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Income Tax Act

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Chapter II: The Taxes

Part I: Normal Tax

10. Exemptions

1. There shall be exempt from the tax--
 - a. the revenues of the Government, any provincial administration or of any other state;
 - b. the revenues of local authorities;
 - c.
 - i. [Sub-para. (i) deleted by s. 9 (1) (a) of Act No. 21 of 1994]
 - ii. any pension payable to any person or his surviving spouse by reason of such person having occupied the office of State President or Vice State President: Provided that the provisions of this subparagraph shall not apply to any amount payable to any person or his surviving spouse by reason of such person having occupied the office of President as elected in terms of section 77 of the Constitution;
 - iii. the salary and emoluments payable to any person who holds office in the Republic as an official of any government, other than the Government of the Republic, provided such person is stationed in the Republic for that purpose and is not ordinarily resident in the Republic;
 - iv. any salary and emoluments payable to any domestic or private servant of any person referred to in subparagraph (iii) in respect of domestic or private services rendered or to be rendered by such servant to such person if such servant is not a South African citizen and is not ordinarily resident in the Republic;
 - v. any salary and emoluments payable to any subject of a foreign state who is temporarily employed in the Republic, provided the exemption of such salary and emoluments is authorized by an agreement entered into by the governments of such foreign state and the Republic;

(cA) the receipts and accruals of--

- i. any institution, board or body (other than a company registered or deemed to be registered under the Companies Act, 1973 (Act No. 61 of 1973), or under any law repealed by that Act and any co-operative formed and incorporated or deemed to be formed and incorporated under the Cooperatives Act, 1981 (Act No. 91 of 1981), and any close corporation and any trust) established by or under any law and which, in the furtherance of its sole or principal object--
 - (aa) conducts scientific, technical or industrial research;
 - (bb) provides necessary or useful commodities, amenities or services to the State (including any provincial administration) or members of the general public;
 - or
 - (cc) carries on activities (including the rendering of financial assistance by way of

loans or otherwise) designed to promote commerce, industry or agriculture or any branch thereof;

- ii. any South African company all the shares of which are held by any such institution, board or body, if the operations of such company are ancillary or complementary to the object of such institution, board or body:

Provided that such institution, board, body or company--

- a. has been approved by the Commissioner subject to such conditions as he may deem necessary to ensure that the activities of such institution, board, body or company are wholly or mainly directed to the furtherance of its sole or principal object;
- b. is by law or under its constitution--
 - i. not permitted to distribute any of its profits or gains to any person, other than, in the case of such company, to its shareholders;
 - ii. required to utilize its funds solely for investment or the object for which it has been established; and
 - iii. required on dissolution--

(aa) where the institution, board, body or company is established under any law, to transfer its assets to some other institution, board or body which has been granted exemption from tax in terms of this paragraph and which has objects similar to those of such institution, board, body or company; or

(bb) where the institution, board, or body is established by law, to transfer its assets to--

(A) some other institution, board or body which has been granted exemption from tax in terms of this paragraph and which has objects similar to those of such institution, board, body or company; or
(B) to the State:

Provided further that--

- a. where the Commissioner is satisfied that any such institution, board, body or company has during any year of assessment failed to comply with the provisions of this paragraph, he may withdraw his approval of the institution, board, body or company with effect from the commencement of that year of assessment;
- b. where the institution, board, body or company fails to transfer, or take reasonable steps to transfer, its assets as contemplated in paragraph (b)(ii) of the first proviso, the accumulated net revenue which has not been distributed shall be deemed for the purposes of this Act to be an amount of taxable income which accrued to such institution, board, body or company during the year of assessment contemplated in paragraph (a); and
- c. any decision of the Commissioner in the exercise of his discretion under this paragraph shall be subject to objection and appeal;

(cB) the receipts or accruals of any company, society or other association of persons (including a trust), whether or not registered under any law (other than a co-operative formed and incorporated or deemed to be formed and incorporated under the Co-operatives Act, 1981 (Act No. 91 of 1981)), if--

- i. the sole or principal object of such company, society or association is as follows, namely-

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(aa) to conduct or promote scientific, technical or industrial research; or
(bb) to provide medical, dental, blood transfusion, hospital or nursing services; or
(cc) to engage in or promote nature conservation or animal protection activities; or
(dd) to engage in or promote activities which the Commissioner is satisfied are of a cultural nature; or
(ee) to provide social or recreational amenities or facilities for the members of such company, society or association; or
(ff) to promote the common interests of persons being members of such company, society or association carrying on any particular kind of business, profession or occupation by means other than--

(A) the carrying on by such company, society or association of any trading or other profit-making activities, or

(B) the participation by such company, society or association in any business, profession or occupation carried on by any of its members,

(C) or the provision to any of its members of financial assistance or of any premises or continuous services or facilities required by its members for the purpose of carrying on any business, profession or occupation;

- ii. the activities of such company, society or association are wholly or mainly directed to the furtherance of its sole or principal object;
- iii. such company, society or association is under its constitution not permitted to distribute any of its profits or gains to any person and is required to utilize its funds solely for investment or the objects for which it has been established; and
- iv. under the constitution of such company, society or association it will upon its winding-up or liquidation be obliged to give or transfer its assets remaining after the satisfaction of its liabilities to some other company, society or association with objects similar to those of the aforesaid company, society or association;

(cC) the receipts and accruals of any association formed and incorporated under section 21 of the Companies Act, 1973, or deemed by that section to be so formed and incorporated, if--

- i. the sole or principal object of the association is to build dwelling houses or other residential accommodation or to purchase newly built dwelling houses or other newly built residential accommodation for occupation by persons who are--

(aa) employees of any employer who is a member of the association or of an employer who is associated with the aforesaid employer; or

(bb) members of the general public,

or to assist such persons to build dwelling houses for occupation by the persons building such houses or to purchase newly built dwelling houses or other newly built residential accommodation for occupation by the persons purchasing such houses or accommodation;

- ii. such sole or principal object is actively pursued;
- iii. the profits of the association derived from transactions with the said persons are, having regard to the future needs of the association, kept to a minimum;
- iv. the association does not carry on any business other than business which is directly connected with the said sole or principal object; and
- v. in the case of an association to which the provisions of item (bb) of subparagraph (i) apply, the directors of the association are independent persons who do not derive any remuneration for their services to the association (or, if such remuneration is in fact derived by any such director, it does not in any one year exceed an amount which is

reasonable in the circumstances) and at least one of those directors is a person nominated by a Minister or the member of an Executive Council of a province responsible for housing matters;

(cD) the receipts and accruals of any amateur sporting association;

(cE) the receipts and accruals of any political party registered under the provisions of section 36 of the Electoral Act, 1979 (Act No. 45 of 1979);

(cF) the receipts and accruals of any company, society or other association of persons (including a trust), whether or not registered under any law (other than a co-operative formed and incorporated or deemed to be formed and incorporated under the Co-operatives Act, 1981 (Act No. 91 of 1981)), if--

- i. the sole or principal object of such company, society or association is the provision of residential accommodation under a sale or a lease or otherwise to aged or retired persons (being persons who have attained the age of at least 60 years or have retired by reason of ill-health or infirmity) in a building, housing complex or village the residential units in which, apart from residential accommodation occupied by essential staff, are or are to be occupied exclusively by such aged or retired persons or their spouses or minor children or dependants;
- ii. at least one meal per day and nursing services are provided in addition to the accommodation;
- iii. the activities of such company, society or association are wholly or mainly directed to the furtherance of its sole or principal object;
- iv. the profits of the company, society or association derived from transactions with the said persons are, having regard to the future needs of the company, society or association, kept to a minimum;
- v. the company, society or association does not carry on any business other than business which is directly connected with the said sole or principal object;
- vi. the company, society or association is under its memorandum, articles of association or constitution not permitted to distribute any of its profits or gains to any person and is required to utilize its funds solely for investment or the objects for which it has been established;
- vii. the remuneration of employees of the company, society or association is not excessive having regard to services performed by such employees and their working conditions; and
- viii. under the memorandum, articles of association or constitution of the company, society or association it will upon its winding-up or liquidation be obliged to give or transfer its assets remaining after the satisfaction of its liabilities to some other company, society or association with objects similar to those of the aforesaid company, society or association and which is also exempt from tax,

(cG) the receipts and accruals of any persons (other than a company) who is ordinarily resident in any country other than the Republic or of an external company which is managed and controlled in any such country, which are derived by such person or company from carrying on business as the owner or charterer of any ship or aircraft, if a similar exemption or equivalent relief is granted by the said country to any person (other than a company) ordinarily resident in the Republic or to any domestic company in respect of any tax imposed in that country on income which may be derived by such person or company from carrying on in such country any business as owner or charterer of any ship or aircraft;

(cH) the receipts and accruals of any company, society or other association of persons or any trust, whether or not registered under any law (other than a co-operative formed and incorporated

or deemed to be formed and incorporated under the Co-operatives Act, 1981 (Act No. 91 of 1981)), if--

- i. the sole object of such company, society, association or trust is to receive, hold and apply moneys contributed to such company, society, association or trust in accordance with section 11(hA) in order to discharge any of the following or like obligations imposed upon any person in terms of any law which regulates mining operations, namely--

(aa) the rehabilitation of disturbances of the surface of land and the prevention and combating of pollution of the air, land, sea or other water where such disturbances and pollution are due to mining, prospecting, quarrying or similar operations;

