

This document is an unofficial consolidation of the Eighth Schedule to the Income Tax Act, 58 of 1962, introduced by the Taxation Laws Amendment Act, 5 of 2001, the amendments effected by the Revenue Laws Amendment Act, 19 of 2001, the amendments effected by Second Revenue Laws Amendment Act, 60 of 2001, the amendments effected by the Taxation Laws Amendment Act, 30 of 2002, and the amendments effected by the Revenue Laws Amendment Act 74 of 2002. While care has been taken in its preparation, errors may exist and the original legislation should be consulted in case of doubt. Queries may be directed to cgt@sars.gov.za.

EIGHTH SCHEDULE
DETERMINATION OF TAXABLE CAPITAL GAINS AND ASSESSED CAPITAL
LOSSES
(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:	Limitation of losses
Part V:	Base cost
Part VI:	Proceeds
Part VII:	Primary residence exclusion
Part VIII:	Other exclusions
Part IX:	Roll-overs
Part X:	Attribution of capital gains
Part XI:	Company distributions
Part XII:	Trusts, trust beneficiaries and insolvent estates
Part XIII:	Foreign Currency
Part XIV:	Miscellaneous

PART I
GENERAL

1. Definitions

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

'active business asset' ... *[Definition of "active business asset deleted by section 63(1) of Act 74 of 2002];*

'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—

(a) property of whatever nature, whether movable or immovable, corporeal or incorporeal, excluding any 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; or

(b) equipped with an inboard or outboard motor;

'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 which is in terms of this Schedule treated as the disposal of an asset, and 'dispose' must be construed accordingly;

'financial instrument' ... *[Definition of "financial instrument" deleted by section 63(1) of Act 74 of 2001];*

'foreign currency' ... *[Definition of "foreign currency" deleted by section 63(1) of Act 74 of 2002];*

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

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

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

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

'pre-valuation date asset' means an asset acquired prior to valuation date by a person and which has not been disposed of by that person before valuation date;

[As amended by section 65 of Act 60 of 2001]

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

'proceeds' means the amount to be determined in terms of Part VI;

'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 contemplated in paragraph 44;

'ruling price' means—

- (a) in the case of a financial instrument listed on a recognised stock exchange in the Republic, the last sale price of that financial instrument at close of business of the exchange, unless there is a higher bid or a lower offer on that day subsequent to the last sale in which case the price of that higher bid or lower offer will prevail; or
- (b) in the case of a financial instrument listed on a recognised exchange outside the Republic, the ruling price of that financial instrument as determined in item (a) and if the ruling price is not determined in this manner by that exchange, the last price quoted in respect of that financial instrument at close of business of that exchange.

[As inserted by section 65 of Act 60 of 2001]

'special trust' means a trust contemplated in paragraph (a) of the definition of 'special trust' in section 1; ***[Definition of "special trust" inserted by section 63(1) of Act 74 of 2002]***

'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 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 38), the market value of the interest of that person decreases and—

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

[As amended by section 65 of Act 60 of 2001]

2. Application

(1) Subject to paragraph 86, this Schedule applies to the disposal on or after valuation date of—

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

[Subparagraph (1) amended by section 64 of Act 74 of 2002]

(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 (alone or 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 value of the net 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 directly or indirectly to immovable property situated in the Republic, other than immovable property held by that company or other entity as trading stock.

[As amended by section 25 of Act 19 of 2001 and section 66 of Act 60 of 2001]

PART II

TAXABLE CAPITAL GAINS AND ASSESSED CAPITAL LOSSES

3. Capital gain

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 respect 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.

[As amended by section 67 of Act 60 of 2001]

4. Capital loss

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 respect of that disposal; or
- (b) in a previous year of assessment, is equal to—
 - (i) so much of the proceeds received or accrued in respect 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 any other 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.

[As amended by section 68 of Act 60 of 2001]

5. Annual exclusion

- (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.

6. Aggregate capital gain

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 and any capital gains which are required to be taken into account in the determination of that person's aggregate capital gain or aggregate capital loss 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 special trust's annual exclusion for that year.

[As amended by section 69 of Act 60 of 2001]

7. Aggregate capital loss

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 any other capital gains which are required to be taken into account in the determination of that person's aggregate capital gain or aggregate capital loss for that year; and
- (b) in the case of a natural person or a special trust, that person's or special trust's annual exclusion for that year.

[As amended by section 70 of Act 60 of 2001]

8. Net capital gain

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.

9. Assessed capital loss

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 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; 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.

10. Taxable capital gain

A person's taxable capital gain for the year of assessment is—

- (a) in the case of a natural person or a special trust as defined in section 1 of the Act, 25 per cent;

[Subparagraph (a) amended by section 66 of Act 74 of 2002]

- (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

11. Disposals

(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, renewal, extension or exercise 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 or cancellation of a share in the company, or by a company in respect of the granting of an option to acquire a share or debenture in that company;

- (c) by a portfolio of a collective investment scheme in respect of the issue of a participatory interest in that portfolio, or by a portfolio in respect of the granting of an option to acquire a participatory interest in that portfolio;
[Item (c) amended by section 67(1) of Act 74 of 2002]
- (d) by a person in respect of the issue 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 to the extent that the beneficiary has a vested interest in that asset;
[Item (e) amended by section 67(1) of Act 74 of 2002]
- (f) ...
- (g) by a person where a disposal is made to correct an error in the registration in the deeds registry of immovable property in that person's name;
[Item (g) amended by section 67(1) of Act 74 of 2002]
- (h) by a lender to a borrower or by a borrower to a lender, 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 or will be returned by that borrower to that lender before the end of the 12 month period contemplated in that definition; or
[Item (h) amended by section 67(1) of Act 74 of 2002]
- (i) by a person where that asset vests in the Master of the High Court or in a trustee, in consequence of the sequestration of the estate of the spouse of that person, as contemplated in section 21 of the Insolvency Act, 1936 (Act No. 24 of 1936), and where that asset is subsequently released by the Master or that trustee as contemplated in that section.

[As amended by section 71 of Act 60 of 2001]

12. Events treated as disposals and acquisitions

(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 described in that subparagraph for proceeds equal to the market value of the asset at the time of the event and to have immediately reacquired the asset at an expenditure equal to that market value, which expenditure must be treated as an amount of expenditure actually incurred and paid for the purposes of paragraph 20(1)(a).

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

- (a) a person who ceases to be a resident, or a resident who is as a result of the

application of any agreement entered into by the Republic for the avoidance of double taxation treated as not being a resident, in respect of all assets of that person other than assets in the Republic listed in paragraph 2(1)(b)(i) and (ii);

- (b) an asset of a person who is not a resident, which asset—
 - (i) becomes an asset of that person's permanent establishment in the Republic otherwise than by way of acquisition; or
 - (ii) ceases to be an asset of that person's permanent establishment in the Republic otherwise than by way of a disposal contemplated in paragraph 11;
- (c) assets that are held by a person otherwise than as trading stock, when they commence to be held by that person as trading stock;
- (d) an asset which ceases to be held by a person as a personal-use asset otherwise than by way of a disposal contemplated in paragraph 11;
- (e) an asset which is held by a person otherwise than 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 a 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, which cost must be treated as an amount of expenditure actually incurred and paid for the purposes of paragraph 20(1)(a).

(4) A person who commences to be a resident must, subject to paragraph 24, be treated as having disposed of each of that person's assets, other than assets in the Republic listed in paragraph 2(1)(b)(i) and (ii), and as having acquired each of those assets at a cost equal to the market value of each of those assets, which cost must be treated as an amount of expenditure actually incurred and paid for the purposes of paragraph 20(1)(a).

(5)(a) Subject to paragraph 67, this subparagraph applies where a debt owed by a person to a creditor has been reduced or discharged by that creditor—

- (i) for no consideration; or
- (ii) for a consideration which is less than the amount by which the face value of the debt has been so reduced or discharged,

but does not apply where the amount of that reduction or discharge constituted a capital gain in terms of paragraph 3(b)(ii) or has been taken into account in terms of section

20(1)(a)(ii) or paragraph 20(3).

(b) Where this subparagraph applies the person contemplated in item (a) shall be treated as having—

- (i) acquired a claim to so much of that debt as was reduced or discharged for no consideration, or if a consideration was paid, to so much of the reduction or discharge of the debt as exceeds the consideration, which claim shall have a base cost of nil; and
- (ii) disposed of that claim for proceeds equal to that reduction or discharge.

[Subparagraph (5) amended by section 68(1) of Act 74 of 2002]

[Paragraph 12 amended by section 72 of Act 60 of 2001]

13. Time of disposal

(1) The time of disposal of an asset by means of—

- (a) a change of ownership effected or to be effected from one person to another because of an event, act, forbearance or by operation of law is, in the case of—
 - (i) an agreement subject to a suspensive condition, the date on which the condition is satisfied;
 - (ii) any agreement which is not subject to a suspensive condition, the date on which the agreement is concluded;
 - (iii) a donation of an asset, the date of compliance with all legal requirements for a valid donation;
 - (iv) the expropriation of an asset, the date on which the person receives the full compensation agreed to or finally determined by a competent tribunal or court;
 - (v) the conversion of an asset, the date on which that asset is converted;
 - (vi) the granting, renewal or extension of an option, the date on which the option is granted, renewed or extended;
 - (vii) the exercise of an option, the date on which the option is exercised;
 - (viii) the termination of an option granted by a company to a person to acquire a share, unit or debenture of that company, the date on which that option terminates; or
 - (ix) any other case, the date of change of ownership;
- (b) the extinction of an asset including by way of forfeiture, termination, redemption, cancellation, surrender, discharge, relinquishment, release, waiver, renunciation, expiry or abandonment, the date of the extinction of the asset;

- (c) the scrapping, loss or destruction of an asset is 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 the date on which it is established that no compensation will be payable;
- (d) the vesting of an interest in an asset of a trust in a beneficiary, is the date on which that interest vests;
- (e) the distribution of an asset by a company to a shareholder, is the date on which that asset is so distributed as contemplated in paragraph 75;
- (f) the decrease of a person's interest in a company, trust or partnership as a result of a value shifting arrangement, is the date on which the value of that person's interest decreases; or
- (g) the happening of an event contemplated in—
 - (i) paragraph 12(2)(a), (b), (c), (d) or (e), paragraph 12(3) or 12(4), is the date immediately before the day that the event occurs; or
 - (ii) paragraph 12(2)(f) or 12(5), is the date that that event occurs.

[Subparagraph (1) amended by section 69 of Act 74 of 2002]

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

14 Disposal by spouse married in community of property

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

- (a) falls within the joint estate of the spouses, that 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.

[Paragraph 14 amended by section 70 of Act 74 of 2002]

PART IV
LIMITATION OF LOSSES

15. Personal-use aircraft, boats and certain rights and interests

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 the carrying on of a trade:

- (a) An aircraft with an empty mass exceeding 450 kg;
- (b) a boat exceeding ten metres in length;
- (c) any fiduciary, usufructuary or other similar interest, the value of which decreases over time;
- (d) any lease of immovable property;
- (e) any—
 - (i) time sharing interest as defined in section 1 of the Property Time Sharing Control Act, 1983 (Act No. 75 of 1983); or
 - (ii) share in a share block company, as defined in section 1 of the Share Block Control Act, 1980 (Act No. 59 of 1980), with a fixed life, the value of which decreases over time; or
- (f) any right or interest of whatever nature to or in an asset contemplated in items (a), (b), (c), (d) or (e).

