

TRANSFER DUTY ACT NO. 40 OF 1949

[View Regulation]

[ASSENTED TO 23 JUNE, 1949]
[DATE OF COMMENCEMENT: 1 JANUARY, 1950]
(*Afrikaans text signed by the Governor-General*)

This Act has been updated to *Government Gazette 44082* dated 20 January, 2021.

as amended by

Transfer Duty Amendment Act, No. 59 of 1951

Transfer Duty Amendment Act, No. 31 of 1953

Transfer Duty Amendment Act, No. 32 of 1954

Finance Act, No. 80 of 1959

[with effect from 1 January, 1950 and 6 July, 1959]

Revenue Laws Amendment Act, No. 70 of 1963

Revenue Laws Amendment Act, No. 77 of 1964

Revenue Laws Amendment Act, No. 81 of 1965

Revenue Laws Amendment Act, No. 56 of 1966

Revenue Laws Amendment Act, No. 103 of 1969

Revenue Laws Amendment Act, No. 72 of 1970

Revenue Laws Amendment Act, No. 92 of 1971

Revenue Laws Amendment Act, No. 89 of 1972

Revenue Laws Amendment Act, No. 66 of 1973

Revenue Laws Amendment Act, No. 88 of 1974

Revenue Laws Amendment Act, No. 70 of 1975

Abattoir Industry Act, No. 54 of 1976

[with effect from 1 February, 1977]

Revenue Laws Amendment Act, No. 95 of 1978

Revenue Laws Amendment Act, No. 102 of 1979

Revenue Laws Amendment Act, No. 106 of 1980

Revenue Laws Amendment Act, No. 99 of 1981

Revenue Laws Amendment Act, No. 87 of 1982

Revenue Laws Amendment Act, No. 118 of 1984

Revenue Laws Amendment Act, No. 81 of 1985

Taxation Laws Amendment Act, No. 86 of 1987

Taxation Laws Amendment Act, No. 87 of 1988

Legal Succession to the South African Transport Services Act, No. 9 of 1989

[with effect from 6 October, 1989]

Taxation Laws Amendment Act, No. 69 of 1989

Value-Added Tax Act, No. 89 of 1991

Abolition of Racially Based Land Measures Act, No. 108 of 1991

[with effect from 22 April, 1994]

South African Abattoir Corporation Act, No. 120 of 1992
[with effect from 31 March, 1993]

Taxation Laws Amendment Act, No. 136 of 1992

Taxation Laws Amendment Act, No. 97 of 1993

Taxation Laws Amendment Act, No. 20 of 1994

Taxation Laws Amendment Act, No. 37 of 1995

Taxation Laws Amendment Act, No. 37 of 1996

Revenue Laws Amendment Act, No. 46 of 1996

Taxation Laws Amendment Act, No. 27 of 1997

South African Revenue Service Act, No. 34 of 1997

Taxation Laws Amendment Act, No. 30 of 1998

Eskom Amendment Act, No. 126 of 1998
[with effect from 18 December, 1998]

Taxation Laws Amendment Act, No. 32 of 1999

Revenue Laws Amendment Act, No. 53 of 1999

Taxation Laws Amendment Act, No. 30 of 2000

Taxation Laws Amendment Act, No. 5 of 2001

Second Revenue Laws Amendment Act, No. 60 of 2001

Taxation Laws Amendment Act, No. 30 of 2002

Revenue Laws Amendment Act, No. 74 of 2002

Exchange Control Amnesty and Amendment of Taxation Laws Act, No. 12 of 2003

Revenue Laws Amendment Act, No. 45 of 2003

Taxation Laws Amendment Act, No. 16 of 2004

Revenue Laws Amendment Act, No. 32 of 2004

Second Revenue Laws Amendment Act, No. 34 of 2004

Taxation Laws Amendment Act, No. 9 of 2005

Revenue Laws Amendment Act, No. 31 of 2005

Small Business Tax Amnesty and Amendment of Taxation Laws Act, No. 9 of 2006

Revenue Laws Amendment Act, No. 20 of 2006

Revenue Laws Amendment Act, No. 35 of 2007

Revenue Laws Second Amendment Act, No. 36 of 2007

Revenue Laws Amendment Act, No. 60 of 2008

Taxation Laws Amendment Act, No. 17 of 2009

Taxation Laws Second Amendment Act, No. 18 of 2009

Taxation Laws Amendment Act, No. 7 of 2010

Voluntary Disclosure Programme and Taxation Laws Second Amendment Act, No. 8 of 2010

Taxation Laws Amendment Act, No. 24 of 2011

Tax Administration Act, No. 28 of 2011

Taxation Laws Amendment Act, No. 22 of 2012

Taxation Laws Amendment Act, No. 31 of 2013

Tax Administration Laws Amendment Act, No. 39 of 2013

Rates and Monetary Amounts Amendment of Revenue Laws Act, No. 13 of 2015

Taxation Laws Amendment Act, No. 25 of 2015

Rates and Monetary Amounts and Amendment of Revenue Laws Act, No. 13 of 2016

Taxation Laws Amendment Act, No. 15 of 2016

Rates and Monetary Amounts and Amendment of Revenue Laws Act, No. 14 of 2017

Rates and Monetary Amounts and Amendment of Revenue Laws Act, No. 22 of 2020
[with effect from 20 January, 2021, unless otherwise indicated]

pending amendment by

Tax Administration Act, No. 28 of 2011
(provisions not yet proclaimed)

ACT

To consolidate and amend the laws relating to transfer duty.

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1. Definitions.—(1) In this Act, unless the context otherwise indicates—

“Commissioner” means the Commissioner for the South African Revenue Service appointed in terms of section 6 of the South African Revenue Service Act, 1997 (Act No. 34 of 1997), or the Acting Commissioner designated in terms of section 7 of that Act;

[Definition of “Commissioner” deleted by s. 1 (a) of Act No. 77 of 1964, inserted by s. 4 (1) (a) of Act No. 106 of 1980 and substituted by s. 34 (1) of Act No. 34 of 1997 and by s. 271 read with para. 1 (a) of Sch. 1 of Act No. 28 of 2011.]

“company” includes—

- (a) any association, corporation or company (including a close corporation) incorporated or deemed to be incorporated by or under any law in force or previously in force in the Republic or in any part thereof, or any body corporate formed or established or deemed to be formed or established by or under any such law; or
- (b) any association, corporation or company incorporated under the law of any country other than the Republic or any body corporate formed or established under such law; or
- (c) any association (not being an association referred to in paragraph (a)) formed in the Republic to serve a specified purpose, beneficial to the public or a section of the public;

[Definition of “company” inserted by s. 1 (a) of Act No. 5 of 2001.]

“date of acquisition” means—

- (a) in the case of the acquisition of property (other than the acquisition of property contemplated in paragraph (b)) by way of a transaction, the date on which the transaction was entered into, irrespective of whether the transaction was conditional or not or was entered into on behalf of a company already registered or still to be registered and, in the case of the acquisition of property otherwise than by way of a transaction, the date upon which the person who so acquired the property became entitled thereto: Provided that where property has been acquired by the exercise of an option to purchase or a right of pre-emption, the date of acquisition shall be the date upon which the option or right of pre-emption was exercised;

[Para. (a) amended by s. 1 (a) of Act No. 86 of 1987 and by Proclamation R.11 of 1994.]

- (b) in the case of the acquisition of property in terms of item 8 of Schedule 1 to the Share Blocks Control Act, 1980 (Act No. 59 of 1980), and if section 9A of this Act does not apply to that acquisition, the date of the written request referred to in subitem (1) (b) of the said item 8;

- (c)

[Definition of “date of acquisition” substituted by s. 4 (1) (b) of Act No. 106 of 1980. Para. (c) added by s. 1 (b) of Act No. 86 of 1987 and deleted by Proclamation R.11 of 1994.]

“declared value” in relation to property means the value of the property as declared in the declaration completed in terms of section fourteen by the person who has acquired the property;

“deeds registry” includes the Mineral and Petroleum Titles Registration Office established by section 2 of the Mining Titles Registration Act, 1967 (Act No. 16 of 1967);

[Definition of “deeds registry” substituted by s. 1 (a) of Act No. 24 of 2011.]

“fair value”—

- (a) in relation to property as defined in paragraphs (a) and (c) of the definition of “property”, means the fair market value of that property as at the date of acquisition thereof;

[Para. (a) substituted by s. 1 (b) of Act No. 24 of 2011.]

- (b) in relation to a share or member’s interest in a company as contemplated in paragraph (d) or (e) of the definition of “property”, means so much of the fair market value as at the date of acquisition of that share or member’s interest, of any property held by that company which constitutes—

- (i) residential property;
- (ii) a share or member’s interest in any company as contemplated in paragraph (d) or (e) of the definition of “property”; or
- (iii) a contingent right in property of a trust as contemplated in paragraph (f) of the definition of “property”,

(without taking into account any lease agreement, any liability in respect of any loan or any right to or an interest in the use of immovable property conferred on the owner of a share in a share block company as contemplated in section 1 of the Share Blocks Control Act, 1980 (Act No. 59 of 1980), in

relation to that residential property or any residential property of any company or trust contemplated in subparagraph (ii) or (iii)), as is attributable to that share or member's interest;

[Para. (b) amended by s. 1 (1) of Act No. 45 of 2003 and by s. 1 (1) (a) of Act No. 17 of 2009 deemed to come into operation on 1 September, 2009 and applicable in respect of the acquisition of any share in a share block company on or after that date.]

- (c) in relation to any contingent right to any property, which constitutes—
- (i) residential property;
 - (ii) a share or member's interest contemplated in paragraph (d) or (e) of the definition of "property"; or
 - (iii) a contingent right in property of a trust as contemplated in paragraph (f) of the definition of "property",

held by a discretionary trust, means the fair market value of that property (without taking into account any lease agreement or any liability in respect of any loan in relation to that residential property or any residential property of any company or trust contemplated in subparagraph (ii) or (iii)), as at the date of acquisition of that contingent right; or

[Para. (c) amended by s. 1 (1) (b) of Act No. 17 of 2009 deemed to come into operation on 1 September, 2009 and applicable in respect of the acquisition of any share in a share block company on or after that date.]

- (d) in relation to a share in a company as contemplated in paragraph (g) of the definition of "property", means so much of the fair market value, as at the date of acquisition of that share, of any property held by that company which constitutes property as contemplated in paragraphs (a) and (c) of that definition (without taking into account any lease agreement or any liability in respect of any loan in relation to that residential property) as is attributable to that share

[Para. (d) inserted by s. 1 (1) (c) of Act No. 17 of 2009 and substituted by s. 1 (b) of Act No. 24 of 2011.]

Provided that—

- (a) the fair market value of any property of a company or a trust which constitutes a contingent right in property of a trust, as contemplated in paragraphs (b) (iii) and (c) (iii), shall be equal to the fair value of that contingent right as determined in terms of paragraph (c) of this definition; and
- (b) where property, has been acquired by the exercise of an option to purchase or a right of pre-emption, the fair value in relation to that property shall be the fair market value thereof as at the date upon which the option or right of pre-emption was acquired by the person who exercised the option or right of pre-emption;

[Definition of "fair value" substituted by s. 2 (1) (a) of Act No. 74 of 2002.]