(bb) the protection of the surface of land and water sources and the making safe of undermined ground and of dangerous excavations, tailings, waste dumps and structures, of whatsoever nature, made in the course of mining, prospecting, quarrying or similar operations; and

(cc) the demolition or removal of any building, structure or other thing erected or constructed in connection with mining, prospecting, quarrying or similar operations, the removal of any debris or other objects and the restoration, as far as is practicable, of the surface to its natural state;

- ii. such company, society or association is under its constitution, or such trust is under the instrument establishing such trust, not permitted to distribute any of its profits or gains to any person and is required to utilize its funds solely for the object for which it has been established: Provided that such company, society, association or trust shall be permitted to invest its funds in institutions approved by the Commissioner, until such time as such funds are required;
- iii. in terms of the constitution of such company, society or association or the instrument establishing such trust it will upon its winding-up or liquidation be obliged to give or transfer its assets remaining after the satisfaction of its liabilities to some other company, society, association or trust with a similar object to that of the said company, society, association or trust; and
- iv. the Commissioner has approved such company, society, association or trust on such conditions as he may deem necessary to ensure that the activities of such company, society, association or trust are wholly directed to the furtherance of its sole object;

(cl) the receipts and accruals of any company formed and incorporated under section 21 of the Companies Act, 1973 (Act No. 61 of 1973), or deemed by the said section to be so formed and incorporated, or other association of persons or any trust. which has been approved by the Commissioner, if--

- i. the sole object of the company, association or trust is--

(aa) to acquire, hold, develop or improve land or any right to land in the Republic with a view to enabling any community, in the Republic, of which at least 75 per cent of the adult members are persons who earn less than R1 800 per month, to acquire such land, or right thereto, so as to occupy that land wholly or mainly for residential purposes;

(bb) in the furtherance of the achievement of the object referred to in item (aa), to assist members of communities referred to in the said item by means of the making of grants or furnishing of material, labour or advice;

(cc) in the furtherance of, or after the achievement of, the object referred to in item (aa), to carry on such other activities as are directly connected with the activities contemplated in items (aa) and (bb), including the provision of community facilities and the establishment and carrying on of community programmes aimed at the furtherance of community life, job creation and the health and welfare of members of the community; or

(dd) in the case of a company which is for the purposes of the Companies Act, 1973 (Act

No. 61 of 1973), the holding company or a subsidiary company or a fellow subsidiary company of any other company having an object referred to in item (aa), to render financial, administrative, managerial, landholding or other assistance or services to such other company;

- ii. such sole object is actively pursued;
- iii. the company, association or trust is or was not knowingly a party to, or does not knowingly permit, or has not knowingly permitted, itself to be used as part of any transaction, operation or scheme of which the sole or main purpose is or was the reduction, postponement or avoidance of liability for any tax, duty or levy which, but for such transaction, operation or scheme, would have been or would have become payable by any person under this Act or any other Act administered by the Commissioner;
- iv. the company, association or trust does not carry on any business other than business which is directly connected with the said sole object;
- v. at least--

(aa) 25 per cent of the directors of the company, members of the governing body of the association or the trustees of the trust, as the case may be, are persons who do not directly or indirectly derive any benefit, other than reasonable remuneration for services rendered, from the company, association or trust, whether by virtue of their being members of a community contemplated in subparagraph (i) (aa) or otherwise; and
(bb) one of those directors, members or trust is a person nominated by a Minister or the member of an Executive Council of a province responsible for housing matters, or, in any case where a former Administrator of a province was, to the exclusion of such a Minister, charged with the administration of any applicable law relating to housing, by such Administrator;

- vi. in terms of the memorandum, articles of association, constitution or deed of trust of the company, association or trust it is upon its deregistration, winding-up or liquidation obliged to give or transfer its assets remaining after the satisfaction of its liabilities to some other company, association or trust which is exempt from tax under this paragraph; and
- vii. such company, association or trust is under its memorandum, articles of association, constitution or deed of trust not permitted to distribute any of its profits or gains to any person and is in terms of such memorandum, articles of association, constitution or deed of trust required to utilize its fund solely for the object for which it has been formed or to invest such profits or gains--

(aa) with a financial institution as defined in section 1 of the Financial Institutions (Investment of Funds) Act, 1984(Act No. 39 of 1984);

(bb) in securities listed on a stock exchange as defined in section 1 of the Stock Exchanges Control Act, 1985 (Act No. 1 of 1985);

(cc) in financial instruments as defined in section 1 of the Financial Markets Control Act, 1989 (Act No. 55 of 1989);

(dd) in other commercial paper, issued or secured by issuers classified from time to time by the Treasury as defined in the Exchequer Act, 1975 (Act No. 66 of 1975), where the Commissioner has approved of the category in which the issuer falls pursuant to such classification and such category is stated in such memorandum, articles of association, constitution or deed of trust;

(cJ) the receipts and accruals of any company, other association of persons or trust, whether or not registered in terms of any law, which has been approved by the Commissioner, if--

- i. the sole or principal object of such company, association or trust is--

(aa) to raise or receive money for any of the purposes contemplated in item (bb), (cc), (dd), or (ee) by means of--

(A) donations;

(B) any loan entered into with any person who is exempt from tax, any government, any external company or any public company;

(C) commercial paper or debentures issued to a financial institution as defined in section 1 of the Financial Institutions (Investment of Funds) Act, 1984 (Act No. 39 of 1984); or

(D) a deposit made by any person contemplated in item (cc) as a pre-condition for, or for the purposes of, securing or enabling the grant of any loan to such person;

(bb) to lend or donate money to any company, association or trust contemplated in paragraph (cC), (cl), or this paragraph;

(cc) to lend money or to provide other financial assistance to persons who are members of any community referred to in paragraph (cl) (i) (aa) in the furtherance of the object mentioned in paragraph (cl) (i); or

(dd) to provide funds or guarantees to a bank registered in terms of the Banks Act, 1990 (Act No. 94 of 1990), a mutual building society registered under the Mutual Building Societies Act, 1965 (Act No. 24 of 1965), an insurer registered in terms of the Insurance Act, 1943 (Act No. 27 of 1943), a pension fund organization registered in terms of the Pension Funds Act, 1956 (Act No. 24 of 1956), or the Development Bank of Southern Africa, if such funds or guarantees are provided on condition that such bank, mutual building society, insurer or pension fund organization or the said Development Bank of Southern Africa shall utilize the funds or guarantees solely to lend money or provide other financial assistance to persons, and for the achievement of the object, referred to in item (cc);

(ee) to provide funds or guarantees to an insurer registered or approved in terms of the Insurance Act, 1943 (Act No. 27 of 1943), carrying on a short-term insurance business, including an underwriter at Lloyds authorized in terms of the said Act to carry on insurance business in the Republic, if such funds or guarantees are provided on condition that--

(A) such insurer shall utilize the funds or guarantees to provide a loan guarantee policy, as defined in paragraph 1 of the Schedule to the Usury Act, 1968 (Act No. 73 of 1968), to a money lender as defined in that Act; and

(B) such policy is provided in respect of loans or other financial assistance provided by such money lender to persons, and for the achievement of the object, referred to in item (cc);

- ii. such sole or principal object is actively pursued;
- iii. the company, association or trust does not carry on any business other than business which is directly connected with the said sole or principal object;
- iv. the company, association or trust is under its memorandum, articles of association, constitution or deed of trust required to utilize its funds solely for the object for which it has been established or for investment--

(aa) with the South African Reserve Bank, to the extent to which it is required to do so in terms of any law, or with a financial institution as defined in section 1 of the Financial Institutions (Investment of Funds) Act, 1984 (Act No. 39 of 1984);

(bb) in securities listed on a stock exchange as defined in section 1 of the Stock Exchanges Control Act, 1985 (Act No. 1 of 1985);

(cc) in financial instruments as defined in section 1 of the Financial Markets Control Act, 1989 (Act No. 55 of 1989);

(dd) in other commercial paper, issued or secured by issuers classified from time to time by the Treasury as defined in the Exchequer Act, 1975 (Act No. 66 of 1975), if the

Commissioner has approved of the category in which the issuer falls pursuant to such classification, and such category is stated in such memorandum, articles of association, constitution or deed of trust;

- v. the company, association or trust is under its memorandum, articles of association, constitution or deed of trust not permitted to distribute any of its profits or gains to any person, unless such person is exempt from tax under this paragraph or paragraph (cC), (cl) or (f);
- vi. in terms of the memorandum, articles of association, constitution or deed of trust of the company, association or trust it is upon its deregistration, winding-up or liquidation obliged to give or transfer its assets remaining after the satisfaction of its liabilities to some other company, association or trust which is exempt from tax under this paragraph or paragraph (cC), (cl) or (f);
- vii. at least--

(aa) 25 per cent of the directors of the company, members of the governing body of the association or the trustees of the trust, as the case may be, are persons who do not directly or indirectly derive any benefit, other than reasonable remuneration for services rendered, from the company, association or trust, whether by virtue of their being members of a community contemplated in subparagraph (i)(cc) or otherwise; and
(bb) one of those directors, members or trustees is a person nominated by the Minister of Finance;

(cK) the receipts and accruals of any company, if--

- i. the sole object of such company is to supply electricity, whether as principal or as agent, to the electricity consumers of any province referred to in section 124 of the constitution or of any local authority as defined in section 1 of the Electricity Act, 1987 (Act No. 41 of 1987);
- ii. such sole object is actively pursued;
- iii. such company is under its memorandum or articles of association not permitted to distribute any of its profits or gains to any member and is required to utilize its funds solely for investment or the object for which it has been formed;
- iv. the Commissioner has approved such company subject to such conditions as he may deem necessary to ensure that the activities of such company are wholly directed to the furtherance of its sole object;
- v. in terms of the memorandum or articles of association of such company it will upon its deregistration, winding-up or liquidation be obliged to transfer its assets remaining after the satisfaction of its liabilities to--

