

No. 58, 1962.]

Please note that most Acts are published in English and another South African official language. Currently we only have capacity to publish the English versions. This means that this document will only contain even numbered pages as the other language is printed on uneven numbered pages.

ACT

To consolidate the law relating to the taxation of incomes and donations.

(English text signed by the State President.)
(Assented to 25th May, 1962.)

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BE IT ENACTED by the State President, the Senate and the House of Assembly of the Republic of South Africa, as follows:—

PRELIMINARY.

1. In this Act, unless the context otherwise indicates— Interpretation.
 - (i) "agent" includes any partnership or company or any other body of persons corporate or unincorporate acting as an agent; (iv)
 - (ii) "assessment" means—
 - (a) the determination of an amount upon which any tax leviable under this Act is chargeable; or
 - (b) the determination of any loss ranking for set-off, and for the purposes of Part III of Chapter III includes any determination by the Commissioner in respect of any of the deductions referred to in section six; (ii)
 - (iii) "benefit fund" means—
 - (a) any friendly society registered under the Friendly Societies Act, 1956 (Act No. 25 of 1956); or
 - (b) any fund which is not so registered solely because of the provisions of paragraph (a) of sub-section (2) of section two of the said Act; or
 - (c) any fund (other than a pension fund, provident fund or retirement annuity fund) which, in respect of the year of assessment in question, the Commissioner is satisfied is a permanent fund *bona fide* established for the purpose of providing sickness, accident or unemployment benefits for its members, or mainly for such a purpose and also for the purpose of providing benefits for the widows, children, dependants or nominees of deceased members; (xii)
 - (iv) "Commissioner" means the Commissioner for Inland Revenue; (xxv)
 - (v) "company" includes—
 - (a) any association incorporated by or under any law in force in the Republic or in any part thereof or registered or deemed to be registered under any such law; or

- (b) any association incorporated or registered outside the Republic which carries on business or has an office or place of business in the Republic or derives income from any source within or deemed to be within the Republic or in which any person ordinarily resident or carrying on business in the Republic is interested as a shareholder or member; or
- (c) any association which is incorporated or registered outside the Republic and is a shareholder in or member of any company as defined in paragraph (a) or (b), either directly, or indirectly by reason of the fact that it is a shareholder in or member of any other company; or
- (d) any association (not being an association referred to in paragraph (a) or an association to which the provisions of paragraph (e) of sub-section (1) of section *ten* apply) formed in the Republic to serve a specified purpose, beneficial to the public or a section of the public; (xxvi)
- (vi) "date of deep level production", in relation to any deep level gold mine, means the date which the Government Mining Engineer certifies as the date on which stopping below a vertical depth of seven thousand five hundred feet from the surface commenced; (xiii)
- (vii) "dependant", in relation to any taxpayer means—
 - (a) any person (other than any child or stepchild of such taxpayer in respect of whom he is for the year of assessment entitled to a rebate in terms of paragraph (c) of sub-section (1) of section *six*), incapacitated by old age, infirmity or any other reason satisfactory to the Commissioner from maintaining himself; and
 - (b) any child (other than a child or stepchild of such taxpayer) under the age of eighteen years on the last day of the year of assessment, towards whose maintenance the taxpayer has expended in cash or otherwise during the year of assessment not less than sixty rand; (iii)
- (viii) "dividend" means any amount distributed by a company (not being a permanent building society or an association or institution to which paragraph (d) of sub-section (1) of section *ten* applies) to its shareholders, and in this definition the expression "amount distributed" includes—
 - (a) in relation to a company that is being wound up or liquidated, any profits distributed, whether in cash or otherwise, other than those of a capital nature, earned before or during the winding up or liquidation;
 - (b) in relation to a company that is not being wound up or liquidated, any profits distributed, whether in cash or otherwise, and whether of a capital nature or not, including an amount equal to the nominal value of any bonus shares, debentures or securities awarded to the shareholders;
 - (c) in the event of the partial reduction of the capital of a company, any cash or the value of any asset which is given to a shareholder in excess of the cash equivalent of the nominal value by which the shares of that shareholder are reduced; and
 - (d) in the event of the reconstruction of a company, any cash or the value of any asset which is given to a shareholder in excess of the nominal value of the shares held by him before the reconstruction,
 but does not include—
 - (e) the nominal value of any bonus shares awarded to a shareholder to the extent to which such shares have been paid up by means of the application of the whole or any portion of the share premium account of a company; or
 - (f) any cash or the value of any asset given to a shareholder to the extent to which the cash or the value of the asset represents a reduction of the share premium account of a company; or
 - (g) the nominal value of any bonus shares awarded to a shareholder as part of the equity share capital of a company by a company which is recognized as a public company in terms of section *thirty-eight*; (xiv)

- (ix) "equity share capital" means, in relation to any company, its issued share capital excluding any part thereof which, neither as respects dividends nor as respects capital, carries any right to participate beyond a specified amount in a distribution, and the expression "equity shares" shall be construed accordingly; (xxiv)
- (x) "executor" means any person to whom letters of administration have been granted by a Master or an Assistant Master of the Supreme Court appointed under the Administration of Estates Act, 1913 (Act No. 24 of 1913), in respect of the estate of a deceased person under any law relating to the administration of estates, and includes a person acting or authorized to act under letters of administration granted outside the Republic but signed and sealed by such a Master or Assistant Master for use within the Republic and, in any case where the estate is not required to be administered under the supervision of such a Master or Assistant Master, the person administering the estate; (xv)
- (xi) "gross income", in relation to any year or period of assessment, means, in the case of any person, the total amount, in cash or otherwise, received by or accrued to or in favour of such person during such year or period of assessment from a source within or deemed to be within the Republic, excluding receipts or accruals of a capital nature, but including, without in any way limiting the scope of this definition, such amounts (whether of a capital nature or not) so received or accrued as are described hereunder, namely—
- (a) any amount received or accrued by way of annuity;
- (b) any amount payable to the taxpayer by his spouse or former spouse, under any judicial order or written agreement of separation or under any order of divorce, by way of alimony or allowance or maintenance of the taxpayer or any children;
- (c) any amount, including any voluntary award, received or accrued in respect of services rendered or to be rendered: Provided that any amount received by or accrued to an employee, upon and because of the termination of his services, by way of bonus, gratuity or compensation, shall be deemed to be received or to accrue in three successive equal annual instalments of which the first instalment shall be deemed to have been received or to have accrued on the date of receipt or accrual of such amount and the subsequent instalments on the anniversary of that date, if—
- (i) the termination of the services of such employee is due to superannuation, ill health or infirmity; or
- (ii) the Commissioner is satisfied that the circumstances of the case warrant this concession,
- and for the purposes of this paragraph any amount which but for the repeal of the Income Tax Act, 1941, would have been deemed to have been received or to have accrued on any date in terms of the proviso to paragraph (b) of the definition of "gross income" in section seven of that Act, shall be deemed to have been received or to have accrued on the said date in terms of this paragraph;
- (d) any amount, including any voluntary award, received or accrued in respect of the relinquishment, termination, loss, repudiation, cancellation or variation of any office or employment or of any appointment (or right or claim to be appointed) to any office or employment: Provided that the provisions of this paragraph shall not apply to any lump sum award from any pension fund, provident fund, retirement annuity fund or benefit fund;

- (e) any amount determined in accordance with the provisions of the Second Schedule in respect of lump sum benefits received by or accrued to such person from any fund (not being a superannuation, pension, provident, widows' or orphans' fund established by law) which has in respect of the current or any previous year of assessment been approved by the Commissioner, whether under this Act or any previous Income Tax Act, as a pension fund, provident fund or retirement annuity fund, if such person was a member of such fund during any such year: Provided that the provisions of paragraph (g) of section *nine* shall *mutatis mutandis* apply in the case of any amount determined as aforesaid;
- (f) any amount received or accrued in commutation of amounts due under any contract of employment or service;
- (g) any amount received or accrued from another person, as premium or like consideration paid by such other person—
 - (i) for the right of use or occupation of land or buildings; or
 - (ii) for the right of use of plant or machinery; or
 - (iii) for the right of use of any patent as defined in the Patents Act, 1952 (Act No. 37 of 1952), or any design, trade mark or copyright as defined in the Designs, Trade Marks and Copyright Act, 1916 (Act No. 9 of 1916), or any other property which, in the opinion of the Commissioner, is of a similar nature; or
 - (iv) for the imparting of or the undertaking to impart any knowledge directly or indirectly connected with the use of any such patent, design, trade mark, copyright or other property as aforesaid;
- (h) in the case of any person to whom, in terms of any agreement relating to the grant to any other person of the right of use or occupation of land or buildings, or by virtue of the cession of any rights under any such agreement, there has accrued in any such year or period the right to have improvements effected on the land or to the buildings by any other person—
 - (i) the amount stipulated in the agreement as the value of the improvements or as the amount to be expended on the improvements; or
 - (ii) if no amount is so stipulated, an amount representing in the opinion of the Commissioner the fair and reasonable value of the improvements;
- (i) the annual value of any quarters or board or residence or of any other benefit or advantage granted in respect of employment;
- (j) any amount by which recouplements of capital expenditure which has been allowed to be deducted under paragraph (a) of section *fifteen* or the corresponding provisions of any previous Income Tax Act, exceed the unredeemed balance of such capital expenditure calculated as provided in section *thirty-six*;
- (k) any amount received or accrued by way of dividends, including any dividends distributed by a private company out of or by way of capitalization of any profits of such company, which in terms of section *thirty-seven* of the Income Tax Act, 1941 (Act No. 31 of 1941), had previously been apportioned among its shareholders as the taxable income or the income subject to super tax of such company, and for the purposes of this paragraph all dividends from sources outside the Republic received by or accrued to any person (other than a company) who is ordinarily resident in the Republic shall be deemed to have been received by or to have accrued to such person from a source within the Republic;

- (l) any amount received or accrued by way of grant or subsidy in respect of any of the matters mentioned in items (a) to (i), inclusive, of subparagraph (1) of paragraph 12 of the First Schedule;
- (m) any amount received or accrued under or upon the surrender or disposal of any policy of insurance upon the life of an employee or, in the case of a company, upon the life of a director or employee of that company;
- (n) any amount which in terms of any other provision of this Act is specifically required to be included in the taxpayer's income, and for the purposes of this paragraph all amounts which in terms of sub-section (4) of section eight are required to be included in the taxpayer's income shall be deemed to have been received by or to have accrued to the taxpayer from a source within the Republic notwithstanding that such amounts may have been recovered or recouped outside the Republic; (xi)
- (xii) "hotelkeeper" means any person carrying on the business of hotelkeeper or boarding or lodging house keeper where meals and sleeping accommodation are supplied to others for money or its equivalent, if such person is the holder of a licence issued under the provisions of Item 4 of Part I of the Second Schedule to the Licences Act, 1962, in respect of that business, and includes in respect of any year of assessment any person who is not a holder of such a licence by reason of the fact that the building in which the business is carried on has been in the course of erection or extensively renovated or that the provisions of exemption (1) to the said Item apply, if the Commissioner is satisfied that during the immediately succeeding year of assessment or such further period as he may for good reason allow, the gross receipts from that business will be or could be expected to be in excess of two thousand rand per annum; (xxi)
- (xiii) "income" means the amount remaining of the gross income of any person for any year or period of assessment after deducting therefrom any amounts exempt from normal tax under Part I of Chapter II; (xxii)
- (xiv) "local authority" means any divisional council, rural council, municipal council, town council, village council, town board, local board, village management board, health committee or school board or any district council or any local or general council established or deemed to have been established under the Native Affairs Act, 1959 (Act No. 55 of 1959), and includes the Rand Water Board; (xxiii)
- (xv) "married" includes joined together in a union recognized as a marriage in accordance with any law or custom, and "husband", "wife" or "spouse" shall be construed accordingly; (xvi)
- (xvi) "married person" means any person who—
- (a) during any portion of the period in respect of which any assessment is made was married or was a widower or a widow; or
 - (b) during the whole of such period was divorced or separated under a judicial order or written agreement, and who is entitled to any deduction in respect of a child under paragraph (c) of sub-section (1) of section six; (xvii)
- (xvii) "mining for gold" or "to mine for gold" includes mining for uranium or to mine for uranium; (xviii)
- (xviii) "mining operations" and "mining" include every method or process by which any mineral is won from the soil or from any substance or constituent thereof; (xxvii)
- (xix) "new deep level gold mine" means any new gold mine in respect of which—
- (a) the Governor-General, the State President or the Minister of Mines has after the thirtieth day of June, 1956, on the recommendation

- of the Mining Leases Board signified in writing his decision to grant a lease of the right to mine for gold; and
- (b) the Government Mining Engineer is satisfied that, at the time the decision to grant the lease was signified, the principal object was to mine gold bearing ores believed to exist within the lease area at depths below a vertical depth of seven thousand five hundred feet from the surface; and
- (c) the Government Mining Engineer is at the time the decision to grant the lease is signified, of the opinion that a period of at least seven years will elapse from the date upon which shaft sinking excavations commence to the date of deep level production; (xxviii)
- (xx) "new gold mine" means an independent workable proposition in respect of which the Governor-General, the State President or the Minister of Mines has, after the twenty-eighth day of February, 1946, on the recommendation of the Mining Leases Board signified in writing his decision to grant a lease of the right to mine for gold, and includes any other gold mine which, in the opinion of the Government Mining Engineer, is an independent workable proposition which was established as such after the said date; (xxix)
- (xxi) "other deep level gold mine" means any producing gold mine (other than a new deep level gold mine) in respect of which the Government Mining Engineer has upon application made to him recognized that its principal object is the mining of gold bearing ores at vertical depths exceeding seven thousand five hundred feet from the surface and in respect of which he is satisfied, at the time the application is lodged with him, that mining at such depths has commenced or will be commenced within a period of five years; (v)
- (xxii) "pension fund" means a superannuation, pension, provident, widows' or orphans' fund established by law, and any fund (other than a retirement annuity fund) not established by law which is approved by the Commissioner in respect of the year of assessment in question: Provided that the Commissioner may approve a fund subject to such limitations or conditions as he may determine, and shall not approve a fund in respect of any year of assessment unless he is in respect of that year of assessment satisfied—
- (a) that the fund is a permanent fund *bona fide* established for the purpose of providing annuities for employees on retirement from employment or for widows, children, dependants or nominees of deceased employees, or mainly for the said purpose and also for the purpose of providing benefits other than annuities for the persons aforesaid; and
- (b) that the rules of the fund provide—
- (i) that all annual contributions of a recurrent nature to the fund shall be in accordance with specified scales;
- (ii) that membership of the fund throughout the period of employment shall be a condition of the employment by the employer of all persons of the class or classes specified therein who enter his employment on or after the date upon which the fund comes into operation;
- (iii) that persons who immediately prior to the said date were employed by the employer and who on the said date fall within the said class or classes may, on application made within a period of not more than twelve months as from the said date, be permitted to become members of the fund on such conditions as may be specified in the rules;

- (iv) that not more than one-third of the total value of the annuity or annuities to which any employee becomes entitled, may be commuted for a single payment, except where the annual amount of such annuity or annuities does not exceed sixty rand;
- (v) for the administration of the fund in such a manner as to preclude the employer, except in the case of a local authority, from controlling the management or assets of the fund and from deriving any monetary advantage from moneys paid into or out of the fund; and
- (vi) that the Commissioner shall be notified of all amendments of the rules; and
- (c) that the rules of the fund have been complied with; (xxx)
- (xxiii) "person" includes the estate of a deceased person; (xxxi)
- (xxiv) "prescribed" means prescribed or deemed to be prescribed by or under this Act; (xxxvii)
- (xxv) "provident fund" means any fund (other than a pension fund, benefit fund or retirement annuity fund) which is approved by the Commissioner in respect of the year of assessment in question: Provided that the Commissioner may approve a fund subject to such limitations or conditions as he may determine, and shall not approve a fund in respect of any year of assessment unless he is in respect of that year of assessment satisfied—
 - (a) that the fund is a permanent fund *bona fide* established solely for the purpose of providing benefits for employees on retirement from employment or solely for the purpose of providing benefits for widows, children, dependants or nominees of deceased employees or deceased former employees or solely for a combination of such purposes; and
 - (b) that the rules of the fund contain provisions similar in all respects to those required to be contained in the rules of a pension fund in terms of sub-paragraphs (i), (ii), (iii), (v) and (vi) of paragraph (b) of the definition of "pension fund"; and
 - (c) that the rules of the fund have been complied with; (xxxviii)
- (xxvi) "regulation" means a regulation in force under this Act; (xxxiii)
- (xxvii) "representative taxpayer" means—
 - (a) in respect of the income of a company, the public officer thereof;
 - (b) in respect of the income under his management, disposition or control, the agent of any person, including an agent appointed as such under the provisions of section *ninety-nine*, and for the purposes of this paragraph the term "agent" includes every person in the Republic having the receipt, management or control of income on behalf of any person permanently or temporarily absent from the Republic or remitting or paying income to or receiving moneys for such person;
 - (c) in respect of income the subject of any trust or in respect of the income of any minor or mentally disordered or defective person or any other person under legal disability, the trustee, guardian, curator or other person entitled to the receipt, management, disposal or control of such income or remitting or paying to or receiving moneys on behalf of such person under disability;
 - (d) in respect of income paid under the decree or order of any court or judge to any receiver or other person, such receiver or person, whoever may be entitled to the benefit of such income, and whether or not it accrues to any person on a contingency or an uncertain event;
 - (e) in respect of the income received by or accrued to any deceased person during his lifetime and the income received by or accrued to the estate of any deceased person, the executor or administrator of the estate of such deceased person,

- but nothing in this definition shall be construed as relieving any person from any liability, responsibility or duty imposed upon him by this Act; (xxxvi)
- (xxviii) "retirement annuity fund" means any fund (other than a pension fund, provident fund or benefit fund) which is approved by the Commissioner in respect of the year of assessment in question: Provided that the Commissioner may approve a fund subject to such limitations or conditions as he may determine, and shall not approve any fund in respect of any year of assessment unless he is in respect of that year of assessment satisfied—
- (a) that the fund is a permanent fund *bona fide* established for the sole purpose of providing life annuities for the members of the fund or annuities for the widows, children, dependants or nominees of deceased members; and
 - (b) that the rules of the fund provide—
 - (i) for periodical contributions by the members and for additional contributions made by way of transfer of members' interests in approved pension funds, provident funds or other retirement annuity funds;
 - (ii) that not more than one-third of the total value of any annuities to which any person becomes entitled, may be commuted for a single payment, except where the annual amount of such annuities does not exceed sixty rand;
 - (iii) that no portion of any annuity payable to the widow, child, dependant or nominee of a deceased member may be commuted later than six months from the date of the death of such member;
 - (iv) adequate security to safeguard the interests of persons who may become entitled to annuities;
 - (v) that no member shall become entitled to the payment of any annuity after he reaches the age of seventy years or, except in the case of a member who becomes permanently incapable through infirmity of mind or body of carrying on his occupation, before he reaches the age of fifty-five years;
 - (vi) that where a member dies before he becomes entitled to the payment of an annuity, the benefits shall not exceed a refund to his estate or to his widow, children, dependants or nominees of the sum of the amounts (with or without reasonable interest thereon) contributed by him and an annuity or annuities to his widow, children, dependants or nominees;
 - (vii) that where a member dies after he has become entitled to an annuity no further benefit shall be payable other than an annuity or annuities to his widow, children, dependants or nominees;
 - (viii) that the sum of the annuities payable to the widow, children, dependants and nominees of a deceased member who was in receipt of an annuity at the time of his death shall not exceed the amount of that annuity;
 - (ix) that a member's contributions shall cease as soon as he becomes entitled to the payment of an annuity;
 - (x) that a member who discontinues his contributions prematurely shall be entitled either to an annuity (payable from the date on which he would have become entitled to the payment of an annuity if he had continued his contributions) determined in relation to his actual contributions or to be reinstated as a full member under conditions prescribed in the rules of the fund;
 - (xi) that upon the winding up of the fund a member's interest therein must either be used to purchase a policy of insurance

- which the Commissioner is satisfied provides benefits similar to those provided by such fund or be paid for the member's benefit into another approved retirement annuity fund;
- (xii) that save as is contemplated in sub-paragraph (ii), no member's rights to benefits shall be capable of surrender, commutation or assignment or of being pledged as security for any loan;
- (xiii) that the Commissioner shall be notified of all amendments of the rules; and
- (c) that the rules of the fund have been complied with; (xxxv)
- (xxix) "scientific research" means any activity in the field of natural or applied science for the extension of knowledge; (xxxix)
- (xxx) "shareholder", in relation to any company, means the registered shareholder in respect of any share, except that where some person other than the registered shareholder is entitled, whether by virtue of any provision in the memorandum or articles of association of the company or under the terms of any agreement or contract or otherwise, to all or part of the benefit of the rights of participation in the profits or income attaching to the share so registered, such other person shall, to the extent that he is entitled to such benefits, also be deemed to be a shareholder; (i)
- (xxxi) "specified date", in respect of any year of assessment, means the thirtieth day of June, or, if the returns of any company are under the proviso to sub-section (13) of section *sixty-six* accepted in respect of a period ending on some other date, such other date, or, in the case of any company which has been required to furnish interim accounts in terms of sub-section (4) of that section, the date up to which such accounts have been rendered; (x)
- (xxxii) "tax" or "the tax" or "taxation" means any levy or tax leviable under this Act; (viii)
- (xxxiii) "taxable income" means the amount remaining after deducting from the income of any person all the amounts allowed to be deducted or set off under Part I of Chapter II; (vii)
- (xxxiv) "taxpayer" means any person chargeable with any tax leviable under this Act and, for the purposes of any provision relating to any return, includes every person required by this Act to furnish such return; (ix)
- (xxxv) "this Act" includes the regulations; (xx)
- (xxxvi) "trade" includes every profession, trade, business, employment, calling, occupation or venture, including the letting of any property and the use of or the grant of permission to use any patent as defined in the Patents Act, 1952 (Act No. 37 of 1952), or any design, trade mark or copyright as defined in the Designs, Trade Marks and Copyright Act, 1916 (Act No. 9 of 1916), or any other property which in the opinion of the Commissioner is of a similar nature; (vi)
- (xxxvii) "trading stock" includes anything produced, manufactured, purchased or in any other manner acquired by a taxpayer for purposes of manufacture, sale or exchange by him or on his behalf, or the proceeds from the disposal of which forms or will form part of his gross income; (xix)
- (xxxviii) "trustee", in addition to every person appointed or constituted as such by act of parties, by will, by order or declaration of court or by operation of law, includes an executor or administrator, tutor or curator, and any person having the administration or control of any property subject to a trust, usufruct, fideicommissum or other limited interest or acting in any fiduciary capacity or having, either in a private or in an official capacity, the possession, direction, control or management of any property of any person under legal disability; (xxxiv)
- (xxxix) "year of assessment" means any period of twelve months in respect of which any tax or duty leviable under this Act is chargeable. (xxiii)

CHAPTER I.

ADMINISTRATION.

2. (1) The Commissioner shall be responsible for carrying out the provisions of this Act. Act to be administered by Commissioner.

(2) A notice in the *Gazette* that any person has been appointed to hold office as Commissioner for Inland Revenue or to act in that capacity, shall be conclusive evidence of such appointment without further proof.

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

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

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

4. (1) Every person employed in carrying out the provisions of this Act shall preserve and aid in preserving secrecy with regard to all matters that may come to his knowledge in the performance of his duties in connection with those provisions, and shall not communicate any such matter to any person whatsoever other than the taxpayer concerned or his lawful representative nor suffer or permit any such person to have access to any records in the possession or custody of the Commissioner except in the performance of his duties under this Act or by order of a competent court: Provided that any information obtained by the Commissioner in the performance of his duties under the provisions of this Act or any previous Income Tax Act may be used by him for the purposes of the provisions of any other fiscal law administered by him: Provided further that the Controller and Auditor-General shall in the performance of his duties in terms of sub-section (1) of section *eleven* of the Exchequer and Audit Act, 1956 (Act No. 23 of 1956), have access to documents in the possession or custody of the Commissioner. Preservation of secrecy.

(2) (a) Every person so employed shall, before acting under this Act, take and subscribe before a magistrate or justice of the peace, such oath of fidelity or secrecy as may be prescribed.

(b) Any oath of secrecy taken and subscribed under the provisions of any previous Income Tax Act by any person who is employed in carrying out the provisions of this Act shall be deemed to be an oath taken and subscribed in terms of this sub-section.

(3) Every person who in contravention of the provisions of this section or of the true intent of the oath of fidelity or secrecy taken by him, and without lawful excuse, reveals any matter or thing which has come to his knowledge in the course of his official duties to any person whatsoever or suffers or permits any person to have access to any records in the possession or custody of the Commissioner, shall be guilty of an offence and liable on conviction to imprisonment for a period not exceeding two years.

(4) Any person who acts in the execution of his office before he has taken the prescribed oath shall be guilty of an offence and liable on conviction to a fine not exceeding fifty rand.

CHAPTER II.

THE TAXES.

PART I.

Normal Tax.

5. (1) There shall be paid annually for the benefit of the Consolidated Revenue Fund, an income tax (in this Act referred to as the normal tax) in respect of the taxable income received by or accrued to or in favour of any person during the year of assessment ending the thirtieth day of June, 1962, and each succeeding year of assessment.

Levy of normal tax and rates thereof.

(2) The rates of tax chargeable in respect of each year of assessment shall be fixed annually by Parliament, but the rates fixed by any Act of Parliament in respect of any year of assessment shall be deemed to continue in force until the next such determination of rates and shall be applied for the purpose of calculating the tax payable in respect of any taxable income received by or accrued to or in favour of any person during the next succeeding year of assessment if, in the opinion of the Commissioner, the calculation and collection of the tax chargeable in respect of such taxable income cannot without risk of loss of revenue be postponed until after the rates for that year have been determined: Provided that after the next such determination of rates any tax paid in pursuance of such interim application shall be adjusted in accordance with such subsequent rates, any amounts paid in excess being refunded and any amounts short-paid being recoverable from the taxpayer concerned.

6. (1) Save as is otherwise provided in this Act, there shall, in the case of a person other than a company, be deducted from the amount of tax payable under section five—

Normal tax rebates.

