

(13 July 2005 – to date)

[This is the **current** version and applies as from **13 July 2005**, i.e. the date of commencement of the Taxation Laws Second Amendment Act 10 of 2005 – **to date**]

EXCHANGE CONTROL AMNESTY AND AMENDMENT OF TAXATION LAWS ACT 12 OF 2003

(Government Notice 730 in Government Gazette 25047 dated 31 May 2003. Commencement date: 31 May 2003 – unless otherwise indicated)

As amended by:

Revenue Laws Amendment Act 45 of 2003 - Government Notice 1844 in Government Gazette 25864 dated 22 December 2003. Commencement date: 1 June 2003.

Taxation Laws Amendment Act 16 of 2004 – Government Notice 895 in Government Gazette 26612 dated 27 July 2004. Commencement date: 27 July 2004.

Taxation Laws Second Amendment Act 10 of 2005 – Government Notice 698 in Government Gazette 27786 dated 13 July 2005. Commencement date: 13 July 2005.

Publisher's note:

Government Notice R57 in Government Gazette 33983, dated 4 February 2011, provides as follows:

"I, Pravin J. Gordhan, Minister of Finance, acting in terms of section 27 of the Exchange Control Amnesty and Amendment of Taxation Laws Act, 2003 (Act No. 12 of 2003) ("the Act"), hereby terminate the existence and mandate of the Amnesty Unit, which was established in terms of section 22 of the Act."

GENERAL EXPLANATORY NOTE:

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

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

(English text signed by the President.)

(Assented to on 30 May 2003.)

ACT

To provide for exchange control amnesty with accompanying tax measures in respect of voluntary disclosure by an applicant of any contravention of the Exchange Control Regulations or failure to

Prepared by:

In partnership with:

comply with the provisions of the Estate Duty Act, 1955, or the Income Tax Act, 1962, to the extent that it relates to foreign assets; to amend the Transfer Duty Act, 1949, so as to adjust the rates of duty; to fix the rates of normal tax payable by persons other than companies in respect of taxable income for the years of assessment ending on 29 February 2004 and by companies in respect of taxable income for the years of assessment ending during the 12 months ending on 31 March 2004; to amend the Income Tax Act, 1962, so as to amend a definition; to further regulate the provisions relating to secrecy to provide for exchange of information between the South African Revenue Service and the South African Reserve Bank; to increase the primary and secondary rebates; to further regulate the exemption in respect of interest and foreign dividends; to increase the income threshold of small business corporations; to further regulate the secondary tax on companies where a company ceases to be a resident; to amend the Customs and Excise Act, 1964, so as to further regulate the provisions relating to secrecy to provide for exchange of information between the South African Revenue Service and the South African Reserve Bank; to increase the rate of the air passenger tax; and to amend Schedule No. 1 to the said Act and the effective date thereof; to amend the Stamp Duties Act, 1968, so as to delete a definition and to amend a definition; to abolish stamp duty on certain instruments; and to effect certain consequential amendments; to amend the South African Reserve Bank Act, 1989, so as to further regulate the provisions relating to secrecy to provide for exchange of information between the South African Reserve Bank and the South African Revenue Service; to amend the Value-Added Tax Act, 1991, so as to increase the threshold of rental income in the definition of "commercial accommodation"; to further regulate the provisions relating to secrecy to provide for exchange of information between the South African Revenue Service and the South African Reserve Bank; to amend the Tax on Retirement Funds Act, 1996, so as to reduce the rate at which the tax on retirement funds is imposed; to provide for the continuation of amendments to the Schedules to the Customs and Excise Act, 1964; to provide for a short title and commencement date of this Act; and to provide for matters connected therewith.

PREAMBLE

RECOGNISING that the objectives of the exchange control amnesty and accompanying tax measures are -

- (a) to enable violators of Exchange Control Regulations and certain tax Acts to regularise their affairs in respect of foreign assets attributable to those violations;
- (b) to ensure maximum disclosure of foreign assets and to facilitate repatriation thereof to the Republic; and
- (c) to extend the tax base by disclosing previously unreported foreign assets.

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

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CHAPTER I

EXCHANGE CONTROL AMNESTY AND ACCOMPANYING TAX MEASURES

Part A

Definitions, Administration and Application

1. Definitions

Prepared by:

In partnership with:

For purposes of this Chapter, unless the context indicates otherwise, any meaning ascribed to any word or expression in section 1 of the Income Tax Act, 1962, must bear the meaning so ascribed, and-

"amnesty unit" means the amnesty unit established in terms of section 22;

"applicant" means any person contemplated in section 3(1)(a) or (b);

"application" means the application contemplated in section 5;

"authorised dealer" means an authorised dealer as defined in the Exchange Control Regulations;

"Commissioner" means the Commissioner for the South African Revenue Service appointed in terms of section 6 of the South African Revenue Service Act, 1997 (Act No. 34 of 1997);

(Definition of "Commissioner" substituted by section 219(1)(a) of Act 45 of 2003)

"date of approval" means the date on which the notice of approval was delivered by the amnesty unit to the applicant as contemplated in section 9(6);

"deliver", in relation to a document, means -

- (a) handing that document to the relevant person;
- (b) sending that document to the relevant person by registered post to that person's last known address, which may be his or her last known place of residence, office, place of business or post office box number;
- (c) transmitting that document to the relevant person by facsimile; or
- (d) transmitting that document to the relevant person by electronic means:

Provided that in the case of paragraphs (c) and (d), the document must be handed to the relevant person or sent by registered post to that person as contemplated in paragraph (b), within ten days of it being so transmitted by facsimile or electronic means;

"domestic tax amnesty levy" means the levy imposed in terms of section 16;

"Estate Duty Act, 1955" means the Estate Duty Act, 1955 (Act No. 45 of 1955);

"exchange control amnesty levy" means the levy imposed in terms of section 11;

"Exchange Control Regulations" means the Exchange Control Regulations, 1961, issued in terms of section 9 of the Currency and Exchanges Act, 1933 (Act No. 9 of 1933);

"facilitator" means a person contemplated in section 3(1)(c);

"foreign asset" means -

- (a) any funds held in foreign currency; and
- (b) any asset transferred from or accumulated outside the Republic,

but does not include any foreign bearer instrument;

"foreign bearer instrument" means a financial instrument issued by a person who is not a resident where the identity of the beneficial owner thereof cannot be determined by reference to either that instrument or the person who issued that financial instrument, but does not include an instrument if the beneficial owner can prove that the financial instrument is derived from that beneficial owner's own funds which had been held for a period of at least 18 months prior to the acquisition of that financial instrument;

"General Manager" means the General Manager of the Exchange Control Department of the South African Reserve Bank or any person to whom the powers, functions and duties have been delegated by the Minister in terms of the Exchange Control Regulations;

"Governor" means the person appointed as the Governor of the South African Reserve Bank under section 4 or 6(1)(a) of the South African Reserve Bank Act, 1989 (Act No. 90 of 1989);

"held", "hold" or "holding" in relation to a foreign asset means direct beneficial ownership in that foreign asset, and includes a deemed holding of that foreign asset in terms of section 4;

"Income Tax Act, 1962" means the Income Tax Act, 1962 (Act No. 58 of 1962);

"leviable amount" means the leviable amount contemplated in section 11(2);

"market value" in relation to a foreign asset of a person, means the market value as contemplated in paragraph 31 of the Eighth Schedule to the Income Tax Act, 1962;

"Minister" means the Minister of Finance;

"related party" in relation to an applicant means -

- (a) a company, none of the shares or interests of which is held by any person other than -

- (i) that applicant; or
 - (ii) in the case where the applicant is a natural person, by that applicant or relatives of that applicant; or
- (b) a trust or deceased estate of which the applicant is a beneficiary;

"resident" means -

- (a) for purposes of tax matters, a resident as defined in section 1 of the Income Tax Act, 1962; and
- (b) for purposes of exchange control matters, a person whether of South African or other nationality, who has taken up residence or is domiciled in the Republic, for purposes of the Exchange Control Regulations;

