

DRAFT
(2 March 2001)

REPUBLIC OF SOUTH AFRICA

TAXATION LAWS AMENDMENT BILL, 2001

(TO INCORPORATE THE TAXATION OF CAPITAL GAINS)

*(As introduced in the National Assembly as a money Bill)
(The English text is the official text of the Bill)*

(MINISTER OF FINANCE)

[B - 01]

REPUBLIEK VAN SUID-AFRIKA

WYSIGINGSWETSONTWERP OP BELASTINGWETTE, 2001

(OM DIE BELASTING VAN KAPITAALWINSTE IN TE VOEG)

*(Soos ingedien in die Nasionale Vergadering as 'n Geldwetsontwerp.)
(Die Afrikaanse teks is die amptelike vertaling van die Wetsontwerp.)*

(MINISTER VAN FINANSIES)

[B - 01]

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.

BILL

To amend the Income Tax Act, 1962, so as to provide for the determination of taxable capital gains and assessed capital losses; to amend the ; and to provide for connected matters.

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

Amendment of section 1 of Act 32 of 1948 – Definition of spouse

Insertion of section 11A in Act 32 of 1948

1. The following section is hereby inserted in the Marketable Securities Tax Act, 1948, after section 11:

“Amendment of Act

11A. Any legislation proposing an amendment to this Act or providing for the enactment of subordinate legislation that may conflict with this Act may be introduced in Parliament only by the Minister of Finance or in consultation with the Minister of Finance.”

Amendment of section 1 of Act 40 of 1949

2. Section 1 of the Transfer Duty Act, 1949, is hereby amended by the insertion after the definition of “South African Revenue Service” of the following definition:

“spouse’ in relation to any person, includes a person who is the partner of such person—

(a) in a marriage recognised in terms of the laws of the Republic;

(b) in a marriage entered into in accordance with any system of religious law which is recognised in the Republic; or

(c) in a permanent marital-like relationship;

Provided that such person and any person who is the partner of such person in a relationship contemplated in paragraph (b) or (c) shall be deemed to be married without community of property.”.

Amendment of section 9 of Act 40 of 1949, as amended by section 3 of Act 31 of 1953, section 12 of Act 80 of 1959, section 3 of Act 70 of 1963, section 3 of Act 77 of 1964, section 1 of Act 81 of 1965, section 7 of Act 103 of 1969, section 2 of Act 89 of 1972, section 3 of Act 66 of 1973, section 5 of Act 88 of 1974, section 77 of Act 54 of 1976, section 2 of Act 95 of 1978, section 6 of Act 106 of 1980, section 2 of Act 99 of 1981, section 2 of Act 118 of 1984, section 3 of Act 81 of 1985, section 3 of Act 86 of 1987, section 4 of Act 87 of 1988, section 1 of Act 69 of 1989, section 36 of Act 9 of 1989, section 1 of Act 69 of 1989, section 79 of Act 89 of 1991, section 6 of Act 120 of 1992, section 4 of Act 136 of 1992, section 5 of Act 97 of 1993, section 2 of Act 37 of 1995 and section 3 of Act 32 of 1999

3. (1) Section 9 of the Transfer Duty Act, 1949, is hereby amended by the addition of the following subsections:

“(16) No duty shall be payable in respect of the acquisition by a natural person of a residence that will constitute that person’s primary residence as defined in paragraph 44 of the Eighth Schedule to the Income Tax Act, 1962, from a company or close corporation where—

(a) that acquisition takes place before 30 September 2002;

(b) that natural person and his or her spouse directly held all the equity share capital or members’ interest in that company or close corporation, as the case may be, from (date ??) to the date of that acquisition; and

(c) that natural person or his or her spouse ordinarily resided in that residence and used it for domestic or private residential purposes as his or her or their ordinary residence from (date ??) to the date of that acquisition;

Provided that this exemption shall apply only in respect of the portion of the property contemplated in paragraph 46 of the Eighth Schedule.

(17) No duty shall be payable in respect of the acquisition by a natural person of a residence that will constitute that person’s primary residence as defined in paragraph 44 of the Eighth Schedule to the Income Tax Act, 1962, from a trust where—

- (a) that acquisition takes place before 30 September 2002;
- (b) that person is the settlor of that trust and that residence was disposed of to that trust by that settlor;
- (c) that person or his or her spouse ordinarily resided in that residence and used it for domestic or private residential purposes as his or her or their ordinary residence from **(date??)** to the date of that acquisition by that person:

Provided that this exemption shall apply only in respect of the portion of the property contemplated in paragraph 46 of the Eighth Schedule.”.

(2) Subsection (1) shall come into operation on the date of promulgation of this Act and shall apply in respect of any acquisition of a residence on or after that date.

Insertion of section 21A in Act 40 of 1949

4. The following section is hereby inserted in the Transfer Duty Act, 1949, after section 21:

“Amendment of Act

21A. Any legislation proposing an amendment to this Act or providing for the enactment of subordinate legislation that may conflict with this Act may be introduced in Parliament only by the Minister of Finance or in consultation with the Minister of Finance.”.

Amendment of section 1 of Act 45 of 1955, as amended by section 1 of Act 59 of 1957, section 1 of Act 65 of 1960, section 7 of Act 77 of 1964, section 3 of Act 92 of 1971, section 9 of Act 106 of 1980, section 5 of Act 86 of 1987, section 7 of Act 87 of 1988, section 6 of Act 97 of 1993, section 2 of Act 140 of 1993, section 8 of Act 88 of 1996, section 5 of Act 27 of 1997, section 34 of Act 34 of 1997, section 7 of Act 53 of 1999, section 6 of Act 30 of 2000 and section 1 of Act 59 of 2000

5. Section 1 of the Estate Duty Act, 1955, is hereby amended by the substitution for paragraph (c) of the definition of “spouse” of the following paragraph:

“(c) in a permanent [**same-sex life**] marital-like relationship:

Provided that that such deceased person and such person contemplated in paragraph (b) or (c) shall, for the purposes of this Act, be deemed to have been married without community of property.”.

Insertion of section 31A in Act 45 of 1955

6. The following section is hereby inserted in the Estate Duty Act, 1955, after section 31:

“Amendment of Act

31A. Any legislation proposing an amendment to this Act or providing for the enactment of subordinate legislation that may conflict with this Act may be introduced in Parliament only by the Minister of Finance or in consultation with the Minister of Finance.”.

Amendment of First Schedule to Act 45 of 1955, as substituted by section 9 of Act 92 of 1971 and amended by section 13 of Act 106 of 1980, section 3 of Act 71 of 1986, section 16 of Act 87 of 198 and section 11 of Act 37 of 1996.

7. (1) The First Schedule to the Estate Duty Act, 1955, is hereby amended by the substitution for the expression “25 per cent” of the expression “ 20 per cent”.

(2) Subsection (1) shall come into operation on 1 October 2001 and shall apply in respect of the estate of any person who dies 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 89 of 1969, 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. R.780 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 and section 2 of Act 59 of 2000

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8. Section 1 of the Income Tax Act, 1962, (in this Act referred to as the principal Act), is hereby amended—

- (a) by the insertion after the definition of “agent” of the following definitions:
“aggregate capital gain’ means an amount determined in terms of paragraph 6 of the Eighth Schedule;
‘aggregate capital loss’ means an amount determined in terms of paragraph 7 of the Eighth Schedule;
‘assessed capital loss’ means an amount determined in terms of paragraph 9 of the Eighth Schedule;”;
- (b) by the addition of the word “or” at the end of paragraph (c) of the definition of “assessment”;
- (c) by the insertion after paragraph (c) of the definition of “assessment” of the following paragraph:
(d) of any assessed capital loss determined in terms of paragraph 9 of the Eighth Schedule, ”;
- (d) by the insertion after the definition of “business day” of the following definitions:
“capital gain’ means an amount determined in terms of paragraph 3 of the Eighth Schedule;
‘capital loss’ means an amount determined in terms of paragraph 4 of the Eighth Schedule;”;
- (e) by the substitution for the words following paragraph (ii) but preceding paragraph (a) of the definition of “gross income” of the following words:
“during such year or period of assessment, excluding receipts or accruals of a capital nature, and that portion of a receipt or accrual which the person is liable to pay to the Commissioner as value-added tax payable as a consequence of a supply by a vendor of goods or services, as contemplated in the Value-Added Tax Act, 1991 (Act No. 89 of 1991), which gave rise to that receipt or accrual, but including, without in any way limiting the scope of this definition, such amounts (whether of a capital nature or not) so received or accrued as are described hereunder, namely—”;
- (f) by the insertion after paragraph (eB) of the definition of “gross income” of the following paragraph:
“(eC) any amount received by or accrued to a person in respect of any long-term policy as defined in the Long-term Insurance Act, 1998 (Act No. 52 of 1998), which is entered into with any person who is not a long-term insurer as defined in that Act;
- (g) by the deletion of the definition of “married”;

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- (h) by the substitution for the definition of “married woman” of the following definition:
“‘married woman’ does not include a married woman who is living apart from her husband in circumstances which indicate that the separation is likely to be permanent **[nor, where any husband is at any time married to two or more wives, any wife other than the wife of his longest subsisting marriage];**”;
- (i) by the insertion after the definition of “pension fund” of the following definition:
“‘permanent establishment’ means a permanent establishment as defined from time to time in Article 5 of the Model Tax Convention on Income and on Capital of the Organisation for Economic Co-operation and Development;”;
- (j) by the insertion after paragraph (f) of the definition of “representative taxpayer” of the following paragraph:
“(g) in respect of any amount derived or any loss incurred from the disposal of any asset, as defined in the Eighth Schedule, by any person for or on behalf of any other person, the person who disposed of such asset for or on behalf of such other person;”;
- (k) by the insertion after the definition of “shareholder” of the following definition:
“‘special trust’ means a trust created solely for the benefit of a person who suffers from?
(i) any ‘mental illness’ as defined in section 1 of the Mental Health Act, 1973 (Act No. 18 of 1973); or
(ii) any serious physical disability,
where such illness or disability incapacitates such person from earning sufficient income for the maintenance of such person, or which incapacitates such person from managing his or her own financial affairs: Provided that where the person for whose benefit the trust was so created dies before or on the last day of a year of assessment, such trust shall be deemed not to be a special trust in respect of years of assessment ending on or after such person’s date of death;”;
- (l) by the insertion after the definition of “specified period” of the following definition:
“‘spouse’ in relation to any person, includes a person who is the partner of such person—
(a) in a marriage recognised in terms of the laws of the Republic;
(b) in a marriage entered into in accordance with any system of religious law which is recognised in the Republic; or
(c) in a permanent marital-like relationship,
and ‘married’, ‘husband’ or ‘wife’ shall be construed accordingly: Provided that such person and any person who is the partner of such person in a relationship

contemplated in paragraph (b) or (c) shall be deemed to be married without community of property.”;

(m) by the insertion after the definition of “tax” of the following definition:

“taxable capital gain’ means an amount determined in terms of paragraph 10 of the Eighth Schedule;”; and

(n) by the substitution for the definition of “taxable income” of the following definition:

“taxable income” means the aggregate of?

(a) the amount remaining after deducting from the income of any person all the amounts allowed under Part I of Chapter II to be deducted from or set off against such income; and

(b) all amounts included or deemed to be included in the taxable income of any person in terms of this Act”.

Amendment of section 3 of Act 58 of 1962, as amended by section 3 of Act 141 of 1992, section 3 of Act 21 of 1994, section 3 of Act 21 of 1995, section 20 of Act 30 of 1998 and section 3 of Act 59 of 2000

9. Section 3 of the principal Act is hereby amended by the substitution for subsection (4) of the following subsection:

“(4) Any decision by the Commissioner under the definitions of “benefit fund”, “pension fund”, “provident fund” and “retirement annuity fund” in section 1, section 6, section 8(4)(b), (c), (d) and (e), section 9D, section 9F, section 10(1)(cH), (cK), (e), (iA), (j) and (nB), section 11(e), (f), (g), (gA), (j), (l), (t), (u) and (w), section 12C, section 13, section 14, section 15, section 22(1), (3) and (5), section 24(2), section 24A(6), section 24C, section 24D, section 24I, section 25D, section 27, section 31, section 35(2), section 38(4), section 57, paragraphs 6, 7, 9, 13, 13A, 14, 19 and 20 of the First Schedule, paragraph (b) of the definition of “formula A” in paragraph 1 and paragraph 4 of the Second Schedule, paragraphs 18, 19(1), 20, 21, 22, 24 and 27 of the Fourth Schedule, **[and]** paragraphs 2, 3, 6, 9 and 11 of the Seventh Schedule and paragraph 29(6) of the Eighth Schedule, shall be subject to objection and appeal.”.

Amendment of section 5 of Act 58 of 1962, as amended by section 2 of Act 6 of 1963, section 5 of Act 90 of 1964, section 6 of Act 88 of 1965, section 7 of Act 55 of 1966, section 6 of Act 95 of 1967, section 6 of Act 76 of 1968, section 7 of Act 89 of 1969, section 7 of Act 52 of 1970, section 5 of Act 88 of 1971, section 5 of Act 90 of 1972, section 5 of Act 65 of 1973, section 5 of Act 103 of 1976, section 5 of Act 113 of 1977, section 3 of Act 104 of 1980, section 4 of Act

96 of 1981, section 4 of Act 91 of 1982, section 3 of Act 94 of 1983, section 3 of Act 121 of 1984, section 3 of Act 65 of 1986, section 3 of Act 90 of 1988, section 3 of Act 129 of 1991, section 5 of Act 21 of 1994 and section 4 of Act 21 of 1995

10. (1) Section 5 of the principal Act is hereby amended—

(a) by the substitution for the words preceding the formula in subsection (10) of the following words:

“Where any taxpayer’s income includes any special remuneration, or where the provisions of section 7A(4A) or paragraph 15(3) or 17 or 19(1) of the First Schedule or paragraph 7 of the Second Schedule are applicable in the case of the taxpayer in respect of any year of assessment, the normal tax payable by the taxpayer in respect of such year (as determined before the deduction of any rebate **[or the addition of any transition levy]**) shall be determined in accordance with the formula—”;

(b) by the substitution for paragraph (b) of subsection (10) of the following paragraph:

“(b) ‘A’ represents the amount of normal tax (as determined before the deduction of any rebate **[or the addition of any transition levy]**) calculated at the full rate of tax chargeable for the said year in respect of a taxable income equal to the amount represented by the expression ‘B + D - (C + L)’ in the formula;”;

(c) by the deletion of subparagraphs (iA) and (iv) of paragraph (d) of subsection (10);

(d) by the substitution for paragraph (g) of subsection (10) of the following paragraph:

“(g) ‘R’ represents the greater of the amounts determined by applying the formula—

$$R = \frac{F}{B + D - (C + L + G)}$$

In respect of the said year of assessment, in which formula—

(i) the amounts represented by the symbols **[‘A’]** ‘B’, ‘C’, ‘D’, and ‘L’ shall be determined in accordance with the foregoing provisions of this subsection as applicable in the said year or in the said preceding year, as the case may be;

(ii) ‘F’ represents the amount of normal tax (as determined before the deduction of any rebate) calculated at the full rate of tax chargeable for the said year in respect of a taxable income equal to the amount represented by the expression ‘B + D - (C + L + G)’ in the formula; and

(iii) ‘G’ represents an amount of the taxable capital gain included in the taxable income in terms of section 26A:

Provided that^{3/4}

- (a) where, as a result of the death or insolvency of the taxpayer, the period assessed is less than 12 months, the symbol 'R' shall be determined with reference to the said year only: **[and**
- (b) **where the said preceding year ended on 28 February 1995, the symbols 'D' and 'L' in the formula shall be disregarded:]**".

(2) Subsection (1) shall come into operation on 1 October 2001 and shall apply in respect of any year of assessment which commences on or after that date.

