so estimated as if such amount was deducted or withheld as contemplated in section 7.

(3) Any estimate of the contribution payable by an employer in terms of subsection (1), shall be subject to objection or appeal."

#### **Amendment of section 12 of Act 4 of 2002, as amended by section 82 of Act 30 of 2002**

50. The Unemployment Insurance Contributions Act, 2002, is hereby amended by the substitution for section 12 of the following section:

##### **"Interest on late payment**

12. (1) An employer who fails to pay the full amount of any contribution within the period for payment prescribed by this Act, must pay interest on the outstanding amount at the rate contemplated in paragraph (b) of the definition of 'prescribed rate' in section 1 of the Income Tax Act, calculated from the day following the last day for payment to the day that payment is received by the Commissioner or Unemployment Insurance Commissioner, as the case may be.

(2) The Commissioner may prescribe by notice in the *Gazette* that any interest payable in terms of this section be calculated on the daily balance owing and compounded monthly, and such method of determining interest will apply from such date as the Commissioner may prescribe."

#### **Amendment of section 13 of Act 4 of 2002, as amended by section 83 of Act 30 of 2002**

51. (1) Section 13 of Unemployment Insurance Contributions Act, 2002, is hereby amended—

(a) by the deletion of subsection (1); and

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

"(4) Any decision by the Commissioner not to remit any penalty under subsection (1) or to impose any penalty under subsection (2) shall be subject to objection or appeal as contemplated in section 14(1)(c)."

(2) Subsection (1)(a) comes into operation on a date determined by the Minister of Finance by notice in the *Gazette*.

#### **Repeal of section 87 of Act 31 of 2005**

52. Section 87 of the Revenue Laws Amendment Act, 2005, is hereby repealed.

#### **Amendment of section 1 of Act 14 of 2007**

53. Section 1 of the Diamond Export Levy (Administration) Act, 2007, is hereby amended by the insertion after the definition of "Commissioner" of the following definition:

"'Customs and Excise Act' means the Customs and Excise Act, 1964 (Act No. 91 of 1964);"

mutholi onoyo ha ngo vhothololwa kha zwikolodo zwawe u ya nga u getshedzwa ha uyu Mulayo, Khomishinari kana Khomishinari wa Ndindakhombo ya u Shaya Mushumo, u ya nga ndila ine zwa vhisa ngayo, a nga ita u anganyela hune ha pfadza ha mutengo wa lwejolwejo lwe lwa tea u badelwa u ya nga khethekanyo 6 na u bvisela mutholi ndjivhadzo ya asesimennde ya mutengo u sa athu u badelwa. 5

(2) Mutholi u do tea u badela Khomishinari mbadelo dza mutengo wa lwejolwejo lwa mutholwa muñwe na muñwe lwo anganyelwaho u ya nga mutengo wonoyo wo tuswa kana u farwa u ya nga khethekanyo 7.

(3) U anganyela huñwe na huñwe ha lwejolwejo lwo badelwaho nga mutholi u ya nga khethekanyo hukhu (1), hu nga tea u hanedzwa kana u itelwa khumbelo". 10

#### **Invoeging van artikel 12 van Wet 4 van 2002, soos gewysig deur artikel 82 van Wet 30 van 2002**

50. Die "Mulayo wa Lwejolwejo lwa Ndindakhombo ya u Shaya Mushumo wa, 15 2002," word hierby gewysig deur artikel 12 deur die volgende artikel te vervang:

#### **"Nyingapfuma tha mbadelo yo lengabo**

12. (1) Mutholi ane a kundelwa u badela mutengo wo fhelelaho wa lwejolwejo luñwe u ya nga tshifhinga tsha mbadelo tsho randelwaho nga uyu Mulayo, u fanela u badela nyingapfuma ya mutengo u sa athu u badelwa u ya nga phimo yo sumbedzwaho kha phara (b) ya hukhu (1) ya Mulayo wa Muthelo wa Mbuelo, u tshi vhaelwa u bva nga duvha li tevhelaho duvha la u fhedzisela la mbadelo u swikela duvha line mbadelo ya tangedzwa nga Khomishinari kana Khomishinari wa Ndindakhombo ya u Shaya Mushumo u ya nga yeneyo ndila. 20 25

(2) Khomishinari vha nga randela nga *Gazette* uri nyingapfuma inwe na inwe ine ya badelwa u ya nga iyi khethekanyo u vhaelwa kha ndinganyiso inc ya khou u kolodwa duvha linwe na linwe ya tanganyiswa nwedzi nga nwedzi, aya maitele a u ita nyingapfuma a do shuma u bva nga yeneyo datumu ine Khomishinari a do randela ngayo." 30

#### **Wysiging van artikel 13 van Wet 4 van 2002, soos gewysig deur artikel 83 van Wet 30 van 2002**

51. (1) Artikel 13 van die "Mulayo wa Zwibviswa zwa Ndindakhombo ya u Shaya Mushumo wa, 2002," word hierby gewysig— 35

