

12 December 2000

REPUBLIC OF SOUTH AFRICA

**TAXATION LAWS AMENDMENT BILL, 2001**

(TO INCORPORATE THE TAXATION OF CAPITAL GAINS)  
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*(As introduced in the National Assembly as a money Bill)  
(The English text is the official text of the Bill)*  
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(MINISTER OF FINANCE)

[B - 01]

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REPUBLIEK VAN SUID-AFRIKA

**WYSIGINGSWETSONTWERP OP BELASTINGWETTE, 2001**

(OM DIE BELASTING VAN KAPITAALWINSTE IN TE VOEG)  
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*(Soos ingedien in die Nasionale Vergadering as 'n Geldwetsontwerp.)  
(Die Afrikaanse teks is die amptelike vertaling van die Wetsontwerp.)*  
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(MINISTER VAN FINANSIES)

[B - 01]

**GENERAL EXPLANATORY NOTE:**

[        ] Words in bold type in square brackets indicate omissions from existing enactments.

           Words underlined with a solid line indicate insertions in existing enactments.

**BILL**

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

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

Amendment of section 1 of Act 58 of 1962, as amended by section 3 of Act 90 of 1962, section 1 of Act 6 of 1963, section 4 of Act 72 of 1963, section 4 of Act 90 of 1964, section 5 of Act 88 of 1965, section 5 of Act 55 of 1966, section 5 of Act 95 of 1967, section 5 of Act 76 of 1968, section 6 of Act 89 of 1969, section 6 of Act 52 of 1970, section 4 of Act 88 of 1971, section 4 of Act 90 of 1972, section 4 of Act 65 of 1973, section 4 of Act 85 of 1974, section 4 of Act 69 of 1975, section 4 of Act 103 of 1976, section 4 of Act 113 of 1977, section 3 of Act 101 of 1978, section 3 of Act 104 of 1979, section 2 of Act 104 of 1980, section 2 of Act 96 of 1981, section 3 of Act 91 of 1982, section 2 of Act 94 of 1983, section 1 of Act 30 of 1984, section 2 of Act 121 of 1984, section 2 of Act 96 of 1985, section 2 of Act 65 of 1986, section 1 of Act 108 of 1986, section 2 of Act 85 of 1987, section 2 of Act 90 of 1988, section 1 of Act 99 of 1988, Government Notice No. R.780 of 14 April 1989, section 2 of Act 70 of 1989, section 2 of Act 101 of 1990, section 2 of Act 129 of 1991, section 2 of Act 141 of 1992, section 2 of Act 113 of 1993, section 2 of Act 21 of 1994, section 2 of Act 21 of 1995, section 2 of Act 36 of 1996, section 2 of Act 28 of 1997, section 19 of Act 30 of 1998, section 10 of Act 53 of 1999, section 13 of Act 30 of 2000 and section 2 of Act 59 of 2000

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

(1) by the insertion of the definition of “aggregate capital gain” after the definition of “agent”:

“aggregate capital gain” means an amount as determined under the provisions of the Eighth Schedule;

(2) by the insertion of the definition of “aggregate capital loss” after the definition of “aggregate capital gain”;

“aggregate capital loss” means an amount as determined under the provisions of the Eighth Schedule;

(3) by the insertion of the definition of “assessed capital loss” after the definition of “aggregate capital loss”;

“assessed capital loss” means an amount as determined under the provisions of the Eighth Schedule;

(4) by the substitution for the definition of “assessment” of the following definition:

“assessment” means the determination by the Commissioner, by way of a notice of assessment served in a manner contemplated in section 106 (2)?

(a) of an amount upon which any tax leviable under this Act is chargeable; or

(b) of the amount of any such tax; **[or]**

(c) of any loss ranking for set-off, or

(d) of any assessed capital loss determined in accordance with the provisions of the Eighth Schedule,

and for the purposes of Part III of Chapter III includes any determination by the Commissioner in respect of any of the rebates referred to in section 6 and any decision of the Commissioner which is in terms of this Act subject to objection and appeal;

- (5) by the insertion of the definition of “capital gain” after the definition of “business day”:

“capital gain” means an amount as determined under the provisions of the Eighth Schedule:

- (6) by the insertion of the definition of “capital loss” after the definition of “capital gain”:

“capital loss” means an amount as determined under the provisions of the Eighth Schedule:

- (7) by the substitution for paragraph (b) of the definition of “connected person” of the following paragraph:

“(b) in relation to a trust?

- (i) any beneficiary of such trust; **[and]**  
 (ii) any connected person in relation to such beneficiary; and  
 (iii) any person who has disposed of assets to such trust where such person or a connected person in relation to such person may on or after such disposal be appointed as a beneficiary of the trust or otherwise acquire an interest as a beneficiary of the trust;”

- (8) By the substitution for the words following paragraph (f) of the definition of “representative taxpayer” of the following words:

“but nothing in this definition shall be construed as relieving any person from any liability, responsibility or duty imposed upon him by this Act[;] and for the purposes of this definition the word “income” shall be construed as including the proceeds on disposal of any asset envisaged under the Eighth Schedule.”