Amendment of section 6quat of Act 58 of 1962, as inserted by section 5 of Act 85 of 1987 and amended by section 5 of Act 28 of 1997, section 12 of Act 53 of 1999 and section 16 of Act 30 of 2000 and substituted by section 4 of Act 59 of 2000

11. Section 6quat is hereby amended?

- (a) by the addition of the word "or" at the end of paragraph (d) of subsection (1);
- (b) by the addition to subsection (1) of the following paragraph:

"(e) any taxable capital gain contemplated in section 26A, to the extent it is attributable to any capital gain in respect of an asset situated outside the Republic."
- (c) by the substitution for the words preceding paragraph (a) of subsection (1A) of the following words:

"For the purposes of subsection (1), the rebate shall be an amount equal to the sum of any taxes on income proved to be payable to the government of any country other than the Republic, without any right of recovery by any person (other than a right of recovery in terms of any entitlement to carry back losses arising during any year of assessment to any year of assessment prior to such year of assessment), by—";
- (d) by the substitution for subparagraph (ii) of paragraph (a) of subsection (1A) of the following subparagraph:

"(ii) any dividend contemplated in subsection (1)(d); **[and] or**
- (e) by the addition to paragraph (a) of subsection (1A) of the following subparagraph:

"(iii) any amount of taxable capital gain as contemplated in subsection (1)(e); and"
- (f) by the substitution for the words following paragraph (d) of subsection (1A) of the following words:

"[to the Government of any country other than the Republic in respect of the amount of income or proportional amount contemplated in subsection (1)(b),]

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which is so included in that resident's taxable income: Provided that where such resident is a member of any partnership or a beneficiary of any trust and such partnership or trust is liable for tax as a separate entity in such other country, a proportional amount of any tax payable by such entity, which is attributable to the interest of such resident in such partnership or **[participation right of such resident in such]** trust, shall be deemed to have been payable by such resident.”;

(g) by the substitution for paragraph (a) in subsection (1B) of the following paragraph:

“(a) the rebate or rebates of any tax proved to be payable to the government of any other country or countries as contemplated in subsection (1A), shall not in aggregate exceed an amount which bears to the total normal tax payable the same ratio as the total taxable income attributable to the income, **[or]** proportional amount contemplated in subsection (1)(b), foreign dividend or taxable capital gain, as the case may be, derived from such country or countries, which is included as contemplated in subsection (1), bears to the total taxable income:”;

(h) by the substitution for the words preceding subparagraph (aa) of paragraph (i) of the proviso to paragraph (a) of subsection (1B) of the following words:

“(i) where **[such]** the sum of any such taxes payable to the government of any such other country or countries exceeds the rebate as so determined (hereinafter referred to as the excess amount), such excess amount may—”;

(i) by the substitution for subparagraph (bb) of paragraph (i) of the proviso to paragraph (a) of subsection (1B) of the following subparagraph:

“(bb) be set off against the amount of any normal tax payable by such resident during such year of assessment in respect of any amount derived from any other country which is included in the taxable income of such resident during such year, as contemplated in paragraph (a), (b), **[or]** (d) or (e) of subsection (1), after any tax payable to the government of any such other country in respect of any amount so included during such year of assessment which may be deducted in terms of subsection (1) and (1A), has been deducted from the amount of such normal tax payable in respect of such amount **[of income or proportional amount contemplated in subsection (1)(b)]** so included; and”.

Amendment of section 7 of Act 58 of 1962, as amended by section 5 of Act 90 of 1962, section 8 of Act 88 of 1965, section 9 of Act 55 of 1966, section 7 of Act 94 of 1983, section 2 of Act 30 of 1984, section 5 of Act 90 of 1988, section 5 of Act 70 of 1989, section 4 of Act 101 of 1990,

section 7 of Act 129 of 1991, section 5 of Act 141 of 1992, section 6 of Act 21 of 1995, section 23 of Act 30 of 1998 and section 13 of Act 53 of 1999

12. Section 7 of the principal Act is hereby amended by the addition of the following subsection:

“(8) If any person has granted a loan to any other person who is a connected person in relation to such person, in respect of which either no interest is payable by such other person or interest is payable by such other person at a rate which is lower than a rate determined by adding 2 per cent to the “official rate of interest” as defined in paragraph 1 of the Seventh Schedule, such person shall for the purposes of this section be deemed to have made a donation to such other person of an amount equal to the difference between the interest actually incurred by such other person to such person (if any) and the amount of interest which would have been payable had it been calculated at the rate so determined.”.

Amendment of section 9D of Act 58 of 1962, as amended by section 9 of Act 28 of 1997, amended by section 28 of Act 30 of 1998, section 17 of Act 53 of 1999, section 19 of Act 30 of 2000 and section 10 of Act 59 of 2000

13. Section 9D of the principal Act is hereby amended—

- (a) by the deletion of the word “and” at the end of paragraph (b) of the proviso to subsection (2A);
- (b) by the addition to the proviso to subsection (2A) of the following paragraphs:
 - (d) any capital gain or capital loss of such entity shall, notwithstanding the reference in paragraph 43 of the Eighth Schedule to the currency of the Republic, be determined with reference to and in the currency which is legal tender in the country in which the entity is resident or the currency in which it conducts the majority of its transactions if the latter currency is different to the former;
 - (e) for the purposes of determining any taxable capital gain or assessed capital loss of such controlled foreign entity, the valuation date value of an asset (other than an asset contemplated in paragraph 29(1)(a) or (b) of the Eighth Schedule) shall, notwithstanding any other provision of that Schedule, be the time-apportionment base cost of the asset as contemplated in paragraph 30 of that Schedule; and
 - (f) where an foreign entity becomes a controlled foreign entity after 1 October 2001, the valuation date for purposes of the determination of any taxable capital gain or assessed capital loss in terms of the Eighth Schedule, shall be

- the date that such entity became a controlled foreign entity.”; and
- (c) by the substitution for the words preceding subparagraph (aa) of paragraph (iii) of the proviso to paragraph (b) of subsection (9) of the following words:
- “(iii) in the form of dividends, interest, royalties, rental, annuities, insurance premiums or income of a similar nature, or any proceeds derived from the disposal of any asset, as determined in accordance with the Eighth Schedule, from which any such income is earned, except where such receipts and accruals—”.

Amendment of section 9E of Act 58 of 1962, as inserted by section 20 of Act 30 of 2000 and amended by section 10 of Act 59 of 2000

14. Section 9E of the principal Act is hereby amended by the substitution for paragraph (v) of the proviso to paragraph (b) of the definition of “foreign dividend” of the following paragraph:

- “(v) to the extent that the proceeds from the disposal—
- (aa) have been taken into account in the determination of the taxable capital gain or assessed capital loss of such person in terms of the provisions of the Eighth Schedule; or
- (bb) have otherwise been included in the taxable income of such person; or”.

Amendment of section 10A of Act 58 of 1962

15. Section 10A of the Income Tax Act, 1962, is hereby amended by the addition of the following subsection:

- “(11) Any cash consideration given by the purchaser under the annuity contract shall be converted to the currency of the Republic by applying the ruling exchange rate on the day the consideration is actually paid.”.

Insertion of section 10B in Act 58 of 1962

16. The following section is hereby inserted after section 10A of the principal Act:

“Income derived from foreign policies.

10B. (1) There shall be exempt from normal tax so much of any amount included during any year of assessment in the gross income of any person, or the spouse, dependant or

nominee of any person, in terms of paragraph (eC) of the definition of “gross income” (other than an amount in respect of which the provisions of section 10A apply), as represents any contribution made by such person during such year or any previous year of assessment to the person from whom such amount was received or accrued, which have not been allowed as a deduction in the determination of the taxable income of such person during such year or previous year.

(2) Any contributions made by any person contemplated in subsection (1), shall be converted to the currency of the Republic by applying the ruling exchange rate on the day the contribution is actually paid.”.

Amendment of section 22 of Act 58 of 1962, as amended by section 8 of Act 6 of 1963, section 14 of Act 90 of 1964, section 21 of Act 89 of 1969, section 23 of Act 85 of 1974, section 20 of Act 69 of 1975, section 15 of Act 103 of 1976, section 20 of Act 94 of 1983, section 19 of Act 121 of 1984, section 14 of Act 65 of 1986, section 5 of Act 108 of 1986, section 21 of Act 101 of 1990 section 22 of Act 129 of 1991, section 17 of Act 113 of 1993, section 1 of Act 168 of 1993, section 19 of Act 21 of 1995, section 12 of Act 36 of 1996, section 25 of Act 53 of 1999 and section 27 of Act 30 of 2000

17. Section 22 of the principal Act is hereby amended—

(a) by the substitution for paragraphs (a) and (b) of subsection (3) of the following paragraphs:

“(a) For the purposes of this section the cost price at any date of any trading stock in relation to any person shall—

(i) subject to subparagraph (ii), be the cost incurred by such person, whether in the current or any previous year of assessment in acquiring such trading stock plus, subject to the provisions of paragraph (b), any further costs incurred by him up to and including the said date in getting such trading stock into its then existing condition and location, but excluding any exchange difference as defined in section 24I relating to the acquisition of such trading stock; or

(ii) in the case of any trading stock which is in terms of paragraph 12(2)(c) of the Eighth Schedule treated as having been acquired at a cost equal to the market value, be that market value.

(b) The further costs which in terms of paragraph (a)(i) are required to be included in the cost price of any trading stock shall be such costs as in terms of any generally

accepted accounting practice approved by the Commissioner should be included in the valuation of such trading stock.”;

- (b) by the insertion after subparagraph (iv) of paragraph (b) of subsection (8) of the following subparagraph:

“(v) assets which were held as trading stock by any taxpayer cease to be held as trading stock by such taxpayer,”; and

- (c) by the substitution for paragraph (B) of subsection (8) and the words following paragraph (B) but preceding the proviso of the following paragraph and words:

“(B) where such trading stock has been applied, disposed of or distributed in a manner contemplated in paragraph (b) or ceases to be held as trading stock, an amount equal to the market value of such trading stock,

and such amount shall be included in the income of the taxpayer for the year of assessment during which such trading stock was so applied, disposed of, **[or]** distributed or ceased to be held as trading stock:”.

Insertion of section 26A in Act 58 of 1962

18. The following section is hereby inserted after section 26 of the principal Act:

“Inclusion of taxable capital gain in taxable income

26A. There shall be included in the taxable income of a person for a year of assessment the taxable capital gain of that person for that year of assessment, as determined in terms of the provisions of the Eighth Schedule.”.

Amendment of section 29A of Act 58 of 1962, as inserted by section 30 of Act 53 of 1999 and amended by section 36 of Act 59 of 2000

19. (1) Section 29A of the principal Act is hereby amended—

- (a) by the substitution for subsection (8) of the following subsection:

“(8) Any transfer of an asset effected by an insurer between one fund and another fund **[otherwise than in terms of the provisions of subsection (6), (7) or (15)]** shall be effected by way of a sale of such asset at the market value thereof and shall for the purposes of this Act be treated as a purchase or sale of such asset, as the case may be, in each such fund.”;

- (b) by the substitution for subsection (10) of the following subsection:

“(10) The taxable income derived by an insurer in respect of its individual policyholder fund, its company policyholder fund and its corporate fund shall be determined separately in accordance with the provisions of this Act as if each such fund had been a separate taxpayer and the individual policyholder fund, company policyholder fund, untaxed policyholder fund and corporate fund, shall be deemed to be separate persons for the purposes of subsection (8) and sections 9B, 24I, 24J, 24K and 24L and the Eighth Schedule to this Act.”;

- (c) by the substitution for the words following item (bb) of subparagraph (ii) of paragraph (a) of subsection (11) of the following words:

“which percentage shall—

(AA) in the case of the individual policyholder fund, be determined in accordance with the formula

$$“Y = \frac{(I + R + F)}{(I + 3R + 5F + 5D)} \times \frac{100}{1}”$$

(BB) in the case of the company policyholder fund, be determined with the formula

$$“Y = \frac{(I + R + F)}{(I + 2R + 4F + 4D)} \times \frac{100}{1},”$$

in which **[formula] formulae—**”

- (d) by the substitution for item (D) of subparagraph (ii) of paragraph (a) of subsection (11) of the following item:

“(D) ‘D’ represents the dividend income (other than taxable foreign dividends) of such fund; and”;

- (e) by the addition to subparagraph (ii) of paragraph (a) of subsection (11) of the following item:

“(E) ‘F’ represents the taxable foreign dividends of such fund; and”

- (f) by the substitution for the expression “50 per cent” in subparagraph (iii) of paragraph (a) of subsection (11) of the expression “40 per cent”.

(2) Subsection (1)(c), (d), (e) and (f) shall come into operation on 1 October 2001 and shall apply in respect of any year of assessment that commences on or after that date.

Amendment of section 31 of Act 58 of 1962, as substituted by section 23 of Act 21 of 1995 and amended by section 37 of Act 30 of 1998, section 31 of Act 53 of 1999 and section 37 of Act 59 of 2000

20. Section 31 of the principal Act is hereby amended by the deletion of the definition of “permanent establishment” in subsection (1).

Amendment of section 64 of Act 58 of 1962, as substituted by section 30 of Act 90 of 1958 and amended by section 19 of Act 36 of 1996:

21. (1) Section 64 of the principal Act is hereby amended by the substitution for the expression “25 per cent” of the expression “20 per cent”.

(2) Subsection (1) shall come into operation on 1 October 2001 and shall apply in respect of any property disposed of under a donation which takes effect on or after that date.

Amendment of section 64B of Act 58 of 1962, as inserted by section 34 of Act 113 of 1993 and amended by section 12 of Act 140 of 1993, section 24 of Act 21 of 1994, section 29 of Act 21 of 1995, section 21 of Act 36 of 1996, section 13 of Act 46 of 1996, section 25 of Act 28 of 1997, section 35 of Act 53 of 1999, section 39 of Act 30 of 2000 and section 42 of Act 59 of 2000.

22. (1) Section 64B of the principal Act is hereby amended by the addition to subsection (5) of the following paragraph:

“(k) any dividend declared by a company to a natural person—

(i) which constitutes the distribution *in specie* of ‘an interest’ as defined in paragraph 44 of the Eighth Schedule, of such person in a residence; or

(ii) out of any profits of a capital nature arising from the disposal to such person of any such an interest in a residence,

where—

(aa) such interest was so distributed to that person, or disposed of and the dividend declared to that person not later than 31 March 2003 after that date;

(bb) that person and his or her spouse held all the equity share capital or members’ interest in that company from **(date??)** to the date of the distribution or disposal of that residence to that person;

(cc) that person or his or her spouse ordinarily resided in that residence and used it for domestic or private residential purposes as his or her or their ordinary residence from **(date??)** to the date of distribution or disposal; and

(dd) such residence will after such distribution or disposal constitute that person's primary residence as defined in paragraph 44 of the Eighth Schedule:
Provided that the provisions of this paragraph shall apply only in respect of that portion of the dividend which relates to the distribution or disposal of that interest in a residence together with so much of the land on which it is situated (including unconsolidated adjacent land), as contemplated in paragraph 46 of the Eighth Schedule.”.

(2) Subsection (1) shall come into operation on the date of promulgation of this Act and shall apply in respect of the distribution or disposal of an interest and dividend declared on or after that date.

Amendment of section 66 of Act 58 of 1962, section 10 of Act 6 of 1963, section 19 of Act 90 of 1964, section 27 of Act 88 of 1971, section 22 of Act 91 of 1982, as amended by section 19 of Act 65 of 1986, section 23 of Act 85 of 1987, section 37 of Act 101 of 1990 and section 26 of Act 21 of 1994

23. Section 66 of the principal Act is hereby amended—

- (a) by the addition to paragraph (b) of subsection (1) of the following subparagraph:
“(v) any person whose aggregate capital gain or aggregate capital loss for the year of assessment exceeds an amount to be stated by the Commissioner in the notice referred to in paragraph (a).”; and
- (b) by the insertion after subsection (7) of the following subsections:
“(7A) The Commissioner may, in the case of any return furnished by a taxpayer or his or her authorised agent in electronic format, accept electronic or digital signatures as binding, valid signatures for the purposes of subsection (7).
“(7B) The Minister may promulgate rules and regulations prescribing the procedures for submitting any return in electronic format and setting out the requirements for an electronic or digital signature contemplated in subsection (7A).”; and
- (c) by the insertion after subsection (13quat) of the following subsection:
“(13quin) For the purposes of subsections (13), (13quat) and (14) of this section, the word ‘income’ shall be construed as including any aggregate capital gain or aggregate capital loss.”.

Substitution of section 68 of Act 58 of 1962, as amended by section 26 of Act 90 of 1962, section 23 of Act 88 of 1965, section 39 of Act 101 of 1990 and section 33 of Act 129 of 1991

24. The following section is hereby substituted for section 68 of the principal Act:

“Income and capital gain of married [women] persons and minor children

68. (1) Any—

- (a) income received by or accrued to or in favour of any person married with or without community of property which in terms of section 7(2) is deemed to be income received by or accrued to such person’s spouse; or
- (b) any capital gain which is in terms of paragraph 67 of the Eighth Schedule taken into account in the determination of the aggregate capital gain or aggregate capital loss of such person’s spouse,

shall be included by such spouse in returns of income required to be rendered by that spouse under this Act.

(2) In the event of the death of any person during any year in respect of which such income is chargeable or in which such capital gain is taken into account, the income or capital gain of such person’s spouse for the period elapsing between the date of such death and the last day of the year of assessment shall be returned as the separate income of such spouse.

(3)(a) Every parent shall be required to include in his return—

- (i) any income received by or accrued to or in favour of any of his minor children either directly or indirectly from himself **[or his wife]** or herself; or
- (ii) any capital gain or capital loss in respect of any transaction entered into directly or indirectly with such parent, which is taken into account in the determination of the aggregate capital gain or aggregate capital loss of any of his or her minor children,

together with such particulars as may be required by the Commissioner.

(b) Every parent shall be required to include in his or her return any income deemed to be his or hers in terms of subsection (3) or (4) of section 7 or any capital gain deemed to be his or hers in terms of paragraph 68 of the Eighth Schedule.”.

Insertion of sections 70A and 70B in Act 58 of 1962

25. The following sections are hereby inserted after section 70 of the principal Act:

“Return of information by Unit Portfolio

70A. (1) Every unit portfolio contemplated in paragraph (e)(i) of the definition of “company” in section 1, shall furnish to the Commissioner an annual return in such form and within such time as the Commissioner may prescribe, showing—

- (a) the names and addresses of all unit holders in that unit portfolio who have disposed of their units in that unit portfolio on or after the valuation date as contemplated in the Eight Schedule;
- (b) the number of units so disposed of by each unit holder;
- (c) the cost of those units determined on the weighted average basis and the amount of the proceeds received or accrued from the disposal of those units;
- (d) the gain derived from or loss incurred in respect of the disposal of those units determined with reference to the cost and proceeds contemplated in paragraph (c);
- (e) in the case of any natural person, his or her identification number: Provided that if that person is not in possession of a South African identity document, any other form of identification; and
- (f) in the case of any person other than a natural person, that person’s registration number.”.