- (a) in the case of a married person, the sum of sixty-two rand;
- (b) in the case of a person other than a married person, the sum of forty-six rand;
- (c) in respect of each child or stepchild of the taxpayer who was alive during any portion of the year of assessment for which the assessment is made, and who—
 - (i) on the last day of that year of assessment was unmarried and was not or would not had he lived have been over the age of eighteen years, or, if he was wholly dependent for his maintenance upon the taxpayer, over the age of twenty-one years, or, if he was wholly dependent for his maintenance upon the taxpayer and the Commissioner is satisfied that he was a full-time student at an educational institution of a public character, over the age of twenty-four years; or
 - (ii) in the case of any other child or stepchild was incapacitated by mental or physical infirmity from maintaining himself and was wholly dependent for his maintenance upon the taxpayer, the sum of thirty-four rand: Provided that where the taxpayer is entitled to a deduction in respect of more than two children in terms of this paragraph, the deduction to be allowed in respect of each child in excess of two shall be thirty-nine rand: Provided further that a parent who has been divorced or separated under a judicial order or written agreement shall not be allowed the deduction in respect of any child born of the marriage which has been dissolved by the order of divorce or to which the order or agreement of separation relates, unless he has maintained such child during such period and the cost of such maintenance has not in terms of section *twenty-one* been deducted from his income;
- (d) in respect of—
 - (i) premiums paid by such person during the year of assessment upon policies under which he or his wife or any children or stepchildren referred to in paragraph (c) is or are insured against death, accident or sickness;

- (ii) fees, subscriptions or contributions paid by him during that year to any provident fund or benefit fund (other than a benefit fund referred to in paragraph (a) of section *eighteen*); and
- (iii) contributions made by him during that year as an employee to any fund established under any law in force in the Republic relating to unemployment insurance,

a sum equal to seven per cent of the amount paid in respect of such premiums, fees, subscriptions or contributions, in the calculation of which sum a fraction of a rand included in the amount so paid shall be regarded as a completed rand, and subject to a maximum deduction of seventeen rand: Provided that no allowance shall be made in respect of insurance under a policy of motor insurance, nor under any other policy, if the amount paid as premium for such other policy has been allowed as a deduction from the income of the taxpayer under the provisions of section *eleven*;

- (e) in respect of each dependant the sum of six rand; and
- (f) in respect of any one or more dependants who are proved to the satisfaction of the Commissioner to have been wholly dependent for their maintenance upon the taxpayer, a further sum of sixteen rand irrespective of the number of such dependants.

(2) In any case in which the period assessed is less than twelve months, the deductions allowed under paragraphs (a), (b), (c), (e) and (f) of sub-section (1) shall be such amounts as bear to the full amount of the respective deductions provided for under the said paragraphs, the same ratio as the period assessed bears to twelve months, unless, in the case of any such period terminating at the death of the taxpayer or commencing at the death of the spouse of the taxpayer, the Commissioner in the special circumstances of the case otherwise directs.

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

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

(2) Any income received by or accrued to or in favour of a woman married with or without community of property and not separated from her husband under a judicial order or written agreement of separation shall be deemed for the purposes of this Act to be income accrued to her husband.

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

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

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

(5) If any person has in any deed of donation, settlement or other disposition made a stipulation to the effect that the beneficiaries thereof or some of them shall not receive the income or some portion of the income thereunder until the happening of some event, whether fixed or contingent, so much of any income as would, but for such stipulation, in consequence of the donation, settlement or other disposition be received by or accrue to or in favour of the beneficiaries,

shall, until the happening of that event or the death of that person, whichever first takes place, be deemed to be the income of that person.

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

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

Certain amounts to be included in income or taxable income.

(2) If, within the period of ten years from the date of the award by any company of any bonus shares which in terms of paragraph (g) of the definition of "dividend" in section one or the corresponding provisions of any previous Income Tax Act did not rank as a dividend, any cash or any asset is given to any shareholder of that company in consequence of the liquidation or reconstruction of the company or the partial reduction of its share capital, the taxable income of the company shall, subject to the provisions of sub-section (3), be deemed to include—

(a) in the case of the reconstruction of the company or the partial reduction of its share capital, an amount equal to the sum of the amount of any such cash and the value of any such asset, but not exceeding the nominal value of such bonus shares (excluding any such shares awarded out of share premium account); and

(b) in the case of the liquidation of the company, if the Commissioner is satisfied that such liquidation is *bona fide* and was not brought about solely or mainly for the purpose of avoiding liability for tax under this sub-section, the amount by which the sum of all the amounts of any such cash and the value of all such assets so given to shareholders (in so far as that amount does not exceed the nominal value of the bonus shares so awarded to shareholders, excluding any such shares awarded out of share premium account) exceeds the sum of the paid-up capital and the amount standing to the credit of share premium account of the company immediately prior to the commencement of the liquidation of the company, or, if the Commissioner is not so satisfied, an amount determined as provided in paragraph (a).

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

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

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

(b) For the purposes of sub-section (2) "paid-up capital" means the nominal value of the paid-up capital, excluding so much of the nominal value of any bonus shares as did not rank as a dividend in terms of paragraph (g) of the definition of "dividend" in section one or the corresponding provisions of any previous Income Tax Act.

- (c) The decision of the Commissioner in the exercise of his discretion under sub-section (2) shall be subject to objection and appeal.
- (4) (a) There shall be included in the taxpayer's income all amounts allowed to be deducted or set off under the provisions of sections *eleven* to *twenty*, inclusive, except paragraphs (k), (p) and (q) of section *eleven*, sub-section (2) of section *twelve* or the said sub-section as applied by sub-section (3) of that section, or sub-section (5) of section *thirteen*, or under the corresponding provisions of any previous Income Tax Act, whether in the current or any previous year of assessment, which have been recovered or recouped during the current year of assessment.
- (b) If any amount referred to in paragraph (a) of this sub-section is an amount which has been recovered or recouped during any year of assessment by a person referred to in paragraph (c) of section *nine* as a result of the loss, sale or disposal in any other manner by that person of a ship, and if that person satisfies the Commissioner that—
- (i) he will within a period of one year (or such longer period as the Commissioner in the circumstances of the case may allow) after the end of that year of assessment conclude a contract for the acquisition by him of a ship to replace the aforesaid ship;
 - (ii) such ship will be used by him for the purposes of his trade for a period of not less than ten years; and
 - (iii) such ship will be a ship in relation to which the provisions of paragraph (b) of section *fourteen* will apply and will continue to apply for the said period of not less than ten years,
- the said amount shall, notwithstanding anything to the contrary contained in paragraph (a), but subject to the provisions of paragraphs (c) and (d), not be included in the income of that person for the aforesaid year of assessment, but shall be included in his income for the period of assessment ending on the date of his death, insolvency or liquidation (in the case of a company), as the case may be.
- (c) Within three months after the end of the year of assessment during which any amount aforesaid has been recovered or recouped by the person concerned, there shall be deposited by the said person with the Public Debt Commissioners for such period and on such conditions as may be approved by the Commissioner an amount equal to the amount which has been so recovered or recouped less such amount, if any, as has in the meantime been paid by the said person in respect of the cost price of such last-mentioned ship.
- (d) If owing to any occurrence (other than the loss by the said person of such last-mentioned ship) or because of any circumstance arising during any year of assessment preceding the period of assessment in respect of which any amount would in terms of the preceding provisions of this sub-section or the corresponding provisions of any previous Income Tax Act be required to be included in the income of the taxpayer, the Commissioner is no longer satisfied in regard to the matters in regard to which in terms of the preceding provisions of this sub-section he is required to be satisfied, the said amount shall be included in the income of the taxpayer for the year of assessment during which such occurrence takes place or such circumstance arises.
- (e) If any amount which was deducted under paragraph (e) of section *eleven* or sub-section (1) of section *twelve* or the said sub-section as applied by sub-section (3) of that section or the corresponding provisions of any previous Income Tax Act in respect of machinery or plant which was used by the taxpayer directly in a process of manufacture, or directly in any other process carried on by him on or after the fifteenth day of March, 1961, which in the opinion of the Commissioner was of a similar nature, has as a result of damage or destruction by water or fire (hereinafter referred to as

“the event”) been recovered or recouped during any year of assessment, and if the taxpayer satisfies the Commissioner—

- (i) that he has concluded or will within a period of one year (or such longer period as the Commissioner in the circumstances of the case may allow) from the date of the event conclude a contract for the acquisition by him of further new or unused machinery or plant (hereinafter referred to as the “further machinery or plant”) to replace the aforesaid machinery or plant; and
- (ii) that the further machinery or plant has been or will be brought into use within a period of three years from the date of the event and will be used by him directly in a process of manufacture or any other process which in the opinion of the Commissioner is of a similar nature, for a period of not less than five years or until the further machinery or plant is scrapped or disposed of in the ordinary course of the taxpayer’s trade prior to the expiry of such period of five years,

the said amount shall, notwithstanding the provisions of paragraph (a) of this sub-section, not be included in the income of the taxpayer for the aforesaid year of assessment: Provided that if, owing to any occurrence or because of any circumstance arising during any year of assessment the Commissioner is no longer satisfied in regard to the matters in regard to which in terms of the preceding provisions of this paragraph he is required to be satisfied, the said amount shall be included in the income of the taxpayer for the year of assessment during which such occurrence takes place or such circumstance arises.

- (f) If as a result of the loss, sale or disposal in any other manner by the taxpayer of the further machinery or plant referred to in paragraph (e) there has accrued to or has been received by the taxpayer an amount in excess of the cost thereof less the amount referred to in the said paragraph, so much of the excess as does not exceed such last-mentioned amount shall (unless such last-mentioned amount has been included in income in terms of the proviso to the said paragraph) be deemed to have been recovered or recouped and shall be included in the taxpayer’s income for the year of assessment during which such further machinery or plant was so lost, sold or disposed of in addition to any recovery or recoupment referred to in paragraph (a).
- (5) (a) Any amount which has been paid, whether in the form of rent or otherwise, by any person for the right of use or occupation of any movable or immovable property and has been allowed as a deduction in the determination of such person’s taxable income, and which or the equivalent of which is upon the subsequent acquisition of such property by that or any other person applied in reduction or towards settlement of the purchase price of such property, shall be included in the income of the person by whom the property is acquired as aforesaid for the year of assessment in which such person exercises the option or concludes the agreement, as the case may be, in consequence of which the property is acquired by him.
- (b) Where any amount has been paid by any person for the right of use or occupation of any property which is thereafter acquired by that or any other person for a consideration which in the opinion of the Commissioner is not an adequate consideration, it shall for the purposes of paragraph (a) be deemed, unless the Commissioner having regard to the circumstances of the case otherwise decides, that the said amount, or so much thereof as does not exceed the difference between the fair market value of such property as determined by the Commissioner and the amount of the consideration for which it has been acquired as aforesaid, has been applied in reduction or towards settlement of the purchase price of such property.

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

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

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

- (a) any contract made by him within the Republic for the sale of goods, whether such goods have been delivered or are to be delivered in or out of the Republic;
- (b) the use in the Republic of or the grant of permission to use in the Republic, or the imparting of or the undertaking to impart any knowledge directly or indirectly connected with the use in the Republic of any patent as defined in the Patents Act, 1952 (Act No. 37 of 1952), or any design, trade mark or copyright as defined in the Designs, Trade Marks and Copyright Act, 1916 (Act No. 9 of 1916), or any other property which in the opinion of the Commissioner is of a similar nature, wheresoever such property has been produced or such permission has been granted or such knowledge has been imparted or such undertaking has been given or payment for such use, grant of permission, imparting of knowledge or undertaking has been made or is to be made, and whether such payment has been made or is to be made by a person resident in or out of the Republic;
- (c) any business carried on by any such person who is ordinarily resident in the Republic or in the case of a company is registered, managed or controlled in the Republic, as owner or charterer of any ship or aircraft, or the disposal by such person of any commodity acquired in connection with the operation of such ship or aircraft, wheresoever such ship or aircraft may be operated or such disposal of the commodity may be effected;
- (d) any service rendered or work or labour done by such person in the carrying on in the Republic of any trade, whether the payment for such service or work or labour is or is to be made by a person resident in or out of the Republic and wheresoever payment for such service or work or labour is or is to be made;
- (e) any services rendered by such person to or work or labour done by such person for or on behalf of the Government, including the Railway Administration and any provincial administration, or any local authority in the Republic or the South African Tourist Corporation, notwithstanding that such services are rendered or that such work or labour is done outside the Republic, provided such services are rendered or such work or labour is done in accordance with a contract of employment entered into with the Government, or such administration or local authority or the Corporation: Provided that nothing in this paragraph shall be construed as imposing liability for taxation under this Act upon any salary or emolument paid to any person in the employment of the Government, including the Railway Administration, in respect of any period for which such person is stationed in the territory of South West Africa;
- (f) any services rendered or work or labour done by any such person who is ordinarily resident in the Republic, as an officer or a member of the crew of any ship or aircraft referred to in paragraph (c), notwithstanding that such services are rendered or such work or labour is done outside the Republic and wheresoever payment for such services or work or labour is or is to be made;
- (g) any pension or annuity granted to such person, wheresoever payment of that pension or annuity is made and wheresoever the funds from which payment is made are situate—
- (i) by the Government, including the Railway Administration and any provincial administration, or by any local authority in the Republic; or
- (ii) by any person, whether residing or carrying on business in the Republic or not, if the services in respect of which that pension or annuity was granted were performed within the Republic for at least two years during the ten years immediately preceding the date from which the pension or annuity first became due: Provided

that if the pension or annuity was granted in respect of services which were rendered partly within and partly outside the Republic, only so much of such pension or annuity as bears to the amount of such pension or annuity the same ratio as the period during which the services were rendered in the Republic bears to the total period during which the services were rendered, shall be deemed to be derived from a source within the Republic.

10. (1) There shall be exempt from the tax— Exemptions.
- (a) the revenues of the Government, including the Railway Administration, and any provincial administration or any other state;
 - (b) the revenues of local authorities;
 - (c) the salaries and emoluments payable to—
 - (i) the State President; and
 - (ii) any person who holds office in the Republic as an official of any government, other than the Government of the Republic or the Administration of the territory of South-West Africa, provided such person is stationed in the Republic for that purpose and is not ordinarily resident in the Republic;
 - (d) the receipts and accruals (including receipts or accruals from investments) of any terminating building society, pension fund, provident fund, retirement annuity fund or benefit fund or of any institution which in the opinion of the Commissioner is a mutual savings bank, a mutual loan association, a fidelity or indemnity fund, a trade union or a non-proprietary stock exchange;
 - (e) the receipts and accruals of—
 - (i) any company, society or other association of persons, whether or not registered under any law [other than a company referred to in paragraph (o) or a co-operative society or company registered under the Co-operative Societies Act, 1939 (Act No. 29 of 1939)], the profits or gains of which, other than profits or gains from investments, are derived solely from transactions with or on behalf of its individual members, and the constitution of which does not admit of the distribution of its profits or gains to any persons other than the members with whom or on whose behalf the transactions took place, and does not confer upon any person any benefit other than benefits accruing to that person from transactions with or on behalf of that person; and
 - (ii) associations which in the opinion of the Commissioner are amateur sporting associations, except as regards any receipts or accruals from investments by any such company, society or association;
 - (f) the receipts and accruals of all ecclesiastical, charitable and educational institutions of a public character, whether or not supported wholly or partly by grants from the public revenue;
 - (g) any amount received as a war pension, or as an award or a benefit under any law relating to the payment of compensation in respect of diseases contracted by persons employed in mining operations;
 - (h) interest received by or accrued to any person not ordinarily resident nor carrying on business in the Republic from stock or securities (including Treasury Bills) issued by the Government or any colony included in the Republic, or any local authority within the Republic or the Electricity Supply Commission: Provided that if in the case of any such stock or securities issued in respect of a loan raised in a country outside the Republic the Treasury has, with the approval of the Minister of Finance, given an undertaking that the interest therefrom received by or accruing to any person not ordinarily resident in the Republic shall be exempt from taxes in the Republic, the interest

received by or accrued to such a person from such of the said stock or securities as were acquired by him outside the Republic and paid for by him in the currency of any country other than the Republic shall be exempt from this tax even if that person carries on business in the Republic;

- (i) interest received from any deposit in the Post Office Savings Bank, including interest on Post Office Savings Bank Certificates or on Tax Redemption Certificates, or annual interest accrued in respect of any Union Loan Certificates or National Savings Certificates, or interest received in respect of any loan portion of the normal and super tax imposed under the Income Tax Act, 1953, or any subsequent Act of Parliament, or annual interest accrued in respect of Five per cent Five Year Treasury Bonds, Five per cent Seven Year Treasury Bonds and any amount credited as interest in respect of any subscription share, but not in respect of any amount paid or credited on any paid-up share in any building society: Provided that the exemption in respect of interest—
- (i) on deposits in the Post Office Savings Bank and on Post Office Savings Bank Certificates made or held by any one person shall be limited in each case to the sum of one hundred rand;
 - (ii) on Tax Redemption Certificates held by any one person shall be limited to the sum of fifty rand;
 - (iii) on Five per cent Five Year Treasury Bonds shall be limited to the sum of one thousand rand in the case of any taxpayer; and
 - (iv) on Five per cent Seven Year Treasury Bonds shall be limited to the sum of one thousand rand in the case of any taxpayer;
- (j) the receipts and accruals of any bank, if the Commissioner is satisfied that such bank is not resident in the Republic and is entrusted by the Government of a territory outside the Republic with the custody of the principal foreign exchange reserves of that territory, and the Minister of Finance decides to apply the provisions of this paragraph to that bank in respect of the year of assessment under charge;
- (k)
- (i) dividends received by or accrued to or in favour of any company: Provided that this exemption shall not apply to dividends (other than those distributed out of profits of a capital nature) distributed by a fixed property company as defined in section *one* of the Unit Trusts Control Act, 1947 (Act No. 18 of 1947), on shares held by a company which is registered under the said Act as a management company in property shares;
 - (ii) dividends received by or accrued to or in favour of any person (other than a company) not ordinarily resident nor carrying on business in the Republic;
 - (iii) dividends received by or accrued to or in favour of the deceased estate of any person who at date of death was not ordinarily resident nor carrying on business in the Republic, if, but for this exemption, such deceased estate would have been liable for normal tax in respect of such dividends;
 - (iv) so much of any dividend received by or accrued to any person (other than a company) who is ordinarily resident in the Republic from any company not registered in the Republic as the Commissioner is satisfied has been distributed out of any profits of such company in respect of which any amount has been included in any year of assessment in the taxable income or income subject to super tax of such person as the result of the apportionment under the income tax law of the territory of South West Africa of the taxable income or income subject to super tax of such company among its shareholders;

- (v) dividends received by or accrued to any person (other than a company) ordinarily resident in the Republic from any company not registered in the Republic in respect of shares acquired by such person—
- (aa) before he became ordinarily resident in the Republic for the first time;
 - (bb) by inheritance or by a donation if at the date of the donation the donor was a person (other than a company) not ordinarily resident in the Republic;
 - (cc) out of funds derived by him from any trade carried on by him outside the Republic;
 - (dd) as bonus shares awarded to him as the holder of shares the dividends on which are exempt from normal tax in his hands in terms of this sub-paragraph or would have been so exempt if such dividends had been received by or had accrued to him on or after the date of commencement of this sub-paragraph;
 - (ee) out of funds derived by him from the disposal of shares the dividends on which were exempt from normal tax in his hands in terms of this sub-paragraph or would have been so exempt if such dividends had been received by or had accrued to him on or after the date of commencement of this sub-paragraph;
- (vi) dividends received by or accrued to any person (other than a company) ordinarily resident in the Republic during any year of assessment from any company incorporated in the territory of South West Africa, if the Commissioner is satisfied that so much of the total net profits of such company for such year of assessment as does not consist of dividends was derived wholly or mainly from a source within the said territory, and that any dividends included in the total net profits of such company for such year of assessment were derived from a company or companies the total net profits of which for such year of assessment consisted solely or mainly of taxable income, determined under the income tax laws of, and derived from sources within, the said territory: Provided that for the purposes of this sub-paragraph the expression "total net profits" in relation to any company in respect of any year of assessment means the net profits of that company for such year of assessment calculated in the manner prescribed under the income tax laws of the said territory for the determination of taxable income for normal tax purposes in respect of that year of assessment, but irrespective of whether the profits are derived from a source within or outside the said territory and subject to the inclusion in the profits of such company of all dividends from whatever source;
- (l) the profits of mining made under a lease granted under section *forty-six* of the Precious and Base Metals Act, 1908 (Act No. 35 of 1908), of the Transvaal;
- (m) any amount received by or accrued to an author of a work in respect of the assignment of or grant of an interest in a copyright in such work, if such amount is chargeable with income tax in a country other than the Republic: Provided that this exemption shall not apply to any person who is not the first owner of a copyright in terms of Chapter IV of the Designs, Trade Marks and Copyright Act, 1916 (Act No. 9 of 1916), or to a company;
- (n) any amount received by or accrued to any member of the defence forces of the Republic, in time of war or

during a period of three months thereafter, whether in cash or otherwise, as an allowance for any uniform, ration or lodging;

- (o) the receipts and accruals of any company registered in pursuance of a licence granted under section *twenty-one* of the Companies Act, 1926 (Act No. 46 of 1926), which has not been revoked;
 - (p) any amount received by or accrued to any person who is not ordinarily resident in the Republic, for services rendered or work or labour done by him outside the Republic for or on behalf of the Government, including the Railway Administration and any provincial administration, or any local authority in the Republic or the South African Tourist Corporation, if such amount is chargeable with income tax in the country in which he is ordinarily resident and the income tax so chargeable is borne by himself and is not paid on his behalf by the Government, the provincial administration or local authority concerned or the said Corporation;
 - (q) so much of any gratuity received by or accrued to any person from his employer as the Commissioner deems to be a grant made because such person had obtained a university degree or diploma or had been successful in some examination, and not remuneration or any portion of remuneration for services rendered or to be rendered;
 - (r) any gratuity (other than a leave gratuity) received by or accrued to any person from public funds upon his retirement from any office or employment under the Government, including the Railway Administration and any provincial administration, which the Treasury declares to be free of tax;
 - (s) the receipts and accruals derived by any company from the realization of assets consisting of gold bullion or shares in companies, if such assets were acquired by such company with funds which were transferred to the Republic from any country outside the Republic by arrangement with the Treasury or with funds derived from the realization of similar assets acquired with the proceeds derived from any such assets or from dividends received in respect of such shares, and the Treasury has with the approval of the Minister of Finance given an undertaking that any such receipts and accruals shall be exempt from the tax, provided particulars of the terms and conditions of any arrangement with and any undertaking given by the Treasury and the period during which such undertaking is to endure are published in the *Gazette*;
 - (t) the receipts and accruals of the Council for Scientific and Industrial Research.
- (2) Notwithstanding the exemptions provided for in paragraphs (h) and (k) of sub-section (1)—
- (a) all amounts falling within the scope of the said paragraphs shall be set out by the taxpayer in the return rendered by him; and
 - (b) the said exemptions shall not apply in respect of any portion of an annuity.
- (3) The exemptions provided by any paragraph of sub-section (1) shall not extend to any payments out of the revenues, receipts, accruals or profits mentioned in such paragraph.
- (4) There shall be exempt from the tax—
- (a) every married person whose taxable income in any year of assessment does not exceed six hundred rand or, where the period of assessment is less than a full year, an amount which bears to six hundred rand the same ratio as the period assessed bears to one year; and
 - (b) every other person, except a company, whose taxable income in any year of assessment does not exceed five hundred rand or, where the period of assessment is less than a full year, an amount which bears to five hundred rand the same ratio as the period assessed bears to one year.

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

General deductions allowed in determination of taxable income.

