

FOREIGN PROVISIONS AND STC:

*This **draft legislation** is released for public information. The amendments contained in this draft are merely proposals which are **subject to change and final approval by the Minister of Finance**. Early comments on this draft will be considered for possible inclusion in a revised draft Bill.*

It is the intention to release the revised draft Bill in the first seven days of October, prior to the commencement of the informal Parliamentary process.

There will be an opportunity to comment on the revised draft Bill, either directly to the National Treasury and SARS or during the public hearings in the Parliamentary Committees in mid-October 2003.

Due to time constraints, it will not be possible to respond individually to comments received. However, receipt of comments will be acknowledged and fully considered by the National Treasury and SARS.

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Amendment of section 1 of Act 58 of 1962

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

- (a) by the deletion of the definition of “designated country”;
- (b) by the substitution in the definition of “dividend” for the words following item (bb) of subparagraph (v) of the first proviso of the following words:
“**[Provided further that for the purposes of this definition an asset shall be deemed to have been given to a shareholder of a company if any asset or any interest, benefit or advantage measurable in terms of money is given or transferred to such shareholder or if the shareholder is relieved of any obligation measurable in terms of money:]** Provided further that a reserve of any company which consists of or includes any amount transferred

from the share premium account of the company shall, except to the extent to which such reserve consists of any other amount, be deemed for the purposes of this definition to be a share premium account of, or share premium received by, such company;”;

- (c) by the insertion after the definition of “financial year” of the following definition:

“foreign dividend’ means any dividend received by or which accrued to any person from a foreign company as defined in section 9D;”;

- (d) by the substitution for paragraph (k) of the definition of “gross income” of the following paragraph:

“(k) any amount received or accrued by way of **[dividends including any amount which is deemed to be a dividend declared as contemplated in the definition of ‘foreign dividend’ in section 9E]** a dividend: Provided that where any foreign dividend declared by a foreign company—

(i) is received by or accrues to a portfolio of a collective investment scheme referred to in paragraph (e)(i) of the definition of ‘company’ in section 1; and

(ii) that foreign dividend is distributed by that portfolio by way of a dividend, or a portion of a dividend, to any person who is entitled to that dividend by virtue of being a holder of any participatory interest in that portfolio,

that foreign dividend shall, to the extent that it is declared to that person as contemplated in subparagraph (ii), be deemed to have been declared by that foreign company directly to that person and to be a foreign dividend which is received by or accrued to that person;”;

- (e) by the deletion of the definition of “international headquarter company”;

- (f) by the deletion of the definition of “qualifying statutory rate”;

- (g) by the substitution in paragraph (a) of the definition of “resident” for the words in subparagraph (ii) preceding item (aa) of the following words:

“not at any time during the relevant year of assessment ordinarily resident in the Republic, if **[such]** that person was physically present in the Republic—”;

- (h) by the insertion in subparagraph (ii) of paragraph (a) of the definition of “resident” after item (bb) preceding the proviso of the following words: “in which case that person will be a resident with effect from the first day of that relevant year of assessment.”;
- (i) by the substitution in the definition of “resident” for item (A) of the proviso to subparagraph (ii) of paragraph (a) of the following item:
“(A) a day shall include a part of a day, but shall not include any day that a person is in transit through the Republic between two places outside the Republic and that person does not formally enter the Republic through a ‘port of entry’ as **[defined]** contemplated in section 9(1) of the Immigration Act, 2002 (Act No. 13 of 2002), or does not enter at any other place in the case of a person authorised by the Minister in terms of section 31(2)(c) of that Act; and”;”;
- (j) by the substitution for paragraph (b) of the definition of “resident” of the following paragraph:
“(b) person (other than a natural person) which is incorporated, established or formed in the Republic or which has its place of effective management in the Republic **[(but excluding any international headquarter company)]**”.

(2) Subsection (1)(e) and (j) shall come into operation on 1 January 2004 and shall apply in respect of years of assessment commencing on or after that date.

Amendment of section 3 of Act 58 of 1962

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

“(4) Any decision of the Commissioner under the definitions of ‘benefit fund’, ‘pension fund’, ‘provident fund’, ‘retirement annuity fund’ and ‘spouse’ in section 1, section 6, section 8(4)(b), (c), (d) and (e), section 9D, **[section 9E, section 9F,]** section 10(1)(cH), (cK), (e), (iA), (j) and (nB), section 11(e), (f), (g), (gA), (j), (l), (t), (u) and (w), section

12C, section 12E, section 12G, section 13, section 14, section 15, section 22(1), (3) and (5), section 24(2), section 24A(6), section 24C, section 24D, section 24I, section 25D, section 27, section 30, section 31, section 35(2), section 38(4), section 41(4), section 57, paragraphs 6, 7, 9, 13, 13A, 14, 19 and 20 of the First Schedule, paragraph (b) of the definition of 'formula A' in paragraph 1 and paragraph 4 of the Second Schedule, paragraphs 18, 19(1), 20, 21, 22, 24 and 27 of the Fourth Schedule, paragraphs 2, 3, 6, 9 and 11 of the Seventh Schedule and paragraphs 29(2A), 29(7), 31(2), 65(1)(d) and 66(1)(c) of the Eighth Schedule, shall be subject to objection and appeal.”.