[As amended by section 73 of Act 60 of 2001]

16. Intangible assets acquired prior to valuation date

(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 an intangible asset acquired prior to valuation date—

- (a) from a connected person in relation to that person; or
- (b) which was associated with a business taken over by that person or any connected person in relation to that person.

(2) For the purposes of subparagraph (1), '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, 1996 (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 except any financial instrument.

17. Forfeited deposits

(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, of which the market value is mainly attributable to the material from which it is minted or cast;
- (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 any asset contemplated in items (a), (b) or (c).

18. Disposal of options

(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 other than by way of the exercise thereof, any capital loss of that person determined in respect of that expiry shall be disregarded.

(2) Subparagraph (1) does not apply in respect of an option to acquire or dispose of—

- (a) a coin made mainly from gold or platinum, of which the market value is mainly attributable to the material from which it is minted or cast;
- (b) immovable property, other than immovable property—
 - (i) in the case of subparagraph (1)(a), which is intended to be the primary

residence of the person entitled to exercise the option; or

(ii) in the case of subparagraph (1)(b), is the primary residence of the person entitled to exercise the option;

(c) a financial instrument; or

(d) any right or interest in those assets contemplated in items (a), (b) and (c).

[As amended by section 74 of Act 60 of 2001]

19. Losses on the disposal of certain shares

(1) Where a person disposes of a share in a company within two years after the acquisition by that person of that share, that person must disregard any capital loss resulting from the disposal to the extent of any extraordinary dividends received by or accrued to that person in respect of that share within that period.

(2) The provisions of subparagraph (1) shall not apply to the extent that dividends were received by or accrued to a holding company or an intermediate company with respect to the company distributing the dividends.

(3) For the purposes of this paragraph—

(a) the period of two years does 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) 'dividend' means any dividend as defined in section 1, but excludes—

(i) any foreign dividend as defined in section 9E, that has been included in the income of the person disposing of the share and any foreign dividend which is exempt from tax in terms of section 9E(7)(e)(i);

(ii) any dividend declared by a company contemplated in paragraph (e) of the definition of company; and

(iii) any dividend contemplated in section 11(s);

(c) 'extraordinary dividends' means so much of any dividends received or accrued within the period of two years contemplated in subparagraph (1), as exceed 15 per cent of the proceeds received or accrued from the disposal of the share; and

(d) 'holding company' and 'intermediary company' means a 'holding company' and

'intermediary company' as defined in section 64B of this Act.

PART V BASE COST

20. Base cost of asset

(1) Despite section 23(*b*) and (*f*), but subject to paragraphs 24, 25 and 32 and subparagraphs (2) and (3), 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;
- (b) the expenditure actually incurred in respect of the valuation of the asset for the purpose of determining a capital gain or capital loss in respect of the asset;
- (c) the following amounts actually incurred as expenditure directly related to the acquisition or disposal of that asset namely—
 - (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) the cost of moving that asset from one location to another;
 - (vi) the cost of installation of that asset, including the cost of foundations and supporting structures;
 - (vii) despite section 23(*d*), in the case of a disposal of an asset by a person by way of a donation as contemplated in paragraph 38, so much of any donations tax payable by that person in respect of that donation, as determined in accordance with paragraph 22;
 - (viii) despite section 23(*d*), 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 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; and
 - (ix) if that asset was acquired or disposed of by the exercise of an option (other than the exercise of an option contemplated in item (*f*)), the expenditure

actually incurred in respect of the acquisition of the option;

- (d) the expenditure actually incurred for purposes of establishing, maintaining or defending a legal title to or right in that asset;
- (e) the expenditure actually incurred in effecting an improvement to or enhancement of the value of that asset, if that improvement or enhancement is still reflected in the state or nature of that asset at the time of its disposal;
- (f) if that asset was acquired or disposed of by the exercise on or after valuation date of an option acquired prior to the valuation date, the valuation date value of that option, which value must be treated as expenditure actually incurred in respect of that asset on valuation date for the purposes of this Part;

[Item (f) amended by section 71(1) of Act 74 of 2002]

- (g) 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 a share listed on a recognised stock exchange or a participatory interest in a portfolio of a collective investment scheme—
 - (i) the cost of maintaining, repairing, protecting or insuring that asset;
 - (ii) where the asset is immovable property, rates or taxes on that property; and
 - (iii) interest as contemplated in section 24J on money borrowed to finance directly the expenditure contemplated in items (a) or (e) in respect of that asset (including money borrowed to refinance those borrowings):

Provided that if that asset constitutes a share listed on a recognised exchange or a participatory interest in a portfolio of a collective investment scheme, the expenditure in respect of that asset must for the purposes of this subparagraph be reduced by two-thirds;

[Item (g) amended by section 71(1) of Act 74 of 2002]

- (h) in the case of—
 - (i) a marketable security, the acquisition of which resulted in the determination of any gain to be included in that person's income in terms of section 8A, the market value of that marketable security that was taken into account in determining the amount of that gain or, where the gain so determined was nil, the amount of the consideration taken into account under section 8A in respect of that acquisition;
 - (ii) any other asset—
 - (aa) so much of an amount that has been included in that person's income in terms of section 8(5), as having been applied towards the reduction

of the purchase price of that asset;

- (bb) where an amount has been included in that person's gross income in terms of paragraph (i) of the definition of 'gross income' in section 1, the value placed on the asset under the Seventh Schedule for purposes of determining the amount so included in that person's gross income; or
- (cc) where an amount has been included in that person's gross income in terms of paragraph (h) of the definition of 'gross income' in section 1 in respect of that asset, so much of that amount so included as exceeds the amount of any allowance granted to that person in terms of section 11(h);
- (iii) a share in a controlled foreign company, an amount equal to the proportional amount of the net income of that company (or any other controlled foreign company in relation to that resident in which that controlled foreign company directly or indirectly has an interest) which was included in the income of that person in terms of section 9D during any year of assessment (other than such portion of that proportional amount which relates to the amount of any taxable capital gain included in that proportional amount) plus the proportional amount of the net capital gains of that controlled foreign company, less the amount of any foreign dividend distributed by that company to that person during any year of assessment which was exempt from tax in terms of section 9E(7)(e)(i); or
- (iv) a value shifting arrangement, an amount determined in accordance with paragraph 23,

which must for the purposes of this Part be treated as expenditure incurred in respect of that asset.

[Item (h) amended by section 71(1) of Act 74 of 2002]

(2) The expenditure incurred by a person in respect of an asset does not include any of the following amounts—

- (a) borrowing costs, including any interest as contemplated in section 24J or raising fees;
- (b) expenditure on repairs, maintenance, protection, insurance, rates and taxes, or similar expenditure, and
- (c) the valuation date value of any option or right to acquire any marketable security contemplated in section 8A(1),

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

(3) The expenditure contemplated in subparagraph (1)(a) to (g), incurred by a person in respect of an asset must be reduced by any amount which^{3/4}

- (a) is or was allowable as a deduction in determining the taxable income of that person before the inclusion of any taxable capital gain;
- (b) has for any reason been reduced or recovered or become recoverable from or has been paid by any other person (whether prior to or after the incurral of the expense to which it relates), to the extent which such amount—
 - (i) is not taken into account as a recoupment in terms of section 8(4)(a) or paragraph (j) of the definition of 'gross income' of an amount contemplated in item (a); or
 - (ii) does not represent the recovery or reduction of an amount contemplated in item (c);
- (c) has not been paid and is not due and payable in a year of assessment;

[As amended by section 26 of Act 19 of 2001 and section 75 of Act 60 of 2001]

21. Limitation of expenditure

(1) Where, but for the provisions of this subparagraph, an amount qualifies or has qualified as an allowable expenditure or may otherwise be taken into account in determining a capital gain or capital loss under more than one provision of this Schedule, that amount or portion thereof, shall not be allowed as expenditure or be taken into account more than once in determining that capital gain or capital loss.

(2) No expenditure shall be allowed under paragraph 20(1)(a) or (e) where any amount of that expenditure is allowable under any other provision of this Schedule, despite that that other provision imposes any limitation on the amount of the expenditure.

22. Amount of donations tax to be included in base cost

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 paragraph 20(1)(c)(vii) must be determined in accordance with the formula—

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

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 paragraph 20(1)(c)(vii)); 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 paragraph 20(1)(c)(vii) shall be nil.

23. Base cost in respect of value shifting arrangement

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

- (a) the base cost of a person's interest to which paragraph 11(1)(g) applies, is determined in accordance with the formula—

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

where—

- (i) 'Y' represents the amount to be determined;
 - (ii) 'A' is the market value of that person's interests immediately prior to the disposal;
 - (iii) 'B' is the person's base cost of the interests calculated immediately prior to the disposal; and
 - (iv) 'C' is the market value of that 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 contemplated in subparagraph (a) is increased by that proportion of the proceeds on disposal contemplated in paragraph 35 (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 35 (2) in respect of the value shifting arrangement which resulted in the acquisition of that interest.

[As amended by section 27 of Act 19 of 2001]

24. Base cost of asset of a person who becomes a resident on or after valuation date

(1) The base cost of an asset, other than an asset situated in the Republic listed in paragraph 2(1)(b)(i) and (ii), acquired by a person before the date on which that person became a resident, is the sum of the value of that asset determined in terms of subparagraphs (2) or (3) and the expenditure allowable in terms of paragraph 20 incurred on or after that date in respect of that asset.

[Subparagraph (1) amended by section 72(1) of Act 74 of 2002]

(2) Where an asset contemplated in paragraph 12(4), has been disposed of by a person on or after the date on which that person commenced to be a resident and the proceeds from that disposal and the expenditure allowable in terms of paragraph 20 incurred prior to that date in respect of that asset are each 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 allowable in terms of paragraph 20 incurred in respect of that asset prior to that date; or
- (b) those proceeds less the expenditure allowable in terms of paragraph 20 incurred on or after that date in respect of that asset.

[Subparagraph (2) amended by section 72(1) of Act 74 of 2002]

(3) Where an asset contemplated in paragraph 12(4) has been disposed of by a person on or after the date on which that person commenced to be a resident and 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 each lower than the expenditure allowable in terms of paragraph 20 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 allowable in terms of paragraph 20 incurred on or after that date in respect of that asset.

[Subparagraph (3) amended by section 72(1) of Act 74 of 2002]

(4) The provisions of this paragraph do not apply in respect of any asset of a person who became a resident before valuation date.

[Paragraph 24 amended by section 76 of Act 60 of 2001]

25. Determination of base cost of pre-valuation date assets

The base cost of a pre-valuation date asset (other than an identical asset in respect of which paragraph 32(3A) has been applied), is, the sum of the valuation date value of that asset, as determined in terms of paragraph 26, 27 or 28, and the expenditure allowable in terms of paragraph 20 incurred on or after the valuation date in respect of that asset.