(a) deur subartikel (1) te skrap; en

(b) deur die volgende subartikel na subartikel (3) by te voeg:

"(4) Tseo inwe na inwe nga Khomishinari ya u sa badela ndatiso inwe na inwe nga fhasi ha khethekanyo hukhu ya (1) kana u badelisa ndatiso inwe na inwe nga fhasi ha khethekanyo hukhu (2) zwi nga hanedzwa kana u itelwa khumbelo sa zwo sumbedzswaho kha khethekanyo 14(1)(c)." 40

(2) Subartikel (1)(a) tree in werking op 'n datum deur die Minister van Finansies by kennisgewing in die *Staatskoerant* bepaal.

#### **Herroeping van artikel 87 van Wet 31 van 2005**

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52. Artikel 87 van die Wysigingswet op Inkomstewette, 2005, word hierby herroep.

#### **Wysiging van artikel 1 van Wet 14 van 2007**

53. Artikel 1 van die Molao wa Lekgethwana la Thomkelontle (Tsamaiso) ya Taemane wa, 2007, word hierby gewysig—

(b) deur na die omskrywing van "Mokomišenara" die volgende omskrywing in te voeg: 50

"**'Molao wa Lekgetho la Dithoto'** o raya Molao wa Lekgetho la Dithoto wa 1964 (Molao wa bo 91 wa ka 1964);".

**Amendment of section 2 of Act 14 of 2007**

**54.** Section 2 of the Diamond Export Levy (Administration Act), 2007, is hereby amended—

- (a) by the deletion of subsection (2);
- (b) by the substitution for subsection (3) of the following subsection: 5
 

“(3) A person who qualifies for registration on or after the promulgation date of this Act must apply to register with the Commissioner within [60] seven days of qualifying for registration.”.

**Amendment of section 4 of Act 14 of 2007**

**55.** Section 4 of the Diamond Export Levy (Administration) Act, 2007, is hereby amended by the substitution for subsection (1) of the following subsection: 10

- “(1) (a) A registered person must submit a return and payment as contemplated in subsection (5) to reach any office designated by the Commissioner by rule made under section 18 during the hours of business prescribed by the Commissioner by rule under the Customs and Excise Act, 1964, within a period of 30 days after the ending date of each assessment period described in subsection (2), but not later than the penultimate business day of that period. 15
- (b) For the purposes of subsection (1)(a), ‘business day’ means any day which is not a Saturday, Sunday or public holiday.”.

**Amendment of section 5 of Act 14 of 2007, as inserted by section 26 of Act 4 of 2008** 20

**56.** Section 5 of the Diamond Export Levy (Administration) Act, 2007, is hereby amended by the substitution for subsection (2) of the following subsection:

- “(2) To the extent a value described in section 2 (2) of the Levy Act in respect of an unpolished diamond is denominated in a foreign currency, that value will be translated into the currency of the Republic [at the selling rate on the date of shipment of that unpolished diamond] on such date and at such rate as determined by the Commissioner, in consultation with the South African Reserve Bank, or if no such rate is determined for such date, the latest rate determined before that date.”. 25

**Amendment of section 14 of Act 14 of 2007** 30

**57.** Section 14 of the Diamond Export Levy (Administration) Act, 2007, is hereby amended—

- (a) by the insertion in subsection (3) after paragraph (a) of the following paragraph: 35
 

“(aA) has failed to furnish the Commissioner with such forms, documents and information in support of such refund as the Commissioner may prescribe by rule; or”; and
- (b) by the substitution for subsection (5) of the following subsection: 40
 

“(5) If the amount that would be refunded under subsection (1) is determined to be less than [R100 or less than such other amount as the Commissioner may determine by Notice in the Gazette] R5, the amount so determined shall not be refunded [in respect of that assessment period but shall be carried forward to the immediately succeeding assessment period] unless the Commissioner is satisfied that exceptional circumstances exist that warrant such refund.”. 45

**Wysiging van artikel 2 van Wet 14 van 2007**

**54.** Die Molao wa Lekgethwana la Thomelontle (Tsamaiso) ya Taemane wa, 2007, word hierby gewysig—

(a) deur subartikel (2) te skrap;

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

“(3) Motho yo o tshwanelegelang go ikwadisa ka kgotsa morago ga go itsisiwe ga letlha la Molao ono o tshwanetse go dira kopo kwa go Mokomišenara ya go ikwadisa mo malatsing a le [60] supa a go tshwanelegela go ikwadisa.”;

**Wysiging van artikel 4 van Wet 14 van 2007**

**55.** Artikel 4 van die “Molao wa Lekgethwana la Thomelontle (Tsamaiso) ya Taemane wa, 2007,” word hierby gewysig deur subartikel (1) deur die volgende subartikel te vervang:

“(1) (a) Motho yo o ikwadisitseng o tshwanetse go ntsha poelo (*return*) mmogo le tuelo jaaka go tlhalositswe mo karolwaneng (5) gore di fitlhe kwa kantorong epe e e kailweng ke Mokomišenara go ya ka molao o o ka fa tlase ga karolo 18 ka nako ya diura tsa tiro tse di umakilweng ke Mokomišenara go ya ka molawana wa Molao wa Lekgetho la Dithoto, wa 1964, mo lobakeng lwa malatsi a le 30 morago ga go khutla ga lobaka lwa tekanyetso (“asesemente”) e e tlhalosiwang go karolwana 2, mme e seng morago ga letsatsi pele ga la bofelofelo la tiro lwa lobaka loo.