"mining asset" means any building, shaft, excavation, borehole, structure, fixture or other improvement or work used or intended to be used for purposes of mining, or purposes incidental thereto, including the accommodation of mine personnel, but does not include any building or structure on land in a proclaimed township;

[Definition of "mining asset" inserted by s. 11 of Act No. 80 of 1959, with effect from 6 July, 1959.]

"person" includes the estate of a deceased or insolvent person and any trust;

[Definition of "person" inserted by s. 8 (1) (a) of Act No. 37 of 1996.]

"property" means land in the Republic and any fixtures thereon, and includes—

- (a) any real right in land but excluding any right under a mortgage bond or a lease of property other than a lease referred to in paragraph (c);

[Para. (a) substituted by s. 1 (c) of Act No. 24 of 2011.]

- (b)

[Para. (b) deleted by s. 1 (d) of Act No. 24 of 2011.]

- (c) any right to minerals (including any right to mine for minerals) and a lease or sub-lease of such a right;

- (d) a share (other than a share contemplated in paragraph (g)) or member's interest in a residential property company;

[Para. (d) added by s. 2 (1) (b) of Act No. 74 of 2002 and substituted by s. 1 (1) (d) of Act No. 17 of 2009 deemed to come into operation on 1 September, 2009 and applicable in respect of the acquisition of any share in a share block company on or after that date.]

~~(e)~~ share (other than a share contemplated in paragraph (g)) or member's interest in a company which is a holding company (as defined in the Companies Act, 1973 (Act No. 61 of 1973), or as defined in the Close Corporations Act, 1984 (Act No. 69 of 1984), as the case may be), if that company and all of its subsidiary companies (as defined in the Companies Act, 1973, or Close Corporations Act, 1984), would be a residential property company if all such companies were regarded as a single entity;

[Para. (e) added by s. 2 (1) (b) of Act No. 74 of 2002 and substituted by s. 1 (1) (d) of Act No. 17 of 2009 deemed to come into operation on 1 September, 2009 and applicable in respect of the acquisition of any share in a share block company on or after that date.]

- (f) a contingent right to any residential property or share or member's interest, contemplated in paragraph (d) or (e), held by a discretionary trust (other than a special trust as defined in section 1 of the Income Tax Act, 1962 (Act No. 58 of 1962)), the acquisition of which is—
- (i) a consequence of or attendant upon the conclusion of any agreement for consideration with regard to property held by that trust;
 - (ii) accompanied by the substitution or variation of that trust's loan creditors, or by the substitution or addition of any mortgage bond or mortgage bond creditor; or
 - (iii) accompanied by the change of any trustee of that trust; and

[Para. (f) added by s. 2 (1) (b) of Act No. 74 of 2002 and amended by s. 1 (1) of Act No. 7 of 2010 deemed to have come into operation on 1 September, 2009.]

- (g) a share in a share block company as defined in the Share Blocks Control Act, 1980 (Act No. 59 of 1980);

[Definition of "property" amended by s. 1 (b) of Act No. 5 of 2001. Para. (g) added by s. 1 (1) (e) of Act No. 17 of 2009 deemed to come into operation on 1 September, 2009 and applicable in respect of the acquisition of any share in a share block company on or after that date.]

"registration officer" means the person who is in charge of a deeds registry;

"Republic" means the territory of the Republic of South Africa and includes the territorial waters, the contiguous zone and the continental shelf referred to respectively in sections 4, 5 and 8 of the Maritime Zones Act, 1994 (Act No. 15 of 1994);

[Definition of "Republic" inserted by s. 5 of Act No. 103 of 1969, deleted by s. 2 of Act No. 87 of 1988 and re-inserted by s. 1 (c) of Act No. 5 of 2001.]

"residential property" means any dwelling-house, holiday home, apartment or similar abode, improved or unimproved land zoned for residential use in the Republic (including any real right thereto), other than—

- (a) an apartment complex, hotel, guesthouse or similar structure consisting of five or more units held by a person which has been used for renting to five or more persons, who are not connected persons, as defined in the Income Tax Act, 1962 (Act No. 58 of 1962), in relation to that person; or
- (b) any "fixed property" of a "vendor" forming part of an "enterprise" all as defined in section 1 of the Value-Added Tax Act, 1991 (Act No. 89 of 1991);

[Definition of "residential property" inserted by s. 2 (1) (c) of Act No. 74 of 2002.]

"residential property company" means any company, other than a REIT as defined in section 1 of the Income Tax Act, 1962 (Act No. 58 of 1962), that holds property that constitutes—

- (a) residential property; or
- (b) a contingent right contemplated in paragraph (f) of the definition of "property",

and where the fair value of that property or contingent right comprises more than 50 per cent of the aggregate fair market value of all the assets, as defined in paragraph 1 of the Eighth Schedule to the Income Tax Act, 1962, (other than financial instruments as defined in section 1 of that Act or any coin made mainly from gold or platinum), held by that company on the date of acquisition of an interest in that company;

[Definition of "residential property company" inserted by s. 2 (1) (c) of Act No. 74 of 2002 and amended by s. 1 of Act No. 31 of 2013.]

"Secretary"

[Definition of "Secretary" inserted by s. 1 (b) of Act No. 77 of 1964 and deleted by s. 4 (1) (c) of Act No. 106 of 1980.]

"South African Revenue Service" means the South African Revenue Service established by section 2 of the South African Revenue Service Act, 1997;

[Definition of "South African Revenue Service" inserted by s. 34 (1) of Act No. 34 of 1997.]

"spouse" in relation to any person, means the partner of such person—

- (a) in a marriage or customary union recognised in terms of the laws of the Republic;
- (b) in a union recognised as a marriage in accordance with the tenets of any religion; or
- (c) in a same-sex or heterosexual union which the Commissioner is satisfied is intended to be permanent:

Provided that a marriage or union contemplated in paragraph (b) or (c) shall, in the absence of proof to the

contrary, be deemed to be a marriage or union without community of property.

[Definition of "spouse" inserted by s. 1 (d) of Act No. 5 of 2001.]

"Tax Administration Act" means the Tax Administration Act, 2011;

[Definition of "Tax Administration Act" inserted by s. 271 read with para. 1 (b) of Sch. 1 of Act No. 28 of 2011.]

"transaction" means—

(a) in relation to paragraphs (a) and (c) of the definition of "property", an agreement whereby one party thereto agrees to sell, grant, waive, donate, cede, exchange, lease or otherwise dispose of property to another person or any act whereby any person renounces any right in or restriction in his or her favour upon the use or disposal of property; or

[Para. (a) substituted by s. 1 (e) of Act No. 24 of 2011.]

(b) in relation to any shares or member's interest contemplated in paragraph (d) or (e) of the definition of "property", an agreement whereby one party thereto agrees to sell, grant, waive, donate, cede, exchange, issue, buy-back, convert, vary, cancel or otherwise dispose of any such shares or member's interest to another person or any act whereby any person renounces any right in or restriction in his or her favour upon the use or disposal of any such shares or member's interest; or

(c) in relation to a discretionary trust, the substitution or addition of one or more beneficiaries with a contingent right to any property of that trust, which constitutes residential property or shares or member's interest contemplated in paragraph (d) or (e) of the definition of "property" or a contingent right contemplated in paragraph (f) of that definition;

[Definition of "transaction" substituted by s. 2 (1) (d) of Act No. 74 of 2002.]

"trust" means any trust consisting of cash or other assets which are administered and controlled by a person acting in a fiduciary capacity, where such person is appointed under a deed of trust or by agreement or under the will of a deceased person.

[Sub-s. (1) (previously s. 1) renumbered by s. 271 read with para. 1 (c) of Sch. 1 of Act No. 28 of 2011. Definition of "trust" added by s. 8 (1) (b) of Act No. 37 of 1996.]

(2) Unless the context indicates otherwise, a word or expression to which a meaning has been assigned in the Tax Administration Act bears that meaning for purposes of this Act.

[Sub-s. (2) inserted by s. 271 read with para. 1 (d) of Sch. 1 of Act No. 28 of 2011.]

2. Imposition of transfer duty.—(1) Subject to the provisions of section 9, there shall be levied for the benefit of the National Revenue Fund a transfer duty (hereinafter referred to as the duty) on the value of any property (which value shall be determined in accordance with the provisions of sections 5, 6, 7 and 8) acquired by any person on or after the date of commencement of this Act by way of a transaction or in any other manner, or on the amount by which the value of any property is enhanced by the renunciation, on or after the said date, of an interest in or restriction upon the use or disposal of that property, at the rate of—

(a)

[Para. (a) substituted by s. 2 (1) of Act No. 136 of 1992 and by s. 3 (1) of Act No. 97 of 1993, amended by s. 14 (1) (a) of Act No. 9 of 2006 and deleted by s. 2 (1) (a) of Act No. 24 of 2011 deemed to have come into operation on 23 February, 2011 and applies in respect of property acquired or interest or restriction in any property renounced on or after that date.]

(b) subject to subsection (5)—

(i) 0 per cent of so much of the said value or the said amount, as the case may be, as does not exceed R1 million;

[Sub-para. (i) substituted by s. 2 (1) of Act No. 14 of 2017 and by s. 1 (1) of Act No. 22 of 2020 deemed to have come into operation on 1 March, 2020 and applicable in respect of property acquired or interest or restriction in any property renounced on or after that date.]

(ii) 3 per cent of so much of the said value or the said amount, as the case may be, as exceeds R1 million but does not exceed R1,375 million;

[Sub-para. (ii) substituted by s. 2 (1) of Act No. 14 of 2017 and by s. 1 (1) of Act No. 22 of 2020 deemed to have come into operation on 1 March, 2020 and applicable in respect of property acquired or interest or restriction in any property renounced on or after that date.]

(iii) 6 per cent of so much of the said value or the said amount, as the case may be, as exceeds R1,375 million but does not exceed R1,925 million;

[Sub-para. (iii) substituted by s. 1 (1) of Act No. 22 of 2020 deemed to have come into operation on 1 March, 2020 and applicable in respect of property acquired or interest or restriction in any property renounced on or after that date.]

(iv) 8 per cent of so much of the said value or the said amount, as the case may be, as exceeds R1,925 million but does not exceed R2,475 million;

[Sub-para. (iv) amended by s. 2 (1) (a) of Act No. 13 of 2016 and by s. 1 (1) of Act No. 22 of 2020 deemed to

have come into operation on 1 March, 2020 and applicable in respect of property acquired or interest or restriction in any property renounced on or after that date.]

- (v) 11 per cent of so much of the said value or the said amount, as the case may be, as exceeds R2,475 million but does not exceed R11 million; and

[Sub-para. (v) substituted by s. 2 (1) (b) of Act No. 13 of 2016 and by s. 1 (1) of Act No. 22 of 2020 deemed to have come into operation on 1 March, 2020 and applicable in respect of property acquired or interest or restriction in any property renounced on or after that date.]

- (vi) 13 per cent of so much of the said value or the said amount, as the case may be, as exceeds R11 million.