Return of information in respect of financial instruments administered by portfolio administrators

70B. (1) Every person who administers a portfolio of financial instruments, as defined in the Eighth Schedule, on behalf of any other person and has the mandate of that other person to buy and sell any such financial instruments on such other person’s behalf, shall furnish to the Commissioner an annual return in such form and within such time as the Commissioner may prescribe, showing?

- (a) the names and addresses of all persons on behalf of whom financial instruments have been disposed of on or after the valuation date contemplated in that Schedule;
- (b) the number of financial instruments so disposed of on behalf of each such other person;
- (c) the cost of those financial instruments determined on the weighted average basis and the amount of the proceeds received or accrued from the disposal of those financial instruments;
- (d) the gain derived from or loss incurred in respect of the disposal of those financial instruments determined with reference to the cost and proceeds contemplated in

- paragraph (c);
- (e) in the case of any natural person, his or her identification number: Provided that if that person is not in possession of a South African identity document, any other form of identification; and
- (f) in the case of any person other than a natural person, that person's registration number.
- (2) Subsection (1) shall not apply in respect of—
- (a) any pension fund, provident fund or retirement annuity fund; or
- (b) any insurer contemplated in section 29A, in respect of any person in that person's capacity as policyholder.”.

Insertion of section 73A in Act 58 of 1962

26. The following sections are hereby inserted after section 73 of the principal Act:

“Record keeping

73A. (1) A person whose gross income consists of amounts other than those derived solely by way of salary, wages or similar compensation for personal service shall retain all records for a period of four years from the date upon which the return relevant to the last entry in those records was received by the Commissioner.

(2) For the purposes of subsection (1) ‘records’ include—

- (a) ledgers, cash books, journals, cheque books, bank statements, deposit slips, paid cheques, invoices and stock lists and all other books of account; and
- (b) any data created by means of a ‘computer’ as defined in section 1 of the Computer Evidence Act, 1983 (Act No. 57 of 1983), including data in the electronic form in which it was originally created or in which it is stored for the purposes of backing up such data,

relating to any trade carried on by that person in which are recorded the details from which that person's returns for the assessment of taxes under this Act were prepared.

(3) Where a person who is required by this section to retain records lodges an objection or appeal against an assessment, that person shall retain all records relevant to that objection or appeal until that assessment becomes final.

Records relating to taxable capital gain or assessed capital loss

73B. (1) A person shall retain all records required to determine the taxable capital gain or assessed capital loss of that person for a period of four years from the date on which the return for that year of assessment was received by the Commissioner.

(2) Where a person has disposed of an asset that is not disregarded or excluded in terms of the Eighth Schedule and the capital gain or capital loss determined in respect of the disposal of that asset exceeds R10 000, but that person is not required to render a return, that person must retain the records required to determine that capital gain or capital loss for a period of five (5) years from the date of disposal of that asset.

(3) For the purposes of this section 'records' includes—

(a) any agreement for the acquisition, disposal or lease of an asset together with related correspondence;

(b) details of any asset transferred into a trust;

(c) copies of valuations used in the determination of a taxable capital gain or assessed capital loss;

(d) invoices or other evidence of payment record such as bank statements, paid cheques relating to any costs claimed in respect of the acquisition, improvement or disposal of any asset;

(e) details supporting the proportional use of an asset for both private and business purposes;

(f) details of any continuous absence of more than 6 months from a primary residence, as contemplated in the Eighth Schedule.

(4) Where a person who is required by this section to retain records in terms of subsections (1) and (2) lodges an objection or appeal against an assessment, that person shall retain all records relevant to that objection or appeal until that assessment becomes final.”.

Amendment of section 75 of Act 58 of 1962, as amended by section 40 of Act 101 of 1990, section 34 of Act 129 of 1991, section 30 of Act 141 of 1992, section 35 of Act 113 of 1993, section 27 of Act 21 of 1994, section 15 of Act 46 of 1996 and section 39 of Act 53 of 1999

27. Section 75 of the principal Act is hereby amended by the substitution for paragraph (f) of subsection (1) of the following paragraph:

“(f) without just cause shown by that person fails to comply with the provisions of section 70A, 70B or 73A.”.

Amendment of section 76 of Act 58 of 1962

28. Section 76 of the principal Act is hereby amended by the substitution for subsections (5) and (6) of the following subsections:

“(5) Any taxpayer who in determining his taxable income as disclosed **[by]** in his return, deducts, **[or]** sets off, disregards or excludes any amount the deduction, **[or]** set-off, disregarding or exclusion whereof is not permissible under the provisions of this Act, or shows as an expenditure or loss any amount which he has not in fact expended or lost, shall be deemed for the purposes of this section to have omitted such amount from his return.

(6) Any taxpayer who wilfully fails to disclose in any return made by him any facts which should be disclosed and the disclosure of which would result in the taxation of the taxpayer’s taxable income on an amount which is higher than the amount upon which such income would be taxable on such return, shall for the purposes of this section be deemed to have omitted from his return the amount by which the former amount exceeds the latter.”.

Amendment of section 78 of Act 58 of 1962

29. Section 78 of the principal Act is hereby amended by the substitution for subsection (2) of the following subsection:

“(2) Any such estimate of the taxable income shall be subject to objection and appeal: Provided that if it appears to the Commissioner that any person is unable from any cause to furnish an accurate return of his income, aggregate capital gain or aggregate capital loss, the Commissioner may agree with such person as to what amount of such income, aggregate capital gain or aggregate capital loss shall be taxable income, net capital gain or assessed capital loss and any amount so agreed upon shall not be subject to any objection or appeal.”.

Amendment of section 79 of Act 58 of 1962, as substituted by section 32 of Act 21 of 1995

30. Section 79 of the principal Act is hereby amended by the substitution for subsection (2) of the following subsection:

“(2) For the purposes of this section any amount referred to in subsection (1)(a) shall include an amount the incorporation of which in an assessment would result in the reduction of any loss or assessed capital loss ranking for set-off or in only a portion of such amount becoming chargeable with tax.”.

Substitution of section 82 of Act 58 of 1962

31. The following section is hereby substituted for section 82 of the principal Act:

“Burden of proof as to exemptions, deductions, [or] abatements, disregarding or exclusions

82. The burden of proof that any amount is—

- (a) exempt from or not liable to any tax chargeable under this Act; or
- (b) subject to any deduction, abatement or set-off in terms of this Act; or
- (c) to be disregarded or excluded in terms of the Eighth Schedule.

shall be upon the person claiming such exemption, non-liability, deduction, abatement or set-off, or that such amount must be disregarded or excluded, and upon the hearing of any appeal from any decision of the Commissioner, the decision shall not be reversed or altered unless it is shown by the appellant that the decision is wrong.”.

Amendment of section 83A of Act 58 of 1962, as amended by section 37 of Act 113 of 1993 and by Government Notice R1245 of 26 September 1997

32. Section 83A of the principal Act is hereby amended by the substitution for paragraph (a) of subsection (1) of the following paragraph:

- “(a) the amount of the tax in dispute does not exceed such amount which the Minister may from time to time fix by notice in the *Gazette*, or, having regard to any assessed loss or assessed capital loss which may be carried forward, will probably not in total exceed such amount; or”.

Amendment of section 89quat of Act 58 of 1962, as substituted by section 22 of Act 65 of 1986, and amended by section 18 of Act 70 of 1989, section 42 of Act 113 of 1993, section 33 of Act 21 of 1995 and section 24 of Act 36 of 1996

33. Section 89quat of the principal Act is hereby amended by the substitution for subsection (3) of the following subsection:

- “(3) Where the Commissioner having regard to the circumstances of the case is satisfied that any amount has been included in the taxpayer’s taxable income or that any deduction, **[or]** allowance, disregarding or exclusion claimed by the taxpayer has not been allowed, and the taxpayer has on reasonable grounds contended that such amount should not have been so included or that such deduction, **[or]** allowance, disregarding or exclusion should have been allowed, the Commissioner may, subject to the provisions of section 103(6), direct that interest shall not be paid by the taxpayer on so much of the said normal tax as is attributable

to the inclusion of such amount or the disallowance of such deduction, **[or]** allowance, disregarding or exclusion.”.

Amendment of section 90 of Act 58 of 1962, as amended by section 15 of Act 6 of 1963, section 23 of Act 95 of 1967, section 35 of Act 121 of 1984, section 20 of Act 96 of 1985, section 38 of Act 129 of 1991 and section 43 of Act 30 of 1998

34. Section 90 of the principal Act is hereby amended by the substitution for the first proviso of the following proviso:

“Provided that any person may recover so much of the tax paid by him or her under this Act as is due to the inclusion in—

- (i) his or her income of any income deemed to have been received by him or her or to be his or her income, as the case may be, in terms of section 7(3), (4), (5), (6), **[or]** (7) or (8), from the person entitled, whether on his or her own behalf or in a representative capacity, to the receipt of the income so included; or
- (ii) his or her taxable income of any capital gain in terms of paragraph 67, 68, 69 or 70 of the Eighth Schedule from the person entitled, whether on his or her own behalf or in a representative capacity, to the proceeds on the disposal of the asset which gave rise to the capital gain.”.

Amendment of section 91 of Act 58 of 1962, as amended by section 16 of Act 6 of 1963, section 26 of Act 55 of 1966, section 38 of Act 89 of 1969, section 36 of Act 121 of 1984, section 39 of act 129 of 1991 and section 26 of Act 36 of 1996

35. Section 91 of the principal Act is hereby amended—

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

“(4) So much of any tax payable by any person as is due to the inclusion in his income of any income deemed to have been received by him or to be his income, as the case may be, in terms of subsection (3), (4), (5), **[or]** (6), (7) or (8) of section 7, may be recovered from the assets by which the income so included was produced.”;

- (b) by the insertion after subsection (4) of the following subsection:

“(4A) So much of any tax payable by any person as is due to the inclusion in the taxable income of such person of any capital gain in terms of paragraph 67, 68, 69 or 70 of the Eighth Schedule, may be recovered from the proceeds from the disposal of the asset which gave rise to the capital gain.”.

Amendment of section 95 of Act 58 of 1962, as amended by section 27 of Act 90 of 1962 and section 35 of Act 28 of 1997

36. Section 95 is hereby amended—

(a) by the substitution for subsection (2) of the following subsection:

“(2) Any abatement, deduction, exemption, **[or]** right to set off a loss, disregarding or exclusion which could be claimed by the person represented by him or her shall be allowed in the assessment made upon the representative taxpayer in his or her capacity as such.”;
and

(b) by the addition of the following subsection:

“(5) For the purposes of this section the word ‘income’ shall be construed as including the amount received or accrued or deemed to have been received or accrued in consequence of the disposal of any asset envisaged under the Eighth Schedule.”.

Amendment of section 103 of Act 58 of 1962, as amended by section 14 of Act 101 of 1978, section 37 of Act 121 of 1984, section 19 of Act 70 of 1989, section 29 of Act 36 of 1996 and section 45 of Act 30 of 1998

37. Section 103 of the principal Act is hereby amended—

(a) by the substitution for the words following subparagraph (iii) of paragraph (b) of subsection (2) of the following words:

“as a direct or indirect result of which—

(A) income has been received by or has accrued to that company or trust during any year of assessment; or

(B) any proceeds received by or accrued to or deemed to have been received by or accrued to that company or trust in consequence of the disposal of any asset, results in a capital gain during any year of assessment,

has at any time **[before or after the commencement of the Income Tax Act, 1946]** been entered into or effected by any person solely or mainly for the purpose of utilising any assessed loss, **[or]** any balance of assessed loss, any capital loss or any assessed capital loss, as the case may be, incurred by the company or trust, in order to avoid liability on the part of that company or trust or any other person for the payment of any tax, duty or levy on income, or to reduce the amount thereof?

(aa) the set-off of any such assessed loss or balance of assessed loss against any such income shall be disallowed; or

- (bb) such capital loss or assessed capital loss shall be disregarded when determining the taxable capital gain or assessed capital loss of that company or trust to the extent such capital loss or assessed capital loss would reduce such capital gain.”; and
- (b) by the substitution for paragraph (b) of subsection 4 of the following paragraph:
- “(b) in the case of any such agreement or change in shareholding or members’ interests or trustees or beneficiaries of such trust, that it has been entered into or effected solely or mainly for the purpose of utilising the assessed loss, [or] balance of assessed loss, capital loss or assessed capital loss in question in order to avoid or postpone such liability or to reduce the amount thereof.”.

Amendment of section 107 of Act 58 of 1962, as amended by section 26 of Act 65 of 1973, section 46 of Act 97 of 1986, section 29 of Act 21 of 1994, section 37 of Act 28 of 1997 and section 46 of Act 30 of 1998

38. Section 107 of the principal Act is hereby amended by the substitution for subsection (2) of the following subsection:

“(2) The Regulations may prescribe penalties for any contravention thereof or failure to comply therewith, not exceeding a fine of **[R1 000]** R2 000.”.

Insertion of section 111A in Act 58 of 1962

39. The following section is hereby inserted in the principal Act after section 111:

“Amendment of Act

111A. Any legislation proposing an amendment to this Act or providing for the enactment of subordinate legislation that may conflict with this Act may be introduced in Parliament only by the Minister or in consultation with the Minister.”.

Amendment of paragraph 4 of First Schedule to Act 58 of 1962, as amended by section 17 of Act 72 of 1963, section 41 of Act 89 of 1969, section 42 of Act 94 of 1983, section 43 of Act 113 of 1993 and section 30 of Act 36 of 1996

40. Paragraph 4 of the First Schedule to the principal Act is hereby amended—

- (a) by the substitution for subitem (ii) of item (a) of subparagraph (1) of the following subitem:

- “(ii) the market value of livestock or produce—
- (aa) acquired by such farmer during the current year of assessment otherwise than by purchase or natural increase or in the ordinary course of farming operations; and
 - (bb) held by such farmer otherwise than for purposes of pastoral, agricultural or other farming operations, which such farmer during such year of assessment commenced to hold for purposes of pastoral, agricultural or other farming operations; or”;
- (b) by the substitution for subitem (ii) of item (b) of subparagraph (1) of the following subitem:
- “(ii) the market value of livestock or produce (other than livestock or produce to which sub-item (i) refers)—
- (aa) acquired by such person during the year of assessment otherwise than by purchase or natural increase or in the ordinary course of arming operations; and
 - (bb) held by such person otherwise than for purposes of pastoral, agricultural or other farming operations, which such person during such year of assessment commenced to hold for purposes of pastoral, agricultural or other farming operations.”.

Amendment of paragraph 19 of Fourth Schedule to Act 58 of 1962, as amended by section 28 of Act 88 of 1965, section 46 of Act 89 of 1969, section 43 of Act 88 of 1971, section 50 of Act 85 of 1974, section 49 of Act 94 of 1983, section 52 of Act 101 of 1990 and section 44 of Act 21 of 1995

41. Paragraph 19 of the Fourth Schedule to the principal Act is hereby amended by the substitution for items (i) and (ii) of paragraph (d) of subparagraph (1) of the following items:

- “(i) as respects an estimate submitted by a provisional taxpayer (other than a company) under item (a), the taxpayers’ taxable income, as assessed by the Commissioner, for the latest preceding year of assessment in relation to such estimate, less the amount of any taxable capital gain included therein in terms of section 26A.; or
- (ii) as respects an estimate submitted by a company under item (b), the company’s taxable income, as assessed by the Commissioner, for the latest preceding year of assessment in relation to such estimate, less the amount of any taxable capital gain included therein in terms of section 26A.”.

Insertion of Eighth Schedule in Act 58 of 1962

42. The following Schedule is hereby inserted after the Seventh Schedule to the principal Act:

“Eighth Schedule

DETERMINATION OF TAXABLE CAPITAL GAINS AND ASSESSED CAPITAL LOSSES

(PARAS 1 - 80)

(Section 26A of this Act)

Part I:	General
Part II:	Taxable capital gains and assessed capital losses
Part III:	Disposal and acquisition of assets
Part IV:	Disregarded disposals and limitation of losses
Part V:	Base cost and proceeds
Part VI:	Primary residence exclusion
Part VII:	Other exclusions
Part VIII:	Roll-overs and attribution of capital gains
Part IX:	Companies and shareholders
Part X:	Trusts, trust beneficiaries and insolvent estates
Part XI:	Miscellaneous

PART I:
GENERAL

Definitions

1. In this Schedule, unless the context otherwise indicates, any meaning ascribed to any word or words in section 1 of this Act must bear the same meaning so ascribed, and—

‘active business asset’ means an asset used or held wholly or exclusively for business purposes, but excludes—

- (a) a financial instrument; and
- (b) an asset held in the course of carrying on such business mainly to derive any income in the form of an annuity, rental income, a foreign exchange gain or royalty or any income of a similar nature;

‘aggregate capital gain’ means the amount to be determined in terms of paragraph 6;

‘aggregate capital loss’ means the amount to be determined in terms of paragraph 7;

‘asset’ includes?

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(2 March 2001)

- (a) property of whatever nature, whether movable or immovable, corporeal or incorporeal, excluding South African currency, but including any coin made mainly from gold or platinum; and
- (b) a right or interest of whatever nature to or in such property;

'base cost' means the amount to be determined in terms of Part V;

'boat' means any vessel used or capable of being used in, under or on the sea or internal waters, whether?