- (9) by the insertion of the definition of “taxable capital gain” after the definition of “tax:

“taxable capital gain” means an amount as determined under the provisions of the Eighth Schedule:

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

“taxable income” means the amount **[remaining]** after **[deducting]** the deduction from or set off against the income of any person of all the amounts allowed under Part I of Chapter II to be deducted from or set off against such income and thereafter, the addition of all amounts to be included or deemed to be included in taxable income in terms of this Act; and

- (11) by the substitution for the definition of “trust” of the following definition:

“trust” means any trust fund consisting of cash or other assets which are administered and controlled by a person acting in a fiduciary capacity, where such person is appointed under a deed of trust or by agreement or under the will of a deceased person, excluding any arrangement or scheme contemplated in paragraph (e) of ‘company’;”.

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

2. Section 6quat is hereby amended?

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

“(d) any foreign dividend contemplated in section 9E; or  
 (e) any taxable capital gain included in terms of section 26A, to the extent it is attributable to any capital gain in respect of an asset situated outside the Republic;

- (2) by the substitution for paragraph (d) in subsection (1A) of the following paragraphs:

“(d) any company in respect of the proportional amount of any profits from which any dividend is declared or deemed to have been declared to a controlled foreign entity as defined in section 9D, and which dividend relates to any proportional amount included in the income of such resident as contemplated in subsection 1(b); or

(e) by such resident in respect of any taxable capital gain contemplated in subsection (1)(e)"

- (3) by the substitution of the following words following paragraph (e) of subsection (1A) but preceding the proviso to that subsection:

"to the Government of any country other than the Republic in respect of the amount of income **[or]** , proportional amount contemplated in subsection (1)(b) or the taxable capital gain contemplated in subsection (1)(e), which is so included in that resident's taxable income:"

- (4) by the substitution of paragraph (a) in subsection (1B) of the following paragraph:

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

- (5) by the substitution of subparagraph (bb) in subparagraph (b) of subsection (1B) for the following subparagraph:

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

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

2. Section 9D of the principal Act is hereby amended

- (1) by the substitution for subsection (2A) of the following subsection:

“(2A) For the purposes of this section, the “net income” of a controlled foreign entity shall be equal to the taxable income of such entity determined in accordance with this Act as if such controlled foreign entity had been a resident: Provided that—

- (a) any deductions or allowances which may be allowed, or any amounts which may be set off against, the income of such entity in terms of this Act shall be limited to the amount of such income,
- (b) any amount whereby such deductions or allowances or amounts exceed the amount of such income, shall be carried forward to the immediately succeeding year of assessment and be deemed to be a balance of assessed loss which may be set off against the income of such entity in such succeeding year for the purposes of section 20; **[and]**
- (c) no deduction shall be allowed in respect of any interest, royalties or rental paid by such entity to any other controlled foreign entity in relation to the resident, as contemplated in subsection (9)(fA)[.]; and
- ~~(d) any capital gain or capital loss of such entity shall notwithstanding paragraph 30 of the Eighth Schedule be determined with reference to and in the currency which is legal tender in the country in which the entity is resident or if it is not resident in any country, the currency in which it conducts the majority of its transactions.”.~~

- (2) by the deletion of the word “or” and the insertion of a comma after the word ‘premiums’ and the insertion of the words ‘or proceeds from the disposal of assets, as contemplated in the Eighth Schedule, from which any such income is earned’ after the words “similar nature” in subparagraph (iii) of paragraph (b) of subsection 9 of section 9D.

**Insertion of section 26A in Act 58 of 1962**

4. The following section is hereby inserted in the principal Act after section 26:

**“Inclusion of taxable capital gain in taxable income**

**26A.** A person's taxable income for a year of assessment shall include the person's taxable capital gain for the year of assessment as determined under the provisions of the Eighth Schedule.”.

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

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

(2) The provisions of subsection (1) shall come into operation on 1 April 2001 and shall apply to the value of any property disposed of under a donation which takes effect on or after that date.

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

6. Section 66 of the principal Act is hereby amended by the insertion after subparagraph (iv) of paragraph (b) of subsection (1) of the following subparagraph:

“(v) any person whose taxable capital gain or assessed capital loss for the year of assessment exceeds an amount to be stated by the Commissioner in the notice referred to in paragraph (a).”.



**Insertion of section 70A in Act 58 of 1962**

7. The following section is hereby inserted in the principal Act after section 70:

**“70A Return of information by Unit Portfolio**

(1) Every unit portfolio constituting a company in terms of paragraph (e)(i) of the definition of “company” in section 1, shall on or after the ‘valuation date’ contemplated in the Eighth Schedule, furnish to the Commissioner an annual return in such form and within such time as the Commissioner may prescribe, showing—

- (a) the names and addresses of all unit holders in that unit portfolio who have disposed of their units in that unit portfolio;
- (b) the date of acquisition and disposal of those units;
- (c) the base cost and proceeds on disposal of those units as contemplated in the Eighth Schedule;
- (d) the amount of the capital gain or capital loss arising on disposal of those units;
- (e) in the case of any natural person, his or her identification number;  
Provided that if he or she is not in possession of a South African identity document, any other form of identification;
- (e) in the case of any person other than a natural person, that person’s registration number.”

**Insertion of section 70B in Act 58 of 1962**

8. The following section is hereby inserted in the principal Act after section 70A:

**“70B Return of information in respect of financial instruments administered by portfolio administrators**

Every person who administers a portfolio of financial instruments, as contemplated in the Eighth Schedule, on behalf of another person and has the mandate of that other person to buy and sell such financial instruments on such other person’s behalf, shall on or after the valuation date contemplated in that Schedule?