[Paragraph 25 amended by section 77 of Act 60 of 2001 and section 73(1) of Act 74 of 2002]

26. Valuation date value where proceeds exceed expenditure or where expenditure in respect of an asset cannot be determined

(1) Where the proceeds from the disposal of a pre-valuation date asset (other than an asset contemplated in paragraph 28 or in respect of which paragraph 32(3A) has been applied) exceed the expenditure allowable in terms of paragraph 20 incurred before, on and after the valuation date in respect of that asset, the person who disposed of that asset must, subject to subparagraph (3), adopt any of the following as the valuation date value of that asset—

- (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, after deducting from those proceeds an amount equal to the expenditure allowable in terms of paragraph 20 incurred on or after the valuation date; or
- (c) the time-apportionment base cost of the asset as contemplated in paragraph 30.

[Subparagraph (1) amended by section 74(1) of Act 74 of 2002]

(2) Where the expenditure incurred before valuation date in respect of a pre-valuation date asset cannot be determined by the person who disposed of that asset or the Commissioner, that person must adopt any of the following as the valuation date value of that asset—

- (a) the market value of the asset on the valuation date as contemplated in paragraph 29; or
- (b) 20 per cent of the proceeds from disposal of the asset, after deducting from those proceeds an amount equal to the expenditure allowable in terms of paragraph 20 incurred on or after the valuation date.

[Item (b) amended by section 74(1) of Act 74 of 2002]

(3) Where a person has adopted the market value as the valuation date value of an 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 substitute as the valuation date value of

that asset, those proceeds less the expenditure allowable in terms of paragraph 20 incurred on or after the valuation date in respect of that asset.

[Subparagraph (3) amended by section 74(1) of Act 74 of 2002]

[Paragraph 26 amended by section 78 of Act 60 of 2001]

27. Valuation date value where proceeds do not exceed expenditure

(1) Subject to subparagraph (2), where the proceeds from the disposal of a pre-valuation date asset do not exceed the expenditure allowable in terms of paragraph 20 incurred before, on and after the valuation date in respect of that asset, the valuation date value of that asset must be determined in terms of this paragraph.

[Subparagraph (1) amended by section 75(1) of Act 74 of 2002]

(2) This paragraph does not apply in respect of any asset contemplated in paragraph 28 or in respect of which paragraph 32(3A) has been applied.

(3) Where a person has determined the market value of an asset on the valuation date, as contemplated in paragraph 29, or the market value of an asset has been published in terms of that paragraph, and—

- (a) the expenditure allowable in terms of paragraph 20 incurred before the valuation date in respect of that asset—
 - (i) is equal to or exceeds the proceeds from the disposal of that asset; and
 - (ii) exceeds the market value of that asset on valuation date, the valuation date value of that asset must be the higher of—
 - (aa) the market value; or
 - (bb) those proceeds less the expenditure allowable in terms of paragraph 20 incurred on or after the valuation date in respect of that asset; or

[Item (a) amended by section 75(1) of Act 74 of 2002]

(b) the provisions of item (a) do not apply, the valuation date value of that asset must be the lower of—

- (i) that market value; or
- (ii) the time-apportionment base cost of that asset as contemplated in paragraph 30.

(4) Where the provisions of subparagraph (3) do not apply, the valuation date value of that asset is the time-apportionment base cost of that asset, as contemplated in paragraph 30.

[As substituted by section 79 of Act 60 of 2001]

28. Valuation date value of an instrument

(1) Despite paragraph 29, 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) the price which could have been obtained upon a sale of that instrument between a willing buyer and a willing seller dealing at arm's length in an open market—
 - (i) in the case of an instrument which is listed on a recognised exchange, on the last trading day before valuation date; or
 - (ii) in any other case, on valuation date.

(2) Where a person has adopted the adjusted initial amount as the valuation date value of an instrument (other than an instrument listed on a recognised exchange), as contemplated in subparagraph (1)(a), and the proceeds from the disposal of that instrument are less than that adjusted initial amount, the valuation value of that instrument must be the time-apportionment base cost of that instrument, as contemplated in paragraph 30.

[As amended by section 80 of Act 60 of 2001]

29. Market value on valuation date

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

- (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 subparagraphs (2) and (2A), in the case of a financial instrument listed on an exchange—
 - (i) in the Republic, the price published by the Commissioner in the *Gazette*, which is the aggregate value of all transactions in that financial instrument as traded on that recognised exchange during the five business days preceding the valuation date, divided by the total quantity of that financial instrument traded during the same period; and
 - (ii) outside the Republic and which is not listed on any exchange in the Republic, the ruling price in respect of that financial instrument on that recognised exchange on the last business day before valuation date;
- (b) an asset which is not listed on a recognised exchange and 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 price at which a unit could be sold to 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 price published before valuation date at which a unit could be sold to the management company of the scheme or where there is not a management company 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;

(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 not 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 ruling price in respect of that share on the date prior to the announcement of the transaction,

the valuation date market value of that share so disposed of, as determined in terms of subparagraph (1)(a), must be increased or decreased, as the case may be, by an amount which bears to that market value the same ratio as the amount of the deviation bears to that ruling price.

(2A) Where—

(i) a financial instrument listed on an exchange in the Republic was not traded during the last five business days preceding valuation date;

(ii) a financial instrument listed on an exchange in the Republic is suspended for any period during September 2001; or

(iii) the market value of a financial instrument determined in terms of subparagraph (1)(a)(i), exceeds the average of the ruling price of that financial instrument, determined for the first 14 business days of the month of September 2001, by five per cent or more,

the Commissioner must, after consultation with the recognised exchange and the Financial

Services Board established in terms of the Financial Services Board Act, 1990 (Act No. 97 of 1990), determine the market value of that financial instrument having regard to the value of the financial instrument, circumstances surrounding the suspension of that financial instrument or reasons for the increase in the value of that financial instrument.

(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 35 per cent of the equity share capital of that company.

(4) For the purposes of paragraphs 26(1)(a) and 27(3), a person may only adopt or determine the market value as the valuation date value of that asset if—

- (a) that person has valued that asset within two years after valuation date;
- (b) the price of that asset has been published by the Commissioner in terms of this paragraph in the *Gazette*; or
- (c) that person has acquired that asset from that person's spouse as contemplated in paragraph 67 and the transferor spouse had adopted or determined a market value in terms of this paragraph, and for this purpose the transferee spouse must be treated as having adopted or determined that same market value.

[Subparagraph (4) amended by section 76(1) of Act 74 of 2002]

(5) Despite subparagraph (4), where a person has valued an asset and—

- (a) the market value of that asset exceeds R10 million;
- (b) that asset is an intangible asset (excluding financial instruments) and the market value thereof exceeds R1 million, or
- (c) that asset is an unlisted share in a company and the market value of all the shares held by that person in that company exceeds R10 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 the form as the Commissioner may prescribe, with the first return submitted by that person after the period contemplated in subparagraph (4).

(6) Where a person disposes of—

- (a) an asset contemplated in subparagraph (5)(a),(b) or (c) which has been valued before proof of valuation is submitted as contemplated in that subparagraph; or
- (b) any other asset which has been valued,

that person must submit proof of that valuation in a form prescribed by the Commissioner with the return for the year of assessment during which that asset was disposed of.

[Subparagraph (6) amended by section 76(1) of Act 74 of 2002]

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

- (a) request any such further information or documents relating to that valuation; or
- (b) where the Commissioner is not satisfied with any value at which an asset has been valued, the Commissioner may adjust the value accordingly.

(8) The period contemplated in subparagraph (4) may be extended by the Minister by notice in the *Gazette*.

[Paragraph 29 amended by section 81 of Act 60 of 2001, section 38 of Act 30 of 2002 and section 76 of Act 74 of 2002]

30. Time-apportionment base cost

(1) Subject to subparagraph (3), the time-apportionment base cost of a pre-valuation date asset is determined in accordance with the formula—

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

where—

- (a) 'Y' represents the amount to be determined;
- (b) 'B' represents the amount of expenditure allowable in terms of paragraph 20 in respect of that asset that is attributable to the period from the date that the asset was acquired to the day before valuation date;
- (c) 'P' represents the proceeds as determined in terms of paragraph 35, in respect of the disposal of that asset, or where subparagraph (2) applies, the amount of proceeds attributable to the expenditure in 'B' as determined in accordance with subparagraph (2);
- (d) 'N' represents the number of years determined from the date that the asset was acquired to the day before valuation date, which number of years may not exceed 20 in the case where the expenditure allowable in terms of paragraph 20 in respect of that asset was incurred in more than one year of assessment prior to the valuation date;
- (e) 'T' represents the number of years determined from valuation date until the date the asset was disposed of after valuation date:

Provided that for purposes of items (d) and (e) a part of a year must be treated as a full year.

[Subparagraph (1) amended by section 77(1) of Act 74 of 2002]

(2) Where a portion of the expenditure allowable in terms of paragraph 20 in respect of a

pre-valuation date asset was incurred on or after the valuation date, the proceeds to be used in the determination of the time apportionment base cost of the asset must be determined in accordance with the formula—

$$P = \frac{R \times B}{(A + B)},$$

where—

- (a) 'P' represents the proceeds attributable to B;
- (b) 'R' represents the total amount of proceeds as determined in terms of paragraph 35 in consequence of the disposal of the pre-valuation date asset;
- (c) 'A' represents the amount of expenditure allowable in terms of paragraph 20 in respect of the asset that is incurred on or after valuation date;
- (d) 'B' represents the amount of expenditure allowable in terms of paragraph 20 in respect of that asset that is incurred before valuation date.

[Subparagraph (2) amended by section 77(1) of Act 74 of 2002]

(3) “(3) Despite the provisions of paragraph 20(3)(a) and 35(3)(a), where in respect of a pre-valuation date asset—

- (a) a person has incurred expenditure allowable in terms of paragraph 20 on or after the valuation date;
- (b) any part of the expenditure allowable in terms of paragraph 20 is or was allowable as a deduction in determining the taxable income of that person before the inclusion of any taxable capital gain; and
- (c) the proceeds in respect of the disposal of that asset exceed the expenditure allowable in terms of paragraph 20 incurred before, on and after the valuation date, that person must determine the time-apportionment base cost of that asset in terms of subparagraph (4).

(4) The time-apportionment base cost of a pre-valuation date asset referred to in subparagraph (3) is determined in accordance with the formulae—

$$Y = \frac{B + [(P_1 - B_1) \times N]}{T + N},$$

and

$$P_1 = \frac{R_1 \times B_1}{(A_1 + B_1)}$$

where—

- (a) 'Y' represents the time apportionment base cost of the asset;
- (b) 'P1' represents the proceeds attributable to the expenditure in B1, disregarding the

- provisions of paragraph 35(3)(a);
- (c) 'A1' represents the amount of expenditure allowable in terms of paragraph 20 in respect of the asset that is incurred on or after valuation date, disregarding the provisions of paragraph 20(3)(a);
 - (d) 'B1' represents the amount of expenditure allowable in terms of paragraph 20 in respect of the asset that is incurred before valuation date, disregarding the provisions of paragraph 20(3)(a);
 - (e) 'B', 'N' and 'T' bear the same meanings ascribed to those symbols in subparagraph (1); and
 - (f) 'R1' represents the total amount of proceeds as determined in terms of paragraph 35 in respect of the disposal of the pre-valuation date asset, disregarding the provisions of paragraph 35(3)(a).