- (a) expenditure and losses actually incurred in the Republic in the production of the income, provided such expenditure and losses are not of a capital nature;
- (b) so much as the Commissioner may allow of any expenditure and losses actually incurred outside the Republic in the production of the income, provided such expenditure and losses are not of a capital nature;
- (c) any expenditure, other than that of a capital nature, actually incurred by the taxpayer during the year of assessment in respect of any dispute or action at law arising in the course or by reason of the ordinary operations undertaken by him in the carrying on of his trade;
- (d) expenditure actually incurred during the year of assessment on repairs of property occupied for the purpose of trade or in respect of which income is receivable, including any expenditure so incurred on the treatment against attack by beetles of any timber forming part of such property and sums expended for the repair of machinery, implements, utensils and other articles employed by the taxpayer for the purposes of his trade;
- (e) save as provided in sub-paragraph (2) of paragraph 12 of the First Schedule, such sum as the Commissioner may think just and reasonable as representing the amount by which the value of any machinery (less any deduction under sub-section (1) of section *twelve* or under that sub-section as applied by sub-section (3) of the said section, or under the corresponding provisions of any previous Income Tax Act), implements, utensils and articles used by the taxpayer for the purpose of his trade has been diminished by reason of wear and tear during the year of assessment:

Provided that—

- (i) where a deduction has been allowed under paragraph (d), the Commissioner shall take into consideration the sum allowed under that paragraph in determining the sum to be allowed under this paragraph;
- (ii) in no case shall any allowance be made for the depreciation of buildings or other structures or works of a permanent nature;
- (iii) no allowance shall be made under this paragraph in respect of any ship to which the provisions of paragraph (a) of section *fourteen* apply;
- (iv) the value of new or unused machinery, implements, utensils or articles which were used by the taxpayer directly in a process of manufacture or, if brought into use on or after the fifteenth day of March, 1961, in any other process which in the opinion of the Commissioner is of a similar nature, and were acquired to replace machinery, implements, utensils or articles which were damaged or destroyed by water or fire, shall be reduced by any amount which has been recovered or recouped as contemplated in paragraph (a) of sub-section (4) of section *eight* or the corresponding provisions of any previous Income Tax Act in respect of the damaged or destroyed machinery, implements, utensils or articles and has been excluded from the taxpayer's income in terms of paragraph (e) of the said sub-section or the corresponding provisions of any previous Income Tax Act, and not included in the taxpayer's income in terms of the proviso to the said paragraph or the corresponding provisions of any previous Income Tax Act in the current or any previous year of assessment;

- (v) the value of any machinery, implements, utensils or articles used by the taxpayer for the purposes of his trade shall be increased by the amount of any expenditure (other than expenditure referred to in paragraph (a)) which is proved to the satisfaction of the Commissioner to have been incurred by the taxpayer in moving such machinery, implements, utensils or articles from one location to another;
- (f) an allowance in respect of any premium or consideration in the nature of a premium paid by a taxpayer for—
 - (i) the right of use or occupation of land or buildings used or occupied for the production of income or from which income is derived; or
 - (ii) the right of use of any plant or machinery used for the production of income or from which income is derived; or
 - (iii) the right of use of any patent as defined in the Patents Act, 1952 (Act No. 37 of 1952), or any design, trade mark or copyright as defined in the Designs, Trade Marks and Copyright Act, 1916 (Act No. 9 of 1916), or of any other property which in the opinion of the Commissioner is of a similar nature, if such patent, design, trade mark, copyright or other property is used for the production of income or income is derived therefrom; or
 - (iv) the imparting of or the undertaking to impart any knowledge directly or indirectly connected with the use of such patent, design, trade mark, copyright or other property as aforesaid;

Provided that—

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

- (ii) any such allowance shall not exceed for any one year such portion of the aggregate of the allowances under this paragraph as is equal to the said aggregate divided by the number of years (calculated from the date on which the improvements are completed) for which the taxpayer is entitled to the use or occupation, or one twenty-fifth of the said aggregate, whichever is the greater; and
- (iii) if the taxpayer is entitled to such use or occupation for an indefinite period, he shall for the purposes of this paragraph be deemed to be entitled to such use or occupation for such period as in the opinion of the Commissioner represents the probable duration of such use or occupation;
- (h) such allowance in respect of any amounts included in the taxpayer's gross income under paragraph (g) or paragraph (h) of the definition of "gross income" in section one as the Commissioner may deem reasonable having regard to any special circumstances of the case and, in the case of an amount so included under the said paragraph (h), to the original period for which the right of use or occupation was granted;
- (i) the amount of any debts due to the taxpayer to the extent to which they are proved to the satisfaction of the Commissioner to be bad, provided such amount is included in the current year of assessment or was included in previous years of assessment in the taxpayer's income;
- (j) such an allowance as may be made each year by the Commissioner in respect of such debts due to the taxpayer as he considers to be doubtful: Provided that such allowance shall be included in the income of the taxpayer in the following year of assessment, and for that purpose any allowance granted in terms of paragraph (h) of sub-section (2) of section eleven of the Income Tax Act, 1941, in respect of the year of assessment ended on the thirtieth day of June, 1961, shall be deemed to be an allowance which was made in terms of this paragraph;
- (k) any sum contributed during the year of assessment by way of current contribution to any pension fund by any person holding any office or employment, where the making of such a contribution is a condition of the holding of such office or employment: Provided that the deduction to be allowed in respect of contributions to a pension fund not established by law shall not exceed the sum of four hundred rand;
- (l) any sum contributed by the taxpayer during the year of assessment for the benefit of his employees to any pension fund, provident fund or benefit fund: Provided that—
 - (i) in respect of any lump sum contribution, the Commissioner may determine that the said sum shall be deducted in a series of annual instalments, so that only a portion thereof is deducted in the year of assessment in which it is contributed, and the residue in such subsequent years of assessment and in such proportions as the Commissioner may determine, until the contribution is extinguished;
 - (ii) if the contributions (including any lump sum payments) made by the taxpayer in respect of any employee during any year of assessment to such funds exceed an amount equal to ten per cent of the approved remuneration of such employee for such year of assessment, and the Commissioner is satisfied that the aggregate of such contributions and the total remuneration accrued during such year of assessment to such employee in respect of his employment by the taxpayer is excessive or unjustifiable in relation to the value of the services rendered by such employee to the taxpayer, and having regard to other benefits, if any, derived by him from his employment by the taxpayer, only so much of

such contributions as appears to the Commissioner to be reasonable, but not less than an amount equal to ten per cent of the approved remuneration of such employee for such year of assessment, shall be allowed to be deducted under this paragraph;

- (iii) any decision of the Commissioner under this paragraph, not being a decision under paragraph (i) of this proviso, shall be subject to objection and appeal,

and for the purposes of paragraph (ii) of this proviso "approved remuneration", in relation to any employee for any year of assessment, means so much of the total remuneration accrued to such employee during such year of assessment in respect of his employment by the taxpayer concerned as the Commissioner considers to be fair and reasonable in relation to the value of the services rendered by such employee during such year of assessment to the taxpayer and having regard to other benefits, if any, derived by him from his employment by the taxpayer;

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

Provided that the deduction under sub-paragraph (ii) shall not exceed in respect of the persons so dependent on any one retired or deceased employee, the sum of six hundred rand;

- (n) any sum contributed by the taxpayer during the year of assessment by way of current contribution to any retirement annuity fund: Provided that the deduction under this paragraph shall not exceed eight hundred rand or, in the case of any person who is entitled to a deduction under paragraph (k), the amount by which the amount of the deduction under the said paragraph is less than eight hundred rand;

- (o) save as provided in sub-paragraph (2) of paragraph 12 of the First Schedule, an allowance in respect of any building of the nature described in sub-section (1) or (4) of section *thirteen* or any machinery, implements, utensils and articles used by the taxpayer for the purposes of his trade which have been scrapped by such taxpayer during the year of assessment, such allowance to be the excess of the original cost to such taxpayer of such building, machinery, implements, utensils or articles over the total amount arrived at by adding all the allowances made in respect thereof under paragraph (e) of this section, or sub-section (1) of section *twelve* or that sub-section as applied by sub-section (3) of the said section, or sub-section (1) or (4) of section *thirteen* or paragraph (a) or (b) of section *fourteen* or the corresponding provisions of any previous Income Tax Act, to any amount or the value of any advantage accruing to the taxpayer in respect of the sale or other disposal of such building, machinery, implements, utensils and articles: Provided that—

- (i) no allowance shall be made in the case of any such building which has been scrapped within a period of ten years from the date of erection or purchase;
- (ii) for the purposes of this paragraph the cost of any building shall be deemed to be the actual cost less any amount deducted from such cost in terms of sub-section (3) of section *thirteen* or the corresponding provisions of any previous Income Tax Act,

and for the purposes of this paragraph the cost of any machinery, implements, utensils or articles shall be deemed to be the actual cost plus the amount by which the value of such machinery, implements, utensils or articles has been increased in terms of paragraph (v) of the proviso to paragraph (e) or the corresponding provisions of any previous Income Tax Act, and less the amount by which such value has been reduced in terms of paragraph (iv) of the said proviso or the corresponding provisions of any previous Income Tax Act;

- (p) expenditure incurred during the year of assessment by any taxpayer—
- (i) for the purpose of scientific research undertaken by him for the development of his business, if such expenditure is not of a capital nature; or
 - (ii) by way of contributions to any association, institute, college or university, to be used in scientific research relating to the taxpayer's own business, if the Council for Scientific and Industrial Research certifies to the Commissioner that it approves the proposals of such association, institute, college or university in regard to such research and that it is satisfied that such contributions will be used in such research;
- (q) save as provided in sub-paragraph (2) of paragraph 12 of the First Schedule, if the Commissioner is satisfied that expenditure of a capital nature has been incurred by a taxpayer for the purpose of scientific research undertaken by him for the development of his business, and the Council for Scientific and Industrial Research certifies to the Commissioner that during the year of assessment in question such research was carried on and was financed by such expenditure, an amount in respect of the year of assessment in which such research commenced and of any succeeding year of assessment, calculated at the rate of twenty-five per cent of such expenditure: Provided that—
- (i) the total deduction under this paragraph shall not exceed the amount of such expenditure; and
 - (ii) if in any year of assessment the taxpayer discontinues such research or if the Council for Scientific and Industrial Research is unable, in respect of any year of assessment, to certify as provided in the foregoing provisions of this paragraph, there shall be included in the taxpayer's income for that year of assessment the total of the deductions under this paragraph or the corresponding provisions of any previous Income Tax Act, whether in the current or any previous year of assessment, less one-tenth of the amount of such expenditure in respect of each completed period of one year, not exceeding ten, contained in the period during which such research was carried on;
- (r) notwithstanding the provisions of section *twenty-three*, so much of any donation made on or before the thirtieth day of June, 1962, by a company during the year of assessment for the purposes of technological training, as defined in the Technological Training Advancement Act, 1960 (Act No. 69 of 1960), at a university (as so defined) as does not exceed one per cent of the taxable income of such company as calculated before allowing any deduction under this paragraph, provided an amount not less than the amount of such deduction has been paid during the year of assessment in question into the special account established under the said Act;
- (s) in the case of a fixed property company as defined in section *one* of the Unit Trusts Control Act, 1947 (Act No. 18 of 1947), the dividends (other than those distributed out of profits of a capital nature) dis-

tributed by such company during the year of assessment on shares held by a company which is registered under the said Act as a management company in property shares;

- (r) in the case of any taxpayer (excluding any taxpayer who derives income from the sale of immovable property to persons who are not employed by him) who during any year of assessment within the period of two years ending on the thirtieth day of June, 1963, incurs expenditure in connection with the erection of any dwelling or who, for the purpose of financing in whole or in part the erection by any person during the said period of any dwelling, advances or donates to any person any amount during any such year of assessment, and who satisfies the Commissioner that that dwelling will be occupied exclusively by persons or the households of persons who are his employees and are employed by him for the purposes of his trade (other than mining or farming), an allowance in respect of the said year of assessment equal to twenty-five per cent of the expenditure so incurred or of the amount so advanced or donated: Provided that—
- (i) where any company is mainly engaged in the provision of housing facilities for the employees of its sole or principal shareholder, the employees of such shareholder shall for the purposes of this paragraph be deemed to be the employees also of the said company;
 - (ii) the aggregate of all the allowances made under this paragraph or the corresponding provisions of any previous Income Tax Act in respect of the erection of any one dwelling shall not exceed the sum of one thousand rand;
 - (iii) if in any year of assessment any dwelling in relation to the erection of which an allowance has been made to any taxpayer under this paragraph or the corresponding provisions of any previous Income Tax Act, whether in the current or any previous year of assessment, is occupied by any person or by the household of any person who is not an employee of that taxpayer, there shall be included in the income of the said taxpayer for the current year of assessment the amount of such allowance less an amount equal to one-tenth of the said allowance in respect of each completed period of one year, but not exceeding ten years, during which such dwelling was occupied by an employee or the household of an employee of that taxpayer,
and for the purposes of this paragraph "employee" in relation to any taxpayer does not include any person who is a relative of that taxpayer or who, if the taxpayer is a company, is a shareholder (or a relative of a shareholder) in that company or in any company which is associated with that company by virtue of shareholding, not being a shareholder who holds all his shares in that company solely because he is employed by that company and who will, in terms of the articles of association of that company, not be entitled to continue to hold those shares after he ceases to be so employed;
- (u) so much of the expenditure (including club subscriptions) but not exceeding three hundred rand, incurred by the taxpayer during the year of assessment in respect of entertainment as the Commissioner is satisfied was so incurred directly in connection with his trade and which is not such expenditure as is referred to in paragraph (a);
- (v) notwithstanding the provisions of paragraphs (a) and (b) of section *twenty-three*, in respect of any person suffering from any physical disability whose taxable income (as calculated before allowing any deduction under this paragraph) for the year of assessment in question does not exceed three thousand rand, so much of any expenditure, but not exceeding three

hundred rand, incurred by such person during such year of assessment as the Commissioner is satisfied was necessarily incurred by him in consequence of such disability and for the purpose of carrying on his trade, not being such expenditure as is referred to in any of the other paragraphs of this section or in section *eighteen*;

- (w) the amount of any premium for which the taxpayer actually became liable under any policy of insurance taken out upon the life of an employee or, in the case of a company, upon the life of a director or an employee of that company, if such policy is the property of the taxpayer;
- (x) any amounts which in terms of any other provision in this Part, are allowed to be deducted from the income of the taxpayer.

12. (1) In respect of new or unused machinery or plant brought into use by any taxpayer for the purposes of his trade and used by him directly in a process of manufacture or any other process which in the opinion of the Commissioner is of a similar nature, there shall be allowed to be deducted from the income of such taxpayer for the year of assessment during which such machinery or plant is so brought into use an allowance equal to fifteen per cent of the cost to him of such machinery or plant: Provided that in the case of machinery or plant which has been acquired to replace machinery or plant which was damaged or destroyed by water or fire, the allowance shall be calculated on such cost less any amount which has been recovered or recouped in respect of the damaged or destroyed machinery or plant and has been excluded from the taxpayer's income in terms of paragraph (e) of sub-section (4) of section *eight* or the corresponding provisions of any previous Income Tax Act, whether in the current or any previous year of assessment.

Deductions in respect of machinery or plant used in a process of manufacture or by hotelkeepers.

(2) There shall further be allowed to be deducted from the income of any taxpayer, in respect of new or unused machinery or plant brought into use by him for the purposes of his trade and used by him directly in a process of manufacture or any other process which in the opinion of the Commissioner is of a similar nature, an allowance, to be known as a machinery investment allowance, for the year of assessment (not being later than that ending on the thirtieth day of June, 1963) during which such machinery or plant was so brought into use, equal to twenty per cent of the cost to the taxpayer of such machinery or plant: Provided that the Minister of Finance may, in the case of any such machinery or plant brought into use in a Bantu area or an area adjacent to a Bantu area, with due regard to the circumstances of the case and to the recommendations of the Secretary for Bantu Administration and Development and the Secretary for Commerce and Industries, direct that the allowance be increased to a sum not exceeding thirty per cent of such cost.

(3) The provisions of sub-sections (1) and (2) shall *mutatis mutandis* apply—

- (a) with reference to new or unused machinery, implements, utensils and articles (other than vehicles and other than equipment for managers' and servants' rooms and offices) brought into use by a taxpayer for the purposes of his trade as hotelkeeper; and
- (b) where the Minister of Finance, having regard to the circumstances of the case and to the recommendations of the Secretary for Bantu Administration and Development and the Secretary for Commerce and Industries so directs, with reference to—
 - (i) used machinery or plant brought into use and used directly in a process of manufacture or any other process which in the opinion of the Commissioner is of a similar nature, in a Bantu area or an area adjacent to a Bantu area;
 - (ii) used machinery, implements, utensils and articles (other than vehicles and other than equipment for managers' and servants' rooms and offices) brought into use for the purposes of his trade by a hotelkeeper in such an area:

Provided that the allowance provided for in sub-section (1) shall not be permitted to be deducted in respect of used machinery, plant, implements, utensils or articles in respect of which an allowance has already been deducted for the year of assessment during which such machinery, plant, implements, utensils or articles were brought into use and used as new or unused machinery, plant, implements, utensils or articles, either under the said sub-section or under the corresponding provisions of any previous Income Tax Act: Provided further that, where an allowance has been permitted to be deducted under sub-section (2) or the corresponding provisions of any previous Income Tax Act, in the case of new or unused machinery, plant, implements, utensils or articles, the allowance in respect thereof as used machinery, plant, implements, utensils or articles shall be such a proportion, not exceeding ten per cent, of the cost thereof as the Minister of Finance may direct.

(4) The cost of used machinery, plant, implements, utensils or articles shall, for the purpose of determining the allowance to be deducted in respect thereof—

- (a) under sub-section (1) as applied by sub-section (3), be deemed to be the actual cost thereof less the aggregate of the amounts allowed to be deducted in respect thereof under paragraph (e) of section *eleven* or the corresponding provisions of any previous Income Tax Act, either in the current or in any previous year of assessment;
- (b) under sub-section (2) as so applied, be deemed to be the actual cost thereof less the aggregate of the amounts allowed to be deducted in respect thereof under paragraph (e) of section *eleven* or under sub-section (1) or under that sub-section as so applied or under the corresponding provisions of any previous Income Tax Act, either in the current or in any previous year of assessment.

13. (1) Notwithstanding anything to the contrary contained in paragraph (ii) of the proviso to paragraph (e) of section *eleven*, an allowance equal to two per cent of the cost (after the deduction of any amount referred to in sub-section (3)) to the taxpayer of any building and of any improvements (other than repairs) effected thereto shall be allowed to be deducted from his income—

Deductions in respect of buildings used in a process of manufacture or by hotelkeepers.

- (a) if the erection of such building was commenced by him on or after the twenty-fifth day of March, 1959, but not later than the fourteenth day of March, 1961, and such building was wholly or mainly used by him during the year of assessment for the purpose of carrying on therein any process of manufacture in the course of his trade (other than mining or farming); or
- (b) if the erection of such building was commenced by him on or after the fifteenth day of March, 1961, and such building was wholly or mainly used by him during the year of assessment for the purpose of carrying on therein in the course of his trade (other than mining or farming) any process of manufacture or any other process which in the opinion of the Commissioner is of a similar nature, or such building was let by him and was wholly or mainly used for the purpose of carrying on therein any process as aforesaid in the course of any trade (other than mining or farming); or
- (c) if the erection of such building was commenced on or after the twenty-fifth day of March, 1959, but not later than the fourteenth day of March, 1961, and such building has been acquired by purchase from any other person who was entitled to an allowance in respect thereof under paragraph (a) or the corresponding provisions of any previous Income Tax Act, and such building was wholly or mainly used during the year of assessment by the person by whom it has been acquired for the purpose of carrying on therein any process of manufacture in the course of his trade (other than mining or farming); or

(d) if the erection of such building was commenced on or after the fifteenth day of March, 1961, and such building has been acquired by purchase from any other person who was entitled to an allowance in respect thereof under paragraph (b) or the corresponding provisions of any previous Income Tax Act, and such building was wholly or mainly used during the year of assessment by the person by whom it has been acquired for the purpose of carrying on therein in the course of his trade (other than mining or farming) a process of manufacture or any other process which in the opinion of the Commissioner is of a similar nature, or such building was let by him and was wholly or mainly used for the purpose of carrying on therein in the course of any trade (other than mining or farming) any process as aforesaid.

(2) The aggregate of the allowances under sub-section (1) or the corresponding provisions of any previous Income Tax Act shall not exceed the cost (after the deduction of any amount referred to in sub-section (3) or the corresponding provisions of any previous Income Tax Act) of any building so erected or purchased, as the case may be, together with the cost of any subsequent improvements (other than repairs) effected thereto.

(3) If in any year of assessment there falls to be included in a taxpayer's income in terms of paragraph (a) of sub-section (4) of section eight an amount which has been recovered or recouped in respect of any allowance made under sub-section (1) or the corresponding provisions of any previous Income Tax Act in respect of any building, the amount so recovered or recouped shall, notwithstanding the provisions of the said paragraph, at the option of the taxpayer to be notified by him in writing to the Commissioner when submitting his return of income for the year of assessment during which the recovery or recoupment occurred, and provided he purchases or erects within twelve months or such further period as the Commissioner may allow from the date on which the event giving rise to the recovery or recoupment occurred, any other building to which the provisions of this paragraph apply, not be included in his income for such year of assessment, but shall be set off against the cost to him of such further building purchased or erected by him.

(4) The provisions of sub-sections (1), (2) and (3) shall *mutatis mutandis* apply with reference to any building the erection of which was commenced by the taxpayer on or after the second day of March, 1960, and the cost of subsequent improvements, (other than repairs) effected thereto if such building was wholly or mainly used by him during the year of assessment for the purpose of carrying on therein his trade of hotelkeeper, and with reference to any building the erection of which was commenced by a taxpayer on or after the fifteenth day of March, 1961, and to the cost of subsequent improvements (other than repairs) effected thereto, if such building was let by the taxpayer and was wholly or mainly used for the purpose of carrying on therein the trade of hotelkeeper.

(5) In addition to the deductions provided for in sub-sections (1) to (4), inclusive, there shall be allowed to be deducted from the income of any taxpayer an allowance to be known as a building investment allowance, in respect of the cost to the taxpayer—

(a) of any building owned by him the erection of which was commenced on or after the second day of March, 1960, but not later than the fourteenth day of March, 1961, and of any improvements (other than repairs) commenced on or after the second day of March, 1960, but not later than the fourteenth day of March, 1961, to such building or to any building owned by the taxpayer the erection of which was commenced before the second day of March, 1960, if the building in question was wholly or mainly used by him for the purpose of carrying on therein any process of manufacture in the course of his trade (other than mining or farming) or for the purpose of carrying on therein his trade of hotelkeeper;

(b) of any building owned by him the erection of which was commenced on or after the fifteenth day of March, 1961, but not later than the thirtieth day of June, 1962, and of any improvements (other than repairs)

commenced on or after the fifteenth day of March, 1961, but not later than the thirtieth day of June, 1962, to any such building or to any building owned by the taxpayer the erection of which was commenced before the fifteenth day of March, 1961, if the building in question was wholly or mainly used by him for the purpose of carrying on therein in the course of his trade (other than mining or farming) any process of manufacture or any other process which in the opinion of the Commissioner is of a similar nature or for the purpose of carrying on therein his trade of hotel-keeper, or if such building was let by him and was wholly or mainly used for the purpose of carrying on therein any process as aforesaid in the course of any trade (other than mining or farming) or for the purpose of carrying on therein the trade of hotelkeeper.

(6) The building investment allowance shall be a sum equal to ten per cent of the cost of the buildings or improvements in question for the year of assessment (but not later than that ending on the thirtieth day of June, 1964) during which—

- (a) in the case of the cost of erection of a building used by the taxpayer or the lessee, the building was first so used;
- (b) in the case of the cost of any improvements to a building, the improvements were completed:

Provided that the Minister of Finance may, having regard to the circumstances of the case and to the recommendations of the Secretary for Bantu Administration and Development and the Secretary for Commerce and Industries, direct that the allowance in respect of buildings referred to in paragraph (b) of sub-section (5) which have been used in the manner aforesaid in a Bantu area or an area adjacent to a Bantu area, or in respect of improvements to such buildings, shall be increased to a sum not exceeding twenty per cent of such cost.

14. There shall be allowed to be deducted from the income of any person referred to in paragraph (c) of section *nine*— Deductions
in respect of
ships.

- (a) in respect of any ship used by such person for the purposes of his trade during the year of assessment an allowance equal to ten per cent of the cost to him of such ship: Provided that—
 - (i) where an allowance under paragraph (b) or the corresponding provisions of any previous Income Tax Act has been made to any person in respect of any ship, no allowance shall be made under this paragraph to such person in respect of that ship for the year of assessment in which the ship is for the first time used by him for the purposes of his trade; and
 - (ii) the aggregate of all the allowances made to any person in respect of any ship under this paragraph, paragraph (b) of this section and paragraph (e) of section *eleven* or the corresponding provisions of any previous Income Tax Act shall not exceed the cost to such person of such ship;
- (b) in the case of a person who during any year of assessment concludes a contract for the acquisition by him of a new ship (whether built or still to be built), or of a ship which is not new and is proved to the satisfaction of the Secretary for Transport at all times since its construction to have been maintained in the highest class applicable to a ship of its type, and who satisfies the Commissioner that the ship in question is or will be registered by him in the Republic and is or will be used by him for the purposes of his trade as a foreign-going ship (as defined in section *two* of the Merchant Shipping Act, 1951 (Act No. 57 of 1951), prior to its amendment by the Merchant Shipping Amendment Act, 1959, subject to the reservation that the reference in paragraph (b) of the definition thereof to a ship of more than one thousand gross register tons, shall be construed as a reference to a ship of not less than two hundred gross register tons and that the reference in para-

graph (d) to a shore-based whaling boat shall be construed as a reference to a shore-based whaling boat of less than two hundred gross register tons), an allowance in respect of that year of assessment equal to forty per cent of the cost to the said person of that ship (hereinafter referred to as the cost price of the ship), or, if at the time at which the allowance under this paragraph has to be made, the cost price of the ship has not yet been determined, of the estimated cost price of that ship, provided the said person satisfies the Commissioner that not less than forty per cent of the cost price or of the estimated cost price, as the case may be, of the ship will be paid by him within a period of two years or, if the Commissioner agrees, three years after the end of that year of assessment or, if the said person does not so satisfy the Commissioner, an allowance in respect of any year of assessment equal to forty per cent of the portion, if any, of the cost price of the ship paid by him during that year of assessment: Provided that—

- (i) the provisions of this paragraph shall not apply in respect of any ship the registration of which in the Republic in the name of the taxpayer concerned does not or will not constitute its first registration in the Republic;
- (ii) if any taxpayer to whom an allowance equal to forty per cent of the cost price or estimated cost price, as the case may be, of any ship has been made under this paragraph or the corresponding provisions of any previous Income Tax Act, fails to pay at least forty per cent of such cost price or estimated cost price, as the case may be, within the said period of two or (as the case may be) three years after the end of the year of assessment in respect of which the said allowance has been made, the said allowance shall be included in the income of the said taxpayer for the year of assessment ending on the same day as the said period, and there shall be deducted from the income of the said taxpayer for that year of assessment an allowance equal to forty per cent of the portion, if any, of the cost price of such ship paid by him during the said period, and from the income of the said taxpayer for any year of assessment thereafter an allowance equal to forty per cent of the portion, if any, of the cost price of such ship paid by him during that year of assessment; and
- (iii) if in respect of any year of assessment the Commissioner is no longer satisfied that a ship in respect of which an allowance has been made under the preceding provisions of this paragraph or the corresponding provisions of any previous Income Tax Act (whether in the current or any previous year of assessment) will be registered in the Republic or will be used by the taxpayer as aforesaid, or if in any year of assessment any such ship which has been registered in the Republic or has been used by the taxpayer as aforesaid, ceases to be so registered or used, or if in any year of assessment the taxpayer ceases to be a person referred to in paragraph (c) of section *nine*, so much of the amount of the said allowance as is not in terms of sub-section (4) of section *eight* required to be included in the taxpayer's income for the current or any other year of assessment, less such amount as would, if this paragraph had not been enacted, have been allowed to the taxpayer by way of deductions (in addition to those actually allowed) under paragraph (a) of this section or paragraph (o) of section *eleven* or the corresponding provisions of any previous Income

Tax Act, either in the current or any previous year of assessment, shall in terms of this proviso be included in the income of the taxpayer for the current year of assessment;

- (c) in respect of any expenditure which such person satisfies the Commissioner he is likely to incur within five years from the end of the year of assessment in question on repairs to any ship used by him for the purposes of his trade, such an allowance as, notwithstanding the provisions of paragraph (e) of section *twenty-three*, the Commissioner, having regard to the estimated cost of such repairs and the date on which they are likely to be incurred, may make each year: Provided that any such allowance in respect of any year of assessment shall be included in the income of the taxpayer for the following year of assessment, and for that purpose any allowance made in terms of paragraph (n) of sub-section (2) of section *eleven* of the Income Tax Act, 1941, in respect of the year of assessment ended on the thirtieth day of June, 1961, shall be deemed to have been made in terms of this paragraph.