"South African Revenue Service" means the South African Revenue Service established in terms of the South African Revenue Service Act, 1997 (Act No. 34 of 1997);

"unauthorised asset" means any foreign asset which was accumulated as foreign assets or transferred from the Republic in contravention of the Exchange Control Regulations; and

"unlawful activity" means an unlawful activity as defined in the Prevention of Organised Crime Act, 1998 (Act No. 121 of 1998), other than -

- (a) any exchange control contravention or failure to comply with the Estate Duty Act, 1955, or the Income Tax Act, 1962; or
- (b) any activity constituting a misrepresentation or non-disclosure that was necessary to facilitate the contravention or failure contemplated in paragraph (a); or
(Paragraph (b) of the definition of "unlawful activity" amended by section 219(1)(b) of Act 45 of 2003)
- (c) any contravention or failure to comply with any other Act administered by the Commissioner, if the applicant or facilitator, as the case may be, no later than 60 days after the date of application rectifies any such contravention or failure and makes arrangements with the Commissioner to pay any outstanding liability relating to that contravention or failure.";
(Paragraph (c) of the definition of "unlawful activity" added by section 219(1)(b) of Act 45 of 2003)

2. Administration of Chapter

The amnesty process of this Chapter is administered by the Chairperson of the amnesty unit.

3. Persons who may apply for exchange control or tax relief in terms of amnesty

(1) The following persons who are resident on 28 February 2003 may apply for amnesty in terms of this Chapter:

- (a) Any natural person (including the deceased estate of a natural person), a close corporation or trust, holding any foreign asset on 28 February 2003, the value of which has been wholly or partly derived from any unauthorised asset;
- (b) Any natural person (including the deceased estate of a natural person), a close corporation or trust, holding any foreign asset on 28 February 2003, the value of which has been wholly or partly derived from any amount that was not declared to the Commissioner as required in terms of the Estate Duty Act, 1955, or the Income Tax Act, 1962; and
- (c) Any natural person (including the deceased estate of a natural person) or any related party in relation to an applicant contemplated in paragraph (a), which on or before 28 February 2003 assisted that applicant (otherwise than solely in an advisory capacity) -

- (i) by accumulating foreign assets; or

- (ii) by transferring funds or assets from the Republic,

for the benefit of that applicant in a manner that involves either any contravention of the Exchange Control Regulations or a failure to comply with the Estate Duty Act, 1955, or the Income Tax Act, 1962, and those foreign assets, funds or assets are no longer held by that natural person or related party.

(2) This Chapter does not apply in respect of any amount not declared to the Commissioner or any failure to comply with the requirements of the Income Tax Act, 1962, as contemplated in subsection (1)(b) and (c) where that amount constitutes, or that failure relates to -

- (a) an amount withheld or deducted by the natural person, close corporation, trust or facilitator, as the case may be, from an employee in terms of paragraph 2 of the Fourth Schedule to the Income Tax Act, 1962; or
- (b) an amount of withholding tax on royalties which must be paid to the Commissioner in terms of section 35 of the Income Tax Act, 1962.

4. Special rules for donors to and beneficiaries of discretionary trust

(Heading of section 4 substituted by section 220(1)(a) of Act 45 of 2003)

- (1) A person who is a donor (or the deceased estate of a donor) or a beneficiary in relation to a discretionary trust which is not a resident, may elect that any foreign asset contemplated in subsection (2), which was held by that discretionary trust on 28 February 2003, must be deemed to be held by that person.

(Section 4(1) substituted by section 220(1)(b) of Act 45 of 2003)

- (2) Subsection (1) applies in respect of a foreign asset of a discretionary trust which -

- (a) was acquired by that discretionary trust by way of a donation;

(Section 4(2)(a) substituted by section 220(1)(c) of Act 45 of 2003)

- (b) has been wholly or partly derived from any unauthorised asset or from any amount not declared to the Commissioner as required by the Estate Duty Act, 1955, or the Income Tax Act, 1962; and

(Section 4(2)(b) substituted by section 220(1)(c) of Act 45 of 2003)

- (c) has not at the time of that election vested in any beneficiary of that discretionary trust.

- (3) Where a person has made an election as contemplated in subsection (1) in relation to a foreign asset -

- (a) that person must be deemed to have held that foreign asset -

- (i) for purposes of this Chapter, from the date that the discretionary trust acquired that foreign asset; and

- (ii) for the purposes of the Income Tax Act, 1962, (other than Part V and VII of Chapter II of that Act) from the first day of the last year of assessment ending on or before 28 February 2003,

(Section 4(3)(a)(ii) substituted by section 220(1)(d) of Act 45 of 2003)

until that foreign asset is disposed of by that discretionary trust to any other person, in which case that person shall be deemed to have disposed of that foreign asset for consideration equal to its market value on the date of disposal; and

- (b) the provisions of sections 7(5), 7(8) and 25B of the Income Tax Act, 1962, and paragraphs 70, 72 and 80 of the Eighth Schedule to that Act, shall not apply in respect of any income, expenditure or capital gain relating to that foreign asset, while it is so deemed to be held by that person.

- (4) In order to make the election contemplated in subsection (1), the person must submit the founding document of the discretionary trust as at 28 February 2003 with the application in terms of section 5.

Part B

Application, Evaluation and Approval Process

5. Application for amnesty and period for application

An applicant or facilitator applying for amnesty contemplated in this Chapter must submit an application by way of a sworn affidavit or solemn declaration which must be delivered to the amnesty unit during the period commencing 1 June 2003 and ending 29 February 2004, at the address and in the form and manner as may be prescribed by the amnesty unit.

(Section 5 substituted by section 221(1) of Act 45 of 2003)

6. Required information for application by applicant

(1) An applicant contemplated in section 3(1)(a) who applies for exchange control relief, as contemplated in Part C, in respect of any foreign asset which is held by that applicant on 28 February 2003 wholly or partly in contravention of the Exchange Control Regulations, must -

- (a) disclose the market value on that date of that foreign asset in the foreign currency of the country in which that foreign asset is situated;
- (b) include a description of the identifying characteristics and the location of that foreign asset;
- (c) submit in respect of the market value in foreign currency of that foreign asset -
 - (i) a valuation certificate by a valuator of the country where that foreign asset is located;
 - (ii) a valuation by a sphere of government of the country where that foreign asset is located;
 - (iii) which constitutes a financial instrument, an original or certified copy of a statement of account indicating the balance or market value as at 28 February 2003; or
 - (iv) any other form of proof of value of that foreign asset as the amnesty unit may on good cause shown allow.

(2) An applicant contemplated in section 3(1)(b) who applies for the tax relief in respect of foreign income, as contemplated in section 15, must -

- (a) disclose the receipts and accruals for the last year of assessment of that applicant ending on or before 28 February 2003, which relate to any foreign asset held by that applicant on 28 February 2003, the value of which has been wholly or partly derived from receipts or accruals

from a source outside the Republic that were not declared to the Commissioner in any previous year of assessment, as required by the Income Tax Act, 1962; and

- (b) include a description of the identifying characteristics and the location of that foreign asset.
- (3) An applicant contemplated in section 3(1)(b) who applies for the domestic tax relief, as contemplated in section 17, must -
- (a) disclose the amounts that were not declared to the Commissioner, as required by the Estate Duty Act, 1955, or the Income Tax Act, 1962, (other than receipts and accruals contemplated in subsection (2)(a)), to the extent that those amounts were accumulated as or converted to foreign assets;
 - (b) disclose the dates on which those amounts were initially accumulated as or converted to foreign assets; and
 - (c) submit documentary proof of those dates and those amounts which were accumulated as or converted to foreign assets after 28 February 1998.
- (4) An applicant contemplated in subsections (1), (2) and (3) must confirm in the application that no foreign asset or foreign bearer instrument held by that applicant on 28 February 2003 was derived wholly or partly from the proceeds of any unlawful activities.

