Government Gazette 15167

STATE PRESIDENT'S OFFICE

No. 1859.
13 October 1993

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

No. 140 of 1993: Revenue Laws Amendment Act, 1993

GENERAL EXPLANATORY NOTE:

Words in bold type indicate omissions from existing enactments.

Words in italics indicate insertions in existing enactments.

ACT

To amend the Insurance Act, 1943, so as to rectify the Afrikaans text of certain definitions; to amend the Estate Duty Act, 1955, so as to insert a definition; to amend the Income Tax Act, 1962, so as to make further provision regarding exemptions from taxation; to make certain textual alterations; to amend or substitute certain definitions; to make further provision regarding secondary tax on companies; and to amend provisions regarding the payment of tax pending an appeal; to amend the Stamp Duties Act, 1968, so as to provide for an exemption; to amend the Value-Added Tax Act, 1991, so as to alter the provisions regarding the payment of tax pending an appeal and the provisions regarding the payment of interest on delayed refunds; to amend the Income Tax Act, 1993, so as to make further provision with regard to unbundling transactions; and to provide for matters connected therewith.

(Afrikaans text signed by the State President.)
(Assented to 1 October 1993.)

BE IT ENACTED by the State President and the Parliament of the Republic of South Africa, as follows:-

Amendment of section 1 of Act 27 of 1943, as amended by section 2 of Act 73 of 1951, section 39 of Act 24 of 1956, section 50 of Act 25 of 1956, section 1 of Act 79 of 1959, section 1 of Act 10 of 1965, section 1 of Act 41 of 1966, section 1 of Act 65 of 1968, section 1 of Act 39 of 1969, section 1 of Act 91 of 1972, section 1 of Act 101 of 1976, section 1 of Act 94 of 1977, section 1 of Act 80 of 1978, section 1 of Act 103 of 1979,

section 1 of Act 99 of 1980, section 1 of Act 36 of 1981, section 1 of Act 86 of 1984, section 1 of Act 106 of 1985, section 1 of Act 54 of 1989, section 29 of Act 97 of 1990, section 1 of Act 83 of 1992, section 1 of Act 104 of 1993 and section 63 of Act 113 of 1993

1. (1) The Afrikaans text of section 1 of the Insurance Act, 1943, is hereby amended-

(a) by the substitution in subsection (1) for the definition of "amortisasiebesigheid" of the following definition:

"`amortisasiebesigheid' beteken **'n polis, uitgesonderd 'n lewenspolis of 'n tuisdienspolis, waarkragtens in versekeraar in ruil vir die betaling of belofte van betaling van 'n som of somme geld 'n verpligting aanvaar om aan 'n persoon 'n som of somme geld to betaal op 'n bepaalde of bepaalbare toekomstige datum** *die besigheid om verpligtinge kragtens amortisasiepolisse to aanvaar*;"; and

(b) by the substitution in subsection (1) for the definition of "amortisasiepolis" of the following definition:

"'amortisasiepolis' beteken 'n polis, uitgesonderd 'n lewenspolis of 'n tuisdienspolis, waarkragtens 'n versekeraar in ruil vir die betaling of belofte van betaling van 'n som of somme geld 'n verpligting aanvaar om aan 'n persoon 'n som of somme geld to betaal op 'n bepaalde of bepaalbare *toekomstige* datum **of na die verloop van die tydperk soos bepaal by of kragtens artikel 59B(1) vanaf die datum waarop die enigste of eerste som geld aan die versekeraar betaalbaar geword bet kragtens die polis**;".

(2) Subsection (1) shall be deemed to have come into operation on 20 July 1993.

