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THE PRESIDENCY

No. 721

3 July 2008

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

No. 4 of 2008: Taxation Laws Second Amendment Act, 2008.



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

GENERAL EXPLANATORY NOTE:

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

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

(English text signed by the President.)
(Assented to 28 June 2008.)

ACT

To amend the—

- Income Tax Act, 1962, so as to amend certain definitions; to delete certain obsolete provisions; to amend provisions relating to the submission of tax returns and reconciliations; to provide for the imposition of penalties; to effect textual and consequential amendments;
 - Value-Added Tax Act, 1991, so as to effect textual amendments;
 - Diamond Export Levy (Administration) Act, 2007, so as to clarify provisions relating to registration; and
 - Securities Transfer Tax Administration Act, 2007, so as to effect a textual correction;
- and to provide for matters connected therewith.

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

Amendment of section 3 of Act 58 of 1962, as amended by section 3 of Act 141 of 1992, section 3 of Act 21 of 1994, section 3 of Act 21 of 1995, section 20 of Act 30 of 1998, section 3 of Act 59 of 2000, section 6 of Act 5 of 2001, section 4 of Act 19 of 2001, section 18 of Act 60 of 2001, section 7 of Act 74 of 2002, section 13 of Act 45 of 2003, section 4 of Act 16 of 2004, section 2 of Act 21 of 2006, section 1 of Act 9 of 2007 and section 3 of Act 36 of 2007

1. Section 3 of the Income Tax Act, 1962, is hereby amended—
 - (a) by the substitution in subsection (4) for paragraph (a) of the following paragraph:

“(a) the definitions of ‘benefit fund’, ‘pension fund’, ‘pension preservation fund’, ‘provident fund’, ‘provident preservation fund’, ‘retirement annuity fund’ and ‘spouse’ in section 1:” and
 - (b) by the substitution in subsection (5)(a) for the words preceding subparagraph (i) of the following words:

“to approve a fund contemplated in the definition of a ‘pension fund’, ‘pension preservation fund’, ‘provident fund’, ‘provident preservation fund’ or ‘retirement fund’, subject to—”.

Amendment of section 10 of Act 58 of 1962, as amended by section 8 of Act 90 of 1962, section 7 of Act 72 of 1963, section 8 of Act 90 of 1964, section 10 of Act 88 of 1965, section 11 of Act 55 of 1966, section 10 of Act 95 of 1967, section 8 of Act 76 of 1968, section 13 of Act 89 of 1969, section 9 of Act 52 of 1970, section 9 of Act 88 of 1971, section 7 of Act 90 of 1972, section 7 of Act 65 of 1973, section 10 of Act 85 of 1974, section 8 of Act 69 of 1975, section 9 of Act 103 of 1976, section 8 of Act 113 of 1977, section 4 of Act 101 of 1978, section 7 of Act 104 of 1979, section 7 of Act 104 of 1980, section 8 of Act 96 of 1981, section 6 of Act 91 of 1982, section 9 of Act 94 of 1983, section 10 of Act 121 of 1984, section 6 of Act 96 of 1985, section 7 of Act 65 of 1986, section 3 of Act 108 of 1986, section 9 of Act 85 of 1987, section 7 of Act 90 of 1988, section 36 of Act 9 of 1989, section 7 of Act 70 of 1989, section 10 of Act 101 of 1990, section 12 of Act 129 of 1991, section 10 of Act 141 of 1992, section 7 of Act 113 of 1993, section 4 of Act 140 of 1993, section 9 of Act 21 of 1994, section 10 of Act 21 of 1995, section 8 of Act 36 of 1996, section 9 of Act 46 of 1996, section 10 of Act 28 of 1997, section 29 of Act 30 of 1998, section 18 of Act 53 of 1999, section 21 of Act 30 of 2000, section 13 of Act 59 of 2000, sections 9 and 78 of Act 19 of 2001, section 26 of Act 60 of 2001, section 13 of Act 30 of 2002, section 18 of Act 74 of 2002, section 36 of Act 12 of 2003, section 26 of Act 45 of 2003, section 8 of Act 16 of 2004, section 14 of Act 32 of 2004, section 5 of Act 9 of 2005, section 16 of Act 31 of 2005, section 23 of Act 9 of 2006, section 10 of Act 20 of 2006, section 10 of Act 8 of 2007, section 2 of Act 9 of 2007 and section 16 of Act 35 of 2007

2. (1) Section 10 of the Income Tax Act, 1962, is hereby amended by the deletion in subsection (2) of paragraph (a).

