

**CAPITAL GAINS TAX:**

*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.*

*Comments may be submitted to either:*

*Ms. Michelle Franks*

*E-mail: [michelle.franks@treasury.gov.za](mailto:michelle.franks@treasury.gov.za)*

*Fax No.: (012) 323-2917*

*or*

*Ms. Christell Brodrick*

*E-mail: [cbrodrick@sars.gov.za](mailto:cbrodrick@sars.gov.za)*

*Fax No.: (012) 422-5192*

**Amendment of paragraph 2 of the Eighth Schedule to Act 58 of 1962**

. Paragraph 2 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended by the substitution in subparagraph (1) for the words preceding item (a) of the following words:

“(1) Subject to paragraph **[86]** 97, this Schedule applies to the disposal on or after valuation date—“

**Income Tax: Amendment of paragraph 2 of the Eighth Schedule to the Income Tax Act, 1962**

This proposed amendment is of a textual nature and changes a cross reference as a result of the introduction of Part XIII of the Schedule.

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

. Paragraph 12 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) 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]** an amount received or accrued 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).”.

(b) by the substitution in subparagraph (5) for the words following subitem (ii) of item (a) of the following:

“but does not apply where—

(aa) the amount of that reduction or discharge constituted—

(A) a capital gain in terms of paragraph 3(b)(ii); or

(B) has been taken into account in terms of section 20(1)(a)(ii) or paragraph 20(3): or

(bb) that person and that creditor are members of the same group of companies unless—

(A) that debt (or any substituted debt) was acquired directly or indirectly from a person who is not a member of that group of companies; or

(B) that person or another person became members of that group of companies after that debt (or any substituted debt) arose; and

these transactions were part of a scheme to avoid any tax otherwise imposed by virtue of this subparagraph.”.

***Income Tax: Amendment of paragraph 12 of the Eighth Schedule to the Income Tax Act, 1962***

*Subclause (a):* Paragraph 12 deems certain events to be disposals, for example, cessation of residence or conversion of capital assets to trading stock. When these events occur the person is treated as having disposed of his/her assets for proceeds equal to their market value and to have reacquired those assets at that same market value.

The reference to proceeds in paragraph 12(1) has caused some uncertainty, because in some cases the market value of the asset would include amounts that are subject to tax as ordinary income. In terms of paragraph 35(3)(a) proceeds normally excludes such amounts. However, by stating that proceeds are equal to market value the provisions of paragraph 35(3)(a) are bypassed and the result is double taxation. Our courts have held that there is a ‘necessary implication’ in the Act against double taxation, and this can be used to address the problem. It is proposed to eliminate any uncertainty by

replacing the word 'proceeds' with the term 'amount received or accrued'. This makes it clear that the provisions of paragraph 35(3)(a) must still be applied to the amount of the deemed receipt or accrual.

### **Example**

On 1.3.03 John buys a government bond for R100 when the prevailing interest rate is 10%. He earns R5 in interest every six months on 31 August and 28 February. On 27.02.04 John emigrates when prevailing interest rates are 5%. As a result of the decline in interest rates the market value of the bond has increased to R200. The market value of his instrument including the accrued interest is R205 (R200 capital plus R5 accrued interest). As the law stands the "proceeds" are R205 and the capital gain is  $R205 - 100 = R105$ . In terms of the proposed amendment the proceeds will be  $R205 - R5 = R200$  and the capital gain will be  $R200 - R100 = R100$ .

*Subclause (b):*

### **Amendment of paragraph 19 of the 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 the company distributing the dividends]** were declared by a company to a shareholder (as defined in Part III of the Act) which forms part of the same group of companies as the company declaring the dividend.”

(b) by the deletion of item (d) of subparagraph (3).

### ***Income Tax: Amendment of paragraph 19 of the Eighth Schedule to the Income Tax Act, 1962***

*Subclauses (a) and (b):* These proposed amendments are of a consequential nature. In the paragraph use is made of the phrases “holding company” and “intermediate company” and they have the same meaning as these phrases in section 64B of the Income Tax Act. The phrase “holding company” in section 64B was deleted in 2002 and a new definition of “group of companies” was introduced in section 1 of the Act. The proposed amendments bring the paragraph in line with the new definition.