7. Statement of foreign assets and liabilities for tax relief

- (1) An applicant contemplated in section 6(2) and (3) applying for tax relief contemplated in Part D, must attach to the application a statement of assets and liabilities as at the last day of the last year of assessment ending on or before 28 February 2002, in respect of all disclosed foreign assets and liabilities of that applicant outside the Republic, reflecting all such foreign assets at both historic cost and estimated market value in the foreign currency of the country in which that foreign asset is situated or liability is incurred.
- (2) Where an applicant fails to comply with subsection (1), the Commissioner may, for purposes of the Income Tax Act, 1962, estimate the historic cost and market value of all foreign assets and the amount of liabilities of that applicant outside the Republic as at the last day of the last year of assessment contemplated in subsection (1).

8. Required information for application by facilitator

A facilitator who applies for the amnesty in terms of this Chapter, must -

- (a) apply jointly with an applicant on the prescribed form submitted by that applicant;

- (b) confirm that there is no reason for that facilitator to believe that any of the foreign assets, funds or assets contemplated in section 3(1)(c) represented or were derived from proceeds of unlawful activities; and
- (c) where that facilitator applies for the domestic tax relief, as contemplated in section 17, with respect to a foreign asset of the applicant contemplated in paragraph (a) -
 - (i) disclose the amounts that were not declared to the Commissioner, as required by the Estate Duty Act, 1955, or the Income Tax Act, 1962, to the extent those amounts were accumulated as or converted to foreign assets;
 - (ii) disclose the dates on which those amounts were so accumulated as or converted to foreign assets; and
 - (iii) submit documentary proof of those dates and those amounts which were accumulated as or converted to foreign assets after 28 February 1998.

9. Evaluation and Approval

- (1) If an applicant applying for exchange control relief, as contemplated in Part C, complies with section 6(1) in relation to a foreign asset, the amnesty unit must, subject to section 10, grant approval that Part C applies to the extent of the disclosure in terms of section 6(1) in respect of that foreign asset.
- (2) To the extent that an applicant applying for tax relief in respect of foreign income, as contemplated in section 15, complies with section 6(2) in respect of any foreign asset, the amnesty unit must, subject to section 10, grant approval that section 15 applies in respect of the receipts or accruals from a source outside the Republic from which that foreign asset has been derived.
- (3) To the extent that an applicant applying for domestic tax relief as contemplated in section 17, complies with section 6(3) in respect of any amount not declared to the Commissioner as required by the Estate Duty Act, 1955, or the Income Tax Act, 1962, which relates to a foreign asset, the amnesty unit must, subject to section 10, grant approval that section 17 applies in respect of that amount.
- (4) To the extent that a facilitator applying for exchange control relief, as contemplated in Part C, complies with section 8, the amnesty unit must, subject to section 10, grant approval that Part C applies in respect of that facilitator.
- (5) To the extent that a facilitator applying for domestic tax relief, as contemplated in section 17, complies with section 8 in respect of any amount not declared to the Commissioner as required by the Estate Duty Act, 1955, or the Income Tax Act, 1962, the amnesty unit must, subject to section 10, grant approval that section 17 applies in respect of that amount.

- (6) The amnesty unit must deliver to an applicant or facilitator a notice of its decision to approve the application.
- (7) The approval contemplated in subsections (1), (3), (4) and (5) is granted subject to payment of the full amount of the exchange control amnesty levy or the domestic tax amnesty levy, as the case may be, within the period prescribed in this Chapter.

10. Circumstances where amnesty unit may not grant approval

- (1) The amnesty unit shall grant approval in terms of section 9 in respect of an applicant, only where -
 - (a) that applicant delivered the application to the amnesty unit within the period commencing 1 June 2003 and ending 29 February 2004;
(Section 10(1)(a) substituted by section 222(1) of Act 45 of 2003)
 - (b) neither the General Manager nor the Commissioner has, before the submission of the application in terms of section 5, delivered a notice to that applicant or any facilitator in relation to that applicant, as the case may be, (or their representatives) that the applicant or facilitator, as the case may be, is subject to an audit, investigation or other enforcement action relating to -
 - (i) any contravention of the Exchange Control Regulations; or
 - (ii) failure to comply with the Income Tax Act, 1962, in respect of his or her foreign assets or foreign bearer instruments; or
 - (iii) undeclared amounts arising in the Republic which were accumulated as or converted to foreign assets as contemplated in section 6(3)(a),unless that notice is subsequently withdrawn by the General Manager or the Commissioner, as the case may be, by the last day of the period contemplated in paragraph (a); and
 - (c) that applicant or facilitator, as the case may be, has confirmed that no foreign assets or foreign bearer instruments have been derived wholly or partly from the proceeds of any unlawful activities, as respectively required by sections 6(4) and 8(b).
- (2) The amnesty unit shall not grant approval in terms of section 9 in respect of an applicant or facilitator, as the case may be, for tax relief contemplated in Part D, if the Commissioner has indicated that the applicant or facilitator, as the case may be, has not yet submitted an income tax return for the last year of assessment ending on or before 28 February 2003 and no extension for the submission of that return was granted by the Commissioner.

- (3) The amnesty unit shall grant approval in terms of section 9 in respect of a facilitator in relation to an applicant, only where -
- (a) that facilitator submits the application jointly with that applicant as contemplated in section 8(a); and
 - (b) the application of that applicant is approved.
- (4) The amnesty unit must deliver to an applicant or facilitator a notice of its decision not to approve the application and must set out the reasons therefor.

Part C

Exchange Control Relief in terms of Amnesty

11. Imposition of exchange control amnesty levy

- (1) An applicant with approval in terms of section 9(1) is subject to an exchange control amnesty levy in respect of the leviable amount determined in terms of subsection (2).
- (2) The leviable amount equals the total market value of all foreign assets disclosed as contemplated in section 6(1)(a), reduced by -
- (a) so much of the market value of all those foreign assets as is proved by the applicant not to be held by that applicant in contravention of the Exchange Control Regulations; and
 - (b) in the case of a natural person, the permissible foreign capital allowance in terms of the Exchange Control Regulations, translated to the relevant foreign currency at the exchange rate as published by the South African Reserve Bank for 28 February 2003 (to the extent that the allowance has not otherwise been availed of by the applicant).

12. Amount of exchange control amnesty levy

- (1) The exchange control amnesty levy is equal to -
- (a) 5 per cent of so much of the leviable amount as is repatriated to the Republic through an authorised dealer within three months after the date of approval (otherwise than for purposes of paying the levy contemplated in paragraph (b) from foreign assets as required by section 13(2)(b)); and
 - (b) 10 per cent of the leviable amount remaining after deducting the amount repatriated as contemplated in paragraph (a).

- (2) The amnesty unit may extend the period contemplated in subsection (1)(a) by a further period of no more than three months -
 - (a) to the extent that an applicant proves that an amount which that applicant wishes to repatriate cannot reasonably be converted into Rand within that period; or
 - (b) in anticipation of an amendment to the Income Tax Act, 1962, in respect of the exemption of certain foreign dividends, where the repatriation will be effected by way of a foreign dividend.
- (3) The leviable amount on which the levy is calculated in terms of subsection (1), is determined before taking into account any fees or commissions.

13. Payment of exchange control amnesty levy

- (1) All amounts of the exchange control amnesty levy must be paid by an applicant to an authorised dealer by no later than -
 - (a) in the case of the exchange control amnesty levy contemplated in section 12(1)(a), the date of repatriation and must be converted into Rand by using the ruling' spot exchange rate on the date of repatriation; and
 - (b) in the case of the exchange control amnesty levy contemplated in section 12(1)(b), three months after the date of approval and must be converted into Rand by using the ruling spot exchange rate on the date of payment.
- (2) The exchange control amnesty levy -
 - (a) contemplated in section 12(1)(a), must be paid from foreign funds repatriated; and
 - (b) contemplated in section 12(1)(b), must be paid -
 - (i) from any foreign funds not otherwise repatriated in terms of section 12(1)(a), which are accepted by an authorised dealer; or
 - (ii) to the extent that the applicant no longer holds any foreign assets, from any foreign funds so repatriated.
- (3) The authorised dealer must pay all amounts received in terms of subsection (1) into an account held for that purpose at the Corporation for Public Deposits established in terms of section 2 of the Corporation for Public Deposits Act, 1984 (Act No. 46 of 1984), within the period and under the terms prescribed by the Chairperson of the amnesty unit, for subsequent transfer to the National Revenue Fund.