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

Deductions from income derived from mining operations.

- (a) an amount to be ascertained under the provisions of section *thirty-six*, in lieu of the allowances in paragraphs (e), (f) and (o) of section *eleven* and sub-section (1) of section *twelve*, including that sub-section as applied by sub-section (3) of the last-mentioned section;
- (b) any expenditure incurred by the taxpayer during the year of assessment on prospecting operations (including surveys, boreholes, trenches, pits and other exploratory work preliminary to the establishment of a mine) in respect of any area within the Republic in respect of which a mining lease has not been granted by the State, together with any other expenditure which in the opinion of the Commissioner is incidental to such operations: Provided that—
- (i) except in the case of any person who derives income from mining for diamonds in the Republic, the Commissioner may determine that any expenditure referred to in this paragraph shall be deducted in a series of annual instalments, so that only a portion of such expenditure is deducted in the year of assessment in which it is incurred, and the residue in such subsequent years of assessment and in such proportions as the Commissioner may determine, until the expenditure is extinguished;
- (ii) in the case of any company which derives income from different classes of mining operations, the deduction under this paragraph shall be made from the income derived from such class or classes of mining operations and in such proportions as the Commissioner may determine;
- (iii) any expenditure which has been allowed to be deducted from the income of any person in terms of this paragraph shall not be included in such person's capital expenditure as defined in sub-section (11) of section *thirty-six*.

16. Notwithstanding the provisions of paragraphs (a) and (b) of section *twenty-three*, there shall be allowed to be deducted from the income of any dentist or medical practitioner so much as the Commissioner may allow of any expenditure incurred by such dentist or medical practitioner if the Dental Association of South Africa or the Medical Association of South Africa, as the case may be, certifies in such form as the Commissioner may prescribe that he—

Deduction of expenses incurred by dentists and medical practitioners on post-graduate study courses.

- (a) has practised his profession for not less than three years; and
- (b) has incurred such expenditure during the year of assessment in respect of the attendance by him of any post-graduate study course approved by such Association, to improve his qualifications for carrying on his profession in the Republic.

17. There shall be allowed to be deducted from the income of any taxpayer any expenditure actually incurred by him during the year of assessment in connection with the appointment of any agent for the sale outside the Republic of goods manufactured by the taxpayer in the course of any trade (other than mining or farming) carried on by him in the Republic.

Deduction of expenses incurred by manufacturers in appointing agents outside the Republic.

18. Notwithstanding the provisions of paragraphs (a), (b) and (g) of section *twenty-three*, there shall be allowed to be deducted from the income of any taxpayer an allowance not exceeding in the aggregate the sum of two hundred rand in respect of—

Deduction in respect of fees paid to dentists, medical practitioners, nursing homes or hospitals.

- (a) any sum contributed by him during the year of assessment by way of current contributions due by him, as a member, to any fund recognized by the Commissioner as a benefit fund established for the sole purpose of defraying in whole or in part any nursing home, hospital, medical and dental expenditure which may be incurred by its members; and
- (b) any fees which the Commissioner is satisfied were paid by the taxpayer during the year of assessment to any nursing home in connection with any confinement of his wife, or to—
 - (i) any dentist or medical practitioner for dental and medical services rendered to; or
 - (ii) any duly registered nursing home or hospital in respect of the illness of,
 - the taxpayer or his wife or his children or stepchildren referred to in paragraph (c) of sub-section (1) of section *six*.

19. (1) The provisions of paragraphs (a) and (b) of section *eleven* and section *twenty* shall, subject to the provisions of sub-section (2) of this section, *mutatis mutandis* apply in relation to any income derived by any person in the form of dividends.

Deductions and set-off from income derived from dividends.

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

(3) In respect of income in the form of dividends derived by any person other than a company there shall be allowed as a deduction in the determination of the taxable income of such person an amount representing a percentage of such dividends calculated in accordance with the following scale:

<i>Where, but for the provisions of this sub-section and sub-section (2) the taxable income of the taxpayer for the year of assessment in question—</i>	<i>Percentage of dividends to be deducted</i>
would not exceed R2,600	100 per cent.
would exceed R2,600 but not R2,800	94 " "
" " R2,800 " " R3,000	88 " "
" " R3,000 " " R3,200	82 " "
" " R3,200 " " R3,400	76 " "
" " R3,400 " " R3,600	70 " "
" " R3,600 " " R3,800	64 " "
" " R3,800 " " R4,000	58 " "
" " R4,000 " " R4,200	52 " "
" " R4,200 " " R4,400	46 " "
" " R4,400 " " R4,600	40 " "
" " R4,600	33½ " "

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

Set-off of assessed losses.

- (a) any balance of assessed loss incurred by the taxpayer in any previous year which has been carried forward from the preceding year of assessment: Provided that—

- (i) no person whose estate has been voluntarily or compulsorily sequestrated shall, unless the order of sequestration has been set aside, be entitled to carry forward any assessed loss incurred prior to the date of sequestration;
 - (ii) the balance of assessed loss shall be reduced by the amount or value of any benefit received by or accruing to a person resulting from a concession granted by or a compromise made with his creditors whereby his liabilities to them have been reduced or extinguished, provided such liabilities arose in the ordinary course of trade;
- (b) any assessed loss incurred by the taxpayer during the same year of assessment in carrying on in the Republic any other trade either alone or in partnership with others, otherwise than as a member of a company the capital whereof is divided into shares.

(2) For the purposes of this section "assessed loss" means any amount, as established to the satisfaction of the Commissioner, by which the deductions admissible under sections *eleven to nineteen*, inclusive, or the corresponding provisions of any previous Income Tax Act exceeded the income in respect of which they are so admissible, or, if the context so requires, means an assessed loss as determined under the provisions of section *thirty* or the corresponding provisions of any previous Income Tax Act.

21. The taxpayer shall have his taxable income reduced by any amount payable by him under any judicial order or written agreement of separation or under any order of divorce by way of alimony or allowance or maintenance of his spouse or former spouse and any children.

Deduction of amounts payable by way of alimony allowance or maintenance.

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

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

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

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

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

(4) If any trading stock has been acquired by any person for no consideration or for a consideration which is not measurable in terms of money, such person shall for the purposes of sub-section (3) be deemed to have acquired such trading stock at a cost equal to the price which in the opinion of the Com-

missioner was the current market price of such trading stock on the date on which it was acquired by such person: Provided that any bonus shares awarded by any company to shareholders of that company on or after the first day of July, 1957, shall have no value.

(5) For the purpose of determining the cost price of any trading stock, any person may, if and as long as he maintains records in respect of his trading stock which the Commissioner considers to be satisfactory, adopt the basis of trading stock valuation whereunder the last item of any class of trading stock purchased by any person on any date is deemed to be the first item of that class of trading stock sold by such person on or after that date: Provided that any person electing to adopt the aforesaid basis of trading stock valuation shall give the Commissioner written notice thereof when he renders his return of income for the first year of assessment in respect of which the said basis is adopted, and any such election shall be binding upon such person and may not be varied by him in respect of any subsequent year of assessment, save with the consent of the Commissioner and subject to such conditions as the Commissioner may determine.

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

- (i) where the period assessed is less than twelve months, a reference to the beginning or end, as the case may be, of the period assessed; and
- (ii) where a return is accepted under the proviso to subsection (13) of section *sixty-six* to a date other than the thirtieth day of June, a reference to the beginning or end, as the case may be, of the period covered by the return.

(7) In this section any reference to a year of assessment includes a reference to a year of assessment under the Income Tax Act, 1941.

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

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

24. If any taxpayer has entered into any agreement with any other person in respect of any property, the effect of which is that, in the case of movable property, the ownership shall pass or, in the case of immovable property, transfer shall be passed from the taxpayer to that other person, upon or after the receipt by the taxpayer of the whole or a certain portion of the amount payable to the taxpayer under the agreement, the whole of that amount shall for the purposes of this Act be deemed to have accrued to the taxpayer on the day on which the agreement was entered into: Provided that the Commissioner, taking into consideration any allowance he has made under paragraph (j) of section *eleven*, may make such further allowance as under

Deductions not allowed in determination of taxable income.

Hire-purchase or other agreements providing for postponement of passing of property concerned.

the special circumstances of the trade of the taxpayer seems to him reasonable, in respect of all amounts which are deemed to have accrued under such agreements but which have not been received at the close of the taxpayer's accounting period: Provided further that any allowance so made shall be included as income in the taxpayer's returns for the following year of assessment and shall form part of his income and for that purpose any allowance granted in terms of section *twenty-two* of the Income Tax Act, 1941, in respect of the year of assessment ended on the thirtieth day of June, 1961, shall be deemed to be an allowance which was made in terms of this section.

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

Income of beneficiaries and estates of deceased persons.

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

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

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

(4) The decision of the Commissioner in the exercise of his discretion under sub-section (1) or (2) shall be subject to objection and appeal.

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

Determination of taxable income derived from farming.

27. (1) In the determination of the taxable income of any co-operative trading society, as defined in the Co-operative Societies Act, 1939 (Act No. 29 of 1939), derived by that society from its transactions, whether with persons who are members or with persons who are not members of the society, the amount of any bonus distributed in any year of assessment to its members by any such society which is a closed society as defined in section *ninety-seven* of that Act shall be allowed as a deduction from the income of that society in so far as such bonus does not exceed an amount equivalent to one-tenth of the aggregate value of the business of such society with its members during such year of assessment, but no such deduction shall be allowed in the case of any such co-operative trading society which is not such a closed society.

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

(2) The receipts and accruals of any co-operative agricultural society or company or farmers' special co-operative company as defined in the said Act, other than receipts or accruals derived from transactions with persons who are not members of such society or company, shall be exempt from tax.

(3) The provisions of sub-section (5) of section *ninety-seven* of the said Act shall *mutatis mutandis* apply for the purpose of determining the extent to which the receipts and accruals of any such co-operative agricultural society or company or farmers' special co-operative company have been derived from transactions with persons who are not members of such society or company.

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

Determination
of taxable income
derived from
insurance business

- (a) income proved to the satisfaction of the Commissioner to have been derived by the taxpayer from the investment of funds attributable to any long-term insurance business carried on by him in the Republic with any pension fund or retirement annuity fund;
- (b) income proved to the satisfaction of the Commissioner to have been derived by the taxpayer from the investment of funds attributable to individual annuity contracts entered into by him in respect of which annuities are being paid and which are not connected with any business carried on by him in the Republic with any fund referred to in paragraph (a); and
- (c) one-third of any dividends received by or accrued to him and which are not included in his income referred to in paragraphs (a) and (b),

which the Commissioner is satisfied has been derived by such taxpayer from the investment (including the letting of any property) of so much of his funds as are invested within or outside the Republic in respect of any long-term insurance business carried on by him in the Republic and of so much of his funds as are invested within the Republic in respect of any long-term insurance business carried on by him outside the Republic.

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

- (a) the total amount of the liability incurred in respect of premiums on reinsurance;
- (b) the actual amount of the liability incurred in respect of any claims during the year of assessment in respect of that business of insurance, less the value of any claims recovered or recoverable under any contract of insurance, guarantee, security or indemnity;
- (c) the expenditure, not being expenditure falling under paragraph (a) or (b), incurred in respect of that business of insurance;
- (d) such allowance as may be made each year by the Commissioner in respect of unexpired risks: Provided that the allowance granted under this paragraph in respect of any year of assessment shall be included in the income of the taxpayer in the following year of assessment, and for that purpose any allowance granted in terms of paragraph (iv) of sub-section (2) of section *eighteen* of the Income Tax Act, 1941, in respect of the year of assessment ended on the thirtieth day of June, 1961, shall be deemed to be an allowance which was granted under this paragraph; and
- (e) such allowance as may be made each year by the Commissioner in respect of claims which have been intimated but not paid: Provided that the allowance granted under this paragraph in respect of any year of assessment shall be included in the income of the taxpayer in the following year of assessment, and for that purpose any allowance granted in terms of paragraph (v) of sub-section (2) of section *eighteen* of the Income Tax Act, 1941, in respect of the year of assessment ended on the thirtieth day of

June, 1961, shall be deemed to be an allowance which was granted under this paragraph: Provided further that in respect of the years of assessment ending on the thirtieth day of June, 1962, and the thirtieth day of June, 1963, the allowance under this paragraph shall be fifty per cent and seventy-five per cent respectively of the allowance which the Commissioner would but for this proviso have allowed.

(3) Nothing in this section contained shall be construed as relieving any taxpayer from the obligation to render returns of any income (other than income to which the provisions of sub-section (1) or (2) apply) or from any liability for taxation in respect of such income or as depriving any such person of the right to set off against the taxable income derived from the business of insurance any loss incurred in respect of any other business or any balance of loss so incurred which the taxpayer would be entitled to set off under the provisions of sub-section (1) of section *twenty*.

(4) In this section—

- (i) "insurance" includes reinsurance; (iii)
- (ii) "long-term insurance business" means long-term insurance business as defined in the Insurance Act, 1943 (Act No. 27 of 1943), and includes any business which in the opinion of the Commissioner is medical aid insurance business conducted on a non-cancellable basis; (ii)
- (iii) "short-term insurance business" means any insurance business other than long-term insurance business. (i)

29. The taxable income received by or accrued to or in favour of any person from employment in the public service or the railway and harbour service of the Republic in respect of such employment shall include any payment made by way of allowance, except payments made to meet expenditure incurred by such person in connection with his official duties.

Taxable income of public servants.

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

Persons carrying on business which extends beyond the Republic.

31. For the purpose of giving effect to any agreement entered into under section *one hundred and eight* or *one hundred and nine* or the corresponding provisions of any previous Income Tax Act, the Commissioner may—

Determination of taxable income of certain persons buying or selling commodities.

- (a) if any person carrying on business in the Republic has purchased any commodity for importation into the Republic or has sold any commodity for export from the Republic; and
- (b) if such person participates directly or indirectly in the management, control or capital of the business of the buyer or seller of such commodity; or
- (c) if any other person participates directly or indirectly in the management, control or capital of the business both of such first-mentioned person and of such buyer or seller,

determine the taxable income of such first-mentioned person as if such commodity had been purchased or sold, as the case may be, at a price determined in accordance with the provisions of the agreement.

32. (1) Any person who carries on in the Republic the business of transmitting messages to places outside the Republic by submarine cables or by any form of wireless apparatus, shall be deemed to have derived therefrom (apart from any taxable income derived from other sources) a taxable income of

Assessment in the case of submarine cable or wireless business.

ten rand for every two hundred rand payable to such person in respect of messages transmitted from any office of such person in the Republic, whether the amount be payable in or outside the Republic.

(2) For the purposes of this section any message which is delivered at any office in the Republic of the person who carries on the business referred to in sub-section (1) for transmission in any manner whatsoever shall be deemed to be transmitted from that office.

(3) The provisions of this section shall not apply to any person so carrying on business who renders accounts which in the opinion of the Commissioner satisfactorily disclose the taxable income derived by such person from the business carried on by him in the Republic.

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

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

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

- (a) the Commissioner may make the assessment from such information as may be available to him;
- (b) the tax thereon shall be payable to the Commissioner prior to the clearance of the ship or aircraft;
- (c) the principal officer of customs at the port or airport where such ship or aircraft is being cleared shall have power to detain the clearance until such payment is made; and
- (d) upon such payment the master, pilot or agent (as the case may be) shall be entitled to a certificate from such officer of customs that the amount so paid has been paid under the provisions of this Act, and such certificate shall be sufficient warrant to such master, pilot or agent of the amount so paid.

34. (1) Any person referred to in sub-section (2) who derives income under or by virtue of any contract or agreement with any other person in relation to the carrying on in the Republic by such other person of any business of distributing, exhibiting or exploiting motion picture films, or of leasing such films to other persons, or of licensing other persons to exhibit or display such films, or in relation to the acquisition of any advertising matter for use in connection with such films, shall be deemed to have derived under or by virtue of such contract or agreement a taxable income equal to an amount arrived at by deducting from an amount equal to ten per cent of the income derived by him as aforesaid any expenditure and losses (other than expenditure or losses of a capital nature) actually incurred by him in the Republic during the year of assessment under or by virtue of such contract or agreement.

Assessment of persons not ordinarily resident or registered, managed or controlled in the Republic who derive income from film business.

(2) The provisions of this section shall apply to every person (other than a company) who is not ordinarily resident in the Republic and to every company which is not registered, managed or controlled in the Republic.

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

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

- (2) (a) Any person who incurs a liability to pay to any other person (not being a person who is ordinarily resident in the Republic or a company which is registered, managed or controlled in the Republic) any amount referred to in paragraph (b) of section *nine*, or who receives payment of any such amount on behalf of such other person, shall within fourteen days after the end of the month during which the said liability is incurred or the said payment is received, as the case may be, or within such further period as the Commissioner may approve, make a payment (which shall be deemed to be an advance payment made on behalf of such other person) to the Commissioner in respect of such other person's obligation to pay normal tax for the year of assessment during which the said amount accrues to or is received by such other person, calculated on a sum equal to thirty per cent of the said amount at the rate of tax applicable to the taxable income (other than taxable income derived from mining operations in the Republic) of companies, and shall submit to the Commissioner at the time of such tax payment a declaration in such form as the Commissioner may prescribe: Provided that—
- (i) if the Commissioner is satisfied that the tax payment required to be made in terms of this paragraph in respect of the said amount has been or will be made by any person, the Commissioner may direct that any other person who is in terms of this paragraph required to make a tax payment in respect of the said amount, shall be relieved of the duty to make such payment;
 - (ii) for the purposes of this sub-section a person having an address outside the Republic shall until the contrary is proved be deemed to be not ordinarily resident in the Republic or, in the case of a company, to be a company, which is not registered, managed or controlled in the Republic.
- (b) Any person making a payment to the Commissioner in terms of paragraph (a) shall, notwithstanding any agreement to the contrary, be entitled to deduct or withhold the amount of such payment from the amount which he is liable to pay to the aforesaid other person, or to recover the amount so paid from such other person or to retain out of any money that may be in his possession or may come to him as the agent of such other person an amount equal to the amount of such payment.
- (c) The provisions of sub-section (2) of section *five* shall *mutatis mutandis* apply in respect of payments made to the Commissioner in terms of paragraph (a).
- (d) A taxpayer on whose behalf a payment has been made to the Commissioner in terms of paragraph (a) shall not be entitled to recover the amount of such payment from the person who under the provisions of paragraph (b) deducts, withholds or retains the amount of such payment and shall be deemed to have received the amount so deducted or withheld.
- (e) Every person who is required to make a payment to the Commissioner in terms of paragraph (a) shall be personally liable for making such payment, and the amount so payable shall be deemed to be a tax due by such person and shall be recoverable from him in the manner prescribed in section *ninety-one*.
- (f) Nothing in this section contained shall be construed as relieving any person to whom the provisions of sub-section (1) apply from the obligation to render a return of income for any year of assessment or from paying any tax for which he may be liable or as depriving him of the right to prove for the purposes of section *one hundred and two* that payments made on his behalf in terms of paragraph (a) in respect of any year of assessment were in excess of the amount of normal tax properly chargeable under this Act in respect of income received by or accrued to him during such year.

36. (1) Subject to the provisions of sub-sections (2) to (7), inclusive, the amount to be deducted each year under paragraph (a) of section *fifteen* in respect of income from mining operations shall be an amount (hereinafter referred to as the quotient) obtained by—

Calculation of redemption allowance and unredeemed balance of capital expenditure in connection with mining operations.

- (a) adding the balance of capital expenditure unredeemed at the commencement of the year of assessment after subtracting therefrom any recoupments received during the year from capital expenditure (irrespective of the date when such capital expenditure was originally incurred), to the amount of capital expenditure ranking for redemption incurred during that year, excluding so much of such capital expenditure as is deductible under sub-section (6); and
- (b) dividing the aggregate amount so obtained by the estimated number of years (hereinafter referred to as the life of the mine) during which mining operations may be expected to continue.

(2) In the case of incomes derived from the working of any diamond mines, there shall in lieu of the quotient be deducted in respect of the year of assessment during which the production of diamonds commences, the amount of capital expenditure incurred up to the close of that year of assessment, and thereafter in respect of each succeeding year of assessment the actual capital expenditure incurred during such year of assessment.

(3) (a) The amount to be deducted each year under paragraph (a) of section *fifteen* from income derived from the working of a new gold mine shall, in respect of the year of assessment during which such mine commences the production of gold, be the amount of capital expenditure incurred up to the close of that year of assessment, and thereafter in respect of each succeeding year of assessment, the actual capital expenditure incurred during such year of assessment.

(b) For the purpose of paragraph (a), any amount calculated under paragraph (c) of the definition of "capital expenditure" in sub-section (11) in respect of any year of assessment shall be deemed to be capital expenditure incurred on the last day of such year of assessment.

(4) Subject to the provisions of sub-section (5), the amount to be deducted each year in respect of income derived from the working of gold mines other than new gold mines shall be an amount equivalent to twenty-seven and a half per cent of the sum of the unredeemed balance of capital expenditure at the beginning of the year of assessment and the capital expenditure incurred during that year, or the quotient resulting from dividing the said sum by the life of the mine, whichever is the greater.

(5) In the case of any person carrying on gold mining operations other than on new gold mines, who commenced or commences the production of gold after the thirty-first day of December, 1935, the amount to be deducted with reference to each year of assessment, in respect of the capital expenditure ranking for redemption incurred by that person prior to the date of commencement of such production, shall, until the aggregate of the amounts deducted is equal to the amount of such capital expenditure, be such sum as will when multiplied by ten or (where the life of the mine as estimated or revised under the provisions of sub-section (8) or (9) is less than ten years) by the number of years in the life of the mine as so estimated or revised, be equal to the amount of such capital expenditure: Provided that any capital expenditure in respect of which a deduction is made under this sub-section shall not rank for deduction under sub-section (4).

(6) There shall, in addition to the quotient referred to in sub-section (1), be deducted under paragraph (a) of section *fifteen* from income derived from the working of any mine other than a copper mine in the district of Namaqualand in the province of the Cape of Good Hope or the district of Letaba in the province of the Transvaal, or a gold or diamond mine, twenty-five per cent of the capital expenditure incurred in respect of such mine on or after the fifteenth day of March, 1961, or such percentage of the said capital expenditure in excess of twenty-five per cent (but not exceeding one hundred per cent) as may be directed by the Minister of Finance having regard in the circumstances of the case to the degree to which the product

of such mine is processed in the Republic and to the recommendations of the Secretary for Mines and the Secretary for Commerce and Industries.

(7) In the case of income derived from the working of any copper mine in the district of Namaqualand in the province of the Cape of Good Hope or the district of Letaba in the province of the Transvaal, there shall, in lieu of the quotient referred to in sub-section (1), be deducted in respect of the year of assessment during which the production of copper commences, the amount of capital expenditure incurred up to the close of that year of assessment, and thereafter in respect of each succeeding year of assessment the actual capital expenditure incurred during that year of assessment.

(8) The life of a mine shall be determined by the Government Mining Engineer, but such determination shall be subject to objection and appeal to the special court constituted under Chapter III as if it were a decision of the Commissioner, and where the life of a mine, estimated and determined as aforesaid, exceeds thirty years the allowance shall, so long as the estimate exceeds that period, be calculated on a period of thirty years.

(9) (a) The life of a mine shall be subject to revision at the instance of the person liable to the tax or of the Commissioner, whenever any material alteration takes place in any circumstances relating to the mine or its working which affects the life of the mine, and shall otherwise be subject to revision in every third year after the last preceding determination, and in any such revision the same provisions shall apply as in the original determination of the life of the mine.

(b) No such revision shall affect any assessment determined or any allowance made or presumed to have been made under this Act or any previous law for the taxation of the profits of mining.

(10) Where separate and distinct mining operations are carried on in mines that are not contiguous, the allowance for redemption of capital expenditure shall be computed separately according to the estimated life of each such mine.

(11) For the purposes of this section—

“capital expenditure” means—

(a) expenditure on shaft sinking and equipment, including any single renewal or replacement of equipment which together with the accessories thereto exceeds in cost forty thousand rand; and

(b) expenditure on development, general administration and management (including any interest and other charges payable after the thirty-first day of December, 1950, on loans utilized for mining purposes) prior to the commencement of production or during any period of non-production; and

(c) in the case of any new deep level gold mine or any other deep level gold mine, an amount calculated as nearly as may be in the manner prescribed for the calculation of the capital allowance provided for in sub-section (3) of section *nineteen* of the Precious and Base Metals Act, 1908 (Act No. 35 of 1908), of the Transvaal (in this paragraph referred to as the Gold Law), at the rate of five per cent per annum on the amount of the unredeemed balance of the aggregate of—

(i) the expenditure referred to in paragraphs (a) and (b), excluding any interest and other charges on loans referred to in paragraph (b), if the mine is a new deep level gold mine, or the balance of capital expenditure unredeemed in terms of sub-section (1) at the commencement of the year of assessment during which the mine is recognized as any other deep level gold mine, and the expenditure referred to in paragraph (a), if the mine is any other deep level gold mine;

(ii) the amount (if any) allowed to rank as capital expenditure in terms of section *thirty-seven*;

(iii) any expenditure incurred during any period of production on development on any reef on which at the date of such development stopping has not yet commenced; and

- (iv) the amount calculated in terms of this paragraph up to the end of the year of assessment under this Act or the Income Tax Act, 1941, immediately preceding the year of assessment under charge,

if the mine is a new deep level gold mine, for the period from the end of the month in which the expenditure is actually incurred or is in terms of paragraph (b) of sub-section (3) deemed to be incurred, up to the end of the year of assessment immediately preceding the first year of assessment in respect of which the determination of the taxable income derived from the working of such mine does not result in an assessed loss, and, if the mine is any other deep level gold mine, for a period of ten years from the commencement of the year of assessment during which the mine is recognized as any other deep level gold mine: Provided that—

- (aa) the amount under this paragraph shall not be calculated for any period during which mining operations are not carried on in accordance with the terms of the relevant lease;
- (bb) notwithstanding anything to the contrary in any law contained, the amount under this paragraph shall not be taken into account for the purpose of calculating the capital allowance provided for in sub-section (3) of section *nineteen* of the Gold Law or for the purpose of determining the profits of which a share is payable to the State in terms of any mining lease;
- (cc) the provisions of sub-sections (4) and (4)*bis* of section *nineteen* of the Gold Law shall, in so far as they can be applied, apply *mutatis mutandis* for the purpose of determining the unredeemed balance of the aggregate of the amounts referred to in sub-paragraphs (i) to (iv) of this paragraph;

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

“expenditure” means net expenditure after taking into account any rebates, recoupments or returns from expenditure.