[Subparagraphs (3) and (4) added by section 77(1) of Act 74 of 2002]

[Section 30 amended by section 82 of Act 60 of 2001 and section 77 of Act 74 of 2002]

31. Market value

- (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 ruling price in respect of that financial instrument on that recognised exchange at close of business on the last business 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 is not listed on a recognised exchange which constitutes a right of a 2holder of a participatory interest in—
 - (i) any company contemplated in paragraph (e)(i) of the definition of 'company' in section 1 of the Act, or any portfolio comprised in any collective investment scheme in property contemplated in Part V of the Collective Investment Schemes Control Act, 2002, carried on in the Republic, the price at which a participatory interest can be sold to 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 price at which a participatory interest can be sold to the management company of the scheme on the date of disposal or where there is not a management company 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;
- (d) a fiduciary, usufructuary or other similar interest in any asset, an amount determined by capitalising at 12 per cent the annual value of the right of enjoyment of the asset subject to that fiduciary, usufructuary or other like interest, as determined in terms of subparagraph (2), over the expectation of life of the person to whom that interest was granted, or if that right of enjoyment is to be held for a lesser period than the life of that person, over that lesser period;
- (e) any asset which is subject to a fiduciary, usufructuary or other similar interest in favour of any person, the amount by which the market value of the full ownership of that asset exceeds the value of that 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 a *bona fide* farming undertaking is being carried on, subject to subparagraph (4), either—
 - (i) the value of that property determined 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.

[Subparagraph (1) amended by section 78(1) of Act 74 of 2002]

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

- (a) the annual value of the right of enjoyment of any asset which is subject to any fiduciary, usufructuary or other like interest, means an amount equal to 12 per cent of the market value of the full ownership of the asset: Provided that where the Commissioner is satisfied that the asset which is subject to that interest could not reasonably be expected to produce an annual yield equal to 12 per cent on that value of the asset, the Commissioner may fix such sum as representing the annual yield as may seem 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 that asset; and

- (b) the expectation of life of a person to whom an interest was granted—
 - (i) in the case of a natural person, must be determined in accordance with the provisions applicable in determining the expectation of life of a person for estate duty purposes, as contemplated in the regulations issued in terms of section 29 of the Estate Duty Act, 1955 (Act No. 45 of 1955); and
 - (ii) in the case of a person other than a natural person, is a period of fifty years.

[Subparagraph (2) amended by section 78(1) of Act 74 of 2002]

(3) The market value of any shares of a person in a company not listed on a recognised exchange must be determined at a value equal to the price which could have been obtained upon a sale of the share between a willing buyer and a willing seller dealing at arm's length in an open market subject to the following—

- (a) no regard shall be had to any provision-
 - (i) restricting the transferability of the shares therein, and 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 the 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 only be used on the death of a person or when the immovable property is disposed of by way of donation or non-arm's length transaction, if—

- (a) that value was used for the purposes of paragraph 26 or 27; or
- (b) the person acquired the immovable property by way of donation or inheritance or non-arm's length transaction at that value.

[Paragraph 31 amended by section 83 of Act 60 of 2001 and section 78 of Act 74 of 2002]

32. Base cost of identical assets

(1) This paragraph applies to assets which form part of a holding of identical assets.

(2) For the purposes of this paragraph 'identical assets' means a group of similar assets which—

- (a) if any one of them were disposed of, would realise the same amount regardless of

which of them was so disposed of; and

- (b) are not able to be individually distinguished apart from any identifying numbers which they may bear.

(3) Subject to subparagraph (3A), the base cost of identical assets must be determined by using one of the following methods—

- (a) specific identification; or
 (b) the first in first out method.

(3A) Despite the provisions of subparagraph (3), the weighted average method of determining base cost of assets, as contemplated in subparagraph (4), may be used for identical assets which—

- (a) from the date of acquisition to the date of disposal constituted assets contemplated in paragraph 31(1)(a), other than instruments contemplated in item (d);
- (b) constitute participatory interests—
- (i) contemplated in paragraph 31(1)(c), where the prices of these participatory interests or shares are regularly published in a national or international newspaper;
 - (ii) in any portfolio comprised in any collective investment scheme managed or carried on by a company registered as a manager under section 42 of the Collective Investment Schemes Control Act, 2002, for purposes of Parts IV and V of that Act; or
 - (iii) in any arrangement or scheme contemplated in paragraph (e)(ii) of the definition of 'company' in section 1 of the Act, which is approved in terms of section 65 of the Collective Investment Schemes Control Act, 2002, by the Registrar defined in section 1 of the latter Act;
- (c) constitute coins made mainly from gold or platinum, where the prices of these coins are regularly published in a national or international newspaper; or
- (d) from the date of acquisition to the date of disposal constituted instruments as defined in section 24J that were listed on a recognised exchange and for which a price was quoted on that exchange,

and where a person uses the weighted average method for any identical asset contemplated in item (a), (b), (c) or (d), that method must be used for all identical assets, contemplated in that item, held by that person.

[Subparagraph (3A) amended by section 79 of Act 74 of 2002]

(4) In applying the weighted average method of determining base cost—

- (a) the weighted average base cost, on valuation date, of identical assets acquired and

not disposed of before valuation date is equal to the valuation date value of those identical assets, as contemplated in paragraph 28, or the market value of those identical assets, as contemplated in paragraph 29, divided by the number of those identical assets; and

- (b) the weighted average base cost, thereafter, of identical assets must be calculated by—
- (i) adding expenditure allowable in terms of paragraph 20 in respect of identical assets to the base cost of identical assets acquired and not disposed of before that expenditure was incurred.
 - (ii) dividing that amount by the number of identical assets acquired and not disposed of after that expenditure was incurred.

(5) ...

(6) Once a person has adopted one of the methods specified in this paragraph in respect of a class of identical assets contemplated in subparagraph (3A), that method must be used until all those identical assets have been disposed of.

[Paragraph 32 amended by section 84 of Act 60 of 2001, section 39 of Act 30 of 2002 and section 79 of Act 74 of 2002]

33. Part-disposals

(1) Subject to subparagraphs (2), (3) and (4), 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 of bears to the market value of the entire asset immediately prior to that disposal.

(2) Subject to subparagraph (4), 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.

(3) For the purposes of subparagraph (1) and (2) there is no part-disposal of an asset by a person in respect of—

- (a) the granting of an option by that person in respect of an asset; and
- (b) the granting, variation or cession of a right of use or occupation of that asset by that person in respect of which no proceeds are received by or accrue to that person.

[Subparagraph (3) amended by section 80 of Act 74 of 2002]

(4) Where proceeds are received by or accrue to a person in respect of the granting, variation or cession of a right of use or occupation of an asset by that person, the portion of the base cost attributable to the part of the asset in respect of which those proceeds

were received or accrued is an amount which bears to the base cost of the entire asset the same proportion as those proceeds bear to the market value of the entire asset immediately prior to that disposal.

[Subparagraph (4) added by section 80(1) of Act 74 of 2002]

[Paragraph 33 amended by section 80 of Act 74 of 2002]

34. Debt substitution

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 having been acquired by the creditor at a cost equal to the market value of that asset at the time of that disposal, which cost must be treated as an amount of expenditure actually incurred and paid for the purposes of paragraph 20(1)(a).

[As amended by section 85 of Act 60 of 2001]

PART VI PROCEEDS

35. Proceeds from disposal

(1) Subject to subparagraphs (2), (3), and (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 or in favour of, that person in respect of that disposal, and includes—

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

(2) The amount of the proceeds from a disposal by way of a value shifting arrangement is 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) The proceeds from the disposal of an asset by a person, as contemplated in subparagraph (1) must be reduced by—

- (a) any amount of the proceeds that must be or was included in the gross income of

that person or that must be or was taken into account when determining the taxable income of that person before the inclusion of any taxable capital gain;

- (b) any amount of the proceeds that has been repaid or has become repayable to the person to whom that asset was disposed of; or
 - (c) 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.
- (4) Where during any year of assessment a person has become entitled to any amount which is payable on a date or dates falling after the last day of that year, that amount must be treated as having accrued to that person during that year.

[As amended by section 85 of Act 60 of 2001]

36. Disposal of partnership asset

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.

37. Assets of trust and company

(1) Where—

- (a) an asset contemplated in paragraph 15 which is not used for purposes of carrying on a trade or an asset which, if owned by a natural person, would be a personal-use asset as contemplated in paragraph 53, is owned by a trust or a company, any interest in which or any shares of which are held directly or indirectly by a natural person;
 - (b) there is a decrease in the market value of that asset while held by that trust or company after that person acquired an interest in that trust or company; and
 - (c) any interest in that trust or that company is thereafter disposed of by a person,
- that person must be treated as having disposed of that interest for proceeds equal to the market value of that interest, 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 trust or company consist of assets used wholly and exclusively for trading purposes.

38. Disposal by way of donation, consideration not measurable in money and transactions between connected persons not at an arm's length price

(1) Subject to subparagraph 2 and paragraphs 12(5) and 67, where a person disposed of an asset by means of a donation or for a consideration not measurable in money or to a person who is a connected person in relation to that person for a consideration which does not reflect an arm's length price—

- (a) the person who disposed of that 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 that asset must be treated as having acquired that asset at a cost equal to that market value, which cost must be treated as an amount of expenditure actually incurred and paid for the purposes of paragraph 20(1)(a).

[Subparagraph (1) amended by section 81 of Act 74 of 2002]

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

- (a) a right contemplated in section 8A; or
- (b) an asset in the circumstances contemplated in section 10(1)(nE).

[Paragraph 38 amended by section 87 of Act 60 of 2001 and section 81 of Act 74 of 2002]

39. Capital losses determined in respect of disposals to certain connected persons

(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 any connected person in relation to that person, subject to subparagraph (3).

(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 that 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, that person is still a connected person in relation to that person.

(3) For the purposes of this paragraph, a connected person in relation to—

- (a) a natural person does not include a relative of that person other than a parent, child, stepchild, brother, sister, grandchild or grandparent of that person; or
- (b) a fund of an insurer contemplated in section 29A does not include another such fund of that insurer in respect of the disposal of an asset in terms of section 29A(6) or (7).

[As amended by section 88 of Act 60 of 2001]

40. Disposal to and from deceased estate

(1) A deceased person must be treated as having disposed of his or her assets, other than—

- (a) assets transferred to the surviving spouse of that deceased person as contemplated in paragraph 67(2)(a);
- (b) assets bequeathed to an approved public benefit organisation as contemplated in paragraph 62;
- (c) a long-term insurance policy of the deceased which if the proceeds of the policy had been received by or accrued to the deceased, the capital gain or capital loss determined in respect of that disposal would be disregarded in terms of paragraph 55; or
- (d) an interest in a pension, provident or retirement annuity fund in the Republic or a fund, arrangement or instrument situated outside the Republic which provides benefits similar to a pension, provident or retirement annuity fund which if the proceeds thereof had been received by or accrued to the deceased, the capital gain or capital loss determined in respect of the disposal of the interest would have been disregarded in terms of paragraph 54,

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, which cost must be treated as an amount of expenditure actually incurred and paid for the purposes of paragraph 20(1)(a).