- (4) The amnesty unit may extend the period contemplated in subsection (1)(b) by a further period of no more than three months -
- (a) to the extent that an applicant proves that an amount which that applicant must pay from foreign funds cannot reasonably be converted to Rand within that period; or
 - (b) in anticipation of an amendment to the Income Tax Act, 1962, in respect of the exemption of certain foreign dividends, where the payment of the levy will be effected by way of a foreign dividend.
- (5) For the purposes of this section, "foreign funds" excludes any funds denominated in the currency of any country which forms part of the Common Monetary Area for purposes of the Exchange Control Regulations or any assets held in any such country.

14. Exchange Control Relief

- (1) An applicant with approval in terms of section 9(1) is deemed not to have contravened the Exchange Control Regulations in respect of -
- (a) so much of the market value of any foreign assets disclosed in terms of section 6(1); and
 - (b) all other foreign assets which are no longer held by that applicant as at 28 February 2003, otherwise than as a result of a donation of that foreign asset by that applicant.
- (2) A facilitator with approval in terms of section 9(4) is deemed not to have contravened the Exchange Control Regulations in respect of any foreign asset contemplated in subsection (1) of an applicant in relation to that facilitator.

Part D

Tax Relief in terms of Amnesty

15. Exemption for undeclared foreign income

An applicant with approval in terms of section 9(2), shall not be liable for the payment of any amount in terms of the Income Tax Act, 1962, and shall be deemed not to have committed any offence in terms of that Act, in respect of any receipts or accruals from a source outside the Republic during any year of assessment ending on or before 28 February 2002, which were not declared to the Commissioner, to the extent that those receipts or accruals represent or are included in -

- (a) any foreign asset in respect of which that applicant has made disclosure in terms of section 6(2); or

- (b) any other foreign asset which is no longer held by that applicant as at 28 February 2003, otherwise than as a result of a donation of that foreign asset by that applicant.

16. Imposition and payment of domestic tax amnesty levy

- (1) An applicant or facilitator with approval in terms of section 9(3) or 9(5), as the case may be, is subject to a domestic tax amnesty levy equal to 2 per cent of the amount disclosed in terms of section 6(3) or 8(c), as the case may be, converted to Rand at the exchange rate as published by the South African Reserve Bank for the date of accumulation or conversion contemplated in that section.
- (2) The applicant or facilitator, as the case may be, must pay the domestic tax amnesty levy into the account contemplated in section 13(3) held at the Corporation for Public Deposits, within a period of three months after the date of approval, for subsequent transfer to National Revenue Fund.

17. Exemption for undeclared amounts arising in Republic

- (1) An applicant with approval in terms of section 9(3) shall not be liable for the payment of any tax or duty-
 - (a) in respect of any amount which is equal to the amount accumulated as or converted to foreign assets, as disclosed in terms of section 6(3); and
 - (b) which could have been imposed in terms of the Estate Duty Act, 1955, or the Income Tax Act, 1962, on or before the date of that accumulation or conversion,

and that applicant shall be deemed not to have committed any offence in terms of those Acts to the extent of any amount so disclosed.

- (2) A facilitator with approval in terms of section 9(5) shall not be liable for the payment of any tax or duty-
 - (a) in respect of any amount which is equal to the amount accumulated as or converted to foreign assets, as disclosed in terms of section 8(c); and
 - (b) which could have been imposed in terms of the Estate Duty Act, 1955, or the Income Tax Act, 1962, on or before the date of that accumulation or conversion,

and that facilitator shall be deemed not to have committed any offence in terms of those Acts to the extent of any amount so disclosed.

- (3) No tax relief shall be granted in terms of this section in respect of any-

- (a) normal tax which could have been imposed in terms of the Income Tax Act, 1962, in respect of any year of assessment ending after 28 February 2002;
- (b) secondary tax on companies which could have been imposed in terms of the Income Tax Act, 1962, in respect of any dividend declared or amount distributed after 28 February 2002;
- (c) donations tax which could have been imposed in terms of the Income Tax Act, 1962, in respect of any donation after 28 February 2003; or
- (d) estate duty which could have been imposed in terms of the Estate Duty Act, 1955, in respect of the estate of any person who died after 28 February 2003.

(Section 17(3) added by section 223(1) of Act 45 of 2003)

18. Circumstances where tax relief does not apply

This Part does not apply in respect of any amount which -

- (a) had already been paid as at the date of application contemplated in section 5; or
- (b) is payable or becomes payable by an applicant or facilitator in consequence of any return or information furnished to the Commissioner by that applicant or facilitator, as the case may be, or any representative of that applicant or facilitator, as the case may be, before the date of that application.

19. Disallowance of deductions, allowances, losses and rebates

An applicant or facilitator may not claim any -

- (a) deduction, allowance, assessed loss or assessed capital loss; or
- (b) rebate in respect of any foreign taxes payable,

which relates to any amount in respect of which section 15 or 17 applies.

Part E

Invalidity of Approval and Review of Decision

20. Invalidity of approval

- (1) Any approval granted in terms of section 9 in respect of an applicant or facilitator shall be void -

- (a) in respect of the tax relief contemplated in section 15 or 17, where the applicant or facilitator, as the case may be, fails to submit the tax return for the last year of assessment ending on or before 28 February 2003 by the later of-
 - (i) a date determined by the amnesty unit; or
 - (ii) 31 March 2004; or
 - (Section 20(1)(a) substituted by section 61 of Act 16 of 2004)*
 - (Section 20(1)(a) substituted by section 13 of Act 10 of 2005)*
 - (b) where it is at any stage determined that any foreign asset or foreign bearer instrument of an applicant wholly or partly represents or has been derived from the proceeds of any unlawful activities.
- (2) Where any approval is void by virtue of the provisions of subsection (1)(b), any amount of the exchange control amnesty levy or domestic tax amnesty levy which has been paid by an applicant or facilitator based on any such approval shall not be refunded to that applicant or facilitator, as the case may be.

21. Objection against decision of amnesty unit

- (1) Any applicant or facilitator aggrieved by a decision of the amnesty unit under this Chapter to deny approval, may lodge an objection to the Chairperson of the amnesty unit and must deliver notice of the objection to the Chairperson within 30 days after the date of delivery of the notice contemplated in section 10(4).
- (2) The Chairperson must refer the matter to a panel consisting of one senior person each from the South African Revenue Service and the Exchange Control Department respectively, co-opted by the amnesty unit for the purpose of reconsidering the application.
- (3) An applicant or facilitator who is dissatisfied with the decision of the panel contemplated in subsection (2), may appeal against the decision of the Chairperson to the tax court contemplated in section 83(2) of the Income Tax Act, 1962, and the provisions of Part III of Chapter III of that Act and the rules relating thereto shall apply *mutatis mutandis*.
- (4) The tax court contemplated in subsection (3) shall have the jurisdiction to hear any appeal noted in terms of this Chapter.

Part F

Establishment and Procedures relating to Amnesty Unit

22. Establishment

Prepared by:

In partnership with:

- (1) There is hereby established a body to be known as the amnesty unit.
- (2) The amnesty unit acts as an independent body that evaluates all applications for amnesty and grants or denies approval in respect of any such application.

23. Constitution

- (1) The amnesty unit consists of -
 - (a) a Chairperson appointed by the Minister;
 - (b) at least four persons from the South African Reserve Bank and at least four persons from the South African Revenue Service, respectively appointed by the Minister to evaluate the applications for amnesty;
 - (c) support personnel seconded by the South African Reserve Bank and the South African Revenue Service, respectively, to deal with the administrative functions of the amnesty unit; and
 - (d) any other support personnel appointed by the Chairperson.
- (2) The Minister must consult the Governor and the Commissioner before appointing the persons contemplated in subsection (1)(a) and (b).