(b) Go tlhalosa se se buiwang ke karolwana (1)(a), “letsatsi la tiro” le raya letsatsi lepe le e seng Lamatlhatso, Sontaga kgotsa letsatsi la boikhutso.”.

**Wysiging van artikel 5 van Wet 14 van 2007, soos ingevoeg deur artikel 26 van Wet 4 van 2008**

**56.** Artikel 5 van die “Molao wa Lekgethwana la Thomelontle (Tsamaiso) ya Taemane wa, 2007,” word hierby gewysig deur subartikel (2) deur die volgende subartikel te vervang:

“(2) Go ya bokgakaleng jo boleng bo tlhalosiwang ka jone go Karolo 2(2) ya Molao wa Lekgethwana malebana le ditaemane tse di sa phatsimisiwang tse boleng jwa tsone bo leng go ya ka madi a dinaga di sele, boleng joo bo tla fetolelwa mo go jwa madi a Repaboliki [ka kelo ya thekiso ka letlha la go romelwa ga taemane e e sa phatsimisiwang] ka letlha leo le ka kelo eo go ya ka fa Mokomisenare a laetseng ka gone, fa a sena go ikgolaganya le *South African Reserve Bank*, kgotsa fa kelo e e ntseng jalo e sa umakiwa mmogo le letlha, go tla dirisiwa kelo ya bošeng ya pele ga letlha leo.”.

**Wysiging van artikel 14 van Wet 14 van 2007**

**57.** Artikel 14 van die “Molao wa Lekgethwana la Thomelontle (Tsamaiso) ya Taemane wa, 2007,” word hierby gewysig—

(a) deur die volgende paragraaf in subartikel (3) na paragraaf (a) in te voeg:

“(aA) a reteletswe ke go naya Mokomišenara diforomo tsa go nna jalo, ditokomane le tshedimosetso e e tshegetsang bosupi jwa pusetsoyadi go ya ka fa Mokomišenara a ka laolang ka gone; kgotsa”; en

(b) deur subartikel (5) deur die volgende subartikel te vervang:

“(5) Fa tlhotlha (“amaonto”) e e tla nnang ya pusetsoyadi ka fa tlase ga Karolwana (1) e lejwa e le ka fa tlase ga [R100 kgotsa ka fa tlase ga tlhotlha (“amaonto”) e nngwe e e laoletsweng ke Mokomišenara ka Kitsiso mo Kuranteng ya Mmuso (Kaseteng)] R5, tlhotlha (“amaonto”) e e kailweng eo ga e kitla e nna ya pusetsoyadi [malebana le lobaka loo lwa nako lwa tekanyetso (“asesemente”) mme e tla fetisediwa pele kwa lobakeng lo lo latelang lwa tekanyetso (“asesemente”)] ntle le fa Mokomišenara a kgotsofaletse gore go na le maemo a a kgethegileng a a dirang gore pusetsoyadi eo e dirwe.”.

**Amendment of section 15 of Act 14 of 2007**

**58.** Section 15 of the Diamond Export Levy (Administration) Act, 2007, is hereby amended—

- (a) by the substitution in subsection (1) of the words preceding paragraph (a) of the following words: 5  
 “(1) The Commissioner must pay interest [**calculated on a monthly basis**] in respect of any amount paid in respect of an assessment period to the extent that amount—”;
  - (b) by the substitution for subsection (2) of the following subsection: 10  
 “(2) A registered person must pay interest [**calculated on a monthly basis**] in respect of any amount due in respect of an assessment period that is not paid within 30 days after the ending date of that assessment period.”;
  - (c) by the substitution for subsection (3) of the following subsection: 15  
 “(3) Interest required under this section must be calculated on the daily balance owing and compounded monthly at [**the rate described in paragraph (b) of the definition of prescribed rate in section 1 of the Income Tax Act**] a rate as determined from time to time by the Minister of Finance in terms of section 80(1)(b) of the Public Finance Management Act, 1999 (Act No. 1 of 1999).”; and 20
  - (d) by the insertion after subsection (3) of the following subsection: 25  
 “(4) Where the Minister fixes a new rate as described in subsection (3), that new rate applies, for purposes of this Act, from the first day of the second month following the date on which that new rate came into operation.”.
- (2) Subsection (1) comes into operation on a date determined by the Minister of Finance by notice in the *Gazette*.