(12) The balance of capital expenditure unredeemed at the commencement of the first year of assessment chargeable under this Act shall be the balance shown to be unredeemed at the end of the last year of assessment chargeable under the Income Tax Act, 1941.

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

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

(2) The amount allowed to rank as capital expenditure for redemption by the new owner under the provisions of sub-section (1) shall for the purposes of paragraph (j) of the definition of “gross income” in section *one* or for the purposes of sub-section (1) of section *thirty-six*, as the case may be, be deemed to be a recoupment from capital expenditure by the person from whom ownership was acquired.

(3) If the value of the consideration given or of the property passing where no consideration is given is in dispute, it may with the consent of the new owner be fixed by the Commissioner and shall failing such consent be determined in the same manner as if transfer duty were payable.

(4) The effective value at the time the change of ownership takes place, of the assets passing shall be determined by the Government Mining Engineer who shall notwithstanding the repeal of the Second Schedule to the Transvaal Mining Leases and Mineral Law Amendment Act, 1918 (Act No. 30 of 1918), for the purposes of such determination have all the powers which were conferred upon him by the provisions of that Schedule.

PART II.

Special Provisions Relating to Companies.

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

Classification of companies.

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

- (a) any company all classes of whose equity shares are publicly quoted on the specified date by a stock exchange in the list issued under its authority, provided the Commissioner is satisfied—
 - (i) that the stock exchange is a recognized and *bona fide* stock exchange under adequate control;
 - (ii) that the rules and regulations of the stock exchange for granting and continuing a quotation for the purchase and sale of shares provide for full protection of the interests of the public in regard to dealings in the shares of the company;
 - (iii) that the memorandum and articles of association of the company contain no such restrictions on the right to acquire or transfer any of its shares as are likely to preclude members of the general public from becoming shareholders in any class of the company's shares; and
 - (iv) that the general public was throughout the year of assessment in question interested either directly as shareholders in the company or indirectly as shareholders in any other public company, in more than fifty per cent of every class of equity shares issued by the company;
- (b) any other company, not being a private company as defined in section *one hundred and four* of the Companies Act, 1926 (as in force on the twenty-sixth day of June, 1946), in respect of which the Commissioner is satisfied—
 - (i) that the general public was throughout the year of assessment in question interested either directly as shareholders in the company or indirectly as shareholders in any other public company, in more than fifty per cent of every class of equity shares issued by the company; and
 - (ii) that the business of the company is conducted and its profits are distributed in such a manner that no person enjoys or receives or is entitled to enjoy or receive, by reason of shareholding, participation in the management or otherwise, any advantage which would not be enjoyed or received by him if the company had been under the control of a board of directors acting in the best interests of all its shareholders and had been one which could have been recognized as a public company under paragraph (a);
- (c) any company which the Commissioner is satisfied was incorporated to serve a specified purpose, beneficial to the public or a section of the public, if under the constitution of the company no shareholder is entitled to participate in the profits or income of the company to an extent greater than seven per cent of the nominal value of his shareholding;
- (d) any society or company registered under the Co-operative Societies Act, 1939 (Act No. 29 of 1939);
- (e) any insurance society or company subject to assessment in terms of section *twenty-eight*;
- (f) any public utility company, established by or under a special Act of Parliament;

- (g) any company the sole or principal business of which in the Republic is mining for gold or diamonds; and
- (h) any company to which the provisions of section *thirty-three* apply.
- (3) A company which at the specified date is not recognized as a public company shall be recognized as a private company.

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

Redetermination of company's status.

40. The decision of the Commissioner in the exercise of his discretion under paragraph (a), (b) or (c) of sub-section (2) of section *thirty-eight* shall be subject to objection and appeal.

Objection and appeal.

PART III.

Non-resident Shareholders' Tax.

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

Levy of non-resident shareholders' tax.

42. (1) The non-resident shareholders' tax shall be paid in respect of the amount of—

Income subject to tax.

- (a) any dividend (excluding such portion thereof as consists of an interim dividend) which has been declared by any company after the thirtieth day of June, 1962; and
- (b) any interim dividend the payment of which has been approved after that date by the directors of any company or by some other person under authority conferred by the memorandum and articles of association of that company,

if the shareholder to whom the dividend or interim dividend has been paid or is payable is—

- (i) a person, other than a company, not ordinarily resident nor carrying on business in the Republic; or
- (ii) a deceased estate referred to in sub-paragraph (iii) of paragraph (k) of sub-section (1) of section *ten* and such dividend is in terms of that sub-paragraph exempt from normal tax; or
- (iii) a company not registered nor carrying on business in the Republic; or
- (iv) the holder of bearer scrip, irrespective of whether he is resident within or outside the Republic,

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

(2) The non-resident shareholders' tax shall not be payable in respect of—

- (a) so much of the amount of any dividend declared by a company which was, in respect of the year of assessment ended on the thirtieth day of June, 1960, exempt from undistributed profits tax in terms of paragraph (d), (e) or (i) of section *fifty-one* of the Income Tax Act, 1941, (hereinafter referred to as the distributing company) to a company not registered nor carrying on business in the Republic (hereinafter referred to as the shareholder company), as is proved to the satisfaction of the Commissioner to have been distributed by way of an award of bonus shares out of income which was derived by the distributing company during any year of assessment which ended not later than the thirtieth day of June, 1960;

- (b) so much of the amount of any dividend declared by the distributing company to the shareholder company as remains after the deduction therefrom of a sum equal

to the amount (if any) by which the aggregate of the amounts which were received by or accrued to the distributing company after the year of assessment ended the thirtieth day of June, 1960, and which, in the opinion of the Commissioner, were available for distribution to the shareholder company by way of dividend, exceeds the aggregate of the amounts of dividends (excluding the dividend in question) declared by the distributing company to the shareholder company on or after the sixteenth day of March, 1961, in respect of which non-resident shareholders' tax was payable under this Act or the Income Tax Act, 1941; and

- (c) dividends received from companies referred to in paragraphs (d), (e), (f) and (h) of sub-section (2) of section *thirty-eight*.

(3) Sub-section (2) shall not be construed as exempting from non-resident shareholders' tax any dividend payable by the distributing company to the shareholder company in respect of any share or by virtue of any right to participate in the income or profits of the distributing company which the shareholder company acquired after the specified date in relation to the return of income of the distributing company for the year of assessment ended the thirtieth day of June, 1960.

(4) For the purposes of this section, "dividend" or "interim dividend" includes any dividend or interim dividend distributed by a company out of or by way of the capitalization of the profits of that company which had previously been apportioned among its shareholders in terms of section *thirty-seven* of the Income Tax Act, 1941, as the taxable income or income subject to super tax of that company or in terms of section *thirty-seven bis* of the said Act as the apportionable income of that company.

43. The person liable for the tax shall be the person to whom or in whose favour the amounts described in section *forty-two* accrue. Person liable for tax.

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

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

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

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

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

45. The rate of tax shall be seven and one-half per cent of the amounts specified in section *forty-two*. Rate of tax.

46. If any amount specified in section *forty-two* has been received from a company which derives income from sources within and outside the Republic, the tax payable in respect of that amount shall be calculated upon an amount which bears to that amount the same ratio as the sum of the net profits of the company derived from sources within the Republic bears to the total sum of its net profits derived from all sources as last determined by the Commissioner for the purposes of this Act or the Income Tax Act, 1941, or, in cases in which there has been no previous determination by the Commissioner, as estimated by the Commissioner according to such information as is available to him.

Determination of tax if company operates outside the Republic.

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

Date of payment of tax.

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

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

PART IV.

Undistributed Profits Tax.

48. Subject to the provisions of section *fifty*, there shall be paid for the benefit of the Consolidated Revenue Fund in respect of the year of assessment ending the thirtieth day of June, 1962, and each succeeding year of assessment thereafter, by every private company registered or carrying on business in the Republic, a tax (in this Act referred to as undistributed profits tax) of fifty cents on every two rand of the amount by which the distributable income of such company exceeds the amount of the dividends distributed by it during the specified period.

Levy of undistributed profits tax and rate thereof.

49. In this Part—

- (i) "deficit" for the purposes of the definition of "total net profits" means any amount, as established to the satisfaction of the Commissioner, by which the sum of the deductions admissible in the determination of total net profits under this Act or the Income Tax Act, 1941, exceeds the sum of the amounts from which they are so deductible, and in relation to any year of assessment preceding that which ended on the thirtieth day of June, 1955, or in relation to any year of assessment ending on or after that date in respect of which the company was not subject to undistributed profits tax, means any amount, as established to the satisfaction of the Commissioner, by which the sum of the deductions which would have been admissible in the determination of total net profits exceeds the sum of the amounts from which they would have been so deductible if in respect of the first-mentioned year of assessment the provisions of this Part had been in operation or in respect of the last-mentioned year of assessment the company had been subject to undistributed profits tax; (iv)
- (ii) "distributable income", in relation to any company in respect of any year of assessment, means the amount arrived at by deducting from the sum of—

Definition: for purposes of this Part

- (a) the total net profits of the company for the year of assessment; and
- (b) all amounts deducted in terms of paragraph (iii) of this definition or the corresponding provisions of any previous Income Tax Act in the determination of the company's distributable income, whether in the current or any previous year of assessment, which have been recovered or recouped by it during the current year of assessment,

the sum of—

- (i) any taxes on income (excluding undistributed profits tax) payable by the company in respect of all amounts included in its total net profits;
 - (ii) an allowance equal to forty per cent of so much of the sum of the amounts referred to in paragraphs (a) and (b) of this definition as is not attributable to the inclusion in the profits of such company of any dividends received by or accrued to it; and
 - (iii) in the case of any company which, whether in the current or in any previous year of assessment, has concluded a contract for the acquisition by it of any new or unused machinery or plant and which satisfies the Commissioner that within a period of three years after the end of the current year of assessment such machinery or plant will be brought into use by it for the purposes of its trade and will be used by it directly in a process of manufacture, an allowance in respect of the current year of assessment equal to the portion, if any, of the cost price of such machinery or plant paid by it during that year of assessment: Provided that—
 - (aa) any company may in respect of any such new or unused machinery or plant elect to deduct as an allowance under this paragraph, in respect of the year of assessment during which such machinery or plant is brought into use by it for the purposes of its trade and is used by it directly in a process of manufacture, an amount equal to the cost to it of such machinery or plant, which allowance shall be in lieu of and not in addition to any allowances to which such company would but for such election have been entitled under the preceding provisions of this paragraph in respect of such machinery or plant;
 - (bb) if in the determination of the distributable income of any company for any year of assessment any amount has been allowed to be deducted under this paragraph (other than an amount referred to in paragraph (aa) of this proviso) or the corresponding provisions of any previous Income Tax Act in respect of any machinery or plant, and such machinery or plant is not brought into use and used by such company directly in a process of manufacture within three years after the end of such year of assessment, such amount shall for the purposes of subsection (1) of section *seventy-nine* be deemed to be an amount which the Commissioner is satisfied should have been subject to tax for such year of assessment and which has not been assessed to tax;
 - (iv) an allowance equal to thirty per cent of any amount which has in terms of sub-paragraph (1) of paragraph 18 of the First Schedule been included in the income of the company for the year of assessment; (vi)
- (iii) "fair value", in relation to any asset, means the fair market value of such asset; and in the determination of the fair market value of any asset regard shall be had, *inter alia*—
- (a) to any sworn valuation of the asset which may be furnished by or on behalf of the company concerned;

- (b) to any valuation of the asset made by any competent and disinterested person appointed by the Commissioner; and
 - (c) to any other relevant facts within the knowledge of the Commissioner or the company concerned which either of them considers could reasonably be taken into account; (ii)
- (iv) "paid up capital" (except where that expression is used in paragraph (a) of sub-section (2) of section *fifty-two*), in relation to any company, means the nominal value of the paid up capital of that company reduced as provided in the said paragraph and excluding so much of the nominal value of any bonus shares as did not rank as a dividend in terms of paragraph (g) of the definition of "dividend" in section *one* or the corresponding provisions of any previous Income Tax Act; (iii)
- (v) "specified period", in respect of any year of assessment, means the period of twelve months ending six months after the specified date for that year of assessment as defined in section *one*; (i)
- (vi) "total net profits", in relation to any company in respect of any year of assessment, means the net profits of that company for such year of assessment calculated in the manner prescribed for the determination for normal tax purposes of taxable income in respect of that year of assessment (without applying the provisions of paragraph (a) of sub-section (1) of section *twenty*), but irrespective of whether the profits are derived from a source within or outside the Republic, and subject to the inclusion in the profits of such company of all dividends from whatever source and any amounts referred to in paragraphs (h) and (i) of sub-section (1) of section *ten* received by or accrued to such company during such year of assessment, and all amounts deducted in terms of paragraph (a) of this definition or the corresponding provisions of any previous Income Tax Act in the determination of the company's total net profits, whether in the current or any previous year of assessment, which have been recovered or recouped by it during the current year of assessment, less the following amounts, namely—
- (a) any expenditure (other than expenditure of a capital nature) which is proved to the satisfaction of the Commissioner to have been actually and necessarily incurred by the company during the year of assessment in the course and by reason of its ordinary business operations and which but for this paragraph would not have been allowable as a deduction in the determination of the company's total net profits; and
 - (b) any deficit incurred by the company which has been brought forward from the preceding year of assessment: Provided that the deficit shall be reduced by the amount or value of any benefit received by or accruing to the company resulting from a concession granted by or a compromise made with such company's creditors whereby its liabilities to them have been reduced or extinguished, if such liabilities arose in the ordinary course of trade. (v)

50. There shall be exempt from undistributed profits tax— Exemptions,

- (a) any association referred to in paragraph (d) of the definition of "company" in section *one*;
- (b) companies in respect of which the provisions of sections *thirty-two*, *thirty-four* and *thirty-six* are by virtue of the definition of "total net profits" in section

forty-nine applicable to the determination of that portion of their total net profits which is derived from their principal business;

- (c) any company in which shares representing not less than seventy-five per cent of such company's issued capital are held by one or more companies in respect of which the provisions of section *thirty-six* are by virtue of the definition of "total net profits" in section *forty-nine* applicable to that portion of their total net profits which is derived from their principal business;
- (d) any company which satisfies the Commissioner that shares representing not less than fifty per cent of its equity share capital were throughout the specified period held by one or more persons (other than companies) not ordinarily resident nor carrying on business in the Republic, or by one or more companies registered outside the Republic and deriving the greater portion of their profits for the year of assessment in question from sources not within or deemed to be within the Republic or by one or more such persons (other than companies) and one or more such companies: Provided that for the purpose of determining the portion of its profits which has been derived by any company from sources within or deemed to be within the Republic for any year of assessment there shall be included in the profits derived by such company from sources within or deemed to be within the Republic as well as in the profits derived by it from all sources during such year of assessment the amount, if any, by which the dividends received by or accrued to such company during such year of assessment from any company registered in the Republic are less than the dividends which would have been received by or would have accrued to such firstmentioned company from such company registered in the Republic if the latter had distributed by way of dividends during such year of assessment an amount equal to not less than thirty per cent of its total net profits for the said year of assessment;
- (e) any company registered outside the Republic which carries on business in the Republic and satisfies the Commissioner that not more than fifty per cent of its total net profits for the year of assessment in question was derived from sources within or deemed to be within the Republic;
- (f) any company (other than a company whose total net profits are derived solely or mainly from dividends) which satisfies the Commissioner that the amount arrived at by deducting from the sum of all its reserves (including any share premium account) and balance of profits unappropriated as at the specified date, together with an amount equal to so much of the nominal value of any bonus shares awarded to shareholders on or after the first day of July, 1957, as did not rank as a dividend in terms of paragraph (g) of the definition of "dividend" in section *one* or the corresponding provisions of any previous Income Tax Act, the sum of the dividends distributed by such company during the last six months of the specified period and the taxes on income (excluding undistributed profits tax) payable by such company in respect of all amounts included in its total net profits for the year of assessment in question did not exceed the greater of the following amounts, namely—
 - (i) one hundred thousand rand; or
 - (ii) forty per cent of such company's paid up capital as at the specified date;
- (g) any company whose total net profits for the year of assessment in question did not exceed five per cent of its paid up capital as at the specified date;
- (h) the South African Reserve Bank, the National Finance Corporation of South Africa, any building society

and any company registered as a banking institution under the Banking Act, 1942 (Act No. 38 of 1942);

- (i) any company all of whose equity shares were throughout the specified period held by the Government or by one or more private companies which are themselves exempt from this tax in terms of this section excluding paragraphs (f) and (g), or by one or more public companies and one or more such private companies or partly by one or more public companies or such private companies and partly by persons other than companies if, in the case of any company whose equity shares were partly held by persons other than companies as aforesaid, the Commissioner is satisfied that the company would have been recognized as a public company in terms of paragraph (a) of sub-section (2) of section *thirty-eight* for the year of assessment in question if the shares held by persons other than companies had represented the company's total share capital and the holders of the said shares had been the company's only shareholders.

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

Assessment of undistributed profits tax.

52. (1) The liability for undistributed profits tax for any year of assessment of any company which is registered outside the Republic and carries on business in the Republic shall be determined as if—

Special provisions to apply in certain cases.

- (a) that portion of the total net profits which was derived by the company during such year of assessment from sources within or deemed to be within the Republic represented the company's total net profits for that year of assessment;
- (b) the sum of the company's reserves (including any share premium account) and balance of profits unappropriated (together with an amount equal to so much of the nominal value of any bonus shares awarded to shareholders on or after the first day of July, 1957, as did not rank as a dividend in terms of paragraph (g) of the definition of "dividend" in section *one* or the corresponding provisions of any previous Income Tax Act) which in the opinion of the Commissioner are attributable to its business in the Republic represented the sum of all its reserves (including any share premium account) and balance of profits unappropriated (together with an amount equal to so much of the nominal value of any bonus shares awarded to shareholders on or after the first day of July, 1957, as did not rank as a dividend as aforesaid);
- (c) the paid up capital of the company as at the specified date were equal to an amount which bears to such company's paid up capital the same ratio as its assets in the Republic bear to its total assets;
- (d) the company had distributed by way of dividends during the specified period or any portion thereof an amount which bears to the amount of the dividends, if any, actually distributed by it during such period or such portion thereof, as the case may be, the same ratio as that portion of the total net profits which was derived by the company during such year of assessment from sources within or deemed to be within the Republic bears to the company's total net profits for that year of assessment.

- (2) (a) If any company has received as consideration for the issue by it of any share in such company an asset other than cash and the Commissioner considers

that the fair value of such asset as at the date of the issue of the share was less than the nominal value of such share, the paid up capital of such company shall for the purposes of this Part be reduced by the amount by which in the opinion of the Commissioner the nominal value of such share exceeded the fair value of such asset as at the said date.

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

53. The decision of the Commissioner in the exercise of his discretion under paragraph (a) of the definition of "total net profits" in section *forty-nine*, paragraph (d), (e) or (f) of section *fifty* or paragraph (a) or (b) of sub-section (2) of section *fifty-two* shall be subject to objection and appeal.

PART V.

Donations Tax.

54. Subject to the provisions of section *fifty-six*, there shall be paid for the benefit of the Consolidated Revenue Fund a tax (in this Act referred to as donations tax) on the cumulative taxable value of all property disposed of (whether directly or indirectly and whether in trust or not) under donations which take effect on or after the first day of July, 1962, by any person (in this Part referred to as the donor) who, in the case of a person other than a company, is ordinarily resident in the Republic, or, in the case of a company, is registered, managed or controlled in the Republic.

55. (1) In this Part, unless the context otherwise indicates—
- (i) "cumulative taxable value" means the sum of the values (excluding such values or such portions of such values, as the case may be, as are exempt from donations tax in terms of section *fifty-six*) of all property disposed of by any person under donations which take effect on or after the first day of July, 1962; (iv)
- (ii) "donation" means any gratuitous disposal of property including any gratuitous waiver or renunciation of a right; (v)
- (iii) "donee" means any beneficiary under a donation and includes, where property has been disposed of under a donation to any trustee to be administered by him for the benefit of any beneficiary, such trustee: Provided that any donations tax paid or payable by any trustee in his capacity as such may, notwithstanding anything to the contrary contained in the trust deed concerned, be recovered by him from the assets of the trust; (i)
- (iv) "fair market value" in relation to immovable property on which *bona fide* farming operations are being carried on means, at the option of the donor, either—
- (a) the fair market value thereof; or
- (b) an amount to be determined in accordance with the provisions of sub-section (2) as representing the aggregate of the fair agricultural or pastoral value of the land and the value which any improvements situated thereon may be expected to add to such value of the land (which aggregate is hereinafter referred to as the surface value)

- together with the fair market value of any mineral rights attaching to the land, as at the date upon which the donation takes effect; (ii)
- (v) "property" means any right in or to property movable or immovable, corporeal or incorporeal, wheresoever situated. (iii)
- (2) (a) In the case of any property in respect of which the donor elects the value determined in accordance with paragraph (b) of the definition of "fair market value" in sub-section (1), the donor shall lodge an application in the prescribed form in duplicate for a determination of the surface value of that property with the magistrate of the district in which such property is situate.
- (b) Any magistrate with whom such an application has been lodged shall forward both copies thereof to a land bank valuator selected by him who has been appointed in terms of section *seventy* of the Land Bank Act, 1944 (Act No. 13 of 1944), with instructions to make a valuation of the surface value of the property in question.
- (c) The provisions of the Land Bank Act, 1944, applicable to valuers under the said Act, and any instructions issued from time to time by the Land Bank to such valuers in connection with the exercise of their duties, shall apply to any such valuator instructed to make a valuation of the surface value of any such property, as though he were making a valuation for land bank purposes.
- (d) Fees and travelling expenses shall be paid by the donor to any such valuator in accordance with the tariffs applicable to the valuation of property by sworn appraisers appointed by Masters of the Supreme Court.
- (e) Any land bank valuator to whom any such application in duplicate has been referred, shall cause the particulars of his valuation of the surface value of the property in question to be inserted on both copies of the application and shall within three days from the date on which his valuation was made forward one copy to the donor and the remaining copy to the magistrate for transmission to the Commissioner.
- (f) The Commissioner shall, subject to the provisions of paragraph (h), thereupon determine the surface value of the property in question, or may refer the matter to the Board of the Land Bank as constituted under section *four* of the Land Bank Act, 1944 (in this section referred to as the Board), for its determination of such value.
- (g) The Commissioner shall at the same time determine the fair market value of the mineral rights attaching to the property in question and shall advise the donor of the values determined by him under this paragraph and paragraph (f) and shall indicate in such advice whether the determination of the surface value of the property was made by him or by the Board.
- (h) If the donor considers himself aggrieved by the Commissioner's determination of the surface value of any property in terms of paragraph (f) he shall notify the Commissioner thereof in writing within twenty-one days or such further period as the Commissioner may allow from the date of the advice referred to in paragraph (g) and the Commissioner shall thereupon cause the matter to be referred to the Board for review.
- (i) For the purposes of its determination under paragraph (f) or (h) the Board shall apply the same principles and follow the same practice and procedure as in the case of a determination by it of the value of property for land bank purposes.
- (j) Any person duly authorized thereto by the Board shall at all reasonable times have full access to the property the value of which is being determined by the Board.
- (k) There shall be no appearance by or on behalf of either party before the Board, whose decision shall be final and shall be communicated in duplicate to the Commissioner who shall forward one copy thereof to the donor.
- (3) For the purposes of this Part a donation shall be deemed to take effect upon the date upon which all the legal formalities for a valid donation have been complied with.

56. (1) Donations tax shall not be payable in respect of the value of any property which is disposed of under a donation— Exemptions.

- (a) to the spouse of the donor under a duly registered ante-nuptial contract or post-nuptial contract;
- (b) to the spouse of the donor who is not separated from him under a judicial order or notarial deed of separation;
- (c) as a *donatio mortis causa*;
- (d) in terms of which the donee will not obtain any benefit thereunder until the death of the donor;
- (e) which is cancelled within six months from the date upon which it took effect;
- (f) if such property consists of any right in or to an insurance policy which is disposed of by means of a cession in terms of which such right is to revert to the cedent if the cessionary predeceases the cedent;
- (g) if such property consists of any right in immovable property situate outside the Republic and was acquired by the donor—
 - (i) not less than ten years before the date upon which the donation takes effect; or
 - (ii) before the donor, being a person other than a company, for the first time became ordinarily resident in the Republic or was, in the case of a company, for the first time registered, managed or controlled in the Republic; or
 - (iii) by inheritance;
- (h) by or to any person (including any government), referred to in paragraph (a), (b), (d), (e) or (o) of sub-section (1) of section *ten*;
- (i) by or to any institution for the advancement of science or art or of a charitable, educational or ecclesiastical nature, if the Minister of Finance is satisfied that the operations of such institution are in the interest of the public;
- (j) if such property or the income therefrom is required to be devoted wholly to purposes which the Minister of Finance is satisfied are in the interest of the public and which are of a charitable, educational or ecclesiastical nature;
- (k) as a voluntary award the value of which is required to be included in the gross income of the donee in terms of paragraph (c) or (d) of the definition of "gross income" in section *one*;
- (l) if such property is disposed of under and in pursuance of any trust;
- (m) if such property consists of a right (other than a fiduciary, usufructuary or other like interest) to the use or occupation of property used for farming purposes, for no consideration or for a consideration which is not an adequate consideration, and the donee is a child of the donor.