(aa) some other company which is exempt from tax in terms of this paragraph; or
(bb) an undertaker or class of undertaker as contemplated in section 6 of the Electricity Act, 1987; and

- vi. the members of such company consist of Eskom and--

(aa) the provincial government of such province; and
(bb) a local authority referred to in subparagraph (i);
(cc) a regional services council or a joint services board referred to in paragraph (c) of the definition of "local authority" in section 1; or
(dd) a trust acting as nominee for such province local authority, regional services council or joint services board;

(cL) [Deleted by Income Tax Act No 36 of 1996]

(cM) the receipts and accruals of any company formed and incorporated under section 21 of the Companies Act, 1973 (Act No. 61 of 1973), or deemed by the said section to be so formed and incorporated, which has been approved by the Commissioner, if--

- i. the sole or principal object of the company is to promote and facilitate the distribution of agricultural and related commodities;
- ii. such sole or principal object is actively pursued;
- iii. the company is or was not knowingly a party to, or does not knowingly permit, or has not knowingly permitted, itself to be used as part of any transaction, operation or scheme of which the sole or main purpose is or was the reduction, postponement or avoidance of liability for any tax, duty or levy which, but for such transaction, operation or scheme, would have been or would have become payable by any person under this Act or any other Act administered by the Commissioner;
- iv. the company does not carry on any business other than business which is directly connected with the said sole or principal object;
- v. the business directly connected with the sole or principal object was previously carried on by a municipal council and the control of the company is exercised by such municipal council;
- vi. in terms of the memorandum or articles of association of the company, it is upon its deregistration, winding-up or liquidation obliged to give or transfer its assets remaining after the satisfaction of its liabilities to--

(aa) some other company which is exempt from tax under this paragraph; or

(bb) a local authority to utilize such assets for the same objects as the aforesaid company:

Provided that--

- a. where the Commissioner is satisfied that any such company has during any year of assessment failed to comply with the provisions of this paragraph, he may withdraw his approval of the company with effect from the commencement of that year of assessment;
 - b. where the Commissioner has withdrawn his approval of such company, it shall, within two months from the date of such withdrawal, transfer, or take reasonable steps to transfer, its remaining assets to any company which is exempt from tax under this paragraph or to a local authority to utilize such assets for the same objects as the aforesaid company;
 - c. where a company fails to transfer, or take reasonable steps to transfer, its remaining assets as contemplated in paragraph (b) of this proviso, the accumulated net revenue which has not been distributed shall be deemed for the purposes of this Act to be an amount of taxable income which accrued to such company during the year of assessment referred to in paragraph (a) of this proviso; and
 - d. any decision of the Commissioner in the exercise of his discretion under this paragraph shall be subject to objection and appeal;
- d. the receipts and accruals of any terminating building society, pension fund, provident fund, retirement annuity fund, benefit fund, mutual savings bank, mutual loan association, fidelity or indemnity fund, trade union, chamber of commerce or industries (or an association of such chambers), local publicity association or non-proprietary stock exchange;

(dA) the receipts and accruals of any fund managed and controlled in the territory or in any country the territory of which formerly formed part of the Republic, if--

- i. having regard to the rules of the fund and the manner in which it is administered, such fund is substantially similar to a pension fund, provident fund or retirement annuity fund; and
 - ii. the receipts and accruals of pension funds, provident funds and retirement annuity funds managed and controlled in the Republic are exempt from any tax on income imposed by the country concerned;
- e. any levy received by or accrued to--
- i. any body corporate established in terms of the Sectional Titles Act, 1986 (Act No. 95 of 1986), from its members;
 - ii. a share block company established in terms of the Share Blocks Control Act, 1980 (Act No. 59 of 1980), from its shareholders; or
 - iii. any other association of persons (other than a company registered or deemed to be registered under the Companies Act, 1973 (Act No. 61 of 1973), and any co-operative formed and incorporated or deemed to be formed and incorporated under the Co-operatives Act, 1981 (Act No. 91 of 1981), and any close corporation and any trust, but including a company incorporated under section 21 of the Companies Act, 1973), from its members, where the Commissioner is satisfied that, subject to such conditions as he may deem necessary, such association of persons--
- aa. has been formed solely for the purposes of managing the collective interests common to all its members, which includes expenditure applicable to the common property of such members and the collection of levies for which such members are liable; and
- bb. is not permitted to distribute any of its funds to any person other than a similar association of persons:

Provided that such body, company or association is or was not knowingly a party to, or does not knowingly permit or has not knowingly permitted, itself to be used as part of any transaction, operation or scheme of which the sole or main purpose is or was the reduction, postponement or avoidance of liability for any tax, duty or levy which, but for such transaction, operation or scheme, would have been or would become payable by any person under this Act or any other law administered by the Commissioner;

- f. the receipts and accruals of all religious, charitable and educational institutions of a public character, which carry on religious, charitable or educational activities, as the case may be, in the Republic, whether or not supported wholly or partly by grants from public revenue;

(fA) the receipts and accruals of any fund the sole object of which is to provide funds for any body, such body being a company, society, association of persons or trust contemplated in paragraph (cF) or any religious, charitable or educational institution contemplated in paragraph (f), if such fund--

- i. has been approved by the Commissioner subject to such conditions as he may deem necessary to ensure that no benefits are allocated by the fund for purposes other than the provision of funds for such a body;

- ii. has submitted to the Commissioner a copy of the written constitution, will or any other written instrument under which it has been established and in terms of which it is--

(aa) not permitted to distribute any of its funds to any person other than such a body
(bb) required to utilize its funds solely for the object for which it has been established or to invest such funds--

(A) with a financial institution as defined in section 1 of the Financial Institutions (Investment of Funds) Act, 1984 (Act No. 39 of 1984);

(B) in securities listed on a stock exchange as defined in section 1 of the Stock Exchanges Control Act, 1985 (Act No.1 of 1985); or

(C) in such other financial instruments as the Commissioner may approve;

(cc) required to distribute, unless the Commissioner otherwise directs, at least 75 per cent of its net revenue (being the gross income of such fund less the costs of its administration) to any such body within a period of 12 months from the end of the financial year during which such net revenue was derived; and

(dd) required on dissolution to transfer its assets to any such body;

(ee) not permitted, except to the extent that the Commissioner directs, to carry on any business;

(ff) required to submit to the Commissioner a copy of any amendment to the constitution, will or other written instrument under which it was established;

(gg) not permitted to accept any donation which is not irrevocable and unconditional; and

(hh) required to apply its net revenue, unless the Minister of Finance otherwise directs, for the furtherance of its sole object in the Republic;

Provided that--

- a. where such constitution, will or other written instrument does not comply with the provisions of this subparagraph, it shall be deemed so to comply if--
- i. in the case of a fund established under the terms of a will; or
 - ii. in the case of a fund established prior to 21 June 1993 under a constitution or other written instrument which cannot be amended to comply with the said provisions, the trustee of the fund furnishes the Commissioner with a written undertaking that the fund will be administered in compliance with the said provisions; and
- b. notwithstanding the provisions of items (bb) and (ee), any asset or business undertaking acquired by such fund by way of donation, inheritance or bequest, may be retained or continued, as the case may be, in the form so acquired:

Provided that--

- a. where the Commissioner is satisfied that any such fund has during any year of assessment failed to comply with the provisions of this paragraph, he may withdraw his approval of the fund with effect from the commencement of that year of assessment;
- b. where the Commissioner has withdrawn his approval of such fund, it shall, within two months from the date of such withdrawal, transfer, or take reasonable steps to transfer, its remaining assets to any such body which is exempt from tax under paragraph (cF) or (f);
- c. where a fund fails to transfer, or take reasonable steps to transfer, its remaining assets as contemplated in paragraph (b) of this proviso, the accumulated net revenue which has not been distributed shall be deemed for the purposes of this Act to be an amount of taxable income which accrued to such fund during the year of assessment referred to in paragraph (a) of this proviso; and

- d. any decision of the Commissioner in the exercise of his discretion under this paragraph shall be subject to objection and appeal;
- 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;

(gA) any disability pension paid under section 2 of the Social Assistance Act, 1992 (Act No. 59 of 1992);

(gB) any compensation paid in terms of the Workmen's Compensation Act, 1941 (Act No. 30 of 1941), or the Compensation for Occupational Injuries and Diseases Act, 1993 (Act No. 130 of 1993)

- h. interest received by or accrued to--
 - i. any person (other than a company) not ordinarily resident nor carrying on business in the Republic; or
 - ii. an external company not carrying on business in the Republic,

from stock or securities (including Treasury Bills) issued by the Government including the South African Transport Services, or any local authority within the Republic or the Electricity Supply Commission or the South African Broadcasting Corporation: 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 derived therefrom by any person not ordinarily resident in the Republic or by any external company shall be exempt from taxes in the Republic, the interest received by or accrued to such a person or company from such of the said stock or securities as were acquired by such person or company outside the Republic and paid for by such person or company in the currency of any country other than the Republic shall be exempt from normal tax even if that person or company carries on business in the Republic: Provided further that the exemption under this paragraph shall not apply in respect of interest which on or after 1 November 1987 is received by or accrues to--