24. Powers, functions and duties

- (1) The amnesty unit -
 - (a) evaluates all applications for amnesty contemplated in section 5; and
 - (b) grants or denies approval of an application in terms of this Chapter.
- (2) The powers and functions of the amnesty unit must not, subject to Parts C and D, be construed to interfere with the powers and functions assigned to the General Manager by the Minister in terms of the Exchange Control Regulations or assigned to the Commissioner in terms of any Act administered by him or her, in so far as those powers and functions of the General Manager or Commissioner relate to -
 - (a) the interpretation of those Regulations or any such Act;
 - (b) the exercise of a discretion conferred on the General Manager or Commissioner by those Regulations or any such Act; or

- (c) the determination by the Commissioner of the liability of a person for any tax or duty in terms of any such Act.
- (3) The provisions of section 4 of the Income Tax Act, 1962, (but excluding section 4(1)(c)(iii)) relating to secrecy and the waiver thereof shall, subject to the provisions of this Chapter, apply *mutatis mutandis* in respect of any member of the amnesty unit.
- (4) Despite section 4 of the Income Tax Act, 1962, and section 33 of the South African Reserve Bank Act, 1989 (Act No. 90 of 1989), the Commissioner and the General Manager may provide such information to the amnesty unit as is necessary for it to perform its functions in terms of this Chapter.
- (5) Any action taken by the amnesty unit outside its authority under this Chapter shall be void.

25. Disclosure of interest

A member of the amnesty unit who has a personal or financial interest in any matter on which the amnesty unit must decide, must disclose that interest and withdraw from the proceedings of the amnesty unit when that matter is being considered and evaluated.

26. Records, provision and use of information

- (1) A copy of the approved application (including all information submitted therewith, but without reflecting any names of persons who have not jointly applied with the applicant for amnesty) granted in terms of:
 - (a) section 9(1) and 9(4) must be submitted to the General Manager, which shall be used by the General Manager to amend the records of the South African Reserve Bank; and
 - (b) section 9(2), 9(3) and 9(5) must be submitted to the Commissioner to update the register of the South African Revenue Service,to give effect to the objectives of the exchange control amnesty and accompanying tax measures.
- (2) Notwithstanding any provision of any other Act, the amnesty unit, the Commissioner and the General Manager may not request details from the applicant or facilitator with regard to any person -
 - (a) who advised an applicant in respect of whom approval has been granted on the method of accumulating foreign assets or transferring funds or assets from the Republic; or
 - (b) who assisted that applicant by accumulating foreign assets or transferring funds or assets from the Republic, other than a facilitator in respect of whom approval is granted.

- (3) Any information submitted by an applicant in terms of section 6 or 7 or by a facilitator in terms of section 8, may not be disclosed to any person where approval in respect of that applicant was not approved as contemplated in section 10, and that information must be submitted to the National Treasury on the date of termination of the existence of the amnesty unit to be retained by the National Treasury for a period of at least five years after that date and the secrecy provisions as applicable to the amnesty unit shall continue to apply to the National Treasury in respect of that information.

27. Termination of existence of amnesty unit

The Minister shall terminate the existence of the amnesty unit by notice in the *Gazette* at the later of all applications having been either approved or the appeals in respect of those applications which have not been approved, having been finalised.

Part G ***Miscellaneous***

28. Limitation for purposes of Income Tax Act

- (1) For purposes of section 22 of the Income Tax Act, 1962, the value or cost of any foreign asset on 28 February 2003 in respect of which approval for amnesty was granted in terms of section 9, may not exceed the value in foreign currency of that foreign asset as disclosed for purposes of the determination of the exchange control amnesty levy.
- (2) For purposes of the Eighth Schedule to the Income Tax Act, 1962, the base cost of any foreign asset in respect of which approval for amnesty was granted in terms of section 9, may not exceed the sum of the value in foreign currency of that foreign asset on 28 February 2003 as disclosed for purposes of the determination of the exchange control amnesty levy and any expenditure allowable in terms of paragraph 20 of the Eighth Schedule to the Income Tax Act, 1962, as is incurred after that date.
- (3) The aggregate of deductions and allowance in terms of the Income Tax Act, 1962, in respect of an allowance asset, as defined in section 41 of that Act, for all years of assessment ending on or after 28 February 2003, shall not exceed the sum of the value in foreign currency of that foreign asset as disclosed for purposes of the determination of the exchange control amnesty levy and the cost of any additions and improvements after 28 February 2003.

29. Reporting

- (1) The Chairperson of the amnesty unit must provide to -
- (a) the Minister a list of all applications for the exchange control relief in terms of the amnesty -
- (i) indicating in respect of each application whether or not it was approved;

- (ii) containing the details of the amounts of the relief granted; and
 - (iii) containing details of the amounts of levy payable in terms of Part C in respect of each such application; and
- (b) the Minister and the Auditor-General a list of all applications for the tax relief in terms of the amnesty -
 - (i) indicating in respect of each application whether or not it was approved;
 - (ii) containing the details of the total amount of receipts and accruals from foreign sources disclosed in terms of section 6(2)(a) and amounts disclosed in terms of section 6(3)(a); and
 - (iii) containing details of the amounts of levy payable in terms of Part D in respect of each such application.
- (2) The list contemplated in subsection (1) must -
 - (a) be in a form that does not disclose the identity of any applicant or facilitator concerned; and
 - (b) be submitted at such times as may be agreed between the Chairperson and the Minister or Auditor-General, as the case may be.
- (3) The Minister must report to Parliament on -
 - (a) the number of applicants and facilitators, respectively, who have applied for amnesty;
 - (b) the total market value of all foreign assets which have been disclosed in terms of the amnesty;
 - (c) the total amount of all levies payable by all applicants and facilitators; and
 - (d) the total amount of receipts and accruals from foreign sources disclosed in terms of section 6(2)(a) and amounts disclosed in terms of section 6(3)(a).

30. Regulations

The Minister may make regulations for generally giving effect to the objects and purposes of this Chapter, including to address any unintended consequences, anomalies or incongruities that may arise with regard to -

- (a) the application of these provisions to foreign assets held by a discretionary trust which is not a resident, as contemplated in section 4;
- (b) foreign assets held by an applicant indirectly by way of shareholding in a company which is not a resident;
- (c) the change in residence of any applicant or determination of residence of a discretionary trust contemplated in section 4; or
- (d) the determination of the extent to which any foreign asset represents or was derived from -
 - (i) any unauthorised assets; or
 - (ii) any amount which was not declared to the Commissioner in terms of the Estate Duty Act, 1955, or the Income Tax Act, 1962, as contemplated in section 6, 7 or 8(c).

CHAPTER II

GENERAL AMENDMENTS TO TAXATION LAWS

31. Amendment of section 2 of Act 40 of 1949, as substituted by section 2 of Act 77 of 1964 and amended by 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 and section 2 of Act 30 of 2002

(1) Section 2 of the Transfer Duty Act, 1949, is hereby amended by the substitution in subsection (1) for paragraph (b) of the following paragraph:

"(b) subject to the provisions of subsection (5) -

- (i) 0 per cent of so much of the said value or the said amount, as the case may be, as does not exceed **[R100 000]** R140 000;
- (ii) 5 per cent of so much of the said value or the said amount, as the case may be, as exceeds **[R100 000]** R140 000 but does not exceed **[R300 000]** R320 000; and
- (iii) 8 per cent of so much of the said value or the said amount, as the case may be, as exceeds **[R300 000]** R320 000,

if the person **[by whom]** who acquires the property **[is acquired]** or in whose favour or for whose benefit the said interest or restriction is renounced is a natural person."

- (2) Subsection (1) shall be deemed to have come into operation on 1 March 2003 and shall apply in respect of any property acquired, or interest or restriction in any property renounced, in terms of an agreement formally and finally signed on or after that date.

32. Fixing of rates of normal tax in terms of Act 58 of 1962

The rates of normal tax to be levied in terms of section 5(2) of the Income Tax Act, 1962, in respect of-

- (a) the taxable income of any person (other than a company) for the year of assessment ending on 29 February 2004; and
- (b) the taxable income of any company for any year of assessment ending during the period of 12 months ending on 31 March 2004,

shall be as set out in Schedule 1 to this Act.