- (a) furnish to the Commissioner an annual return in such form and within such time as the Commissioner may prescribe, showing?
- (h) the names and addresses of all persons in respect of whom financial instruments have been disposed of;
- (ii) the amount of the capital gain or capital loss arising on such disposal;

- (iii) in the case of any natural person, his or her identification number: Provided that if he or she is not in possession of a South African document, any other form of identification;
- (iv) in the case of any person other than a natural person, that person's registration number.
- (b) have available for submission to the Commissioner when so requested?
  - (i) the date of acquisition and disposal of such financial instruments; and
  - (ii) the base cost and proceeds on disposal of such financial instruments as contemplated in the Eighth Schedule".

#### **Insertion of section 73A in Act 58 of 1962**

9. The following section is hereby inserted in the principal Act after section 73:

#### **"73A Records**

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

(2) For the purposes of subsection (1) 'records' includes-

(a) ledgers, cash books, journals, cheque books, bank statements, deposit slips, paid cheques, invoices and stock lists and all other books of account;

(b) any data created by means of a "computer" as defined in section 1 of the Computer Evidence Act, 1983 (Act No. 57 of 1983), including data in the electronic form in which it was originally created or in which it is stored for the purposes of backing up such data,

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

(3) A person shall retain all records required to determine that person's taxable capital gain or assessed capital loss for a period of four years from the date upon which the return for the year of assessment during which the gain or loss arose was received by the Commissioner.

(4) Where a person is not required to render a return and has disposed of an asset for proceeds more than R10,000, that person must retain the records required to determine the capital gain or loss in respect of each asset for a period of five (5) years from the date of disposal of that asset.

(5) For the purposes of subsection (3) and (4) 'records' includes—

- (a) agreements for the purchase, sale or lease of assets together with related correspondence;
- (b) documentation of assets acquired otherwise than by way of a purchase;
- (c) details of assets transferred into a trust;
- (d) copies of valuations used in the determination of a taxable capital gain or assessed capital loss;
- (e) invoices or other evidence of payment record such as bank statements, paid cheques for costs claimed in the purchase, improvement or sale of assets;
- (f) details supporting the proportional use of an asset for both private and business purposes.

(6) Where a person who is required by this section to retain records in terms of subsections (1), (3) and (4) lodges an objection or appeal against an assessment, that person shall retain every record relevant to that objection or appeal until that assessment becomes final."

#### **Substitution of section 82 of Act 58 of 1962**

10. The following section is hereby substituted for section 82 of the Income Tax Act, 1962:

**"82. Burden of proof as to exemptions, deductions or abatements—**The burden of proof that any amount is—

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

shall be upon the person claiming such exemption, non-liability, deduction, abatement, [or] set-off, disregarding or exclusion, and upon the hearing of any appeal from any decision of the Commissioner, the decision shall not be reversed or altered unless it is shown by the appellant that the decision is wrong."

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

11. Section 75 is hereby amended by the substitution of paragraph (f) of subsection (1) of the following paragraph:

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

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

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

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

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

13. Section 95 is hereby amended:

(1) by the substitution of subsection (2) of the following subsection:

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

(2) by the insertion of subsection (5):

“(5) For the purposes of this section the word “income” shall be construed as including the proceeds on disposal of any asset envisaged under the Eighth Schedule.”

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

14. Section 103 of the principal Act is hereby amended by—

(1) the substitution for subsection 2 of the following subsection:

“(2) Whenever the Commissioner is satisfied that—

(a) any agreement affecting any company or trust; or

(b) any change in—

(i) the shareholding in any company; or

(ii) the members' interests in any company which is a close corporation; or

(iii) the trustees or beneficiaries of any trust,

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

~~(a) the set-off of any such assessed loss or balance of assessed loss against any such income shall be disallowed[.]~~ **[or]**

~~(b) such capital loss or assessed capital loss shall be disregarded when determining the aggregate capital gain or aggregate capital loss or net capital gain of that company or trust.”: and~~

(2) the substitution for paragraph (b) of subsection 4 of the following paragraph:

“(b) in the case of any such agreement or change in shareholding or members' interests or trustees or beneficiaries of such trust, that it has been entered into or effected solely or mainly for the purpose of utilising the assessed loss **[or]**, balance of assessed loss, ~~capital loss or assessed capital loss~~ in question in order to avoid or postpone such liability or to reduce the amount thereof.”.

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

15. Section 107 of the principal Act is hereby amended—

(1) by the insertion after paragraph (e) of subsection (1) of the following paragraph:

“(f) prescribing the manner and the method of valuation, the procedures to be followed and the person by whom a valuation of an asset for purposes of the Eighth Schedule is to be made.” ;

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

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

**Insertion of section 111B in Act 58 of 1962**

16. The principal Act is hereby amended by the insertion after section 111 of the following section:

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

**Substitution of long title of Act 58 of 1962**

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

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

the normal tax **[and the said provincial taxes (excluding the normal tax imposed on companies)]** and interest and other charges in respect of such taxes, and to provide for connected matters.

**Amendment of paragraph 19 of Fourth Schedule to Act 58 of 1962, as amended by section 28 of Act 88 of 1965, by section 46 of Act 89 of 1969, section 43 of Act 88 of 1971, section 50 of Act 85 of 1974, section 49 of Act No. 94 of 1983, section 52 of Act 101 of 1990 and by section 44 of Act 21 of 1995**

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

- (i) as respects an estimate submitted by a provisional taxpayer (other than a company) under item (a), the taxpayers' taxable income before the inclusion of any taxable capital gain as envisaged in section 26A, as assessed by the Commissioner, for the latest preceding year of assessment in relation to such estimate; or
- (ii) as respects an estimate submitted by a company under item (b), the company's taxable income before the inclusion of any taxable capital gain as envisaged in section 26A, as assessed by the Commissioner, for the latest preceding year of assessment in relation to such estimate."