(2) Subject to subparagraph 12(5), 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 67(2)(a) or an approved public benefit organisation as contemplated in paragraph 62) 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, which cost must be treated as an amount of expenditure actually incurred and paid for the purposes of paragraph 20(1)(a).

[Subparagraph (2) amended by section 82(1) of Act 74 of 2002]

(3) For the purposes of this Schedule, the disposal of an asset by the deceased estate of a natural person shall be treated in the same manner as if that asset had been disposed of by that natural person.

[Paragraph 40 amended by section 89 of Act 60 of 2001 and section 82 of Act 74 of 2002]

41. Tax payable by heir of a deceased estate

(1) Where—

- (a) 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 (Act No. 55 of 1955), before taking into account the amount of that tax so determined; and
- (b) 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 or legatee of the estate, who would have been entitled to that asset contemplated in item (b), had there been no liability for tax, may elect that that asset be distributed to that heir or legatee 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).

[Subparagraph (1) amended by section 83 of Act 74 of 2002]

(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.

[Paragraph 41 amended by section 83 of Act 74 of 2002]

42. Short-term disposals and acquisitions of identical financial instruments

(1) Where a capital loss is determined in respect of the disposal by a person of a financial instrument and within a period beginning 45 days before the date of disposal and ending 45 days after that date, that person or a connected person in relation to that person, subject to subparagraph (3), acquires or has entered into a contract to acquire a financial instrument of the same kind and of the same or equivalent quality—

- (a) the person who disposed of the financial instrument must be treated as having disposed thereof for proceeds equal to the base cost thereof; and
- (b) the person who acquired the financial instrument of the same kind and of the same or equivalent quality must be treated as having acquired that financial instrument at a cost equal to the total of—
 - (i) any amount allowable in terms of paragraph 20; and
 - (ii) 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 operation of item (a), which cost must be treated as an amount of expenditure actually incurred and paid for the purposes of paragraph 20(1)(a).

(2) For the purposes of subparagraph (1), there must not be taken into account in determining the period of 91 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 quality;
- (b) is the grantor of an option to buy a financial instrument of the same kind and of the same or equivalent quality; or
- (c) has otherwise diminished risk of loss in respect of 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 quality.

(3) For the purposes of this paragraph, a connected person in relation to—

- (a) a natural person does not include a relative of that person other than a parent, child, stepchild, brother, sister, grandchild or grandparent of that person; or
- (b) a fund of an insurer contemplated in section 29A does not include another such fund of that insurer in respect of the disposal of an asset in terms of section 29A(6) or (7).

[As amended by section 90 of Act 60 of 2001]

43. Assets disposed of or acquired in foreign currency

(1) Subject to subparagraph (4), where a person during any year of assessment disposes of an asset for proceeds denominated in a foreign currency after having incurred expenditure in respect of that asset in the same currency, that person must determine the capital gain or capital loss on the disposal in that foreign currency and that capital gain or capital loss must be translated into the local currency in accordance with the provisions of section 25D.

[Subparagraph (1) amended by section 84(1) of Act 74 of 2002]

(2) Despite section 25D, where a person disposes of an asset, other than an asset contemplated in subsection (4)), for proceeds denominated in any currency (hereinafter referred to as the 'currency of disposal') after having incurred expenditure in respect of that asset in another currency (hereinafter referred to as the 'currency of expenditure'), that person **must —**

- (a) determine the capital gain or capital loss on the disposal by translating both proceeds and the base cost into the currency of expenditure at the ruling exchange rate on the date of disposal; and
- (b) where the currency of disposal is denominated in the local currency, translate the expenditure which is allowable in terms of paragraph 20, into the local currency at the average exchange rate for the year of assessment during which that expenditure was incurred or treated as being incurred (or if the local currency did not exist at the time of expenditure, the first available exchange rate for that local currency); and
- (c) where neither the currency of disposal nor the currency of expenditure constitutes local currency—
- (i) translate the amount of the expenditure, which is allowable in terms of paragraph 20, to the currency of disposal at the average exchange rate for the year of assessment during which that expenditure was incurred or treated as being incurred (or if the currency of disposal did not exist at the time of expenditure, the first available exchange rate for that currency of disposal); and
 - (ii) translate the amount of the capital gain or capital loss determined in foreign currency to the local currency at the average exchange rate for the year of assessment during which the asset was disposed of.

[Subparagraph (2) amended by section 84(1) of Act 74 of 2002]

(3) ... [Subparagraph (3) deleted by section 84(1) of Act 74 of 2002]

(4) Despite section 25D, where a person during any year of assessment disposes of any—

- (a) foreign equity instrument; or
 - (b) asset the capital gain or loss from the disposal of which is derived or deemed to have been derived from a source in the Republic, as contemplated in section 9(2) (other than an asset contemplated in section 9(2)(b)(i) or an asset contemplated in paragraph (b) of the definition of 'foreign currency asset' in paragraph 84), which was acquired or disposed of in any currency other than currency of the Republic, that person must for purposes of determining the capital gain or capital loss on the disposal of that asset translate—
- (i) the proceeds into the currency of the Republic at the average exchange rate for that year of assessment; and
 - (ii) the expenditure incurred in respect of that foreign equity instrument into the currency of the Republic at the average exchange rate for the year of assessment

during which that expenditure was incurred:

Provided that the provisions of this subparagraph do not apply in respect of any exchange item in respect of which section 24I applies).

[Subparagraph (4) amended by section 84(1) of Act 74 of 2002]

(5) Where a person is treated as having derived an amount of proceeds from the disposal of any asset and the base cost of that asset is determined in any foreign currency—

- (a) the amount of those proceeds must be treated as being denominated in the currency of the base cost; and
- (b) the base cost of the person acquiring that asset must for purposes of paragraphs 12, 38, 40, 42 and 67 be treated as being denominated in that currency.

[Subparagraph (5) added by section 84(1) of Act 74 of 2002]

(6) Where a person has adopted the market value as the valuation date value of any asset contemplated in this paragraph, that market value must be determined in the currency of expenditure of that asset and, in the case of an asset—

- (a) contemplated in subparagraph (2)(b) and (4), must be translated to the currency of the Republic at the ruling exchange rate on valuation date; or
- (b) contemplated in subparagraph (2)(c), must be translated to the currency of disposal at the ruling exchange rate on valuation date.

[Subparagraph (6) added by section 84(1) of Act 74 of 2002]

(7) For the purposes of this paragraph—

‘foreign currency’ means currency other than local currency; and

‘local currency’ means—

- (a) in relation to a permanent establishment of a person, the currency used by that permanent establishment for purposes of financial reporting;
- (b) in any other case, the currency of the Republic.

[Subparagraph (7) added by section 84(1) of Act 74 of 2002]

[Paragraph 43 amended by section 91 of Act 60 of 2001 and section 84(1) of Act 74 of 2002]

PART VII

PRIMARY RESIDENCE EXCLUSION

44. Definitions

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—

(i) a right under a mortgage bond; or

(ii) a right or interest of whatever nature in a trust or an asset of a trust, other than a right of a lessee who is not a connected person in relation to that 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 special trust or a spouse of that person or beneficiary—

(i) ordinarily resides or resided in as his or her main residence; and

(ii) uses or used mainly for domestic 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.

[As amended by section 92 of Act 60 of 2001]

45. General principle

(1) Subject to subparagraphs (2) and (3), 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 determined in respect of the disposal of the primary residence of that person or that special trust as does not exceed R1 million.

(2) Where more than one natural person or special trust jointly holds an interest in a primary residence at the same time, the amount to be disregarded in terms of subparagraph (1) must be apportioned in relation to each interest so held.

(3) Subject to paragraph 48, only one residence may be a primary residence of a person or a special trust for any period during which that person or special trust held an interest in more than one residence.

[As amended by section 29 of Act 19 of 2001 and section 93 of Act 60 of 2001]

46. Size of residential property qualifying for exclusion

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 mainly for domestic or private purposes together with that residence; and
- (c) is disposed of at the same time and to the same person as that residence.

[As amended by section 30 of Act 19 of 2001]

47. Apportionment in respect of periods where not ordinarily resident

Subject to paragraph 48, where—

- (a) a natural person or special trust disposes of an interest in a residence which is or was a primary residence; and
 - (b) that person or a beneficiary of that special 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 special 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.

[As amended by section 94 of Act 60 of 2001]

48. Disposal and acquisition of primary residence

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 any of 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;
- (b) that residence was being erected on land acquired for that purpose in order to be used as that person's primary residence;
- (c) the residence had been accidentally rendered uninhabitable; or
- (d) the death of that person.

49. Non-residential use

Subject to paragraph 50—

- (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 special trust held that interest; and

- (b) where that person or a beneficiary of that special 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 special trust held that interest,

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 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.

[As amended by section 95 of Act 60 of 2001]

50. Rental periods

A natural person or a beneficiary of a special trust or a spouse of that person or beneficiary must for purposes of paragraph 49 be treated as having used a residence for domestic 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 engaged in carrying on business in the Republic at a location further than 250 kilometers from that residence.

51. Transfer of a primary residence from a company or trust

(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 or trust on or after the date of promulgation of the Taxation Laws Amendment Act, 2001 (Act No 5 of 2001), but not later than 30 September 2002;
[Item (a) amended by section 85 of Act 74 of 2002]
- (b) that natural person—
- (i) alone or together with his or her spouse directly held all the share capital or member's interest in that company from 5 April 2001 to the date of registration in the deeds registry of that residence in the name of that natural person or his or her spouse or in their names jointly; or
 - (ii) disposed of that residence to that trust by way of donation, settlement or other disposition or financed all the expenditure, as contemplated in paragraph 20, actually incurred by the trust to acquire and to improve the residence;
- (c) that natural person alone or together with his or her spouse personally and ordinarily resided in that residence and used it mainly for domestic purposes as his or her or their ordinary residence from 5 April 2001 to the date of that registration; and
- (d) that registration in the deeds registry in the name of that person, his or her spouse or their names jointly takes place not later than 31 March 2003:

Provided that the provisions of this paragraph apply only in respect of the portion of the property contemplated in paragraph 46.

[Paragraph 51 amended by section 96 of Act 60 of 2001 and section 85 of Act 74 of 2002]

PART VIII OTHER EXCLUSIONS

52. General principle

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.

53. Personal-use assets

(1) 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 as contemplated in subparagraph (2).

(2) A personal-use asset is an asset of a natural person or a special trust that is used mainly for purposes other than the carrying on of a trade.

(3) Personal use assets do not include—

- (a) a coin made mainly from gold or platinum of which the market value is mainly attributable to the material from which it is minted or cast;
- (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;
- (g) any contract in terms of which a person, in return for payment of a premium, is entitled to policy benefits upon the happening of a certain event and includes a reinsurance policy in respect of such a contract, but excludes any short-term policy contemplated in the Short-Term Insurance Act, 1998 (Act No. 53 of 1998);
- (h) any short-term policy contemplated in the Short-Term Insurance Act, 1998, to the extent that it relates to any asset which is not a personal use asset; and
- (i) a right or interest of whatever nature to or in an asset envisaged in items (a) to (h).