- (a) self-propelled or not;
- (b) equipped with an inboard or outboard motor; or
- (c) a surface craft or submarine;

'capital gain' means the amount to be determined in terms of paragraph 3;

'capital loss' means the amount to be determined in terms of paragraph 4;

'disposal' means an event, act, forbearance or operation of law envisaged in paragraph 11 or an event, act, forbearance or operation of law when a person is in terms of this Schedule treated as having disposed of an asset, and 'dispose' must be construed accordingly;

'distribution' means any transfer of cash or an asset by a company to a shareholder with respect to a share held in that company including an issuance of shares or debt in that company (or any option thereto) regardless of whether that transfer constitutes a 'dividend' as defined in section 1;

'financial instrument' includes—

- (a) a loan, advance, debt, stock, bond, debenture, bill, share, promissory note, currency, banker's acceptance, negotiable certificate of deposit, deposit with a financial institution, unit in a unit portfolio, a participatory interest in a portfolio of a collective investment scheme, or a similar instrument;
- (b) repurchase or resale agreement, forward purchase arrangement, futures contract, forward contract, option contract, swap contract;
- (c) any other contractual right or obligation which derives its value from the value of a debt security, equity, commodity, rate indices or a specified index;
- (d) any interest-bearing arrangement; and
- (e) any financial arrangement based on or determined with reference to the time value of money, cash flow, exchange or transfer of an asset;

'individual policyholder fund' means a fund contemplated in section 29A(4)(b);

'insurer' means an insurer as defined in section 29A(1);

'natural person' includes, unless the context otherwise indicates, the deceased or insolvent estate of a person;

'net capital gain' means the amount to be determined in terms of paragraph 8;

'option to acquire a share or a unit' includes a warrant, a renounceable nil paid letter of allocation, or any other right to acquire a share or a unit;

'personal-use asset' means an asset contemplated in paragraph 53(1);

'pre-valuation date asset' means an asset acquired prior to valuation date by a person and which is still held by that person on valuation date;

'primary residence' means a primary residence contemplated in paragraph 44;

'proceeds' means the amount to be determined in terms of paragraph 34;

'recognised exchange' means?

- (a) a stock exchange licensed under the Stock Exchanges Control Act, 1985 (Act No. 1 of 1985);
- (b) a financial exchange licensed under the Financial Markets Control Act, 1989 (Act No. 55 of 1989); or
- (c) an exchange in a country other than the Republic which is similar to an exchange contemplated in paragraph (a) or (b) and which has been recognised by the Minister for purposes of this Schedule by notice in the *Gazette*;

'residence' means a residence envisaged in paragraph 44;

'share' includes any share (including fractional shares thereof) issued by a company without regard to how that share participates in the distributions or capital of that company;

'taxable capital gain' means the amount to be determined in terms of paragraph 10;

'valuation date' means 1 October 2001;

'value shifting arrangement' means an arrangement by which a person or a connected person in relation to that person retains an interest in a company, trust or partnership, but following a change in the rights or entitlements of the interests in that company, trust or partnership (other than as a result of a disposal at market value as determined before the application of paragraph 37), the market value of the interest of that person or connected person decreases and—

- (a) the value of the interest of another person held directly or indirectly in that company, trust or partnership increases; or
- (b) another person acquires a direct or indirect interest in that company, trust or partnership.

Application

2. (1) Subject to paragraph 80, this Schedule applies to the disposal on or after valuation date of—

- (a) any asset of a resident; and
- (b) the following assets situated in the Republic of a person who is not a resident—
 - (i) immovable property held by that person or any interest or right of whatever nature of that person to or in immovable property; or

- (ii) any asset of a permanent establishment of that person through which a trade is carried on in the Republic during the relevant year of assessment.

(2) For purposes of subparagraph (1)(b)(i), an interest in immovable property situated in the Republic includes a direct or indirect interest of at least 20 per cent held by a person (together with any connected person in relation to that person) in the equity share capital of a company or in any other entity, where 80 per cent or more of the net value of the assets of that company or other entity, determined on the market value basis, is, at the time of disposal of shares in that company or interest in that other entity, attributable to immovable property situated in the Republic, which exceeds R1 million.

PART II:
TAXABLE CAPITAL GAINS AND ASSESSED CAPITAL LOSSES

Capital gain

3. A person's capital gain for a year of assessment, in respect of the disposal of an asset?
- (a) during that year, is equal to the amount by which the proceeds received or accrued in consequence of that disposal exceed the base cost of that asset; or
 - (b) in a previous year of assessment, is equal to—
 - (i) so much of any amount received by or accrued to that person during the current year of assessment, as constitutes part of the proceeds of that disposal which has not been taken into account during any year in determining the capital gain or capital loss in respect of that disposal; or
 - (ii) so much of the base cost of that asset that has been taken into account in determining the capital gain or capital loss in respect of that disposal, as has been recovered or recouped during the current year of assessment, whether as a result of an indemnity or repayment or the cancellation, termination or variation of an agreement, or due to the prescription or waiver or a release from an obligation or any other event.

Capital loss

4. A person's capital loss for a year of assessment in respect of the disposal of an asset—
- (a) during that year, is equal to the amount by which the base cost of that asset exceeds the proceeds received or accrued in consequence of that disposal; or
 - (b) in a previous year of assessment, is equal to—

- (i) so much of the proceeds received or accrued in consequence of the disposal of that asset that have been taken into account during any year in determining the capital gain or capital loss in respect of that disposal—
 - (aa) as that person is no longer entitled to as a result of the cancellation, termination or variation of any agreement, or due to the prescription or waiver of a claim or a release from an obligation or another event during the current year of assessment;
 - (bb) as has become irrecoverable during the current year of assessment; or
 - (cc) as has been repaid or has become repayable during the current year of assessment; or
- (ii) so much of the base cost of that asset that has not been taken into account during any year in determining the capital gain or capital loss in respect of that disposal, as has been paid or has become due and payable during the current year of assessment.

Annual exclusion

5. (1) Subject to subparagraph (2), the annual exclusion of a natural person and a special trust in respect of a year of assessment is R10 000.

(2) Where a person dies during the year of assessment, that person's annual exclusion for that year is R50 000.

Aggregate capital gain

6. A person's aggregate capital gain for a year of assessment is the amount by which the sum of that person's capital gains for that year exceeds the sum of—

- (a) that person's capital losses for that year; and
- (b) in the case of a natural person or a special trust, that person's or trust's annual exclusion for that year.

Aggregate capital loss

7. A person's aggregate capital loss for a year of assessment is the amount by which the sum of a person's capital losses for the year exceeds the sum of—

- (a) that person's capital gains for that year; and

- (b) in the case of a natural person or a special trust, that person's or trust's annual exclusion for that year.

Net capital gain

8. A person's net capital gain for the year of assessment is the amount by which that person's aggregate capital gain for that year exceeds that person's assessed capital loss for the previous year of assessment, if any.

Assessed capital loss

9. A person's assessed capital loss for a year of assessment, where that person has—
- (a) an aggregate capital gain for that year, is the amount by which that person's assessed capital loss for the previous year of assessment (if any) exceeds the amount of that person's aggregate capital gain for that year;
 - (b) an aggregate capital loss for that year, is the sum of that person's aggregate capital loss for that year and that person's assessed capital loss for the previous year (if any); or
 - (c) neither an aggregate capital gain nor an aggregate capital loss for that year, is the amount of that person's assessed capital loss for the previous year (if any).

Taxable capital gain

10. A person's taxable capital gain for the year of assessment is—
- (a) in the case of a natural person or a special trust, 25 per cent;
 - (b) in the case of an insurer, in respect of its—
 - (i) individual policyholder fund, 25 per cent; and
 - (ii) untaxed policyholder fund, 0 per cent; or
 - (c) in any other case, 50 per cent,
- of that person's net capital gain for that year of assessment.

PART III: DISPOSAL AND ACQUISITION OF ASSETS

Disposals

11. (1) Subject to subparagraph (2), a disposal is any event, act, forbearance or operation of law which results in the creation, variation, transfer or extinction of an asset, and includes—

- (a) the sale, donation, expropriation, conversion, grant, cession, exchange or any other alienation or transfer of ownership of an asset;
- (b) the forfeiture, termination, redemption, cancellation, surrender, discharge, relinquishment, release, waiver, renunciation, expiry or abandonment of an asset;
- (c) the scrapping, loss or destruction of an asset;
- (d) the vesting of an interest in an asset of a trust in a beneficiary;
- (e) the distribution of an asset by a company to a shareholder;
- (f) the granting of an option; or
- (g) the decrease in value of a person's interest in a company, trust or partnership as a result of a value shifting arrangement.

(2) There is no disposal of an asset—

- (a) by a person who transfers the asset as security for a debt or by a creditor who transfers that asset back to that person upon release of the security;
- (b) by a company in respect of the issue of a share in the company, or by a company in respect of the granting of an option to acquire a share in that company;
- (c) by a unit portfolio in respect of the issue of a unit in that portfolio, or by a unit portfolio in respect of the granting of an option to acquire a unit in that unit portfolio;
- (d) by a person in respect of any bond, debenture, note or other borrowing of money or obtaining of credit from another person;
- (e) by a trustee in respect of the distribution of an asset of the trust to a beneficiary who has a vested interest in that asset prior to distribution;
- (f) by a trustee in respect of a change in ownership in an asset as a result of the termination of the appointment of a trustee or the appointment of a new trustee of a trust under a trust deed; or
- (g) by a person where a disposal is made to correct an error in the registration of immovable property in that person's name.

Events treated as disposals and acquisitions

12. (1) Where an event described in subparagraph (2) occurs, a person will be treated for the purposes of this Schedule as having disposed of an asset or assets described in that subparagraph

for a consideration equal to the market value of the asset or assets at the time of the event and to have immediately reacquired the asset or assets at a cost equal to that market value.

(2) Subparagraph (1) applies, in the case of—

- (a) a person who ceases to be a resident, in respect of all assets of that person other than assets listed in paragraph 2(1)(b);
- (b) an asset of a person who is not a resident, which—
 - (i) becomes an asset of that person's permanent establishment in the Republic otherwise than by way of acquisition; or
 - (ii) is an asset of that person's permanent establishment in the Republic when that asset ceases to be an asset of that permanent establishment otherwise than by way of a disposal contemplated in paragraph 11;
- (c) assets that are not held by a person as trading stock, when they commence to be held by that person as trading stock;
- (d) an asset which is held by a person as a personal-use asset, when that asset ceases to be held by that person as a personal-use asset otherwise than by way of disposal contemplated in paragraph 11;
- (e) an asset which is not held by a person as a personal-use asset, when that asset commences to be held by that person as a personal-use asset; or
- (f) an asset transferred by an insurer contemplated in section 29A from one fund contemplated in section 29A(4) to any other such fund.

(3) Where assets that are held by a person as trading stock cease to be held by that person as trading stock, otherwise than by way of a disposal contemplated in paragraph 11, that person will be treated as having disposed of those assets for consideration equal to the amount included in that person's income in terms of section 22(8) and to have immediately reacquired those assets for a cost equal to that amount.

(4) A person who commences to be a resident must, subject to paragraph 25, be treated as having disposed of each of that person's assets, other than assets listed in paragraph 2(1)(b), on the day before becoming a resident and as having acquired each of those assets on the date that person commences to be a resident, at a cost equal to the market value of that asset as at that date.

Time of disposal

13. (1) The time of disposal of an asset in consequence of—

- (a) a change of ownership of an asset from one person to another because of an event, act, forbearance or by operation of law is, in the case of—

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- (i) an agreement subject to a suspensive condition the date that the condition is satisfied;
- (ii) any agreement which is not subject to any condition, the date that the agreement is concluded;
- (iii) the expropriation of an asset in terms of law, the date the person received the full compensation for the expropriation of the asset that person agreed to or which was finally determined by a competent tribunal or court;
- (ii) a donation of an asset, the date of compliance with all legal requirements for a valid donation;
- (iii) the granting of an option, the date that the option is granted, renewed or extended;
- (iv) the forfeiture or abandonment of an asset, the date that the asset is forfeited or abandoned;
- (v) the termination of an option granted by a company to a person to acquire a share, unit or debenture of that company, the date of the event when that option terminates; or
- (vi) in any other case the date of change of ownership;
- (b) an event contemplated in paragraph 12, the date immediately before the day that the event occurs;
- (c) the scrapping, loss or destruction of an asset the date—
 - (i) when the full compensation in respect of that scrapping, loss or destruction is received; or
 - (ii) if no compensation is payable, the later of the date when the scrapping, loss or destruction is discovered or when it is established that no compensation will be payable;
- (d) the extinction of a interest in an asset including by way of forfeiture, termination, redemption, cancellation, surrender, discharge, relinquishment, release, waiver, renunciation, expiry or abandonment, exercise of an option or conversion, the date of the extinction of the interest in the asset or the asset, whichever date is earlier; or
- (e) the decrease of a person's interest in a company, trust or partnership as a result of a value shifting arrangement, the date on which the value of that person's interest decreases.

(2) A person to whom an asset was disposed of will be treated as having acquired that asset at the time of disposal of that asset as contemplated in subparagraph (1).

Disposal by spouse married in community of property

14. For the purposes of this Schedule, in the case of spouses married in community of property, where any property is disposed of by one of the spouses and such property—

- (a) falls within the joint estate of the spouses, such disposal is treated as having been made in equal shares by each spouse; and
- (b) was excluded from the joint estate of the spouses, that disposal is treated as having been made solely by the spouse making the disposal.

PART IV:
DISREGARDED DISPOSALS AND LIMITATION OF LOSSES

Aircraft, boats and certain rights and interests

15. A capital loss in respect of the following assets of a person must be disregarded in determining the aggregate capital gain or aggregate capital loss of a person, to the extent that the assets are used for purposes other than for business purposes—

- (a) an aircraft with an empty mass exceeding 450 kg;
- (b) a boat exceeding 10m in length;
- (c) any fiduciary, usufructuary or other like interest, the value of which declines over time;
or
- (d) any lease of immovable property.

Designated intangible assets

16. (1) A person must, in determining the aggregate capital gain or aggregate capital loss of that person, disregard any capital loss determined in respect of the disposal of a designated intangible asset, which was acquired prior to valuation date—

- (a) as part of a business that was taken over by that person as a going concern;
- (b) from a connected person; or
- (c) from any other person, where the designated intangible business formed part of the business of that other person and that business was taken over by any connected person in relation to that person.

(2) For the purposes of subparagraph (1), 'designated intangible asset' means—

- (a) goodwill;

- (b) any patent as defined in the Patents Act, 1978 (Act No. 57 of 1978), or any design as defined in the Designs Act, 1993 (Act No. 195 of 1993), or any trade mark as defined in the Trade Marks Act, 1993 (Act No. 194 of 1993), or any copyright as defined in the Copyright Act, 1978 (Act No. 98 of 1978), any rights recognised under the Plant Breeders' Rights Act (Act No. 15 of 1996), or any model, pattern, plan, formula or process or any other property or right of a similar nature;
- (c) any intellectual property right or property or right of a similar nature in respect of which a proprietary interest may be established in terms of the Common Law of the Republic of South Africa; or
- (d) any other intangible property other than intangible property that—
 - (i) was acquired for market value consideration; and
 - (ii) can only be disposed of by reason of expiration of that intangible property.

Forfeited deposits

17. (1) Where—

- (a) a person has made a deposit for the purpose of acquiring an asset which is not intended for use wholly and exclusively for business purposes; and
 - (b) that deposit has been forfeited,
- the capital loss determined in respect of that forfeiture must be disregarded when determining that person's aggregate capital gain or aggregate capital loss.

(2) Subparagraph (1) does not apply in respect of—

- (a) a coin made mainly from gold or platinum;
- (b) immovable property, other than immovable property intended to be the primary residence of that person;
- (c) a financial instrument; or
- (d) any right or interest in such assets contemplated in items (a), (b) and (c).

Exercise of options

18. A capital loss of a person determined in respect of the exercising by that person of an option must be disregarded.

Abandonment, expiry and disposal of options

19. (1) Where a person who is entitled to exercise an option—

(a) to acquire an asset not intended for use wholly and exclusively for business purposes; or
(b) to dispose of an asset not used wholly and exclusively for business purposes,
has abandoned that option, allowed that option to expire, or in any other manner disposed of that option, any capital loss of that person determined in respect of that expiry shall be disregarded.

(2) Subparagraph (1) does not apply in respect of—

- (a) a coin made mainly from gold or platinum;
- (b) immovable property, other than immovable property—
 - (i) in the case of subparagraph (1)(a), which is intended to be the primary residence of that person; or
 - (ii) in the case of subparagraph (1)(b), was the primary residence of that person;
- (c) a financial instrument; or
- (d) any right or interest in such assets contemplated in items (a), (b) and (c).

Securities lending

20. Where any marketable security has been lent by a lender to a borrower in terms of a 'lending arrangement' as defined in section 23(1) of the Stamp Duties Act, 1968 (Act No. 77 of 1968) and another marketable security of the same kind and of the same or equivalent quantity and quality has been returned by that borrower to that lender before the end of the 12 month period contemplated in that definition—

- (a) that marketable security must be deemed not to have been acquired by that borrower or disposed of by that lender; and
- (b) that other marketable security must be deemed not to have been acquired by that lender or disposed of by the borrower.

