

BUSINESS AND REINVESTMENT PROVISIONS

*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:

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Amendment of section 1 of Act 58 of 1962

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

- (a) by the insertion after the definition of “date of assessment” of the following definition:

“depreciable asset’ means an asset as defined in paragraph 1 of the Eighth Schedule (other than trading stock), in respect of which a capital deduction or allowance determined with reference to the cost or value of that asset is allowable in terms of this Act for purposes other than the determination of any taxable capital gain or capital loss;”.

Amendment of section 8 of Act 58 of 1962

. Section 8 of the Income Tax Act, 1962, is hereby amended—

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

“(e) Notwithstanding paragraph (a), but subject to paragraph (eB), (eC), (eD) and (eE), there shall not be included in the income of a person any amount recovered or recouped as a result of the disposal of any asset, where that person has elected that paragraph 65 or 66 of the Eighth Schedule applies in respect of the disposal of that asset.

(eA) Where a person acquires more than one asset in replacing the asset disposed of as contemplated in paragraph (e), that person must, in applying paragraphs (eB), (eC), (eD) and (eE), apportion the amount recovered or recouped to the replacement assets in the same ratio as the receipts and accruals from that disposal respectively expended in acquiring each replacement asset bear to the total amount of those receipts and accruals expended in acquiring all those assets.

(eB) Where the replacement asset of a person as contemplated in paragraph (e) constitutes a depreciable asset, that person shall be deemed to have recovered or recouped in a year of assessment so much of the amount contemplated in paragraph (e) as bears to the total amount of the recovery or recoupment contemplated in paragraph (e) the same ratio as the amount of any capital deduction or allowance allowed in that year of assessment in respect of that replacement asset bears to the total amount of the capital deduction or allowance (determined with reference to the cost or value of that asset at the time of acquisition thereof) which is allowable in that year and other years of assessment in respect of that asset.

(eC) Where a person during any year of assessment disposes of a replacement asset contemplated in paragraph (e) and any portion of the recovery or recoupment which is apportioned to that asset has not been included in the income of that person in terms of paragraph (eB), (eD) or (eE) in any year of assessment (including that year of assessment), that portion must be deemed to be an amount recovered

or recouped by that person in that year in respect of that replacement asset.

(eD) Where during any year of assessment a person ceases to use a replacement asset contemplated in paragraph (e), in respect of which paragraph 66 of the Eighth Schedule applies, for the purposes of that person's trade and any portion of the amount which is apportioned to that replacement asset has not been included in the income of that person in terms of paragraph (eB), (eC) or (eE) in any year of assessment (including that year of assessment), that portion must be deemed to be an amount recovered or recouped in that year of assessment.

(eE) Where a person contemplated in paragraph (e) fails to conclude a contract or fails to bring any replacement asset into use within the period prescribed in paragraphs 65 or 66 of the Eighth Schedule, as the case may be, paragraph (eB) shall not apply and that person must—

- (i) deem so much of the amount contemplated in paragraph (e) as has not been included in the income of that person as contemplated in paragraph (eB) to be an amount recovered or recouped for purposes of paragraph (a) on the date on which that prescribed period ends;
- (ii) determine interest at the prescribed rate on the amount recovered or recouped from the date of the disposal contemplated in paragraph (e) to the date contemplated in subparagraph (i); and
- (iii) deem that interest to be an amount recovered or recouped on the date contemplated in subparagraph (i).”

Amendment of section 10 of Act 58 of 1962

. Section 10 of the Income Tax Act, 1962, is hereby amended by the addition to subsection (1) of the following paragraph:

- “(z) any amount received by or accrued to or in favour of any person from the Government, where—
- (i) that amount is granted in terms of an agreement for the performance by that person of an institutional function in terms of Public Private Partnership, as defined in Regulation 16 of the Treasury Regulations issued in terms of section 76 of the Public Finance Management Act, 1999 (Act No. 1 of 1999);
 - (ii) that person is required in terms of that agreement to expend that amount for the development of any physical infrastructure of the Republic;
 - (iii) that amount will be so expended before the commencement by that person of performing that institutional function; and
 - (iv) the ownership of that physical infrastructure which will vest in the Government.”.

Amendment of section 11 of Act 58 of 1962

. Section 11 of the Income Tax Act, 1962, is hereby amended by the substitution for paragraph (o) of the following paragraph:

- “(o) an amount of capital loss which has been disregarded in terms of paragraph 66A of the Eighth Schedule in respect of the disposal by that person of a depreciable asset;”;

Amendment of section 12C of Act 58 of 1962

. Section 12C of the Income Tax Act, 1962, is hereby amended by the substitution in subsection (1) for subparagraphs (i) and (ii) of paragraph (c) of the proviso of the following subparagraphs:

- “(i) acquired by the taxpayer under an agreement formally and finally signed by every party to the agreement [**during the**

period commencing] on or after 1 March 2002 [**and ending on 28 February 2005**]; and

- (ii) brought into use by the taxpayer [**during that period**] on or after that date in a process of manufacture or process which in the opinion of the Commissioner is of a similar nature, carried on by that taxpayer in the course of its business (other than banking, financial services, insurance or rental business),”.