Amendment of section 1 of Act 45 of 1955, as amended by section 1 of Act 59 of 1957, section 1 of Act 65 of 1960, section 7 of Act 77 of 1964, section 3 of Act 92 of 1971, section 9 of Act 106 of 1980, section 5 of Act 86 of 1987, section 7 of Act 87 of 1988 and section 6 of Act 97 of 1993

2. (1) Section 1 of the Estate Duty Act, 1955, is hereby amended by the insertion after the definition of "fair market value" of the following definition:

"*'family company', in relation to a deceased person, means an company (other than a company whose shares are quoted on a recognized stock exchange) which at any relevant time was controlled or capable of being controlled directly or indirectly, whether through a majority of the shares thereof or any other interest therein or in any other manner*

whatsoever, by the deceased or by the deceased and one or more of his relatives;".

(2) Subsection (1) shall be deemed to have come into operation on 9 July 1993.

Amendment of section 9 of Act 58 of 1962, as amended by section 7 of Act 90 of 1962, section 6 of Act 72 of 1963, section 7 of Act 90 of 1964, section 9 of Act 95 of 1967, section 12 of Act 89 of 1969, section 6 of Act 65 of 1973, section 9 of Act 85 of 1974, section 8 of Act 103 of 1976, section 9 of Act 121 of 1984, section 5 of Act 96 of 1985, section 6 of Act 65 of 1986, section 2 of Act 108 of 1986, section 7 of Act 85 of 1987, section 10 of Act 129 of 1991, section 7 of Act 141 of 1992 and section 5 of Act 113 of 1993

3. (1) Section 9 of the Income Tax Act, 1962, is hereby amended by the deletion in subsection (1) of the proviso to paragraph (f).

(2) Subsection (1) shall be deemed to have come into operation as from the commencement of the years of assessment ending on or after 1 January 1994.

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 and section 7 of Act 113 of 1993

4. (1) Section 10 of the Income Tax Act, 1962, is hereby amended by the insertion in subsection (1) after paragraph (nH) of the following paragraph:

"*(o) an remuneration derived b an person as an officer or crew member of a ship engaged in the international transportation for reward of passengers or goods if such person was outside the Republic for a period or periods exceeding 183 days in aggregate during the year of assessment*;".

(2) Subsection (1) shall be deemed to have come into operation as from the commencement of the years of assessment ending on or after 1 January 1994.

Amendment of section 11 of Act 58 of 1962, as amended by section 9 of Act 90 of 1962, section 8 of Act 72 of 1963, section 9 of Act 90 of 1964, section 11 of Act 88 of 1965, section 12 of Act 55 of 1966, section 11 of Act 95 of 1967, section 9 of Act 76 of 1968, section 14 of Act 89 of 1969, section 10 of Act 52 of 1970, section 10 of Act 88 of 1971, section 8 of Act 90 of 1972, section 9 of Act 65 of 1973, section 12 of Act 85 of 1974, section 9 of Act 69 of 1975, section 9 of Act 113 of 1977, section 5 of Act 101 of 1978, section 8 of Act 104 of 1979, section 8 of Act 104 of 1980, section 9 of Act 96 of 1981, section 7 of Act 91 of 1982, section 10 of Act 94 of 1983, section 11 of Act 121 of 1984, section 46 of Act 97 of 1986, section 10 of Act 85 of 1987, section 8 of Act 90 of 1988, section 8 of Act 70 of 1989, section 11 of Act 101 of 1990, section 13 of Act 129 of 1991, section 11 of Act 141 of 1992 and section 9 of Act 113 of 1993

5. (1) Section 11 of the Income Tax Act, 1962, is hereby amended

(a) by the substitution in the proviso to paragraph (e) for paragraph (viii) of the following paragraph:

"(viii) where in respect of any machinery, implement, utensil or article acquired by the taxpayer on or after 21 June 1993, a deduction or allowance was previously granted to a connected person in relation to the taxpayer under this paragraph or section 12B(1) or 12C(1), or under section 27(2)(d) prior to the deletion thereof by section 28(b) of the Income Tax Act, 1991 (Act No. 129 of 1991), the allowance under this paragraph shall be calculated on *an amount not exceeding* the lesser of the cost of such machinery, implement, utensil or article to such connected person or the market value thereof as determined on the date upon which it was acquired by the taxpayer;"; and