**Amendment of section 17 of Act 14 of 2007**

**59.** Section 17 of the Diamond Export Levy (Administration) Act, 2007, is hereby amended— 30

- (a) by the substitution for the heading of the following heading: 30  
 “Applicability of [**Income Tax Act**] Customs and Excise Act”; and
- (b) by the substitution for subsection (1) of the following subsection: 35  
 “(1) The provisions of the [**Income Tax Act**] Customs and Excise Act relating to— 35
  - (a) the exercise of powers and performance of duties;
  - (b) preservation of secrecy;
  - (c) the production of information, documents or things, enquiries, searches and seizures and evidence on oath;
  - (d) [**objections and**] appeals; 40
  - (e) settlement of disputes;
  - (f) the payment and recovery of [**tax**] duty, expenses, charges, interest and penalties;
  - (g) offences;
  - (h) [**reporting of unprofessional conduct**] electronic communication; 45  
and
  - (i) jurisdiction of courts as contained in section [**105**] 95,
 apply, with changes required by the context, to the levy in terms of this Act and the Levy Act.”.

**Amendment of section 2 of Act 25 of 2007** 50

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

- “(3) If the Minister makes an announcement referred to in subsection (2), that reduction or change comes into effect on the date announced and continues to apply



**Wysiging van artikel 15 van Wet 14 van 2007**

58. Artikel 15 van die “Molao wa Lekgethwana la Thomelontle (Tsamaiso) ya Taemane wa, 2007,” word hierby gewysig—

- (a) deur die woorde wat paragraaf (a) in subartikel (1) voorafgaan deur die volgende woorde te vervang: 5

“(1) Mokomišenara o tshwanetse go duela morokotso [o o balelelwang ka kgwedi] wa tlhotlwa (“amaonto”) epe fela e e duelelwang lobaka lwa tekanyetso (“asesemente”) go ka bokgakaleng jo e leng gore tlhotlwa (“amaonto”)—”;

- (b) deur subartikel (2) deur die volgende subartikel te vervang: 10

“(2) Motho yo o kwadisitsweng o tshwanetse go duela morokotso [o o balelelwang ka kgwedi] wa tlhotlwa (“amaonto”) epe fela e e tshwanetseng go duelelwa lobaka lwa tekanyetso (“asesemente”) e e sa duelwang mo malatsing a le 30 morago ga letlha la bofelo la lobaka loo lwa tekanyetso (“asesemente”).”;

- (c) deur subartikel (3) deur die volgende subartikel te vervang: 15

“(3) Morokotso o o batliwang ka fa tlase ga karolo eno o tshwanetse go balelelwa letsatsi le letsatsi go ya ka balanse ya letsatsi le letsatsi le go tlhakannwa kgwedi le kgwedi ka [kelo e e tlhalositsweng mo serapeng (b) sa tlhaloso ya kelo e e kailweng go Karolo 1 ya Molao wa Lekgetho la Letseno] kelo e e tlhomiwang gangwe le gape ke Tona ya Matlotlo go ya ka karolo 80(1)(b) ya Molao wa Taolo ya Madi a Setšhaba, wa 1999 (Molao wa bo 1 wa 1999).”;

- (d) deur die volgende subartikel na subartikel (3) in te voeg: 20

“(4) Fa Tona e tlhoma kelo e ntšha jaaka go tlhalositswe go karolwana (3), kelo e ntšha eo e tla dira, ka ntlha ya Molao ono, go simolola ka letsatsi la ntlha la kgwedi ya bobedi morago ga letlha le kelo e ntšha eo e simolotseng go dira ka lowa.”;

- (2) Subartikel (1) tree in werking op 'n datum deur die Minister van Finansies by kennisgewing in die *Staatskoerant* bepaal. 25

**Wysiging van artikel 17 van Wet 14 van 2007**

59. Artikel 17 van die “Molao wa Lekgethwana la Thomelontle (Tsamaiso) ya Taemane wa 2007” word hierby gewysig—

- (a) deur die opskrif deur die volgende opskrif te vervang: 35

“Go dira ga [Molao wa Lekgetho la Letseno] Molao wa Lekgetho la Dithoto.—”;

- (b) deur subartikel (1) deur die volgende subartikel te vervang: 40

“(1) Melawana ya [Molao wa Lekgetho la Letseno] Molao wa Lekgetho la Dithoto o o amanang le—

(a) go dirisa taolo le go diragatsa maikarabelo; 40

(b) Pabalelo ya sephiri;

(c) thagiso ya tshedimosetso, dikwalo kgotsa dilo, dipatlisiso, diphuruphutso le go tsewa (“dikgapo”) le bopaki jwa maikano;

(d) [dikemokgatlanong] boikuelo;