Amendment of section 12E of Act 58 of 1962

. Section 12E of the Income Tax Act, 1962, is hereby amended—

- (a) by the substitution in subsection (4) for subparagraph (ii) of paragraph (a) of the following subparagraph:

“(ii) none of the shareholders or members at any time during the year of assessment of the company or close corporation holds any shares or has any interest in the equity of any other company as defined in section 1, other than—

(aa) a company contemplated in paragraph (a) of the definition of 'listed company'; [**or**]

(bb) any portfolio in a collective investment scheme contemplated in paragraph (e) of the definition of 'company';); or

(cc) a company contemplated in section 10(1)(e)(i), (ii) or (iii);

- (b) by the substitution in subsection (4) for subparagraph (iii) of paragraph (a) of the following subparagraph:

“(iii) not more than 20 per cent of the [**gross income**] total of all receipts and accruals (other than those of a capital nature) and the capital gains of the company or close corporation consists collectively of investment income and income from the rendering of a personal service; and”.

Amendment of section 23 of Act 58 of 1962

. Section 23 of the Income Tax Act, 1962, is hereby amended by the addition of the following paragraph:

“(n) any deduction or allowance in respect of any asset acquired from an amount granted to the taxpayer by the Government which is exempt from tax in terms of section 10(1)(zH)(iv) or (zI).”

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 subparagraph (3) for item (a) of the following item:

“(a) is or was allowable as a deduction in determining the taxable income of that person (otherwise than in terms of section 11(o)) before the inclusion of any taxable capital gain;”

Substitution for paragraph 65 of Eighth Schedule to Act 58 of 1962

. The following paragraph hereby substitutes paragraph 65 of the Eighth Schedule to the Income Tax Act, 1962:

“Involuntary disposal

65. (1) A person may elect that this paragraph must apply in respect of the disposal of an asset (other than a financial instrument), where—

- (a) that asset is disposed of by way of operation of law, theft or destruction;
- (b) proceeds accrue to that person by way of compensation in respect of that disposal;

- (c) those proceeds are equal to or exceed the base cost of that asset; and
- (d)
 - (i) an amount at least equal to the receipts and accruals from that disposal has been or will be expended to acquire one or more asset (hereinafter referred to as the 'replacement asset or assets');
 - (ii) the replacement asset constitutes an asset contemplated in section 9(2);
 - (iii) the contracts for the acquisition of the replacement asset or assets have all been or will be concluded within 18 months from the date of the disposal of that asset; and
 - (iv) the replacement asset or assets will all be brought into use within three years of the disposal of that asset,

(2) Where a person has elected in terms of subparagraph (1) that this paragraph must apply in respect of the disposal of an asset, any capital gain determined in respect of that disposal must, subject to subparagraphs (4), (5) and (6) be disregarded when determining that person's aggregate capital gain or aggregate capital loss.

(3) Where a person acquires more than one asset in replacing the asset disposed of as contemplated in subparagraph (1), that person must, in applying subparagraphs (4) and (5), apportion the capital gain derived from the disposal of that asset to the replacement assets in the same ratio as the receipts and accruals from that disposal respectively expended in acquiring each of those replacement assets bear to the total amount of those receipts and accruals expended in acquiring all those assets.

(4) Where a replacement asset contemplated in subsection (1) constitutes a depreciable asset, the person must treat as a capital gain for a year of assessment, so much of the disregarded capital gain contemplated in subparagraph (2), as bears to the total amount of that disregarded gain the same ratio as the amount of any capital deduction or allowance allowed in that year in respect of the replacement asset bears to the total amount of the capital deduction or allowance (determined with reference to the cost or value of that asset at the time

of acquisition thereof) which is allowable in that year and other years of assessment in respect of that asset.

(5) Where a person during any year of assessment disposes of a replacement asset contemplated in subparagraph (4) and any portion of the disregarded capital gain which is apportioned to that asset as contemplated in subparagraph (3), has not been treated as a capital gain in terms of subparagraph (4) or (6) in any year of assessment (including that year of assessment), that person must in that year of assessment treat that portion of disregarded gain as a capital gain from the disposal of that replacement asset.

(6) Where a person fails to conclude a contract or fails to bring any replacement asset into use within the prescribed period, subparagraph (4) shall not apply and that person must—

- (a) treat so much of the disregarded capital gain as a capital gain on the date on which that prescribed period ends;
- (b) determine interest at the prescribed rate on that capital gain from the date of that disposal to the date contemplated in item (a); and
- (c) treat that interest as a capital gain on the date contemplated in item (a) when determining that person's aggregate capital gain or aggregate capital loss.