(2) Donations tax shall not be payable in respect of—

- (a) so much of the sum of the values of all casual gifts made by the donor on or after the first day of July, 1962, and during the period ending on the first specified date following the thirtieth day of June, 1962, and commencing either on the first day of January, 1962, or on the day following the specified date immediately preceding such first specified date, whichever is later, or during any period ending on any specified date subsequent to such first specified date and commencing on the day following the specified date immediately preceding such subsequent specified date, as does not exceed one thousand rand: Provided that—
 - (i) where any such period exceeds or is less than twelve months, the amount in respect of which the tax shall not be payable in terms of this paragraph shall be an amount which bears to one thousand rand the same ratio as that period bears to twelve months;

- (ii) in the case of any such period which commenced before the first day of July, 1962, the aforesaid amount of one thousand rand (where the period is twelve months) or the amount determined in accordance with paragraph (i) of this proviso (where the period exceeds or is less than twelve months) shall be reduced by an amount equal to the sum of the values of all casual gifts made by the donor from the commencement of the period in question to and including the thirtieth day of June, 1962;
 - (iii) for the purposes of this paragraph "specified date" in relation to any donor shall have the meaning assigned thereto in the definition of that expression in section one, the reference in the said definition to a company being construed as including a reference to a person other than a company;
- (b) so much of the value of all property disposed of by the donor under a donation on any date to or for the benefit of his children as, together with so much as was exempt from donations tax in terms of this paragraph or paragraph (b) of sub-section (2) of section fifty-four *quat* of the Income Tax Act, 1941, of the sum of the values of all property disposed of under donations before such date by the donor to or on behalf of his children, does not exceed the sum arrived at by multiplying the amount of ten thousand rand by the number of children of the donor who are alive on the said date, and for the purposes of this paragraph any child of a deceased child of the donor shall be deemed to be a child of the donor, but if more than one child of any one deceased child is alive on the date referred to in this paragraph the children of that deceased child shall be regarded as a single child of the donor as at that date;
- (c) so much of any *bona fide* contribution made by the donor towards the maintenance of any person as the Commissioner considers to be reasonable.

57. (1) If any property is disposed of under a donation by a woman married in or out of community of property and not separated from her husband under a judicial order or notarial deed of separation, that property shall for the purposes of this Part be deemed to be disposed of under a donation by her husband: Provided that—

Donations by a wife or by a body corporate at the instance of any person.

- (a) any tax paid or payable by the husband in respect of any property disposed of under a donation by the wife may be recovered from the assets of the wife;
 - (b) if either the husband or the wife makes written application therefor to the Commissioner or the Commissioner considers it desirable, separate payments may be made by, or separate notices of assessment may be sent to, the respective spouses in respect of the property disposed of under any donation by such husband and wife, respectively, but the total amount of such separate payments or the total tax payable in respect of the separate assessments so issued, as the case may be, shall not be less than the total amount of tax which would have been payable by the husband alone if the value of the property disposed of under a donation by the husband and wife together had been assessed as the value of property disposed of under a donation by the husband alone.
- (2) If any property is disposed of under any donation by any body corporate at the instance of any person, that property shall for the purposes of this Part be deemed to be disposed of under a donation by that person: Provided that any tax paid or payable by any person in respect of any property so disposed of under a donation by any body corporate may be recovered from the assets of that body corporate.

(3) For the purposes of sub-section (2) property shall be deemed to be disposed of under a donation by any body cor-

porate at the instance of any person if, having regard to the circumstances under which that donation was made by such body corporate, the Commissioner is of the opinion—

- (a) that it was not made in the ordinary course of the normal income earning operations of that body corporate; and
- (b) that the selection of the donee who benefited by the donation was made at the instance of that person.

58. Where any property has been disposed of for a consideration which, in the opinion of the Commissioner, is not an adequate consideration that property shall for the purposes of this Part be deemed to have been disposed of under a donation: Provided that in the determination of the value of such property a reduction shall be made of an amount equal to the value of the said consideration.

Property disposed of under certain transactions deemed to have been disposed of under a donation.

59. The person liable for donations tax shall be the donor: Provided that if the donor fails to pay the tax within the period prescribed in sub-section (1) of section *sixty* the donor and the donee shall be jointly and severally liable for the tax.

Persons liable for the tax.

60. (1) Donations tax shall be payable within three months or such longer period as the Commissioner may allow from the date upon which the donation in question takes effect and shall be paid to the receiver of revenue for the district within which the donor (in the case of any person other than a company) is ordinarily resident or (in the case of any company) is registered, managed or controlled.

Payment and assessment of the tax.

(2) Where a donor has disposed of property under more than one donation in respect of which donations tax is payable the tax payable in respect of each such donation shall be calculated according to the order in which such donations took effect.

(3) Where a donor has disposed of property under more than one donation on the same date those donations shall for the purpose of determining the tax payable in respect of each donation be deemed to have taken effect—

- (a) in such order as the donor may elect; or
- (b) if the donor fails to make an election within fourteen days after having been called upon by the Commissioner to do so, in such order as the Commissioner may determine.

(4) The payment of the tax in terms of sub-section (1) shall be accompanied by a return in such form as may be prescribed by the Commissioner.

(5) The Commissioner may at any time assess either the donor or the donee or both the donor and the donee for the amount of donations tax payable or, where the Commissioner is satisfied that the tax payable under this Part has not been paid in full, for the difference between the amount of the tax payable and the amount paid, but the payment by either of the said parties of the amount payable under such assessment shall discharge the joint obligation.

61. For the purposes of the donations tax—

- (a) any reference in sub-section (1) or (2) of section *seventy-four*, paragraph (c) or (d) of sub-section (1) of section *seventy-five* or paragraph (a) or (e) of the definition of "representative taxpayer" in section *one* to the income of any person or to the gross income received by or accrued to or in favour of any person shall be deemed to include a reference to property disposed of by any person under a donation or to the value of such property, as the context may require;
- (b) the reference in sub-section (2) of section *seventy-four* to any person entitled to or in receipt of any income shall be deemed to include a reference to any person who has disposed of property under a donation;
- (c) the reference in section *seventy-eight* to the taxable income in relation to which any return or information is required shall be deemed to include a reference to the value of any property disposed of under a donation in relation to which the return or information is required;

Extension of scope of certain provisions of Act for purposes of donations tax.

- (d) the reference in paragraphs (b) and (c) of the definition of "representative taxpayer" in section *one* to the income under the management, disposition or control of an agent or to income the subject of any trust, as the case may be, shall be deemed to include a reference to any property disposed of under a donation which is under the management, disposition or control of the agent or to property disposed of under a donation which is the subject of the trust, as the case may be.
- (e) the reference in sub-section (1) of section *ninety-five* to the income to which a representative taxpayer is entitled in his representative capacity, or of which in such capacity he has the management, receipt, disposal, remittance, payment or control shall be deemed to include a reference to any property disposed of under a donation of which a representative taxpayer in his representative capacity has the management, receipt, disposal, remittance, payment or control, and the reference in the said sub-section to income received by or accruing to or in favour of such a person beneficially shall be deemed to include a reference to property disposed of by such a person in his own right under a donation.

62. (1) For the purposes of donations tax the value of any property shall be deemed to be—

Value of property disposed of under donations.

- (a) in the case of any fiduciary, usufructuary or other like interest in property, an amount determined by capitalizing at six per cent the annual value of the right of enjoyment of the property over which such interest was or is held, to the extent to which the donee becomes entitled to such right of enjoyment, over the expectation of life of the donor, or if such right of enjoyment is to be held for a lesser period than the life of the donor, over such lesser period;
- (b) in the case of any right to any annuity, an amount equal to the value of the annuity capitalized at six per cent over the expectation of life of the donor, or if such right is to be held by the donee for a lesser period than the life of the donor, over such lesser period;
- (c) in the case of a right of ownership in any movable or immovable property which is subject to a usufructuary or other like interest in favour of any person, the amount by which the fair market value of the full ownership of such property exceeds the value of such interest, determined—
- (i) in the case of a usufructuary interest, by capitalizing at six per cent the annual value of the right of enjoyment of the property subject to such usufructuary interest over the expectation of life of the person entitled to such interest, or, if such right of enjoyment is to be held for a lesser period than the life of such person, over such lesser period;
- (ii) in the case of an annuity charged upon the property, by capitalizing at six per cent the amount of the annuity over the expectation of life of the person entitled to such annuity, or, if it is to be held for a lesser period than the life of such person, over such lesser period; or
- (iii) in the case of any other interest, by capitalizing at six per cent such amount as the Commissioner may consider reasonable as representing the annual yield of such interest, over the expectation of life of the person entitled to such interest, or, if such interest is to be held for a lesser period than the life of such person, over such lesser period;

(d) in the case of any other property, the fair market value of such property as at the date upon which the donation takes effect: Provided that in any case in which, as a result of conditions which in the opinion of the Commissioner were imposed by or at the instance of the donor, the value of any property is reduced in consequence of the donation, the value of such property shall be determined as though the conditions in terms of which the value of the said property is reduced in consequence of the donation, had not been imposed.

(2) For the purposes of paragraphs (a) and (c) of sub-section (1) the annual value of the right of enjoyment of a property means an amount equal to six per cent upon the value of the full ownership of the property which is subject to any fiduciary, usufructuary or other like interest: Provided that—

(a) where it is established to the satisfaction of the Commissioner that the property which is subject to any such interest could not reasonably be expected to produce an annual yield equal to six per cent on such value of the property, the Commissioner may fix such sum as representing the annual yield as may seem to him to be reasonable, and the sum so fixed shall for the purposes of paragraph (a) of sub-section (1) be deemed to be the annual value of the enjoyment of such property;

(b) where the property which is subject to any such interest consists of books, pictures, statuary or other objects of art, the annual value of the right of enjoyment shall for the purposes of paragraph (a) of sub-section (1) be deemed to be the average net receipts (if any) derived by the person entitled to such right of enjoyment of such property during the three years immediately preceding the date on which the donation took effect.

(3) Where for the purposes of sub-section (1) any calculation is required to be made over the expectation of life of any person, such calculation shall, in the case of a person who is not a natural person, be made over a period of fifty years.

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

(5) In fixing the fair market value of any property in terms of sub-section (4), the Commissioner shall have regard *inter alia*—

(a) to the municipal or divisional council valuation (if any) of such property;

(b) to any sworn valuation of such property furnished by or on behalf of the donor or the donee; and

(c) to any valuation of such property made by any competent and disinterested person appointed by the Commissioner.

63. The decision of the Commissioner in the exercise of his discretion under sub-section (3) of section *fifty-seven*, sub-paragraph (iii) of paragraph (c) of sub-section (1) of section *sixty-two* or the proviso to paragraph (d) of the said sub-section (1) or sub-section (4) of section *sixty-two*, and any determination by the Commissioner under paragraph (g) of sub-section (2) of section *fifty-five* of the value of the mineral rights attaching to any property, shall be subject to objection and appeal.

64. (1) The rate of the donations tax shall be as follows: Rate of
donations tax.

<i>Cumulative Taxable value of Property Disposed of under Donations.</i>	<i>Rate of Tax Per Cent.</i>
On so much of the cumulative taxable value of property disposed of by the donor under donations—	
as does not exceed R8,000	3
as exceeds R8,000 but does not exceed R10,000	4
“ “ R10,000 “ “ R12,000	5
“ “ R12,000 “ “ R14,000	6
“ “ R14,000 “ “ R16,000	7
“ “ R16,000 “ “ R18,000	8
“ “ R18,000 “ “ R20,000	9
“ “ R20,000 “ “ R22,000	10
“ “ R22,000 “ “ R24,000	11
“ “ R24,000 “ “ R26,000	12
“ “ R26,000 “ “ R28,000	13
“ “ R28,000 “ “ R32,000	14
“ “ R32,000 “ “ R36,000	15
“ “ R36,000 “ “ R40,000	16
“ “ R40,000 “ “ R44,000	17
“ “ R44,000 “ “ R48,000	18
“ “ R48,000 “ “ R52,000	19
“ “ R52,000 “ “ R56,000	20
“ “ R56,000 “ “ R60,000	21
“ “ R60,000 “ “ R70,000	22
“ “ R70,000 “ “ R80,000	23
“ “ R80,000 “ “ R90,000	24
“ “ R90,000	25

(2) For the purpose only of determining [in accordance with the rates prescribed in sub-section (1)] the rate of tax payable in respect of the value of any property disposed of by any donor under any donation, the cumulative taxable value of all property disposed of by such donor under donations which took effect before the donation in question shall be increased by an amount equal to the cumulative taxable value [as defined in sub-section (1) of section *fifty-four ter* of the Income Tax Act, 1941, before its repeal by this Act] of all property disposed of by the donor under donations which took effect before the first day of July, 1962, and the amount so arrived at shall for the said purpose be deemed to represent the cumulative taxable value of all property disposed of by the donor under donations which took effect before the donation in question.

CHAPTER III.

GENERAL PROVISIONS.

PART I.

Returns.

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

66. (1) (a) The Commissioner shall annually give public notice that all persons liable to taxation under the provisions of this Act, whether personally or in any representative capacity, are required to furnish within thirty days after the date of such notice, or within such further time as the Commissioner may for good cause allow, returns for the assessment of the tax. Notice by Commissioner requiring returns for assessment of taxes under this Act and manner of furnishing returns and interim returns.

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

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

- (ii) any person, other than a company, whose gross income for the year of assessment under charge exceeded the amount to be stated by the Commissioner in the notice referred to in paragraph (a);
 - (iii) any company which derived gross income during the year of assessment under charge.
- (2) Such notice shall state the places at which the prescribed forms may be obtained, and it shall be the duty of all such persons, and of all persons required by this Act to furnish such returns, to apply for the prescribed forms of returns.
- (3) Any such person failing to furnish such returns shall not be relieved from any penalty by reason only of his having received no notice to furnish the same or of the prescribed form not having been delivered to him, but the Commissioner may, if he deems it advisable, cause forms to be delivered or sent by post to any person.
- (4) The Commissioner may, prior to the issue of any such annual notice, require any person by notice in writing to render interim returns for any period he may designate in such notice, and may proceed to make an assessment in respect of that period.
- (5) (a) Every person shall on publication of the annual notice or on receipt of a form delivered or sent by post as provided in sub-section (3) or of a notice issued in terms of sub-section (4), prepare and deliver in the prescribed manner within the time mentioned in any such notice or form to the person appointed to receive the same, a return in the form prescribed, giving the particulars required and all other details in relation thereto which may be prescribed.
- (b) Any such return shall be signed by the taxpayer or by his agent duly authorized in that behalf.
- (6) Any person signing any such return shall be deemed for all purposes in connection with this Act to be cognizant of all statements made in that return.
- (7) Any return made or purporting to be made or signed by or on behalf of any person for the purposes of this Act, shall be deemed to be duly made and signed by the person affected unless such person proves that such return was not made or signed by him or on his behalf.
- (8) If any person fails to make such a return, the Commissioner may appoint a person to make a return on behalf of such person, and the return made by the person so appointed shall for all the purposes of this Act be deemed to be the return of the person liable to make the same.
- (9) The returns furnished by or on behalf of any person required to furnish returns under this Act shall contain such particulars, be in such form, and be furnished to the person appointed to receive the same at such time as may be prescribed by the Commissioner.
- (10) The Commissioner may, when and as often as he thinks necessary, require any person to make further or more detailed returns respecting any matter of which a return is required or prescribed by this Act.
- (11) All returns required to be furnished under this Act shall be delivered at, or sent by post to, the prescribed address.
- (12) Any such return shall, if marked with the words "Income Tax" and "Official" be carried and delivered free of postal or other charges by the postal department.
- (13) The return of income to be made by any person in respect of any year of assessment chargeable under this Act shall be a full and true return for the whole period of twelve months ending upon the last day of the year of assessment under charge: Provided that where it is established to the satisfaction of the Commissioner that the income of a person cannot be conveniently returned for that period, the Commissioner may accept returns made up to a date agreed to by him which returns shall be deemed for all purposes of this Act to be returns for the periods covered by the years of assessment under charge, and the taxpayer shall not without the consent of the Commissioner be entitled to make a return in respect of any subsequent year of assessment to a date other than the date so agreed to.

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

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

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

Half-yearly returns by persons engaged in gold mining.

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

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

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

68. (1) The income received by or accrued to or in favour of a woman married with or without community of property and not separated from her husband under a judicial order or written agreement shall be included by him in returns of income required to be rendered by him under this Act: Provided that if either the husband or the wife makes written application therefor to the Commissioner or the Commissioner considers it desirable, returns of income may be required to be rendered by any such husband or wife separately.

Income of married women and minor children.

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

(3) (a) Every parent shall be required to include in his return any income received by or accrued to or in favour of any of his minor children either directly or indirectly from himself or his wife, together with such particulars as may be required by the Commissioner.

(b) Every parent shall be required to include in his return any income deemed to be his in terms of sub-section (3) or (4) of section seven.

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

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

(a) the names and addresses of all persons or of all persons of any particular class employed by him, and the earnings, salary, wages, allowances or pensions, whether in money or otherwise, received by or accrued to or in favour of each such person in respect of such employment;

(b) all amounts received by or accrued to or in favour of any person in respect of any share or interest in any business carried on by the person furnishing the return;

(c) all moneys received by the person furnishing the return from any person for investment or on loan or on deposit with or without interest;

- (d) all interest or rent received by or accrued to or in favour of any person from the person furnishing the return or from any business carried on by the last-named person in the Republic;
- (e) all interest, rent or dividends collected for or on behalf of any person by the person furnishing the return;
- (f) all such other information in his possession with regard to the income received by or accrued to or in favour of himself or of any other person as may be required by the Commissioner.

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

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

70. (1) Every company which pays interest upon or in respect of debentures or debenture stock or which pays interest on any loans or advances shall, within thirty days after the thirtieth day of June in each year, furnish to the Commissioner a return giving the full name and address of each person receiving such interest and the amount of interest so paid. Duty of companies to furnish returns.

(2) Every company which pays any dividends, awards any bonus shares, debentures or securities or pays any liquidation dividends to shareholders in such company, in respect of the shares held by them, shall within thirty days after the thirtieth day of June in each year furnish to the Commissioner a return giving the full name and address of each shareholder and the amount or value of such payment or award to each such shareholder.

(3) Every private company registered or carrying on business in the Republic shall within thirty days after the thirtieth day of June in each year furnish a return giving the name and address of and the number of shares held by every person who on the specified date was a shareholder of the company.

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

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

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

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

- (a) the number of shares in any company registered in the name of the taxpayer for whom the return is rendered;
- (b) the dividends from any company received by or accrued to the taxpayer for whom the return is rendered;
- (c) the name and address of the person, if the taxpayer for whom the return is rendered is not entitled to retain the dividends received or accrued from any company, or, in the case of a private company, to participate in the profit or income of any such company, who, under any agreement or arrangement, is entitled to receive and retain such dividends or to participate in such profit or income;
- (d) the number of shares in any company which are not registered in the name of the taxpayer for whom the return is rendered but in respect of which such taxpayer under an agreement or arrangement with

the registered owner obtains all dividends payable by such company or in the case of a private company the rights of the registered owner to participate in the profit or income of such company;

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

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

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

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

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

Production of documents and evidence on oath.

(2) (a) The Commissioner may by notice in writing require any person entitled to or in receipt of any income (whether on his own behalf or as the representative of any person) or any person whom the Commissioner may deem able to furnish information, to attend at a time and place to be named by the Commissioner for the purpose of being examined on oath respecting the income of any such person or any transactions or matters affecting the same or any of them or any part thereof.

(b) Any person so attending may be allowed by the Commissioner any reasonable expenses necessarily incurred by him in so attending.

(3) Any officer engaged in carrying out the provisions of this Act who has in relation to the affairs of a particular person been authorized thereto by the Commissioner in writing or by telegram, may, for the purposes of the administration of this Act—

(a) without previous notice, at any time during the day enter any premises whatsoever and on such premises search for any moneys, books, records, accounts or documents;

(b) in carrying out any such search, open or cause to be removed and opened, any article in which he suspects any moneys, books, records, accounts or documents to be contained;

(c) seize any such books, records, accounts or documents as in his opinion may afford evidence which may be material in assessing the liability of any person for any tax;

(d) retain any such books, records, accounts or documents for as long as they may be required for any assessment or for any criminal or other proceedings under this Act.

(4) Any authorized person exercising any power under sub-section (3) shall on demand produce the written authority furnished to him by the Commissioner.

(5) The person to whose affairs any books, records, accounts or documents seized under sub-section (3) relate, shall be

entitled to examine and make extracts from them during office hours under such supervision as the Commissioner may determine.

75. (1) Any person who—

Penalty on default.

- (a) fails or neglects to furnish, file or submit any return or document as and when required by or under this Act; or
- (b) without just cause shown by him, refuses or neglects to furnish any information or reply or to attend and give evidence as and when required by the Commissioner or any officer duly authorized by him or to answer truly and fully any questions put to him or to produce any books or papers required of him by the Commissioner or any such officer; or
- (c) fails to show in any return made by him any portion of the gross income received by or accrued to or in favour of himself or fails to disclose to the Commissioner, when making such return, any material facts which should have been disclosed; or
- (d) fails to show in any return prepared or rendered by him on behalf of any other person any portion of the gross income received by or accrued to or in favour of such other person or fails to disclose to the Commissioner, when preparing or making such return, any facts which, if so disclosed, might result in increased taxation; or
- (e) obstructs or hinders any officer in the discharge of his duties; or
- (f) not being a person whose gross income consists solely of salary, wages or similar compensation for personal service, without just cause shown by him fails to retain for a period of five years from the date of the last entry therein all ledgers, cash books, journals, cheque books, bank statements, deposit slips, paid cheques, invoices, stock lists and all other books of account relating to any trade carried on by him and recording the details from which his returns for the assessment of taxes under this Act or any previous Income Tax Act were prepared; or
- (g) submits or furnishes a false certificate or statement under section *seventy-three*.

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

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

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

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

Additional tax in the event of default or omission.

- (a) if he makes default in rendering a return in respect of any year of assessment, an amount equal to twice the tax chargeable in respect of his taxable income for that year of assessment; or
- (b) if he omits from his return any amount which ought to have been included therein, an amount equal to twice the difference between the tax as calculated in respect of the taxable income returned by him and the tax properly chargeable in respect of his taxable income as determined after including the amount omitted;

- (c) if he makes any incorrect statement in any return rendered by him which results or would if accepted result in the assessment of the normal tax at an amount which is less than the tax properly chargeable, an amount equal to twice the difference between the tax as assessed in accordance with the return made by him and the tax which would have been properly chargeable.
- (2) (a) The Commissioner may remit the additional charge imposed under sub-section (1) or any part thereof as he may think fit: Provided that, unless he is of the opinion that there were extenuating circumstances, he shall not so remit if he is satisfied that any act or omission of the taxpayer referred to in paragraph (a), (b) or (c) of sub-section (1) was done with intent to evade taxation.
- (b) In the event of the Commissioner deciding not to remit the whole of the additional charge imposed under sub-section (1), his decision shall be subject to objection and appeal.
- (c) Notwithstanding the provisions of this sub-section, the Commissioner may either before or after an assessment is issued agree with the taxpayer on the amount of the additional charge to be paid, and the amount so agreed upon shall not be subject to any objection and appeal.
- (3) The additional amounts of tax for which provision is made under this section shall be chargeable in cases where the taxable income or any part thereof is estimated by the Commissioner in terms of section *seventy-eight* or agreed upon with the taxpayer in terms of the proviso to sub-section (2) of the said section as well as in cases where such taxable income or any part thereof is determined from accounts rendered by the taxpayer.
- (4) The powers conferred upon the Commissioner by this section shall be in addition to any right conferred upon him by this Act to take proceedings for the recovery of any penalties for evading or avoiding assessment or the payment of tax or attempting to do so.
- (5) Any taxpayer who in determining his taxable income as disclosed by his return, deducts or sets off any amount the deduction or set-off whereof is not permissible under the provisions of this Act, or shows as an expenditure or loss any amount which he has not in fact expended or lost, shall be deemed for the purposes of this section to have omitted such amount from his return.
- (6) Any taxpayer who wilfully fails to disclose in any return made by him any facts which should be disclosed and the disclosure of which would result in the taxation of the taxpayer's income on an amount which is higher than the amount upon which such income would be taxable on such return, shall for the purposes of this section be deemed to have omitted from his return the amount by which the former amount exceeds the latter.
- (7) If in any year of assessment in which the determination of the taxable income of the taxpayer does not result in an assessed loss, he is entitled to the set-off of a balance of assessed loss from the previous year of assessment and such balance is less than it would have been had it been calculated on the basis of the returns rendered by him, he shall for the purposes of this section be deemed to have omitted from his return for the first-mentioned year of assessment an amount equal to the difference between the amount at which such balance is finally determined and the amount at which it would have been determined on the said basis.

PART II.

Assessments.

77. (1) All assessments required to be made under this Act shall, subject to the provisions of section *three*, be made by the Commissioner or under his direction. Assessments and recording thereof.

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

(3) Upon recording or filing the particulars of any assessment the Commissioner shall give notice of the assessment and of the tax payable thereon to the taxpayer assessed.

(4) Such notice shall be sent to such person by post or delivered to such person in such other manner as the Commissioner may consider necessary or convenient.

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

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

(7) Separate assessments shall, notwithstanding the provisions of sub-section (15) of section *sixty-six*, be made upon partners.

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

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

79. (1) If at any time the Commissioner is satisfied that any amounts which should have been subject to tax have not been assessed to tax either under this Act or any previous Income Tax Act, he shall raise assessments in respect of such amounts, notwithstanding that assessments may have been made upon the person concerned in respect of the year or years of assessment in respect of which the amounts in question are assessable, and notwithstanding the provisions of sub-section (5) of section *eighty-one* and sub-section (18) of section *eighty-three* or the corresponding provisions of such previous Income Tax Act: Provided that the Commissioner shall not raise an assessment under this sub-section— Additional assessments.

- (a) after the expiration of three years from the date of assessment in terms of which any amount which should have been assessed to tax under such assessment was not so assessed, unless the Commissioner is satisfied that the amount was not so assessed because of fraud or misrepresentation or non-disclosure of material facts; or
- (b) if the amount which should have been subject to tax was in accordance with the practice generally prevailing at the time when the assessment was made not assessed to tax; or
- (c) in respect of any amount if any previous assessment made on the person concerned for the year of assessment in question has in respect of that amount been amended or reduced pursuant to any order made by a special court for hearing income tax appeals constituted under the provisions of this Act or any previous Income Tax Act, unless the Commissioner is satisfied that the order in question was obtained by fraud or misrepresentation or non-disclosure of material facts.

(2) For the purposes of this section any amount referred to in sub-section (1) shall include an amount the incorporation of which in an assessment would result in the reduction of any loss ranking for set-off or in only a portion of such amount becoming chargeable with tax.