(e) tharabololo ya dikgotlang 45

(f) Tuelo le go bonwa ga [lekgetho] dituediso, ditsheayegelo le dikotlhao,

(g) ditlolomolao

(h) [go begiwa ga maitsholo a a sa siamang] puisano ya eleketeroniki; 50

(i) dithata tsa makgotla jaaka di tlhagelela mo karolong [105] 95, Di a diragatswa kwa diphetogo tse di tlhokwang ke maemo a lekgethwana go ya ka Molao o le Molao wa Lekgethwana.”;

**Wysiging van artikel 2 van Wet 25 van 2007**

60. Artikel 2 van die Wet op Belasting op Oordrag van Sekuriteite, 2007, word hierby gewysig deur subartikel (3) deur die volgende subartikel te vervang: 55

“(3) Indien die Minister 'n aankondiging bedoel in subartikel (2) maak, tree daardie vermindering of verandering in werking op die datum aangekondig en duur

## Act No. 18, 2009 TAXATION LAWS SECOND AMENDMENT ACT, 2009

for a period of [six] 12 months from that date, unless Parliament passes legislation giving effect to that announcement within that period of [six] 12 months.”.

**Amendment of section 1 of Act 29 of 2008**

61. Section 1 of the Mineral and Petroleum Resources Royalty (Administration) Act, 2008, is hereby amended by the insertion after the definition of “financial year” of the following definition: 5

“**‘nonbinding private opinion’** means a written statement issued by the Commissioner in response to an inquiry by a person in order to provide the person with informal guidance in respect of the tax treatment of a particular set of facts and circumstances or transaction;”. 10

**Amendment of section 2 of Act 29 of 2008**

62. Section 2 of the Mineral and Petroleum Resources Royalty (Administration) Act, 2008, is hereby amended by the substitution for subsection (2) of the following subsection:

“(2) A person that qualifies for registration as mentioned in subsection (1)— 15  
 (a) on 1 November 2009—  
     (i) may apply to register with the Commissioner on or after 1 November 2009; and  
     (ii) must apply to register with the Commissioner by 31 January 2010;  
     or 20  
 (b) after 1 November 2009 must apply to register with the Commissioner within 60 days after the day on which that person qualifies for registration.”.

**Amendment of section 4 of Act 29 of 2008**

63. (1) The following section is hereby substituted for section 4 of the Mineral and Petroleum Resources Royalty (Administration) Act, 2008: 25

**“Election for unincorporated body of persons**

4. (1) Notwithstanding subsection (2), if an unincorporated body of persons—  
 (a) consists of two or more members; and  
 (b) holds a prospecting right, retention permit, exploration right, mining right, mining permit or production right granted pursuant to the Mineral and Petroleum Resources Development Act (or a lease or sublease mentioned in section 11 of the Mineral and Petroleum Resources Development Act in respect of such a right) in the name of that unincorporated body, 30  
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all the members of that unincorporated body may elect that the unincorporated body [becomes] is deemed to be a person [that qualifies for registration in terms of section 2] for the purposes of this Act and the Royalty Act.

(2) On the day on which the members of an unincorporated body [qualifies for registration] make an election as mentioned in subsection (1)[— 40

(a)] all the members of that unincorporated body must elect a year of assessment in respect of that unincorporated body and that year of assessment must be the same year of assessment as that of a member of that unincorporated body[; and 45

voort vir 'n tydperk van [ses] 12 maande vanaf daardie datum, tensy die Parlement binne daardie tydperk van [ses] 12 maande wetgewing deurvoer om gevolg aan daardie aankondiging te gee.”.

#### Wysiging van artikel 1 van Wet 29 van 2008

61. Artikel 1 van die “Molao wa Royalithi (Tshepedišo) ya Methopo ya Diminerale le Petroliamo, wa 2008,” word hierby gewysig deur die volgende omskrywing in te voeg na die omskrywing van ‘Mokomišenare’:

“**‘kgopolo ya poraefete ya go se itlame’ e ra setatamente seo se ngwadilwego seo se ntšhwago ke Mokomišenare go karabo ya potšišo ye e botšišitšwego ke motho gore a fe motho yo a nago le tlhahlo ye e sego ya semmušo mabapi le go šomana le motšhelo wa sete ya dintlha tše di rilego le mabaka goba kgwebišano;**”.

#### Wysiging van artikel 2 van Wet 29 van 2008

62. Artikel 2 van die “Molao wa Royalithi (Tshepedišo) ya Methopo ya Diminerale le Petroliamo, wa 2008,” word hierby gewysig deur subartikel (2) deur die volgende subartikel te vervang:

“(2) Motho yo a nago le maswanedi a boingwadišo ka ge go boletšwe karolwaneng ya (1)—  
(a) ka la 1 Nofembere 2009—  
(i) a ka dira kgopelo ya go ngwadišwa le Mokomišenare ka goba ka morago ga la 1 Nofembere 2009; le  
(ii) o swanetše go dira kgopelo ya go ngwadišwa le Mokomišenare ka la 31 Janawari 2010; goba  
(b) “ka morago ga la 1 Nofembere 2009 o swanetše go dira kgopelo ya go ngwadišwa le Mokomišenare mo matšatšing a 60 ka morago ga ge letšatši leo motho yoo a bago le maswanedi a ngwadišo.”.