- 33. Amendment of section 1 of Act 58 of 1962, as amended by section 3 of Act 90 of 1962, section 1 of Act 6 of 1963, section 4 of Act 72 of 1963, section 4 of Act 90 of 1964, section 5 of Act 88 of 1965, section 5 of Act 55 of 1966, section 5 of Act 95 of 1967, section 5 of Act 76 of 1968, section 6 of Act 89 of 1969, section 6 of Act 52 of 1970, section 4 of Act 88 of 1971, section 4 of Act 90 of 1972, section 4 of Act 65 of 1973, section 4 of Act 85 of 1974, section 4 of Act 69 of 1975, section 4 of Act 103 of 1976, section 4 of Act 113 of 1977, section 3 of Act 101 of 1978, section 3 of Act 104 of 1979, section 2 of Act 104 of 1980, section 2 of Act 96 of 1981, section 3 of Act 91 of 1982, section 2 of Act 94 of 1983, section 1 of Act 30 of 1984, section 2 of Act 121 of 1984, section 2 of Act 96 of 1985, section 2 of Act 65 of 1986, section 1 of Act 108 of 1986, section 2 of Act 85 of 1987, section 2 of Act 90 of 1988, section 1 of Act 99 of 1988, Government Notice No. R.780 of 14 April 1989, section 2 of Act 70 of 1989, section 2 of Act 101 of 1990, section 2 of Act 129 of 1991, section 2 of Act 141 of 1992, section 2 of Act 113 of 1993, section 2 of Act 21 of 1994, section 2 of Act 21 of 1995, section 2 of Act 36 of 1996, section 2 of Act 28 of 1997, section 19 of Act 30 of 1998, section 10 of Act 53 of 1999, section 13 of Act 30 of 2000, section 2 of Act 59 of 2000, section 5 of Act 5 of 2001, section 3 of Act 19 of 2001, section 17 of Act 60 of 2001, section 9 of Act 30 of 2002 and section 6 of Act 74 of 2002**

- (1) Section 1 of the Income Tax Act, 1962, is hereby amended by the addition after paragraph (b) of the definition of "resident" of the following words:

"but does not include any person who is deemed to be exclusively a resident of another country for purposes of the application of any agreement entered into between the governments of the Republic and that other country for the avoidance of double taxation;".

- (2) Subsection (1) shall be deemed to have come into operation on 26 February 2003.

34. Amendment of section 4 of Act 58 of 1962, as amended by section 6 of Act 55 of 1966, section 4 of Act 104 of 1979, section 32 of Act 104 of 1980, section 3 of Act 96 of 1981, section 3 of Act 85 of 1987, section 3 of Act 70 of 1989, section 4 of Act 21 of 1994, section 3 of Act 36 of 1996, section 34 of Act 34 of 1997, section 21 of Act 30 of 1998, section 11 of Act 53 of 1999, section 14 of Act 30 of 2000, section 19 of Act 60 of 2001 and section 8 of Act 74 of 2002

Section 4 of the Income Tax Act, 1962, is hereby amended by the addition in subsection (1) to paragraph (c) of the following subparagraph:

"(iii) disclosing to the Governor of the South African Reserve Bank or any other person to whom the powers, functions and duties have been delegated by the Minister in terms of Exchange Control Regulations, 1961, issued in terms of section 9 of the Currency and Exchanges Act, 1933 (Act No. 9 of 1933), such information as may be required for purposes of exercising any power or performing any function or duty in terms of those Regulations."

35. Amendment of section 6 of Act 58 of 1962, as inserted by section 5 of Act 104 of 1980 and amended by section 5 of Act 96 of 1981, section 5 of Act 91 of 1982, section 4 of Act 94 of 1983, section 4 of Act 121 of 1984, section 3 of Act 96 of 1985, section 4 of Act 85 of 1987, section 4 of Act 90 of 1988, section 4 of Act 70 of 1989, section 3 of Act 101 of 1990, section 4 of Act 129 of 1991, section 4 of Act 141 of 1992, section 5 of Act 21 of 1995, section 4 of Act 36 of 1996, section 3 of Act 28 of 1997, section 22 of Act 30 of 1998, section 5 of Act 32 of 1999, section 15 of Act 30 of 2000, section 6 of Act 19 of 2001 and section 11 of Act 30 of 2002

Section 6 of the Income Tax Act, 1962, is hereby amended by the substitution in subsection (2) for paragraphs (a) and (b) of the following paragraphs:

"(a) a primary rebate, an amount of ~~[R4 860]~~ R5 400; and

(b) a secondary rebate, if the taxpayer was or, had the taxpayer lived, would have been over the age of 65 years on the last day of the year of assessment, an amount of ~~[R3 000]~~ R3 100."

36. Amendment of section 10 of Act 58 of 1962, as amended by section 8 of Act 90 of 1962, section 7 of Act 72 of 1963, section 8 of Act 90 of 1964, section 10 of Act 88 of 1965, section 11 of Act 55 of 1966, section 10 of Act 95 of 1967, section 8 of Act 76 of 1968, section 13 of Act 89 of 1969, section 9 of Act 52 of 1970, section 9 of Act 88 of 1971, section 7 of Act 90 of 1972, section 7 of Act 65 of 1973, section 10 of Act 85 of 1974, section 8 of Act 69 of 1975, section 9 of Act 103 of 1976, section 8 of Act 113 of 1977, section 4 of Act 101 of 1978, section 7 of Act 104 of 1979, section 7 of Act 104 of 1980, section 8 of Act 96 of 1981, section 6 of Act 91 of 1982, section 9 of Act 94 of 1983, section 10 of Act 121 of 1984, section 6 of Act 96 of 1985, section 7 of Act 65 of 1986, section 3 of Act 108 of 1986, section 9 of Act 85 of 1987, section 7 of Act 90 of 1988, section 36 of Act 9 of 1989, section 7 of Act 70 of 1989, section 10 of Act 101 of 1990, section 12 of Act 129 of 1991, section 10 of Act 141 of 1992, section 7 of Act 113 of

1993, section 4 of Act 140 of 1993, section 9 of Act 21 of 1994, section 10 of Act 21 of 1995, section 8 of Act 36 of 1996, section 9 of Act 46 of 1996, section 10 of Act 28 of 1997, section 29 of Act 30 of 1998, section 18 of Act 53 of 1999, section 21 of Act 30 of 2000, section 13 of Act 59 of 2000, section 9 of Act 19 of 2001, section 26 of Act 60 of 2001, section 13 of Act 30 of 2002 and section 18 of Act 74 of 2002

Section 10 of the Income Tax Act, 1962, is hereby amended by the substitution in subsection (1) for subitems (A) and (B) of item (bb) of subparagraph (xv) of paragraph (i) of the following subitems:

"(A) in the case of any person who was or, had he or she lived, would have been at least 65 years of age on the last day of the year of assessment, the amount of **[R10 000]** R15 000; or

(B) in any other case, the amount of **[R6 000]** R10 000,".

37. Amendment of section 12E of Act 58 of 1962, as inserted by section 12 of Act 19 of 2001 and amended by section 17 of Act 30 of 2002 and section 21 of Act 74 of 2002

(1) Section 12E of the Income Tax Act, 1962, is hereby amended by the substitution in subsection (4) for the expression "R3 million" wherever it may occur in subparagraph (i) of paragraph (a) of the expression "R5 million".

(2) Subsection (1) shall be deemed to have come into operation on 1 April 2003 and shall apply in respect of any year of assessment ending on or after that date.