[Sub-s. (1) substituted by s. 3 (1) (a) of Act No. 88 of 1974 and amended by s. 9 (1) (a) of Act No. 37 of 1996. Para. (b) amended by s. 5 (1) of Act No. 106 of 1980, substituted by s. 2 (1) of Act No. 136 of 1992 and by s. 3 (1) of Act No. 97 of 1993, amended by 2 (1) of Act No. 32 of 1999, substituted by s. 2 (1) of Act No. 30 of 2002 and by s. 31 (1) of Act No. 12 of 2003, amended by s. 1 (1) of Act No. 16 of 2004 and by s. 1 (1) of Act No. 9 of 2005 and substituted by s. 14 (1) (b) of Act No. 9 of 2006, by s. 2 (1) (b) of Act No. 24 of 2011 and by s. 2 (1) of Act No. 13 of 2015 deemed to have come into operation on 1 March, 2015 and applicable in respect of property acquired or interest or restriction in any property renounced on or after that date. Sub-para. (vi) added by s. 2 (1) (c) of Act No. 13 of 2016 and by s. 1 (1) of Act No. 22 of 2020 deemed to have come into operation on 1 March, 2020 and applicable in respect of property acquired or interest or restriction in any property renounced on or after that date.]

(2) The Minister of Finance may announce in the national annual budget contemplated in section 27 (1) of the Public Finance Management Act, 1999 (Act No. 1 of 1999), that, with effect from a date mentioned in that announcement—

- (a) the rates of transfer duty contemplated in subsection (1) will be altered to the extent mentioned in the announcement; or

[Para. (a) substituted by s. 1 (1) of Act No. 25 of 2015 deemed to have come into operation on 1 March, 2015 and applicable in respect of any property acquired or interest or restriction in any property renounced on or after that date.]

- (b) there will be a change in the provision of this Act that will have the effect that the acquisition of or the renunciation of any interest in or restriction upon a certain class of property will no longer be subject to transfer duty.

[Sub-s. (2) substituted by s. 1 of Act No. 56 of 1966, amended by s. 2 (1) (a) of Act No. 66 of 1973, deleted by s. 3 (1) (b) of Act No. 88 of 1974, inserted by s. 1 of Act No. 31 of 2005 and amended by s. 1 (1) (a) of Act No. 15 of 2016.]

(3) If the Minister makes an announcement contemplated in subsection (2), that alteration or change comes into effect on the date determined by the Minister in that announcement and continues to apply for a period of 12 months from that date subject to Parliament passing legislation giving effect to that announcement within that period of 12 months.

[Sub-s. (3) added by s. 2 (1) (b) of Act No. 66 of 1973, deleted by s. 3 (1) (b) of Act No. 88 of 1974, inserted by s. 1 of Act No. 31 of 2005 and substituted by s. 2 of Act No. 18 of 2009 and by s. 1 (1) (b) of Act No. 15 of 2016 deemed to have come into operation on 1 March, 2016 and applicable in respect of any property acquired or interest or restriction in any property renounced on or after that date.]

- (4)

[Sub-s. (4) added by s. 2 (1) (b) of Act No. 66 of 1973 and deleted by s. 3 (1) (b) of Act No. 88 of 1974.]

(5) Where a person acquires any property consisting of or including an undivided share in any property (hereinafter in this subsection referred to as the joint property), the duty payable in respect of such acquisition shall be calculated in accordance with the formula

$$y = \frac{a}{b} \times c,$$

in which formula—

- (a) "y" represents the duty payable;

- (b) "a" represents the value on which the duty is leviable in terms of subsection (1);

- (c) "b" represents an amount equal to the sum of—

- (i) the amount represented by "a"; and

- (ii) the value of the remainder of the joint property (being the share or shares in the joint property remaining after excluding the aforesaid undivided share), assuming such value to be an amount which bears to the value of the said undivided share (being the value thereof represented by or included in "a") the same ratio as the said remainder (expressed as a percentage of the full ownership of the joint property without regard to the value of that property or any share therein) bears to the said undivided share (expressed as a percentage of the full ownership of the joint property without regard to the value of that property or any share therein); and

- (d) "c" represents the duty which would have been leviable at the rate prescribed in subsection (1) (b) on the amount represented by the symbol "b" in the formula if that amount had been the value on which duty was leviable under subsection (1).

[Sub-s. (5) added by s. 3 (1) (c) of Act No. 88 of 1974 and amended by s. 2 (1) (c) of Act No. 24 of 2011 deemed to have come into operation on 23 February, 2011 and applies in respect of property acquired or interest or restriction in any property renounced on or after that date.]

(6) The provisions of subsection (5) shall not apply in respect of the acquisition of an undivided share in common property which is in terms of the provisions of the Sectional Titles Act, 1986 (Act No. 95 of 1986), apportioned to a section as defined in section 1 of that Act and forms part of a unit as so defined but shall apply in respect of the acquisition of an undivided share in such unit.

[Sub-s. (6) added by s. 3 (1) (c) of Act No. 88 of 1974 and amended by s. 3 of Act No. 87 of 1988.]

- (7)

[Sub-s. (7) added by s. 3 (1) (c) of Act No. 88 of 1974 and deleted by s. 1 of Act No. 37 of 1995.]

- (8)

[S. 2 amended by s. 1 of Act No. 59 of 1951, by s. 1 (1) of Act No. 31 of 1953 and by s. 1 (1) of Act No. 32 of 1954 and substituted by s. 2 of Act No. 77 of 1964. Sub-s. (8) added by s. 9 (1) (b) of Act No. 37 of 1996 and deleted by s. 2 (1) (d) of Act No. 24 of 2011 deemed to have come into operation on 23 February, 2011 and applies in respect of property acquired or interest or restriction in any property renounced on or after that date.]

3. By whom, when and to whom duty payable.—(1) The duty shall within six months of the date of acquisition be payable by the person who has acquired the property or in whose favour or for whose benefit any interest in or restriction upon the use or disposal of property has been renounced.

(1A) Where a person who acquires any property contemplated in paragraph (d), (e) or (g) of the definition of "property" fails to pay the duty within the period contemplated in subsection (1), the public officer of that company and the person from whom the shares or member's interest are acquired shall be jointly and severally liable for such duty: Provided that the public officer or person from whom the shares or member's interest was acquired, may recover any amount of duty paid in terms of this subsection in accordance with section 160 of the Tax Administration Act.

[Sub-s. (1A) added by s. 3 (1) of Act No. 74 of 2002, amended by s. 2 (1) of Act No. 17 of 2009 and substituted by s. 271 read with para. 2 (a) of Sch. 1 of Act No. 28 of 2011.]

(1B) Where a person who acquires any property contemplated in paragraph (f) of the definition of "property" fails to pay the duty within the period contemplated in subsection (1), the trust and representative taxpayer of that trust shall be jointly and severally liable for such duty: Provided that the trust or representative taxpayer may recover any amount of duty paid in terms of this subsection by the trust or representative taxpayer, as the case may be, in accordance with section 160 of the Tax Administration Act.

[Sub-s. (1B) added by s. 3 (1) of Act No. 74 of 2002 and substituted by s. 271 read with para. 2 (b) of Sch. 1 of Act No. 28 of 2011.]

(2) Pending the completion of the declarations referred to in section 14, or the determination of the amount of duty payable under this Act, a deposit on account of the duty payable must be made by way of an electronic payment.

[Sub-s. (2) substituted by s. 6 of Act No. 60 of 2001, by s. 1 (a) of Act No. 35 of 2007 and by s. 12 (1) (a) of Act No. 8 of 2010 with effect from 1 January, 2011 and applicable to any payments made on or after that date.]

- (3)

[Sub-s. (3) substituted by s. 4 (1) of Act No. 88 of 1974, amended by s. 1 of Act No. 99 of 1981, substituted by s. 10 (1) of Act No. 37 of 1996, by s. 6 of Act No. 60 of 2001, by s. 1 (b) of Act No. 35 of 2007 and by s. 12 (1) (b) of Act No. 8 of 2010 and deleted by s. 271 read with para. 2 (c) of Sch. 1 of Act No. 28 of 2011.]

(4) Where, in addition to any amount of duty which is payable by any person in terms of this Act, an amount of penalty is payable by him in terms of the provisions of this Act, any payment made by that person on or after 1 April 1994 in respect of such duty or penalty which is less than the total amount due by him in respect of such duty and penalty shall for the purposes of this Act be deemed to be made—

- (a) in respect of such penalty; and
(b) to the extent that such payment exceeds the amount of such penalty, in respect of such duty.

[Sub-s. (4) added by s. 4 of Act No. 97 of 1993.]

(5) Any agreement concluded prior to 1 April 1994 between the Commissioner and the person liable for the payment of any duty or penalty which provides for the allocation of any payment to be made on or after that date otherwise than in accordance with the provisions of subsection (4) shall, in so far as it provides for such allocation, cease to have effect.

[Sub-s. (5) added by s. 4 of Act No. 97 of 1993.]

3A. Sharia compliant financing arrangements.—(1) For the purpose of the payment of duty in respect of any murabaha as defined in section 24JA (1) of the Income Tax Act, 1962 (Act No. 58 of 1962)—

- (a) the financier shall be deemed not to have acquired any property under the sharia arrangement; and

[Para. (a) substituted by s. 3 (1) (a) of Act No. 24 of 2011 with effect from 1 January, 2013 (Editorial Note:

effective date in s. 3 (2) of Act No. 24 of 2011 as substituted by s. 163 (1) of Act No. 22 of 2012).]

- (b) the client shall be deemed to have acquired property from the seller—
 - (i) for an amount equal to the consideration paid by the financier to the seller; and
 - (ii) at such time as the financier acquired the property from the seller by virtue of the transaction between the seller and the financier.

[Para. (b) substituted by s. 3 (1) (a) of Act No. 24 of 2011 with effect from 1 January, 2013 (Editorial Note: effective date in s. 3 (2) of Act No. 24 of 2011 as substituted by s. 163 (1) of Act No. 22 of 2012).]

- (2) For the purpose of the payment of the duty in respect of any diminishing musharaka as defined in section 24JA (1) of the Income Tax Act, 1962 (Act No. 58 of 1962)—
 - (a) the bank shall be deemed not to have acquired any property under the sharia arrangement;
 - (b) (i) where the bank and the client jointly acquire property, the client shall be deemed to have acquired the bank's interest in the property—
 - (aa) for an amount equal to the amount paid by the bank in respect of the bank's interest in the property; and
 - (bb) at the time that the seller of the asset was divested of any interest in the property by virtue of the transaction between the seller and the bank; and
 - (ii) where the bank acquires an interest in property from the client, the bank shall be deemed not to have acquired any interest in property from the client and the client shall be deemed not to have subsequently acquired any interest in that property from the bank.

(3) For the purpose of the payment of duty in respect of any sukuk as defined in section 24JA (1) of the Income Tax Act, 1962 (Act No. 58 of 1962), the trust shall be deemed not to have acquired the asset from the government of the Republic.

[S. 3A inserted by s. 2 (1) of Act No. 7 of 2010 with effect from 1 January, 2013 (Editorial Note: effective date in s. 2 (2) of Act No. 7 of 2010 as substituted by s. 158 (1) of Act No. 22 of 2012). Sub-s. (3) added by s. 3 (1) (b) of Act No. 24 of 2011 with effect from 1 January, 2013 (Editorial Note: effective date in s. 3 (2) of Act No. 24 of 2011 as substituted by s. 163 (1) of Act No. 22 of 2012).]