Amendment of section 6quat of Act 58 of 1962

. Section 6quat of the Income Tax Act, 1962, is hereby amended—

- (a) by the substitution for paragraph (d) of subsection (1) of the following paragraph:

“(d) any foreign dividend [**contemplated in section 9E**]; or”;
- (b) by the substitution in subsection (1A) for the word “and” at the end of subparagraph (iii) of paragraph (a) of the word “or”;
- (c) by the substitution in subsection (1A) for paragraph (b) of the following paragraph:

“(b) any controlled foreign company, in respect of such proportional amount contemplated in subsection (1)(b), subject to section 72(3)”;
- (d) by the deletion of paragraphs (c) and (d) of subsection (1A);
- (e) by the substitution for paragraph (e) of subsection (1A) of the following paragraph:

“(e) any portfolio of a collective investment scheme in respect of the amount of any foreign dividend which is deemed to have been declared to such resident in terms of [**section 9E(5)**] paragraph (ii) of the proviso to paragraph (k) of the definition of ‘gross income’ and included in the taxable income of that resident; or”;

(f) by the substitution in subsection (1B) for the words in paragraph (a) preceding the proviso of the following words:

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

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

“(ii) where the sum of any such taxes payable to the government of any such other country or countries (excluding any taxes contemplated in subsection (1A)(b) which are attributable to the proportional amount of a controlled foreign company which—
(aa) is included in the taxable income of the resident by virtue of an election made by that resident in terms of section 9D(1A) or 9D(12); or
(bb) relates to any amount contemplated in section 9D(9)(b)(ii) or (iii) which are not excluded from the application of subsection (2) in terms of those subparagraphs),
exceeds the rebate as so determined (hereinafter referred to as the excess amount), that excess amount may—”;

(h) by the deletion of paragraphs (c) and (d) of subsection (1B);

(i) by the substitution for paragraph (e) of subsection (1B) of the following paragraph:

“(e) no rebate shall be allowed in respect of any tax payable on any amount contemplated in subsection (1)(d), if the resident has **[made an election]** elected to deduct the amount of withholding tax as contemplated in section **[9E(6)] 11(r).”; and**

(j) by the deletion of the definition of “qualifying interest” in subsection (3).

Amendment of section 7 of Act 58 of 1962

. Section 7 is hereby amended by the deletion of the proviso to subsection (8).

Amendment of section 8E of Act 58 of 1962

. Section 8E of the Income Tax Act, 1962, is hereby amended by the substitution in subsection (1) for subparagraph (ii) of paragraph (b) of the definition of “affected instrument” of the following subparagraph:

- “(ii) such share does not rank pari passu as regards its participation in dividends with all other ordinary shares in the capital of the relevant company or, where the ordinary shares in such company are divided into two or more classes, with the shares of at least one of such classes, or any dividend payable on such share is to be calculated with reference to any specified rate of interest or is otherwise to be calculated having regard to—
- (aa) the amount of capital subscribed for such share; or
 - (bb) the amount of any loan or advance made directly or indirectly by the shareholder or by any connected person in relation to the shareholder;”

Amendment of section 9D of Act 58 of 1962

- . Section 9D of the Income Tax Act, 1962, is hereby amended—
- (a) by the substitution in subsection (1) for the definition of “foreign company” of the following definition:
- “‘foreign company’ means any association, corporation, company, arrangement or scheme contemplated in paragraph (a), (b) or (e) of the definition of ‘company’ in section 1, which is not a resident **[or which is a resident but where that association, corporation, company,**

arrangement or scheme is as a result of the application of the provisions of any agreement entered into by the Republic for the avoidance of double taxation treated as not being a resident];”.

- (b) by the substitution in subsection (1) for the words in the definition of “foreign financial instrument holding company” preceding paragraph (a) thereof of the following words:

“‘foreign financial instrument holding company’ means any foreign company where more than 50 per cent of the market value or **[actual cost]** the initial cost of acquisition (determined in terms of generally accepted accounting practice) of all the assets of that company, together with the assets of [any] all controlled group **[company] companies** in relation to that foreign company, consists of financial instruments, other than—”;

- (c) by the substitution in subsection (1) for the words in paragraph (a) of the definition of “foreign financial instrument holding company” preceding subparagraph (i) of the following words:

“(a) any financial instrument that constitutes a debt due to that foreign company, or **[a] to any** controlled group company in relation to that foreign company, in respect of goods sold or services rendered by that foreign company or controlled group company, as the case may be, where—”;

- (d) by the substitution in subsection (1) for subparagraph (ii) of paragraph (a) of the definition of “foreign financial instrument holding company” of the following subparagraph:

“(ii) that debt is an integral part of a business conducted by that foreign company or controlled group company, as the case may be, as a **[continuing independent operation] going concern;**”;

- (e) by the substitution for the proviso to the definition of “foreign financial instrument holding company” of the following proviso:

“Provided that in determining whether 50 per cent of either the market value or **[actual] initial cost of acquisition** of the assets of the company and controlled group **[company] companies** consist of financial instruments, the following assets must be wholly disregarded—

- (i) any share **[in any other company in the same group of companies]** of a controlled group company in relation to that company; and
- (ii) any financial instrument which constitutes a loan, advance or debt **[if both the debtor and creditor companies form part of the same group of companies]** entered into between—
- (aa) that company and any controlled group company in relation to that company; or
- (bb) controlled group companies in relation to that company;”;
- (f) by the insertion after subsection (1) of the following subsection:
- “(1A) Any resident who, together with any connected person in relation to that resident, holds at least ten per cent but not more than 25 per cent of the participation rights in any foreign company (other than a foreign company contemplated in paragraph (a) of the definition of ‘controlled foreign company’), may elect that the foreign company be deemed to be a controlled foreign company in relation to that resident in respect of any foreign tax year of that foreign company;”;
- (g) by the substitution in subsection (2) for item (bb) of subparagraph (ii) of paragraph (a) of the following item:
- “(bb) the proportional amount determined in the manner contemplated in subparagraph (i) (as if the day that foreign **[entity]** company commenced to be a controlled foreign **[entity]** company was the first day of its foreign tax year), of the net income of that company for the period commencing on the day that the foreign company commenced to be a controlled foreign company and ending on the last day of that foreign tax year; or”;
- (h) by the substitution in subsection (2A) for the words preceding the proviso of the following words:
- “For the purposes of this section, the ‘net income’ of a controlled foreign company in respect of a foreign tax year is an amount equal to the taxable income of that company determined in accordance with the provisions of this Act as if that controlled foreign company had been a taxpayer, and as if that company had been a resident for purposes of the definition of ‘gross income’, sections 7(8), **[9E]**, 10(1)(h), 10(1)(hA),