### **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 in item (g) of paragraph (1) of the words preceding subitem (i) of the following words:

“(g) the following amounts actually incurred as expenditure directly related to the cost of ownership of the 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—“

***Income Tax: Amendment of paragraph 20 of the Eighth Schedule to the Income Tax Act, 1962***

This amendment is of a textual nature to bring the wording in line with the definition of “recognised exchange”.

**Amendment of paragraph 27 of Eighth Schedule to Act 58 of 1962**

. (1) Paragraph 27 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended—

(a) by the substitution for subparagraph (3) of the following subparagraph:

“(3) Where—

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

**[(a)]** (b) the expenditure allowable in terms of paragraph 20 incurred by that person 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**

**(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.]**

(b) by the substitution for subparagraph (4) of the following subparagraph:

“(4) Where the provisions of subparagraph (3) do not apply, the valuation date value of that asset, contemplated in subparagraph (1), is the time-apportionment base cost of that asset, as contemplated in paragraph 30.”

(2) Subsection (1) shall be deemed to have come into operation on 1 October 2001.

***Income Tax: Amendment of paragraph 27 of Eighth Schedule to the Income Tax Act, 1962***

Paragraph 27 prescribes the method to determine the valuation date value of an asset where—

- the asset was acquired before valuation date;
- proceeds do not exceed expenditure, allowable in terms of paragraph 20, incurred before and after the valuation date.

*Subclause (a):*

Paragraph 27(3)(b) deals with the situation where paragraph 27(3)(a) does not apply. That situation occurs where—

- the asset is sold for proceeds less than or equal to its cost, and
- the market value on valuation date is equal to or greater than the pre-CGT cost of the asset.

Under these conditions the valuation date value of the asset is the lower of the market value and the time apportionment base cost (TAB) of the asset.

It has, however, been found that TAB will always be lower than market value, and as a result the reference to market value is superfluous. The technical explanation for this is as follows:

TAB is determined in accordance with the formula

$$Y = B + [(P - B) \times N/N + T]$$

Where

B = expenditure incurred before the valuation date

P = Proceeds generated by pre-CGT expenditure

N = Number of years before valuation date

T = Number of years after valuation date

Simply put, the valuation date value (TAB) is arrived at by adding a pre-CGT gain to the pre-CGT expenditure. A pre-CGT loss would, of course, be deducted.

In order for TAB to be greater than market value,  $P - B$  in the TAB formula it would have to be a positive figure (in other words, a gain). When an asset is sold for proceeds less than or equal to cost – a requirement for entry into paragraph 27,  $P - B$  will always be either zero (where proceeds = B) or a negative figure (where P is less than B). It is therefore evident that TAB can never exceed market value where market value is greater than pre-CGT expenditure and the asset is sold at or below cost. Paragraph 27(3)(b) is therefore superfluous and it is proposed that it be deleted. Under this proposal situations not covered by the existing paragraph 27(3)(a) will be dealt with under paragraph 27(4) which requires that TAB be used.

In summary, the deletion of paragraph 27(3)(b) is simply a technical amendment designed to remove superfluous wording. It has no impact on the way in which the provision was applied previously.

*Subclause (b):* The proposed amendment to subparagraph (4) is to restrict its operation to an asset contemplated in subparagraph (1).

It is proposed that these amendments be deemed to have come into operation on 1 October 2001.

#### **Amendment of paragraph 30 of Eighth Schedule to Act 58 of 1962**

. Paragraph 30 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended by the substitution for the first formula in subparagraph (4) of the following formula:

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

#### ***Income Tax: Amendment of paragraph 30 of Eighth Schedule to the Income Tax Act, 1962***

This amendment corrects a printing error, by the insertion of a bracket after “B<sub>1</sub>” in the first formula in subparagraph (4).