4. Penalty and interest on late payment of duty.—(1) If any duty in respect of any transaction entered into before 1 March 2005, remains unpaid after the date of the expiration of the period referred to in section 3, the Commissioner must in accordance with Chapter 15 of the Tax Administration Act impose a penalty, at the rate of 10 per cent per annum on the amount of the unpaid duty, calculated in respect of each completed month in the period from that date to the date of payment.

[Sub-s. (1) amended by s. 2 of Act No. 70 of 1963, substituted by s. 1 of Act No. 72 of 1970 and by s. 3 (1) of Act No. 87 of 1982, amended by s. 1 (1) (b) of Act No. 32 of 2004 and substituted by s. 271 read with para. 3 (b) of Sch. 1 of Act No. 28 of 2011.]

4. Penalty on late payment of duty

(Pending amendment: S. 4, heading to be substituted by s. 271 read with para. 3 (a) of Sch. 1 of Act No. 28 of 2011 with effect from a date to be determined by the President by proclamation in the *Gazette* – date not determined to the extent that Sch. 1 amends or repeals a provision relating to interest: Proclamation No. 51 in *Government Gazette* 35687 of 14 September, 2012.)

(Date of commencement to be proclaimed)

(1A) If any duty in respect of any transaction entered into on or after 1 March 2005, remains unpaid after the date of the expiration of the period referred to in section 3, interest shall, subject to the provisions of subsection (3), become payable at a rate equal to 10 per cent per annum of the amount of duty which remains unpaid, calculated in respect of each completed month in the period from that date to the date of payment.

[Sub-s. (1A) inserted by s. 1 (1) (c) of Act No. 32 of 2004.]

(1A)

(Pending amendment: Sub-s. (1A) to be deleted by s. 271 read with para. 3 (c) of Sch. 1 of Act No. 28 of 2011 with effect from a date to be determined by the President by proclamation in the *Gazette* – date not determined to the extent that Sch. 1 amends or repeals a provision relating to interest: Proclamation No. 51 in *Government Gazette* 35687 of 14 September, 2012.)

(Date of commencement to be proclaimed)

(2) For the purpose of subsection (1) a deposit on account of duty shall be deemed to be a payment of duty.

(3) Whenever the Commissioner is satisfied that the delay in the determination of the value on which the duty is payable cannot be ascribed to the person liable to pay the duty, he or she may allow a reasonable extension of time within which the duty may be paid without interest if, within six months of the date of acquisition of the property—

- (a) a deposit on account of the duty payable is made to the Commissioner of an amount equal to the duty calculated on the amount of the consideration paid or payable or on the declared value, as the case may be; and
 - (b) application is made in writing to the Commissioner for such extension of time.
- [S. 4 amended by s. 1 (1) (a) of Act No. 32 of 2004. Sub-s. (3) substituted by s. 7 of Act No. 60 of 2001 and amended by s. 1 (1) (d) of Act No. 32 of 2004.]

5. Value of property on which duty payable.—(1) The value on which duty shall be payable shall, subject to the provisions of this section—

- (a) where consideration is payable by the person who has acquired the property, be the amount of that consideration; and
- (b) where no consideration is payable, be the declared value of the property.

(2) (a) If a transaction whereby property has been acquired, is, before registration of the acquisition in a deeds registry, cancelled, or dissolved by the operation of a resolutive condition, duty shall be payable only on that part of the consideration which has been or is paid to and retained by the seller and on any consideration payable by the buyer for or in respect of the cancellation thereof, provided that on cancellation or dissolution of that transaction, such property completely reverts to the seller and the original buyer has relinquished all rights and has not received nor will receive any consideration arising from such cancellation or dissolution.

[Para. (a) substituted by s. 2 (1) of Act No. 45 of 2003.]

(b) Upon the subsequent disposal of property referred to in paragraph (a), the person so disposing of it shall, in the declaration to be made by him in terms of section fourteen, set forth the circumstances of such previous transaction and of the cancellation thereof and shall furnish particulars relating to the payment of duty in connection therewith, and any duty payable in connection with such previous transaction but still unpaid shall be paid by the person so disposing of the property, who may thereupon recover the duty so paid from the person liable for the payment thereof in terms of section three.

(3) Where a transaction provides for the payment of the whole or any part of the consideration by way of rent, royalty, share of profits or any other periodical payment, or otherwise than in cash, the value of such consideration shall be determined in accordance with the provisions of section eight.

(4) In the case of a transaction whereby one property is exchanged for another, and—

- (a) no additional consideration is payable by either party to the transaction, the value on which duty shall be payable in respect of the acquisition of each property shall, subject to the provisions of subsections (6) and (7), be the declared value of each property: Provided that if the properties exchanged are not of equal value, duty shall, subject to the said provisions, be paid in respect of the acquisition of each property on the declared value of the property which has the greater value;
- (b) additional consideration is payable by either party to the transaction, the value on which duty shall be payable, shall, subject to the provisions of subsections (6) and (7), be—
 - (i) in respect of the acquisition of the property for which the additional consideration is payable, the declared value of that property or, the declared value of the property given in exchange for that property plus the additional consideration payable, whichever is the greater; and
 - (ii) in respect of the acquisition of the other property, the declared value thereof, or the declared value of the property given in exchange for that property less the additional consideration payable, whichever is the greater.

(5) In the case of the cession of a lease or sub-lease referred to in paragraph (c) of the definition of "property" in section one, the value on which duty shall be payable shall be the amount of the consideration payable by the cessionary to the cedent in respect of the cession or, if no consideration is so payable, the declared value of the property acquired under the cession.

[Sub-s. (5) substituted by s. 4 (a) of Act No. 24 of 2011.]

(5A)

[Sub-s. (5A) inserted by s. 2 of Act No. 86 of 1987 and deleted by Proclamation R.11 of 1994.]

(6) If the Commissioner is of opinion that the consideration payable or the declared value is less than the fair value of the property in question he may determine the fair value of that property, and thereupon the duty payable in respect of the acquisition of that property shall be calculated in accordance with the fair value as so determined or the consideration payable or the declared value, whichever is the greatest: Provided that the provisions of this subsection shall not be construed as preventing the Commissioner, after a determination of the fair value of the property in question has been made, from revising such determination or from making a further determination of the fair value of that property under this subsection, provided such revision or further determination is made not later than two years from the date on which duty was originally paid in respect of the said acquisition.

[Sub-s. (6) substituted by s. 6 of Act No. 103 of 1969.]

(7) In determining the fair value in terms of subsection (6), the Commissioner shall have regard, according to the circumstances of the case, *inter alia* to—

- (a) the nature of the real right in land and the period for which it has been acquired or, where it has

been acquired for an indefinite period or for the natural life of any person, the period for which it is likely to be enjoyed;

- (b) the municipal valuation of the property concerned;
[Para. (b) substituted by s. 15 of Act No. 9 of 2006.]
- (c) any sworn valuation of the property concerned furnished by or on behalf of the person liable to pay the duty;
- (d) any valuation made by the Director-General: Mineral Resources or by any other competent and disinterested person appointed by the Commissioner.
[Para. (d) substituted by s. 4 (b) of Act No. 24 of 2011.]

(8) If the fair value of property as determined by the Commissioner—

- (a) exceeds the amount of the consideration payable in respect of that property, or the declared value, as the case may be, by not less than one-third of the consideration payable or the declared value, as the case may be, the costs of any valuation made by a person referred to in paragraph (d) of subsection (7) (other than the Director-General: Mineral Resources) shall be paid by the person liable for the payment of the duty;
[Para. (a) substituted by s. 4 (c) of Act No. 24 of 2011.]
- (b) does not exceed the said consideration or declared value as the case may be, to the extent set out in paragraph (a), the costs of the valuation shall be borne by the State.

(9) The provisions of subsections (6) and (7) shall not apply in respect of the acquisition of property sold by public auction, unless the Commissioner is satisfied that the sale was not a *bona fide* sale by public auction, or that there was collusion between the seller and the purchaser or their agents.

(10) In the case of the acquisition of property in terms of Item 8 of Schedule 1 to the Share Blocks Control Act, 1980 (Act No. 59 of 1980), the value of that property shall be reduced by an amount equal to the value of any supply made to the person acquiring that property, of a share mentioned in section 8 (17) of the Value-Added Tax Act, 1991 (Act No. 89 of 1991), where—

- (i) tax in respect of such supply has been paid in terms of that Act; or
- (ii) such supply is in terms of that Act subject to tax at the rate of zero per cent,

if the value of such share wholly or partly constitutes consideration for the acquisition of that property.

[Sub-s. (10) added by s. 3 of Act No. 136 of 1992.]

(11) Where any person has acquired any property and any consideration has in terms of section 6 (1) (c) been added to the consideration payable by such person in respect of such property, the value of that property shall be reduced by an amount equal to the value which constitutes consideration of any supply of such property made to the person acquiring that property, if in terms of the Value-Added Tax Act, 1991 (Act No. 89 of 1991)—

- (a) value-added tax in respect of such supply has been paid or will be accounted for; or
- (b) such supply is subject to value-added tax at the rate of zero per cent.

[Sub-s. (11) added by s. 2 of Act No. 20 of 1994.]

6. Certain payments to be added to the consideration payable in respect of property.—(1) There shall for the purpose of the payment of duty be added to the consideration payable in respect of the acquisition of any property—

- (a) any commission or fees paid or payable in respect of the property by the person who acquired the property: Provided that where the property is acquired by way of a sale in execution, the amount to be added to the consideration in terms of this paragraph shall be so much of any commission or fees paid or payable by the person who acquired the property, as exceeds five per cent of the consideration payable in respect of the property;

[Para. (a) substituted by s. 8 (1) of Act No. 30 of 1998.]

- (b) if property has been acquired by the exercise of an option to purchase or a right of pre-emption, any consideration paid or payable by the person who has acquired the property to any person in respect of the said option or right of pre-emption;
- (c) any consideration which the person who has acquired property has paid or agreed to pay to any person whatsoever in respect of or in connection with the acquisition of the property, over and above the consideration payable to the person from whom the property was acquired, other than any rent payable under a lease or sub-lease by the cessionary thereof.

(2) Where the whole or any part of any commission, fees or consideration referred to in subsection (1) is payable by way of rent, royalty, share of profits or any other periodical payment, or otherwise than in cash, the value thereof shall, for the purpose of the payment of duty, be determined *mutatis mutandis* in accordance with the provisions of section eight: Provided that the value of any such consideration referred to in paragraph (b) of subsection (1) shall be so determined as at the date upon which the option or right of pre-emption was acquired by

the person who exercised the option or right of pre-emption.

7. Certain payments excluded from the consideration payable in respect of property.—There shall for the purpose of the payment of duty be excluded from the consideration payable in respect of the acquisition of any property—

- (a) transfer duty or any other duty or tax payable in respect of the acquisition of the property; and
- (b) the costs or fees payable in connection with the registration of the acquisition of the property.