[Subparagraph (3) amended by section 86(1) of Act 74 of 2002]

(4) For the purposes of subparagraph (2), an asset of a natural person or a special trust to whom an allowance is or was paid or payable in respect of the use of that asset for business purposes, must be treated as being used mainly for purposes other than the carrying on of a trade.

[Paragraph 53 amended by section 97 of Act 60 of 2001 and section 86(1) of Act 74 of 2002]

54. Retirement benefits

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; or
- (b) a lump sum benefit paid from a fund, arrangement or instrument situated outside the Republic which provides similar benefits under similar conditions to a pension,

provident or retirement annuity fund approved in terms of this Act.

55. Long-term assurance

(1) A person must disregard any capital gain or capital loss determined in respect of a disposal that resulted in the receipt by or accrual to that person of an amount—

- (a) in respect of a policy, where that person—
 - (i) is the original beneficial owner or one of the original beneficial owners of the policy;
 - (ii) is the spouse, nominee, dependant as contemplated in the Pension Funds Act, 1956 (Act No. 24 of 1956), or deceased estate 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 any 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 union contemplated in paragraph (b) or (c) of the definition of 'spouse' in section 1 of this Act, an agreement of division of assets which has been made an order of court;
- (b) in respect of any policy where that person is an employee or director whose life was insured in terms of that policy and any premiums paid by that person's employer were deducted in terms of section 11(w);
- (c) in respect of a policy that was taken out to insure against the death, disability or illness of that person by any other person who was a partner of that person, or held any share or similar interest in a company in which that person held any share or similar interest, for the purpose of enabling that other person to acquire, upon the death of that person, the whole or part of—
 - (i) that person's interest in the partnership concerned; or
 - (ii) that person's share or similar interest in that company and any claim by that person against that company,
 and no premium on the policy was paid or borne by that person while that other person was the beneficial owner of the policy; or
- (d) in respect of a policy originally taken out on the life of a person, where that policy is provided to that person or dependant by or in consequence of that person's membership of a pension fund, provident fund or retirement annuity fund.

[Subparagraph (1) amended by section 87(1) of Act 74 of 2002]

(2) For the purposes of subparagraph (1), 'policy' means a policy as defined in section 29A with an insurer.

[Paragraph 55 amended by section 31 of Act 19 of 2001, section 98 of Act 60 of 2001 and section 87 of Act 74 of 2002]

56. Disposal by creditor of debt owed by connected person

(1) Where a creditor disposes of a claim owed by a debtor, who is a connected person in relation to that creditor, that creditor must disregard any capital loss determined in consequence of that disposal.

(2) Despite paragraph 39, subparagraph (1) does not apply in respect of any capital loss determined in consequence of the disposal by a creditor of a claim owed by a debtor, to the extent that the amount of that claim so disposed of represents—

- (a) a capital gain which is included in the determination of the aggregate capital gain or aggregate capital loss of that debtor by virtue of paragraph 12(5);
- (b) an amount which the creditor proves must be or was included in the gross income of any acquirer of that claim; or
- (c) an amount that must be or was included in the gross income or income of the debtor or taken into account in the determination of the balance of assessed loss of the debtor in terms of section 20(1)(a)(ii).

[Subparagraph (2) amended by section 88(1) of Act 74 of 2002]

[Paragraph 56 amended by section 99 of Act 60 of 2001 and section 88(1) of Act 74 of 2002]

57. Disposal of small business assets

(1) For purposes of this paragraph—

'active business asset' means—

- (a) an asset which constitutes immovable property, to the extent that it is used for business purposes; or
- (b) an asset (other than immovable property) used or held wholly and exclusively for business purposes,

but excludes—

- (i) a financial instrument; and
- (ii) an asset held in the course of carrying on a 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;

[Definition of 'active business asset' inserted by section 89(1) of Act 74 of 2002]

'small business' means a business of which the market value of all its assets, as at the date of the disposal of the asset or interest contemplated in subparagraph (2), does not exceed R5 million.

(2) Subject to subparagraphs (3), (4) and (5), a natural person must, 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 that 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 operations of the business of that small business during that period, 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 (2).

(6) The provisions of this paragraph do not apply where a person owns 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 assets in respect of all those businesses exceeds R5 million.

58. Exercise of options

Where, as a result of the exercise by a person of an option, that person acquires or disposes of an asset in respect of which that option was granted, that person must disregard any capital gain or capital loss determined in respect of the exercise of that option.

[As amended by section 100 of Act 60 of 2001]

59. Compensation for personal injury, illness or defamation

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 special trust, as the case may be, receiving compensation for personal injury, illness or defamation of that person or a beneficiary of that special trust.

[As amended by section 101 of Act 60 of 2001]

60. Gambling, games and competitions

(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) by any natural person, unless that form of gambling, game or competition is authorised by, and conducted in terms of, the laws of the Republic.

[As amended by section 32 of Act 19 of 2001]

61. Unit trust funds

A portfolio in a collective investment scheme contemplated in paragraph (e)(i) of the definition of 'company' in section 1, must disregard any capital gain or capital loss.

[Paragraph 61 amended by section 102 of Act 60 of 2001 and section 90(1) of Act 74 of 2002]

62. Donations and bequests to public benefit organisations

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

63. Exempt persons

A person must disregard any capital gain or capital loss in respect of the disposal of an asset where all the receipts and accruals of that person would have been exempt from tax in terms of section 10, if those receipts and accruals had been received by or had accrued to that person.

[Paragraph 63 amended by section 91 of Act 74 of 2002]

64. Asset used to produce exempt income

A person must disregard any capital gain or capital loss in respect of the disposal of an asset 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 (i)(xv), (k) and (m) of subsection (1) thereof.

64A. Awards in terms of the Restitution of Land Rights Act

A person must disregard any capital gain or capital loss in respect of the disposal that resulted in that person receiving restitution of a right to land, an award or compensation in terms of the Restitution of Land Rights Act, 1994 (Act No. 22 of 1994).

[Paragraph 64A added by section 92(1) of Act 74 of 2002]

PART IX ROLL-OVERS

65. Involuntary disposal

(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, or where the Master of the High Court or an appointed trustee disposes of an asset, other than a financial instrument, of a person in consequence of the sequestration of the estate of the spouse of that person, as contemplated in section 21 of the Insolvency Act, 1936 (Act No. 24 of 1936), and that person obtains an order in which the proceeds are declared to be those of that person;
- (b) proceeds accrue to that person by way of compensation for that expropriation, loss or destruction, or in consequence of the disposal by the Master of the High Court or the appointed trustee, as contemplated in item (a);

- (c) those proceeds exceed the base cost of that asset; and
- (d) that person satisfies the Commissioner that—
 - (i) an amount equal to those proceeds has been or will be expended in replacing that asset;
 - (ii) a contract has been or will be concluded within a year from the date of the disposal of that asset to replace that asset with a similar asset; and
 - (iii) the replacement asset has been or will be brought into use within three years of the disposal of that asset,

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

(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 an asset contemplated in paragraph 2(1)(b).

(3) The Commissioner may extend the periods contemplated in subparagraph (1)(d) by a maximum of six months if all reasonable steps were taken to conclude a contract or bring the replacement asset into use, as the case may be.

(4) Where a person fails to conclude a contract or fails to bring a replacement asset into use within the prescribed period that person must—

- (a) treat the disregarded capital gain contemplated in subparagraph (1) as a capital gain on the date on which that prescribed period ends when determining that person's 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 a capital gain on the date contemplated in item (a) when determining that person's aggregate capital gain or aggregate capital loss.

[As amended by section 103 of Act 60 of 2001]

66. Reinvestment in replacement assets

(1) Subject to paragraph 65 and 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, 12E, 14 or 14bis;

- (b) the proceeds received or accrued from that disposal exceed the base cost of that asset; and
- (c) that person satisfies the Commissioner that—
 - (i) an amount equal to those proceeds has been or will be expended in replacing that asset;
 - (ii) a contract has been or will be concluded within a year from the date of the disposal of that asset to replace that asset with a replacement asset which will qualify for a deduction which is equivalent to the capital allowance or deduction for which the asset so replaced qualified; and
 - (iii) the replacement asset has been or will be brought into use within a year after the disposal of that asset,

that person must, when determining that person's aggregate capital gain or aggregate capital loss, disregard the capital gain on that asset and must treat 20 per cent of the disregarded capital gain as a capital gain when determining that person's 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 the asset is an asset contemplated in paragraph 2(1)(b).

(3) The Commissioner may extend the periods contemplated in subparagraph (1)(c) by a maximum of six months if all reasonable steps were taken to conclude a contract or bring the replacement asset into use, as the case may be.

(4) Where a person fails to conclude a contract or fails to bring a replacement asset into use within the prescribed period that person must—

- (a) treat the disregarded capital gain contemplated in subparagraph (1) as a capital gain on the date that that prescribed period ends when determining that person's 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 a capital gain on the date contemplated in item (a) when determining that person's 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 that person's trade and any portion

of the disregarded capital gain, contemplated in subparagraph (1), has not been treated as a capital gain in determining that person's 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 that person's aggregate capital gain or aggregate capital loss for that year of assessment.

[As amended by section 33 of Act 19 of 2001]

67. Transfer of asset between spouses

- (1) (a) Subject to subparagraph 3, a person (hereinafter referred to as 'the transferor') must disregard any capital gain or capital loss determined in respect of the disposal of an asset to his or her spouse (hereinafter referred to as 'the transferee');
- (b) The transferee must be treated as having—
- (i) acquired the asset on the same date that such asset was acquired by the transferor;
 - (ii) acquired the asset for an amount equal to the expenditure contemplated in paragraph 20 that was incurred by that transferor prior to that disposal;
 - (iii) incurred that expenditure on the same date that it was incurred by the transferor; and
 - (iv) used the asset in the same manner that it was used by the transferor in respect of the period prior to that disposal.
- (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 union contemplated in paragraph (b) or (c) of the definition of 'spouse' in section 1 of this Act, an agreement of division of assets which has been made an order of court.
- (3) Subparagraph (1) shall not apply in respect of the disposal of an asset by a person to his or her spouse who is not a resident, unless the asset disposed of is an asset contemplated in paragraph 2(1)(b).

[As amended by section 104 of Act 60 of 2001]

67A. Capital gains and capital losses in respect of interests in collective investment schemes in property

(1) A holder of a participatory interest in a portfolio comprised in any collective investment scheme managed or carried on by any company registered as a manager under section 42 of the Collective Investment Schemes Control Act, 2002, for the purposes of Part V of that Act must determine a capital gain or capital loss in respect of any participatory interest in that portfolio only upon the disposal of that interest.

[Subparagraph (1) amended by section 93(1) of Act 74 of 2002]

(2) **A** capital gain or capital loss to be determined in terms of subparagraph (1) must be determined with reference to the proceeds from the disposal of that participatory interest and its base cost.