Pre-acquisition dividends

21. (1) Where a person disposes of a share in a company within 90 days after the date of acquisition of that share, the person disposing of the share must disregard any capital loss determined in respect of that disposal, to the extent of any dividends received or accrued with respect to that share.

(2) Where a person disposes of a share in a company more than 90 days after the date of acquisition, but within two years after that acquisition and the person disposing of the share owned a requisite percentage in that company, that person must disregard any capital loss resulting from the disposal to the extent of any extraordinary dividends received or accrued with respect to that share.

(3) The provisions of subparagraphs (1) and (2), shall not apply to the extent that dividends were

received by or accrued to that person at a time when that person qualified as a holding company or an intermediate company with respect to the company distributing the dividends.

(4) For the purposes of this paragraph—

- (a) the periods of 90 days and two years do not include any days during which the person disposing of a share—
 - (i) has an option to sell, is under a contractual obligation to sell, or has made (and not closed) a short sale of, substantially similar financial instruments;
 - (ii) is the grantor of an option to buy substantially similar financial instruments; or
 - (iii) has otherwise diminished risk of loss with respect to that share by holding one or more contrary positions with respect to substantially similar financial instruments;
- (b) a person shall have owned a requisite percentage of shares in a company if that person, either directly or through any connected person in relation to that person, held at least 10 per cent of the equity of that company at any time during the period of two years contemplated in subparagraph (2);
- (c) ‘dividend’ means any dividend as defined in section 1, but excludes any foreign dividend as defined in section 9E, that has been included in the taxable income of the person disposing of the share; and
- (d) ‘extraordinary dividends’ include all dividends received or accrued within the period of 2 years contemplated in subparagraph (2), to the extent that those dividends cumulatively exceed 15 per cent of the proceeds received or accrued from disposal of the share;
- (e) ‘holding company’ and ‘intermediary company’ means a ‘holding company’ and ‘intermediary company’, as defined in section 64B of this Act.

Debt substitution

22. (1) Subject to subparagraph (2), where a person reduces or discharges a debt owed by that person to a creditor by disposing of an asset to that creditor, that asset must be treated as—

- (a) having been disposed of for an amount equal to the amount by which the debt has been reduced in consequence of that disposal; and
- (b) having been acquired by the creditor at a cost equal to the lesser of—
 - (i) the market value of that asset at the time of that disposal; or
 - (ii) the amount by which the debt has been reduced in consequence of that disposal.

(2) Where a person reduces or discharges a debt owed by that person to a creditor by disposing of an asset to that creditor as well as by paying an amount in money or by substituting a new debt for part of that debt, the amount of that payment or of that new debt shall be deducted from the debt reduced or discharged before applying subparagraph (1) in respect of the asset so disposed of.

PART V:
BASE COST AND PROCEEDS

Base cost of asset

23. (1) Subject to paragraphs 24 and 25 and subparagraphs (2), (3), (4) and (5), the base cost of an asset acquired by a person is the sum of—

- (a) the expenditure actually incurred in respect of the cost of acquisition or creation of that asset, subject to paragraph 43(3);
- (b) expenditure incurred in respect of the valuation of the asset for the purpose of calculating a capital gain or capital loss in respect of the asset;
- (c) the following amounts actually incurred as expenditure directly related to the acquisition, creation, variation or disposal of that asset—
 - (i) the remuneration of a surveyor, valuer, auctioneer, accountant, broker, agent, consultant or legal advisor, for services rendered;
 - (ii) transfer costs;
 - (iii) stamp duty, transfer duty or similar duty;
 - (iv) advertising costs to find a seller or to find a buyer;
 - (v) any amount of value-added tax not allowed as a deduction in terms of section 16(3) of the Value-added Tax Act, No. 89 of 1991, or any equivalent tax levied by a foreign state, which is not allowed as an input deduction by that state;
 - (vi) the cost of establishing, maintaining or defending a legal title to or right in that asset;
 - (vii) the cost of moving that asset from one location to another;
 - (viii) the cost of installation of that asset, including the cost of foundations and supporting structures; and
 - (ix) in the case of a disposal of an asset by a person by way of a donation as contemplated in paragraph 37, so much of any donations tax payable by that person in respect of that donation, as determined in accordance with subparagraph (6);
 - (x) if that person acquired that asset by way of a donation and the donations tax levied in respect of that donation was paid by that person, so much of the donations tax which bears to the full amount of the donations tax so payable

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- the same ratio as the capital gain of the donor determined in respect of that donation, bears to the market value of that asset on the date of that donation;
- (d) expenditure actually incurred in effecting an improvement or enhancement to that asset, if that improvement or enhancement is still reflected in the state or nature of that asset at the time of its disposal;
 - (e) if that asset was acquired by the exercise after valuation date of an option acquired prior to the valuation date, the valuation date value of that option, which value must be deemed to be expenditure incurred in respect of that asset before valuation date for the purposes of this Part, and in any other case, the expenditure incurred in respect of acquisition of the option;
 - (f) the following amounts actually incurred as expenditure directly related to the cost of ownership of that asset, which is used wholly and exclusively for business purposes or which constitutes equity share capital or an interest in a unit portfolio—
 - (i) the cost of maintaining, repairing or insuring that asset;
 - (ii) where the asset is land, rates or taxes on land; and
 - (iii) interest as contemplated in section 24J on money borrowed to directly finance the expenditure contemplated in subparagraphs (a) and (d) in respect of that asset (including money borrowed to refinance such borrowings):Provided that if that asset constitutes equity share capital or an interest in a unit portfolio, the expenditure in respect of that asset must for the purposes of this subparagraph be reduced by two-thirds;
 - (g) the following amounts which must for the purposes of this Part be treated as expenditure incurred in respect of an asset in the case of—
 - (i) a marketable security, any gain in respect of that acquisition that was included in that person's income in terms of section 8A;
 - (ii) any other asset, so much of an amount that has been included in that person's gross income in respect of that acquisition as has not otherwise been included in the cost of that acquisition; or
 - (iii) an interest in a controlled foreign entity as defined in section 9D, the proportional amount of the net income of that entity which was included in the income of that person in terms of section 9D during any year of assessment, less the amount of any foreign dividend distributed by that entity to that person during any year of assessment which was exempt from tax in terms of section 9E(7)(e)(i).

(2) Notwithstanding the provisions of paragraph 33, the base cost of an option granted by a grantor is the amount of any expenditure actually incurred in granting that option.

(3) The base cost of an asset acquired by a person does not include any of the following amounts—

- (a) borrowing costs, including any interest as contemplated in section 24J or raising fees; and
- (b) expenditure on repairs, maintenance, insurance, protection, rates and taxes, or similar expenditure,

other than borrowing costs and expenditure contemplated in subparagraph (1)(f)).

(4) The base cost of an asset acquired by a person must be reduced by any amount which has been included in terms of subparagraph (1) and (2), which—

- (a) is allowable as a deduction in determining the taxable income of that person before the inclusion of any taxable capital gain;
- (b) has not been paid and is not due and payable in the year of assessment in which that asset is disposed of; or
- (c) has for any reason been recovered or become recoverable from or has been paid by any person (whether prior to or after the incurral of the expense to which it relates), or that has been recouped as a result of the cancellation, termination or variation of an agreement or due to the prescription or waiver of a claim or a release from an obligation or any other event.

(5) In the case of a disposal by way of a value shifting arrangement—

(a) the base cost of interests to which paragraph 11(1)(g) applies, is calculated as a proportion of the person's base cost in the interests calculated immediately prior to the disposal equal to—

$$Y = \frac{(A - B)}{A},$$

where—

- (i) 'Y' represents the amount to be determined;
- (ii) 'A' is the market value of the person's interests immediately prior to the disposal; and
- (iii) 'B' is the market value of the person's interests immediately after the disposal.

(b) the base cost of a person—

- (i) whose interests increased in value as a result of a value shifting arrangement is increased by that proportion of the proceeds of disposal contemplated in paragraph 34(2) in respect of the value shifting arrangement which resulted in the increase in market value of that person's interest; or
- (ii) who acquires a direct or indirect interest in the company, trust or partnership, is that proportion of the proceeds of disposal contemplated in paragraph 34(2) in respect of the value shifting arrangement which resulted in the acquisition of that interest.

(6) The amount of the donations tax payable by a person in respect of the disposal of an asset which may be taken into account in terms of subparagraph (1)(c)(ix) must be determined in accordance with the formula—

$$Y = \frac{(M - A) \times D}{M}$$

where—

- (a) 'Y' represents the amount to be determined;
- (b) 'M' represents the market value of the asset donated in respect of which the donations tax is payable;
- (c) 'A' represents all amounts allowed to be taken into account in determining the base cost of the asset in terms of this Part (other than subparagraph (1)(c)(ix) of this paragraph); and
- (d) 'D' represents the total amount of donations tax so payable:

Provided that where the amount included in 'A' is greater than the amount included in 'M', the amount of donations tax to be taken into account in terms of subparagraph (1)(c)(ix) shall be nil.

Base cost of asset of a person who becomes a resident

24. (1) Where an asset of a person who becomes a resident as contemplated in paragraph 12(4), has been disposed of by a person after the date on which that person commenced to be a resident and both the proceeds from that disposal and the expenditure contemplated in paragraph 23 incurred prior to that date in respect of that asset are lower than the market value of that asset as at that date, that person must be treated as having acquired that asset at a cost equal to the higher of?

- (a) the expenditure contemplated in paragraph 23 incurred in respect of that asset prior to that date; or
- (b) those proceeds less the expenditure contemplated in paragraph 23 incurred after that date in respect of that asset.

(2) Where an asset contemplated in paragraph 12(4) has been disposed of by a person after the date on which that person commenced to be a resident and both the proceeds from the disposal of that asset and the market value of that asset as at the date on which that person commenced to be a resident are lower than the expenditure contemplated in paragraph 23 incurred prior to that date in respect of that asset, that person must be treated as having acquired that asset at a cost equal to the higher of?

- (a) that market value; or

- (b) those proceeds less the expenditure contemplated in paragraph 23 incurred after that date in respect of that asset.

Determination of base cost of pre-valuation date assets

25. The base cost of a pre-valuation date asset is the sum of the valuation date value of that asset, as determined in terms of paragraph 26 or 27, and the expenditure contemplated in paragraph 23 incurred after the valuation date in respect of that asset.

Valuation date value where proceeds exceed expenditure or expenditure in respect of an asset is unknown

26. (1) Where the proceeds from the disposal of a pre-valuation date asset (other than an asset contemplated in paragraph 28) exceed the expenditure contemplated in paragraph 23 incurred both before and after the valuation date in respect of that asset (if any), or where the expenditure incurred prior to valuation date in respect of a pre-valuation date asset is unknown, the person who disposed of that asset must, subject to subparagraph (2) and (3), determine the valuation date value of the asset as any of the following—

- (a) the market value of the asset on the valuation date as contemplated in paragraph 29;
- (b) 20 per cent of the proceeds from disposal of the asset; or
- (c) the time-apportionment base cost of the asset, as contemplated in paragraph 30.

(2) Where a person has adopted the market value as the valuation date value of that asset as contemplated in subparagraph (1)(a) and the proceeds from the disposal of that asset do not exceed that market value, that person must determine the valuation date value of the asset as the higher of?

- (a) the expenditure contemplated in paragraph 23 incurred before the valuation date in respect of that asset; or
- (b) those proceeds less the expenditure contemplated in paragraph 23 incurred after the valuation date in respect of that asset.

(3) A person may not adopt the time-based apportionment base cost of an asset, where the weighted average method of determining the base cost of that asset is used as contemplated in paragraph 32(2)(b).

Valuation date value where proceeds do not exceed expenditure

27. (1) Where the proceeds from the disposal of a pre-valuation date asset (other than an asset contemplated in paragraph 28) do not exceed the expenditure contemplated in paragraph 23 incurred before and after the valuation date in respect of that asset, and the person who disposed of the asset—

- (a) did not adopt the market value on the valuation date, as contemplated in paragraph 29(4), the valuation date value of that asset is—
 - (i) the time-apportionment base cost of that asset as contemplated in paragraph 29; or
 - (ii) where the weighted average method of determining the base cost of that asset is used as contemplated in paragraph 32(2)(b), the value of that asset as determined by applying that method;
- (b) adopted the market value of the asset on the valuation date, as contemplated in paragraph 29(4), the valuation date value of the asset must, subject to subparagraph (2), be determined as the lower of—
 - (i) that market value; or
 - (ii) the time-apportionment base cost of that asset as contemplated in paragraphs 30.

(2) Where the expenditure contemplated in paragraph 23 incurred before the valuation date in respect of an asset contemplated in subparagraph (1), exceeds both the proceeds from the disposal of that asset and the market value of that asset, that person must determine the valuation date value of the asset as the higher of?

- (a) the market value; or
- (b) those proceeds less the expenditure contemplated in paragraph 23 incurred after the valuation date in respect of that asset.

(3) A person may not adopt the time-based apportionment base cost of an asset for purposes of subparagraph (1)(b), where the weighted average method of determining the base cost of that asset is used as contemplated in paragraph 32(2)(b).

Valuation date value of an instrument

28. The valuation date value of an instrument as defined in section 24J must be—

- (a) the adjusted initial amount as determined in terms of that section on valuation date; or
- (b) market value of that instrument determined in terms of paragraph 31(1)(g).

Valuation date market value

29. (1) The market value on the valuation date of—

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- (a) a financial instrument listed on a recognised exchange and for which a price was quoted on that exchange both before and after the valuation date is, subject to subparagraph (2), in the case of a financial instrument listed on an exchange—
 - (i) in the Republic, the average of the last price quoted in respect of that financial instrument on the recognised exchange on each of the five days of trading preceding the valuation date; and
 - (ii) outside the Republic and which is not listed on such an exchange in the Republic, the last price quoted in respect of that financial instrument on that recognised exchange on the last trading day before valuation date;
- (b) an asset which constitutes a right of a unit holder in—
 - (i) any company contemplated in paragraph (e)(i) of the definition of 'company' in section 1 of the Act, or any unit portfolio comprised in any unit trust scheme in property shares carried on in the Republic, the price published by the Commissioner in the *Gazette*, which is the average of the buying price, at which a unit could be purchased from the management company of the scheme, for the last five trading days before valuation date; or
 - (ii) any arrangement or scheme contemplated in paragraph (e)(ii) of the definition of 'company', the last buying price published before valuation date at which a unit could be purchased from the management company of the scheme;
- (c) any other asset, the market value determined in terms of paragraph 31 on valuation date,

(2) Where—

- (a) a person holds a controlling interest in a company the shares of which are listed on a recognised exchange, and that entire controlling interest is disposed of to another person (who is a connected person in relation to that person), who acquires that entire controlling interest; and
- (b) the price per share for which that controlling interest has been so disposed of deviates from the last price quoted in respect of that share on the date of disposal due to a premium on or discount in the price per share in respect of the acquisition or disposal of that controlling interest,

the market value of that share held on valuation date, as determined in subparagraph (1)(a), must be increased or decreased, as the case may be, by an amount which bears to the market value the same ratio as the amount of the premium or discount bears to the total price of the share.

(3) For the purposes of this paragraph—

- (a) the last price quoted for a specific day means the average of the buying and selling prices quoted at close of business on that day; and

(b) 'controlling interest' in a company, means an interest in more than 50 per cent of the equity share capital of that company.

(3) For the purposes of paragraphs 26(1)(a) and 27(1)(a), a person may only adopt the market value as the valuation date value of that asset if that person has valued that asset within two years after valuation date.

(4) Notwithstanding subparagraph (3), where a person has valued an asset and—

(a) the market value of that asset exceeds R10 million; or

(b) that asset is an intangible asset and the market value thereof exceeds R1 million,

that person may only adopt the market value as the valuation date value of that asset if that person has furnished proof of that valuation to the Commissioner in such form as the Commissioner may prescribe, with the first return submitted by that person after that two year period contemplated in subparagraph (3).

(5) Where a person disposes of—

(a) an asset contemplated in subparagraph (4)(a) or (b) which has been valued before proof of valuation is submitted as contemplated in that subparagraph; or

(b) any other asset which has been which has been valued,

that person must submit proof of that valuation with the return for the year of assessment during which such asset was disposed of.

(6) The Commissioner may, notwithstanding any proof of valuation submitted by a person to the Commissioner as contemplated in subparagraph (4) or (5)—

(a) request further information relating to that valuation; or

(b) where the Commissioner is not satisfied with any value at which an asset has been valued, he or she may adjust the value accordingly.

(7) The period contemplated in subparagraph (3) may be extended by the Minister by notice in the *Gazette*.

Time-apportionment base cost

30. (1) Where the total amount of expenditure as contemplated in paragraph 23 in respect of a pre-valuation date asset, was incurred in a single year of assessment prior to valuation date, the time-apportionment base cost of that asset is determined in accordance with the formula—

$$Y = E + [(P - E) \times \frac{N}{T + N}]$$

where—

(a) 'Y' represents the amount to be determined;

(b) 'E' represents the amount of that expenditure;

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- (c) 'P' represents the proceeds received or accrued in consequence of the disposal of that asset;
- (d) 'N' represents the number of years or part thereof the asset was owned prior to the valuation date;
- (e) 'T' represents the number of years or part thereof the asset was owned after valuation date.