(b) by the substitution for paragraph (dd) of the proviso to paragraph (gA) of the following paragraph:

"(dd) where any such invention, patent, design, trade mark, copyright or other property or knowledge was so acquired or obtained by the taxpayer on or after 1 July 1993 from any other person who is a resident of the Republic or a neighbouring country (or, in the case of a company, a domestic company or a company incorporated, managed or controlled in a neighbouring country), and who is a connected person in relation to the taxpayer, the allowance under this paragraph shall be calculated on *an amount not exceeding* the lesser of the cost of such invention, patent, design, trade mark, copyright or other property or knowledge to such connected

person or the market value thereof as determined on the date upon which such invention, patent, design, trade mark, copyright or other property or knowledge was acquired or obtained by the taxpayer;".

(2) (a) Subsection (1)(a) shall be deemed to have come into operation on 21 June 1993.

(b) Subsection (1)(b) shall be deemed to have come into operation on 1 July 1993.

Amendment of section 12B of Act 58 of 1962, as inserted by section 11 of Act 90 of 1988 and amended by section 13 of Act 101 of 1990 and section 10 of Act 113 of 1993

6. (1) Section 12B of the Income Tax Act, 1962, is hereby amended by the substitution in subsection (4A) for the words following paragraph (c) of the following words:

"the deduction in terms of this section shall be calculated on *an amount not exceeding* the lesser of the cost of such asset to such connected person or the market value thereof as determined on the date upon which the asset was brought into use by such person.".

(2) Subsection (1) shall be deemed to have come into operation on 21 June 1993 l and shall apply to any asset acquired on or after that date.

Amendment of section 12C of Act 58 of 1962, as inserted by section 14 of Act 101 of 1990 and amended by section 11 of Act 113 of 1993

7. (1) Section 12C of the Income Tax Act, 1962, is hereby amended by the substitution in subsection (4) for the words following paragraph (c) of the following words:

"the deduction in terms of this section shall be calculated on *an amount not exceeding* the lesser of the cost of such asset to such connected person or the market value thereof as determined on the date upon which the asset was brought into use by such person.".

(2) Subsection (1) shall be deemed to have come into operation on 21 June 1993 and shall apply to any asset acquired on or after that date.

Amendment of section 14 of Act 58 of 1962, as substituted by section 19 of Act 55 of 1966 and amended by section 17 of Act 85 of 1974, section 12 of Act 103 of 1976, section 11 of Act 104 of 1979, section 10 of Act 65 of 1986 and section 14 of Act 113 of 1993

8. (1) Section 14 of the Income Tax Act, 1962, is hereby amended by the substitution for subsection (4) of the following subsection:

"(4) Where any person is entitled to an allowance under this section in respect of any ship acquired by him on or after 21 June 1993 from a connected person, and a deduction under this section was previously granted to such connected person in respect of the ship concerned, whether in the current or any previous year of assessment, the deduction under this section shall be calculated on *an amount not exceeding* the lesser of the adjustable cost of the ship concerned to such connected person or the market value thereof as determined on the date upon which the ship was acquired by such person.".

(2) Subsection (1) shall be deemed to have come into operation on 21 June 1993.

Amendment of section 14bis of Act 58 of 1962, as inserted by section 16 of Act 88 of 1965 and amended by section 15 of Act 141 of 1992 and section 15 of Act 113 of 1993

9. (1) Section 14bis of the Income Tax Act, 1962, is hereby amended by the substitution for subsection (5) of the following subsection:

"(5) Where any person is entitled to an allowance under this section in respect of any aircraft acquired by him from a connected person, and a deduction under this section was previously granted to such connected person in respect of such aircraft, whether in the current or any previous year of assessment, the deduction under this section shall be calculated on *an amount not exceeding* the lesser of the cost of the aircraft concerned to such connected person or the market value thereof as determined on the date upon which the aircraft was brought into use by such person.".