**Insertion of Eighth Schedule in Act 58 of 1962**

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

**"Eighth Schedule**

**DETERMINATION OF TAXABLE CAPITAL GAINS AND ASSESSED CAPITAL LOSSES  
(PARAS 1 - 72)**

**(Section 26A of this Act)**

- Part I: General
- Part II: Taxable capital gains and assessed capital losses
- Part III: Disposal and acquisition of assets
- Part IV: Disregarded disposals and limitation of losses
- Part V: Base cost and proceeds
- Part VI: Primary residence exclusion
- Part VII: Other exclusions

Part VIII:	Roll-overs and attribution of capital gains
Part IX:	Companies and shareholders
Part X:	Trusts, trust beneficiaries and insolvent estates
Part XI:	Anti-avoidance measures
Part XII:	Miscellaneous

## PART I: GENERAL

### Definitions

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

'active business asset' means an asset used or held for use in the course of carrying on a trade but excludes—

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

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

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

'asset' includes? -

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

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

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

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



'business asset' means an asset to the extent that it is not a personal-use asset;

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

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

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

'financial instrument' includes a loan, advance, debt, stock, bond, debenture, bill, promissory note, currency, share, deposit with a financial institution, unit in a unit portfolio, repurchase or resale agreement, futures contract, forward contract, option contract, swap contract, any other contractual right or obligation which derives its value from the value of a debt security, equity, commodity, rate or a specified index, or any similar instrument;

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

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

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

'permanent establishment' means a permanent establishment as defined from time to time in Article 5 of the Model Tax Convention on Income and on Capital of the Organisation for Economic Co-operation and Development;

'personal-use asset' means an asset contemplated in paragraph 42(1);

'primary residence' means a primary residence contemplated in paragraph 33;

'proceeds' means the amount to be determined in terms of paragraph 25;

'recognised exchange' means?

- (a) a stock exchange licensed under the Stock Exchanges Control Act, 1985 (Act 1 of 1985);
- (b) a financial exchange licensed under the Financial Markets Control Act, 1989 (Act No. 55 of 1989); or

- (c) an exchange outside the Republic recognised by the Minister for purposes of this Schedule by notice in the *Gazette*;

'residence' means a residence envisaged in paragraph 33;

"special trust" means a trust created solely for the benefit of a person who suffers from?

- (i) any "mental illness" as defined in section 1 of the Mental Health Act, 1973 (Act No. 18 of 1973); or
- (ii) any serious physical disability,

where such illness or disability incapacitates such person from earning sufficient income for the maintenance of such person.

'spouse' in relation to a person, means a person who is the partner of such person—

- (a) in a marriage recognised in terms of the laws of the Republic;
- (b) in a marriage entered into in accordance with any system of religious law; or
- (c) in a permanent same-sex relationship;

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

'valuation date' means 1 April 2001.

## Application

2. (1) This Schedule applies to?

- (a) any asset of a resident; and
- (b) the following assets situated in the Republic of a person who is not a resident—
- (i) immovable property and any interest or right of whatever nature to or in that property, held by that person; or
- (ii) any asset of a permanent establishment, branch or agency of that person in the Republic through which a trade is carried on during the relevant year of assessment.

(2) For purposes of subparagraph (1)(b)(i), an interest in immovable property situated in the Republic includes a direct or indirect interest in a company or any other entity where 80 per cent or more of the value of the assets of the company or other entity is attributable to immovable property situated in the Republic owned by that company or other entity.

**PART II: TAXABLE CAPITAL GAINS AND ASSESSED CAPITAL LOSSES****Capital gain**

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

**Capital loss**

4. A person's capital loss for a year of assessment is in respect of an asset disposed of—
- (a) during that year, equal to the amount by which the base cost of the asset exceeds the proceeds in consequence of that disposal; or
  - (b) in a previous year of assessment, equal to—
    - (i) so much of the base cost of that asset that has not been taken into account during such year or any previous year in determining the capital gain or capital loss in respect of that disposal as has been paid or has become due and payable during the current year of assessment; or
    - (ii) so much of the proceeds of that asset that have been taken into account during such year or any previous year in determining the capital gain or capital loss in respect of that disposal—
      - (aa) as that person is no longer entitled to as a result of the cancellation, termination or variation of any agreement or due to the prescription or waiver of a claim or a release from an obligation or another event during the current year of assessment;

- (bb) as has become irrecoverable during the current year of assessment; or
- (cc) as has been repaid or has become repayable during the current year of assessment.

### **Annual exclusion**

5. A natural person's and a special trust's annual exclusion in respect of a year of assessment is R10 000.

### **Aggregate capital gain**

6. A person's aggregate capital gain for a year of assessment is the amount by which the sum of a person's capital gains for the year exceeds the sum of—
- (a) the person's capital losses for the year; and
  - (b) in the case of a natural person or a special trust, that person's or trust's annual exclusion for the year.

### **Aggregate capital loss**

7. A person's aggregate capital loss for a year of assessment is the amount by which the sum of a person's capital losses for the year exceeds the sum of—
- (a) the person's capital gains for the year; and
  - (b) in the case of a natural person or a special trust, that person's or trust's annual exclusion for the year.