8. Valuation of consideration payable by way of rent, royalty, share of profits or any other periodical payment, or otherwise than in cash.—Where the whole or any part of the consideration in respect of the acquisition of any property is payable by way of rent, royalty, share of profits or any other periodical payment, or otherwise than in cash, the value of the consideration so payable shall, for the purpose of the payment of the duty, be—

- (a) where the consideration is in the form of rent, royalty, share of profits, or any other periodical payment—
 - (i) if the actual amounts of the periodical payments are fixed, the aggregate of the said amounts payable over the period (including renewal periods) for which the property has been acquired by the person liable to pay the duty or, where the property acquired is a lease or sub-lease and the said aggregate amount exceeds the fair value as determined by the Commissioner *mutatis mutandis* in accordance with the provisions of subsection (7) of section five of the property which is the subject of the lease or sub-lease, such fair value;
 - (ii) if the actual amounts of the periodical payments are not fixed or if the property has been acquired for an indefinite or unlimited period or for the natural life of any person, a value which the Commissioner considers fair in the circumstances;
- (b) where the consideration is in the form of goods, services, rights or privileges, the current market value of such goods, services, rights or privileges at the date of the transaction or, where the market value of such goods, services, rights or privileges as at the date of the transaction is not ascertainable, a value which the Commissioner considers fair in the circumstances;
- (c) where the consideration is in the form of shares in or other securities of a company, whether already registered or still to be registered, or is in the form of rights to acquire such shares or securities, the value of such shares or securities or rights thereto, which value shall—
 - (i) in the case of shares or securities which are quoted on any recognized stock exchange on the date of the transaction, be their middle market price on that date; or
 - (ii) in the case of other shares or securities or rights thereto, be a value which the Commissioner considers fair in the circumstances;
- (d) where the consideration is in the form of a member's interest in a close corporation, whether already registered or still to be registered, such value which the Commissioner considers fair in the circumstances.

[Para. (d) added by s. 2 (1) of Act No. 81 of 1985.]

9. Exemptions from duty.—(1) No duty shall be payable in respect of the acquisition of property by—

- (a) the Government and a provincial administration;

[Para. (a) amended by s. 3 (1) (a) of Act No. 77 of 1964, substituted by s. 7 (1) (a) of Act No. 103 of 1969 and by s. 4 (1) (a) of Act No. 87 of 1988 and amended by s. 36 (6) of Act No. 9 of 1989.]

- (b) any "municipality" as defined in section 1 of the Income Tax Act, 1962 (Act No. 58 of 1962);

[Para. (b) substituted by s. 3 of Act No. 70 of 1963, by s. 1 (a) of Act No. 81 of 1965, by s. 7 (1) (b) of Act No. 103 of 1969 and by s. 2 (1) (a) of Act No. 95 of 1978, amended by s. 3 (1) of Act No. 81 of 1985 and substituted by s. 5 (1) (a) of Act No. 97 of 1993 and by s. 1 (a) of Act No. 20 of 2006.]

- (bA)

[Para. (bA) inserted by s. 2 of Act No. 89 of 1972, deleted by s. 4 of Act No. 126 of 1998 and by s. 3 (1) (a) of Act No. 30 of 2000 with effect from 1 January, 2000.]

- (bB) any "water services provider" as defined in section 1 of the Income Tax Act, 1962) Act No. 58 of 1962);

[Para. (bB) inserted by s. 3 (1) (a) of Act No. 66 of 1973 and substituted by s. 2 of Act No. 99 of 1981, by s. 4 (1) (a) of Act No. 136 of 1992 and by s. 1 (b) of Act No. 20 of 2006.]

- (bC)

[Para. (bC) inserted by s. 3 (1) (b) of Act No. 66 of 1973, substituted by s. 77 of Act No. 54 of 1976 and deleted by s. 6 (2) of Act No. 120 of 1992.]

- (c) (i) a public benefit organisation contemplated in paragraph (a) of the definition of "public benefit

organisation" in section 30 (1) of the Income Tax Act, 1962 (Act No. 58 of 1962), that has been approved by the Commissioner in terms of section 30 (3) of that Act; or

[Sub-para. (i) substituted by s. 1 (c) of Act No. 20 of 2006.]

- (ii) any institution, board or body, which is exempt from tax in terms of section 10 (1) (cA) (i) of that Act, which has as its sole or principal object the carrying on of any public benefit activity contemplated in section 30 of that Act,

in respect of property acquired by such public benefit organisation, institution, board or body, the whole, or substantially the whole, of which will be used for the purposes of one or more public benefit activity carried on by such public benefit organisation, institution, board or body, as the case may be: Provided that if at any time subsequent to the acquisition thereof it is used otherwise than in the manner contemplated in this paragraph, duty shall become payable in respect of the acquisition of that property and the date upon which that property was first so otherwise used shall for the purposes of section 3 (1) and section 4 be deemed to be the date of acquisition thereof;

[Para. (c) substituted by s. 4 (1) (c) of Act No. 87 of 1988 (English only), amended by s. 2 (a) of Act No. 37 of 1995 and by s. 3 (1) (b) of Act No. 30 of 2000 and substituted by s. 3 (1) (a) of Act No. 30 of 2002 and by s. 2 (a) of Act No. 32 of 2004.]

- (d) any institution or body in respect of property acquired for the purpose of a public hospital, subject *mutatis mutandis* to the proviso to paragraph (c);

- (e) an heir or legatee in respect of—

- (i) property of the deceased acquired by *ab intestato* or testamentary succession or as a result of a re-distribution of the assets of a deceased estate in the process of liquidation; or

[Sub-para. (i) substituted by s. 1 (1) (a) of Act No. 69 of 1989.]

- (ii) the amount by which the value of property so acquired is enhanced by the renunciation of an interest in or restriction upon the use or disposal of such property;

- (f)

[Para. (f) deleted by s. 16 (a) of Act No. 9 of 2006.]

- (g) a joint owner of property in respect of the acquisition and registration in his name of a defined portion of the property allotted to him upon partition of the property, but not in respect of any consideration payable by him in order to equalize the partition or for any other reason;

- (h) a joint owner of property who acquires the sole ownership in the whole or a portion of the property, in respect of so much of the value of the property in which sole ownership is acquired as represents his share in the joint ownership of that property;

- (i) a surviving or divorced spouse who acquires the sole ownership in the whole or any portion of property registered in the name of his or her deceased or divorced spouse where that property or portion is transferred to that surviving or divorced spouse as a result of the death of his or her spouse or dissolution of their marriage or union;

[Para. (i) substituted by s. 16 (b) of Act No. 9 of 2006.]

- (j)

[Para. (j) added by s. 3 (1) of Act No. 86 of 1987 and deleted by s. 3 (1) (c) of Act No. 30 of 2000 with effect from 15 July, 2001.]

- (k) a spouse in a marriage in community of property in respect of the acquisition of an undivided half-share in property by operation of law by virtue of the contraction of such marriage, if such property had been acquired by the other spouse prior to the date of contraction of the marriage;

[Para. (k) added by s. 1 (1) (b) of Act No. 69 of 1989.]

- (l) any company in terms of—

- (i) an asset-for-share transaction as defined in section 42 of the Income Tax Act, 1962 (Act No. 58 of 1962);
 - (iA) a substitutive share-for-share transaction as defined in section 43 of the Income Tax Act, 1962 (Act No. 58 of 1962);
 - (iB) an amalgamation transaction as defined in section 44 of the Income Tax Act, 1962 (Act No. 58 of 1962);
 - (ii) an intra-group transaction as defined in section 45 of the Income Tax Act, 1962 (Act No. 58 of 1962);
 - (iii) a liquidation distribution as defined in section 47 of the Income Tax Act, 1962 (Act No. 58 of 1962); or
 - (iv) a transaction which would have constituted a transaction or distribution contemplated in subparagraphs (i) to (iii) regardless of whether that person acquired that property as a capital

asset or as trading stock,

where the public officer of that company has made a sworn affidavit or solemn declaration that such acquisition of property complies with the provisions of this paragraph;

[Para. (l) added by s. 8 (1) of Act No. 60 of 2001, substituted by s. 4 (1) of Act No. 74 of 2002, by s. 3 (1) (a) of Act No. 45 of 2003, amended by s. 3 (1) (a) of Act No. 17 of 2009, by s. 3 (1) (a) of Act No. 7 of 2010, by s. 5 (1) of Act No. 24 of 2011 and substituted by s. 2 (1) of Act No. 31 of 2013 deemed to have come into operation on 1 January, 2013 and applicable in respect of transactions entered into on or after that date.]

(m) any person in respect of the transfer of a property from a superannuation fund created and operated mainly for employees of the former TBVC and self-governing territories and other similar funds into the Government Employees' Pension Fund;

[Para. (m) added by s. 2 (1) (a) of Act No. 31 of 2005 with effect from the date of promulgation of that Act, 1 February, 2006 and applicable in respect of any property acquired or interest in or restriction upon in any property renounced on or after that date.]

(n) any person to whom the Minister of Land Affairs has made available state land administered or controlled by him or her in terms of the Provision of Land and Assistance Act, 1993 (Act No. 126 of 1993), or section 42E of the Restitution of Land Rights Act, 1994 (Act No. 22 of 1994);

[Para. (n) added by s. 1 (1) of Act No. 60 of 2008 with effect from 31 October, 2009.]

(o) any person in respect of so much of the value of the property as does not exceed an amount equal to any advance or subsidy granted to that person in terms of the Provision of Land and Assistance Act, 1993 (Act No. 126 of 1993), for the purposes of that acquisition.

[Para. (o) added by s. 1 (1) of Act No. 60 of 2008 with effect from 31 October, 2009.]

(1A) No duty shall be payable in respect of the registration of any property transferred by any public benefit organisation contemplated in paragraph (a) of the definition of "public benefit organisation" in section 30 (1) of the Income Tax Act, 1962 (Act No. 58 of 1962), that has been approved by the Commissioner in terms of section 30 (3) of that Act to any other entity which is controlled by that public benefit organisation;

[Sub-s. (1A) inserted by s. 3 (1) (d) of Act No. 30 of 2000 and substituted by s. 1 (d) of Act No. 20 of 2006.]

(2) No duty shall be payable by a person who requires his ownership in property to be registered in his name in a deeds registry under any of the following circumstances—

(i) where there has been an error in the registration of the acquisition of the property, provided the duty payable in respect of that acquisition has been duly paid;

(ii)

[Para. (ii) deleted by s. 2 (b) of Act No. 32 of 2004.]

(3) No duty shall be payable in respect of the registration jointly in the names of partners of any property which is registered in the name of the partnership carried on by such partners.

(4) No duty shall be payable—

(a) in respect of a change in the registration of property required as a result of the termination of the appointment of an administrator of a trust under a will or other written instrument or of a trustee of an insolvent estate; or

(b) where trust property is transferred by the administrator of a trust in pursuance of the will or other written instrument in pursuance of which the administrator was appointed—

(i) to the persons entitled thereto under such will; or

(ii) to a relative as contemplated in the definition of "relative" in section 1 of the Estate Duty Act, 1955 (Act No. 45 of 1955), where the trust was founded in terms of such other written instrument by a natural person for the benefit of such relative: Provided that no consideration is paid directly or indirectly by such relative in respect of the acquisition of such trust property; or

[Para. (b) substituted by s. 4 (1) (d) of Act No. 87 of 1988.]

(c) where property is restored by a trustee of an insolvent estate to the insolvent; or

(d) in respect of the registration of trust property in the name of a trustee in his capacity as trustee if such trust property is held by such trustee as trust property at the date of commencement of the Trust Property Control Act, 1988, and such registration is required in terms of section 11 (2) of the said Act.

