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## **THE PRESIDENCY**

No. 945

30 September 2009

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

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



**AIDS HELPLINE: 0800-123-22 Prevention is the cure**

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

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

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

To—

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

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

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

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

1. (1) Notwithstanding anything to the contrary contained in any Act administered by the Commissioner of the South African Revenue Service, in terms of the South African Revenue Service Act, 1997 (Act No. 34 of 1997), the Commissioner may, subject to subsection (5), allocate any payment made in terms of these Acts against the oldest amount of tax, duty, levy, penalty or interest outstanding at the time of the payment, other than amounts for which payment has been suspended in terms of any of those Acts. 5 10

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

(3) In the event a payment in subsection (1) is insufficient to extinguish all debts of the same age, the amount of the payment may be allocated among these debts as may be determined by the Commissioner. 15

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

(5) This section does not apply to any payment by any person in respect of the clearance of goods for home consumption in terms of the Customs and Excise Act, 1964, where such a person designates that such payment must be allocated to the duty and other charges due in terms of that Act and value-added tax due in terms of the Value-Added Tax Act, 1991 (Act No. 89 of 1991), on the goods concerned. 20

**Amendment of section 2 of Act 40 of 1949, as amended by section 1 of Act 59 of 1951, section 1 of Act 31 of 1953, section 1 of Act 32 of 1954, section 2 of Act 77 of 1964, section 1 of Act 56 of 1966, section 2 of Act 66 of 1973, section 3 of Act 88 of 1974, section 5 of Act 106 of 1980, section 3 of Act 87 of 1988, section 2 of Act 136 of 1992, section 3 of Act 97 of 1993, section 1 of Act 37 of 1995, section 9 of Act 37 of 1996, section 2 of Act 32 of 1999, section 2 of Act 30 of 2002, section 31 of Act 12 of 2003, section 1 of Act 16 of 2004, section 1 of Act 9 of 2005, section 1 of Act 31 of 2005 and section 14 of Act 9 of 2006** 25 30

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

“(3) If the Minister makes an announcement contemplated in subsection (2), that reduction or change comes into effect on the date determined by the Minister in that announcement and continues to apply for a period of [six] 12 months from that date unless Parliament passes legislation giving effect to that announcement within that period of [six] 12 months.”. 35

**Amendment of section 9A of Act 45 of 1955, as inserted by section 7 of Act 86 of 1987 and amended by section 14 of Act 60 of 2001** 40

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

“(i) after the expiration of [five years from the date of the assessment notice in terms of which any value or amount which should have been assessed to duty under such assessment was not so assessed or in terms 45

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

the currency of the Republic on the last day of that year of assessment by applying the average exchange rate for that year of assessment.”; and  
(b) by the insertion after subsection (4) of the following subsection:

“(4A) If the amount translated in accordance with subsection (4) includes a number of cents that is less than one rand, that amount must be rounded off to the nearest rand.”.

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

8. Section 69 of the Income Tax Act, 1962, is hereby amended by the substitution in subsection (2)(a) for item (i) of the following item:

“(i) the full names [and], address and income tax reference number, if that number is available; and”.

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

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

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

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

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

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

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

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

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

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

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

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

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