### **Net capital gain**

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

**Assessed capital loss**

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

**Taxable capital gain**

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

**PART III: DISPOSAL AND ACQUISITION OF ASSETS****Disposals**

11. (1) Subject to subparagraph (2), a disposal is any event, act, forbearance or operation of law which results in the creation, variation, transfer or extinction of an asset and includes—
- (a) the sale, donation, expropriation, conversion, grant, cession, creation, exchange or any other alienation or transfer of ownership of an asset;
  - (b) the forfeiture, termination, redemption, cancellation, surrender, discharge, relinquishment, release, variation, waiver, renunciation, expiry or abandonment of an asset;
  - (c) the scrapping, loss, destruction or damaging of an asset;
  - (d) the vesting of an interest in an asset of a trust in a beneficiary;
  - (e) the distribution of an asset by a company to a shareholder; or
  - (f) the granting of an option.

- (2) There is no disposal of an asset—
- (a) by a person who transfers the asset as security for a debt or on release of the security by a creditor who transfers that asset back to that person upon the redemption or cancellation of that debt;
  - (b) by a company in respect of the issue of a share in the company or a debenture of the company, or by a company in respect of the granting of an option to acquire shares or debentures in such company;
  - (c) by a unit trust in respect of the issue of a unit in that trust or a debenture of that trust, or by a unit trust in respect of the granting of an option to acquire units in such unit trust;
  - (d) by a person in respect of the borrowing of money or obtaining credit from another person;
  - (e) by a trustee in respect of the distribution of an asset of the trust to a beneficiary who has a vested interest in that asset prior to distribution; or
  - (f) by a trustee in respect of a change in ownership in an asset by a trustee as a result of the termination of the appointment of an administrator of a trust under a will or other written instrument or of a trustee of an insolvent estate.

### **Part-disposals**

**12.** (1) Subject to subparagraph (2), where part of an asset is disposed of, the proportion of the base cost attributable to the part disposed of to the base cost of the part retained shall equal the proportion of the market value of the part disposed of to the market value of the part retained at the time of that disposal.

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

### **Events treated as disposals and acquisitions**

**13.** (1) Where an event described in subparagraph (2) occurs, a person owning assets described in that subparagraph will be treated as having disposed of those assets for consideration equal to the market value of the assets at the time of the event and to have immediately reacquired the assets at a cost equal to the market value of the assets at that time.

- (2) Subparagraph (1) applies, in the case of—
- (a) a person who ceases to be a resident, to all assets of that person other than assets listed in paragraph 2(1)(b);

- (b) an asset which is owned by a person who is not a resident and which is an asset of that person's permanent establishment in the Republic when that asset ceases otherwise than by way of disposal to be an asset of that establishment
- (c) assets that are not trading stock of a person, when they commence to be held as trading stock of that person;
- (d) an asset which is a personal-use asset of a person, when that asset ceases to be held as a personal-use asset by that person otherwise than by way of disposal; or
- (e) an asset which is not a personal-use asset of a person, when that asset commences to be held as a personal-use asset by that person.

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

(4) A person who commences to be a resident shall, subject to subparagraphs (5) and (6), be treated as having disposed of and reacquired each of his or her assets other than assets listed in paragraph 2(1)(b) for a base cost equal to the market value of that asset as at the date on which that person commences to be a resident.

(5) Where an asset contemplated in subparagraph (4) has been disposed of by a person after the date on which he or she commenced to be a resident and both the proceeds from that disposal and the expenditure contemplated in paragraph 22 incurred prior to that date in respect of that asset are lower than the market value of that asset as at that date, that person shall be treated as having acquired that asset for a base cost equal to the higher of?

- (a) the expenditure contemplated in paragraph 22 incurred in respect of that asset prior to that date; or
- (b) those proceeds less the expenditure contemplated in paragraph 22 incurred after that date in respect of that asset.

(6) Where an asset contemplated in subparagraph (4) has been disposed of by a person after the date on which he or she commenced to be a resident and both the proceeds from the disposal of that asset and the market value of that asset as at the date on which that person commenced to be a resident are lower than the expenditure contemplated in paragraph 22 incurred prior to that date in respect of that asset, that person shall be treated as having acquired that asset for a base cost equal to the higher of?

- (a) that market value; or
- (b) those proceeds less the expenditure contemplated in paragraph 22 incurred after that date in respect of that asset.

**Time of disposal**

14. (1) The time of disposal of an asset in consequence of—
- (a) change of ownership of an asset from one person to another because of an act, event, forbearance or by operation of law is, in the case of—
    - (i) an unconditional agreement, the date that the agreement is concluded;
    - (ii) a conditional agreement, the earlier of the date that the condition is satisfied or the date that the first payment of the proceeds accrues or is received by the person disposing of that asset;
    - (iii) expropriation of an asset in terms of law, the date when compensation for the asset expropriated accrues;
    - (iv) a donation of an asset, the date of compliance with all legal requirements for a valid donation;
    - (v) granting of an option, the date that the option is granted, renewed or extended;
    - (vi) forfeiture or abandonment of an asset, the date that the asset is forfeited; or
    - (vii) termination of an option granted by a company to a person to acquire a share, unit or debenture of that company, the date of the event when that option terminates;
 but is in any other case the date of change of ownership;
  - (b) an event contemplated in paragraph 13, the date immediately before the day that the event occurs;
  - (c) the damage, loss or destruction of an asset, the date—
    - (i) when the compensation in respect of that damage, loss or destruction accrues; or
    - (ii) if no compensation is payable, the later of the date when the damage, loss or destruction is discovered or when it is established that no compensation will be payable; or
  - (d) ending of ownership of an incorporeal asset by redemption, cancellation, release, discharge, expiry, abandonment, surrender, exercise of an option or conversion, the date that the asset terminates.
- (2) A person shall be treated as having acquired an asset at the time of disposal of that asset to that person.



