



# Government Gazette

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## **THE PRESIDENCY**

No. 781

22 July 2008

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

**No. 3 of 2008: Taxation Laws Amendment Act, 2008.**



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**GENERAL EXPLANATORY NOTE:**

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

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

*(English text signed by the President.)  
(Assented to 17 July 2008.)*

# ACT

**To amend the—**

- Income Tax Act, 1962, so as to fix the rates of normal tax; to amend and insert certain definitions; to delete certain obsolete definitions; to delete certain obsolete provisions; to delete certain obsolete references; to effect textual and consequential amendments; to exclude certain amounts from the net income of a controlled foreign company; to add, amend and remove certain exemptions; to add, amend and remove certain deductions; to amend provisions relating to: the deemed receipt or accrual of income, certain limitations in respect of deductions, special corporate rules, the determination of the net amount of a dividend, the treatment of certain tax claims and refunds, the determination of S.I.T.E., public benefit activities and the taxation of fringe benefits, persons commencing or ceasing to be residents, capital distributions and oil and gas companies;
- Customs and Excise Act, 1964, so as to amend rates of duty in Schedule No. 1;
- Value-Added Tax Act, 1991, so as to amend thresholds;
- Collective Investment Schemes Control Act, 2002, so as to effect a textual correction;
- Revenue Laws Amendment Act, 2006, so as to amend provisions with regard to the 2010 FIFA World Cup;
- Diamond Export Levy Act, 2007, so as to effect textual corrections;
- Securities Transfer Tax Act, 2007, so as to substitute a word; and
- Revenue Laws Amendment Act, 2007, so as to amend effective dates; to amend provisions relating to the amalgamation of sporting bodies; to effect textual amendments;

**and to provide for matters connected therewith.**

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

**Fixing of rates of normal tax and amendment of certain amounts for purposes of Act 58 of 1962**

1. (1) The rates of tax fixed by Parliament in terms of section 5(2) of the Income Tax Act, 1962, are set out in paragraphs 1, 3, 4, 5, 6 and 7 of Appendix I to this Act. 5
- (2) The Income Tax Act, 1962, is hereby amended—
  - (a) by the substitution for the amounts in section 6(2)(a) and (b) respectively of the amounts in the third column opposite the relevant section in the table in paragraph 2 of Appendix I to this Act; 10
  - (b) by the substitution for the amount in paragraph (b) of the definition of "formula B" in paragraph 1 of the Second Schedule of the amount in the third column of the table in paragraph 8 of Appendix I to this Act; and
  - (c) by the substitution for each monetary amount in the provisions specified in the second column of the tables in Part II of Appendix I to this Act of the monetary amount in the third column opposite the relevant provision. 15
- (3) For the purposes of Appendix I to this Act any word or expression to which a meaning has been assigned in the Income Tax Act, 1962, unless the context indicates otherwise, bears the meaning so assigned.
- (4) For the purposes of Appendix III to this Act any word or expression to which a meaning has been assigned in the Value-Added Tax Act, 1991, unless the context indicates otherwise, bears the meaning so assigned. 20
- (5) The rates of tax fixed in terms of subsection (1) apply in respect of the taxable income of—
  - (a) any person (other than a company) for the year of assessment commencing on 1 March 2008; and 25
  - (b) any company for any year of assessment ending during the period of 12 months ending on 31 March 2009.
- (6) The Value-Added Tax Act, 1991, is hereby amended by the substitution for each monetary amount in the provisions specified in the second column of the table in Appendix III to this Act of the monetary amount in the third column opposite the relevant provision. 30
- (7) Paragraphs (b) and (c) of subsection (2) are deemed to have come into operation on 1 March 2008 and apply in respect of a year of assessment commencing on or after that date. 35
- (8) Subsection (6) is deemed to have come into operation on 1 March 2008 and applies in respect of any tax period commencing on or after that date.

Amendment of section 1 of Act 58 of 1962, as amended by section 3 of Act 90 of 1962, section 1 of Act 6 of 1963, section 4 of Act 72 of 1963, section 4 of Act 90 of 1964, section 5 of Act 88 of 1965, section 5 of Act 55 of 1966, section 5 of Act 95 of 1967, section 5 of Act 76 of 1968, section 6 of Act 52 of 1970, section 4 of Act 88 of 1971, section 4 of Act 90 of 1972, section 4 of Act 65 of 1973, section 4 of Act 85 of 1974, section 4 of Act 69 of 1975, section 4 of Act 103 of 1976, section 4 of Act 113 of 1977, section 3 of Act 101 of 1978, section 3 of Act 104 of 1979, section 2 of Act 104 of 1980, section 2 of Act 96 of 1981, section 3 of Act 91 of 1982, section 2 of Act 94 of 1983, section 1 of Act 30 of 1984, section 2 of Act 121 of 1984, section 2 of Act 96 of 1985, section 2 of Act 65 of 1986, section 1 of Act 108 of 1986, section 2 of Act 85 of 1987, section 2 of Act 90 of 1988, section 1 of Act 99 of 1988, Government Notice No. R780 of 14 April 1989, section 2 of Act 70 of 1989, section 2 of Act 101 of 1990, section 2 of Act 129 of 1991, section 2 of Act 141 of 1992, section 2 of Act 113 of 1993, section 2 of Act 21 of 1994, section 2 of Act 21 of 1995, section 2 of Act 36 of 1996, section 2 of Act 28 of 1997, section 19 of Act 30 of 1998, section 10 of Act 53 of 1999, section 13 of Act 30 of 2000, section 2 of Act 59 of 2000, section 5 of Act 5 of 2001, section 3 of Act 19 of 2000, section 17 of Act 60 of 2001, section 9 of Act 30 of 2002, section 6 of Act 74 of 2002, section 33 of Act 12 of 2003, section 12 of Act 45 of 2003, section 3 of Act 16 of 2004, section 3 of Act 32 of 2004, section 3 of Act 32 of 2005, 55

section 19 of Act 9 of 2006, section 3 of Act 20 of 2006, section 3 of Act 8 of 2007 and section 5 of Act 35 of 2007