- a. a person (other than a company) who is ordinarily resident in a neighbouring country, if such stock or security was acquired by him on or after that date; or
- b. a company which is incorporated, registered, managed or controlled in any neighbouring country unless the Commissioner is satisfied that such stock or security was acquired by it before that date and that on both that date and the date of receipt or accrual of such interest one or more natural persons, not ordinarily resident in the Republic, held for their own benefit all the issued shares of such company:

Provided further that the exemption under this paragraph shall not apply to any natural person unless such person was physically absent from the Republic for a period or periods of at least 183 days in aggregate during the year of assessment in which such interest was received or accrued;

(hA) interest received by or accrued to a person (other than a company) who is ordinarily resident outside the Republic or a company which is managed and controlled outside the Republic: Provided that--

- i. the exemption under this section shall not apply to any natural person who was at any time ordinarily resident in the Republic if such person has during the year of assessment carried on business in the Republic;

- ii. for the purposes of this paragraph the expression "Republic" shall include any country which has for the purposes of applying any regulation made under section 9 of the Currency and Exchanges Act, 1933 (Act No. 9 of 1933), been included in the common monetary area;
- iii. for the purposes of this paragraph, so much of any dividend as has been distributed by any unit portfolio constituting a company in terms of paragraph (e) of the definition of "company" in section 1 out of interest derived by such unit portfolio which is exempt from tax in the hands of such unit portfolio under the provisions of paragraph (iA), shall be deemed to be interest;
- iv. the exemption under this paragraph shall not apply to any natural person unless such person was physically absent from the Republic for a period or periods of at least 183 days in aggregate during the year of assessment in which such interest was received or accrued; and
- v. the exemption under this paragraph shall no apply to any interest received by or accrued to a company which is managed and controlled outside the Republic, if such interest is effectively connected with the business carried on by that company in the Republic.

i.

(i) [Sub-para. (i) deleted by s.8 (1) (n) of Act No. 36 of 1966]

(ii) [Sub-para. (ii) deleted by s.8 (1) (n) of Act No. 36 of 1966]

(iii) so much of the interest on Tax Redemption Certificates held by any one person as does not exceed the sum of fifty rand;

(iv) [Sub-para. (iv) deleted by s. 10 (1) (d) of Act No. 101 of 1990.]

(v) interest on any loan portion of the normal or super [tax](#) imposed under the Income Tax Act, 1953, or any subsequent Act of Parliament;

(vi) [Sub-para. (vi) deleted by s.8 (1) (n) of Act No. 36 of 1966]

(vii) to (x) inclusive [Sub-paras. (vii) to (x) inclusive deleted by s. 7 (1) (a) of Act No. 65 of 1973.]

(xi) [Sub-para. (xi) deleted by s. 7 (1) (c) of Act No. 104 of 1979.]

(xiA) [Sub-para. (xiA) deleted by s. 10 (1) (f) of Act No. 101 of 1990.]

(xiB) [Sub-para. (xiB) deleted by s. 7(1)(d) of Act No. 104 of 1979.]

(xiC) [Sub-para. (xiC) deleted by s. 10(1) (f) of Act No. 101 of 1990.]

(xiD) [Sub-para. (xiD) deleted by s. 10 (1) (f) of Act No. 101 of 1990.]

(xiDA) [Sub-para. (xiDA) deleted by s. 10 (1) (f) of Act No. 101 of 1990.]

(xiDB) and (xiDC) [Sub-paras. (xiDB) and (xiDC) deleted by s. 10 (1) (f) of Act No. 101 of 1990.]

(xiE) [Sub-para. (xiE) deleted by s. 10 (1) (f) of Act No. 101 of 1990.]

(xii) [Sub-para. (xii) deleted by s.8 (1) (n) of Act No. 36 of 1966]

(xiiA) [Sub-para. (xiiA) deleted by s.8 (1) (n) of Act No. 36 of 1966]

(xiii) [Sub-para. (xiii) deleted by s.8 (1) (n) of Act No. 36 of 1966]

(xiv) [Sub-para. (xiv) deleted by s.8 (1) (n) of Act No. 36 of 1966]

(xv) in the case of any taxpayer who is a natural person, so much of the aggregate of any interest received by or accrued to him which is not otherwise exempt from tax, as does not during the year of assessment exceed the amount of R2 000;

(xvi) in the case of any taxpayer who is a natural person, so much of the aggregate of any amounts received by or accrued to him by way of dividends referred to in section 11(s) and any amounts received by or accrued to him which have been distributed to him out of unit portfolios which in terms of subsection (5B) of section 19 are for the purposes of that section deemed to be income derived otherwise than in the form of dividends, as does not during the year of assessment exceed the amount of R2 000 less the amount of any interest which is exempt from tax under subparagraph (xv);

(iA) in the case of any unit portfolio referred to in paragraph (e) of the definition of "company" in section 1, so much of the interest received by or accrued to such unit portfolio as has been distributed, or as the Commissioner is satisfied will be distributed, by way of a dividend or a portion of a dividend, to persons who have become entitled to such dividend by virtue of their being registered as holders of units in such unit portfolio on a date falling on or after the first day of April, 1971;

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 person: Provided that this exemption shall not apply--

(aa) to dividends (other than those distributed out of profits of a capital nature and those received by or accrued to or in favour of any person not ordinarily resident nor carrying on business in the Republic) distributed by a fixed property company as defined in section 1 of the Unit Trusts Control Act, 1981 (Act No. 54 of 1981), on shares included in a unit portfolio comprised in any unit trust scheme in property shares authorized under the said Act; or

(bb) to so much of any dividend as has been distributed by any unit portfolio constituting a company in terms of paragraph (e) of the definition of "company" in section 1--

(A) out of interest derived by such unit portfolio which is exempt from tax in the hands of such unit portfolio under the provisions of paragraph (iA); and

(B) out of amounts received by or accrued to such unit portfolio by way of dividends referred to in section 11 (s); or

(cc) to any dividend received by or accrued to or in favour of any person where such dividend constitutes or forms part of any consideration paid or payable to such person in respect of the disposal of shares (other

than affected shares in respect of which the taxpayer has, in terms of the provisions of section 9B, elected the amount received or accrued on disposal to be deemed to be of a capital nature), which were held as trading stock by such person in a company and such shares were acquired by such company in terms of section 85 of the Companies Act, 1973 (Act No. 61 of 1973).

(iA) dividends received by or accrued to or in favour of any unit portfolio constituting a company in terms of paragraph (e) of the definition of "company" in section 1;

- ii. [Sub-paras. (ii) deleted by s. 10(1) (k) of Act No. 101 of 1990.]
- iii. [Sub-paras. (iii) deleted by s. 10(1) (k) of Act No. 101 of 1990.]
- iv. [Sub-para. (iv) deleted by s. 13 (1) (h) of Act No. 89 of 1969.]
- v. [Sub-para. (v) deleted by s. 10 (1) (k) of Act No. 101 of 1990.]
- vi. [Sub-para. (vi) deleted by s. 13 (1) (i) of Act No. 89 of 1969.]

(kA) [Para. (kA) deleted by s. 10 (1) (l) of Act No. 101 of 1990.]

- l. [Para. (l) deleted by s. 10 (1) (m) of Act No. 101 of 1990.]
- 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 under the Copyright Act, 1978 (Act No. 98 of 1978), or to a company;

(mA) [Para. (mA) deleted by section 10(e) of Act No. 28 of 1997]

(mB) any benefit or allowance payable in terms of the Unemployment Insurance Act, 1966 (Act No. 30 of 1966);

- n. [Para. (n) deleted by s. 12 (1) (d) of Act No. 129 of 1991.]

(nA) where an employee is as a condition of his employment required while on duty to wear a special uniform which is clearly distinguishable from ordinary clothing, the value of any such uniform given to the employee by his employer, or so much of any allowance made by the employer to the employee in lieu of any such uniform as is reasonable;

(nB) any benefit or advantage accruing to any employee (as defined in paragraph 1 of the Seventh Schedule) by reason of the fact that his employer (as defined in the said paragraph), has, in consequence of the transfer of the employee from one place of employment to another place of employment or the appointment of the employee as an employee of the employer or the termination of the employee's employment, borne the expense--

- i. of transporting such employee, members of his household and the personal goods and possessions of him self and the members of his household from his previous place of residence to his new place of residence; or
- ii. of such costs as the Commissioner may allow which have been incurred by the employee in respect of the sale of his previous residence and in settling in permanent residential accommodation at his new place of residence; or
- iii. of hiring residential accommodation in an hotel or elsewhere for the employee or members of his household during the period ending 183 days after his transfer took effect or after he took up his appointment, as the case may be, if such residential accommodation was occupied temporarily pending the obtaining of permanent residential accommodation;

(nC) [Para. (nC) deleted by s. 12 (1) (e) of Act No. 129 of 1991.]

(nD) [Para. (nD) deleted by s. 12 (1) (f) of Act No. 129 of 1991.]

(nE) any amount (including any taxable benefit determined under the provisions of the Seventh Schedule) received by or accrued to an employee, as so defined, under a share incentive scheme operated for the benefit of employees of the taxpayer's employer, as so defined, which was derived--

- i. upon the cancellation of a transaction under which the taxpayer purchased shares under such scheme; or
- ii. upon the repurchase from the taxpayer, at a price not exceeding the selling price to him, of shares purchased by him under such scheme,

if in consequence of such cancellation or repurchase the taxpayer has not received or become entitled to receive any compensation or consideration other than the repayment of any portion of the purchase price actually paid by him;

(nF) [Para. (nF) deleted by s. 12 (1) (g) of Act No. 129 of 1991.]