25B and paragraphs 2(1)(a), 12, 24, 70, 71, 72 and 80 of the Eighth Schedule.”;

(i) by the substitution in subsection (2A) for paragraph (c) of the proviso of the following paragraph:

“(c) no deduction shall be allowed in respect of any interest, royalties, rental or income of a similar nature paid or payable or deemed to be paid or payable by that company to any other controlled foreign company in relation to the resident (including any similar amount adjusted in terms of section 31) or any exchange difference determined in terms of section 24I in respect of any exchange item to which that controlled foreign company and other foreign company are parties, as contemplated in subsection (9)(fA), unless that resident has elected in terms of subsection (12) that the provisions of subsection (9) shall not apply in respect of the net income of that other controlled foreign company for the relevant foreign tax year;”;

(j) by the substitution in subsection (9) for the words preceding paragraph (a) of the following words:

“The provisions of **[this section]** subsection (2) shall not apply to the extent that the net income of the controlled foreign company—”;

(k) by the deletion in subsection (9) of paragraph (a);

(l) by the substitution in subsection (9) for the words in the proviso to paragraph (b) preceding subparagraph (i) of the following words:

“Provided that the provisions of this paragraph shall not apply to any net income that is attributable to **[any amounts]**—”;

(m) by the substitution in subsection (9) for paragraph (i) of the proviso to paragraph (b) of the following paragraph:

“(i) any amounts derived from any transaction relating to the supply of goods or services by or to that controlled foreign company with any connected person (in relation to that controlled foreign company), who is a resident, unless the consideration in respect of that transaction reflects an arm’s length price that is consistent with the provisions of section 31; or”;

(n) by the substitution in subsection (9) for the words in paragraph (ii) of the proviso to paragraph (b) of the following words:

“(ii) any amounts derived from—”;

(o) by the substitution in subsection (9) for subparagraph (iii) of paragraph (b) of the following subparagraph:

“(iii) any amounts in the form of dividends, interest, royalties, rental, annuities, insurance premiums or income of a similar nature, or any capital gain determined in respect of the disposal of any asset from which any such income is or could be earned, or any foreign currency gain determined in respect of any foreign equity instrument or any foreign currency gain determined in terms of section 24I, except **[where those amounts]**—

(aa) **[do]** to the extent that any income and capital gains attributable to those amounts (other than income in respect of which any of the provisions contained in paragraphs (e) to (h) apply) do not in total exceed [five] ten per cent of the [sum of the amounts (other than those of a capital nature) and the amount of all capital gains and foreign currency gains of that controlled foreign company] income and capital gains of the controlled foreign company attributable to that business establishment (excluding income in respect of which any of the provisions contained in paragraphs (e) to (h) apply);
or

(bb) where those amounts arise from the principal trading activities of any banking or financial services, insurance or rental business, excluding any such amounts derived—

(A) by a company which is a foreign financial instrument holding company at the time that the amounts are so derived;

(B) from any connected person (in relation to that controlled foreign company) who is a resident or

any resident who directly or indirectly holds at least five per cent of the participation rights in—

- (i) that controlled foreign company; or
- (ii) in any other company in the same group of companies which holds shares in that controlled foreign company; or

(C) **[from any resident]** to the extent that **[those amounts are produced as part of a scheme for the purpose of avoiding the liability for any tax, duty or levy imposed in terms of this Act or any other law administered by the Commissioner]** those amounts form part of any scheme in terms of which any amount received or accrued by any person is exempt from tax while any corresponding expenditure is deductible by that person or by any connected person in relation to that person;”;

(p) by the substitution in subsection (9) for paragraph (f) of the following paragraph:

“(f) is attributable to any foreign dividend **[contemplated in section 9E]** declared to **[or deemed to have been declared to]** that controlled foreign company, by any other controlled foreign company **[from an amount which relates to an amount of income]** in relation to the resident, to the extent that the foreign dividend does not exceed the aggregate of all amounts which **[has] have** been or will be included in the income of the resident in terms of this section in any year of assessment, which relate to the net income of—

- (i) the company declaring the dividend; or
- (ii) any other company which has been included in the income of that resident by virtue of that resident's participation rights in that other company held indirectly through the company declaring the dividend.

reduced by so much of all foreign dividends received by or accrued to that controlled foreign company as was excluded from the application of this section in terms of this paragraph.”;

(q) by the substitution in subsection (9) for paragraph (h) of the following paragraph:

“(h) is attributable to any amount received by or accrued to that controlled foreign company[—

(i)] from the disposal of any interest in the equity share capital of any other foreign company[; or

(ii) **by way of a dividend declared to that controlled foreign company by any other foreign company],**

(other than a foreign company which was a foreign financial instrument holding company immediately before that disposal), if that controlled foreign company (together with any other company in the same group of companies as that controlled foreign company) immediately before that disposal [or at the time of the declaration of dividend]—

(aa) held more than 25 per cent of the equity share capital in that other foreign company; and

(bb) **[in the case of any disposal contemplated in subparagraph (i),]** held such interest contemplated in item (aa) for a period of at least 18 months prior to that disposal, unless that interest was acquired by the controlled foreign company from any other foreign company, where that controlled foreign company and that other foreign company form part of the same group of companies and that controlled foreign company and that other foreign company in aggregate held that interest for more than 18 months:

Provided that **[the provisions of subparagraph (i) shall not apply where that other foreign company is a foreign financial instrument holding company immediately before that disposal]** in determining the total equity share capital in a foreign company, there shall not be taken into account any

share which would have constituted an affected instrument, as contemplated in section 8E, but for the three year period requirement contained in that section.”;

- (r) by the deletion of subsection (11);
- (s) by the addition of the following subsection:

“(12) A resident who, together with any connected person in relation to that resident, holds at least 10 per cent but not more than 25 per cent of the or participation rights of a controlled foreign company may elect that all the provisions of subsection (9) shall not apply in respect of the net income determined for a relevant foreign tax year of any controlled foreign company in which that resident holds any participation rights.”.