(2) Where the total amount of expenditure as contemplated in paragraph 22 in respect of a pre-valuation date asset was incurred during more than one year of assessment?

- (a) that asset must for purposes of this subparagraph be treated as consisting of separate assets each of which was acquired?
 - (i) six months after the commencement of each of the years of assessment during which that expenditure was incurred; and
 - (ii) at a cost equal to the amount of the expenditure so incurred during that year of assessment;
- (b) the time-apportionment base cost of the asset is the sum of the base cost of each of the assets contemplated in item (a), which must be determined in accordance with the formula—

$$Y = E + [(P - E) \times \frac{N}{T + N}]$$

where—

- (i) 'Y' represents the base cost to be determined in respect of the asset contemplated in item (a);
- (ii) 'E' represents the expenditure incurred during the relevant year of assessment as contemplated in item (a)(ii);
- (iii) 'P' represents the proceeds of the asset contemplated in item (a) determined in accordance with subparagraph (3);
- (iv) 'N' represents the number of years or part thereof the asset was held prior to valuation date;
- (v) 'T' represents the total number of years or part thereof that the asset was held after valuation date.

(3) The proceeds in respect of a separate asset contemplated in subparagraph (2)(a), must for the purposes of subparagraph (2)(b)(iii) be determined in accordance with the formula—

$$P = T \times \frac{C}{B}$$

where—

- (a) 'P' represents the amount to be determined;
- (b) 'T' represents the total amount of the proceeds received or accrued in consequence of the disposal of the entire pre-valuation date asset;
- (c) 'C' represents the cost of the separate asset contemplated in item (2)(a)(ii);
- (d) 'B' represents the base cost of the entire pre-valuation date asset.

(There are three possible approaches as far as this paragraph is concerned.)

- 1. *delete (2) and (3) and all assets can be dealt with under (1). All pre-valuation date expenditure will be deemed to have been incurred on the date of acquisition of the asset;*
- 2. *apply subparagraphs (2) and (3) only in respect of all assets other than financial instruments;*
or
- 3. *apply (1), (2) and (3) to any pre-valuation date asset.)*

Determination of market value

31. (1) The market value of—

- (a) an asset which is a financial instrument listed on a recognised exchange and for which a price was quoted on that exchange, is the average of the buying and selling prices in respect of that financial instrument on that recognised exchange quoted at close of business on the last trading day before disposal of that financial instrument;
- (b) an asset which is a long-term insurance policy, being a policy as defined in section 1 of the Long-term Insurance Act, 1998 (Act No. 52 of 1998), the greater of—
 - (i) the amount which would be payable to the policyholder upon the surrender of that policy on that day; or
 - (ii) the amount which according to the insurer is the fair market value of that policy should it run its remaining policy term as determined on that day;
- (c) an asset which constitutes a right of a unit holder in—
 - (i) any company contemplated in paragraph (e)(i) of the definition of 'company' in section 1 of the Act, or any unit portfolio comprised in any unit trust scheme in property shares carried on in the Republic, the buying price at which a unit can be purchased from the management company of the scheme on the date of disposal; or
 - (ii) any arrangement or scheme contemplated in paragraph (e)(ii) of the definition of 'company', the buying price, at which a unit can be purchased from the management company of the scheme on the date of disposal;

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- (d) a fiduciary, usufructuary or other like interest in any property, an amount determined by capitalizing at 12 per cent, the annual value of the right of enjoyment of the property subject to such fiduciary, usufructuary or other like interest, as determined in subparagraph (2), over the expectation of life of the person entitled to such interest, or if such right of enjoyment is to be held for a lesser period than the life of such person, over such lesser period;
- (e) any property which is subject to a fiduciary, usufructuary or other like interest in favour of any person, the amount by which the fair market value of the full ownership of such property exceeds the value of such fiduciary, usufructuary or other like interest determined in accordance with item (d);
- (f) in the case of any asset which constitutes immovable property on which farming operations are being carried on, subject to subparagraph (4), either—
 - (i) the value of that property determined in as contemplated in paragraph (b) of the definition of 'fair market value' in section 1 of the Estate Duty Act, 1955 (Act No. 45 of 1955); or
 - (ii) the price contemplated in item (g);
- (g) any other asset, the price which could have been obtained upon a sale of the asset between a willing buyer and a willing seller dealing at arm's length in an open market.

(2) For purposes of subparagraph (1)(d), the annual value of the right of enjoyment of any property which is subject to any fiduciary, usufructuary or other like interest, means an amount equal to 12 per cent of the fair market value of the full ownership of the property: Provided that where the Commissioner is satisfied that the property which is subject to any such interest could not reasonably be expected to produce an annual yield equal to 12 per cent on that value of the property, the Commissioner may fix such sum as representing the annual yield as may seem to him to be reasonable, and the sum so fixed must for the purposes of subparagraph (1)(d) be treated as being the annual value of the right of enjoyment of such property.

(3) The market value of any shares of a person in a company not quoted on any exchange must be determined subject to the following—

- (a) no regard shall be had to any provision in the memorandum and articles of association, founding statement, association agreement or rules of the company, as the case may be—
 - (i) restricting the transferability of the shares therein, but it shall be assumed that those shares were freely transferable; or
 - (ii) whereby or whereunder the value of the shares is to be determined;
- (b) if upon the winding up of the company that person would have been entitled to share in the assets of the company to a greater extent *pro rata* to shareholding than other shareholders, the value of the shares held by that shareholder must not be less than the amount to which

that shareholder would have been so entitled if the company had been in course of winding-up and the said amount had been determined as at valuation date.

(4) The value contemplated in subparagraph (1)(f)(i) may not be elected on the death of a person or when the immovable property is disposed of in any other manner, unless—

- (a) that person has valued that asset on that basis within two years after valuation date and furnished proof of that valuation to the Commissioner in such form as the Commissioner may prescribe, with the first return submitted by that person after that two year period and the deceased prior to his death elected that value for the purposes of paragraph 26 or 27; or
- (b) the person acquired the immovable property by way of donation or inheritance at that value.

(5) Where a person disposes of an asset contemplated in subparagraph (4) before a valuation is submitted as contemplated in that subparagraph and that person wishes to adopt the market value of that asset, that person must submit proof of that valuation with the return for the year of assessment during which such asset was disposed of.

Determination of base cost of financial instruments

32. (1) This paragraph applies to the disposal of financial instruments which form part of a holding of identical assets.

(2) The base cost of a financial instrument contemplated in subparagraph (1) may be determined by using one of the following methods—

- (a) first in first out;
- (b) weighted average; or
- (c) specific identification.

(3) Once a person has adopted one of the methods specified in subparagraph (2) in respect of a class of financial instruments, that method must be used until all financial instruments in that class have been disposed of.

Part-disposals

33. (1) Subject to subparagraph (2), where part of an asset is disposed of, the proportion of the base cost attributable to the part disposed of is an amount which bears to the base cost of the entire asset the same proportion as the market value of the part disposed bears to the market value of the entire asset immediately prior to that disposal.

(2) Where a part of the base cost of an asset can be directly attributed to the part of the asset that is disposed of or retained then the apportionment contemplated in subparagraph (1) does not apply in respect of that part of the base cost.

Proceeds from disposal

34. (1) Subject to subparagraph (4), the proceeds from the disposal of an asset by a person are equal to the amount received by or accrued to or which is treated as having been received by or accrued to a person in consequence of that disposal, and includes—

- (a) the amount by which any debt owed by that person has been reduced or discharged; and
- (b) any total amount treated to have been received by or accrued to a lessee from the lessor of the leased property for improvements effected to such property.

(2) The amount of the proceeds from a disposal by way of a value shifting arrangement are determined as the market value of the person's interests to which subparagraph 11(1)(g) applies immediately prior to the disposal less the market value of the person's interests immediately after the disposal, which amount shall be treated as having been received or accrued to that person.

(3) Where an option is granted by a person which binds that person to buy an asset and sell an asset, that option must for the purposes of subparagraph (1), be treated as if there were two options granted by that person and the amount received or accrued in respect of that option must be attributed equally to each of those two options.

(4) The proceeds from the disposal of an asset by a person, as contemplated in subparagraph (1) must be reduced by the following amounts—

- (a) any amount that must be included in the gross income of that person or that must be taken into account when determining the taxable income of that person before the inclusion of any taxable capital gain;
- (b) any amount for which the person must account as output tax under the Value-added Tax Act, 1991 (Act No. 89 of 1991);
- (c) any amount that has been repaid or has become repayable to the person to whom that asset was disposed of; or
- (d) any reduction, as the result of the cancellation, termination or variation of an agreement or due to the prescription or waiver of a claim or release from an obligation or any other event, of an accrued amount forming part of the proceeds of that disposal.

Disposal of partnership asset

35. The proceeds from the disposal of a partner's interest in an asset of the partnership must be treated as having accrued to that partner at the time of that disposal.

Assets of company or trust

36. (1) Where—

- (a) an asset contemplated in paragraph 15 or an asset which, if owned by a natural person, would be a personal-use asset as contemplated in paragraph 53, is held by a company;
 - (b) there is a decrease in the market value of that asset while held by that company; and
 - (c) any share in the company is thereafter disposed of by a natural person,
- that natural person must be treated as having disposed of that share for proceeds equal to the market value of the share, determined on the date of disposal, as if the market value of that asset had not decreased.

(2) Subparagraph (1) does not apply where more than 50 per cent of the assets of the company consist of business assets.

Disposal to connected person or by means of donation or non-arm's length transaction

37. (1) Subject to paragraph 66, where a person disposed of an asset to a person who is a connected person in relation to that person, or disposed of an asset for consideration which does not reflect an arm's length price—

- (a) the person who disposed of the asset must be treated as having disposed of that asset for proceeds equal to the market value of that asset as at the date of that disposal; and
- (b) the person who acquired the asset must be treated as having acquired that asset at a cost equal to that market value.

(2) Where a person disposed of an asset by means of a donation or for a consideration not measurable in money, that disposal is, for the purposes of subparagraph (1) treated as a disposal by means of a non-arm's length transaction.

Capital losses determined in respect of disposals to relatives, companies or trusts

38. (1) A person must, when determining the aggregate capital gain or aggregate capital loss of that person, disregard any capital loss determined in respect of the disposal of an asset to—

- (a) any relative of that person as contemplated in subparagraph (3);
- (b) any company in which that person or a relative of that person has a controlling interest; or
- (c) any trust of which that person or a relative of that person is a trustee and where the beneficiaries include that person or any of that person.

(2) A person's capital loss which is disregarded in terms of subparagraph (1) may be deducted from that person's capital gains determined in respect of disposals of assets during such year or subsequent years to the same person to whom the disposal giving rise to that capital loss was made, if at the time of those subsequent disposals, in the case of—

- (a) a company, that person or a relative still has a controlling interest in that company; or
- (b) a trust, that person or relative is still a beneficiary of that trust.

(3) For the purposes of this paragraph, a relative in relation to a person means a spouse, parent, child, brother, sister, grandchild or grandparent of that person.

Disposal to and from deceased estate

39. (1) Subject to subparagraphs (2) and (3), a deceased estate must, for the purposes of this Schedule, be treated in the same manner as the deceased would have been treated at the date immediately prior to death, if that deceased had disposed of an asset at that date.

(2) A deceased person must be treated as having disposed of his or her assets (other than assets transferred to the surviving spouse of such deceased person as contemplated in paragraph 66(2)(a)) to his or her deceased estate for proceeds equal to the market value of those assets at the date of that person's death, and the deceased estate must be treated as having acquired those assets at a cost equal to that market value.

(3) Where an asset is disposed of by a deceased estate to an heir or legatee (other than the surviving spouse of the deceased person as contemplated in paragraph 66(2)(a)) or a trustee of a trust?

- (a) the deceased estate must be treated as having disposed of that asset for proceeds equal to the base cost of the deceased estate in respect of that asset; and
- (b) the heir, legatee or trustee must be treated as having acquired that asset at a cost equal to the base cost of the deceased estate in respect of that asset.

Tax payable by heir of a deceased estate

40. Where the tax determined in terms of this Act, which relates to the taxable capital gain of a deceased person, exceeds 50 per cent of the net value of the estate determined for purposes of the Estate Duty Act, 1955, before taking into account that amount of the tax so determined, and the executor of the estate is required to dispose of any asset of the estate for purposes of paying the amount of that tax, any heir of the estate, who would have been entitled to that asset, had there been no liability for tax, may elect that that asset be distributed to him or her upon the condition that the amount of tax which exceeds 50 per cent of that net value be paid by him or her within a period

of three years after the date that the executor obtained permission to distribute the assets of the estate, as contemplated in section 35(12) of the Administration of Estates Act, 1965 (Act No. 66 of 1965).

(2) Any amount of tax payable by an heir as contemplated in subparagraph (1), becomes a debt due to the State and must be treated as an amount of tax chargeable in terms of this Act which is due by that person.

Disposal to and from an insolvent estate

41. (1) Subject to section 25C, a person whose estate has been voluntarily or compulsorily sequestrated must be treated as having disposed of his or her assets to his or her insolvent estate for proceeds equal to the market value of those assets at the date of that person's sequestration, and the insolvent estate must be treated as having acquired those assets at a cost equal to that market value.

(2) Where the order of sequestration is set aside and the assets are disposed of to the person whose estate had been sequestrated—

- (a) the insolvent estate must be treated as having disposed of those assets for proceeds equal to the base cost of the insolvent estate in respect of those assets; and
- (b) the person whose estate was sequestrated must be treated as having acquired those assets at a cost equal to the base cost of the insolvent estate in respect of those assets.

Short-term disposal and acquisitions of identical assets

42. (1) Where a capital loss is determined in respect of the disposal of a financial instrument and within a period beginning 45 days before the date of disposal and ending 45 days after such date—

- (a) that person or, in the case of a natural person, a relative of that person;
- (b) any company in which that natural person or relative of that person has a controlling interest; or
- (c) any trust of which that natural person or relative of that person is a trustee and the beneficiaries include that person or a relative of that person,

acquires or has entered into a contract or option to acquire a financial instrument of the same kind and of the same or equivalent quantity or quality—

- (i) the person who disposed of the financial instrument must be treated as having disposed thereof for proceeds equal to the base cost thereof; and
- (ii) the person contemplated in items (a), (b) or (c) who acquired the same or a substantially identical financial instrument must be treated as having acquired that financial instrument at

a cost equal to any amount permissible in terms of paragraph 23 of this Schedule, plus the amount of any capital loss which would have arisen in the hands of the person who disposed of the asset, were it not for the preclusion in (i) above.

(2) For the purposes of subparagraph (1), there must not be taken into account determining the period of 90 days any days in which the person disposing of the financial instrument—

- (a) has an option to sell, is under a contractual obligation to sell or has made (and not closed) a short sale of a financial instrument of the same kind and of the same or equivalent quantity or quality;
- (b) is the grantor of an option to buy a financial instrument of the same kind and of the same or equivalent quantity or quality; or
- (c) has otherwise diminished risk of loss with respect to that share by holding one or more contrary positions with respect to a financial instrument of the same kind and of the same or equivalent quantity or quality.

(3) For the purposes of this paragraph, a relative in relation to a person means a spouse, parent, child, brother, sister, grandchild or grandparent of that person.

Currency conversion

43. (1) Where the proceeds from the disposal of an asset accrue to a person in any currency which is not legal tender in the Republic, those proceeds must be converted to the currency of the Republic at the ruling exchange rate applicable on the date of that accrual.

(2) Where an amount of expenditure was incurred in respect of the base cost of an asset in any currency which is not legal tender in the Republic, that amount must be converted to the currency of the Republic at the ruling exchange rate applicable at the date on which that amount was paid or became due and payable, whichever was the earlier.

(3) Where a resident acquires an asset financed or partly financed by way of a loan in a currency which is not legal tender in the Republic from a third party outside the Republic, and that asset is used as security for the loan, the base cost of that asset must be treated as being—

- (a) any expenditure actually incurred in respect of the cost of acquisition other than that financed by way of the loan; and
- (b) any capital repayment actually incurred in respect of the loan, converted to the currency of the Republic at the ruling exchange rate applicable at the date of each repayment.

(4) Where a person has adopted the market value of a pre-valuation date asset as the valuation date value of that asset, as contemplated in paragraph 26 and 27, that value must be converted to the currency of the Republic at the ruling exchange rate applicable on valuation date.

PART VI:
PRIMARY RESIDENCE EXCLUSION

Definitions

44. In this Part, unless the context otherwise indicates—

‘an interest’ means—

- (a) any real or statutory right; or
- (b) a share owned directly in a share block company as defined in the Share Blocks Control Act, 1980 (Act No. 59 of 1980) or a share or interest in a similar entity which is not a resident; or
- (c) a right of use or occupation,
but excluding a right under a mortgage bond or an interest in a trust.

‘primary residence’ means a residence—

- (a) in which a natural person or a special trust holds an interest; and
- (b) which that person or a beneficiary of that trust or a spouse of that person or beneficiary—
 - (i) ordinarily resides in as his or her main residence; and
 - (ii) uses mainly for domestic or private residential purposes;

‘residence’ means any structure, including a boat, caravan or mobile home, which is used as a place of residence by a natural person, together with any appurtenance belonging thereto and enjoyed therewith.

General principle

45. (1) Subject to subparagraphs (2), (3) and (4), a natural person or a special trust must, when determining an aggregate capital gain or aggregate capital loss, disregard so much of a capital gain or capital loss as does not exceed R1 million determined in respect of the disposal of the primary residence of that person or that trust.