#### **Amendment of paragraph 33 of the Eighth Schedule to Act 58 of 1962**

. Paragraph 33 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 subparagraphs (2), (3), **[and]** (4) and (5), 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.”.
- (b) by the deletion in item (a) of subparagraph (3) of the word “and” at the end of item (a);
- (c) by the insertion in item (b) of subparagraph (3) of the word “and” at the end of item (b);
- (d) by the addition to subparagraph (3) of the following item: and
  - “(c) the improving or enhancing of a leased asset.”.
- (e) by the addition of the following subparagraph;
  - “(5) When determining the time-apportionment base cost of the part of an asset that has been disposed of, any reference to base cost in this paragraph must be treated as meaning the expenditure allowable in terms of paragraph 20 in respect of that asset.”.

**Income Tax: Amendment of paragraph 33 of Eighth Schedule to the Income Tax Act, 1962**

Paragraph 33 prescribes rules for determining the base cost of assets when a part of the asset is disposed of.

*Subclauses (a) to (d):* Persons who lease assets, such as fixed property, and who have effected improvements to the property, have interpreted the Eighth Schedule as allowing them to claim as a capital loss the bare dominium of the cost of the improvements in the year that they are effected. The argument advanced is that although they will have use of the asset they lose the ownership of the asset when it is affixed to the property. The purpose of the proposed amendment is to clarify the position that the bare dominium of the cost of any asset used to improve a leased asset cannot be claimed as a capital loss as a part disposal when the improvement is effected. The cost of improvements to the leased asset qualifies as part of the base cost in terms of paragraph 20 and will be brought into account for capital gains tax purposes on the termination of the lease.

**Example**

Grocer (Pty) Ltd enters into a 10 year lease for a shop and spend R100 000 on the shop front and fixtures on which no income tax allowances can be claimed. The bare dominium of the improvements calculated over a period of 10 years is R32 198 which the company wishes to claim as a capital loss in the year the improvements are effected. In terms of the proposed amendment the expenditure will form part of the base cost of the asset i.e. the lease and if on termination of the lease no compensation for the improvements is received the capital loss will be allowed at the expiry of the lease.

*Subclause (e):* Paragraph 33 does not cater for the determination of the time-apportionment base cost of the part of the asset disposed of as the different subparagraphs refer to “base cost” and not to “expenditure” incurred to acquire the asset. It is proposed that the paragraph be amended to cater for the use of the time-apportionment base cost method of determining the base cost.

**Amendment of paragraph 39 of Eighth Schedule to Act 58 of 1962**

. Paragraph 39 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended by the substitution for subsection (1) of the following subsection:

“(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 person—

(a) who was a connected person in relation to that person immediately before that disposal; or

(b) which is—

(i) a member of the same group of companies as that person; or

(ii) a trust with a beneficiary which is a member of the same group of companies as that person,

immediately after that transaction, subject to subparagraph (3).”.

***Income Tax: Amendment of paragraph 39 of Eighth Schedule to the Income Tax Act, 1962***

Paragraph 39 provides that a person must disregard capital losses determined in respect of the disposal of an asset to a connected person. It is proposed that this provision be extended to also cover capital losses determined in respect of the disposal of any asset to—

- a company which is a member of the same group of companies as that person, and
- a trust with a beneficiary which is a member of the same group of companies as the person as immediately after the transaction.

This would, for example, include disposal of an asset to a company in terms of a company formation transaction, where that person receives shares in exchange for that asset.

**Amendment of paragraph 43 of the 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 in subparagraph (2) for the words preceding item (a) of the following words:

“(2) Despite section 25D, where a person disposes of an asset, (other than an asset contemplated in **[subsection] subparagraph** (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 for purposes of determining the capital gain or capital loss on the disposal of that asset—“

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

“(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),”

- (a) by the substitution of subitem (ii) of item (b) of subparagraph (4) for the following subitem:

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

***Income Tax: Amendment of paragraph 43 of Eighth Schedule to the Income Tax Act, 1962***

*Subclause (a):* The amendment is of a textual nature.