Repeal of section 9E of Act 58 of 1962

. Section 9E of the Income Tax Act, 1962, is hereby repealed.

Repeal of section 9F of Act 58 of 1962

. Section 9F of the Income Tax Act, 1962, is hereby repealed.

Amendment of section 9G of Act 58 of 1962

. Section 9G of the Income Tax Act, 1962, is hereby amended—

- (a) by the substitution for subsections (1) and (2) of the following subsection:

“(1) For the purposes of this section 'foreign currency' means any currency [**which is not legal tender in**] other than currency of the Republic.

(2) [**Notwithstanding the provisions of section 25D,**] The amount to be included in the gross income of a person in respect of the

disposal by that person of any foreign equity instrument which constitutes trading stock, shall be **[determined by translating]** the amount received or accrued in any currency other than currency of the Republic in respect of that disposal translated into the currency of the Republic at the average exchange rate for the year of assessment during which that foreign equity instrument is disposed of.”;

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

“Any—

(a) expenditure incurred by a person in any foreign currency **[other than currency of the Republic]** in respect of any foreign equity instrument which is allowable as a deduction in terms of the provisions of this Act; or

(b) amount in any foreign currency **[other than currency of the Republic]** which is taken into account in the determination of the taxable income of any person in respect of any foreign equity instrument,

shall, for **[purposes of determining the taxable income of that person for]** the year of assessment in which that foreign equity instrument is disposed of, be translated into the currency of the Republic—

(i) in the case of a foreign equity instrument acquired before 1 October 2001, at the ruling exchange rate on 1 October 2001; or

(ii) in any other case, at the average exchange rate for the year of assessment during which—

(aa) in the case of paragraph (a), that expenditure was actually incurred by that person; or

(bb) in the case of paragraph (b), the expenditure which relates to the amount so taken into account was actually incurred by that person.”.

Amendment of section 10 of Act 58 of 1962

. Section 10 of the Income Tax Act, 1962, is hereby amended—

- (a) by the substitution in subsection (1) for the words in item (aa) of subparagraph (xv) of paragraph (i) preceding the proviso of the following words:

“so much of the aggregate of any foreign dividends [**contemplated in section 9E**] and interest received by or accrued to him or her from a source outside the Republic, which are not otherwise exempt from tax, as does not during the year of assessment exceed R1 000.”;

- (b) by the substitution in subsection (1) for the words in item (bb) of subparagraph (xv) of paragraph (i) preceding subitem (A) of the following words:

“(bb) so much of the aggregate of any interest received by or accrued to him or her from a source in the Republic and any dividends (other than foreign dividends [**contemplated in section 9E**]), which are not otherwise exempt from tax, as does not during the year of assessment exceed—”;

- (c) by the substitution in subsection (1) for words in subparagraph (i) of paragraph (k) preceding the proviso of the following words:

“dividends (other than foreign dividends) received by or accrued to or in favour of any person.”

- (d) by the deletion in subsection (1) of the word “or” at the end of item (cc) of the proviso to subparagraph (i) of paragraph (k);

- (e) by the deletion in subsection (1) of item (dd) of the proviso to subparagraph (i) of paragraph (k); and

- (f) by the addition in subsection (1) to paragraph (k) of the following subparagraph:

“(ii) so much of any foreign dividend received by or accrued to a person—

(aa) where that person (in the case of a company, together with any other company in the same group of companies as that person) holds more than 25 per cent of the total equity share capital in that company: Provided that—

- (i) in determining the total equity share capital in a company, there shall not be taken into account any share which—
- (aa) would have constituted an affected instrument, as contemplated in section 8E, but for the three year period requirement contained in that section; or
 - (bb) forms part of any scheme in terms of which any amount received or accrued by any person is exempt from tax while any corresponding expenditure is deductible by that person or by any connected person in relation to that person; and
- (ii) this exemption does not apply in respect of any foreign dividend received or accrued by virtue of the holding of any share contemplated in subparagraph (i):
- (bb) who is a resident and that foreign dividend is declared to that resident by a listed company which complies with paragraphs (a) and (b) of the definition of 'listed company' in section 1 and more than 10 per cent of the equity share capital in that listed company is at the time of the declaration of that foreign dividend held collectively by residents;
 - (cc) who is a resident to the extent that the foreign dividend does not exceed the aggregate of all amounts which have been or will be included in the income of that resident in terms of section 9D in any year of assessment, which relate to the net income of—
 - (A) the company declaring the dividend; or
 - (B) any other company which has been included in the income of that resident in terms of section 9D by virtue of that resident's participation rights in that

other company held indirectly through the company declaring the dividend,

reduced by so much of all foreign dividends received by or accrued to that resident at any time from any company contemplated in subitems (A) or (B), as was either exempt from tax in terms of this item or was not included in the income of that resident by virtue of any inclusion in terms of section 9D;”;

(dd) to the extent that the profits from which the foreign dividend is distributed—

(A) relate to any amount which has been or will be subject to tax in the Republic in terms of this Act, unless those profits have been or will be exempt or taxed at a reduced rate in the Republic as a result of the application of any agreement for the avoidance of double taxation; or

(B) arose directly or indirectly from any dividends declared by any company which is a resident;

(g) by the deletion of paragraph (kA) of subsection (1);

(h) by the substitution in subsection (1) for paragraph (A) of the proviso to subparagraph (ii) of paragraph (o) of the following paragraph:

“(A) for purposes of this subparagraph, a person who is in transit through the Republic between two places outside the Republic and who does not formally enter the Republic through a port of entry as **[defined]** contemplated in section 9(1) of the Immigration Act, 2002 (Act No. 13 of 2002), or does not enter at any other place in the case of a person authorised by the Minister in terms of section 31(2)(c) of that Act, shall be deemed to be outside the Republic; and”.