(2) Where more than one natural person or special trust has an interest in that primary residence, the total capital gain or capital loss so disregarded collectively in respect of all natural persons or special trusts holding such an interest, may not exceed R1 million in respect of the disposal of that primary residence.

(3) Only one residence may be a primary residence of a person for any period during which that person held more than one residence.

Size of residential property qualifying for exclusion

46. Where a primary residence and the land on which it is situated is disposed of by a person, the provisions of paragraph 45 apply in respect of so much of that land, including unconsolidated adjacent land, as—

- (a) does not exceed two hectares;
- (b) is used for domestic or private purposes in association with that residence; and
- (c) is disposed of at the same time and to the same person as that residence.

Apportionment in respect of periods of absence

47. Subject to paragraphs 48 and 49—

- (a) where a natural person or special trust disposes of an interest in a residence which is or was a primary residence;
- (b) that person or a beneficiary of that trust or a spouse of that person or beneficiary, was not ordinarily resident in that residence throughout the period on or after the valuation date during which that person or trust held that interest,

then the portion of the capital gain or capital loss to be disregarded in terms of paragraph 45 must be determined with reference to the portion of that period during which that person, beneficiary or spouse was so ordinarily resident.

Disposal and acquisition of primary residence

48. A natural person or a beneficiary of a special trust must for purposes of paragraph 47 be treated as having been ordinarily resident in a residence for a continuous period (not exceeding two years), if that person did not reside in that residence during that period for the following reasons—

- (a) at the time the residence was that person's primary residence it had been offered for sale and vacated due to the acquisition or intended acquisition of a new primary residence; or
- (b) that residence was being erected on land acquired for that purpose in order to be used as that person's primary residence; or
- (c) the residence had been accidentally rendered uninhabitable.

Rental periods

49. A natural person or a beneficiary of a special trust or a spouse of that person or beneficiary must for purposes of paragraph 50 be treated as having used a residence for domestic or private residential purposes during any continuous period of absence therefrom (not exceeding five years) while that residence was being let, if—

- (a) that person or beneficiary or spouse resided in that residence as a primary residence for a continuous period of at least one year prior to and after any such period;
- (b) no other residence was treated as the primary residence of that person or beneficiary during any such period; and
- (c) that person or beneficiary or spouse was—
 - (i) temporarily absent from the Republic; or
 - (ii) employed or carrying on business in the Republic at a location further than 250 kilometers from that residence.

Non-residential use

50. Subject to paragraph 49?

- (a) where a natural person or special trust—
 - (i) disposes of an interest in a primary residence; or
 - (ii) disposes of an interest in a residence that was a primary residence for a part of the period on or after the valuation date during which that person or trust held that interest; and
- (b) that person or a beneficiary of that trust used the residence referred to in subparagraph (a) or a part thereof for the purposes of carrying on a trade for any portion of the period on or after the valuation date during which that person or trust held that interest,

then the portion of the capital gain or capital loss to be disregarded in terms of paragraph 45 must be determined with reference to the period on or after the valuation date during which that person or beneficiary used that residence for domestic or private residential purposes as well as to the part of that residence used by that person or beneficiary mainly for purposes other than the carrying on of a trade.

Transfer of a primary residence from a company or trust

51. (1) Where an interest in a residence has been transferred from a company or a trust to a natural person as contemplated in subparagraph (2)?

- (a) that company or trust must be treated as having disposed of that residence at market value on the valuation date; and

- (b) that natural person must be treated as having acquired that primary residence at market value on the valuation date.

(2) Subparagraph (1) applies where—

- (a) that natural person acquires that residence from the company on or after 1 October 2001, but not later than 30 September 2002;
- (b) that natural person and his or her spouse directly held all the equity share capital in that company or interest in that trust from 1 October 2001 to the date of that acquisition; and
- (c) that natural person or his or her spouse personally and ordinarily resided in that residence and used it for domestic or private residential purposes as his or her or their ordinary residence from 1 October 2001 to the date of that acquisition.

PART VII:
OTHER EXCLUSIONS

General principle

52. Capital gains and capital losses must be disregarded in the circumstances and to the extent set out in this Part when determining the aggregate capital gain or aggregate capital loss of a person.

Personal-use assets

53. (1) Subject to subparagraph (2), a personal-use asset is an asset of a natural person or a special trust, to the extent that that asset is used for purposes other than the carrying on of a trade.

(2) Personal use assets do not include—

- (a) a coin made mainly from gold or platinum;
- (b) immovable property;
- (c) an aircraft, the empty mass of which exceeds 450 kilograms;
- (d) a boat exceeding ten metres in length;
- (e) a financial instrument;
- (f) any fiduciary, usufructuary or other like interest, the value of which decreases over time; and
- (g) a right or interest of whatever nature to or in an asset envisaged in items (a) to (f).

(3) A natural person or a special trust must disregard a capital gain or capital loss determined in respect of the disposal of a personal-use asset.

Retirement benefits

54. A person must disregard any capital gain or capital loss determined in respect of a disposal that resulted in that person receiving—

- (a) a lump sum benefit as defined in the Second Schedule;
- (b) a lump sum benefit paid in consideration of past employment from a fund, arrangement or instrument situated outside the Republic which provides benefits similar to a pension, provident or retirement annuity fund approved in terms of this Act.

Long-term assurance

55. A person must disregard any capital gain or capital loss determined in respect of a disposal that resulted in that person receiving—

- (a) an amount paid in respect of a policy as defined in section 29A entered into by that person with an insurer as defined in that section, where that person or, in the case of a natural person—
 - (i) is the original beneficial owner or one of the original beneficial owners of the policy;
 - (ii) is the spouse, nominee or dependant of the original beneficial owner of the relevant policy and no amount was paid or is payable or will become payable, whether directly or indirectly, in respect of the cession of that policy from the beneficial owner of that policy to that spouse, nominee or dependant; or
 - (iii) is the former spouse of the original beneficial owner and that policy was ceded to that spouse in consequence of a divorce order or, in the case of a marital-like relationship, an agreement of division of assets which has been made an order of court;
- (b) an amount paid in respect of any policy taken out on the life of an employee or director as contemplated in section 11(w);
- (c) an amount paid to a person where the policy was originally taken out on the life of any other person who was a partner of that person, or held any share or like interest in a company in which that person held any share or like interest, for the purpose of enabling that person to, upon the death of that other person, acquire the whole or part of—
 - (i) that other person's interest in the partnership concerned; or

- (ii) that other person's share or like interest in that company and any claim by that other person against that company, and no premium on the policy was paid or borne by that other person;
- (d) an amount paid in respect of a policy originally taken out on the life of a person, where such policy is provided to that person or dependant by or in consequence of his or her membership of a pension fund, provident fund or retirement annuity fund.

Disposal of small business assets

56. (1) For purposes of this paragraph, 'small business' means a business of which the market value of all assets, as at the date of the disposal of the asset or interest contemplated in subparagraph (2), does not exceed R5 000 000.

(2) Subject to subparagraphs (3), (4) and (5), a natural person may, when determining an aggregate capital gain or aggregate capital loss, disregard a capital gain determined in respect of the disposal of?

- (a) an active business asset of a small business owned by that natural person as a sole proprietor; or
- (b) an interest in each of the active business assets of a business, which qualifies as a small business, owned by a partnership, upon that natural person's withdrawal from that partnership to the extent of his or her interest in that partnership; or
- (c) an entire direct interest in a company (which consists of at least 10 per cent of the equity of a company), to the extent that the interest relates to active business assets of the business, which qualifies as a small business, of that company,

if that person at the time of that disposal held for his or her own benefit that active business asset, interest in the partnership, or interest in the company (as the case may be) for a continuous period of at least five years prior to that disposal and was substantially involved in the business of that small business, and—

- (i) has attained the age of 55 years; or
- (ii) the disposal is in consequence of ill-health, other infirmity, superannuation or death.

(3) The sum of the amounts to be disregarded by a natural person as contemplated in subparagraph (2), may not exceed R500 000 during that natural person's lifetime.

(4) A natural person must realise all capital gains qualifying in terms of subparagraph (2) within a period of 24 months commencing on the date of the first disposal contemplated in subparagraph (2).

(5) Where a natural person operates more than one small business either by way of a sole proprietorship, a partnership interest or a direct interest in the equity of a company consisting of at

least 10 per cent, then he or she may subject to subparagraphs (4) and (6), include every such small business in the determination of the amount to be disregarded in terms of subparagraph (3).

(6) The provisions of this paragraph do not apply where a person operates more than one business either by way of a sole proprietorship, a partnership interest or a direct interest in the equity of a company consisting of at least 10 per cent, and the total market value of all active business assets in respect of all such businesses exceeds R5 000 000.

Compensation for personal injury, illness or defamation

57. A natural person or a special trust must disregard a capital gain or a capital loss determined in respect of a disposal that resulted in that person or that trust, as the case may be, receiving compensation for personal injury, illness or defamation of that person or a beneficiary of that trust.

Gambling, games and competitions

58. (1) A person must disregard a capital gain or capital loss determined in respect of a disposal relating to any form of gambling, game or competition.

(2) Notwithstanding subparagraph (1), a capital gain may not be disregarded—

- (a) by any person other than a natural person; or
- (b) where that form of gambling, game or competition is not authorised by, or conducted in terms of, the laws of the Republic.

Conversion of foreign currency

59. A natural person or a special trust must disregard a capital gain or a or capital loss determined in respect of the conversion of foreign currency into South African legal tender where the foreign currency was acquired by that person or special trust for personal expenditure of the person or a beneficiary of the special trust outside the Republic.

Short-term insurance proceeds

60. A person must disregard a capital gain or capital loss determined in respect of a disposal of an interest in a policy of insurance against the risk of the loss, destruction or damage of an asset which resulted in that person receiving a payment from an insurer, to the extent that the payment is treated as proceeds on the loss, destruction or damage of that asset.

Unit trust funds

61. A unit portfolio comprised in any unit trust scheme managed or carried on by any company registered as a management company under section 4 or 30 of the Unit Trusts Control Act, 1981 (Act No. 54 of 1981), must disregard any capital gain or capital loss.

Donations to public benefit organisations

62. A person must disregard any capital gain or capital loss determined in respect of the donation of an asset by that person to a public benefit organisation approved by the Commissioner under section 30.

Asset used to produce exempt income

63. A person must disregard any capital gain or capital loss in respect of the disposal of an asset—

- (a) where the receipts and accruals of that person are exempt from tax in terms of section 10; or
- (b) which is used solely to produce amounts which are exempt from tax in terms of section 10, other than receipts and accruals contemplated in paragraphs (j)(xv), (k) and (m) of subsection (1) thereof.

PART VIII:

ROLL-OVERS AND ATTRIBUTION OF CAPITAL GAINS

Involuntary disposal

64. (1) Subject to subparagraphs (2), (3) and (4), where—

- (a) a person disposes of an asset other than a financial instrument by way of expropriation, loss or destruction;
- (b) proceeds accrue to that person by way of compensation for that expropriation, loss or destruction;
- (c) those proceeds exceed the base cost of that asset; and
- (d) that person satisfies the Commissioner that—
 - (i) those proceeds, including substantially the whole of any capital gain, will be expended in replacing that asset;

- (ii) a contract will be concluded to replace that asset with a similar asset within a year of the disposal of that asset; and
- (iii) the replacement asset will be brought into use within three years of the disposal of that asset,

that person must, when determining his or her aggregate capital gain or aggregate capital loss for a year, disregard the capital gain determined in respect of that disposal and the amount of that disregarded capital gain must, during the year that the replacement asset is disposed of, be treated as a capital gain on the disposal of the replacement asset when determining his or her aggregate capital gain or aggregate capital loss for that year.

(2) Where there is a disposal, as contemplated in subparagraph (1), by a person who is not a resident of an asset situated in the Republic, an asset can only be considered to be a replacement asset for the purposes of subparagraph (1), where that asset is situated in the Republic.

(3) The Commissioner may, having regard to whether or not all reasonable steps were taken to conclude a contract or bring the replacement asset into use, as the case may be, extend the periods contemplated in subparagraph (1)(d) by a maximum of six months.

(4) Where a person fails to conclude a contract within the prescribed period contemplated in subparagraph (1)(d)(ii) or fails to bring a replacement asset into use within the prescribed period contemplated in subparagraph (1)(d)(iii) or the longer period contemplated in subparagraph (3) that person must—

- (a) treat the disregarded capital gain contemplated in subparagraph (1) as a capital gain on the date that that prescribed period or longer period ends when determining an aggregate capital gain or aggregate capital loss;
- (b) determine interest at the prescribed rate on that capital gain from the date of that disposal to the date contemplated in item (a); and
- (c) treat that interest as an additional capital gain on the date contemplated in item (a) when determining his or her aggregate capital gain or aggregate capital loss.

Reinvestment in similar assets

65. (1) Subject to subparagraphs (2), (3), (4) and (5), where—

- (a) a person disposes of an asset qualifying for a capital allowance or deduction in terms of section 11(e), 12B, 12C, 14 or 14 *bis*;
- (b) the proceeds received or accrued from that disposal exceed the base cost of that asset;

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- (c) that person has concluded a contract to replace that asset with a replacement asset which will qualify for a deduction in terms of section 11(e), 12B or 12C by the end of the year of assessment in which that disposal takes place; and
- (d) that person satisfies the Commissioner that—
 - (i) those proceeds, including substantially the whole of the capital gain, will be expended in replacing that asset; and
 - (ii) the replacement asset will be brought into use within a year after the disposal of that asset,

that person must, when determining his or her aggregate capital gain or aggregate capital loss, disregard the capital gain on that asset and must treat 20% of the disregarded capital gain as a capital gain when determining his or her aggregate capital gain or aggregate capital loss for the year of assessment during which that replacement asset is brought into use and in each of the four succeeding years of assessment.

(2) Where there is a disposal, as contemplated in subparagraph (1), by a person who is not a resident of an asset situated in the Republic, that asset can only be considered to be a replacement asset for the purposes of subparagraph (1), where it is situated in the Republic.

(3) The Commissioner may, having regard to whether or not all reasonable steps were taken to bring the replacement asset into use, extend the period contemplated in subparagraph (1)(d) by a maximum of six months.

(4) Where a person fails to conclude a contract within the prescribed period contemplated in subparagraph (1)(c), or fails to bring a replacement asset into use within the prescribed period contemplated in subparagraph (1)(d)(ii) or the longer period contemplated in subparagraph (3), that person must—

- (a) treat the disregarded capital gain contemplated in subparagraph (1) as a capital gain on the date that that prescribed period or longer period ends when determining an aggregate capital gain or aggregate capital loss;
- (b) determine interest at the prescribed rate on that capital gain from the date of that disposal to the date contemplated in item (a); and
- (c) treat that interest as an additional capital gain on the date contemplated in item (a) when determining his or her aggregate capital gain or aggregate capital loss.

(5) Where during any year of assessment a person disposes of a replacement asset or ceases to use a replacement asset for the purposes of his or her trade and any portion of the disregarded capital gain, contemplated in subparagraph (1), has not been treated as a capital gain in determining his or her aggregate capital gain or aggregate capital loss for that year of assessment or any prior year of assessment, that portion must be treated as a capital gain in determining his or her aggregate capital gain or aggregate capital loss for that year of assessment.

Transfer of asset between spouses

66. (1) Where a person disposes of an asset to his or her spouse, the person disposing of that asset must be treated as having disposed of the asset for proceeds equal to the base cost of the asset and the spouse acquiring the asset must be treated as having acquired the asset at a cost of the same amount.

(2) For the purposes of subparagraph (1)—

- (a) a deceased person must be treated as having disposed of an asset to his or her surviving spouse, if that asset accrues to that surviving spouse upon the death of that person; or
- (b) a person must be treated as having disposed of an asset to his or her spouse, if that asset is transferred to that spouse in consequence of a divorce order or, in the case of a marital-like relationship, an agreement of division of assets which has been made an order of court.

Attribution of capital gain to spouse

67. (1) Any portion of a person's capital gain—

- (a) determined in respect of the disposal of any asset which was—
 - (i) donated to that person by his or her spouse; or
 - (ii) acquired from funds donated to that person by his or her spouse,where that asset or those funds were so donated in terms of a transaction, operation or scheme entered into or carried on by his or her spouse after the valuation date mainly for purposes of reducing, postponing or avoiding that spouse's liability for any tax, duty or levy which would otherwise have become payable under any Act administered by the Commissioner; or
- (b) derived from—
 - (i) any trade carried on by that person in partnership or association with that person's spouse or which is in any way connected with any trade carried on by that spouse; or
 - (ii) that person's spouse or from any partnership or private company at a time when that spouse was a member of that partnership or the sole, main or one of the principal shareholders of that company,that exceeds the amount to which that person would reasonably be entitled having regard to the nature of the relevant trade, the extent of that person's participation therein, the services rendered by that person or any other relevant factor,

must be disregarded when determining that person's aggregate capital gain or aggregate capital loss and taken into account when determining the aggregate capital gain or aggregate capital loss of that person's spouse.

(2) Where an asset was acquired from funds derived from the disposal of any asset contemplated in subparagraph (1)(a)(i) or (ii), that asset will for the purposes of subparagraph (1) be treated as having been donated to that person by his or her spouse or acquired from funds donated to that person by his or her spouse, as the case may be.