[Para. (d) deleted by s. 3 (b) of Act No. 31 of 1953 and added by s. 4 (1) (f) of Act No. 87 of 1988.]

(5)

[Sub-s. (5) amended by s. 12 (1) of Act No. 80 of 1959, by s. 3 (1) (b) of Act No. 77 of 1964, by s. 7 (1) of Act No. 103 of 1969 and by s. 4 (1) (g) of Act No. 87 of 1988 and deleted by s. 4 (1) (b) of Act No. 136 of 1992.]

(6) (a) No duty shall be payable by a person who, as surety for the payment of the consideration payable under a transaction, pays the consideration and seeks transfer of the property in question into his own name,

provided—

- (i) the duty has been paid in respect of the acquisition of the property under the transaction; and
- (ii) no further consideration is payable by the surety to either party to the transaction.

(b) If further consideration is payable by a surety referred to in paragraph (a) to either party to the transaction, duty shall be payable by him on the value of that further consideration.

(7) No duty shall be payable in respect of the acquisition of property by way of a transaction, if the transaction—

- (a) is declared void by a competent court;
- (b) in terms of which the property is acquired from a person whose estate is sequestrated subsequent to the date of the transaction, becomes void by reason of the sequestration;
- (c) in terms of which property is acquired by a person whose estate is sequestrated prior to the registration of the acquisition by him of the property, is abandoned by the trustee of his insolvent estate;
- (d) is a transaction whereby portions of adjoining properties which are being worked or about to be worked for minerals and are held under claim licence, mynpacht or other mining title, are exchanged, provided the Government Mining Engineer issues a certificate stating that the exchange is made solely and *bona fide* for mining purposes and is necessary or instrumental to proper or more economic working: Provided that if any additional consideration is payable by either party to the exchange, duty shall be payable on the value of the additional consideration.

(8) No duty shall be payable in respect of the acquisition on or after the sixteenth day of March, 1964, of property by any company (hereinafter referred to as the subsidiary company) which has been incorporated, and is managed and controlled, in the Republic from any other company (hereinafter referred to as the foreign company) which has been incorporated, and is managed and controlled, outside the Republic if it is proved to the satisfaction of the Commissioner—

- (a) that at the time of such acquisition all the issued shares of the subsidiary company were held for its own benefit by the foreign company or a company which was incorporated, managed and controlled outside the Republic and was controlled by or controlled the foreign company; and
- (b) that the subsidiary company has under an arrangement with the foreign company acquired from the foreign company all the assets, including the said property, relating to any industrial or commercial or other business undertaking of the foreign company in the Republic.

[Sub-s. (8) added by s. 3 (1) (c) of Act No. 77 of 1964 and substituted by s. 1 (b) of Act No. 81 of 1965 and by s. 5 of Act No. 88 of 1974.]

(9) If any property has by expropriation or compulsory sale under any law been acquired by the State (including the South African Transport Services and a provincial administration) or any rural council, municipal council, town council, village council, town board, local board, village management board, health committee or any district council or any board, body or institution of a public character established by law, and such property is, upon the cancellation or variation on or after 1 January 1964, of such expropriation or sale, re-acquired by the person from whom such property was expropriated or by whom such property was sold under such sale, no duty shall be payable in respect of such re-acquisition.

[Sub-s. (9) added by s. 1 (c) of Act No. 81 of 1965 and substituted by s. 7 (1) (e) of Act No. 103 of 1969, by s. 4 (1) (h) of Act No. 87 of 1988 and by s. 5 (1) (b) of Act No. 97 of 1993.]

(10)

[Sub-s. (10) added by s. 7 (1) (f) of Act No. 103 of 1969 and deleted by s. 4 (1) (i) of Act No. 87 of 1988.]

(11)

[Sub-s. (11) added by s. 2 (1) (b) of Act No. 95 of 1978, amended by s. 4 (1) (j) of Act No. 87 of 1988 and deleted by s. 3 (1) (b) of Act No. 30 of 2002 with effect from 1 March, 2002.]

(12)

[Sub-s. (12) added by s. 6 (1) of Act No. 106 of 1980, amended by s. 4 (1) (k) of Act No. 87 of 1988 and deleted by s. 3 (1) (b) of Act No. 30 of 2002 with effect from 1 March, 2002.]

(12A)

[Sub-s. (12A) inserted by s. 4 (1) (c) of Act No. 136 of 1992 and deleted by s. 3 (1) (b) of Act No. 30 of 2002 with effect from 1 March, 2002.]

(12B)

[Sub-s. (12B) inserted by s. 5 (1) (c) of Act No. 97 of 1993, amended by s. 2 (b) of Act No. 37 of 1995 and deleted by s. 3 (1) (b) of Act No. 30 of 2002 with effect from 1 March, 2002.]

(12C)

[Sub-s. (12C) inserted by s. 3 of Act No. 32 of 1999 and deleted by s. 3 (1) (b) of Act No. 30 of 2002 with effect from 1 March, 2002.]

(13)

[Sub-s. (13) added by s. 2 (1) of Act No. 118 of 1984, substituted by s. 4 (1) (d) of Act No. 136 of 1992 and deleted by s. 3 (1) (e) of Act No. 30 of 2000 with effect from 15 July, 2001.]

(14)

[Sub-s. (14) added by s. 1 (1) (c) of Act No. 69 of 1989 and deleted by s. 3 (1) (f) of Act No. 30 of 2000.]

(15) No duty shall be payable in respect of the acquisition of any property under any transaction which for purposes of the Value-Added Tax Act, 1991, is a taxable supply of goods to the person acquiring such property if—

- (a) the transferor of the property under such transaction, in a declaration in such form as the Commissioner may prescribe, certifies that value-added tax payable under the said Act has been paid to him in respect of the said supply by the transferee and has been accounted for by him in a relevant return required to be furnished by him under the said Act or will be so accounted for in such return within the time allowed under that Act for the rendering of such return, or where such supply was subject to the said tax at the rate of zero per cent, such information regarding such supply as the Commissioner may require has been furnished to him;
- (b) any security required by the Commissioner for the payment of such tax has been lodged, if such tax has not yet been paid; and
- (c) the Commissioner has issued a certificate to the effect that the requirements of this subsection for the granting of the exemption have been met.

[Sub-s. (15) added by s. 79 of Act No. 89 of 1991.]

(15A) No duty shall be payable in respect of the acquisition of any property under an asset-for-share transaction as contemplated in section 42 of the Income Tax Act, 1962 (Act No. 58 of 1962), where—

- (a) the supplier and recipient of that property are deemed to be one and the same person in terms of section 8 (25) of the Value-Added Tax Act, 1991; and
- (b) the public officer of the company as contemplated in section 101 of the Income Tax Act, 1962, has made a sworn affidavit or solemn declaration that such acquisition of property complies with the provisions of paragraph (a).

[Sub-s. (15A) inserted by s. 2 (1) (b) of Act No. 31 of 2005 and amended by s. 2 (1) (a) of Act No. 35 of 2007 deemed to have come into operation in respect of the acquisition of any property on or after 1 January, 2007.]

(15B) No duty shall be payable in respect of the acquisition of property operated and managed by a person on behalf of a rental pool scheme as contemplated in section 52 (2) of the Value-Added Tax Act, 1991, where the person acquiring that property elects in writing that that property must continue to be operated and managed by that person on behalf of a rental pool scheme.

[Sub-s. (15B) inserted by s. 2 (1) (b) of Act No. 35 of 2007.]

(16)

[Sub-s. (16) added by s. 2 of Act No. 5 of 2001 and deleted by s. 2 (1) (c) of Act No. 31 of 2005 with effect from the date of promulgation of that Act, 1 February, 2006 and applicable in respect of any property acquired or interest in or restriction upon in any property renounced on or after that date.]

(17)

[Sub-s. (17) added by s. 2 of Act No. 5 of 2001 and deleted by s. 2 (1) (c) of Act No. 31 of 2005 with effect from the date of promulgation of that Act, 1 February, 2006 and applicable in respect of any property acquired or interest in or restriction upon in any property renounced on or after that date.]

(18) No duty shall be payable where—

- (a) any old order right or OP26 right as defined in Schedule II of the Mineral and Petroleum Resources Development Act, 2002 (Act No. 28 of 2002), wholly or partially continues in force or is wholly or partially converted into a new right pursuant to that Schedule; or
- (b) any prospecting right, mining right, exploration right, production right, mining permit, retention permit or reconnaissance permit as defined in section 1 of the Mineral and Petroleum Resources Development Act, 2002, or any reconnaissance permission contemplated in section 14 of that Act, is granted or is wholly or partially renewed in terms of that Act.

[Sub-s. (18) added by s. 3 (1) (b) of Act No. 45 of 2003 with effect from date of promulgation of the Mineral and Petroleum Resources Development Act, 2002 (Act No. 28 of 2002): 1 May, 2004. Para. (b) substituted by s. 2 (1) of Act No. 16 of 2004.]

(19) No duty shall be payable by a person—

- (a) in respect of any transaction contemplated in Item 8 of Schedule 1 to the Share Blocks Control Act, 1980 (Act No. 59 of 1980), in terms of which any right to or interest in the use of immovable property conferred by reason of the ownership of a share held by that person in a share block company as defined in section 1 of that Act is converted to ownership by that person of that immovable property; or
- (b) in respect of the acquisition by that person of a part of the immovable property of a share block

company as defined in section 1 of the Share Blocks Control Act, 1980 (Act No. 59 of 1980), where that person had a right of use of that part, which right was conferred by reason of the ownership of a share held by that person in that share block company.

[Sub-s. (19) added by s. 3 (1) (b) of Act No. 45 of 2003 and substituted by s. 1 (1) of Act No. 22 of 2012 with effect from 1 January, 2013 and applicable in respect of acquisitions made on or after that date.]

(20) No duty shall be payable in respect of any acquisition of any interest in a residence as contemplated in paragraph 51 or 51A of the Eighth Schedule to the Income Tax Act, 1962 (Act No. 58 of 1962), where that acquisition takes place as a result of a transfer or disposal contemplated in either of those paragraphs.

[Sub-s. (20) added by s. 3 (1) (b) of Act No. 17 of 2009 and substituted by s. 3 (1) (b) of Act No. 7 of 2010 with effect from 1 October, 2010 and applicable in respect of acquisitions taking place on or after that date and before 1 January, 2013. (Editorial Note: effective date in sub-s. (20) of Act No. 40 of 1949 and as substituted by s. 3 (1) (b) and s. 144 (1), respectively, of Act No. 7 of 2010. Provisions of more recent amendments have been followed).]

9A.

[S. 9A inserted by s. 4 (1) of Act No. 66 of 1973, amended by s. 2 (1) of Act No. 102 of 1979, by s. 7 (1) of Act No. 106 of 1980, by s. 5 of Act No. 87 of 1988 and by s. 2 (1) of Act No. 69 of 1989 and repealed by s. 4 of Act No. 17 of 2009.]

10. Administration of Act.—(1) The Commissioner shall be responsible for the administration of this Act.

(2) The powers conferred and the duties imposed upon the Commissioner by this Act may be exercised or performed by the Commissioner or by any SARS official under the control, direction or supervision of the Commissioner.

[Sub-s. (2) substituted by s. 271 read with para. 4 (a) of Sch. 1 of Act No. 28 of 2011.]