Amendment of section 11 of Act 58 of 1962

. Section 11 of the Income Tax Act, 1962, is hereby amended—

- (a) by the insertion after paragraph (bB) of the following paragraph:
“(bC) an amount of any interest actually incurred by a company in the production of the income of that company for the year of assessment in the form of foreign dividends: Provided that—
(i) this deduction shall be limited to the amount of those foreign dividends which are included in the income of that company during that year of assessment; and
(ii) any amount whereby that interest exceeds the amount of those foreign dividends as contemplated in subparagraph (i), must be reduced by the amount of any foreign dividends received by or accrued to that company during that year which are exempt from tax, and the balance shall be carried forward to the immediately succeeding year of assessment and be deemed to be an amount of interest actually incurred by that company during that succeeding year of assessment in the production of income in the form of foreign dividends.”;
- (b) by the insertion after paragraph (q) of the following paragraph:
“(r) notwithstanding section 23(g), at the election of that person, the amount of withholding tax on dividends proved to be payable in respect of any foreign dividend which is included in the gross income of that person: Provided that an election made by a person in terms of this paragraph applies in respect of all foreign dividends received by or accrued to that person during the year of assessment in respect of which the election was made.”.

Amendment of section 24I of Act 58 of 1962

- . Section 24I of the Income Tax Act, 1962, is hereby amended—
- (a) by the substitution in subsection (1) for paragraphs (b) and (c) of the definition of “local currency” of the following paragraphs:

- “(b) any resident in respect of an exchange item which is not attributable to a permanent establishment outside the Republic, **[any] the currency [which is legal tender in] of** the Republic; or
- (c) any person that is not a resident in respect of any exchange item which is attributable to a permanent establishment in the Republic, **[any] the currency [which is legal tender in] of** the Republic;”;

(b) by the substitution for subsection (9) of the following subsection:

“(9) For purposes of this section, any exchange item of a person contemplated in subsection (2), held by that person on 1 October 2001, other than in the course of trade of such person, shall be deemed to have been received, incurred, acquired or entered into, as the case may be, by that person on that date at the ruling exchange rate on that date for purposes of this section.”;

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

“(b) any controlled foreign company in relation to any exchange item contemplated in paragraph (a).”.

Substitution of section 25D of Act 58 of 1962

. The following section hereby substitutes section 25D of the Income Tax Act, 1962:

“Determination of taxable income in foreign currency

25D. (1) Unless expressly otherwise provided in this Act, the amount of any taxable income derived by a person during any year of assessment from amounts received by or accrued to, or expenditure incurred by, that person **[which are denominated]** in any currency other than the currency of the Republic, shall be determined—

[(a) in that currency; or]

[(b)](a) where **[that income is]** the amounts so received, accrued or incurred are attributable to a permanent establishment of that person outside the Republic, in the currency used by that permanent establishment for purposes of financial reporting (other than the currency of any country in the common monetary area); or

[and the amount so determined shall be translated to the currency of the Republic by applying the average exchange rate for that year of assessment];

(b) in any other case, in the currency in which the amounts so received or accrued or the expenditure so incurred is denominated.”;

(2) The amount of any taxable income for any year of assessment determined in terms of this Act in any currency other the currency of the Republic, must be translated to the currency of the Republic by applying the average exchange rate for that year of assessment.

Amendment of section 31 of Act 58 of 1962

. Section 31 of the Income Tax Act, 1962, is hereby amended by the deletion in subsection (1) of paragraph (d) of the definition of “international agreement”.

Amendment of section 64B of Act 58 of 1962

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

- (a) by the deletion in subsection (1) of the word “and” at the end of subparagraph (i) of paragraph (a) of the definition of “dividend cycle”;
- (b) by the insertion in subsection (1) after subparagraph (ii) of paragraph (a) of the definition of “dividend cycle” of the following subparagraphs:

- “(iii) the date on which that company was incorporated, formed or otherwise established; and
- (iv) the date on which that company becomes a resident.”;
- (c) by the substitution in subsection (1) for the words following paragraph (a) of the definition of “dividend cycle” of the following words:
“and ending on the date on which such first dividend accrues to the shareholder concerned or on which the amount is deemed to have been distributed as contemplated in section 64C(2)”;
- (d) by the substitution in subsection (1) for the words following subparagraph (ii) of paragraph (aA) of the definition of “dividend cycle” of the following words:
“and ending on the date on which such first dividend accrues to the shareholder concerned or on which the amount is deemed to have been distributed as contemplated in section 64C(2); and”;
- (e) by the substitution in subsection (1) for paragraph (b) of the definition of “dividend cycle” of the following paragraph:
“(b) in relation to any subsequent dividend declared by that company, the period commencing immediately after the previous dividend cycle of the company and ending on the date on which such dividend accrues to the shareholder concerned or on which the amount is deemed to have been distributed as contemplated in section 64C(2).”;
- (f) by the substitution for the words in subsection (3) preceding the proviso of the following words:
“The net amount of any dividend referred to in subsection (2) shall be the amount by which such dividend declared by a company exceeds the sum of any dividends (other than any dividends contemplated in subsection (5)(b), (c), (d), **[and] (f) and (j)** or any foreign dividends **[as defined in section 9E]**, but including foreign dividends **[which] to the extent that those foreign dividends** are exempt in terms of **[section 9E(7)(c), (d), (e)(ii), (iii) or (iv) or (f), or section 9E (8A)]** section 10(1)(k)(ii)(dd)), which have during the dividend cycle in relation to such firstmentioned dividend accrued to the company.”;