*Subclause (b):* Paragraph 43 provides rules for the translation of expenditure incurred in a foreign currency and proceeds received or accrued in a foreign currency for assets other than foreign currency which is dealt with in Part XIII of the Schedule. Paragraph 43(4) deals specifically with the position of capital gains and losses arising from the disposal of—

- foreign equity instruments, which is a defined term and essentially means foreign liquid assets, and
- assets the capital gains or losses of which are derived or deemed to be derived from a source in the Republic as contemplated in section 9(2).

The purpose of the paragraph is to bring the capital gain or loss on the disposal of these assets as well as the capital gain or loss as a result of the currency fluctuation to account on disposal of the asset. The exclusion of assets contemplated in section 9(2)(b)(i) from the operation of paragraph 43(4) had the unintended consequence that a resident could acquire and dispose of South African source assets in foreign currency and thereby escape CGT on any gains attributable on the depreciation of the rand. It is proposed that that this unintended consequence be rectified.

*Subclause (c):* As explained in subclause (b) above the subparagraph deals with two types of assets and as a result of a textual error only one type of asset is mentioned in paragraph 43(4)(b)(ii) and it is proposed that this error be corrected.

***Amendment of paragraph 55 of the Eighth Schedule to Act 58 of 1962***

. Paragraph 55 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended—

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

“(b) in respect of any policy, where that person is or was 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);”;

(b) by the substitution for the words preceding subitem (i) of item (c) of subparagraph (1) of the following words:

“(c) in respect of a policy that was taken out to insure against the death, disability or severe illness of that person by any other person who was a partner of that person, or held any shares or similar interest in a company in which that person held any share or similar interest, for the purpose of enabling that person to acquire, upon the death, disability or severe illness of that person, the whole or part of—“.

***Income Tax: Amendment of paragraph 55 of Eighth Schedule to the Income Tax Act, 1962***

Paragraph 55 prescribes the circumstances in which the capital gains or losses on the disposal of long-term policies are disregarded. As a general rule the capital gains or losses determined in respect of second hand policies are subject to CGT but there are certain exceptions.

*Subclause (a):* Item (b) provides for the situation where an employer has taken out a policy on the life of an employee and paid the premiums on the policy which were deductible in terms of section 11(w). The policy is ceded to the employee normally when the employee leaves the services of the employer and the value of the policy is taxable as ordinary income in the hands of the employee. This is technically a second hand policy but in terms of the item any capital gain or loss on this disposal is disregarded. Concern has been expressed that the wording may exclude persons who are not employees on the date of disposal of the policy and it is proposed that this matter be clarified.

Item (c) of subparagraph (1) provides for the situation where a person takes out a policy to insure against the death of a partner or co-shareholder so that he or she can acquire the interest in the partnership or shares or similar interest in the company of if the partner or co-shareholder dies. If the partnership is disbanded or the person is no longer a shareholder the policy may be ceded to the person whose life was insured and this paragraph provides that any capital gain when the policy pays out is disregarded. As the item is worded it only operates on the death of the person insured and it was intended also to apply in the circumstances where the insured became disabled or severely ill. It is proposed that the wording be changed to give effect to what was intended.

***Substitution of paragraph 62 of Eighth Schedule to Act 58 of 1962***

. The following paragraph is hereby substituted for paragraph 62 of the Eighth Schedule to the Income Tax Act, 1962:

***“Donations and bequests to public benefit organizations and exempt persons***

**62.** A person must disregard a capital gain or capital loss determined in respect of the donation or bequest of an asset by that person to—

- (a) the Government or any provincial administration;
- (b) a public benefit organisation exempt from tax in terms of section 10(1)(cN);
- (c) a person approved by the Commissioner in terms of section 10(1)(cA) or (d); or
- (d) a person referred to in section 10(1)(b), (cE) or (e).”.

***Income Tax: Substitution of paragraph 62 of Eighth Schedule to the Income Tax Act, 1962***

Paragraph 62 disregards capital gains and capital losses that are determined in respect of any donation or bequest to a public benefit organisation approved by the

Commissioner in terms of section 30 of the Income Tax Act. It is proposed that this concession be extended to donations and bequest to the three levels of Government and tax exempt bodies and organisation which operate for the good of the general public. It is proposed that capital gains and losses arising from donations and bequests to the following bodies be disregarded.