(3) Administrative requirements and procedures for purposes of the performance of any duty, power or obligation or the exercise of any right in terms of this Act are, to the extent not regulated in this Act, regulated by the Tax Administration Act.

[Sub-s. (3) inserted by s. 271 read with para. 4 (b) of Sch. 1 of Act No. 28 of 2011.]

11. Powers of the Commissioner.—(1) The Commissioner may decline to accept any payment of duty otherwise than as a deposit on account of duty until the appropriate declarations referred to in section 14 are submitted to him.

[Sub-s. (1) substituted by s. 4 of Act No. 46 of 1996.]

(2) If the Commissioner is satisfied that the declaration required to be completed by any one of the parties to a transaction or by a person who has acquired property otherwise than by way of a transaction, cannot be obtained, he may, notwithstanding the provisions of subsection (1) of section fourteen, dispense with the production of such declaration or may accept in lieu thereof a declaration by some other person whom he considers able to furnish the particulars required to be given.

(3) (a) Where in terms of section 3 (2) a deposit on account of the duty payable by any person is made pending the determination by the Commissioner of the fair value of the property concerned, of an amount equal to the duty calculated on the consideration paid or payable in respect of the acquisition of the property or on the declared value thereof, as the case may be, and there is given to the Commissioner security to his or her satisfaction for the payment of any balance of transfer duty which may still be payable, the Commissioner may in his or her discretion issue to the person liable to pay the duty a certificate that such deposit has been made and that such security has been given.

[Para. (a) substituted by s. 271 read with para. 5 of Sch. 1 of Act No. 28 of 2011.]

(b) No fee shall be payable in respect of a certificate issued under paragraph (a).

11A.

[S. 11A inserted by s. 5 of Act No. 46 of 1996, amended by s. 9 of Act No. 30 of 1998, by s. 9 of Act No. 60 of 2001 and by s. 4 of Act No. 45 of 2003 and repealed by s. 271 read with para. 6 of Sch. 1 of Act No. 28 of 2011.]

11B.

[S. 11B inserted by s. 5 of Act No. 46 of 1996 and repealed by s. 271 read with para. 6 of Sch. 1 of Act No. 28 of 2011.]

11C.

[S. 11C inserted by s. 5 of Act No. 46 of 1996 and repealed by s. 271 read with para. 6 of Sch. 1 of Act No. 28 of 2011.]

11D.

[S. 11D inserted by s. 5 of Act No. 46 of 1996, amended by s. 4 of Act No. 30 of 2000 and repealed by s. 271 read with para. 6 of Sch. 1 of Act No. 28 of 2011.]

11E.

[S. 11E inserted by s. 5 of Act No. 46 of 1996, amended by s. 10 of Act No. 30 of 1998 and repealed by s. 271 read with para. 6 of Sch. 1 of Act No. 28 of 2011.]

12. Registration of acquisition of property prohibited where duty not paid.—(1) No registration officer shall make any record in his deeds registry of an acquisition of property unless there has been produced to him proof, other than a receipt for a deposit on account of duty—

- (a) that any duty payable under this Act or any other law has been paid in respect of the acquisition in question; and
- (b) where the property is to be transferred from the registered owner direct to a person who acquired the property from an intermediary contemplated in the Alienation of Land Act, 1981 (Act No. 68 of 1981), that any duty payable under this Act or any other law has been paid in respect of the acquisition of the property by the intermediary who acquired the property from the registered owner, and in respect of each subsequent acquisition of the property by any person who is also an intermediary as contemplated in the said Act.

[Sub-s. (1) substituted by s. 2 of Act No. 92 of 1971. Para. (b) substituted by s. 1 (1) of Act No. 70 of 1975 and by s. 4 of Act No. 86 of 1987.]

(2) The provisions of subsection (1) shall not apply with reference to an acquisition of property in respect of which there is lodged with the registration officer a certificate issued in terms of section 11 (3) (a) or 9 (15) (c).

[Sub-s. (2) substituted by s. 80 of Act No. 89 of 1991.]

(3) Any dispute as to any person's right to exemption from the payment of duty shall be referred by the registration officer to the Commissioner.

[S. 12 substituted by s. 8 of Act No. 103 of 1969. Sub-s. (3) substituted by s. 2 of Act No. 72 of 1970.]

13. Commissioner to recover amount of duty underpaid.—(1) Whenever the Commissioner is satisfied that the duty payable under this Act in respect of the acquisition of any property or the renunciation of any interest in or restriction upon the use or disposal of any property has not been paid in full, the Commissioner shall, notwithstanding that the acquisition has already been registered in a deeds registry, recover the difference between the amount of the duty payable and the amount paid in accordance with Chapter 11 of the Tax Administration Act.

[Sub-s. (1) substituted by s. 3 (a) of Act No. 31 of 2005 and by s. 271 read with para. 7 (a) of Sch. 1 of Act No. 28 of 2011.]

(2)

[Sub-s. (2) deleted by s. 271 read with para. 7 (b) of Sch. 1 of Act No. 28 of 2011.]

(3) The Commissioner may not recover any amount of duty not fully paid by any person as contemplated in subsection (1) after the expiration of a period of five years reckoned from the date on which that amount became payable in terms of this Act, if it is shown that—

- (a) the failure to pay that amount was not due to an intent of that person or any other person acting on behalf of that person not to make payment of duty; and
- (b) that person or other person acted in good faith and on an assumption that the transaction was not subject to duty under this Act which assumption was based on reasonable grounds and not due to negligence on the part of that person or other person.

[Sub-s. (3) added by s. 3 (b) of Act No. 31 of 2005.]

13A.

[S. 13A inserted by s. 5 of Act No. 45 of 2003 and repealed by s. 271 read with para. 8 of Sch. 1 of Act No. 28 of 2011.]

13B.

[S. 13B inserted by s. 5 of Act No. 45 of 2003 and repealed by s. 271 read with para. 8 of Sch. 1 of Act No. 28 of 2011.]

13C.

[S. 13C inserted by s. 5 of Act No. 45 of 2003 and repealed by s. 271 read with para. 8 of Sch. 1 of Act No. 28 of 2011.]

14. Declarations to be furnished to Commissioner.—(1) A return appropriate to the manner of the acquisition of property in any particular case shall be submitted by the parties to the transaction whereby the property has been acquired and, if the Commissioner so directs, also by the agent, auctioneer, broker or other person who acted for or on behalf of either party to the transaction or, if the property has been acquired otherwise than by way of a transaction, by the person who acquired the property.

[Sub-s. (1) substituted by s. 6 (1) (a) of Act No. 88 of 1974, by s. 1 (a) of Act No. 34 of 2004, by s. 1 (a) of Act No. 36 of 2007, by s. 13 (1) (a) of Act No. 8 of 2010 and by s. 271 read with para. 9 (a) of Sch. 1 of Act No. 28 of 2011.]

(1A)

[Sub-s. (1A) inserted by s. 6 (1) (b) of Act No. 88 of 1974, substituted by s. 1 (b) of Act No. 36 of 2007 and deleted by s. 13 (1) (b) of Act No. 8 of 2010 with effect from 1 January, 2011 and applicable to any payments made on or after that date.]

(2) Where no suitable form of declaration has been prescribed by the Commissioner for any particular kind of acquisition of property, he may require from any person concerned in the acquisition a declaration setting forth the material facts of the case and containing such other information as he may consider necessary.

(3) An estate agent as contemplated in section 1 of the Estate Agency Affairs Act, 1976 (Act No. 112 of 1976), who is entitled to any remuneration or other payment in respect of services rendered in connection with a transaction in terms of which a person acquired property contemplated in paragraphs (d), (e) or (f) of the definition of "property", must within six months of the date of acquisition of that property submit details of that transaction to the Commissioner in a form and in such manner as prescribed by the Commissioner.

[Sub-s. (3) added by s. 1 (b) of Act No. 34 of 2004 and substituted by s. 13 (1) (c) of Act No. 8 of 2010 with effect from 1 January, 2011 and applicable to any payments made on or after that date.]

(4)

[Sub-s. (4) added by s. 1 (c) of Act No. 36 of 2007, substituted by s. 13 (1) (d) of Act No. 8 of 2010 and deleted by s. 271 read with para. 9 (b) of Sch. 1 of Act No. 28 of 2011.]

(5)

[Sub-s. (5) added by s. 1 (c) of Act No. 36 of 2007 and deleted by s. 13 (1) (e) of Act No. 8 of 2010 with effect from 1 January, 2011 and applicable to any payments made on or after that date.]

(6)

[Sub-s. (6) added by s. 1 (c) of Act No. 36 of 2007, substituted by s. 13 (1) (f) and (g) of Act No. 8 of 2010 and deleted by s. 271 read with para. 9 (b) of Sch. 1 of Act No. 28 of 2011.]

(7)

[Sub-s. (7) added by s. 1 (c) of Act No. 36 of 2007, substituted by s. 13 (1) (h) of Act No. 8 of 2010 and deleted by s. 271 read with para. 9 (b) of Sch. 1 of Act No. 28 of 2011.]

(8)

[Sub-s. (8) added by s. 1 (c) of Act No. 36 of 2007 and deleted by s. 271 read with para. 9 (b) of Sch. 1 of Act No. 28 of 2011.]

15. Records of certain sales of property to be kept.—(1) In addition to the requirements upon a taxpayer contained in sections 29, 30, 32 and 33 of the Tax Administration Act, every auctioneer or other person who has effected a sale of property on behalf of some other person shall, for a period of five years from the date on which the sale was effected, keep a record of the sale including a description of the property sold, the person by whom and the person to whom the property has been sold and the price paid for the property.

[Sub-s. (1) substituted by s. 271 read with para. 10 (a) of Sch. 1 of Act No. 28 of 2011.]

(2)

[Sub-s. (2) deleted by s. 271 read with para. 10 (b) of Sch. 1 of Act No. 28 of 2011.]

(3)

[Sub-s. (3) amended by s. 4 of Act No. 77 of 1964, substituted by s. 5 of Act No. 30 of 2000 and deleted by s. 271 read with para. 10 (b) of Sch. 1 of Act No. 28 of 2011.]

16. Persons who acquire property on behalf of others shall disclose names of their principals.—(1) Where property is sold to a person who is acting as an agent for some other person, the person so acting as agent shall disclose to the seller or his or her agent the name and address of the principal for whom he or she acts, and furnish the seller or his or her agent with a copy of the documents appointing him or her as agent—

- (i) if the sale is by auction, on the day of acceptance by the auctioneer of his or her offer; or
- (ii) if the sale is otherwise than by auction, on the day of conclusion of the agreement of sale.

[Sub-s. (1) substituted by s. 6 (1) of Act No. 45 of 2003.]

(2) Any person who has been appointed as an agent, but fails to furnish the documents contemplated in subsection (1) and the name of the person on whose behalf he or she is acting to the seller or his or her agent on the date specified in subsection (1) shall, for the purpose of the payment of the duty payable in respect of the acquisition of the property in question, be presumed, unless the contrary is proved, to have acquired the property for himself or herself.

[Sub-s. (2) substituted by s. 6 (1) of Act No. 45 of 2003 and by s. 2 of Act No. 34 of 2004.]

17.