38. Amendment of section 64C of Act 58 of 1962, as inserted by section 34 of Act 113 of 1993 and amended by section 13 of Act 140 of 1993, section 25 of Act 21 of 1994, section 30 of Act 21 of 1995, section 22 of Act 36 of 1996, section 40 of Act 30 of 1998, section 36 of Act 53 of 1999, section 40 of Act 30 of 2000, section 43 of Act 59 of 2000 and section 37 of Act 74 of 2002

(1) Section 64C of the Income Tax Act, 1962, is hereby amended -

(a) by the deletion of the word "or" at the end of paragraph (d) of subsection (3) and the addition of the word "or" at the end of paragraph (e) of that subsection; and

(b) by the addition to subsection (3) of the following paragraph:

"(f) the company ceases to be a resident to the extent profits and reserves of that company are available for distribution immediately before so ceasing to be a resident (including any amount deemed in terms of the definition of 'dividend' in section 1 to be a profit available for distribution): Provided that any prohibition or limitation on any distribution contained in the company's memorandum and articles of association or founding statement or any agreement must be disregarded."

- (2) Subsection (1) shall be deemed to have come into operation on 26 February 2003 and shall apply in respect of any company that ceases to be a resident on or after that date.

39. Amendment of section 4 of Act 91 of 1964, as amended by section 2 of Act 105 of 1969, section 2 of Act 110 of 1979, sections 3 and 15 of Act 98 of 1980, section 2 of Act 84 of 1987, section 4 of Act 59 of 1990, section 1 of Act 105 of 1992, section 1 of Act 98 of 1993, section 2 of Act 45 of 1995, Schedule 3 to Act 34 of 1997, section 58 of Act 30 of 1998, section 47 of Act 53 of 1999, section 115 of Act 60 of 2001 and section 43 of Act 30 of 2002

Section 4 of the Customs and Excise Act, 1964, is hereby amended by the addition in subsection (3) to paragraph (b) of the following subparagraph:

"(v) disclosing to the Governor of the South African Reserve Bank or any other person to whom the powers, functions and duties have been delegated by the Minister in terms of Exchange Control Regulations, 1961, issued in terms of section 9 of the Currency and Exchanges Act, 1933 (Act No. 9 of 1933), such information as may be required for purposes of exercising any power or performing any function or duty in terms of those Regulations."

40. Amendment of section 47B of Act 91 of 1964, as inserted by section 59 of Act 30 of 2000

- (1) Section 47B of the Customs and Excise Act, 1964, is hereby amended by the substitution in subsection (2) for the words in subparagraph (i) of paragraph (b) preceding the proviso of the following words:

"(i) The tax shall be charged at the rate of **[R100]** R110 on the carriage of each chargeable passenger departing on a flight:".

- (2) Subsection (1) shall come into operation on 1 July 2003, and shall apply to any carriage of a chargeable passenger on any flight which commences on or after that date: Provided that the provisions of subsection (1) shall not apply in respect of the carriage of any chargeable passenger, where the ticket in respect of that flight was purchased and issued before the date of promulgation of this Act.

41. Amendment of Schedule No. 1 to Act 91 of 1964, as amended by section 19 of Act 95 of 1965, section 15 of Act 57 of 1966, section 2 of Act 96 of 1967, section 22 of Act 85 of 1968, section 37 of Act 105 of 1969, section 9 of Act 98 of 1970, section 2 of Act 89 of 1971, section 12 of Act 103 of 1972, section 6 of act 68 of 1973, section 3 of Act 64 of 1974, section 13 of Act 71 of 1975, section 13 of Act 105 of 1976, section 38 of Act 112 of 1977, section 3 of Act 114 of 1981, section 27 of Act 86 of 1982, section 10 of Act 89 of 1984, section 14 of Act 101 of 1985, section 11 of Act 69 of 1988, section 19 of Act 68 of 1989, section 40 of Act 59 of 1990, section 3 of Act 111 of 1991, section 15 of Act 105 of 1992, section 13 of Act 98 of 1993, section 12 of Act 19 of

1994, section 74 of Act 45 of 1995, section 8 of Act 44 of 1996, section 15 of Act 27 of 1997, section 75 of Act 30 of 1998, section 7 of Act 32 of 1999, section 64 of Act 30 of 2000, section 52 of Act 19 of 2001 and section 53 of Act 30 of 2002

- (1) Schedule No. 1 to the Customs and Excise Act, 1964, is hereby amended as set out in Schedule 2 to this Act.
- (2) Subject to the provisions of section 58(1) of the Customs and Excise Act, 1964, subsection (1) shall be deemed to have come into operation on 26 February 2003.

42. Amendment of section 1 of Act 77 of 1968, as amended by section 16 of Act 103 of 1969, section 5 of Act 66 of 1973, section 7 of Act 88 of 1974, section 19 of Act 106 of 1980, section 3 of Act 118 of 1984, section 17 of Act 87 of 1988, section 36 of Act 9 of 1989, section 3 of Act 69 of 1989, section 5 of Act 136 of 1991, section 4 of Act 20 of 1994, section 77 of Act 30 of 1998, section 74 of Act 53 of 1999, section 40 of Act 5 of 2001, section 54 of Act 19 of 2001 and section 141 of Act 60 of 2001

- (1) Section 1 of the Stamp Duties Act, 1968 is hereby amended -
 - (a) by the substitution for the definition of "fixed deposit" of the following definition:

" 'fixed deposit' means a negotiable certificate of deposit"; and
 - (b) by the deletion of the definition of "policy of life insurance".

- (2) Subsection (1) shall be deemed to have come into operation on 1 April 2003.

43. Amendment of section 7 of Act 77 of 1968, as amended by section 18 of Act 103 of 1969, section 10 of Act 89 of 1972, section 8 of Act 66 of 1973, section 3 of Act 70 of 1975, section 5 of Act 87 of 1982, section 7 of Act 118 of 1984, section 5 of Act 69 of 1989 and section 55 of Act 19 of 2001

- (1) Section 7 of the Stamp Duties Act, 1968 is hereby amended by the deletion in subsection (1) of paragraph (i).
- (2) Subsection (1) shall be deemed to have come into operation on 1 April 2003.

44. Repeal of section 24 of Act 77 of 1968

- (1) Section 24 of the Stamp Duties Act, 1968 is hereby repealed.
- (2) Subsection (1) shall be deemed to have come into operation on 1 April 2003.

45. Repeal of Item 18 of Schedule 1 to Act 77 of 1968

- (1) Item 18 of Schedule 1 to the Stamp Duties Act, 1968, is hereby repealed.
- (2) Subsection (1) is deemed to have come into operation on 1 April 2003.

46. Amendment of section 33 of Act 90 of 1989, as amended by section 3 of Act 39 of 1997

Section 33 of the South African Reserve Bank Act, 1989, is hereby amended by the insertion after subsection (1) of the following subsection:

"(1A) The provisions of subsection (1) shall not be construed as preventing any director, officer or employee of the Bank who is responsible for exercising any power or performing any function or duty under the Exchange Control Regulations, 1961, issued in terms of section 9 of the Currency and Exchanges Act, 1933 (Act No. 9 of 1933), from disclosing to the Commissioner for the South African Revenue Service any information as may be required for purposes of exercising any power or performing any function or duty in terms of any Act administered by the Commissioner."

47. Amendment of section 1 of Act 89 of 1991, as amended by section 21 of Act 136 of 1991, paragraph 1 of Government Notice 2695 of 8 November 1991, section 12 of Act 136 of 1992, section 22 of Act 97 of 1993, section 9 of Act 20 of 1994, section 18 of Act 37 of 1996, section 23 of Act 27 of 1997, section 81 of Act 53 of 1999, section 76 of Act 30 of 2000, section 64 of Act 59 of 2000, section 65 of Act 19 of 2001, section 148 of Act 60 of 2001 and section 114 of Act 74 of 2002

Section 1 of the Value-Added Tax Act, 1991, is hereby amended by the substitution for paragraph (a) of the definition of "commercial accommodation" of the following paragraph:

"(a) lodging or board and lodging, together with domestic goods and services, in any house, flat, apartment, room, motel, hotel, inn, guest house, boarding house, residential establishment, holiday accommodation unit, chalet, tent, caravan, camping site, houseboat or similar establishment, which is regularly or systematically supplied and where the total annual receipts from the supply thereof exceeds [R48 000] R60 000 per annum or is reasonably expected to exceed [R48 000] R60 000 per annum, but excluding a dwelling supplied in terms of an agreement for the letting and hiring thereof;"

48. 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 and section 116 of Act 74 of 2002

Section 6 of the Value-Added Tax Act, 1991, is hereby amended -

- (a) by the addition of the word "or" at the end of paragraph (e) of subsection (2); and
- (b) by the addition to subsection (2) of the following paragraph:

"(f) disclosing to the Governor of the South African Reserve Bank or any other person to whom the powers, functions and duties have been delegated by the Minister in terms of Exchange Control Regulations, 1961, issued in terms of section 9 of the Currency and Exchanges Act, 1933 (Act No. 9 of 1933), such information as may be required for purposes of exercising any power or performing any function or duty in terms of those Regulations."