(3) The provisions of sections *seventy-six* and *seventy-eight* shall apply to any assessments or additional assessments made by the Commissioner under the powers conferred by this section.

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

PART III.

Objections and Appeals.

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

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

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

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

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

82. The burden of proof that any amount is exempt from or not liable to any tax chargeable under this Act or is subject to any deduction, abatement or set-off in terms of this Act, shall be upon the person claiming such exemption, non-liability, deduction, abatement or set-off, and upon the hearing of any appeal from any decision of the Commissioner, the decision shall not be reversed or altered unless it is shown by the appellant that the decision is wrong. Burden of proof as to exemptions, deductions or abatements.

83. (1) Any person entitled to make an objection who is dissatisfied with any decision of the Commissioner as notified to him in terms of sub-section (4) of section *eighty-one* may appeal therefrom to a special court for hearing income tax appeals, constituted in accordance with the provisions of this section. Appeal to specially constituted court against Commissioner's decision.

(2) Every court so constituted shall consist of a judge of the Supreme Court who shall be the President of the court, an accountant of not less than ten years' standing, and a representative of the commercial community: Provided that in all cases relating to the business of mining such third member shall if the appellant so desires be a qualified mining engineer.

(3) The State President may, by proclamation in the *Gazette*, constitute such court or courts for such area or areas as he may think fit, and may from time to time by such proclamation abolish any existing court or courts or constitute such additional courts as circumstances may require.

(4) Any appeal lodged under the provisions of the Income Tax Act, 1941, may be heard and determined by any court constituted or deemed to be constituted under the provisions of this Act.

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

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

(c) The members of any special court for the hearing of income tax appeals constituted under the provisions of the Income Tax Act, 1941, shall be deemed to have

been appointed under the provisions of this sub-section.

(6) The Judge-President of the Provincial Division of the Supreme Court having jurisdiction in the area for which a court has been constituted shall nominate and second a judge or an acting judge of such division to be the President of such court, and such secondment shall be for such period or for the hearing of such cases as the said Judge-President shall determine.

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

(b) At any such appeal the person who made the objection shall be limited to the grounds stated in his notice of objection.

(8) If an assessment has been altered or reduced, the assessment as altered or reduced shall be deemed to be the assessment against which the appeal is made.

(9) At least ten days before the date fixed for the hearing of an appeal the Commissioner shall send to the person who made the objection or to his duly authorized attorney or representative a written notice of the time and place appointed for the hearing of such appeal.

(10) The hearing of an appeal may be adjourned by the court from time to time to any time and place that may seem convenient.

(11) The sittings of the court for the hearing of such appeals shall not be public, and the court shall at any time on the application of the appellant exclude from such sitting or require to withdraw therefrom all or any persons whomsoever whose attendance is not necessary for the hearing of the appeal under consideration.

(12) The Commissioner or any person authorized by him may appear in support of the assessment on the hearing of any appeal, and the appellant and any person who is interested in such appeal may appear in person or by his counsel, attorney or agent.

(13) Subject to the provisions of this Act, the court may—

(a) in the case of any assessment under appeal, order such assessment to be amended, reduced or confirmed, or may if it thinks fit refer the assessment back to the Commissioner for further investigation and assessment;

(b) in the case of any appeal against the amount of the additional charge imposed by the Commissioner under sub-section (1) of section *seventy-six*, reduce, confirm or increase the amount of the additional charge so imposed;

(c) in the case of any other decision of the Commissioner which is subject to appeal, confirm or amend such decision.

(14) Any assessment made by the Commissioner on reference under sub-section (13) shall be subject to objection and appeal as in this Part provided.

(15) Any matter of law arising for decision before the court, and any question as to whether a matter for decision is a matter of fact or a matter of law, shall be decided by the President of the court, and the other members shall have no voice in such decision.

(16) Any decision of the court shall be recorded by the Commissioner.

(17) The court shall not make any order as to costs save when the claim of the Commissioner is held to be unreasonable or the grounds of appeal therefrom to be frivolous.

(18) Any decision of the court under this section shall, subject to the provisions of section *eighty-six*, be final.

84. (1) The Commissioner, the appellant or the President of a special court may procure the attendance of any witness (whether residing or for the time being within the area of jurisdiction of that court or not) in the manner prescribed in the regulations.

Summoning of witnesses and penalty for non-attendance.

(2) If any person who has been duly subpoenaed to give evidence at the hearing of an appeal or to produce any book, record, document or thing in his possession or under his control, fails without reasonable cause to attend or to give evidence or to produce that book, record, document or thing according to the subpoena or, unless excused by the President of the court,

to remain in attendance throughout the proceedings, the President of the court may, upon being satisfied upon oath or by the return of the person by whom the subpoena was served, that such person has been duly subpoenaed and that his reasonable expenses have been paid or offered to him, impose upon the said person a fine not exceeding fifty rand or in default of payment imprisonment for a period not exceeding three months.

(3) If any person so subpoenaed fails to appear or unless duly excused to remain in attendance throughout the proceedings, the President of the court may also, upon being satisfied as aforesaid and in case no lawful excuse for such failure seems to him to exist, issue a warrant for the apprehension of that person in order that he may be brought up to give evidence or to produce any book, record, document or thing according to the subpoena, and on failure so to give evidence or produce that book, record, document or thing, to be dealt with in the manner prescribed in sub-section (2).

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

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

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

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

Contempt of special court.

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

86. (1) There shall be no right of appeal against any decision of the special court on a question of fact, but upon the determination of an appeal by the special court, the appellant or the Commissioner, if dissatisfied with that determination as being erroneous in law, may by notice in writing addressed to the registrar of the court require the special court to state a case setting forth the facts, the contentions of the parties and the determination of the court, for an appeal—

Appeal in questions of law

(a) to the provincial or local division of the Supreme Court of South Africa having jurisdiction in the area in which the sitting of the special court was held; or

(b) if the appellant and the Commissioner lodge their written consent thereto with the registrar of the special court, to the Appellate Division of the Supreme Court of South Africa, without any intermediate appeal to such provincial or local division,

and the provincial or local division or the Appellate Division, as the case may be, may upon the hearing of the appeal decide any question of law which was or could have been properly raised before the special court, and reverse, affirm or amend the determination of the special court or remit the matter to the special court with such instructions as the said division may think fit to give, or make such other order as it may deem fit.

(2) Any such notice shall be lodged with the registrar of the special court within thirty days of the date of the notice issued by him notifying the decision of the special court.

(3) The court by which a case shall be stated for an appeal in terms of sub-section (1) shall consist of the persons who

were the members of the court which made the determination appealed against, notwithstanding that any person who in terms of this sub-section is required to act as the President or a member of such firstmentioned court is no longer a judge or acting judge of the Provincial Division of the Supreme Court concerned or, as the case may be, that his appointment as a member of the special court has since the date of the said determination expired: Provided that if any person who was a member of the court has died or is for any other reason unable so to act—

- (a) his place may be taken, in the case of the President of the court, by any judge or acting judge of the Provincial Division of the Supreme Court concerned who may be nominated and seconded for that purpose in accordance with the provisions of sub-section (6) of section *eighty-three*, and, in the case of any other member of the court, by an accountant, a person representative of the commercial community or a qualified mining engineer, as the case may be, appointed as a member of the special court in terms of paragraph (a) of sub-section (5) of the said section; or
- (b) the said court may, if the appellant and the Commissioner so agree, consist of one or more of the persons who were members of the court which made the determination appealed against and who are able to act as aforesaid.

(4) Where for the purposes of sub-section (3) any judge or acting judge has been nominated to take the place of the President of the court which made the determination appealed against and such judge or acting judge is of the opinion that it is impossible for the court as constituted in terms of paragraph (a) of the proviso to sub-section (3) to state a case for an appeal on the material before it, he may afford the appellant and the Commissioner an opportunity of adducing evidence before that court in regard to such point or points as he deems necessary for the purpose of enabling the court to state a case as required, or he may set aside the determination appealed against and order that the appeal in respect of which the said determination was made, be heard and determined *de novo*.

(5) An appeal shall lie to the Appellate Division of the Supreme Court of South Africa from a decision of a provincial or local division under this section.

87. A member of any special court or a judge of any division of the Supreme Court of South Africa shall not solely on account of his liability to be assessed under this Act be deemed to be interested in any matter upon which he may be called upon to adjudicate thereunder. Members of courts not disqualified from adjudicating.

88. The obligation to pay and the right to receive and recover any tax chargeable under this Act shall not, unless the Commissioner so directs, be suspended by any appeal or pending the decision of a court of law under section *eighty-six*, but if any assessment is altered on appeal or in conformity with any such decision a due adjustment shall be made, amounts paid in excess being refunded with interest from the date of receipt and amounts short-paid being recoverable with interest from the due date. Payment of tax pending appeal.

PART IV.

Payment and Recovery of Tax.

89. (1) Any tax chargeable under this Act shall be paid on such days and at such places as may be notified by the Commissioner or as may be specified in this Act, and may be paid in one sum or in instalments of equal or varying amounts as may be determined by the Commissioner having regard to the circumstances of the case. Appointment of day for payment of tax.

(2) Any taxpayer who fails to pay his tax on or before the day on which it is payable (in this Act called the due date) shall pay, on any amount paid after the due date in respect of such tax, interest at the rate of one and a quarter cents on each completed two rand of such amount for every completed month contained in the period reckoned from the due date to the date on which the said amount is paid: Provided that interest shall not be collected on any amount of tax which is paid within such period as may be notified by the Commissioner

in the notice of assessment or within any extension of such said period which the Commissioner may grant having regard to the circumstances of the case.

90. Subject to the provisions of this Act, normal tax leviable thereunder shall be payable—

Persons by whom normal tax payable.

- (a) by any representative taxpayer, in respect of any income received or controlled by him in such representative capacity;
- (b) by any spouse upon whom any separate assessment notice has been served, where separate assessments have been made upon two spouses under the provisions of sub-section (6) of section *seventy-seven*;
- (c) in respect of any other income and in all other cases, by the person by whom the income is received or to whom or in whose favour it accrues or who is legally entitled to the receipt thereof:

Provided that any person may recover so much of the taxation paid by him under this Act as is due to the inclusion in his income of any income deemed to have been received by him or to be his income, as the case may be, in terms of sub-section (3), (4), (5) or (6) of section *seven*, from the person entitled, whether on his own behalf or in a representative capacity, to the receipt of the income so included.

91. (1) (a) Any tax shall, when it becomes due or is payable, be deemed to be a debt due to the Government and shall be payable to the Commissioner in the manner and at the place prescribed.

Recovery of tax.

- (b) If any person fails to pay any tax when it becomes due or is payable by him, the Commissioner may file with the clerk or registrar of any competent court a statement certified by him as correct and setting forth the amount of the tax so due or payable by that person, and such statement shall thereupon have all the effects of, and any proceedings may be taken thereon as if it were, a civil judgment lawfully given in that court in favour of the Commissioner for a liquid debt of the amount specified in the statement.
- (c) The Commissioner may institute proceedings for the sequestration of the estate of any taxpayer and shall for the purposes of such proceedings be deemed to be the creditor in respect of any tax due by such taxpayer.

(2) Notwithstanding anything contained in the Magistrates' Courts Act, 1944 (Act No. 32 of 1944), a statement for any amount whatsoever may be filed in terms of paragraph (b) of sub-section (1) with the clerk of the court of the magistrate having jurisdiction in respect of the person by whom such amount is payable in accordance with the provisions of this Act.

(3) Any tax due and payable by any person married without community of property and not separated from his wife under a judicial order or written agreement may be recovered from the assets of his wife in so far as the tax is payable in respect of the income of his wife deemed to be his under the provisions of sub-section (2) of section *seven*.

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

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

Correctness of assessment cannot be questioned.

93. (1) If the Commissioner has, in accordance with any arrangements made with the government of any other country or territory by an agreement entered into under section *one hundred and eight* or the corresponding provisions of any previous Income Tax Act with a view to rendering reciprocal assistance in the collection of taxes, received a request for the

Collection of taxes under arrangements made under section 108.

collection from any person in the Republic of an amount alleged to be due by him under the income tax laws of such other country or territory, the Commissioner may, by notice in writing, call upon such person to state, within a period specified in the notice, whether or not he admits liability for the said amount or for any lesser amount.

(2) The Commissioner may—

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

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

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

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

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

Evidence as to assessments.

PART V.

Representative Taxpayers.

95. (1) Every representative taxpayer shall as regards the income to which he is entitled in his representative capacity, or of which in such capacity he has the management, receipt, disposal, remittance, payment or control, be subject in all respects to the same duties, responsibilities and liabilities as if the income were income received by or accruing to or in favour of him beneficially and shall be liable to assessment in his own name in respect of that income, but any such assessment shall be deemed to be made upon him in his representative capacity only.

Liability of representative taxpayer.

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

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

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

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

Right of representative taxpayer to indemnity.

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

Personal liability of representative taxpayer.

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

98. Where a shareholder or a member of a company is absent from the Republic, such company shall for the purposes of this Act be deemed to be the agent for such shareholder or member, and shall as regards such shareholder or member and in respect of any income received by or accruing to him or in his favour as a shareholder or member, have and exercise all the powers, duties and responsibilities of an agent for a taxpayer absent from the Republic.

Company regarded as agent for absent shareholder

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

Power to appoint agent.

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

Remedies of Commissioner against agent or trustee.

101. (1) Every company carrying on business or having an office in the Republic shall at all times be represented by an individual residing therein.

Public officers of companies.

(2) Such individual shall be a person approved by the Commissioner and shall be appointed by the company or by an agent or attorney who has authority to appoint such a representative for the purposes of this Act: Provided that in the event of any company being placed in voluntary or compulsory liquidation the liquidator or liquidators duly appointed shall be required to exercise in respect of that company all the functions and assume all the responsibilities of a public officer under this Act during the continuance of the liquidation.

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

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

(5) Every company shall also within the period prescribed by sub-section (3) appoint a place within the Republic approved by the Commissioner at which any notices or other documents under this Act affecting the company may be served or delivered or to which any such notices or documents may be sent.

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

(7) Every company shall keep the office of public officer constantly filled and shall at all times maintain a place for the service or delivery of notices in accordance with sub-section (5), and every change of public officer or of the place for the service or delivery of notices shall be notified to the Commissioner within fourteen days of such change taking effect.

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

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

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

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

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

(13) Any public officer appointed or deemed to have been appointed under the provisions of the Income Tax Act, 1941, and holding office at the commencement of this Act shall, provided no objection to his continuance in office is raised by the Commissioner, be deemed to be a public officer appointed under this Act.

PART VI.

Miscellaneous.

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

(2) The Commissioner shall not authorize any refund under this section unless the claim therefor is made within three years after the date when the assessment was made.

103. (1) Where any transaction, operation or scheme (whether entered into or carried out before or after the commencement of this Act, and including a transaction, operation or scheme involving the alienation of property) has been entered into or carried out which has the effect of avoiding or postponing liability for any tax, duty or levy on income (including any such tax, duty or levy imposed by a previous Act), or of reducing the amount thereof, and which in the opinion of the Commissioner, having regard to the circumstances under which the transaction, operation or scheme was entered into or carried out— Transactions, operations or schemes for purposes of avoiding or postponing liability for or reducing amounts of taxes on income.

- (i) was entered into or carried out by means or in a manner which would not normally be employed in the entering into or carrying out of a transaction, operation or scheme of the nature of the transaction, operation or scheme in question; or
- (ii) has created rights or obligations which would not normally be created between persons dealing at arm's length under a transaction, operation or scheme of the nature of the transaction, operation or scheme in question,

and the Commissioner is of the opinion that the avoidance or the postponement of such liability, or the reduction of the amount of such liability was the sole or one of the main purposes of the transaction, operation or scheme, the Commissioner shall determine the liability for any tax, duty or levy on income and the amount thereof as if the transaction, operation or scheme had not been entered into or carried out or in such manner as in the circumstances of the case he deems appropriate for the prevention or diminution of such avoidance, postponement or reduction.

(2) Whenever the Commissioner is satisfied that any agreement or any change in the shareholding in any company, as a direct or indirect result of which income has been received by or has accrued to that company during any year of assessment, has at any time before or after the commencement of the Income Tax Act, 1946, been entered into or effected by any person solely or mainly for the purpose of utilizing any assessed loss or any balance of assessed loss incurred by the company, in order to avoid liability on the part of that company or any other person for the payment of any tax, duty or levy on income, or to reduce the amount thereof, the set-off of any such assessed loss or balance of assessed loss against any such income shall be disallowed.

(3) For the purposes of sub-section (1) any transaction, operation or scheme (whether entered into or carried out before or after the commencement of this Act) whereby any person (other than a company) who is ordinarily resident or carrying on business in the Republic, or any company registered or carrying on business in the Republic, has disposed of shares held by such person or such company in any company registered or incorporated in the Republic to any person (other than a company) not ordinarily resident nor carrying on business in the Republic or to any company registered outside the Republic, shall, unless it is proved to the satisfaction of the Commissioner that the parties are independent persons dealing at arm's length with each other, be deemed to be a transaction, operation or scheme entered into or carried out by means or in a manner not normally employed in the entering into or carrying out of such a transaction, operation or scheme of the nature of the transaction, operation or scheme in question.

(4) Any decision of the Commissioner under sub-section (1), (2) or (3) shall be subject to objection and appeal, and whenever in proceedings relating thereto it is proved that the transaction, operation, scheme, agreement or change in shareholding in question would result in the avoidance or the postponement of liability for payment of any tax, duty or levy on income or in the reduction of the amount thereof, it shall be presumed, until the contrary is proved—

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

104. (1) Any person who with intent to evade or to assist Offences and penalties.
any other person to evade assessment or taxation—

- (a) makes or causes or allows to be made any false statement or entry in any return rendered in terms of this

Act, or signs any statement or return so rendered without reasonable grounds for believing the same to be true; or

- (b) gives any false answer, whether verbally or in writing, to any request for information made under this Act by the Commissioner or any person duly authorized by him or any officer referred to in section *three*; or
- (c) prepares or maintains or authorizes the preparation or maintenance of any false books of account or other records or falsifies or authorizes the falsification of any books of account or other records; or
- (d) makes use of any fraud, art or contrivance whatsoever, or authorizes the use of any such fraud, art or contrivance,

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

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

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

106. (1) Any form, notice, demand or other document issued or given by or on behalf of the Commissioner or any other officer under this Act shall be sufficiently authenticated if the name of the Commissioner or officer by whom the same is issued or given is stamped or printed thereon. Authentication and service of documents.

(2) Any notice required or authorized under this Act to be served upon any person shall be effectually served—

- (a) if delivered to him; or
- (b) if left with some adult person apparently residing at or occupying or employed at his last known abode or office or place of business in the Republic; or
- (c) if despatched by registered post in an envelope on which is written his name and his last known address, which may be any such place or office as is referred to in paragraph (b) or his last known post office box number or that of his employer; and
- (d) in the case of a company—
 - (i) if delivered to the public officer of the company; or
 - (ii) if left with some adult person apparently residing at or occupying or employed at the place appointed by the company under sub-section (5) of section *one hundred and one*, or where no such place has been appointed by the company, if left with some adult person apparently residing at or occupying or employed at the last known office or place of business of the company in the Republic; or
 - (iii) if despatched by registered post in an envelope on which is written the name of the company or its public officer and its or his last known address, which may be any such office or place as is referred to in sub-paragraph (ii) or its or his last known post office box number or that of his employer.

107. (1) The State President may make regulations—

Regulations.

- (a) prescribing the duties of all persons engaged or employed in the administration of this Act;
- (b) defining the limits of areas within which such persons are to act;
- (c) prescribing the nature of the accounts to be rendered by any taxpayer in support of any returns rendered under this Act and the manner in which such accounts shall be authenticated;
- (d) prescribing the method of valuation of annuities or of fiduciary, usufructuary or other limited interests in property referred to in section *sixty-two*;
- (e) prescribing the procedure to be observed in the conduct and hearing of objections and appeals before the special courts,

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

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

(3) Any regulation made under the Income Tax Act, 1941, and in force at the date of commencement of this Act, shall be deemed to have been made under this Act.

108. (1) The State President may enter into an agreement with the government of any other country or territory, whereby arrangements are made with such government with a view to the prevention, mitigation or discontinuance of the levying, under the laws of the Republic and of such other country or territory, of income tax in respect of the same income, or to the rendering of reciprocal assistance in the administration of and the collection of taxes under the income tax laws of the Republic and of such other country or territory.

Prevention of, or relief from, double taxation.

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

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

(4) As soon as may be after the publication in the *Gazette* of any proclamation under this section copies thereof shall be laid upon the Table in the Senate and in the House of Assembly.

(5) The duty imposed by any law to preserve secrecy with regard to income tax shall not prevent the disclosure to any authorized officer of the country or territory mentioned in any proclamation issued in terms of sub-section (2), of the facts, knowledge of which is necessary to enable it to be determined whether immunity, exemption or relief ought to be given or which it is necessary to disclose in order to render or receive assistance in accordance with the arrangements notified in such proclamation.

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

Prevention of or relief from double taxation in the Republic and South-West Africa.

(2) The provisions of sub-sections (2) to (7), inclusive, of section *one hundred and eight* shall *mutatis mutandis* apply in respect of an agreement referred to in sub-section (1) of this section: Provided that in the application of the said pro-

visions any reference therein to the State President or to a proclamation by the State President, shall be construed as a reference to the Minister of Finance and to a notice by the said Minister, respectively.

110. (1) For the purposes of any lease of the right to mine for gold in which provision is made for the set-off of the whole or a portion of the amount payable by the lessee by reason of any increase in the scale of taxation leviable upon incomes derived from mining for gold against the annual consideration payable by the lessee in respect of such lease, and which has as the basis for determining whether or not such an increase has been effected the taxation which was leviable at the rates prescribed by either—

Determination of increase in the scale of taxation for purposes of certain leases of the right to mine for gold.

- (a) the Income Tax Act, 1933 (Act No. 31 of 1933), and the Gold Mines Excess Profits Duty Act, 1933 (Act No. 33 of 1933); or
- (b) the Gold Mines Excess Profits Duty Act, 1933 (Act No. 33 of 1933), as amended by the Gold Mines Excess Profits Duty (Amendment) Act, 1934 (Act No. 43 of 1934), and the Income Tax Act, 1934 (Act No. 44 of 1934),

the amount to be so set off in respect of any year shall be the amount by which the amount of normal tax leviable for that year upon the income derived from mining for gold, including excess recoupments of capital expenditure, together with an amount equal to the amount of gold profits surtax which would have been payable for that year by the lessee concerned, if the provisions of section *two* of the Gold Mines Excess Profits Duty Amendment Act, 1935 (Act No. 51 of 1935), had still been in force and had applied in respect of that year, exceeds the amount of normal tax which would have been payable for such year on the same income, if the provisions of section *one* of the Income Tax Act, 1936 (Act No. 34 of 1936), had still been in force and had applied in respect of that year.

111. (1) Subject to the provisions of sub-section (2), the laws specified in the Third Schedule are hereby repealed to the extent set out in the third column of that Schedule: Provided that any tax or other amount which but for such repeal would have been capable of being levied, assessed or recovered and which has not been levied, assessed or recovered at the commencement of this Act, may be levied, assessed or recovered as if such repeal had not been effected.

Repeal of laws.

(2) Any notice or proclamation issued or regulation made or anything done under any provision of a law repealed by sub-section (1) shall be deemed to have been issued, made or done under the corresponding provision of this Act.

112. This Act shall be called the Income Tax Act, 1962, and shall come into operation on the first day of July, 1962.

Short title and commencement.

First Schedule.

COMPUTATION OF TAXABLE INCOME DERIVED FROM PASTORAL, AGRICULTURAL OR OTHER FARMING OPERATIONS.

(Section *twenty-six* of this Act.)

1. In this Schedule a reference to the end of a year of assessment includes, where the period assessed is less than twelve months, a reference to the end of that period.

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

3. (1) Subject to the provisions of sub-paragraphs (2) and (3), the value of livestock (reduced as provided in paragraph 10) or produce held and not disposed of at the end of the year of assessment shall be included in income for such year of assessment, and there shall be allowed as a deduction from such income the value of livestock or produce, as determined in accordance with the provisions of paragraph 4, held and not disposed of at the beginning of the year of assessment.

(2) For the purposes of sub-paragraph (1), the value of livestock (reduced as provided in paragraph 10) or produce held and not disposed of at the end of any year of assessment by any person who discontinued farming operations during such year, shall be included in his income for such year.

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

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

- (a) in the case of a farmer who was carrying on farming operations on the last day of the year immediately preceding the year of assessment, the sum of—
- (i) the values of livestock (reduced as provided in paragraph 10 or the corresponding provisions of any previous Income Tax Act) and produce held and not disposed of by him at the end of the year immediately preceding the year of assessment; and
 - (ii) such value as the Commissioner may allow in respect of livestock or produce acquired by such farmer during the current year of assessment otherwise than by purchase or natural increase or in the ordinary course of farming operations; or
- (b) in the case of any person commencing or recommencing farming operations during the year of assessment, the sum of—
- (i) the value of any livestock or produce held and not disposed of by him at the end of the day immediately preceding the date of such commencement or recommencement; and
 - (ii) such value as the Commissioner may allow in respect of livestock or produce (other than livestock or produce to which sub-item (i) refers) acquired by such person during the year of assessment otherwise than by purchase or natural increase or in the ordinary course of farming operations.

5. The value to be placed upon livestock (other than livestock acquired by purchase for stud purposes) for the purposes of this Schedule shall, subject to the provisions of sub-item (ii) of item (a) and sub-item (ii) of item (b), respectively, of sub-paragraph (1) of paragraph 4, be—

- (a) in the case of a farmer other than a company or the estate of a deceased person, the standard value applicable to the livestock; Provided that the value to be placed on livestock held and not disposed of by any such farmer at the end of the period of assessment terminating at the death or insolvency of the said farmer shall be the price which in the opinion of the Commissioner is the current market price of the livestock;
- (b) in the case of livestock acquired by a company or the estate of a deceased person—
- (i) if acquired by purchase, either the purchase price paid or the price which in the opinion of the Commissioner is the current market price of the livestock; or
 - (ii) if acquired otherwise than by purchase, the price which in the opinion of the Commissioner is the current market price of the livestock.