- (g) by the substitution in subsection (4) for the words in paragraph (c) preceding subparagraph (i) of the following words:
“Where any cash or assets is or are **[given]** transferred or distributed—”;
- (h) by the substitution in subsection (5) for subparagraph (ii) of paragraph (c) of the following subparagraph:
“(ii) distribution of profits of a capital nature (other than capital profits attributable to the disposal of any asset on or after 1 October 2001 which capital profits must, in the case of an asset acquired before that date, be limited to the amount of profit determined as if that asset had been acquired on 1 October 2001 for a cost equal to the market value of that asset on that date **[as]** determined in the manner contemplated in paragraph 29 of the Eighth Schedule): Provided that where that company became a resident after 1 October 2001, the capital profits in respect of an asset acquired before becoming a resident, must be limited to the amount of profit determined as if that asset had been acquired on the date of so becoming a resident for a cost equal to the market value of that asset on that date; or”;
- (i) by the addition in subsection (5) to paragraph (c) of the following subparagraph:
“(iii) distribution of profits derived by that company before that company become a resident.”;
- (j) by the substitution in subsection (5) for the words preceding subparagraph (i) of paragraph (f) of the following words:
“(f) any dividend declared by a company which accrues to a shareholder (as defined in Part III) of that company if—”;
- (k) by the substitution in subsection (5) for subparagraphs (i) and (ii) of paragraph (f) of the following subparagraph:
“(i) that shareholder is a controlling group company **[forming part of the same group of companies as]** in relation to the controlled group company declaring the dividend;

- (ii) to the extent that the dividend declared by that controlled group company is derived out of profits earned by **[the company declaring the dividend]** that company during any period when that company **[formed part of the same group of companies as the shareholder]** was a controlled group company in relation to the company to whom the dividend **[was declared]** accrued”;
- (l) by the addition to subsection (5) of the word “and” at the end of subparagraph (iii);
- (m) by the deletion in subsection (5) of subparagraph (iv) of paragraph (f);
- (n) by the addition in subsection (5) to paragraph (f) of the following proviso:

“Provided that for purposes of this paragraph, where that shareholder company was formed solely by one or more companies within that group of companies, that shareholder company must be deemed to have been in existence from the date on which the controlling company in relation to that shareholder company was formed.”;

- (o) by the deletion of subsection (6);
- (p) by the substitution in subsection (7) for the words preceding the proviso of the following words:

“(7) The secondary tax on companies shall be paid to the Commissioner by the company liable therefore[—

(a) where such tax is payable in respect of any dividend declared on or before 30 June 1993-

- (i) if a year of assessment of the company ended during the period from 1 December 1992 to 31 March 1993, by not later than 31 December 1993; and**

(ii) in any other case, by not later than 31 July 1993; and

(b) where such tax is payable in respect of any dividend declared after 30 June 1993,] by not later than the last day of the month following the month in which the dividend cycle relevant to such dividend ends and each payment of such tax shall be accompanied by a return in such form as the Commissioner may require.”;

(q) by the deletion of subsection (10).

(2) Subsection (1)(o) shall come into operation on 1 July 2005 and shall apply in respect of any dividend declared on or after that date.

Amendment of section 64C of Act 58 of 1962

. Section 64C of the Income Tax Act, 1962, is hereby amended—

(a) by the deletion in subsection (1) of the definition of “recipient”;

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

“(2) For the purposes of section 64B, **[any] an amount [which is in terms of subsection (3) deemed to have been distributed by a company]** shall, subject to the provisions of subsection (4), be deemed to be a dividend declared by such company **[out of that company’s profits (determined in respect of the most recent year of assessment and which are available for distribution), to a shareholder, where that shareholder]** to a shareholder, where—

(a) **[receives a deemed distribution as contemplated in subsection (3); or] any cash or asset is distributed or transferred by the company to or for the benefit of that shareholder or any connected person in relation to that shareholder;**

(b) **[is a connected person in relation to any person who receives a deemed distribution as contemplated in subsection (3),] the shareholder or any connected person in relation to that shareholder is released or relieved from any obligation measurable in money which is owed to the company by that shareholder or connected person;**

(c) any debt owed by the shareholder or any connected person in relation to that shareholder to any third party is paid or settled by the company;

(d) any amount is used or applied by the company in any other manner for the benefit of the shareholder or any connected person in relation to that shareholder;

(e) that amount represents additional taxable income or reduced assessed loss of that company by virtue of any transaction with the shareholder which is a resident or connected person in relation to such a shareholder, the consideration of which is adjusted in accordance with the provisions of section 31; or

(f) any loan or advance is granted and made available to that shareholder or connected person in relation to that shareholder

[notwithstanding the fact that such amount may have been so distributed by way of a loan or credit to the recipient or that the recipient may in consequence of such distribution have assumed any other form of obligation to make a future payment to the company];”;

(c) by the deletion of subsection (3);

(d) by the substitution in subsection (4) for the words preceding paragraph (a) of the following words:

“(4) The provisions of subsection **[(3)] (2)** shall not apply—”;

(e) by the substitution in subsection (4) for paragraphs (a) and (b) of the following paragraphs:

“(a) where the **[distribution of such]** amount constitutes a dividend or would have constituted a dividend but for the provisions of paragraphs (e) to (i), inclusive, of the definition of ‘dividend’ in section 1;

(b) where such amount **[distributed]** constitutes remuneration in the hands of the **[recipient]** shareholder or any connected person in relation to that shareholder or the settlement of any debt owed by the company to the **[recipient]** shareholder or connected person;”;

(f) by the substitution in subsection (4) for the words in paragraph (c) preceding the proviso of the following words:

“(c) to so much of any **[such]** amount **[distributed]** (other than an amount contemplated in subsection **[(3)](2)(e)**) as exceeds the company’s profits and reserves which are available for distribution, including any amount deemed in terms of the

definition of 'dividend' in section 1 to be a profit available for distribution.”;