Attribution of capital gain to parent of minor child

68. A capital gain derived by or for the benefit of a minor child by reason of any donation, settlement or other disposition—

- (a) made by a parent of that child; or
- (b) made by another person in return for any donation, settlement or other disposition or for some other consideration made or given by a parent of that child in favour directly or indirectly to that person or his or her family,

must be disregarded when determining that child's aggregate capital gain or aggregate capital loss and be taken into account in determining the aggregate capital gain or aggregate capital loss of that parent.

Attribution of capital gain which is subject to conditional or revocable vesting

69. (1) Where—

- (a) a capital gain has been derived during a year of assessment by reason of a donation, settlement or other disposition made by any person;
- (b) that donation, settlement or other disposition is subject to a stipulation or condition imposed by that person or anyone else in terms of which a capital gain or a portion thereof determined in respect of that donation, settlement or other disposition shall not vest in the beneficiaries thereof or some of them until the happening of some fixed or contingent event;
- (c) that capital gain or any portion thereof has not vested in any beneficiary during that year; and
- (d) the person who made that donation, settlement or other disposition was a resident and was alive throughout that year;

that capital gain or that portion thereof must be taken into account in determining the aggregate capital gain or aggregate capital loss of that person and disregarded when determining the aggregate capital gain or aggregate capital loss of any other person.

(2) Where—

- (a) a capital gain has been derived by reason of a donation, settlement or other disposition;
- (b) the deed of donation, settlement or other disposition conferred a right upon a beneficiary thereof to receive that capital gain or any portion thereof;
- (c) that right may be revoked or conferred upon another by the person who conferred it; and
- (d) that capital gain or any portion thereof has vested in that beneficiary during a year of assessment throughout which the person who conferred that right was a resident and retained those powers of revocation

that capital gain or portion thereof must be disregarded when determining the aggregate capital gain or aggregate capital loss of that beneficiary and taken into account when determining the aggregate capital gain or aggregate capital loss of the person retaining those powers.

Attribution of capital gain vesting in person who is not a resident

70. Where?

- (a) a resident has made a donation, settlement or other disposition to any person who is not a resident (other than to a foreign entity, as defined in section 9D, of a public character); and
- (b) a capital gain attributable to that donation, settlement or other disposition has vested in any person who is not a resident (other than a controlled foreign entity, as defined in section 9D, in relation to that resident),

that capital gain must be disregarded when determining the aggregate capital gain or aggregate capital loss of the person in whom it vests and taken into account when determining the aggregate capital gain or aggregate capital loss of that resident.

PART IX: COMPANIES AND SHAREHOLDERS

Consequences of distributions to companies

71. (1) Where a company makes a distribution to a shareholder and that distribution qualifies as a disposal, the company making the distribution shall treat the distribution as a disposal for proceeds equal to market value on the date when the distribution is declared.

(2) For purposes of this paragraph, the date when the distribution is declared occurs on the date approved by the directors or by some other person with comparable authority conferred under the memorandum and articles of association for the company making the distribution.

Consequences of non-share distributions to shareholders

72. (1) Where the distribution is other than a distribution as contemplated under paragraphs 73 or 74 or is pursuant to a share redemption, a shareholder receiving a distribution from a company that consists of assets shall reduce the base cost of the share in respect of which the distribution is made to the extent that the market value of the distribution on that date constitutes proceeds.

(2) Where the reduction contemplated in subparagraph (2) exceeds the base cost of the share in respect of which the distribution is received, the shareholder shall add the excess to proceeds when the shareholder disposes of the share.

(3) Any asset received by a shareholder in respect of a distribution contemplated under subparagraph (1) shall be treated as having been incurred for an expenditure equal to the market value of that asset on the date of distribution.

(4) For the purposes of this paragraph, any distribution of an option to acquire a share in the company making the distribution shall be treated as having no market value.

(5) For the purposes of this paragraph, the date of distribution occurs on the date when that distribution accrues to the shareholder as contemplated in section 64B(4) *mutatis mutandis*.

Consequences of liquidations to shareholders

73. (1) Where a company makes a distribution to a shareholder that occurs in the course or anticipation of the deregistration, winding-up, liquidation, or dissolution of that company, the shareholder shall be deemed to have disposed of that share at the earlier of—

- (a) the date of deregistration, winding-up, liquidation, or dissolution; or
- (b) in the case of a winding-up or liquidation, the date when the liquidator declares in writing that no reasonable grounds exist to believe that the shareholder of the company receiving the distribution (or shareholders holding that same class of shares) will receive any further distribution in the course of the wind-up or liquidation.

(2) All distributions that are proceeds that are received on or after the date of disposal described in subparagraph (1) shall be treated as proceeds received in the disposal on the date described, and all distributions that are received before shall be treated as one or more distributions described in paragraph 72.

Consequences of company share distributions and substitutions to shareholders

74. (1) Where a company distributes shares in that company to a shareholder in addition to the shares previously held by that shareholder in that company and the shareholder does not surrender or cancel any shares in that company as contemplated in subparagraph (2), such newly distributed shares shall have a cost base equal to the amount that such newly distributed shares qualify as a 'dividend' as defined under section 1

(2) Where a company distributes shares in that company to a shareholder in substitution of a share in that company previously held by the shareholder by reason of a subdivision of that previously held share or by reason of any similar arrangement, the shareholder shall be deemed to have disposed of that previously held share at a market value equal to the base cost of the previously held share and any newly distributed share received in substitution shall have a base cost equal to the previously held share with the cost base allocated among all the newly distributed shares received in substitution in proportion to their relative market values.

(3) Where a company makes a distribution described in subparagraph (2) and distributes cash or other assets in addition to the newly distributed shares, the shareholder shall be treated as making a part disposal under subparagraph (2) and a part disposal for the cash or other assets.

Pre-valuation date shares and profits

75. (1) Where a shareholder disposes of a share that qualifies as a pre-valuation date asset and relies on time-based apportionment to determine the valuation date value of that share, each distribution described in paragraph 72 that has a date of distribution occurring before the valuation date shall be treated by the shareholder as a deduction from expenditure with respect to that share to the extent the market value of each distribution constitutes proceeds (even if that deduction exceeds that expenditure).

(2) Where a shareholder disposes of a share and that shareholder previously received a distribution with respect to that share consisting of dividends as defined under section 1, that are exempt from tax under section 64B(2) by reason of 64B(5)(c), (e) or (g), the shareholder shall add such dividends to proceeds on the disposal to the extent this addition reduces any capital loss on that disposal.

PART X:
TRUSTS, TRUST BENEFICIARIES AND INSOLVENT ESTATES

Capital gain attributed to a beneficiary

76. (1) Subject to paragraphs 67 to 70, where a capital gain is determined in respect of the vesting by a trust of an asset in a beneficiary of that trust, that gain—

- (a) must be disregarded for the purpose of calculating the aggregate capital gain or aggregate capital loss of the trust; and
- (b) must be taken into account for the purpose of calculating the aggregate capital gain or aggregate capital loss of the beneficiary to whom that asset was so disposed of.

(2) Subject to paragraphs 67 to 70, where a capital gain arises in a trust in a year of assessment during which a beneficiary of that trust has a vested interest or acquires a vested interest (including an interest caused by the exercise of a discretion) in that capital gain but not in the asset, the disposal of which gave rise to the capital gain, the gain—

- (a) must be disregarded for the purpose of calculating the aggregate capital gain or aggregate capital loss of the trust; and
- (b) must be taken into account for the purpose of calculating the aggregate capital gain or aggregate capital loss of the beneficiary in whom the gain vests.

Base cost of interest in a discretionary trust

77. (1) A person's interest in a discretionary trust must, subject to subparagraph (2), be treated as having a base cost of nil.

(2) Where a trust asset is vested in a beneficiary of the trust as a result of the exercise of a discretion, the base cost of the beneficiary's interest in the trust must be increased by the beneficiary's cost of acquisition of that asset as determined in terms of paragraph 37(1)(b).

Death of the beneficiary of a special trust

78. Where a beneficiary of a special trust dies, that trust must continue to be treated as a special trust for the purposes of this Schedule, until the earlier of the disposal of all assets held by that trust or one year after the date of death of that beneficiary.

Insolvent estates of natural persons

79. (1) Subject to subparagraphs (3) and (4), an insolvent estate must be treated in the same manner as the insolvent would have been treated at the date immediately prior to insolvency were he or she to have disposed of an asset at that date.

(2) Subject to subparagraph (3) and section 25C, no person whose estate has been voluntarily or compulsorily sequestrated may carry forward any assessed capital loss incurred prior to the date of sequestration.

(3) Where the order of sequestration has been set aside, the provisions of subparagraph (2) shall not apply and the assessed capital loss to be carried forward must be reduced by that portion of the assessed capital loss which was allowed to be set off in determining the aggregate capital gain or aggregate capital loss of the insolvent estate of that person;

PART XI:
MISCELLANEOUS

Transactions during transitional period

80. (1) For purposes of this paragraph ‘transitional period’ means the period from 23 February 2000 until and including the day before the valuation date.

(2) The provisions of subparagraph (3) apply where a person—

- (a) acquired an asset during the transitional period by means of a non-arm’s length transaction; or
- (b) acquired an asset during the transitional period directly or indirectly from a person who was a connected person in relation to that person at—
 - (i) the time of that acquisition; or
 - (ii) any time during the period from the date of that acquisition up to a subsequent disposal of that asset by that person within three years of that acquisition; or
- (c) reacquired an asset within a period of ninety days after its disposal during the transitional period—
 - (i) by means of a non-arm’s length transaction; or
 - (ii) directly or indirectly to a connected person in relation to that person; or
- (d) acquired an asset within a period of ninety days after the disposal, during the transitional period, of a substantially similar asset that was disposed of—
 - (i) by means of a non-arm’s length transaction; or
 - (ii) directly or indirectly to a connected person in relation to that person;

in order to replace the asset so disposed of.

- (3) Any person who acquired or reacquired an asset in the circumstances set out in subparagraph (2) must for purposes of paragraph 30 be treated as having acquired or reacquired that asset—
- (a) at the time when the person who disposed of that asset or the substantially similar asset acquired that asset; and
 - (b) at a cost equal to the base cost of that asset or the substantially similar asset in the hands of the person who disposed of it.”.

Substitution of long title of Act 58 of 1962

43. The following long title is hereby substituted for the long title of the principal Act:

“To consolidate the law relating to the taxation of incomes and donations, to provide for the recovery of taxes on persons **[and the incomes of persons levied by the provinces on income tax payers, to provide for interest to be paid on late payments of such provincial taxes, to provide for certain provisions to be applied for the purposes of any ordinance of a provincial council imposing a tax on persons or on the incomes of persons]**, to provide for the deduction by employers of amounts from the remuneration of employees in respect of certain tax liabilities of employees, and to provide for the making of provisional tax payments and for the payment into the **[Consolidated]** National Revenue Fund **[and the various provincial revenue funds]** of portions of the normal tax **[and the said provincial taxes (excluding the normal tax imposed on companies)]** and interest and other charges in respect of such taxes, and to provide for related matters.”.

Insertion of section 120A in Act 91 of 1964

44. The following section is hereby inserted in the Customs and Excise Act, 1964, after section 120:

“Amendment of Act

120A. Any legislation proposing an amendment to this Act or providing for the enactment of subordinate legislation that may conflict with this Act may be introduced in Parliament only by the Minister of Finance or in consultation with the Minister of Finance.”.

Insertion of section 34A in Act 77 of 1968

45. The following section is hereby inserted in the Stamp Duties Act, 1968, after section 34:

“Amendment of Act

34A. Any legislation proposing an amendment to this Act or providing for the enactment of subordinate legislation that may conflict with this Act may be introduced in Parliament only by the Minister of Finance or in consultation with the Minister of Finance.”.

Amendment of item 7 of Schedule 1 to Act No. 77 of 1968, as amended by section 18 of Act 88 of 1974, section 12 of Act 66 of 1973, and section 15 of Act 114 of 1977

46. Item 7 of Schedule 1 to the Stamp Duties Act, 1968, is hereby amended by the addition of the following paragraph under the heading “*Exemptions*”:

“(e) Any mortgage bond hypothecating immovable property or an interest in such property, any cession of a bond or the substitution of a debtor in respect of a bond, where such hypothecation, cession or substitution is pursuant to the acquisition by a natural person of a residence contemplated in section 9(16) of the Transfer Duty Act, 1949 and under the circumstances contemplated under that section.”.

Amendment of item 15 of Schedule 1 to Act 77 of 1968, as substituted by section 13 of Act 89 of 1972 and amended by section 16 of Act 66 van 1973, section 21 of Act 88 of 1974, section 3 of Act 104 of 1976, section 20 of Act 114 of 1977, section 8 of Act 95 of 1978, section 8 of Act 102 of 1979, section 21 of Act 106 of 1980, section 9 of Act 99 of 1981, section 7 of Act 87 of 1982, section 14 of Act 92 of 1983, section 11 of Act 118 of 1984, section 11 of Act 81 of 1985, section 5 of Act 71 of 1986, section 13 of Act 108 of 1986, section 11 of Act 86 of 1987, section 33 of Act 87 of 1988, section 14 of Act 69 of 1989, section 9 of Act 136 of 1991, section 8 of Act 136 of 1992, section 17 of Act 97 of 1993, section 17 of Act 140 of 1993, section 8 of Act 20 of 1994, section 86 of Act 30 of 1998, section 79 of Act 53 of 1999, section 72 of Act 30 of 2000 and section 63 of Act 59 of 2000

47. (1) Item 15 of Schedule 1 to the Stamp Duties Act, 1968, is hereby amended by the substitution for paragraph (v) under the heading “*Exemptions from the duty under paragraph (3)*” of the following paragraph:

“(v) Any registration of transfer of any share in a share block company as defined in section 1 of the Share Blocks Control Act, 1980 (Act 59 of 1980), which confers a

right to or an interest in the use of immovable property, where such registration is in consequence of a sale or disposal of such share—

- (i) which in terms of the Value-Added Tax Act, 1991 (Act 89 of 1991), constitutes a supply of such share and in terms of that Act value-added tax has been or will be paid by the transferor in respect of such supply or such supply is subject to the said tax at a rate of zero per cent; or
- (ii) by a company or close corporation to a natural person where—
 - (aa) such sale or disposal took place not later than 30 September 2002;
 - (bb) such immovable property to which such shares relate will constitute the primary residence, as defined in paragraph 44 of the Eighth Schedule to the Income Tax Act, 1962, of that person;
 - (cc) that person and his or her spouse held all the equity share capital or members' interest in that company or close corporation, as the case may be, from **date?** to the date of sale or disposal of such shares; and
 - (dd) that person and his or her spouse ordinarily resided in that residence and used it for domestic or private residential purposes as his or her or their main residence from **date?** to the date of sale or disposal of such shares."

(2) Subsection (1) shall come into operation on the date of promulgation of this Act and shall apply in respect of any acquisition on or after that date.

48. (VAT electronic signature) (Carolus)**

Insertion of section 86A in Act 89 of 1991

49. The following section is hereby inserted in the Value-added Tax Act, 1991, after section 86:

"Amendment of Act

86A. Any legislation proposing an amendment to this Act or providing for the enactment of subordinate legislation that may conflict with this Act may be introduced in Parliament only by the Minister or in consultation with the Minister."

Insertion of section 16A in Act 34 of 1996

50. The following section is hereby inserted in the Tax on Retirement Funds Act, 1996, after section 16:

“Amendment of Act

16A. Any legislation proposing an amendment to this Act or providing for the enactment of subordinate legislation that may conflict with this Act may be introduced in Parliament only by the Minister of Finance or in consultation with the Minister of Finance.”.

Insertion of section 18A in Act 31 of 1998

51. The following section is hereby inserted in the Uncertificated Securities Tax Act, 1998, after section 18:

“Amendment of Act

18A. Any legislation proposing an amendment to this Act or providing for the enactment of subordinate legislation that may conflict with this Act may be introduced in Parliament only by the Minister of Finance or in consultation with the Minister of Finance.”.

Insertion of section 13A in Act 50 of 1998

52. The following section is hereby inserted in the Demutualisation Levy Act, 1998, after section 13:

“Amendment of Act

13A. Any legislation proposing an amendment to this Act or providing for the enactment of subordinate legislation that may conflict with this Act may be introduced in Parliament only by the Minister of Finance or in consultation with the Minister of Finance.”.

Insertion of section 22A in Act 9 of 1999

53. The following section is hereby inserted in the Skills Development Levies Act, 1999, after section 22:

“Amendment of Act

22A. Any legislation proposing an amendment to this Act or providing for the enactment of subordinate legislation that may conflict with this Act may be introduced in Parliament only by the Minister of Finance or in consultation with the Minister of Finance.”.

Insertion of section 6B in Act 9 of 1999

54. The following section is hereby inserted after section 6 of the Skills Development Levies Act, 1999:

“Electronic filing of statement

6B. (1)The Commissioner may, in the case of any statement submitted by an employer or his or her authorised agent in electronic format, accept electronic or digital signatures as binding, valid signatures.

(2) The Minister may promulgate rules and regulations prescribing the procedures for submitting any statement in electronic format and setting out the requirements for an electronic or digital signature contemplated in subsection (1).”.

Short title and commencement

55. This Act is called the Taxation Laws Amendment Act, 2001 and comes into operation on 1 October 2001.