(nG) the value of any benefit or advantage contemplated in paragraph 2 of the Seventh Schedule derived by an employee who, after having retired from full-time service with the employer by whom such benefit or advantage was granted, has been re-employed by such employer on a part-time basis, if--

- i. the cash remuneration received by or accrued to the employee in respect of such part-time employment was payable at a rate not exceeding R5 000 per annum;
- ii. the employee retired from such full-time service on or after attaining the age of 60 years or as a result of ill-health or other infirmity; and
- iii. such benefit or advantage was granted before the employee so retired:

Provided that the provisions of this paragraph shall not apply to any benefit or advantage granted to an employee who is re-employed on or after 1 March 1992;

(nH) 50 per cent of so much of any taxable benefit derived by the taxpayer during any year of assessment ending not later than 28 February 1995 in consequence of the granting of any loan in the circumstances contemplated in paragraph 2 (f) of the Seventh Schedule as--

- i. was determined in relation to any portion of such loan which was before 15 March 1990 utilized by the taxpayer for the purpose of acquiring shares under a share incentive scheme operated by his employer and which relates to so many of such shares as the taxpayer was or is, under the conditions of such scheme as they applied immediately before the said date, prohibited from disposing of; and
 - ii. relates to a period in the year of assessment during which the taxpayer was so prohibited from disposing of the relevant shares;
- o. any remuneration derived by any person as an officer or crew member of a ship engaged--
- i. in the international transportation for reward of passengers or goods; or
 - ii. in the prospecting (including surveys and other explanatory work) for, or the mining of, any minerals (including natural oils) from the seabed outside the continental shelf of the Republic as contemplated in section 8 of the Maritime Zones Act, 1994 (Act No. 15 of

1994), where such officer or crew member is employed on board such ship solely for the purposes of the 'passage' of such ship, as defined in the Marine Traffic Act, 1981 (Act No. 2 of 1981),

if such person was outside the Republic for a period or periods exceeding 183 days in aggregate during the year of assessment;

- 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 or the Council for Scientific and Industrial Research, 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 or the said Council;
- q. any *bona fide* scholarship or bursary granted to enable or assist any person to study at a recognized educational or research institution: Provided that if any such scholarship or bursary has been so granted by an employer or an associated institution (as respectively defined in paragraph 1 of the Seventh Schedule) to an employee (as defined in the said paragraph) or to a relative of such employee in circumstances indicating that the scholarship or bursary concerned would not have been granted had that employee not been an employee of that employer, the exemption under this paragraph shall not apply--
 - i. if any remuneration to which the employee was entitled or might in the future have become entitled was in any manner whatsoever reduced or forfeited as a result of the grant of such scholarship or bursary;
 - ii. in the case of a scholarship or bursary granted to enable or assist any such relative of an employee so to study, if the remuneration derived by the employee during the year of assessment exceeded R50 000; and
 - iii. to so much of any scholarship or bursary contemplated in paragraph (ii) as in the case of any such relative exceeds R1 600 during the year of assessment;

(qA) [Para (qA) deleted by s. 12 (1) (j) of Act No 129 of 1991]

- 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, or from the funds of the Land and Agricultural Bank of South Africa upon his retirement as a member of the board of the said Bank, 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--
 - i. of the Council for Scientific and Industrial Research;
 - ii. of the South African Inventions Development Corporation;
 - iii. [Sub-para. (iii) deleted by section 29(c) of Act No. 30 of 1998]
 - iv. [Sub-para. (iv) deleted by section 10(g) of Act No. 28 of 1997]

- v. of the Armaments Development and Production Corporation of South Africa Limited, established under section 2 of the Armaments Development and Production Act, 1968 (Act No. 57 of 1968);
- vi. of any company during any period during which all the issued shares of such company are held by the Corporation referred to in subparagraph (v), if the operations of such company are conducted in pursuance of, or are ancillary or complementary to, the objects of the said Corporation:
- vii. [Sub-para. (vii) deleted by section 10(g) of Act No. 28 of 1997]
- viii. [Sub-para. (viii) deleted by Revenue Laws Amendment Act No 46 of 1996]
- ix. [Sub-para. (ix) deleted by Revenue Laws Amendment Act No 46 of 1996]
- x. of the Development Bank of Southern Africa established on 30 June 1983;
- xi. [Sub-para. (xi) deleted by section 18 of Act No. 53 of 1999];
- xii. of KESCOR (Proprietary) Limited, a company registered under the Companies Act, 1973, on 11 May 1990; [Sub-para. (xii) added by s. 12 (1) (k) of Act No. 129 of 1991.]
- xiii. [Sub-para. (xiii) deleted by s. 9 (1) (f) of Act No. 21 of 1994.]
- xiv. [Sub-para. (xiv) deleted by Income Tax Act No 38 of 1996]
- xv. of a recognized company as contemplated in section 2 of the Provision of Special Funds for Tertiary Training and Education Act, 1993, which has been approved by the Commissioner;

(tA) the receipts and accruals of any company which qualifies for exemption under section 2 of the Company Tax Amendment Decree, 1994 (Decree No. 2 of 1994 of Ciskei), which are derived from a source within the territory of the former Republic of Ciskei;

- u. any amount received by or accrued to any person from such person's spouse or former spouse by way of alimony or allowance or maintenance of such person or any children under an order of judicial separation or divorce granted in consequence of proceedings instituted after the twenty-first day of March, 1962, or under any agreement of separation entered into after that date;
- v. [Para. (v) deleted by section 10(1)(s) of Act No. 141 of 1992.]

(vA) [Para. (vA) deleted by section 10(1)(s) of Act No. 141 of 1992.]

- u. [Para. (w) deleted by section 29(e) of Act No. 30 of 1998]
- v. so much of any amount (being a lump sum) referred to in paragraph (d) of the definition of "gross income" in section 1 or in section 7A (4A) or (5) as does not exceed R30 000 less the sum of any other amounts which have been excluded from the taxpayer's income by virtue of the exemption conferred by this paragraph, whether in the current or any previous year of assessment: Provided that the exemption under this paragraph shall not apply in respect of any amount received by or accrued to any person upon or because of the termination or because of the impending termination of the services required to be rendered by him as the holder of any office or employment or in respect of the relinquishment, termination, loss, repudiation, cancellation or variation of his office or employment or in respect of his appointment (or right or claim to be appointed) to any office or employment, unless--
 - i. such person has attained the age of fifty-five years; or
 - ii. the termination or impending termination of such person's services or the relinquishment, termination, loss, repudiation, cancellation or variation of his office or employment or of his appointment (or right or claim to be appointed to any office or employment is due to superannuation, ill-health or other infirmity; or
 - iii. [Sub-para. (iii) deleted by s. 10 (1) (f) of Act No. 21 of 1995.]
 - iv. the termination or impending termination of such person's services is due to his employer having ceased to carry on or intending to cease carrying on the trade in respect of which such person was employed or to such person having become

redundant in consequence of his employer having effected a general reduction in personnel or a reduction in personnel of a particular class and, where such person's employer is a company, such person was not at any time a director of such company and did not at any time hold more than five per cent of the issued share capital or members' interest in such company;

Provided further that, notwithstanding the provisions of section 37D, any such amount which was received by or accrued to a married woman and which was in whole or in part excluded from her husband's taxable income under the provisions of this paragraph, shall for the purposes of determining the exemption under this paragraph in respect of any such amount subsequently received by or accrued to either spouse be deemed to be an amount which was received or accrued to the husband.

- y. [Para (y) Deleted by s. 10 (1) (p) of Act No 101 of 1990]
- z. any amount received by or accrued to or in favour of any person from the State by way of a subsidy on interest payable by him on any amount owing by him on any loan or advance utilised by him for the purposes of pastoral, agricultural or other farming operations carried on by him;

(zA) any amount by way of rebate or other assistance received by or accrued to or in favour of any exporter (as defined in section 11bis (1)) under any scheme for the promotion or financing of exports which is for the purposes of this paragraph approved by the Minister of Trade and Industry with the concurrence of the Minister of Finance: Provided that where the person entitled to claim such amount from the State has, under an agreement directly connected with the export trade carried on by him, agreed to pay the whole or any portion of such amount to any other person, the exemption under this paragraph shall also apply to the whole or such portion of such amount received by or accrued to such other person under the said agreement;

(zB) any amount received by or accrued to any employer from a fund which has under an industrial council agreement been established as contemplated in section 48 (1) (d) of the Labour Relations Act, 1956 (Act No. 28 of 1956) or section 39 (4) of the Manpower Training Act, 1981 (Act No. 56 of 1981), for the training of employees for skilled work, if such employer has undertaken such training in respect of his employees;

(zC) any amount received by or accrued to or in favour of any person from the State by way of a subsidy under any scheme designed to encourage the establishment, expansion or carrying on of industrial or commercial undertakings in an economic development area, if such subsidy was granted in respect of--

- i. wages paid by such person in carrying on any such undertaking; or
- ii. the expenses incurred by such person in training employees employed by him in such undertaking;

(zD) any amount received by or accrued to or in favour of any person by way of a reimbursement by the State of expenditure incurred by him in relocating in an economic development area any industrial or commercial undertaking, or part of such an undertaking, carried on by him elsewhere than in such area, except to the extent that the said amount relates to any expenditure claimed by and allowed to such person as a deduction from his income under the provisions of this Act or has been taken into account in the determination under this Act of the value of any machinery or plant for the purposes of determining any allowance in respect of such machinery or plant;

(zE) any amount received by or accrued to the Small Business Development Corporation, Limited, by way of any subsidy or assistance payable by the State

(zF) any amount (other than interest) received by or accrued to any person from the State in terms of any export incentive scheme, being a payment in lieu of any allowance or credit to which such person was or could have become entitled in terms of the provisions of section 11bis (6);

(zG) any amount which on or after 15 May 1989 was received by or accrued to a film owner (as defined in section 24F) by way of a subsidy payable by the State under any scheme designed to promote the production of films (as defined in the said section);

(zH) any amount received by or accrued to or in favour of any person from the State in terms of--

- i. the Regional Industrial Development Programme which came into operation on 1 May 1991;
 - ii. the Simplified Regional Industrial Development Programme, which came into operation on 1 October 1993 by way of a grant;
 - iii. the Small/Medium Manufacturing Development Programme, which came into operation on 1 October 1996 by way of a grant;
 - iv. the Tax Holiday Scheme contemplated in section 37H, which came into operation on 1 October 1996 by way of a grant.
2. Notwithstanding the exemptions provided for in paragraphs (h) and (k) of subsection (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 subsection (1) shall not extend to any payments out of the revenues, receipts, accruals or profits mentioned in such paragraph.
 4. [Deleted by Income Tax Act No 38 of 1996]

...