(2) Subsection (1) shall be deemed to have come into operation on 21 June 1993 and shall apply to any aircraft acquired on or after that date.

Amendment of section 23D of Act 58 of 1962, as inserted by section 19 of Act 113 of 1993

10. (1) Section 23D of the Income Tax Act, 1962, is hereby amended by the substitution for subsection (2) of the following subsection:

"(2) Where any asset which has been let by a taxpayer to a lessee was acquired by the taxpayer on or after 21 June 1993, whether directly or indirectly from such lessee or a person who is a connected person in relation to such lessee, and a deduction was previously granted to such lessee or such connected person under section 11(e), 12B, 12C, 13, 14 or 14bis or section 12 prior to the repeal thereof by section 16 of the Income Tax Act, 1991 (Act No. 129 of 1991), or section 27(2)(d) prior to the deletion thereof by section 28(b) of that Act, whether in the

current or any previous year of assessment, any deduction or allowance claimed by such lessor in respect of such asset in terms of section 11(e) or (o), *12C*, 13, 14 or 14bis shall be calculated on *an amount not exceeding* the lesser of the cost or adjustable cost, as the case may be, of such asset to such lessee or such connected person or the market value thereof as determined on the date upon which the asset was acquired by the taxpayer.".

(2) Subsection (1) shall be deemed to have come into operation on 21 June 1993.

Amendment of section 241 of Act 58 of 1962, as inserted by section 21 of Act 113 of 1993

11. (1) Section 241 of the Income Tax Act, 1962, is hereby amended-

(a) by the substitution in subsection (1) for paragraph (c) of the definition of "realised" of the following paragraph:

"(c) a foreign currency option contract, when payment is received or made in respect of the right in terms of such foreign currency option contract having been exercised, or when such foreign currency option contract expires without such right having been exercised, *or when such foreign currency option contract is disposed of*;";

(b) by the addition in subsection (1) to subparagraph (iii) of paragraph (c) of the definition of "ruling exchange rate" of the following proviso:

"Provided that where such foreign currency option contract is realised by the disposal thereof, the rate shall be obtained by dividing the amount received or accrued as a result of the disposal of such foreign currency option contract, by the foreign currency amount as specified in such foreign currency option contract;";

(c) by the deletion in subsection (1) of subparagraph (iv) of paragraph (c) of the definition of "ruling exchange rate";

(d) by the substitution in subsection (7) for the words preceding paragraph (a) of the following words:

"Notwithstanding the provisions of subsections (2) and (4), but subject to the provisions of **section** *sections 36 and* 37E-"; and

(e) by the substitution for paragraphs (b) and (c) of subsection (7) of the following paragraphs, respectively:

"(b) any exchange difference arising from a forward exchange contract or a foreign currency option contract which has been entered into by a person contemplated in paragraph (a), *to the extent to which such forward exchange contract or foreign currency option contract is entered into* to serve as a hedge in respect of a loan *or* advance *obtained or to be obtained* or *a* debt *incurred or to be incurred for the utilization thereof as* contemplated in paragraph (a) **to the extent to which the amount of such exchange difference does not exceed the amount of the exchange difference contemplated in paragraph (a)**; and

(c) any premium or other consideration paid or payable in respect of or in terms of a foreign currency option contract entered into or acquired by a person contemplated in paragraph (a), *to the extent to which such foreign currency option contract is entered into or obtained* in order to serve as a hedge in respect of a loan *or* advance *obtained or to be obtained* or *a* debt *incurred or to be incurred for the utilization thereof as* contemplated in paragraph (a),".

(2) Subsection (1) shall be deemed to have come into operation as from the commencement of the years of assessment ending on or after 1 January 1994.