#### Wysiging van artikel 4 van Wet 29 van 2008

63. (1) Die “Molao wa Royalithi (Tshepedišo) ya Methopo ya Diminerale le Petroliamo, wa 2008,” word hierby gewysig deur artikel 4 deur die volgende artikel te vervang:

#### “Go kgetha lekgotla la batho bao ba sego khamphani”

4. (1) Go sa šetšwe karolwana ya (2), ge le lekgotla la batho bao ba sego khamphani—

- (a) le na le maloko a mabedi goba go feta; gomme; le
- (b) le na le tokelo ya go lekola diminerale nageng, phemiti ya go ba mong wa moepo, tokelo ya go utulla diminerale, tokelo ya go rafa diminerale moepong, phemiti ya go rafa dimenerale moepong goba tokelo ya tšweletšo tše di filwego go latela Molao wa Tlhabollo ya Methopo ya Diminerale le Petroliamo (goba go hiriša goba go hirišetša ba bangwe ba ka fasana mo go boletšwego ka gona karolong ya 11 ya Molao wa Tlhabollo ya Methopo ya Diminerale le Petroliamo mabapi le tokelo yeo) ka leina la lekgotla leo le sego khamphani, maloko ka moka a lekgotla leo le sego khamphani a a ka kgetha gore lekgotla leo le sego khamphani [le ba] le tšeiwa go ba motho [yo a nago le maswanedi a ngwadišo ka ge go boletšwe karolwaneng ya 2] mo mabakeng a Molao wo le Molao wa Royalithi

(2) Ka letšatši leo maloko a lekgotla leo le sego khamphani [le bago le maswanedi a ngwadišo ka ge go boletšwe karolwaneng ya (1)] a dira kgetho bjalo ka ge go akantšwe mo karolwaneng ya (1)—

- (a)] maloko ka moka a lekgotla leo le sego khamphani a swanetše go kgetha ngwaga wa tekolo wa mabapi le go dira tekolo ya lekgotla leo le sego khamphani gomme ngwaga woo wa tekolo o swanetše go ba ngwaga wa tekolo wa leloko leo la lekgotla leo le sego la khamphani. [; le

(b) **section 10 of the Royalty Act applies to that unincorporated body for as long as that unincorporated body is registered in terms of section 2].**

(3) If **[subsection (2) applies to]** the members of an unincorporated body made an election mentioned in subsection (1)— 5

(a) the liabilities and duties imposed under this Act and the Royalty Act in respect of that unincorporated body must be applied and performed by that unincorporated body separately from the members of that unincorporated body; **[and]**

(b) any other actions that are permitted by a person registered under this Act in respect of that unincorporated body must be performed by that unincorporated body separately from the members of that unincorporated body; and 10

(c) **section 10 of the Royalty Act applies to that unincorporated body for as long as that unincorporated body is deemed to be a person by virtue of the election made in terms of subsection (1).** 15

(4) Each member of an unincorporated body **[mentioned in subsection (2)] that made an election mentioned in subsection (1)** is liable jointly and severally with the other members of that unincorporated body for—

(a) the duties of that unincorporated body under this Act and the Royalty Act; 20

(b) the royalty imposed under the Royalty Act on that unincorporated body in respect of all mineral resources transferred by that unincorporated body, while the member was a member of that unincorporated body. 25

(5) If—

(a) an unincorporated body of which the members made an election mentioned in subsection **[(2)] (1)** is dissolved solely as a result of—

(i) the retirement, withdrawal or death of one or more members of that unincorporated body; or 30

(ii) the admission of a new member to that unincorporated body; and

(b) the new unincorporated body which is brought into being as a result of the dissolution mentioned in paragraph (a) satisfies the requirements of subsection (1)(a) and (b), 35

the **[registration] election made by the members of the dissolved unincorporated body as mentioned in subsection (1)** remains in effect for purposes of the new unincorporated body notwithstanding that dissolution.

(6) All the members of an unincorporated body **that made an election mentioned in subsection (1)** may at any time elect to terminate the registration of that unincorporated body with effect from the day after the last day of the year of assessment in which that election was made.”. 40

(2) Subsection (1) comes into operation on 1 November 2009.

#### **Amendment of section 9 of Act 29 of 2008**

**64.** Section 9 of the Mineral and Petroleum Resources Royalty (Administration) Act, 2008, is hereby amended by the substitution in subsection (2) for paragraph (a) of the following paragraph: 45

“(a) a registered person **[defaults in furnishing]** fails to furnish a return mentioned in subsection (1) or any information in respect of that return;”.