Chapter II: The Taxes

Part I: Normal Tax

18A. Deduction of donations to universities, colleges and certain educational funds

1. For the purposes of this section--

"college" means--

- a. a technikon established or deemed to have been established or declared to be such under the Technikon Act, 1993 (Act No 125 of 1993) or any other Act of parliament, or
- b. any other educational institution established by or under any other law of the Republic if the Commissioner, in consultation with the officer in the public service of the Republic, upon or to whom powers, duties or functions are or may be conferred, imposed or assigned in terms of the law in question, is satisfied that

such institution is in all material respects similar to any Technikon referred to in paragraph (a);

"donation" does not include any voluntary contribution made in respect of school fees;

"educational fund" means--

- c. the National Study Loan and Bursary Fund established by section 2 of the National Study Loans and Bursaries Act, 1964 (Act No. 89 of 1964); or
- d. any special fund established in the Republic for the sole purpose of receiving donations to be used exclusively for educational or training purposes in the Republic, if such fund is administered and controlled by--
 - i. any education authority which provides secondary education beyond the sixth standard in any school; or
 - ii. the principal committee or governing body of any school which provides secondary school education beyond the sixth standard; or
 - iii. the principal or governing body of any teachers' training institution; or
 - iv. the principal or governing body of any permanent institution approved by the Minister of Finance which has been formed--

(aa) for the promotion of adult education, vocational training or technical education; or

(bb) to promote the education and training of religious or social workers; or

(cc) for the education or training of physically or mentally handicapped persons,

for the benefit of the pupils, students or trainees of the school or institution in question; or

- c. any special fund established in the Republic for the sole purpose of receiving donations to be used exclusively--
 - i. for educational or training purposes for the benefit of the pupils, students or trainees of any school or institution referred to in paragraph (b) which is situated in the Republic, where such fund is administered and controlled by the trustee of any educational trust approved by the Minister of Finance which has been created under a written deed of trust with the object of serving such purposes; or
 - ii. for the benefit of any university or college for purposes other than the defraying of students' fees or the granting of any bursary to any person nominated by a donor to such fund; or
 - iii. for the benefit of any educational institution situated outside the Republic for purposes other than the defraying of students' fees or the granting of any bursary to any person nominated by a donor to such fund, if--

(aa) the Minister of Finance is satisfied that such institution provides educational facilities similar to those provided by a university or college; and

(bb) the said Minister, having regard to the nature and objects of such institution and the persons benefiting from the educational facilities provided by such institution, has approved such institution for the purposes of this section,

but excluding any such fund established and controlled by any educational institution the profits of which accrue in whole or in part for the benefit of or are distributable to any proprietor, partner or shareholder of such institution;

- d. any trust fund established in the Republic for the sole purpose of receiving donations from companies to be used exclusively for educational or training purposes in respect of primary and secondary education in the Republic if--
 - i. the Minister of Finance has approved such trust fund; and
 - ii. the sum of the donations in respect of which prospective donors have irrevocably committed themselves to donate to such trust fund, is at the time of the approval of such trust fund not less than R1 000 000;

"educational or training purposes", in relation to any fund referred to in paragraph (b), (c) or (d) of the definition of "educational fund" in this subsection, means--

- e. the defrayal of any expenditure directly incurred in the provision of educational or training facilities (including expenditure on board and lodging facilities but excluding any expenditure in respect of tuition or boarding fees for, or the granting of any bursary to, any person nominated by a donor to such fund), or
- f. the investment of any amount received by such fund in the form of cash donations, if such amount is not immediately required to be used for the defrayal of any expenditure as contemplated in paragraph (a) of this definition but is, together with any income derived from such investment, so used from time to time; or
- g. the application of any property received by such fund by way of any donation in kind in order to provide any educational or training facility or, where such donated property has been realized, the disposal of the proceeds from such realization as contemplated in paragraph (a) or (b);

"specified educational project

[Definition of "specified educational project" deleted by s. 14 (1) (d) of Act No. 91 of 1982]

"taxable income", in relation to any taxpayer, means the taxpayer's taxable income as calculated before allowing any deductions under this section and, in the case of any company carrying on mining operations, before allowing any deduction under section 15(a) and before allowing any set-off of any part of the balance of assessed loss under section 20(1)(a) which arose from any deduction made under the said section 15(a);

"university" means a university established by an Act of Parliament, and a university college established under the Tertiary Education Act, 1988 (Act No 66 of 1988)

- 2. Notwithstanding anything to the contrary in this Act, there shall be allowed to be deducted from the **taxable income** of the taxpayer so much of the sum of any *bona fide* donations made by the taxpayer during the year of assessment--
 - a. to any university or college for purposes other than the defrayal of students' fees for, or the granting of any bursary to, any person nominated by a donor to such fund; and
 - b. to any educational fund;
 - c. [Deleted by Income Tax Act No 38 of 1996]

3. Any claim for a deduction in respect of any donation under subsection (2) shall not be allowed unless supported by a receipt issued by the university, college or person in control of the educational fund concerned on which the following particulars are given, namely--
 - a. the date of the receipt of the donation;
 - b. the name of the university, college or educational fund which received the donation, together with an address to which enquiries may be directed in connection therewith; and
 - c. the name and address of the donor,
 - d. the amount of the donation or the nature of the donation (if not made in cash);
 - e. a certification to the effect that the receipt is issued for the purposes of section 18A of the Income Tax Act, 1962, and that the donation has been or will be used exclusively for the purposes of the university, college or educational fund concerned;
4. If any deduction is claimed by any taxpayer under the provisions of subsection (2) in respect of any donation of property in kind, the amount of such deduction shall be deemed to be an amount equal to
 - a. where such property constitutes trading stock of the taxpayer (including any livestock or produce in respect of which the provisions of paragraph 11 of the First Schedule are applicable), the amount which has been taken into account for the purposes of section 22(8) or, in the case of such livestock or produce, the said paragraph 11, in relation to the donation of such property;
 - b. where such property (other than trading stock) constitutes an asset used by the taxpayer for the purposes of his trade, the cost to the taxpayer of such property less any allowance (other than any investment allowance) allowed to be deducted from the income of the taxpayer under the provisions of this Act in respect of that asset; or
 - c. where such property does not constitute trading stock of the taxpayer or an asset used by him for the purposes of his trade, the cost to the taxpayer of such asset, less, in the case of a movable asset which has deteriorated in condition by reason of use or other causes, a depreciation allowance calculated in the manner contemplated in section 8(5)(bB)(i); or
 - d. where such property is purchased, manufactured, erected, assembled, installed or constructed by or on behalf of the taxpayer in order to form the subject of the said donation, the cost to the taxpayer of such property.
5. Any books of account, records or other documents relating to any fund referred to in subsection (6) shall
 - a. where kept in book form, be retained and carefully preserved by any person in control of such fund for a period of five years from the date of the last entry in any book; or
 - b. where not kept in book form, be retained and carefully preserved by any person in control of such fund for a period of five years after completion of the transactions, acts or operations to which they relate.
6. In the application of the provisions of this section in so far as they relate to any fund referred to in paragraph (b), (c) or (d) of the definition of "educational fund" in subsection (1), the Commissioner may by notice in writing require any person whom the Commissioner may deem able to furnish information in regard to such fund;
 - a. to answer any questions relating to such fund; or
 - b. to make available for inspection by the Commissioner or any person appointed by him, any books of account, records or other documents relating to such fund; or

- c. to attend at the time and place appointed by the Commissioner for the purposes of producing for examination by the Commissioner or any person appointed by him, any books of account, records or other documents relating to such fund.
7. If after acting as contemplated in subsection (6), the Commissioner has reasonable grounds for believing that the administrator of any fund referred to in that subsection has in any way failed to carry out the objects for which the fund was established or has expended moneys belonging to the fund for purposes not covered by such objects, the Commissioner may by notice in writing addressed to that administrator direct that donations to such fund shall not qualify for deduction under the provisions of subsection (2) in respect of any year of assessment specified in such notice, and any claim by any taxpayer for such deduction shall accordingly be disallowed.