Amendment of section 64B of Act 58 of 1962, as inserted by section 34 of Act 113 of 1993

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

(a) by the addition in subsection (5) to paragraph (a) of the following proviso:

"Provided that the provisions of this paragraph shall not apply to a company (other than a company referred to in section 10(1)(s)) which is exempt from tax under the said provisions solely because it derives gross income of a particular nature;"; and

(b) by the substitution for paragraph (c) of subsection (5) of the following paragraph:

"(c) so much of any dividend distributed in the course of the liquidation or winding up of a company, *or in anticipation of the deregistration of a company under a scheme for the rationalization of a group of companies in terms of section 48 of the Taxation Laws Amendment Act, 1988 (Act No. 87 of 1988),* as is shown by the company to be a distribution of profits derived during any year of

assessment which ended not later than 31 March 1993, other than any such profits derived by way of the revaluation of trading stock held by such company; and".

(2) Subsection (1) shall be deemed to have come into operation on 17 March 1993.

Amendment of section 64C of Act 58 of 1962, as inserted by section 34 of Act 113 of 1993

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

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

"(a) where the distribution of such amount constitutes a dividend or would have constituted a dividend but for the provisions of paragraphs (e) to **h** *(i)*, inclusive, of the definition of `dividend' in section 1;";

(b) by the substitution for paragraph (e) of subsection (4) of the following paragraph:

"(e) to any loan granted to the recipient if the recipient is an employee of the company *or an associated institution contemplated in paragraph 1 of the Seventh Schedule in relation to the company* and such loan is granted under, and in compliance with the normal terms and conditions of, a loan scheme generally available to employees of the company *or of the associated institution* who are not shareholders;"; and

(c) by the substitution for paragraph (h) of subsection (4) of the following paragraph:

"(h) to so much of any amount distributed as constitutes a profit of a capital nature, if the liquidation or winding up of the distributing company *has commenced or* is commenced within *six months after the date on which such amount is so distributed or* such *further* reasonable period as the Commissioner may allow.".

(2) Subsection (1) shall be deemed to have come into operation on 17 March 1993.

Amendment of section 88 of Act 58 of 1962, as substituted by section 40 of Act 113 of 1993

14. (1) Section 88 of the Income Tax Act, 1962, is hereby amended by

the addition of the following subsection, the existing section becoming subsection (1):

"(2) The payment by the Commissioner of any interest under the provisions of this section shall be deemed to be a drawback from revenue charged to the State Revenue Fund.".

(2) Subsection (1) shall be deemed to have come into operation on 1 April 1993.

Amendment of section 89quat of Act 58 of 1962, as inserted by section 34 of Act 121 of 1984, substituted by section 22 of Act 65 of 1986 and amended by section 18 of Act 70 of 1989 and section 42 of Act 113 of 1993

15. (1) Section 89quat of the Income Tax Act, 1962, is hereby amended by the addition of the following subsection:

"(6) The payment by the Commissioner of any interest under the provisions of this section shall be deemed to be a drawback from revenue charged to the State Revenue Fund.".

(2) Subsection (1) shall be deemed to have come into operation on 1 April 1993.

Amendment of paragraph 1 of 4th Schedule to Act 58 of 1962, as added by section 19 of Act 6 of 1963 and amended by section 22 of Act 72 of 1963, section 44 of Act 89 of 1969, section 24 of Act 52 of 1970, section 37 of Act 88 of 1971, section 47 of Act 85 of 1974, section 6 of Act 30 of 1984, section 38 of Act 121 of 1984, section 20 of Act 70 of 1989, section 44 of Act 101 of 1990, section 44 of Act 129 of 1991, section 33 of Act 141 of 1992 and section 48 of Act 113 of 1993

16. Paragraph 1 of the Fourth Schedule to the Income Tax Act, 1962, is hereby amended by the substitution for paragraph (c) of the definition of "remuneration" of the following paragraph:

"(c) 35 per cent of the amount of any allowance or advance in respect of transport expenses referred to in section 8(1)(b), other than any such allowance or advance contemplated in section 8(1)(b)(iii) which is based on the actual distance travelled by the recipient, and which is calculated at a rate per kilometre which does not exceed the appropriate rate per kilometre fixed by the Minister of Finance under the said **item** *section 8(1)(b)(iii)* ,".