**Disposal of partnership asset**

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

**Disposal by spouse married in community of property**

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

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

**PART IV: DISREGARDED DISPOSALS AND LIMITATION OF LOSSES****Aircraft, boats and certain rights and interests**

17. A capital loss in respect of the following assets of a natural person or a special trust shall be disregarded in determining the aggregate capital gain or aggregate capital loss of a person to the extent that the assets are used for purposes other than the carrying on of trade—

- (a) an aircraft with an empty mass exceeding 450 kg;
- (b) a boat exceeding 10m in length;
- (c) any fiduciary, usufructuary or other like interest less than 50 years in duration; or
- (d) any right of use or occupation in respect of immovable property of less than 50 years' duration

**Designated intangible asset**

18. (1) A capital loss in respect of the disposal of a designated intangible asset acquired prior to the valuation date shall be disregarded in determining the aggregate capital gain or aggregate capital loss of a person.

- (2) For the purposes of subparagraph (1), "designated intangible asset" means:
  - (a) goodwill;
  - (b) any patent as defined in the Patents Act, 1978 (Act No. 57 of 1978), or any design as defined in the Designs Act, 1993 (Act No. 195 of 1993), or any trade

mark as defined in the Trade Marks Act, 1993 (Act No. 194 of 1993), or any copyright as defined in the Copyright Act, 1978 (Act No. 98 of 1978), or any model, pattern, plan, formula or process or any other property or right of a similar nature; or

- (c) any other intangible property other than intangible property that: -
  - (i) was acquired for market value consideration; and
  - (ii) can only be disposed of by reason of its expiry.

### **Forfeited Deposits**

19. Where—

- (a) a person has made a deposit for the purpose of acquiring an asset not intended for use in carrying on a trade; and
  - (b) that deposit has been forfeited,
- the capital loss arising from that forfeiture shall be disregarded when determining that person's aggregate capital gain or aggregate capital loss.

### **Securities lending**

20. Where—

- (a) any marketable security has been lent by a lender to a borrower in terms of a "lending arrangement" as defined in section 23(1) of the Stamp Duties Act, 1968 (Act No. 77 of 1968) and another marketable security of the same kind and of the same or equivalent quantity and quality has been returned by that borrower and registered in the name of that lender before the end of the 12 month period contemplated in the definition of "lending arrangement", that marketable security shall be deemed not to have been acquired by that borrower or disposed of by that lender; and
- (b) another marketable security of the same kind and of the same or equivalent quantity and quality has been returned by that borrower and registered in the name of that lender before the end of the 12 month period contemplated in the definition of "lending arrangement", that other marketable security shall be deemed not to have been acquired by that lender or disposed of by the borrower.

## 21. Straddle transactions

- (1) Where—
- (a) the sum of the capital losses exceeds the sum of the capital gains on the disposal of straddle assets within a period commencing 45 days before the end of the year of assessment; and
  - (b) the sum of the capital gains exceeds the sum of the capital losses on the disposal of straddle assets within a 45 day period commencing on the first day of the immediately succeeding year of assessment,
- so much of the capital losses contemplated in item (a) shall be disregarded in determining the aggregate capital gain or aggregate capital loss of a person as will equal the amount of the excess contemplated in item (b).

(2) The capital losses disregarded by a person in terms of subparagraph (1) may be treated as capital losses in determining the aggregate capital gain or aggregate capital loss of that person in the immediately succeeding year of assessment.

(3) For the purposes of subparagraph (1), a 'straddle asset' is a financial instrument or commodity, the value of which varies depending on the value of a debt security, equity, commodity, rate or a specified index.

## PART V: BASE COST AND PROCEEDS

### Base cost of asset

22. (1) Subject to paragraph 23 and subparagraph (2), the base cost of an asset acquired by a person is the sum of the following amounts—
- (a) the expenditure actually incurred in respect of the cost of acquisition of that asset including, in the case of a marketable security, any gain in respect of that acquisition that was included in that person's income in terms of section 8A;
  - (b) the following amounts actually incurred as expenditure directly related to the acquisition or disposal of that asset—
    - (i) the remuneration of a surveyor, valuer, auctioneer, accountant, broker, agent, consultant or legal advisor, for services rendered;
    - (ii) transfer costs;
    - (iii) stamp or similar duty;
    - (iv) advertising costs to find a seller or to find a buyer;

- (v) any amount of value-added tax not allowed as an input deduction in terms of section 16(3) of the Value-Added Tax Act, No. 89 of 1991, or where an equivalent tax is levied by a foreign state, not allowed as an input deduction by that state;
  - (vi) the cost of establishing, maintaining or defending a legal title to or rights in that asset;
  - (vii) the cost of moving that asset from one location to another; and
  - (viii) if that asset was acquired by the exercise of an option, any consideration given by that person for the granting of that option.
- (c) the expenditure actually incurred in effecting an improvement to that asset which is still reflected in the state or nature of that asset at the time of its disposal.
- (2) The base cost of an asset acquired by a person does not include any of the following amounts—
- (a) any amount allowable as a deduction in determining the taxable income of that person before the inclusion of any taxable capital gain;
  - (b) any amount that has not been paid and is not due and payable in the year of assessment in which an asset is disposed of;
  - (c) any amount that has for any reason been recovered or become recoverable from any person (whether prior to or after the incurral of the expense to which it relates) or that has been recouped as a result of the cancellation, termination or variation of an agreement or due to the prescription or waiver of a claim or a release from an obligation or any other event;
  - (d) borrowing costs, including any interest as contemplated in section 24J or raising fees; and
  - (e) expenditure on repairs, maintenance, insurance, protection, rates and taxes, or similar expenditure.