2. (1) Section 1 of the Income Tax Act, 1962, is hereby amended—
- (a) by the deletion of the definition of “building society”;
  - (b) by the substitution in the definition of “child” for the words preceding paragraph (b) of the following words:
    - “‘child’, in relation to any person, includes any person adopted by him or her—
    - (a) under [the provision of the Adoption of Children Act, 1923 (Act No. 25 of 1923), or Children’s Act, 1937 (Act No. 31 of 1937), or the Children’s Act, 1960 (Act No. 33 of 1960)] the law of the Republic; or”;
  - (c) by the deletion of the definition of “date of deep level production”;
  - (d) by the deletion of the word “and” in the definition of “dividend” at the end of paragraph (b);
  - (e) by the insertion in the definition of “dividend” after paragraph (b) of the following paragraph:
    - “(c) any reduction of the profits of a company as a result of—
    - (i) the reduction of the capital of that company; or
    - (ii) the acquisition, cancellation or redemption of shares issued by that company; and”;
  - (f) by the deletion in the definition of “dividend” of paragraph (cA);
  - (g) by the insertion in the definition of “dividend” after paragraph (c) of the following paragraph:
    - “(cB) any reduction of the profits of a company, if—
    - (i) that company holds shares in any other company which is a shareholder in relation to that company; and
    - (ii) those shares are cancelled.”;
  - (h) by the substitution in the definition of “dividend” for the words preceding subparagraph (aa) of paragraph (iii) of the first proviso of the following words:
    - “if, in the event of any partial reduction of the capital of a company or acquisition, cancellation or redemption of shares issued by that company, any cash or any asset is given to a shareholder and the cash or asset (or a portion thereof) represents a return of share capital or share premium, the amount of share capital or share premium so returned—”;
  - (i) by the substitution in the definition of “dividend” for paragraph (iiiA) of the first proviso of the following paragraph:
    - “(iiiA) in the event of the reduction [or redemption] of the share capital or share premium of a company, or the acquisition, cancellation or redemption of shares issued by that company, in relation to a class of shareholders, that company must be deemed to have distributed profits to the shareholders in that class to the extent that the share capital and share premium [that must be apportioned to any class of shares shall not exceed] so reduced exceeds the [consideration given in respect of the issue of that class of shares] share capital and share premium contributed by that class of shareholders.”;
  - (j) by the deletion of the definition of “entertainment expenditure”;
  - (k) by the substitution in the definition of “gross income” for paragraph (a) of the following paragraph:
    - “(a) any amount received or accrued by way of annuity, including any amount contemplated in the definition of ‘living annuity’ or the definition of ‘annuity amount’ in section 10A(1);”;
  - (l) by the substitution in the definition of “gross income” for subparagraph (i) of the proviso to paragraph (d) of the following subparagraph:
    - “(i) the provisions of this paragraph shall not apply to any lump sum award from any pension fund, pension preservation fund, provident fund, provident preservation fund or retirement annuity fund.”;

- (m) by the substitution in the definition of "gross income" for paragraph (e) of the following paragraph:  
"(e) a retirement fund lump sum benefit or retirement fund lump sum withdrawal benefit;";
- (n) by the substitution in the definition of "gross income" for paragraph (eB) of the following paragraph:  
"(eB) any actuarial surplus that may be used for a purpose contemplated in section 15E(1)(f) or (g) of the Pension Funds Act, 1956 (Act No. 24 of 1956), if the use of that surplus for that purpose was approved by the board contemplated in section 15E of that Act;";
- (o) by the insertion after the definition of "listed company" of the following definition:  
"'living annuity' means a right of a member or former member of a pension fund, pension preservation fund, provident fund, provident preservation fund or retirement annuity fund, or his or her dependant or nominee, or any subsequent nominee, to an annuity purchased from a person on or after the retirement date of that member or former member in respect of which—  
 (a) the value of the annuity is determined solely by reference to the value of assets which are specified in the annuity agreement and are held by or on behalf of that person for purposes of providing the annuity;  
 (b) the amount of the annuity is determined in accordance with a method or formula prescribed by the Minister by notice in the *Gazette*;  
 (c) the full remaining value of the assets contemplated in paragraph (a) may be paid as a lump sum when the value of those assets become at any time less than an amount prescribed by the Minister by notice in the *Gazette*;  
 (d) the amount of the annuity is not guaranteed by that person;  
 (e) on the death of the member or former member, the value of the assets referred to in paragraph (a) may be paid to a dependant or nominee of the member or former member as an annuity or lump sum, or, in the absence of a dependant or nominee, to the deceased's estate as a lump sum; and  
 (f) further requirements regarding the annuity may be prescribed by the Minister by notice in the *Gazette*;"
- (p) by the deletion of the definition of "married woman";
- (q) by the deletion of the definition of "mutual building society";
- (r) by the insertion after the definition of "nominal value" of the following definition:  
"'normal retirement age' means—  
 (a) in the case of a member of a pension fund or provident fund, the date on which the member becomes entitled to retire from employment for reasons other than sickness, accident, injury or incapacity through infirmity of mind or body;  
 (b) in the case of a member of a retirement annuity fund, a pension preservation fund or a provident preservation fund, the date on which the member attains 55 years of age; or