(g) by the substitution in subsection (4) for paragraphs (d) and (e) of the following paragraphs:

“(d) to any loan granted in respect of which a rate of interest not less than the 'official rate of interest', as defined in paragraph 1 of the Seventh Schedule is payable by the **[recipient]** shareholder or any connected person in relation to the shareholder;

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

(h) by the substitution in subsection (4) for the words in paragraph (f) preceding subparagraph (i) of the following words:

“(f) to any loan or credit granted to a **[recipient]** shareholder of the company or any connected person in relation to the shareholder during any year of assessment, if—”;

(i) by the substitution in subsection (4) for subparagraph (ii) of paragraph (f) of the following subparagraph:

“(ii) the amount thereof is not included in any subsequent loan or credit granted to the **[recipient]** shareholder or any connected person in relation to the shareholder; and”;

(j) by the substitution in subsection (4) of paragraph (h) of the following paragraph:

“(h) to a **[loan]** distribution or transfer made by—

(i) any controlling group company to **[any other]** controlled group company; or

(ii) a company to any other company within the same group of companies (otherwise than as contemplated in

- subparagraph (i)), if that [loan is utilised by that other company in the Republic] other company is a resident;”;
- (k) by the deletion in subsection (4) of the word “and” at the end of paragraph (i);
- (l) by the substitution in subsection (4) for paragraph (j) of the following paragraph:
- “(j) to any loan granted to any **[recipient] shareholder or connected person in relation to the shareholder**, which is a company by any other company which holds for its own benefit, whether directly or indirectly, any of the equity share capital of such **[recipient company] shareholder or connected person**: Provided that the provisions of this paragraph shall not apply where such **[recipient company] shareholder or connected person** holds any of the equity share capital in such other company; and.”;
- (m) by the addition to subsection (4) of the following paragraph:
- “(k) to any amount deemed to have been distributed by a company as contemplated in subsection (2)(a), (b), (c), (d) or (f) to a shareholder or any connected person in relation to the shareholder, which is a resident—
- (i) if that shareholder is a controlling group company in relation to the company which is deemed to have distributed that amount; and
- (ii) to the extent that the amount of the profits and reserves available for distribution that was taken into account in terms of section 64C(4)(c) were derived during the period that the shareholder was a controlling group company in relation to that company.”;
- (n) by the substitution in subsection (5) for the words preceding paragraph (a) of the following words:
- “(5) Where any loan granted by a company to a **[recipient] shareholder or any connected person in relation to the shareholder—**”;
- (o) by the substitution in subsection (5) for paragraph (b) of the following paragraph:

“(b) is thereafter wholly or partly repaid by the **[recipient]** shareholder or connected person,”;

(p) by the addition of the following subsection:

“(6) For purposes of this section and section 64B, the dividend contemplated in subsection (2)(a), (b), (c), (d) and (f) shall respectively be deemed to have been declared by the company on the date that the cash or asset is distributed or transferred, the obligation is released or relieved, the debt is paid or settled, the amount is used or applied or the loan or advance is made available, as the case may be.”.

Amendment of section 70 of Act 58 of 1962

. Section 70 of the Income Tax Act, 1962, is hereby amended by the deletion in subsection (2) of paragraph (b).

Substitution of section 72A of Act 58 of 1962

. The following section hereby substitutes section 72A of the Income Tax Act, 1962:

“Return [as to participation right in] relating to controlled foreign company

72A. (1) Every resident who on the last day of the foreign tax year of a controlled foreign entity or immediately before a foreign company ceases to be a controlled foreign company directly or indirectly, together with any connected person in relation to that resident, holds at least 10 per cent of the participation rights in any controlled foreign company, must submit to the Commissioner together with the return contemplated in section 66 in respect of that year of assessment a return containing—

- (a) the name, address and country of residence of the controlled foreign company;
- (b) a description of the various classes of participation rights in that controlled foreign company;
- (c) the percentage and class of participation rights held by the resident, whether directly, indirectly or together with connected persons and any such rights held by all connected persons;
- (d) the rights of that person to participate in—
 - (i) any dividends of that controlled foreign company; and
 - (ii) any distribution upon the liquidation of that controlled foreign company,and any such rights of all connected persons;
- (e) the determination of the net income of the controlled foreign company and the calculation of the proportional amount relating thereto;
- (f) a description of any amount of tax proved to be payable by that controlled foreign company to the government of any other country in respect of any income contemplated in paragraph (d), including particulars relating to the country in which that tax was payable and the underlying profits to which that foreign tax relates.

(2) A resident must together with the return contemplated in subsection (1), submit a copy of the financial statements of the controlled foreign company (prepared in accordance with generally accepted accounting practice) for the foreign tax year of that controlled foreign company which ends during that year of assessment of that resident.

(3) Where a person in respect of any year of assessment fails to comply with the provisions of—

- (a) subsection (1)(c) in respect of the participation rights held in any controlled foreign company and no reasonable grounds exist for that person to believe that such person was not subject to that requirement—

- (i) that person shall be deemed to hold all the participation rights in that controlled foreign company for purposes of section 9D, unless that person proves otherwise;
- (ii) the exclusions contemplated in section 9D(9) shall not apply in determining the proportional amount of the net income of that controlled foreign company which must be included in the income of that person in terms of section 9D; and
- (iii) the provisions of section 6quat shall not apply in respect of any tax proved to be payable to the government of any other country with respect to the proportional amount of the net income of that controlled foreign company which is included in the income of that person in terms of section 9D; or

(b) subsection (2) and no reasonable grounds exist for that failure which are outside the control of the person—

- (i) the proportional amount which must be included in the income of that person in terms of section 9D for that year shall be determined with reference only to the receipts and accruals of the controlled foreign company; and
- (ii) the provisions of section 6quat shall not apply in respect of any tax proved to be payable to the government of any other country with respect to the proportional amount of the net income of that controlled foreign company which is included in the income of that person in terms of section 9D.”.