(b) **karolo ya 10 ya Molao wa Royalithi o dirišwa go lekgotla leo le sego khamphani ge fela lekgotla leo le sego khamphani le ngwadišitšwe go latela karolo ya 2].**

(3) ge **[karolwana ya (2) e dirišwa go]** maloko a lekgotla leo e sego khamphani a dira dikgetho bjalo ka ge di akantšwe mo karolwaneng ya (1)— 5

(a) maikarabelo le mešomo yeo e diragatšwago ka fase ga Molao wo le Molao wa Royalithi mabapi le lekgotla leo e sego khamphani e swanetše go dirišwa le go phethagatšwa ke lekgotla leo le sego khamphani le nnoši ka ntle le maloko a lekgotla leo le sego khamphani; **[le]** 10

(b) ditiro dife goba dife tšeo di dumeletšwego motho yo a ngwadišitšwego ka fase ga Molao wo mabapi le lekgotla leo le sego khamphani, di swanetšwe go phethagatšwa ke lekgotla leo le sego khamphani le nnoši ka ntle le maloko a lekgotla leo le sego khamphani; **le** 15

(c) karolo 10 ya Molao wa Royalithi e dirišwa go lekgotla leo le sego khamphani ge fela ge lekgotla leo le sego khamphani le tšeiwa go ba motho go ya ka maatla a dikgetho tšeo di dirilwego go ya ka karolwana ya (1). 20

(4) **Leloko le lengwe le lengwe la lekgotla leo le sego khamphani [leo le boletšwego mo karolwaneng ya (2)] leo le dirišago kgetho bjalo ka ge e akantšwe mo karolwaneng ya (1) le na le maikarabelo mmogo le ba mmalwa ba bangwe ba maloko a lekgotla leo le sego khamphani go—**

(a) mešomo ya lekgotla leo le sego khamphani ka fase ga Molao wo le Molao wa Royalithi; or 25

(b) go royalithi ye e lefišwago ka fase ga Molao wa Royalithi go lekgotla leo le sego khamphani mabapi le methopo ya diminerae ka moka ye e fetišeditšwego ke lekgotla leo le sego khamphani, ge leloko leo le be le sa le leloko la lekgotla leo le sego khamphani. 30

(5) Ge—

(a) lekgotla leo le sego khamphani leo le boletšwego mo karolwaneng ya **[(2)]** leo maloko a dirilego dikgetho bjalo ka ge di akantšwe mo karolwaneng ya (1), le fedišwa ka botlalo ka lebaka la—

(i) go tšwa mošomong, go itokolla goba lehu la leloko le tee goba maloko a mmalwa a lekgotla leo le sego khamphani; goba 35

(ii) go tsenywa ga leloko le lefsa ka lekgotleng leo le sego khamphani; **le**

(b) lekgotla le lefsa leo le sego khamphani leo le hlongwago ka lebaka la go fedišwa mo go boletšwego ka gona temaneng ya (a) le phethagatša dinyakwa tša karolwana ya (1)(a) le (b), 40

**[ngwadišo ya]** kgetho yeo e dirilwego ke maloko a lekgotla leo le sego la khamphani leo le fedišitšwego bjalo ka ge go akantšwe mo karolwaneng ya 1 e tšwela pele go šoma mabakeng a lekgotla leo le sego khamphani go sa šetšwe go fedišwa moo. 45

(6) Maloko ka moka a lekgotla leo le sego khamphani **[ao a boletšwego ka karolwaneng ya (1)]** ao a dirilego dikgetho bjalo ka ge di akantšwe mo karolwaneng ya (1) a ka kgetha go fediša ngwadišo ya lekgotla leo le sego khamphani nao ye nngwe le ye nngwe go thoma ka letšatši la ka morago ga mafelelo la ngwaga wa tekolo woo kgetho yeo e dirilwego ka wona.”. 50

(2) Subartikel (1) tree op 1 November 2009 in werking.

#### Wysiging van artikel 9 van Wet 29 van 2008

**64.** Artikel 9 van die “Molao wa Royalithi (Tshepedišo) ya Methopo ya Diminerae le Petroliamo, wa 2008,” word hierby gewysig deur paragraaf (a) in subartikel (2) deur die volgende paragraaf te vervang: 55

“(a) motho yo a ngwadišitšwego **[a dira phošo ka go se romele]** palelwa ke go romela dipampiri tša go lefa royalithi bjalo ka ge e boletšwe mo karolwaneng ya (1) goba tshedimošo efe goba efe mabapi le poelo yeo;”.