### **Election in respect of assets acquired prior to valuation date**

**23.** (1) The base cost of an asset acquired by a person before the valuation date is the sum of the valuation date value of that asset as determined in terms of subparagraphs (2) or (4) and the amounts of any expenditure contemplated in paragraph 22 incurred after the valuation date in respect of that asset.

(2) Where the proceeds from the disposal of an asset acquired before the valuation date exceed the expenditure contemplated in paragraph 22 incurred in respect of that asset, the person

who disposed of that asset shall, subject to subparagraphs (3) and (6), determine the valuation date value of the asset as any of the following—

- (a) the market value of the asset on the valuation date as contemplated in subparagraph (8);
- (b) 20 per cent of the proceeds of disposal of the asset; or
- (c) the time-apportionment base cost of the asset, as contemplated in subparagraphs (9) and (10).

(3) Where a person has adopted the market value of an asset acquired before the valuation date as the valuation date value of that asset as contemplated in subparagraph 2(a) and both the proceeds from the disposal of that asset and the expenditure contemplated in paragraph 22 incurred before the valuation date in respect of that asset do not exceed that market value, that person shall determine the valuation date value of the asset as the higher of?

- (a) that expenditure; or
- (b) those proceeds less the expenditure contemplated in paragraph 22 incurred after the valuation date in respect of that asset.

(4) Where the proceeds from the disposal of an asset acquired before the valuation date do not exceed the expenditure contemplated in paragraph 22 incurred in respect of that asset, the person who disposed of that asset shall, subject to subparagraphs (5) and (6), determine the valuation date value as the lower of the market value of that asset on the valuation date as contemplated in subparagraph (8) or the time-apportionment base cost of that asset as contemplated in subparagraphs (9) and (10).

(5) Where a person has adopted the market value of an asset acquired before the valuation date as the valuation date value of that asset as contemplated in subparagraph 2(a) and both the proceeds from the disposal of that asset and that market value are lower than the expenditure contemplated in paragraph 22 incurred before the valuation date in respect of that asset, that person shall determine the valuation date value of the asset as the higher of?

- (a) the market value; or
- (b) those proceeds less the expenditure contemplated in paragraph 22 incurred after the valuation date in respect of that asset.

(6) A person may, in terms of subparagraphs (2)(a) and (4), adopt the market value of an asset other than an asset contemplated in subparagraph (8)(a) or (b) as the valuation date value of that asset only if that person has?

- (a) established the market value of that asset in conformance with the regulations contemplated in section 107(1)(f) of the Act; and
- (b) furnished a return of that market value within two years from the valuation date in such form as the Commissioner may prescribe.

(7) The period contemplated in subparagraph (6) may be extended by the Minister by notice in the *Gazette*.

(8) The market value of an asset on the valuation date is, in the case of?

- (a) an asset which is a financial instrument listed on an recognised exchange and for which a price was quoted on that exchange on the date as at which the value is calculated, the market value as determined under paragraph 24;
- (b) an asset which is a long-term insurance policy, being a policy as defined in section 1 of the Long-Term Insurance Act, 1998 (Act No. 52 of 1998), the amount which would be payable to the policyholder upon the surrender of the policy on that day; or
- (c) any other asset, the price which could have been obtained upon a sale of the asset between a willing buyer and a willing seller dealing at arm's length in an open market.

(9) Where the total amount of expenditure as contemplated in paragraph 22 was incurred in a single year of assessment in respect of an asset acquired before the valuation date, the time-apportionment base cost of that asset is the sum of—

- (a) the amount of that expenditure; and
- (b) a proportion of the difference between the proceeds from the disposal of that asset and the amount of the expenditure contemplated in item (a) equal to the proportion of the number of years or part thereof the asset was owned prior to the valuation date compared to the sum of the number of years or part thereof the asset was owned prior to the valuation date and the number of years or part thereof the asset was owned after the valuation date.

(10) Where the total amount of expenditure as contemplated in paragraph 22 was incurred during more than one year of assessment in respect of an asset acquired prior to the valuation date?

- (a) that asset shall for purposes of this subparagraph be treated as consisting of separate assets each of which was acquired?
  - (i) six months after the commencement of each of the years of assessment during which that expenditure was incurred; and
  - (ii) for a base cost equal to the amount of the expenditure so incurred during that year of assessment;
- (b) the proceeds in respect of each of those assets shall be equal to a proportion of the proceeds from the disposal of the complete asset equal to the proportion of the base cost determined in terms of item (a)(ii) compared to the base cost of the complete asset;
- (c) the time-apportionment base cost of each of those assets shall be the sum of—

- (i) the amount of the base cost determined in terms of item (a)(ii); and
- (iii) a proportion of the difference between the proceeds as determined in terms of item (b) and the base cost as determined in terms of item (a)(ii) equal to the proportion of the number of years or part thereof the asset was owned prior to the valuation date compared to the sum of the number of years or part thereof the asset was owned prior to the valuation date and the number of years or part thereof the asset was owned after the valuation date; and
- (d) the time-apportionment base cost of the complete asset is the sum of the time-apportionment base cost of each of those assets as determined in terms of item (c).