[Subparagraph (2) amended by section 93(1) of Act 74 of 2002]

[Paragraph 67A inserted by section 105 of Act 60 of 2001 and amended by section 93(1) of Act 74 of 2002]

PART X

ATTRIBUTION OF CAPITAL GAINS

68. Attribution of capital gain to spouse

(1) Where a person's capital gain or a capital gain that has vested in or is treated as having vested in that person during the year of assessment in which it arose can be attributed wholly or partly to—

- (a) any donation, settlement or other disposition; or
- (b) any transaction, operation or scheme,

made, entered into or carried out by that person's spouse 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, so much of the gain as can be so attributed 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 a person's capital gain is derived from—

- (a) 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
- (b) that person's spouse or 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,

so much of that gain as 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.

69. Attribution of capital gain to parent of minor child

Where a minor child's capital gain or a capital gain that has vested in or is treated as having vested in or that has been used for the benefit of that child during the year of assessment in which it arose can be attributed wholly or partly to 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 some other consideration made or given by a parent of that child in favour directly or indirectly of that person or his or her family,

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

70. Attribution of capital gain subject to conditional vesting

Where—

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

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

71. Attribution of capital gain subject to revocable vesting

Where—

- (a) a deed of donation, settlement or other disposition confers a right upon a beneficiary thereof who is a resident to receive a capital gain attributable to that donation, settlement or other disposition or any portion of that gain;
- (b) that right may be revoked or conferred upon another by the person who conferred it; and
- (c) a capital gain attributable to that donation, settlement or other disposition or a portion of that gain has in terms of that right vested in that beneficiary during a year of assessment throughout which the person who conferred that right has been a resident and has retained the power to revoke that right,

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

72. Attribution of capital gain vesting in non-resident

Where—

- (a) a resident has made a donation, settlement or other disposition to any person (other than to a public benefit organisation contemplated in section 30 or a foreign entity, as defined in section 9D, of a similar nature); and
- (b) a capital gain attributable to that donation, settlement or other disposition has arisen during a year of assessment and has during that year vested in or is treated as having vested in any person who is not a resident (other than a controlled foreign company, in relation to that resident),

[Item (b) amended by section 94 of Act 74 of 2002]

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.

73. Attribution of income and capital gain

(1) Where both an amount of income and a capital gain are derived by reason of or are attributable to a donation, settlement or other disposition, the total amount of that income and gain—

- (a) that is deemed in terms of section 7 to be that of a person other than the one to whom it accrues or by whom it is received or for whose benefit it is expended or accumulated; and
- (b) that is attributed in terms of this Part to a person other than the one in whom it vests,

shall not exceed the amount of the benefit derived from that donation, settlement or other disposition.

(2) For purposes of this paragraph, the benefit derived from a donation, settlement or other disposition means the amount by which the person to whom that donation, settlement or other disposition was made, has benefited from the fact that it was made for no or an inadequate consideration, including consideration in the form of interest.

PART XI COMPANY DISTRIBUTIONS

74. Definitions

For the purposes of this Part, unless the context otherwise dictates—

'capital distribution' means any distribution (or portion thereof) by a company that—

- (a) does not constitute a dividend; or
- (b) that constitutes a dividend which is exempt from secondary tax on companies by reason of section 64B(5)(c);

'company' means any 'company' as defined in section 1, except for any portfolio in a collective investment scheme contemplated in paragraph (e) of that definition;

[Definition of 'company' amended by section 95(1) of Act 74 of 2002]

'distribution' means any transfer of cash or assets by a company to a shareholder in relation to a share held by that shareholder, including any issue of shares or debt in that company (or any option thereto), regardless of whether that transfer constitutes a dividend;

'share' in relation to a company means any share capital of, or member's interest in that company, any right or interest in or to such share capital or member's interest, whether or not that share capital or member's interest carries a right to participate in dividends or a

capital distribution.

[As amended by section 106 of Act 60 of 2001]

75. Distributions *in specie* by company

(1) Where a company makes a distribution of an asset *in specie* to a shareholder, that company must be treated as having disposed of that asset to that shareholder for proceeds equal to market value.

(2) The market value of any asset contemplated in subparagraph (1) must be its market value on the date the distribution is approved by the directors or by some other person with comparable authority conferred under the memorandum and articles of association of the company making the distribution.

76. Distributions of cash or assets *in specie* received by shareholder

(1) Subject to subparagraph (2), where a capital distribution of cash or an asset *in specie* is received by or accrues to a shareholder in respect of a share, that shareholder must—

- (a) where that capital distribution is received or accrues before valuation date, reduce the expenditure contemplated in paragraph 20 actually incurred before valuation date in respect of that share by the amount of that cash or the market value of that asset *in specie*; and
- (b) where that capital distribution is received or accrues on or after valuation date, treat the amount of that cash or the market value of that asset *in specie* as proceeds when that share is disposed of.

(2) where a shareholder uses the weighted average method in respect of shares that are identical assets as contemplated in paragraph 32(3A)(a) and a capital distribution of cash or an asset *in specie* is received by or accrues to that shareholder in respect of those shares on or after valuation date, the weighted average base cost of those shares must be determined by—

- (a) deducting the amount of that cash or the market value of that asset *in specie* from the base cost of those shares held when that capital distribution was received or accrued; and
- (b) dividing the result by the number of those shares held when that capital distribution was received or accrued.

[Subparagraphs (1) and (2) substituted by section 96(1) of Act 74 of 2002]

(3) Any distribution of an asset *in specie* received by or accrued to a shareholder must be treated as having been acquired at an expenditure equal to the market value and on the

date contemplated in paragraph 75 (2), which expenditure must be treated as an amount of expenditure actually incurred and paid for the purposes of paragraph 20(1)(a).

[Subparagraph (3) amended by section 96(1) of Act 74 of 2002]

(4) ... [Subparagraph 4 deleted by section 96(1) of Act 74 of 2002]

[As amended by section 107 of Act 60 of 2001]

77. Distributions in liquidation or deregistration received by shareholder

(1) A shareholder of a company that is being wound up, liquidated or deregistered must be treated as having disposed of all the shares held by that shareholder in that company at the earlier of—

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

(2) Any capital distribution of cash or assets *in specie* received by or accrued to that shareholder in respect of those shares after the disposal of those shares must be treated as a capital gain in determining that shareholder's aggregate capital gain or aggregate capital loss for that year of assessment.

78. Share distributions received by shareholder

(1) Where a company issues capitalisation shares, those capitalisation shares must be treated as having been acquired for expenditure incurred and paid of nil, except to the extent that the issue of those shares constitutes a dividend, in which case they must be treated as having been acquired for expenditure and paid equal to the amount of that dividend.

(2) Subject to paragraphs 11(1)(g), 23 and 35(2), where a company issues shares in substitution of previously held shares in that company by reason of a subdivision, consolidation, or similar arrangement or a conversion contemplated in section 40A or 40B—

- (a) the shareholder must disregard any capital gain or capital loss determined in respect of that substitution; and
- (b) those newly issued shares must be treated as—
 - (i) having an aggregate base cost equal to the aggregate base cost of the previously held shares with the aggregate base cost allocated among all

- those newly issued shares in proportion to their relative market values; and
- (ii) having been acquired on the same date as those previously held shares.

[Subparagraphs (1) and (2) amended by section 97(1) of Act 74 of 2002]

(3) Where a company issues shares in substitution of previously held shares as contemplated in subparagraph (2) and also makes a capital distribution of cash or assets *in specie* with respect to those previously held shares—

- (a) the shareholder must disregard any capital gain or capital loss determined in respect of that substitution but not in respect of the transfer of those previously held shares exchanged for that capital distribution; and
- (b) both the substitution and that capital distribution must be treated as separate transactions with the base cost of those previously held shares allocated between both transactions based on the relative market values of the newly issued shares and that capital distribution received in exchange therefor.

79. Matching contributions and distributions

(1) Despite paragraph 76, where a shareholder receives a capital distribution of cash or assets *in specie*, the amount of that capital distribution must be treated as a capital gain for the purposes of determining that shareholder's aggregate capital gain or aggregate capital loss, where—

- (a) the shareholder receiving the capital distribution is a connected person in relation to the company making that capital distribution;
- (b) the company making the capital distribution received consideration from a new or different shareholder in respect of the issue of one or more shares by that company within two years prior to the capital distribution contemplated in (a); and
- (c) the contribution and capital distribution contemplated in both (a) and (b) are part of a scheme to reduce, avoid, or postpone any tax payable under this Act or any other Act administered by the Commissioner on the disposal of shares by the shareholder contemplated in (a).

(2) The reduction in base cost and addition to proceeds contemplated in subparagraphs (1) and (2) of paragraph 76 shall not apply in respect of any share that carries a right to a distribution contemplated in subparagraph (1).

PART XII**TRUSTS, TRUST BENEFICIARIES AND INSOLVENT ESTATES****80. Capital gain attributed to beneficiary**

(1) Subject to paragraphs 68, 69, 71 and 72, where a capital gain is determined in respect of the vesting by a trust of an asset in a trust beneficiary who is a resident, 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 68, 69, 71 and 72, where a capital gain arises in a trust in a year of assessment during which a trust beneficiary who is a resident 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.

(3) Where during any year of assessment any resident acquires a vested right to any amount representing capital of any trust which is not a resident, and—

- (a) that capital arose from—
 - (i) a capital gain of that trust determined in any previous year of assessment during which that resident had a contingent right to that capital; or
 - (ii) any amount which would have constituted a capital gain of that trust had that trust been a resident; and
- (b) that capital gain has not been subject to tax in the Republic in terms of the provisions of this Act,

that amount must be taken into account for the purposes of calculating the aggregate capital gain or aggregate capital loss of that resident in that year of assessment.

[As inserted by section 108 of Act 60 of 2001]

81. Base cost of interest in discretionary trust

Despite paragraph 38(1)(b), a person's interest in a discretionary trust must be treated as having a base cost of nil.

[As amended by section 109 of Act 60 of 2001 and section 98 of Act 74 of 2002]

82. Death of beneficiary of special trust

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 two years after the date of death of that beneficiary.

83. Insolvent estate of person

(1) For the purposes of this Schedule, the disposal of an asset by the insolvent estate of a person shall be treated in the same manner as if that asset had been disposed of by that person.

(2) No person whose estate has been voluntarily or compulsorily sequestered may carry forward any assessed capital loss incurred prior to the date of sequestration.

PART XIII FOREIGN CURRENCY

84. Definitions

For purposes of this Part, unless the context otherwise indicates—

“foreign currency” means any currency which is not legal tender in the Republic;

“foreign currency asset” in relation to a person means any amount in foreign currency—

- (a) which constitutes a unit of foreign currency of that person; or
- (b) owing to that person in respect of any loan, advance or debt payable to that person;

“foreign currency base cost” means the base cost in respect of a foreign currency asset, as determined in accordance with paragraph 91;

“foreign currency liability” means an amount in foreign currency owing by that person in respect of any loan, advance or debt incurred by that person;

“foreign currency proceeds” means the proceeds from the disposal of a foreign currency asset, as determined in accordance with paragraph 92;

“personal expenses” of a person means any—

- (a) domestic or private expenses incurred outside the Republic in respect of foreign accommodation (excluding the acquisition of any immovable property) or foreign personal-use assets; or
- (b) traveling or maintenance expenses;

“personal foreign currency asset” means any foreign currency asset of a person which constitutes—

- (a) an amount which constitutes a unit of foreign currency in cash or cash equivalent, held primarily for the regular payment of personal expenses; or
- (b) any one account held in the relevant foreign currency with a banking institution from which funds can be immediately withdrawn, which account is used primarily for the regular payment of personal expenses;

“valuation date” means—

- (a) 1 March 2003; or
- (b) where a person becomes a resident of the Republic after 1 March 2003, the date that such person becomes a resident.