(7) Where a replacement asset or assets constitute a personal use assets, the provisions of this paragraph shall not apply, unless the asset disposed of as contemplated in subparagraph (1)(a) constitutes a personal use asset.

Substitution for paragraph 66 of Eighth Schedule to Act 58 of 1962

. The following paragraph hereby substitutes paragraph 66 of the Eighth Schedule to the Income Tax Act, 1962:

“Reinvestment in replacement assets

66. (1) A person may elect that this paragraph must apply in respect of the disposal of an asset, where—

- (a) that asset qualified for a capital deduction or allowance in terms of section 11(e), 12B, 12C, 12E, 14 or 14bis;
- (b) the proceeds received or accrued from that disposal are equal to or exceed the base cost of that asset;
- (c) an amount at least equal to the receipts and accruals from that disposal has been or will be expended to acquire one or more assets (hereinafter referred to as the ‘replacement asset or assets’), all of which will qualify for a capital deduction or allowance in terms of section 11(e), 12B, 12C or 12E;
- (d) the replacement asset constitutes an asset contemplated in section 9(2)(b); and
- (e) the replacement asset or assets are all brought into use in the year of assessment during which the asset contemplated in item (a) is disposed of or within 18 months after that disposal.

(2) Where a person has elected in terms of subparagraph (1) that this paragraph must apply in respect of the disposal of an asset, any capital gain determined in respect of that disposal must, subject to subparagraphs (4), (5), (6) and (7), be disregarded when determining that person’s aggregate capital gain or aggregate capital loss.

(3) Where a person acquires more than one asset in replacing the asset disposed of as contemplated in subparagraph (1), that person must, in applying subparagraphs (4), (5) and (6), apportion the capital gain derived from the disposal of that asset to the replacement assets in the same ratio as the receipts and accruals from that disposal respectively expended in acquiring each of those replacement assets bear to the total amount of those receipts and accruals expended in acquiring all those assets.

(4) A person must treat as a capital gain for a year of assessment, so much of the disregarded capital gain contemplated in subparagraph (2), as bears to the total amount of that disregarded

capital gain the same ratio as the amount of any deduction or allowance allowed in that year in terms of section 11(e), 12B, 12C or 12E in respect of the replacement asset bears to the total amount of the deduction or allowance in terms of that section (determined with reference to the cost or value of that asset at the time of acquisition thereof) which is allowable in that year and other years of assessment in respect of that asset.

(5) Where a person during any year of assessment disposes of a replacement asset and any portion of the disregarded capital gain which is apportioned to that asset as contemplated in subparagraph (3), has not been treated as a capital gain in terms of subparagraph (4), (5) or (6) in any year of assessment (including that year of assessment, that person must in that year of assessment treat that portion of disregarded capital gain as a capital gain from the disposal of that replacement asset.

(6) Where during any year of assessment a person ceases to use a replacement asset for the purposes of that person's trade and any portion of the disregarded capital gain which is apportioned to that asset as contemplated in subparagraph (3), has not been treated as a capital gain in terms of subparagraph (4), (5) or (7) in any year of assessment (including that year of assessment), that person must treat that portion of disregarded capital gain as a capital gain for that year of assessment.

(7) Where a person fails to bring any replacement asset into use within the prescribed period, subparagraph (4) shall not apply and that person must—

- (a) treat so much of the disregarded capital gain as has not been treated as a capital gain in terms of subparagraph (4) as a capital gain on the date that the prescribed period ends;
- (b) determine interest at the prescribed rate on that capital gain from the date of that disposal to the date contemplated in item (a); and

- (c) treat that interest as a capital gain on the date contemplated in item (a) when determining that person's aggregate capital gain or aggregate capital loss.

Insertion of paragraph 64A in Eighth Schedule to Act 58 of 1962

. The following paragraph is hereby inserted in the Eighth Schedule to the Income Tax Act, 1962, after paragraph 64:

“Loss from disposal of capital asset

64A. Where—

- (a) a person disposes of a depreciable capital asset qualifying for a capital allowance or deduction in terms of section 11(e), 12B, 12C, 12E, 14 or 14bis;
 - (b) the base cost of that asset exceeds the sum of the proceeds received or accrued from that disposal; and
 - (c) the useful life of that asset does not exceed 10 years.
- the amount of any capital loss determined in respect of that disposal must be disregarded in determining a person's aggregate capital gain or aggregate capital loss for the relevant year of assessment and must be allowed as a deduction in terms of section 11(o) in determining the taxable income derived during that year of assessment by that person from carrying on any trade.”.