Income Tax Amendment – South Africa

21. (1) Section 10 of the Income Tax Act, 1962, is hereby amended—
- (a) by the deletion of paragraphs (cB), (cC), (cD), (cF), (cI), (cJ), (f) and (fA) of subsection (1);
 - (b) by the deletion of paragraph (cK) of subsection (1);
 - (c) by the insertion after paragraph (cM) of subsection (1) of the following paragraph:
 - “(cN) the receipts and accruals of any public benefit organisation which has been approved by the Commissioner in terms of section 30(3);”;
 - (d) by the substitution for paragraph (d) of subsection (1) of the following paragraph:
 - “(d) the receipts and accruals of any **[terminating building society]**—
 - (i) pension fund, provident fund, retirement annuity fund; or
 - (ii) benefit fund **[mutual savings bank]**, mutual loan association, fidelity or indemnity fund, trade union, chamber of commerce or industries (or an association of such chambers), local publicity association or non-proprietary stock exchange approved by the Commissioner subject to such conditions as the Minister may prescribe by regulation; or
 - (iii) company, society or other association of persons established to—
 - (aa) provide social and recreational amenities or facilities for the members of such company, society or other association; or
 - (bb) promote the common interests of persons (being members of such company, society or association of persons) carrying on any particular kind of business, profession or occupation, approved by the Commissioner subject to such conditions as the Minister may prescribe by regulation;”;
 - (e) by the substitution for subparagraph (iii) of paragraph (hA) of subsection (1) of the following subparagraph:
 - “(iii) for the purposes of this paragraph, so much of any dividend as has been distributed by any unit portfolio constituting a company in terms of paragraph (e)(i) of the definition of ‘company’ in section 1 out of interest derived by such unit portfolio which is exempt from tax in the hands of such unit portfolio under the provisions of paragraph (iA), shall be deemed to be interest;”;
 - (f) by the substitution for subparagraph (xv) of paragraph (i) of subsection (1) of the following subparagraph:

“(xv) in the case of any taxpayer who is a natural person, so much of the aggregate of any dividends and interest received by or accrued to him which [is] are not otherwise exempt from tax, as does not during the year of assessment exceed [the amount of R2 000]—

(2) (a) Subsection (1)(a), (c) and (d) shall come into operation on a date fixed by the President by proclamation in the *Gazette*: Provided that any company, society, trust, institution, union, chamber, exchange, other association of persons or fund whose receipts and accruals were exempt from tax in terms of the provisions of paragraphs (cB), (cC), (cD), (cF), (cI), (cJ), (f) and (fA) of section 10(1) of the Income Tax, 1962, prior to the amendment thereof by this section, which company, society, trust, institution, union, chamber, exchange, other association of persons or fund applies for approval by the Commissioner in terms of section 10(1)(d)(ii) or (iii) or section 30 of that Act within a period of 12 months after the date so fixed by the President, or submit a written undertaking as provided for in the said section 30 within such period, shall continue to enjoy exemption until written notification by the Commissioner of his decision in terms of the said section 10(1)(d)(ii) or (iii) or section 30: Provided further that any such company, society, trust, institution, union, chamber, exchange, other association or fund, shall subject to the provisions of the said section 30—

- (i) within a period of five years after the date so fixed by the President; or
- (ii) at such time as any amendment to the constitution or other written document in terms of which it has been established is effected, whichever is sooner, submit to the Commissioner a copy of such constitution or other written instrument in terms of which it has been established.

Substitution of section 18A of Act 58 of 1962, as inserted by section 15 of Act 52 of 1970 and substituted by section 16 of Act 96 of 1981 and amended by section 14 of Act 91 of 1982, section 16 of Act 94 of 1983, section 16 of Act 121 of 1984, section 15 of Act 90 of 1988, section 17 of Act 101 of 1990, section 20 of Act 129 of 1991 and section 11 of Act 36 of 1996

24. (1) The following section is hereby substituted for Section 18A of the Income Tax Act, 1962:

“ Deduction of donations to certain public benefit organisations

18A. (1) There shall be allowed to be deducted from the taxable income of any taxpayer so much of the sum of any *bona fide* donations in cash or in kind made by such taxpayer and actually paid or transferred during the year of assessment to—

- (a) any—
 - (i) public benefit organisation approved by the Commissioner under section 30; or
 - (ii) institution, board or body contemplated in section 10(1)(cA)(i), which carries on in the Republic any public benefit activity which is determined by the Minister by notice in the *Gazette* for the purposes of this section, a copy of which shall be laid upon the table in Parliament;
- (b) any public benefit organisation approved by the Commissioner under section 30, which—
 - (i) provides funds solely to any public benefit organisation, institution, board or body contemplated in paragraph (a); and
 - (ii) during the year of assessment preceding the year of assessment of such public benefit organisation during which the donation is received, distributed or incurred the obligation to so distribute at

least 75 per cent of the funds received by or accrued to such organisation by way of donations which qualified for a deduction in terms of this section, as does not exceed the greater of—

(aa) five per cent of the taxable income of the taxpayer as calculated before allowing any deduction under this section or section 18; or

(bb) R1 000.

(2) Any claim for a deduction in respect of any donation under subsection (1) shall not be allowed unless supported by a receipt issued by the public benefit organisation, institution, board or body concerned, on which the following details are given, namely—

(a) the reference number of the public benefit organisation, institution, board or body issued by the Commissioner for the purposes of this section;

(b) the date of the receipt of the donation;

(c) the name of the public benefit organisation, institution, board or body which received the donation, together with an address to which enquiries may be directed in connection therewith;

(d) the name and address of the donor;

(e) the amount of the donation or the nature of the donation (if not made in cash);

(f) a certification to the effect that the receipt is issued for the purposes of section 18A of the Income Tax Act, 1962, and that the donation has been or will be used exclusively for the object of the public benefit organisation, institution, board or body concerned.

(3) If any deduction is claimed by any taxpayer under the provisions of subsection (1) in respect of any donation of property in kind, the amount of such deduction shall be deemed to be an amount equal to—

(a) where such property constitutes trading stock of the taxpayer (including any livestock or produce in respect of which the provisions of paragraph 11 of the First Schedule are applicable), the amount which has been taken into account for the purposes of section 22(8) or, in the case of such livestock or produce, the said paragraph 11, in relation to the donation of such property; or

(b) where such property (other than trading stock) constitutes an asset used by the taxpayer for the purposes of his trade, the cost to the taxpayer of such property less any allowance (other than any investment allowance) allowed to be deducted from the income of the taxpayer under the provisions of this Act in respect of that asset; or

(c) where such property does not constitute trading stock of the taxpayer or an asset used by him for the purposes of his trade, the cost to the taxpayer of such asset, less, in the case of a movable asset which has deteriorated in condition by reason of use or other causes, a depreciation allowance calculated in the manner contemplated in section 8(5)(bB)(i); or

(d) where such property is purchased, manufactured, erected, assembled, installed or constructed by or on behalf of the taxpayer in order to form the subject of the said donation, the cost to the taxpayer of such property.

(4) The provisions of subsections (9) and (10) of section 30 shall apply *mutatis mutandis* in respect of any institution, board or body contemplated in subsection (1)(a).

(5) If the Commissioner has reasonable grounds for believing that any person who is in a fiduciary capacity responsible for the management or control of the income or assets of any public benefit organisation, institution, board or body has with intent—

(a) in any material way failed to ensure that the objects for which the public benefit organisation, institution, board or body was established are carried out or has expended moneys belonging to the public benefit organisation, institution, board or body for the purposes not covered by such objects; or
(b) issued or allowed a receipt to be issued to any taxpayer for the purposes of this section in respect of any fees or other emoluments payable to such organisation, institution, board or body by such taxpayer, the Commissioner may by notice in writing addressed to that person direct that donations to such fund shall not qualify for deduction under the provisions of this section in respect of any year of assessment specified in such notice, and any claim by any taxpayer for such deduction shall accordingly be disallowed.”.

(2) Subsection (1) shall in so far as it—

(a) determines the limit of the deduction as contemplated in section 18A(1), be deemed to have come into operation on 1 March 2000, and shall apply in respect of years of assessment commencing on or after that date; and
(b) amends the rest of section 18A, come into operation on a date fixed by the President by proclamation in the *Gazette*.

(3) The public benefit activities determined by the Minister of Finance by notice in the *Gazette* as contemplated in section 18A(1)(a) of the Income Tax Act, 1962, shall be incorporated into that Act within a period of 12 months after the date fixed by the President in terms of subsection (2)(b).

Insertion of section 30 in Act 58 of 1962

35. (1) The following section is hereby inserted after section 29A of the Income Tax act, 1962:

“ Public benefit organisations

30. (1) For the purposes of this Act, ‘public benefit activity’ means—

(a) any activity determined by the Minister in terms of subsection (2); and
(b) the providing of funds to—

- (i) any public benefit organisation which has been approved in terms of this section;
- (ii) any institution, board or body contemplated in section 10(1)(cA)(i), of which at least 75 per cent of its resources are applied in the furtherance of a public benefit activity contemplated in paragraph (a); or
- (iii) any association of persons carrying on one or more such public benefit activity in the Republic:

‘public benefit organisation’ means any organisation of a public character—

(a) which is a company formed and incorporated under section 21 of the Companies Act, 1973 (Act No. 61 of 1973), or a trust or an association of persons; and

(b) of which the sole object is—

- (i) subject to the provisions of subsection (3)(b)(iv), to carry on one or more public benefit activities in a non-profit manner;
- (ii) to carry out all such activities (or substantially the whole thereof) in the Republic, unless the Minister, having regard to the circumstances of the case, directs otherwise.