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

Amendment of section 13 of Act 58 of 1962, as amended by section 12 of Act 90 of 1962, section 5 of Act 6 of 1963, section 11 of Act 72 of 1963, section 12 of Act 90 of 1964, section 14 of Act 88 of 1965, section 17 of Act 55 of 1966, section 13 of Act 52 of 1970, section 13 of Act 88 of 1971, section 12 of Act 90 of 1972, section 13 of Act 65 of 1973, section 16 of Act 85 of 1974, section 13 of Act 69 of 1975, section 7 of Act 101 of 1978, section 10 of Act 104 of 1980, section 14 of Act 96 of 1981, section 12 of Act 85 of 1987, section 12 of Act 90 of 1988, section 12 of Act 113 of 1993, section 11 of Act 46 of 1996, section 22 of Act 53 of 1999, section 20 of Act 59 of 2000, section 13 of Act 19 of 2001 and section 30 of Act 60 of 2001

3. (1) Section 13 of the Income Tax Act, 1962, is hereby amended by the substitution for subsection (3) of the following subsection:

“(3) If in any year of assessment there falls to be included in a taxpayer’s income in terms of paragraph (a) of section 8(4) an amount which has been recovered or recouped in respect of any allowance made under subsection (1) or the corresponding provisions of any previous Income Tax Act in respect of any building or improvements, such portion of the amount so recovered or recouped as is set off against the cost of a further building as hereinafter provided shall, notwithstanding the provisions of the said paragraph, at the option of the taxpayer [to be notified by him in writing to the Commissioner when submitting his return of income for the year of assessment during which the recovery or recoupment occurred.] and provided [he] the taxpayer purchases or erects within twelve months or such further period as the Commissioner may allow from the date on which the event giving rise to the recovery or recoupment occurred, any other building to which the provisions of subsection (1) apply, not be included in [his] the taxpayer’s income for [such] that year of assessment, but shall be set off against so much of the cost to [him] the taxpayer of [such] that further building purchased or erected by [him] the taxpayer as remains after the deduction of any portion of such cost in respect of which an allowance has been granted to the taxpayer under section 11(g), whether in the current or any previous year of assessment.”.

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

Amendment of section 13bis of Act 58 of 1962, as inserted by section 15 of Act 88 of 1965 and amended by section 18 of Act 55 of 1966, section 14 of Act 95 of 1967, section 14 of Act 88 of 1971, section 14 of Act 69 of 1975, section 13 of Act 94 of 1983, section 46 of Act 97 of 1986, section 13 of Act 90 of 1988, section 13 of Act 113 of 1993, section 12 of Act 21 of 1994 and section 21 of Act 59 of 2000

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4. (1) Section 13bis of the Income Tax Act, 1962, is hereby amended by the substitution in subsection (6) for paragraph (a) of the following paragraph:

“(a) If in any year of assessment there falls to be included in a taxpayer’s income in terms of paragraph (a) of subsection (4) of section eight an amount which has been recovered or recouped in respect of any allowance made under the preceding provisions of this section or the provisions of subsection (1) of section thirteen, as applied by subsection (4) of that section, or the corresponding provisions of any previous Income Tax Act, in respect of any building or portion thereof or any improvements or portion thereof, so much of the amount so recovered or recouped as is set off against the cost of a further building as hereinafter provided shall, notwithstanding the provisions of the said paragraph, at the option of the taxpayer [to be notified by him in writing to the Commissioner when submitting his return of income for the year of assessment during which the recovery or recoupment occurred,] and provided [he] the taxpayer erects within twelve months or such further period as the Commissioner may allow from the date on which the event giving rise to the recovery or recoupment occurred, any other building in respect of the cost of which an allowance is made under the preceding provisions of this section, not be included in [his] the taxpayer’s income for [such] that year of assessment, but shall be set off against so much of the cost to [him] the taxpayer of such further building erected by [him] the taxpayer as remains after the deduction of any portion of [such] that cost in respect of which an allowance has been granted to the taxpayer under paragraph (g) of section eleven, whether in the current or any previous year of assessment.”.

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

Amendment of section 13quat of Act 58 of 1962, as inserted by section 33 of Act 45 of 2003 and amended by section 12 of Act 16 of 2004, section 19 of Act 32 of 2004, section 23 of Act 31 of 2005 and section 16 of Act 8 of 2007

5. (1) Section 13quat of the Income Tax Act, 1962, is hereby amended by the substitution in subsection (4) for the words preceding paragraph (a) of the following words:

“No deduction shall be allowed under this section, unless the taxpayer has [together with the tax return for the year of assessment in which the deduction is claimed under subsection (3)(a)(i) or (b)(i), provided to the Commissioner] obtained or determined the following for submission to the Commissioner in such form and within such time as may be prescribed by the Commissioner—”.