Amendment of Item 15 of Schedule 1 to Act 77 of 1968, as substituted by section 13 of Act 89 of 1972 and amended by section 16 of Act 66 of 1973, section 21 of Act 88 of 1974, section 3 of Act 104 of 1976, section 20 of Act 114 of 1977, section 8 of Act 95 of 1978, section 8 of Act 102 of 1979,

section 21 of Act 106 of 1980, section 9 of Act 99 of 1981, section 7 of Act 87 of 1982, section 14 of Act 92 of 1983, section 11 of Act 118 of 1984, section 11 of Act 82 of 1985, section 5 of Act 71 of 1986, section 13 of Act 108 of 1986, section 11 of Act 86 of 1987, section 33 of Act 87 of 1988, section 14 of Act 69 of 1989, section 9 of Act 136 of 1991, section 8 of Act 136 of 1992 and section 17 of Act 97 of 1993

17. (1) Item 15 of Schedule 1 to the Stamp Duties Act, 1968, is hereby amended-

(a) by the addition of the word "and" at the end of paragraph (xv); and

(b) by the addition after paragraph (xv) of the following paragraph:

"(xvi) the South African Housing Trust Limited, a company registered under the Companies Act, 1973 (Act No. 61 of 1973), on 27 November 1986.".

(2) Subsection (1) shall be deemed to have come into operation on 29 June 1993.

Amendment of section 36 of Act 89 of 1991, as substituted by section 2 of Act 61 of 1993

18. (1) Section 36 of the Value-Added Tax Act, 1991, is hereby amended by the addition of the following subsection, the existing section becoming subsection (1):

"*(2) The payment by the Commissioner of any interest under the provisions of this section shall be deemed to be a drawback from revenue charged to the State Revenue Fund*.".

(2) Subsection (1) shall be deemed to have come into operation on 1 April 1993.

Amendment of section 45 of Act 89 of 1991, as amended by section 33 of Act 136 of 1992 and section 4 of Act 61 of 1993

19. (1) Section 45 of the Value-Added Tax Act, 1991, is hereby amended by the addition of the following subsection:

"*(3) The payment by the Commissioner of any interest under the provisions of this section shall be deemed to be a drawback from revenue charged to the State Revenue Fund*.".

(2) Subsection (1) shall be deemed to have come into operation on 1 April 1993.

Amendment of section 60 of Act 113 of 1993

20. (1) Section 60 of the Income Tax Act, 1993, is hereby amended by the addition to subsection (5) of the following paragraph and proviso:

"*(c) where an person who held shares (hereinafter referred to as old shares) in an unbundling company or an intermediate company as a result of a right contemplated in section 8A(1) of the principal Act which has been exercised by him and distributable shares (hereinafter referred to as new shares) are distributed to such person in accordance with an unbundling transaction, any portion of any gain made by such person in the exercise of such right to acquire such old shares, shall be included in such person's income-*

(i) in the year of assessment during which he becomes entitled to dispose of such new shares, which portion shall be an amount which bears to such gain the same ratio as the market value of such new shares on the date on which such person became entitled to such new shares by way of a distribution in specie bears to the market value of such old shares on that date; and

(ii) in the year of assessment during which he becomes entitled to dispose of such old shares, which portion shall be calculated by reducing such gain by the amount which has been determined or is to be determined in terms of subparagraph (i):

Provided that for the purposes of paragraphs (b) and (c) the market value of such old shares on the date on which the qualifying shareholders became entitled to acquire such new shares by way of a distribution in specie, shall be determined without having regard to the fact that such new shares are to be issued to such shareholders.".

(2) Subsection (1) shall be deemed to have come into operation on 20 July 1993.

Short title

21. This Act shall be called the Revenue Laws Amendment Act, 1993.