**Act No. 18, 2009 TAXATION LAWS SECOND AMENDMENT ACT, 2009****Insertion of section 18A in Act 29 of 2008**

65. The Mineral and Petroleum Resources Royalty (Administration) Act, 2008, is hereby amended by the insertion of the following subsection:

**“Nonbinding private opinions and other written statements**

- 18A.** (1) The Commissioner may issue a nonbinding private opinion to a person regarding the tax treatment of a particular set of facts and circumstances or a particular transaction. 5
- (2) A nonbinding private opinion does not have any binding effect upon the Commissioner.
- (3) A nonbinding private opinion may not be cited in any proceeding before the Commissioner or the courts other than a proceeding involving the person to whom the nonbinding private opinion was issued.”. 10

**Substitution of section 21 of Act 29 of 2008**

66. (1) The Mineral and Petroleum Resources Royalty (Administration) Act, 2008, is hereby amended by the substitution for section 21 of the following section: 15

**“Short title and commencement**

- 21.** (1) This Act is called the Mineral and Petroleum Resources Royalty (Administration) Act, 2008.
- (2) This Act comes into operation—
- (a) in respect of sections 1, 2, 3, 4, 7, 17, 18 and 20 on 1 November 2009; 20
- and
- (b) in respect of sections 5, 6, 8, 9, 10, 11, 12, 13, 14, 15, 16 and 19 on 1 March 2010.”.
- (2) Subsection (1), to the extent that it relates to—
- (a) section 21(2)(a) of the Mineral and Petroleum Resources Royalty (Administration) Act, 2008, comes into operation on 1 November 2009; and 25
- (b) section 21(2)(b) of the Mineral and Petroleum Resources Royalty (Administration) Act, 2008, comes into operation on 1 March 2010.”.

**Short title and commencement**

67. (1) This Act is called the Taxation Laws Second Amendment Act, 2009. 30

(2) Save in so far as is otherwise provided for in this Act or the context otherwise indicates, the amendments effected to the Income Tax Act, 1962, by this Act are deemed for the purposes of assessments in respect of normal tax under the Income Tax Act, 1962, to have come into operation as from the commencement of years of assessment ending 35

on or after 1 January 2010.

**Invoeging van artikel 18A in Wet 29 van 2008**

**65.** Die “Molao wa Royalithi (Tshepedišo) ya Methopo ya Diminerale le Petroliamo, wa 2008,” word hierby gewysig deur die volgende artikel in te voeg:

**“Dikgopolo tša poraefete tša go se itlame le ditatamente tše dingwe tšeo di ngwadilwego**

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**18A.** (1) Mokomišenare a ka ntšha kgopolo ya poraefete yeo e sa tlamego mabapi le go šomana le motšhelo wa sete ya dintlha tše di rilego le mabaka goba kgwebišana.

(2) Kgopolo ya poraefete ye e sa tlamego ga e na maitlamo afe goba afe mo go Mokomišenare.

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(3) Kgopolo ya poraefete yeo e sa tlamego e ka no se ngwalwe mo go ditshepetšo dife goba dife pele ga Mokomišenare goba dikgoro tša tsheko go na le gore ditshepetšo di ama motho yo a filwego kgopolo yeo ya poraefete.”.

**Vervanging van artikel 21 van Wet 29 van 2008**

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**66.** (1) Die “Molao wa Royalithi (Tshepedišo) ya Methopo ya Diminerale le Petroliamo, wa 2008,” word hierby gewysig deur artikel 21 deur die volgende artikel te vervang:

**“Leina le le kopana la Molao le go thoma go šoma ga wona”**

**21.** (1) Molao wo o bitšwa Molao wa Royalithi (Tshepedišo) ya Methopo ya Diminerale le Petroliamo, wa 2008.

(2) Molao wo o thoma go šoma—

(a) go ya ka dikarolo tša 1, 2, 3, 4, 7, 17, 18 le 20 ka la 1 Nofembere 2009; le

(b) go ya ka dikarolo tša 5, 6, 8, 9, 10, 11, 12, 13, 14, 15, 16 le 19 ka la 1 Matšhe 2010.”.

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(2) Karolwana ya (1), go fihlela mo e amanago le—

(a) karolo ya 21(2)(a) ya Molao wa Royalithi (Tshepedišo) ya Methopo ya Diminerale le Petroliamo, wa 2008, o tšeiwa go ba o šoma ka la 1 Nofembere 2009; le

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(b) karolo ya 21(2)(b) ya Molao wa Royalithi (Tshepedišo) ya Methopo ya Diminerale le Petroliamo, wa 2008, o thoma go šoma ka la 1 Matšhe 2010.”

**Kort titel en inwerkingtreding**

**67.** (1) Hierdie Wet heet die Tweede Wysigingswet op Belastingwette, 2009.

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(2) Tensy hierdie Wet anders bepaal of dit uit die samehang anders blyk, word die wysigings aan die Inkomstebelastingwet, 1962, deur hierdie Wet aangebring, vir die doeleindes van aanslae ten opsigte van normale belasting kragtens die Inkomstebelastingwet, 1962, geag in werking te getree het met die aanvang van jare van aanslag wat op of na 1 Januarie 2010 eindig.

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