Amendment of paragraph 1 of Eighth Schedule to Act 58 of 1962

. Paragraph 1 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended by the substitution for the definition of “foreign currency” of the following definition:

“foreign currency’ means any currency **[which is not legal tender in other than currency of the Republic;”**.

Amendment of paragraph 12 of Eighth Schedule to Act 58 of 1962

. Paragraph 12 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended by the substitution in subparagraph (2) for item (a) of the following item:

“(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);”.

Amendment of paragraph 19 of Eighth Schedule to Act 58 of 1962

. Paragraph 19 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended—

- (a) by the substitution for subparagraph (2) of the following subparagraph:
“(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]** company within the same group of companies as the company distributing the dividends and all the companies in that group of companies are residents.”;
- (b) by the substitution in subparagraph (3) for subitem (i) of item (b) of the following subitem:
“(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)]** 10(1)(k)(ii)(cc).”;
- (c) by the deletion of paragraph (d) of subparagraph (3).

Amendment of paragraph 20 of Eighth Schedule to Act 58 of 1962

. Paragraph 20 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended by the substitution for subitem (iii) of item (h) of subparagraph (1) of the following subitem:

“(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)] 10(1)(k)(ii)(cc)**; or”.

Amendment of paragraph 43 of Eighth Schedule to Act 58 of 1962

. Paragraph 43 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended—

(a) by the substitution for subparagraph (1) of the following subparagraph:

“(1) Subject to subparagraph (4), where a person during any year of assessment disposes of an asset for proceeds **[denominated]** in a **[foreign]** currency other than currency of the Republic 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(2).”;

(b) by the substitution for subparagraph (2) of the following subparagraph:

“(2) **[Despite section 25D,]** Where a person disposes of an asset, (other than an asset contemplated in **[subsection] subparagraph (4)**), for proceeds which are either received or accrued or denominated for purposes of financial reporting of a permanent establishment of that person in any currency (hereinafter referred to as the ‘currency of disposal’) after having incurred expenditure in respect of that asset which is either actually incurred or denominated for purposes of financial reporting in another currency (hereinafter referred to as the ‘currency of expenditure’), that person must for purposes of determining the capital gain or capital loss on the disposal of that asset—

(a) where the currency of expenditure is actually incurred or denominated in the local currency, translate the proceeds into the local currency at the average exchange rate for that year of assessment during which that asset was disposed of;

(b) where the currency of disposal is received or accrued or 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,

and must translate the amount of the capital gain or loss in accordance with the provisions of section 25D.”;

- (c) by the substitution in subparagraph (4) for the words preceding item (a) of the following words:

“**[Despite section 25D,]** Where a person during any year of assessment disposes of any—”;

- (d) by the substitution in subparagraph (4) for item (b) of the following item:

“(b) asset the capital gain or capital 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),”;

- (e) by the substitution in subparagraph (4) for item (ii) of the following item:

“(ii) the expenditure incurred in respect of that foreign equity instrument or that asset, as the case may be, into the currency of the Republic at the average exchange rate for the year of assessment during which that expenditure was incurred.”;

- (f) by the substitution in subparagraph (5) for item (b) of the following item:

“(b) the base cost of the person acquiring that asset must for purposes of paragraphs 12, 38 and 40**[, 42 and 67]** be treated as being denominated in that currency.”;

- (g) by the insertion after subparagraph (5) of the following subparagraph:

“(5A) Where paragraph 12(5) applies in respect of any debt owed by a person in any foreign currency, the base cost of the claim which is treated as having been acquired by that person in terms of paragraph 12(5)(b)(i) must be treated as being denominated in that foreign currency.”;

(h) by the substitution in subsection (7) for paragraph (a) of the definition of “local currency” of the following paragraph:

“(a) in relation to a permanent establishment of a person, the currency used by that permanent establishment for purposes of financial reporting (other than the currency of any country in the common monetary area).”

Amendment of paragraph 67 of Eighth Schedule to Act 58 of 1962

. Paragraph 67 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended by the substitution in subparagraph (1) for subitem (iii) of item (b) of the following subitem:

“(iii) incurred that expenditure on the same date and in the same currency that it was incurred by the transferor; and”.

Amendment of paragraph 84 of Eighth Schedule to Act 58 of 1962

. Paragraph 84 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended by the substitution for the definition of “foreign currency” of the following definition:

“foreign currency’ means any currency **[which is not legal tender in]** other than the currency of the Republic.”

Amendment of paragraph 86 of Eighth Schedule to Act 58 of 1962

. Paragraph 86 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended by the insertion in subparagraph (1) of the following words after item (b):

“reduced by any 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.”.

Amendment of paragraph 88 of Eighth Schedule to Act 58 of 1962

. Paragraph 88 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended—

(a) by the substitution for subparagraph (1) of the following subparagraph:
“(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]** were held and not disposed of by that person before that date.”;

(b) by the substitution for subparagraph (2) of the following subparagraph:
“(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.”.

Amendment of paragraph 92 of Eighth Schedule to Act 58 of 1962

. Paragraph 92 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended by the substitution for subparagraph (a) of the following subparagraph:

“(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]**".

Amendment of paragraph 93 of Eighth Schedule to Act 58 of 1962

. Paragraph 93 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended—

- (a) by the substitution in subparagraph (3) for item (c) of the following item:
“(c) acquire any foreign equity instrument or any asset in local currency as contemplated in paragraph 43(4); or”; and
- (b) by the addition of the following subparagraph:
“(4) Where a person incurred any liability before the valuation date, that person must, for purposes of this paragraph be treated as having incurred that liability on the valuation date.”.

Commencement dates of provisions to be determined.