49. Amendment of section 2 of Act 38 of 1996, as amended by section 107 of Act 30 of 1998

- (1) Section 2 of the Tax on Retirement Funds Act, 1996, is hereby amended by the substitution in the words preceding paragraph (a) for the expression "25 per cent" of the expression "18 per cent".
- (2) Subsection (1) shall be deemed to have come into operation on 1 March 2003.

50. Continuation of certain amendments of Schedules Nos. 1 to 6 and 8 to Act 91 of 1964

- (1) Every amendment or withdrawal of or insertion in Schedules Nos. 1 to 6, inclusive, and 8 to the Customs and Excise Act, 1964, made under section 48, 56, 60(3) or 75(15) of that Act during the calendar year ending on 31 December 2002 shall not lapse by virtue of the provisions of section 48(6), 56(3), 60(4) or 75(16) of that Act.
- (2) The amendments of Part 2 and Part 5 of Schedule No. 1 of the Customs and Excise Act, 1964, made under section 48 of that Act by Government Notice R.479 of 1 April 2003 in respect of the said Part 2 and Government Notice R.480 of 2 April 2003 in respect of the said Part 5, shall not lapse by virtue of the provisions of section 48(6) of that Act.

51. Short title and commencement

- (1) This Act shall be called the Exchange Control Amnesty and Amendment of Taxation Laws Act, 2003.
- (2) Save in so far as is otherwise provided in this Act or the context otherwise indicates, the amendments effected to the Income Tax Act, 1962, by this Act shall for purposes of assessments in respect of normal tax under the Income Tax Act, 1962, be deemed to have come into operation as from the commencement of years of assessment ending on or after 1 January 2004.

SCHEDULE 1

RATES OF NORMAL TAX PAYABLE BY PERSONS (OTHER THAN COMPANIES) IN RESPECT OF THE YEARS OF ASSESSMENT ENDING 29 FEBRUARY 2004, AND BY COMPANIES IN RESPECT OF YEARS OF ASSESSMENT ENDING DURING THE PERIOD OF 12 MONTHS ENDING 31 MARCH 2004

(Section 32)

1. The rates of normal tax referred to in section 32 of this Act in respect of persons (other than companies) are as follows: -

(a) in respect of the taxable income of any person (other than a person in respect of which paragraph (b) applies), an amount of tax calculated in accordance with the table below:

| Taxable Income | Rates of Tax |
|---|--|
| Where the taxable income - does not exceed R70 000 | 18 per cent of each R1 of the taxable income; |
| exceeds R70 000 but does not exceed R110 000 | R12 600 plus 25 per cent of the amount by which the taxable income exceeds R70 000; |
| " R110 000 " " " " R140 000 | R22 600 plus 30 per cent of the amount by which the taxable income exceeds R110 000; |
| " R140 000 " " " " R180 000 | R31 600 plus 35 per cent of the amount by which the taxable income exceeds R140 000; |
| " R180 000 " " " " R255 000 | R45 600 plus 38 per cent of the amount by which the taxable income exceeds R180 000; |
| " R255 000 | R74 100 plus 40 per cent of the amount by which the taxable income exceeds R255 000. |

(b) in respect of the taxable income of any trust (other than a special trust), an amount of 40 cents on each rand of taxable income.

2. The rates of normal tax referred to in section 32 of this Act in respect of companies are, subject to the provisions of paragraph 4, as follows: -

(a) on each rand of the taxable income of any company (excluding taxable income referred to in subparagraphs (b), (c), (d), (e), (f), (g) and (h)), 30 cents, or, in the case of a company which

mines for gold on any gold mine and which is in terms of an option exercised by it exempt from the payment of secondary tax on companies, 38 cents;

- (b) in respect of the taxable income of any company which qualifies as a small business corporation as defined in section 12E of the Income Tax Act, 1962, on each rand of the taxable income as does not exceed R150 000, 15 cents, and on each rand of the taxable income of such company as exceeds R150 000, 30 cents;
- (c) on each rand of the taxable income of any employment company as defined in section 12E of the Income Tax Act, 1962, 35 cents;
- (d) on each rand of the taxable income derived by any company from mining for gold on any gold mine with the exclusion of so much of the taxable income as the Commissioner for the South African Revenue Service determines to be attributable to the inclusion in the gross income of any amount referred to in paragraph (j) of the definition of "gross income" in section 1 of the Income Tax Act, 1962, but after the set-off of any assessed loss in terms of section 20(1) of that Act, a percentage determined in accordance with the formula:

$$y = 37 - \frac{185}{x}$$

or, in the case of a company which is in terms of an option exercised by it exempt from the payment of secondary tax on companies, in accordance with the formula:

$$y = 46 - \frac{230}{x}$$

in which formulae y represents such percentage and x the ratio expressed as a percentage which the taxable income so derived (with the said exclusion, but before the set-off of any assessed loss or deduction which is not attributable to the mining for gold from the said mine) bears to the income so derived (with the said exclusion);

- (e) on each rand of the taxable income of any company, the sole or principal business of which in the Republic is, or has been, mining for gold and the determination of the taxable income of which for the period assessed does not result in an assessed loss, which the Commissioner for the South African Revenue Service determines to be attributable to the inclusion in its gross income of any amount referred to in paragraph (j) of the definition of "gross income" in section 1 of the Income Tax Act, 1962, a rate equal to the average rate of normal tax or 30 cents, whichever is higher: Provided that for the purposes of this subparagraph, the average rate of normal tax shall be determined by dividing the total normal tax (excluding the tax determined in accordance with this subparagraph for the period assessed) paid by the company in respect of

its aggregate taxable income from mining for gold on any gold mine for the period from which that company commenced its gold mining operations on that gold mine to the end of the period assessed, by the number of rands contained in the said aggregate taxable income;

- (f) on each rand of the taxable income derived by any company from carrying on long-term insurance business in respect of its individual policyholder fund, company policyholder fund and corporate fund, 30 cents;
- (g) on each rand of the taxable income (excluding taxable income referred to in subparagraphs (b), (c), (d), (e), (f) and (h)) derived by a company which has its place of effective management outside the Republic and which carries on a trade through a branch or agency within the Republic, 35 cents;
- (h) on each rand of the taxable income derived by a qualifying company as contemplated in section 37H of the Income Tax Act, 1962, subject to the provisions of the said section, zero cents:

Provided that the tax determined in accordance with any of subparagraphs (a) to (h), inclusive, shall be payable in addition to the tax determined in accordance with any other of the said subparagraphs.

- 3. The rates set forth in paragraphs 1 and 2 shall be the rates required to be fixed by Parliament in accordance with the provisions of section 5(2) of the Income Tax Act, 1962.
- 4. For the purposes of paragraph 2, income derived from mining for gold shall include any income derived from silver, osmiridium, uranium, pyrites or other minerals which may be won in the course of mining for gold, and any other income which results directly from mining for gold.
- 5. In this Schedule, unless the context otherwise indicates, any word or expression to which a meaning has been assigned in the Income Tax Act, 1962, bears the meaning so assigned.

SCHEDULE 2

AMENDMENTS TO SCHEDULE NO. 1 TO THE CUSTOMS AND EXCISE ACT, 1964

(Section 41)

(Please note that a copy of Schedule 2 will be provided upon request. Kindly refer to our website for our contact details.)