[S. 17 amended by s. 5 of Act No. 77 of 1964, by s. 6 of Act No. 46 of 1996 and by s. 3 of Act No. 34 of 2004 and repealed by s. 271 read with para. 11 of Sch. 1 of Act No. 28 of 2011.]

17A.

[S. 17A inserted by s. 7 (1) of Act No. 45 of 2003 and repealed by s. 271 read with para. 11 of Sch. 1 of Act No. 28 of 2011.]

17B.

[S. 17B inserted by s. 4 of Act No. 34 of 2004, amended by s. 2 of Act No. 36 of 2007 and repealed by s. 271 read with para. 11 of Sch. 1 of Act No. 28 of 2011.]

18. Objection and Appeal procedures.—(1)

[Sub-s. (1) repealed by s. 271 read with para. 11 of Sch. 1 of Act No. 28 of 2011.]

(2)

[Sub-s. (2) substituted by s. 10 (1) of Act No. 60 of 2001 (as substituted by s. 67 (1) of Act No. 30 of 2002), amended by s. 8 (1) (a) of Act No. 45 of 2003 and repealed by s. 271 read with para. 11 of Sch. 1 of Act No. 28 of 2011 with effect from 1 October, 2012 except to the extent that it relates to interest under this Act: Proclamation No. 51 in *Government Gazette* 35687 of 14 September, 2012.]

Wording prior to amendment by Act No. 28 of 2011 applicable to the extent it relates to interest

(2) The provisions of the Income Tax Act, 1962, relating to—

(a) objections and appeals, as provided for in Part III of Chapter III and the rules promulgated thereunder; and

(b) . . .

shall *mutatis mutandis* apply in respect of any objection lodged or appeal noted or any dispute settled in terms of this Act.

(Editorial Note: Para. (a) makes Part III of Chapter III of the Income Tax Act applicable to transfer duty and this Part includes s. 88 (5) to (7) of the Income Tax Act which relates only to interest.)

(3)

[Sub-s. (3) repealed by s. 271 read with para. 11 of Sch. 1 of Act No. 28 of 2011.]

(4)

[Sub-s. (4) inserted by s. 8 (1) (b) of Act No. 45 of 2003 and repealed by s. 271 read with para. 11 of Sch. 1 of Act No. 28 of 2011.]

(5) If any assessment relating to an appeal contemplated in subsection (4) is altered on appeal or in conformity with any such decision or a decision by the Commissioner to concede the appeal to the tax board or the tax court or such court of law, a due adjustment shall be made, amounts paid in excess being refunded with interest at a rate contemplated in paragraph (b) of the definition of "prescribed rate", in section 1 of the Income Tax Act, 1962, and calculated from the date proved to the satisfaction of the Commissioner to be the date on which any excess was received and the amounts short-paid being recoverable with penalty calculated as provided in section 4.

[Sub-s. (5) inserted by s. 8 (1) (b) of Act No. 45 of 2003.]

(5)

(Pending amendment: Sub-s. (5) to be repealed by s. 271 read with para. 11 of Sch. 1 of Act No. 28 of 2011 with effect from a date to be determined by the President by proclamation in the *Gazette* – date not determined to the extent that Sch. 1 amends or repeals a provision relating to interest: Proclamation No. 51 in *Government Gazette* 35687 of 14 September, 2012.)

(Date of commencement to be proclaimed)

(6) The payment by the Commissioner of any interest under the provisions of subsection (5) shall be deemed to be a drawback from revenue charged to the National Revenue Fund.

[S. 18 amended by s. 3 (a) and (b) of Act No. 27 of 1997 and substituted by s. 10 (1) of Act No. 60 of 2001. Sub-s. (6) added by s. 8 (1) (b) of Act No. 45 of 2003.]

(6)

(Pending amendment: Sub-s. (6) to be repealed by s. 271 read with para. 11 of Sch. 1 of Act No. 28 of 2011 with effect from a date to be determined by the President by proclamation in the *Gazette* – date not determined to the extent

that Sch. 1 amends or repeals a provision relating to interest: Proclamation No. 51 in *Government Gazette* 35687 of 14 September, 2012.)

(Date of commencement to be proclaimed)

19.

[S. 19 amended by s. 4 of Act No. 27 of 1997 and repealed by s. 11 (1) of Act No. 60 of 2001.]

20.

[S. 20 substituted by s. 11 of Act No. 30 of 1998 and by s. 4 (1) of Act No. 31 of 2005 and repealed by s. 271 read with para. 11 of Sch. 1 of Act No. 28 of 2011.]

20A.

[S. 20A inserted by s. 12 (1) of Act No. 30 of 1998, substituted by s. 5 of Act No. 34 of 2004 and repealed by s. 271 read with para. 11 of Sch. 1 of Act No. 28 of 2011.]

20B. Transactions, operations, schemes or understanding for obtaining undue tax benefits.—

(1) Notwithstanding anything in this Act, whenever the Commissioner is satisfied that any transaction, operation, scheme or understanding (whether enforceable or not), including all steps by which it is carried into effect—

- (a) has been entered into or carried out which has the effect of granting a tax benefit to any person; and
- (b) having regard to the substance of the transaction, operation, scheme or understanding—
 - (i) was entered into or carried out in a manner which would not normally be employed for *bona fide* business purposes, other than the obtaining of a tax benefit; or
 - (ii) has created rights or obligations which would not normally be created between persons dealing at arm's length; and
- (c) was entered into or carried out solely or mainly for the purposes of obtaining a tax benefit,

the Commissioner shall determine the liability for any duty imposed by this Act, and the amount thereof, as if the transaction, operation, scheme or understanding had not been entered into or carried out, or in such manner as in the circumstances of the case the Commissioner deems appropriate for the prevention or diminution of such tax benefit.

(2) For the purpose of this section "**tax benefit**" means—

- (a) any reduction in the liability of any person to pay duty;
- (b) any increase in the entitlement of any person to the refund of duty; or
- (c) any other avoidance or postponement of liability for the payment of any duty imposed by this Act or any tax, duty or levy imposed by any other Act administered by the Commissioner.

(3) Any decision of the Commissioner under subsection (1) shall be subject to objection and appeal in accordance with Chapter 9 of the Tax Administration Act, and whenever in proceedings relating thereto it is proved that the relevant transaction, operation, scheme or understanding results or would result in a tax benefit, it shall be presumed, until the contrary is proved, that such transaction, operation, scheme or understanding was entered into or carried out solely or mainly for the purpose of obtaining a tax benefit.

[S. 20B inserted by s. 9 (1) of Act No. 45 of 2003. Sub-s. (3) substituted by s. 1 of Act No. 39 of 2013.]

20C.

[S. 20C inserted by s. 6 (1) of Act No. 34 of 2004 and repealed by s. 271 read with para. 11 of Sch. 1 of Act No. 28 of 2011.]

20D.

[S. 20D inserted by s. 6 (1) of Act No. 34 of 2004 and repealed by s. 271 read with para. 11 of Sch. 1 of Act No. 28 of 2011.]

21. Repeal of Laws.—The Laws specified in the Schedule are hereby repealed to the extent set out in the fourth column of the said Schedule: Provided that any duty which has at the date of commencement of this Act become payable under any law so repealed, but which has not at that date been paid, shall be recovered in accordance with and subject to the provisions of the said law: Provided further that if any such duty was not paid before the twentieth day of March, 1963, any interest payable in respect of such duty under any such law for the period from that date to the date of payment of the duty, shall be calculated at the rate of seven and a half per centum per annum in respect of each completed month in that period.

[S. 21 amended by s. 4 of Act No. 70 of 1963 and by s. 3 of Act No. 72 of 1970.]

21A.

22. Short title and date of commencement.—This Act shall be called the Transfer Duty Act, 1949, and shall come into operation on the first day of January, 1950.

Schedule
REPEAL OF LAWS

<i>Province or Union</i>	<i>Number and Date of Law</i>	<i>Title or Subject of Law</i>	<i>Extent of Repeal</i>
Cape of Good Hope	Ordinance No. 6 of 1844	Ordinance for Regulating Sales.	So much as is unrepealed.
	Act No. 5 of 1884	Transfer Duty Consolidation and Amendment Act, 1884.	The whole, except sections twenty-four, twenty-five, twenty-eight and thirty.
	Act No. 46 of 1902	The Higher Educational Institutions Transfer Duty Exemption Act, 1902.	So much as relates to transfer duty.
	Ordinance No. 5 of 1921	Consolidated Education Ordinance, 1921.	So much of sections three hundred and eighteen and three hundred <i>and</i> twenty as relates to transfer duty.
Transvaal	Proclamation No. 8 of 1902	Transfer Duty Proclamation, 1902.	The whole, except sections twenty-two, twenty-three, twenty-six, twenty-eight, twenty-nine and thirty.
	Ordinance No. 14 of 1905	Ordinance to amend the Transfer Duty Proclamation, 1902.	The whole.
Natal	Law No. 5 of 1860	To amend the Law for regulating the payment of Transfer Duty on the sale or transfer of Immovable Property.	The whole.
	Law No. 20 of 1865	To exempt growing crops and Machinery from the payment of Transfer Duty on being sold along with the Lands on which they are growing or to which they are attached.	The whole.
	Law No. 19 of 1883	To amend Law No. 5 of 1860.	The whole.
	Law No. 19 of 1884	To amend in certain respects the Law and Practice in reference to Registration.	So much as is unrepealed.
	Law No. 5 of 1890	To amend in certain respects Law No. 5 of 1860 and Law No. 19 of 1883.	The whole.
	Law No. 6 of 1891	To amend Law 19, 1884 entitled "Law to amend in certain respects the Law and Practice in reference to Registration".	The whole.
	Act No. 43 of 1889	The Natal Mines Act, 1889.	Sections ninety and ninety-one.
	Act No. 7 of 1903	To amend the Law relating to Sale and	Sections three, four and six and the

		Purchase of Land.	Schedule.
	Act No. 23 of 1907	To amend Law No. 5 of 1890 and Law No. 6 of 1891.	The whole.
	Act No. 31 of 1908	To impose a cession fee upon unregistered Crown Leases.	The whole.
	Act No. 11 of 1909	To amend the Transfer Duty Law No. 5 of 1860.	The whole.
	Act No. 12 of 1909	To amend Law No. 19, 1884, relative to the registration of leases.	The whole.
Orange Free State	Law Book Chapter CXVIII	Transfer and Registration of Stands.	Sections six and eight.
	Law No. 14 of 1897	To impose a tax on fixed property situate in but sold outside the Orange Free State by public auction.	The whole.
	Ordinance No. 12 of 1906	Transfer Duty Ordinance, 1906.	The whole, except sections forty-one, forty-two, forty-five, forty-seven, forty-nine, fifty-one, fifty-two and fifty-three.
	Ordinance No. 18 of 1906	Villages Management Amendment Ordinance, 1906.	Section five.
	Act No. 30 of 1908	Transfer Duty Amendment Act, 1908.	The whole.
Union	Act No. 11 of 1913	Transfer Duty Reduction Act, 1913.	The whole.
	Act No. 42 of 1917	Financial Adjustment Act, 1917.	Section eight.
	Act No. 28 of 1919	Transvaal Transfer Duty Amendment Act, 1919.	The whole.
	Act No. 43 of 1919	Financial Adjustments Act, 1919.	Section three.