- the Government or any provincial administration;
- any local authority;
- any approved institution, board or body established by or under any law which—
  - conducts scientific, technical or industrial research;
  - provides necessary or useful commodities, amenities or services to the State or general public;
  - carries on activities designed to promote commerce, industry or agriculture; and
  - any company owned by any such institution, board or body;
- any approved pension, provident, retirement or benefit fund, mutual loan association, fidelity or indemnity fund, trade union, chamber of commerce or industry, local publicity association, non-proprietary;
- any approved company, society or association established to—
  - provide social and recreational amenities or facilities to members of the entity;
  - promote the common interests of persons carrying on any particular type of business, profession or occupation;
- any South African political party;
- any body corporate established in terms of the Sectional Titles Act;
- any share block company established in terms of the Share Blocks Control Act;
- any association of persons including section 21 companies—
  - formed solely for the purpose of managing the collective interests common to all members; and
  - it is not permitted to distribute any of its funds to any person other than a similar association of persons.

#### **Substitution of paragraph 63 of Eighth Schedule to Act 58 of 1962**

. The following paragraph is hereby substituted for paragraph 63 of the Eighth Schedule to the Income Tax Act, 1962:

##### **“Exempt persons**

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

***Income Tax: Substitution of paragraph 63 of Eighth Schedule to the Income Tax Act, 1962***

Paragraph 63 seeks to disregard all capital gains and losses in respect of the disposals by persons that are exempt from tax in terms of section 10 on any receipt or accruals that are received by or accrue to them. The proposed changes are to ensure that this is achieved.

**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 for item (a) of subparagraph (1) of the following item:

“(1) (a) Subject to subparagraph [3] (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”).”.

***Income Tax: Substitution of paragraph 67 of Eighth Schedule to the Income Tax Act, 1962***

The amendment is of a textual nature.

**Insertion of paragraph 67B of Eighth Schedule to Act 58 of 1962**

. (1) The following paragraph is hereby inserted in the Eighth Schedule to the Income Tax Act, 1962, after paragraph 67A:

**“Transfer of a unit by a share block company to its member**

**67B.** (1) Where any company which operates a share block scheme as contemplated in section 1 of the Share Blocks Control Act, 1980 (Act No. 59 of 1980), transfers a unit in immovable property in terms of Item 8 of Schedule 1 to that Act to a person who holds a share in that company,—

- (a) that company must disregard any capital gain or capital loss determined in respect of that disposal of that unit to that person, and
- (b) that person must disregard any capital gain or capital loss determined in respect of the disposal of that share.

(2) Where a person who held a share in a share block company acquires a unit in the circumstances contemplated in subparagraph (1), that person must be treated as having—

- (a) acquired that unit for an amount equal to the expenditure contemplated in paragraph 20 incurred by that person in acquiring that share;

- (b) effected improvements to that unit for an amount equal to the expenditure contemplated in paragraph 20 incurred by that person in effecting improvements to the immovable property in respect of which that person had a right of use as a result of the ownership of that share;
- (c) acquired that unit on the date that that share was acquired;
- (d) incurred the amount of expenditure contemplated in paragraph 20 on the same date that it was incurred by that person to acquire that share and improve that immovable property , and
- (e) used that unit in the same manner as that person used the immovable property in respect of which that person had a right of use as a result of the ownership of that share; and
- (f) adopted or determined the market value as contemplated in paragraph 29(4) as the valuation date value of that unit, for an amount equal to the market value adopted or determined by that person in terms of that paragraph for that share.

(2) Subsection (1) shall be deemed to have come into operation on 1 October 2001.

***Income Tax: Insertion of paragraph 67B of Eighth Schedule to the Income Tax Act, 1962***

Part IX of the Eighth Schedule provides for roll-overs which effectively defer the taxation of specified capital gains.