85. Application of this Part

This Part applies in respect of—

- (a) the acquisition and disposal of any foreign currency asset; and
- (b) the settlement or part settlement of any foreign currency liability,

by any person who is a resident (other than a resident in respect of whom section 24I of the Act applies in respect of any foreign currency asset of that person in the relevant foreign currency).

86. Foreign currency capital gain and foreign currency capital loss

(1) Despite anything to the contrary contained in the Act, a person’s foreign currency capital gain for the year of assessment in respect of—

- (a) the disposal of a foreign currency asset (other than a personal foreign currency asset), is the amount by which the foreign currency proceeds exceed the foreign currency base cost; or
- (b) the settlement or part settlement of any foreign currency liability due by that person, is the amount determined in accordance with paragraph 93(1).

(2) Despite anything to the contrary contained in the Act, a person’s foreign currency capital loss for the year of assessment in respect of—

- (a) the disposal of a foreign currency asset (other than a personal foreign currency asset) is the amount by which the foreign currency base cost in respect of that asset exceeds the foreign currency proceeds; or
 - (b) any settlement or part settlement of any foreign currency liability due by that person, is the amount determined in accordance with paragraph 93(2).
- (3) The amount of any foreign currency capital gain or foreign currency capital loss of a person during any year of assessment, as contemplated in subparagraphs (1) and (2), respectively, shall be treated as a capital gain or capital loss, as the case may be, for purposes of determining the aggregate capital gain or aggregate capital loss of that person for that year in terms of this Schedule.

87. Disposal of foreign currency asset

A disposal of a foreign currency asset includes—

- (a) the conversion, sale, donation, expropriation, cession, exchange or any alienation or transfer of that foreign currency asset;
- (b) the forfeiture, termination, redemption, cancellation, surrender, discharge, relinquishment, release, waiver, renunciation, expiry, abandonment or loss of that foreign currency asset; or
- (c) the vesting of any foreign currency asset of a trust in a beneficiary of that trust.

88. Events treated as acquisition or disposal of foreign currency asset

(1) A person must be treated as having acquired on valuation date all foreign currency assets (other than personal foreign currency assets) of that person which have not been disposed of by that person before that date.

(2) Where a person—

- (a) ceases to be a resident; or
- (b) who is a resident, is as a result of the application of any agreement entered into by the Republic with any other country for the avoidance of double taxation, treated as not being a resident,

that person must be treated as having disposed of all foreign currency assets (other than personal foreign currency assets) acquired and not disposed of by that person before so ceasing to be or treated as not being a resident.

(3) Where the provisions of section 24I become applicable to a person in respect of any foreign currency asset of that person, that person must, for the purposes of this Part, be treated as having disposed of all foreign currency assets (other than personal foreign

currency assets) of that person which were not disposed of immediately before section 24I became applicable.

(4) Where the provisions of this Part become applicable to a person, that person must, for the purposes of this Part, be treated as having acquired all foreign currency assets (other than personal foreign currency assets) of that person which were not disposed of immediately before this Part became applicable.

(5) Where a person commences to hold a foreign currency asset which is included in the foreign currency asset pool, as a personal foreign currency asset, that person must be treated as having disposed of that foreign currency asset on the date that the person so commences to hold that foreign currency asset as a personal foreign currency asset.

(6) Where a person ceases to hold a foreign currency asset as personal foreign currency asset, that person must be treated as having acquired that foreign currency asset on the date that the person so ceases to hold that foreign currency asset as a personal foreign currency asset.

89. Exchange of foreign currency assets denominated in same foreign currency

(1) Subject to subparagraph (2), where a person exchanges one foreign currency asset for another foreign currency asset which is denominated in the same currency, there shall, for the purposes of this Part—

- (a) be no disposal by that person of the foreign currency asset which is surrendered in exchange for that other foreign currency asset, to the extent that the value in foreign currency of that foreign currency asset so surrendered does not exceed the value in foreign currency of that other foreign currency asset; and
- (b) be no acquisition by that person of the foreign currency asset which is obtained in exchange for that other foreign currency asset, to the extent that the value in foreign currency of that foreign currency asset so obtained does not exceed the value in foreign currency of that other foreign currency asset.

(2) Subparagraph (1) does not apply to the extent that the foreign currency asset obtained or surrendered in exchange for the other foreign currency asset constitutes a personal foreign currency asset.

90. Foreign currency asset pool

(1) A person must maintain a foreign currency asset pool for each foreign currency in which any foreign currency asset of that person is denominated, which must—

- (a) include the total amount in foreign currency of all foreign currency assets (other than personal foreign currency assets) acquired on or after valuation date, (including any amount of interest which is deemed to have accrued for purposes of the Act in respect of any foreign currency asset); and
 - (b) be reduced by the amount in foreign currency of any foreign currency asset included therein, which has been disposed of by that person on or after valuation date.
- (2) The total asset pool base cost in respect of the foreign currency asset pool contemplated in subparagraph (1), is determined as the sum of the values in foreign currency of each foreign currency asset contemplated in subparagraph (1)(a), translated into the currency of the Republic at the average exchange rate for the year of assessment during which the relevant foreign currency asset was acquired, subject to paragraphs 95 and 96, reduced by the foreign currency base cost of any foreign currency assets disposed of as contemplated in subparagraph (1)(b).

91. Foreign currency base cost of foreign currency asset

The base cost of a foreign currency asset disposed of by a person is an amount which bears to the total asset pool base cost determined in terms of paragraph 90(2) prior to that disposal, the same ratio as the value in foreign currency of that foreign currency asset so disposed of bears to the total value in foreign currency of the relevant foreign currency asset pool determined in terms of paragraph 90(1) prior to that disposal.

92. Foreign currency proceeds

Subject to paragraphs 95 and 96, the proceeds from the disposal by a person of a foreign currency asset is an amount determined by translating the value in foreign currency of that asset into the currency of the Republic at the average exchange rate for the year of assessment during which that asset is disposed of and—

- (a) reducing that amount by—
 - (i) any capital gain determined in terms of this Schedule in respect of the disposal of that foreign currency asset (otherwise than in terms of the application of this Part), which was included in that amount; or
 - (ii) any other amount included therein, which is or was during any year of assessment included in the taxable income of that person (or of that person's spouse in the case of an asset transferred to that person as contemplated in paragraph 95) in respect of that foreign currency asset; or

- (b) increasing that amount by any capital loss determined in terms of this Schedule in respect of the disposal of that foreign currency asset (otherwise than in terms of the application of this Part).

93. Settlement of foreign currency liability

(1) A person must be treated as having a foreign currency capital gain from the settlement or part settlement by that person of any foreign currency liability, to the extent that the amount settled or part settled, translated into the currency of the Republic at the average exchange rate for the year of assessment during which that foreign currency liability was incurred, exceeds that amount translated into the currency of the Republic at the average exchange rate for the year of assessment during which that foreign currency liability was settled or part settled.

(2) A person must be treated as having a foreign currency capital loss from the settlement or part settlement by that person of any foreign currency liability, to the extent that the amount settled or part settled, translated into the currency of the Republic at the average exchange rate for the year of assessment during which that foreign currency liability was settled or part settled, exceeds that amount translated into the currency of the Republic at the average exchange rate for the year of assessment during which that foreign currency liability was incurred.

(3) A person must disregard any foreign currency capital gain or foreign currency capital loss determined during any year of assessment in respect of the settlement of any foreign currency liability, to the extent that the amount of that foreign currency liability was utilised otherwise than to—

- (a) acquire any right in terms of a forward exchange contract or a foreign currency option contract;
- (b) acquire any foreign currency asset other than a personal foreign currency asset;
- (c) acquire any foreign equity instrument or any asset in local currency as contemplated in paragraph 43; or
- (d) refinance any foreign currency liability which was utilised to acquire any asset contemplated in item (a), (b) or (c),

which was not disposed of by that person during any previous year of assessment.

94. Involuntary disposal of foreign currency asset

A person must disregard any foreign currency gain or foreign currency loss determined in respect of an involuntary disposal of any foreign currency asset by way of expropriation, theft or physical loss.

95. Transfer of foreign currency assets between spouses

Where a person disposes of any foreign currency asset to his or her spouse—

- (a) that person must be treated as having disposed of that foreign currency asset for proceeds equal to the foreign currency base cost of that foreign currency asset; and
- (b) that spouse must, for purposes of paragraph 90(2), treat that foreign currency base cost as the value of that asset in the currency of the Republic on the date of acquisition.

96. Application of provisions of Eighth Schedule

(1) The provisions of paragraphs 11(2)(a), (e) and (i), 12(1), 12(2)(a), 13, 14, 36, 38, 39, 40, 56, 62, 63, 68, 69, 70, 71, 72, 73, 80 and 82 and 83 of the Eighth Schedule to the Act, shall apply *mutatis mutandis* in respect of the determination of any foreign currency capital gain or foreign currency capital loss resulting from the disposal of any foreign currency asset.

(2) For purposes of paragraph 96(1), any reference in any provision referred to in that paragraph to—

- (a) the market value shall be treated as a reference to the relevant value in foreign currency translated to the currency of the Republic at the average exchange for the relevant year of assessment; and
- (b) the base cost shall be treated as a reference to the foreign currency base cost.

(2) Subsection (1) shall come into operation on 1 March 2003 and shall apply in respect of years of assessment commencing on or after that date.

PART XIV MISCELLANEOUS

97. Transactions during transitional period

(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) Subject to subparagraph (3), where a person—

- (a) acquired an asset during the transitional period by means of a non-arm's length transaction, that person shall for the purposes of paragraph 30 be treated as having acquired that asset—
 - (i) at the time when the person who disposed of that asset acquired that asset; and
 - (ii) at a cost equal to the base cost of that asset in the hands of the person who disposed of it; 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,
 that person shall for the purposes of paragraph 30 be treated as having acquired that asset—
 - (aa) at the time when that connected person acquired that asset, or is treated as having acquired that asset in terms of this paragraph; and
 - (bb) at a cost equal to the base cost of that asset in the hands of that connected person, or an amount which is treated as the base cost of that asset in the hands of that connected person in terms of this paragraph; 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,
 that person shall for the purposes of paragraph 30 be treated as having reacquired that asset—
 - (aa) at the time when that person originally acquired that asset prior to that disposal; and
 - (bb) at a cost equal to the base cost of that asset at the time of that disposal; 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, that person shall for the purposes of paragraph 30 be treated as having acquired that asset—

- (aa) at the time when that person acquired the substantially similar asset; and
- (bb) at a cost equal to the base cost of that substantially similar asset at the time of that disposal.

(3) The provisions of this paragraph do not apply to any disposal of an asset by a fund contemplated in section 29A(4) to any other such fund in terms of section 29A(6) or (7).

[As amended by section 35 of Act 19 of 2001, section 112 of Act 60 of 2001 and section 101 of Act 74 of 2002]