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

Amendment of section 18A of Act 58 of 1962, as substituted by section 24 of Act 30 of 2000 and amended by section 72 of Act 59 of 2000, section 20 of Act 30 of 2002, section 34 of Act 45 of 2003, section 26 of Act 31 of 2005, section 16 of Act 20 of 2006, section 18 of Act 8 of 2007 and section 31 of act 35 of 2007

6. (1) Section 18A of the Income Tax Act, 1962, is hereby amended by the substitution for subsection (2B) of the following subsection:

“(2B) A public benefit organisation, institution, board or body contemplated in subsection (2A), must [together with its annual return for a year of assessment submit to the Commissioner] obtain and retain an audit certificate confirming that

all donations received or accrued in that year in respect of which receipts were issued in terms of subsection (2), were utilised in the manner contemplated in subsection (2A).”

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

Amendment of section 27 of Act 58 of 1962, as amended by section 17 of Act 113 of 1977, section 11 of Act 101 of 1978, section 19 of Act 104 of 1980, section 21 of Act 96 of 1981, section 15 of Act 96 of 1985, section 18 of Act 85 of 1987, section 22 of Act 90 of 1988, section 28 of Act 129 of 1991, section 23 of Act 141 of 1992, section 23 of Act 113 of 1993, section 15 of Act 36 of 1996, section 34 of Act 59 of 2000 and section 29 of Act 74 of 2002

7. (1) Section 27 of the Income Tax Act, 1962, is hereby amended by the substitution for subsection (4) of the following subsection:

“(4) If in any year of assessment there falls to be included in an agricultural co-operative’s income in terms of paragraph (a) of section 8(4) an amount, which has been recovered or recouped, in respect of any allowance made under subsection (2)(b) in respect of any building or improvements, such portion of the amount so recovered or recouped as is set off against the cost of a further building as hereinafter provided shall, notwithstanding the provisions of the said paragraph, at the option of [such] that co-operative[, to be notified by it in writing to the Commissioner when submitting its return of income for the year of assessment during which the recovery or recoupment occurred,] and provided it erects within twelve months or such further period as the Commissioner may allow from the date on which the event giving rise to the recovery or recoupment occurred, any other building to which the provisions of subsection (2)(b) apply, not be included in its income for [such] that year of assessment, but shall be set off against so much of the cost to it of [such] that further building erected by it as remains after the deduction of any portion of [such] that cost in respect of which an allowance has been granted to [such] that co-operative under section 11(g), whether in the current or any previous year of assessment.”

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

Amendment of section 66 of Act 58 of 1962, as amended by section 10 of Act 6 of 1963, section 19 of Act 90 of 1964, section 27 of Act 88 of 1971, section 22 of Act 91 of 1982, section 19 of Act 65 of 1986, section 23 of Act 85 of 1987, section 37 of Act 101 of 1990, section 26 of Act 21 of 1994, section 41 of Act 30 of 2000, section 19 of Act 5 of 2001, section 17 of Act 19 of 2001, section 26 of Act 30 of 2002, section 38 of Act 74 of 2002, section 61 of Act 45 of 2003, section 18 of Act 16 of 2004, section 7 of Act 34 of 2004 and section 9 of Act 32 of 2005

8. (1) Section 66 of the Income Tax Act, 1962, is hereby amended—

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

“(7A) The Commissioner may, in the case of any return furnished by a taxpayer or a taxpayer’s authorised agent in electronic format, accept electronic or digital signatures as valid signatures [for the purposes of subsection (7)].”;

(b) by the substitution for subsection (13B) of the following subsection:

“(13B) For the purposes of subsections (13), (13A), (13C) and (14), the word ‘income’ must be construed as including any aggregate capital gain or aggregate capital loss.”; and

(c) by the insertion after section 13B of the following subsection:

“(13C) Where—

(a) a company does not close its accounts on the last day of its financial year, the Commissioner may accept accounts in respect of the taxpayer’s income drawn to a fixed day approved by the Commissioner, which day shall fall within 10 days before or after the last day of the financial year;

(b) such accounts are drawn to a date later than the last day of the year of assessment, no further regard shall be had to the income