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

- (a) in the case of any farmer who on or after the first day of July, 1955, and before the first day of July, 1962, rendered returns in respect of farming operations, the standard value which in relation to such farmer applied to that class of livestock in accordance with the provisions of paragraph 13 of the Third Schedule to the Income Tax Act, 1941;
- (b) in the case of any other farmer or any farmer who on or after the first day of July, 1962, includes that class of livestock in his return for the first time, either—
- (i) such standard value as may be fixed by regulation made or deemed to have been made under this Act; or
 - (ii) such other standard value as the farmer may adopt for that class of livestock when rendering his first return of income on or after the said date in respect of farming operations, or when so including in any return such a class of livestock for the first time: Provided that no standard value adopted under this sub-item shall be more than twenty per cent higher or lower than the standard value fixed under sub-item (i) in respect of livestock of the class in question: Provided further that any farmer who classifies any kind of his livestock on a basis other than that applied for the purpose of fixing a standard value under sub-item (i), may adopt in respect of any class into which he so classifies that livestock such a standard value as may be approved by the Commissioner with due regard to the values so fixed.

7. The exercise of an option under sub-item (ii) of item (b) of paragraph 6 shall be binding upon the farmer in respect of all subsequent returns for income tax purposes, and no standard value fixed by any farmer whether under this Act or any previous Income Tax Act may be varied by him in respect of any subsequent year of assessment, save with the consent and approval of the Commissioner and upon such terms as the Commissioner may require.

8. The value to be placed upon livestock acquired by purchase for stud purposes shall be the purchase price paid for that livestock.

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

10. The value of livestock held at the end of the year of assessment by any farmer other than a company shall be reduced by such an amount as in the opinion of the Commissioner is fair and reasonable having

regard to the risk of mortality of such livestock: Provided that no reduction under this paragraph shall be made from the value of livestock held and not disposed of at the end of the period of assessment terminating at the death or insolvency of such farmer.

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

12. (1) Subject to the provisions of sub-paragraphs (2) to (6), inclusive, there shall be allowable as deductions in the determination of the taxable income derived by any farmer the expenditure incurred by him during the year of assessment in respect of—

- (a) the eradication of noxious plants;
- (b) the prevention of soil erosion;
- (c) dipping tanks;
- (d) dams, irrigation schemes, boreholes and pumping plants;
- (e) fences;
- (f) the erection of buildings used in connection with farming operations, other than those used for the domestic purposes of persons who are not employees of such farmer;
- (g) the establishment of orchards and vineyards;
- (h) the building of roads and bridges used in connection with farming operations;
- (i) the carrying of electric power from the main transmission lines to the farm apparatus.

(2) No deduction under paragraph (e) or (o) of section eleven of this Act shall be allowed in respect of any machinery, articles or plant for which a deduction under sub-paragraph (1) of this paragraph or the corresponding provisions of a previous Income Tax Act has been allowed, and no deduction under paragraph (g) of the said section shall be allowed in respect of expenditure of a capital nature for which a deduction under sub-paragraph (1) of this paragraph or such corresponding provisions has been allowed.

(3) The total amount allowable as deductions to any farmer under items (c) to (i), inclusive, of sub-paragraph (1) in any year of assessment shall not exceed the taxable income (as calculated before allowing any deductions under the said items) derived by him from farming operations during that year of assessment: Provided that the amount by which the total expenditure incurred by any farmer during any year of assessment in respect of the matters referred to in the said items exceeds the taxable income (calculated as aforesaid) derived by him from farming operations during that year of assessment shall be carried forward and be deemed for the purposes of sub-paragraph (1) to be expenditure which has been incurred by him during the next succeeding year of assessment and for the purposes of this proviso any amount which has been carried forward from the year of assessment ended the thirtieth day of June, 1961, in terms of the proviso to sub-paragraph (3) of paragraph 17 of the Third Schedule to the Income Tax Act, 1941, shall be deemed to be an amount which has been so carried forward in terms of this proviso.

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

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

(5) The aggregate of all the deductions allowed under item (f) of sub-paragraph (1) or the corresponding provisions of any previous Income Tax Act to any farmer in respect of the erection of any buildings used for the domestic purposes of any one of his employees shall not exceed the sum of four thousand rand.

(6) If in any year of assessment any building in relation to which a deduction has been allowed to any farmer under item (f) of sub-paragraph (1) of this paragraph or item (f) of sub-paragraph (1) of paragraph 17 of the Third Schedule to the Income Tax Act, 1941, whether in the current or in any previous year of assessment, is used for the domestic purposes of any person other than an employee of that farmer, there shall be included in the income of that farmer for the current year of assessment the amount of such deduction less one-tenth of the said amount in respect of each completed period of one year, but not exceeding ten years, during which such building was used by the said farmer in connection with his farming operations other than for the domestic purposes of persons who are not his employees.

13. (1) If it is proved to the satisfaction of the Commissioner—

- (a) that any farmer has in any year of assessment sold livestock on account of drought or stock disease; and
- (b) that such farmer has within four years after the close of the said year of assessment purchased livestock to replace the livestock so sold,

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

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

(3) Every farmer who desires to claim a deduction in terms of sub-paragraph (1), shall with his return of income for the year of assessment in which he sold livestock on account of conditions of drought or stock disease, notify the Commissioner accordingly and furnish full particulars in regard to the livestock so sold.

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

14. (1) Any amount received by or accrued to a farmer in respect of the disposal of any plantation shall, whether such plantation is disposed of separately or with the land on which it is growing, be deemed not to be a receipt or accrual of a capital nature and shall form part of such farmer's gross income.

(2) Where any plantation is disposed of by a farmer with the land on which it is growing the amount to be included in such farmer's gross income in terms of sub-paragraph (1) shall—

- (a) if the amount representing the consideration payable in respect of the disposal of the plantation is agreed to between the parties to the transaction, be the amount so agreed to; or
- (b) failing such agreement, be such portion of the consideration payable in respect of the disposal of the land and the plantation as in the opinion of the Commissioner represents the consideration payable for the plantation.

15. (1) In the determination of the taxable income of any farmer there shall be allowed as a deduction—

- (a) any expenditure incurred by such farmer during the year of assessment in respect of the establishment and maintenance of plantations;
- (b) any expenditure incurred by such farmer prior to the first day of July, 1948, in respect of the establishment and maintenance of any plantation or the cost of acquisition of any plantation purchased by such farmer whether before or after the first day of July, 1948: Provided that—
 - (i) any deductions allowed under this item in respect of any plantation shall not in respect of any year of assessment exceed the gross income derived by such farmer in that year from the said plantation;
 - (ii) the aggregate of the deductions allowed in terms of this item or the corresponding provisions of the Income Tax Act, 1941, or by virtue of any other provision of the last-mentioned Act or the Income Tax Act, 1925 (Act No. 40 of 1925), in respect of plantations shall not exceed the amount of such expenditure or such cost of acquisition.

(2) For the purpose of calculating the cost of acquisition of any plantation the provisions of sub-paragraph (2) of paragraph 14 shall apply *mutatis mutandis* in the case of any plantation acquired by any farmer with the land on which it is growing.

(3) For the purpose only of calculating the rates of normal tax payable in respect of any year of assessment by a farmer whose income for that year includes income derived from the disposal of plantations or forest produce, there shall (if the Commissioner is satisfied that such disposal forms part of the normal farming operations of the farmer concerned) be deducted from the taxable income of such farmer the amount by which the taxable income derived by him in that year from the disposal of plantations and forest produce exceeds the annual average taxable income derived by him from that source over the three years of assessment immediately preceding the said year of assessment: Provided that

- (i) the Commissioner's determination as to what portion of a farmer's taxable income is derived from the disposal of plantations and forest produce shall be final;
- (ii) in no case shall the rate of tax be less than that applicable to the first rand of taxable income, and nothing in this paragraph contained shall be construed as relieving any farmer from liability for taxation under this Act upon any portion of his taxable income.

16. For the purposes of paragraphs 14 and 15—

"plantation" means any artificially established tree as ordinarily understood or any forest of such trees and includes any natural extension of such trees;

"forest produce" means trees and anything derived from trees, including timber, wood, bark, leaves, seeds, gum, resin and sap.

17. For the purpose only of calculating the rates of normal tax payable in respect of any year of assessment by any farmer whose sugar cane fields have been damaged by fire, there shall be deducted from the taxable income of such farmer for such year of assessment so much of that taxable income as is proved to the satisfaction of the Commissioner to have been derived from the disposal of sugar cane as a result of fire in his cane fields and but for such fire would not have been derived by him in that year, but in no case shall the rate of tax be less than that applicable to the first rand of taxable income, and nothing herein contained shall be construed as relieving such farmer from liability for taxation under this Act upon any portion of his taxable income.

18. (1) There shall in respect of each year of assessment be included in the income of any company carrying on farming operations so much of such company's unadjusted balance of livestock values (determined as provided in sub-paragraph (2)) as does not exceed the value, determined in accordance with the provisions of paragraph 5, of livestock disposed of by it during the year of assessment in question, until the amounts so included are in the aggregate equal to such company's said unadjusted balance of livestock values.

(2) For the purposes of sub-paragraph (1), any company's unadjusted balance of livestock values shall be determined—

- (a) in the case of any company the values of whose livestock and produce held and not disposed of by it at the beginning and end of the year of assessment ended the thirtieth day of June, 1954, were not taken into account in the determination of its taxable income for that year, by deducting from the amount (in item (b) referred to as the company's opening value of livestock) which was taken into account in the determination of such company's taxable income for the year of assessment ended the thirtieth day of June, 1955, as being the value of livestock held and not disposed of by it at the beginning of that year of assessment, the sum of—
- (i) any expenditure incurred by the company in the purchase of livestock which was not allowed as a deduction in respect of years of assessment preceding that ended the thirtieth day of June, 1955, under the provisions of paragraph 4 of the Third Schedule to the Income Tax Act, 1941;
 - (ii) the value of livestock held and not disposed of by such company on the thirtieth day of June, 1953, or on the date (not later than the thirtieth day of June, 1954) upon which it commenced or recommenced farming operations, whichever date is the later; and
 - (iii) the aggregate of the amounts included in the income of such company in terms of item (b) of sub-paragraph (1) of paragraph 11 of the Third Schedule to the Income Tax Act, 1941, in respect of the years of assessment commencing with that ended the thirtieth day of June, 1955, and terminating with that ended the thirtieth day of June, 1961; and
- (b) in the case of any other company, by deducting from the company's opening value of livestock the sum of—
- (i) the value (reduced as provided in paragraph 9 of the Third Schedule to the Income Tax Act, 1941, and taken into account in the determination of such company's taxable income for the year of assessment ended the thirtieth day of June, 1954) of livestock held and not disposed of by it at the end of the said year of assessment; and
 - (ii) the aggregate of the amounts included in the income of such company in terms of sub-paragraph (2) of paragraph 11 of the Third Schedule to the Income Tax Act, 1941, in respect of the years of assessment referred to in sub-item (iii) of item (a) of this sub-paragraph.

Second Schedule.

COMPUTATION OF GROSS INCOME DERIVED BY WAY OF LUMP SUM BENEFITS FROM PENSION, PROVIDENT AND RETIREMENT ANNUITY FUNDS.

(Paragraph (e) of the definition of "gross income" in section one of this Act.)

1. For the purposes of this Schedule—

- (i) "formula A", in relation to a pension fund or provident fund, means the formula—

$$Y = \frac{10}{1} \times \frac{N}{50} \times \frac{1}{2} \times \text{Average Salary,}$$

in which formula "Y" represents the amount which has to be determined, "N" represents the number of completed years (not exceeding fifty) in the period of employment of the taxpayer which, in terms of the rules of the fund in question, is taken into account for the purpose of determining the amount of the benefits payable to him under the fund, or, if the period of employment is not taken into account for that purpose, in the period of his membership of the fund during which contributions thereto were made in respect of his membership, and "average salary" means the highest annual average salary (not exceeding ten thousand rand) actually earned by the taxpayer during any five consecutive years in the service of the employer by whom he was employed during his membership of the fund; Provided that—

- (a) the period of employment or membership to be taken into account in applying the formula in relation to any such fund shall be reduced by any period of employment or

membership which is common to such fund and any other such fund, if such common period has been included in the period of employment or membership taken into account in applying the formula in relation to such other fund;

- (b) unless, not later than the date on which he submits his first return of income in which is included or should have been included any lump sum benefit referred to in sub-paragraph (1) of paragraph 5, or within such further period as the Commissioner in the circumstances of the case may allow, any taxpayer who is a member of two or more such funds having a common period of employment or membership informs the Commissioner in writing in relation to which fund such common period shall be applied, the said common period shall be applied to such fund as the Commissioner may, with the object of achieving the best result for the taxpayer, determine; (ii)
- (ii) "formula B", in relation to a pension fund, provident fund or retirement annuity fund means the formula—

$$Z = C - D,$$

in which formula—

- (a) "Z" represents the amount which has to be determined;
- (b) "C" represents an amount not exceeding twenty thousand rupees representing the sum of the amounts calculated in accordance with formula A in relation to the taxpayer in respect of the different pension and provident funds of which he is or was a member and from which any lump sum benefits were or may be derived in consequence of or following upon his retirement or death on or after the fifteenth day of March, 1961, and the aggregate of the lump sum benefits received by or accrued to him from retirement annuity funds in the circumstances described in sub-paragraph (1) of paragraph 5 on or after the fifteenth day of March, 1961, and whether in the current or any previous year of assessment: Provided that the lump sum benefits in respect of any retirement annuity fund taken into account for the purpose of this calculation shall not exceed the amount received or accrued in commutation of not more than one-third of the taxpayer's annuity from such fund, or, in the case of the death of a member before his retirement in relation to such fund, an amount equal to one-third of the member's own contributions to such fund (including so much of any amount paid into such fund for his benefit by another approved retirement annuity fund, or any approved pension or provident fund, as represented his own contributions to the fund by which such amount was so paid) together with reasonable interest on one-third of the said contributions calculated from the dates of payment of the respective contributions to the date of death of such member; and
- (c) "D" represents the sum of the deductions which may have been allowed to the taxpayer in terms of sub-paragraph (1) of paragraph 5 of this Schedule or sub-paragraph (1) of paragraph 5 of the Fourth Schedule to the Income Tax Act, 1941, in respect of previous years of assessment; (iii)
- (iii) "lump sum benefit" includes any amount determined by the commutation of an annuity or portion of an annuity and any fixed or ascertainable amount (other than an annuity) payable by any fund referred to in paragraph (e) of the definition of "gross income" in section one of this Act whether in one amount or in instalments; (i)
- (iv) "pension fund", in relation to any taxpayer, means a fund (other than a superannuation, pension, provident, widows' or orphans' fund established by law) which has in respect of the year of assessment in question or any previous year of assessment been approved by the Commissioner as a pension fund as defined in section one of this Act or the corresponding provisions of any previous Income Tax Act, if during any such year the taxpayer was a member of such fund; (iv)
- (v) "provident fund", in relation to any taxpayer, means a fund which has in respect of the year of assessment in question or any previous year of assessment been approved by the Commissioner as a provident fund as defined in section one of this Act or the corresponding provisions of any previous Income Tax Act, if during any such year the taxpayer was a member of such fund; (vii)
- (vi) "retire" means, in relation to a member of—
- (a) a pension fund, to retire from employment and become entitled to the payment of an annuity from such fund;
- (b) a provident fund, to retire from employment and become entitled to the payment of full benefits in terms of the rules of the fund;
- (c) a retirement annuity fund, to become entitled to the payment of an annuity from such fund.
- and "retirement" in relation to a member of any of the said funds bears a corresponding meaning; (vi)
- (vii) "retirement annuity fund", in relation to any taxpayer, means a fund which has in respect of the year of assessment in question or any previous year of assessment been approved by the Commissioner as a retirement annuity fund as defined in section one of this Act or the corresponding provisions of any previous Income Tax Act, if during any such year the taxpayer was a member of such fund. (v)

2. The amount to be included in the gross income of any person in terms of paragraph (e) of the definition of "gross income" in section one of this Act shall be the aggregate of the amounts received by or accrued to such person by way of lump sum benefits during any year of assessment from any pension funds, provident funds or retirement annuity funds, less the deductions permitted under the provisions of this Schedule.

3. Any lump sum benefit which becomes recoverable in consequence of or following upon the death of a member of a pension fund, provident fund or retirement annuity fund shall be deemed to be a lump sum

benefit which accrued to such member immediately prior to his death: Provided that so much of any tax payable as is due to the inclusion in the income of such member of any amount in accordance with the provisions of this paragraph, may be recovered from the person to whom or in whose favour the lump sum benefit in question accrues.

4. (1) If in terms of the rules of a pension, provident or retirement annuity fund any lump sum benefit arising out of a member's withdrawal or resignation is payable at a fixed or ascertainable future date, such benefit shall be deemed to have accrued to such member on that date or on the date of his death, whichever is earlier, and shall be assessed to tax in respect of the year of assessment during which such benefit is deemed to accrue as though it were a lump sum benefit derived by him upon his withdrawal or resignation from the fund or upon his retirement or immediately prior to his death, as the case may be.

(2) If upon a member's withdrawal or resignation from or the winding up of a pension fund, provident fund or retirement annuity fund, a policy of insurance is ceded or otherwise made over to or in favour of such member, any lump sum due in respect of such policy upon its maturity or earlier surrender shall be deemed to be a lump sum benefit accruing to such member from a pension fund, provident fund or retirement annuity fund, as the case may be, on the date of such maturity or surrender, or, if such member dies before such date, on the date of his death, and shall be assessed to tax in respect of the year of assessment during which such benefit is deemed to accrue as though it were a lump sum benefit derived by him upon his withdrawal or resignation from the fund or upon his retirement or immediately prior to his death, as the case may be: Provided that if after the cession or making over of such policy any premiums are paid thereon by such member, there shall be deducted from such lump sum, in addition to any other deduction to which such member may be entitled in terms of this Schedule, an amount which bears to such lump sum the same ratio as the sum of the premiums paid by him after such cession or making over bears to the sum of all the premiums paid on such policy.

(3) If a member of a provident fund retires from such fund before he reaches the age of fifty-five years in the case of a male or fifty years in the case of a female on grounds other than ill-health, any lump sum benefits received by or accrued to such member in consequence of or following upon such retirement shall, unless the Commissioner having regard to the circumstances of the case otherwise directs, be assessed to tax not in accordance with the provisions of paragraph 5 but in accordance with the provisions of paragraph 6 as though it were a lump sum benefit derived by such member in consequence of or following upon such member's withdrawal or resignation from such fund.

BENEFITS ACCRUING UPON RETIREMENT AND BENEFITS DEEMED TO HAVE ACCRUED IMMEDIATELY PRIOR TO THE TAXPAYER'S DEATH: DEDUCTIONS.

5. (1) The deduction to be allowed in determining the amount required to be included in the taxpayer's gross income for any year of assessment in terms of paragraph 2 shall, if the lump sum benefits in question have been derived in consequence of or following upon the taxpayer's retirement or are deemed to have accrued to him immediately prior to his death, be an amount (not exceeding the aggregate value of such lump sum benefits) equal to the greater of the following amounts, namely—

- (a) an amount determined in accordance with formula B in relation to such taxpayer, but subject to the provisions of sub-paragraph (2); or
- (b) an amount equal to the sum of the amounts which would have been allowed to be deducted in terms of paragraph (b)ter of the definition of "gross income" in section seven of the Income Tax Act, 1941, prior to its amendment by the Income Tax Act, 1961 (Act No. 80 of 1961), if such lump sum benefits had been received by or had accrued to such taxpayer on the fourteenth day of March, 1961, and had been required to be included in his gross income in terms of the said paragraph, less the aggregate of any deductions which may have been allowed to the taxpayer under this sub-paragraph or sub-paragraph (1) of paragraph 5 of the Fourth Schedule to the Income Tax Act, 1941, in respect of any years of assessment preceding the year of assessment in question.

(2) Notwithstanding anything to the contrary contained in the definition of "formula B" in paragraph 1, the amount that shall be taken into account as represented by the symbol C in that formula for the purpose of determining the amount of the deduction to be allowed in terms of item (a) of sub-paragraph (1) in the circumstances described in any of the items of this sub-paragraph shall not be less than the amount stated in the relevant item, namely—

- (a) four thousand rand if the taxpayer is or was a member of a provident fund from which any lump sum benefit was or may be derived in consequence of or following upon his retirement on or after the fifteenth day of March, 1961;
- (b) in respect of lump sum benefits deemed to have accrued immediately prior to the taxpayer's death, ten thousand rand;
- (c) in respect of lump sum benefits deemed to have accrued to the taxpayer immediately prior to his death and consisting of or including benefits derived from provident funds, an amount equal to the sum of the taxpayer's own contributions to such funds including so much of the amounts paid into such funds for his benefit by other provident funds as represented his own contributions to such other funds;
- (d) in respect of lump sum benefits deemed to have accrued to the taxpayer immediately prior to his death and consisting of or including lump sum benefits derived from retirement annuity funds in any case in which the death has occurred before the taxpayer's retirement in relation to such funds, an amount (not exceeding the lesser of twenty thousand rand and the aggregate value of such lump sum benefits) equal to the sum of

the amounts the taxpayer could have derived in respect of the commutation of one-third of all annuities to which he would have become entitled from such funds if the date of his retirement in relation to such funds had fallen on the day preceding his death.

(3) Where in respect of any year of assessment an amount has to be determined in accordance with formula B in relation to any taxpayer in regard to any pension fund or provident fund prior to the date of his retirement in relation to such fund, it shall be assumed for the purposes of such determination that such taxpayer will survive the date of his retirement in relation to the fund in question and that he will continue to be employed until that date on the scale of salary at which he is employed at the date on which the determination is made.

(4) For the purposes of any calculation in accordance with formula B no regard shall be had to any lump sum benefit from any retirement annuity fund which has not yet been received by or accrued to the taxpayer.

(5) For the purposes of calculating any amount which would have been allowed to be deducted in terms of paragraph (b) *ter* of the definition of "gross income" in section seven of the Income Tax Act, 1941, in the circumstances described in item (b) of sub-paragraph (1), regard shall be had to the contributions actually made by the taxpayer to the fund or funds in question and the period or periods of his employment before the fifteenth day of March, 1961, and no cognizance shall be taken of any contributions or of any employment on or after that date.

WITHDRAWAL OR RESIGNATION: WINDING-UP: DEDUCTIONS.

6. The deduction to be allowed in determining the amount required to be included in the taxpayer's gross income for any year of assessment in terms of paragraph 2 shall, if the lump sum benefits in question have been derived in consequence of or following upon his withdrawal or resignation from any pension funds, provident funds or retirement annuity funds, or upon the winding up of any such funds, be the sum of the following amounts, namely—

- (a) so much of the lump sum benefits derived from pension funds as is paid for the benefit of such taxpayer into another approved pension fund or any approved retirement annuity fund;
- (b) so much of the lump sum benefits derived from provident funds as is paid for the benefit of such taxpayer into another approved provident fund, any approved pension fund or any approved retirement annuity fund;
- (c) so much of the lump sum benefits derived from retirement annuity funds as is applied in accordance with the provisions of sub-paragraph (xi) of paragraph (b) of the definition of "retirement annuity fund" in section one of this Act; and
- (d) so much of the excess of the aggregate value of the lump sum benefits in question derived from all the funds over the sum of the amounts allowed to be deducted under the preceding sub-paragraphs as does not exceed six hundred rand;

Provided that in respect of any lump sum benefits so derived by such taxpayer from any provident fund, the sum of the deductions under sub-paragraphs (b) and (d) shall not be less than the lesser of either the aggregate value of such lump sum benefits or the sum of such taxpayer's own contributions to such fund, including so much of the amounts paid into such fund for his benefit by other provident funds as represented his own contributions to such other funds.

7. For the purpose only of calculating the rate of normal tax payable in respect of any year of assessment by any person whose income for that year includes an amount determined in accordance with the provisions of this Schedule, there shall be deducted from the taxable income of such person the amount so included in his income, but in no case shall the rate of tax be less than that applicable to the first rand of taxable income and nothing herein contained shall be construed as relieving any person from liability for taxation under this Act upon any portion of his taxable income.

Third Schedule.
LAWS REPEALED.

Number and year of Law.	Short title.	Extent of repeal.
Act No. 29 of 1939.	Co-operative Societies Act, 1939 ..	Sub-sections (2) and (3) of section <i>ninety-nine</i> .
Act No. 31 of 1941.	Income Tax Act, 1941	The whole.
Act No. 46 of 1941.	Special Taxation Act, 1941	The whole.
Act No. 34 of 1942.	Income Tax Act, 1942	The whole.
Act No. 26 of 1943.	Income Tax Act, 1943	The whole.
Act No. 31 of 1943.	Special Taxation Amendment Act, 1943.	The whole.
Act No. 47 of 1944.	Income Tax Act, 1944	The whole.
Act No. 39 of 1945.	Income Tax Act, 1945	The whole.
Act No. 55 of 1946.	Income Tax Act, 1946	The whole.
Act No. 52 of 1947.	Income Tax Act, 1947	The whole.
Act No. 40 of 1948.	Income Tax Act, 1948	The whole.
Act No. 45 of 1949.	Income Tax Act, 1949	The whole.
Act No. 35 of 1950.	Income Tax Act, 1950	The whole.
Act No. 64 of 1951.	Income Tax Act, 1951	The whole.
Act No. 56 of 1952.	Income Tax Act, 1952	The whole.
Act No. 34 of 1953.	Income Tax Act, 1953	The whole, except section <i>two</i> .
Act No. 55 of 1954.	Income Tax Act, 1954	The whole.
Act No. 43 of 1955.	Income Tax Act, 1955	The whole, except sections <i>fourteen</i> and <i>fifteen</i> .
Act No. 55 of 1956.	Income Tax Act, 1956	The whole.
Act No. 61 of 1957.	Income Tax Act, 1957	The whole, except section <i>three</i> .
Act No. 36 of 1958.	Income Tax Act, 1958	The whole, except sections <i>three</i> and <i>nineteen</i> .
Act No. 78 of 1959.	Income Tax Act, 1959	The whole, except section <i>three</i> .
Act No. 58 of 1960.	Income Tax Act, 1960	The whole.
Act No. 80 of 1961	Income Tax Act, 1961	The whole, except sections <i>thirty-two</i> and <i>thirty-three</i> .