A company which operates a share block scheme in relation to immovable property which wishes to open a sectional titles register so that it can allow share block holders the right to take transfer of the property for which they hold the right of use, must follow the procedures prescribed in the First Schedule to the Share Blocks Control Act, 1980. In terms of this Schedule the share block holder who wishes to take transfer of the property must surrender his or her share certificate and right of use of the property and in return transfer of the property is given. Although seen from the point of view of the share block holder this is merely a change in the form of ownership of the immovable property, this is a disposal that can give rise to a capital gain or capital loss in the hands of both the share block company and the holder. In order not to create cash flow difficulties for the share block company and the holder it is proposed any capital gain or loss as a result of the conversion be disregarded. It is proposed in effect that the recognition of the capital gain or loss of the holder be deferred until the holder actually disposes of the immovable property and for this purpose the holder be treated as if—

- the expenditure incurred in respect of the acquisition and improvement of the share block interest was incurred to acquire and improve the sectional title unit; or

- the market value determination of the share block interest if made within the prescribed period be treated as if it were the market value of the sectional title interest; and
- the date the share block interest was acquired and the use to which it was put is the same as the date of acquisition and use of the unit. This will enable the holder to use the time-apportioned base cost if the share block interest was a pre-valuation date asset and the full period of ordinary residence in the immovable property for the purposes of the R1million primary residence exclusion.

#### **Insertion of paragraph 67C of Eighth Schedule to Act 58 of 1962**

. (1) The following paragraph is hereby inserted in the Eighth Schedule to the Income Tax Act, 1962, after paragraph 67B:

#### **“Mineral rights conversions and renewals.**

**67C.** Notwithstanding paragraph 11, there is no disposal where—

- (a) any old order right or OP26 right as defined in Schedule II of the Mineral and Petroleum Resources Development Act (Act No. 28 of 2002) continues in force or is converted into a new right pursuant to the same Schedule; or
- (b) any prospecting right, mining right, exploration right or production right as defined in Schedule I of the Mineral and Petroleum Resources Development Act (Act No. 28 of 2002) is renewed pursuant to the same Schedule,

to the extent of that continuation, conversion, or renewal, and the continued, converted or renewed right will be deemed to be one and the same asset as the right before continuation, conversion or renewal for purposes for purposes of this Act.”.

#### **Amendment of paragraph 72 of the Eighth Schedule to Act 58 of 1962**

. Paragraph 72 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended by substitution for subparagraph (a) of the following subparagraph:

“(a) a resident has made a donation, settlement or other disposition to any person (other than **[a public benefit organisation contemplated in section 30 or a foreign] an entity, [as defined in section 9D,]** which is not resident and which is [of a] similar [nature] to a public benefit organisation contemplated in section 30); and”.

#### **Amendment of paragraph 72 of the Eighth Schedule to Act 58 of 1962**

The amendment is of a textual nature and replaces a reference to the deleted definition of “foreign entity” in section 9D.

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

. Paragraph 88 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended by the substitution of subparagraph (6) for the following subparagraph:

“(6) Where a person ceases to hold a foreign currency asset as a 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.”.

**Income Tax: Amendment of paragraph 88 of the Eighth Schedule to the Income Tax, 1962**

This amendment is of a textual nature.

**Amendment of paragraph 94 of Eighth Schedule to Act 58 of 1962**

. Paragraph 94 of the Eighth Schedule to the Income Tax Act, 1962, is hereby substituted by the following paragraph:

**“Involuntary disposal of foreign currency asset**

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

**Income Tax: Amendment of paragraph 94 of the Eighth Schedule to the Income Tax Act, 1962**

It is proposed that the undefined terms ‘foreign currency gain’ and ‘foreign currency loss’ be replaced by the defined terms ‘foreign currency capital gain’ and foreign currency capital loss’. The latter terms are defined in paragraph 86.

**Amendment of paragraph 96 of Eighth Schedule**

. Paragraph 96 of the Eighth Schedule to the Income Tax Act, 1962, is hereby amended by the substitution of subparagraph (1) for the following paragraph:

“(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.”.

***Income Tax: Amendment of paragraph 96 of Eighth Schedule to the Income Tax Act, 1962***

This amendment is of a textual nature.

DRAFT