(2) (a) The Minister shall, by notice in the *Gazette*, determine any activity which is of a philanthropic and benevolent nature, having regard to the needs, interests and well-being of the general public for the purposes of this section.

(b) A copy of the notice contemplated in paragraph (a) shall be laid upon the Table in Parliament as soon as practicable.

(3) The Commissioner shall, for the purposes of this Act, approve a public benefit organisation which—

(a) complies with such conditions as the Minister may prescribe by way of regulation to ensure that the activities and resources of such organisation are directed in the furtherance of its object;

(b) has submitted to the Commissioner a copy of the constitution, will or other written instrument under which it has been established and in terms of which it is—

(i) required to have at least three persons, who are not connected persons in relation to each other, to accept the fiduciary responsibility of such organisation;

(ii) prohibited from distributing any of its funds to any person (otherwise than in the course of undertaking any public benefit activity) and is required to utilise its funds solely for the object for which it has been established, or to invest such funds—

(aa) with a financial institution as defined in section 1 of the Financial Institutions (Investment of Funds) Act, 1984 (Act No. 39 of 1984);

(bb) in securities listed on a stock exchange as defined in section 1 of the Stock Exchanges Control Act, 1985 (Act No. 1 of 1985);
or

(cc) in such other prudent investments in financial instruments and assets as the Commissioner may determine after consultation with the Executive Officer of the Financial Services Board and the Director of Non-Profit Organisations:

Provided that the provisions of this subparagraph shall not prohibit any such organisation from retaining any investment (other than any investment in the form of a business undertaking or trading activity or asset which is used in such business undertaking or trading activity) in the form that it was acquired by way of donation, bequest or inheritance;

(iii) required on dissolution to transfer its assets to any similar public benefit organisation which has been approved in terms of this section;

(iv) prohibited from carrying on any business undertaking or trading activity, otherwise than to the extent that—

(aa) the gross income derived from such business undertaking or trading activity does not exceed the greater of—

(A) 15 per cent of the gross receipts of such public benefit organisation; or

(B) R25 000;

(bb) the undertaking or activity is—

(A) integral and directly related to the sole object of such public benefit organisation; and

(B) carried out or conducted on a basis substantially the whole of which is directed towards the recovery of cost and which would not result in unfair competition in

relation to taxable entities;

(cc) the undertaking or activity, if not integral and directly related to the sole object of such public benefit organisation as contemplated in item (bb), is of an occasional nature and undertaken substantially with assistance on a voluntary basis without compensation; or

(dd) the undertaking or activity is approved by the Minister by notice in the *Gazette*, having regard to—

(A) the scope and benevolent nature of the undertaking or activity;

(B) the direct connection and interrelationship of the undertaking or activity with the sole purpose of the public benefit organisation;

(C) the profitability of the undertaking or activity; and

(D) the level of economic distortion that may be caused by the tax exempt status of the public benefit organisation carrying out the undertaking or activity;

(v) prohibited from accepting any donation which is revocable at the instance of the donor for reasons other than a material failure to conform to the designated purposes and conditions of such donation, including any misrepresentation with regard to the tax deductibility thereof in terms of section 18A: Provided that a donor may not impose conditions which could enable such donor or any connected person in relation to such donor to derive some direct or indirect benefit from the application of such donation;

(vi) required to submit to the Commissioner a copy of any amendment to the constitution, will or other written instrument under which it was established;

(c) the Commissioner is satisfied is or was not knowingly a party to, or does not knowingly permit, or has not knowingly permitted, itself to be used as part of any transaction, operation or scheme of which the sole or main purpose is or was the reduction, postponement or avoidance of liability for any tax, duty or levy which, but for such transaction, operation or scheme, would have been or would have become payable by any person under this Act or any other Act administered by the Commissioner;

(d) has not paid any remuneration to any employee, office bearer, member or other person which is excessive, having regard to what is generally considered reasonable in the sector and in relation to the service rendered;

(e) complies with such reporting requirements as may be determined by the Commissioner;

(f) the Commissioner is satisfied that, in the case of any public benefit organisation which provides funds to any association of persons contemplated in paragraph (b)(iii) of the definition of 'public benefit activity', has taken reasonable steps to ensure that the funds are utilised for the purpose for which it has been provided; and

(g) has, within such period as the Commissioner may determine, been registered in terms of section 13(5) of the Non-profit Organisations Act, 1997 (Act No. 71 of 1997), and complied with any other requirements imposed in terms of that Act:

Provided that notwithstanding subparagraph (iv) of paragraph (b), any business undertaking or trading activity, or asset used in such undertaking or activity, acquired by such organisation before 1 January

2001 by way of donation, bequest or inheritance may be retained or continued, as the case may be, in the form so acquired for a period of five years after that date.

- (4) Where the constitution, will or other written instrument does not comply with the provisions of subsection (3)(b), it shall be deemed to so comply—
- (a) in the case of a public benefit organisation established under the terms of a will, or under a constitution or other written instrument which cannot be amended to comply with the said subsection; or
 - (b) in any other case, for a period not exceeding five years, if the person responsible in a fiduciary capacity for the funds and assets of such organisation furnishes the Commissioner with a written undertaking that such organisation will be administered in compliance with the provisions of this section.
- (5) Where the Commissioner is—
- (a) satisfied that any public benefit organisation approved under subsection (3) has during any year of assessment in any material respect; or
 - (b) during any year of assessment satisfied that any such public benefit organisation has on a continuous or repetitive basis, failed to comply with the provisions of this section, or the constitution, will or other written instrument under which it is established to the extent that it relates to the provisions of this section, he may after due notice withdraw his approval of the organisation with effect from the commencement of that year of assessment.
- (6) Where the Commissioner has so withdrawn his approval of such organisation, such organisation shall, within three months or such longer period as the Commissioner may allow after the date of such withdrawal, transfer, or take reasonable steps to transfer, its remaining assets to any other organisation which is—
- (a) approved in terms of this section; and
 - (b) not a connected person in relation to such organisation.
- (7) Where any such organisation fails so to transfer, or so to take reasonable steps to transfer, its remaining assets, the accumulated net revenue which has not been distributed in terms of this section shall for the purposes of this Act be deemed to be an amount of taxable income which accrued to such organisation during the year of assessment referred to in subsection (5).
- (8) The provisions of this section shall not, if the Commissioner is satisfied that the non-compliance giving rise to the withdrawal contemplated in subsection (5) has been rectified, preclude any such organisation from applying for approval in terms of this section in the year of assessment following the year of assessment during which the approval was so withdrawn by the Commissioner.
- (9) Any books of account, records or other documents relating to any approved public benefit organisation shall—
- (a) where kept in book form, be retained and carefully preserved by any person in control of such organisation for a period of four years after the date of the last entry in any book; or
 - (b) where not kept in book form, be retained and carefully preserved by any person in control of such organisation for a period of four years after completion of the transactions, acts or operations to which they relate.
- (10) In the application of the provisions of this Act, the Commissioner may by notice in writing require any person whom the Commissioner may deem able to furnish information in regard to any approved public benefit organisation—
- (a) to answer any questions relating to such organisation; or

(b) to make available for inspection by the Commissioner or any person appointed by him, any books of account, records or other documents relating to such organisation; or

(c) to attend at the time and place appointed by the Commissioner for the purposes of producing for examination by the Commissioner or any person appointed by him, any books of account, records or other documents relating to such organisation.

(11) Any decision of the Commissioner in the exercise of his discretion under this section shall be subject to objection and appeal.

(12) Any person who is in a fiduciary capacity responsible for the management or control of the income and assets of any approved public benefit organisation who intentionally fails to comply with any provision of this section or of the constitution, will or other written instrument under which such organisation is established to the extent that it relates to the provisions of this section, shall be guilty of an offence and on conviction be liable to a fine or to imprisonment for a period not exceeding two years.”.

(2) Subsection (1) shall come into operation on a date fixed by the President by proclamation in the *Gazette*.

(3) The public benefit activities determined by the Minister by notice in the *Gazette* as contemplated in section 30(2) of the Income Tax Act, 1962, shall be incorporated into that Act within a period of 12 months after the date determined by the President in terms of subsection (2).

Amendment of section 56 of Act 58 of 1962, as amended by section 18 of Act 90 of 1964, section 25 of Act 55 of 1966, section 33 of Act 89 of 1969, section 38 of Act 85 of 1974, section 21 of Act 113 of 1977, section 13 of Act 101 of 1978, section 23 of Act 96 of 1981, section 31 of Act 94 of 1983, section 4 of Act 30 of 1984, section 28 of Act 121 of 1984, section 18 of Act 96 of 1985, section 21 of Act 85 of 1987, section 26 of Act 90 of 1988, section 28 of Act 141 of 1992, section 32 of Act 113 of 1993, section 18 of Act 36 of 1996 and section 39 of Act 30 of 1998 38.

(1) Section 56 of the Income Tax Act, 1962, is hereby amended—

(a) by the substitution for paragraph (h) of subsection (1) of the following paragraph:

“ (h) by or to any person (including any government) referred to in section 10(1)(a), (b), (cA), [(cB), (cC), (cD)](cE), [(cF), (cI), (cJ), (cL)](cN), (d) or (e) [**or (fA)**];”;

(b) by the deletion of paragraphs (i) and (j) of subsection (1).

(2) Subsection (1) shall come into operation on a date fixed by the President by proclamation in the *Gazette*, and shall apply in respect of any donation made on or after that date.