#### **Averaging of value of shares owned on valuation date**

**24.** For the purposes of paragraph 23, the market value of a financial instrument described in that paragraph is the average of the last price quoted in respect of that financial instrument on the recognised exchange on each of the five days of trading preceding the valuation date.

#### **Proceeds from disposal**

**25.** (1) Subject to subparagraph (2), the proceeds from the disposal of an asset by a person are equal to the total amount received by or accrued to or deemed to have been received by or accrued to a person in a year of assessment in consequence of that disposal, and includes—

- (a) any consideration in the form of a discharge of all or part of a debt owed by that person; and
- (b) any amount received by or accrued to a lessee from the lessor of the leased property for improvements effected to such property.

(2) The proceeds from the disposal of an asset by a person do not include any of the following amounts—

- (a) any amount that must be included in the gross income of that person or that must be taken into account when determining the taxable income of that person before the inclusion of any taxable capital gain;
- (b) any amount that has been repaid or has become repayable to the person to whom that asset was disposed of; or
- (c) any reduction, as the result of the cancellation, termination or variation of an agreement or due to the prescription or waiver of a claim or release from an

obligation or any other event, of an accrued amount forming part of the proceeds of that disposal.

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

**26.** Where a person disposed of an asset to a person who is a connected person in relation to that person or disposed of an asset by means of a non-arm's length transaction—

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

### **Capital losses arising from disposals to connected persons**

**27.** (1) A person's capital loss arising from the disposal of an asset to a person who is a connected person in relation to that person must be disregarded when determining the aggregate capital gain or aggregate capital loss of that person.

(2) A person's capital loss which is disregarded in terms of subparagraph (1) may be deducted from that person's capital gains or added to that person's capital losses arising from subsequent disposals of assets to the same person to whom the disposal giving rise to that capital loss was made if the latter person is still a connected person in relation to that person at the time of those subsequent disposals.

### **Disposal by means of donation or for no consideration**

**28.** Where a person disposed of an asset by means of a donation or for a consideration not measurable in money, that disposal is treated as a disposal by means of a non-arm's length transaction.



**Disposal to and from deceased estate**

**29.** (1) A deceased person shall be treated as having disposed of his or her assets to the deceased estate for proceeds equal to the market value of those assets at the date of that person's death, and the deceased estate shall be treated as having acquired those assets for a base cost equal to that market value.

(2) Where an asset is disposed of by a deceased estate to an heir, legatee or trustee of a trust?

(a) the deceased estate shall be treated as having disposed of that assets for proceeds equal to the base cost of the deceased estate in respect of that assets; and

(b) the heir, legatee or trustee shall be treated as having acquired that assets for a base cost equal to the base cost of the deceased estate in respect of that asset.

**Currency conversion**

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

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

**Reacquired assets**

**31.** Where a person has a capital loss in respect of the disposal of an asset and the person or a connected person acquires the same or a substantially similar asset within 90 days of the time of disposal—

(a) the person who disposed of the asset shall be treated as having disposed of the asset for proceeds equal to the base cost of the asset; and

(b) the person who acquired the asset shall be treated as having acquired the asset for a base cost equal to the base cost of the person who disposed of the asset, in respect of that asset.

## Gain on cancellation or reduction of obligation

### 32. [To be considered]

## PART VI: PRIMARY RESIDENCE EXCLUSION

### Definitions

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

“an interest” means—

- (a) any real or statutory right in a residence or in land; or
- (b) a share owned directly in a share block company as defined in the Share Blocks Control Act, 1980 (Act No. 59 of 1980) or a share in a similar entity which is not a resident; or
- (c) a right of use or occupation,

but excluding a right under a mortgage bond.

‘primary residence’ means a residence—

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

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

### General principle

34. (1) A natural person or a special trust shall when determining an aggregate capital gain or aggregate capital loss disregard so much of a capital gain or capital loss as does not exceed R1 million arising in respect of the disposal of a primary residence.

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

### **Size of residential property qualifying for exclusion**

**35.** Where a primary residence is disposed of together with the land on which it is situated, the provisions of paragraph 34 shall apply in respect of so much of that land, including unconsolidated adjacent land, as—

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

### **Apportionment in respect of periods of absence**

**36.** Subject to paragraphs 37 and 38—

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

then the portion of the capital gain or capital loss to be disregarded in terms of paragraph 34 shall be determined with reference to the portion of that period during which that person, beneficiary or spouse was so ordinarily resident.

### **Disposal and acquisition of primary residence**

**37.** A natural person or a beneficiary of a special trust shall for purposes of paragraph 36 be treated as having been ordinarily resident in a residence for a continuous period not exceeding two years if that person did not reside in that residence during that period for the following reasons—

- (a) at the time the residence was that person's primary residence it had been offered for sale and vacated due to the acquisition or intended acquisition of a new primary residence;

- (b) the residence was newly acquired as a primary residence for that person and undergoing renovation or improvement prior to that person taking up residence therein;
- (c) the residence was being erected on land acquired for that purpose in order to be used as that person's primary residence; or
- (d) the residence had been accidentally rendered uninhabitable.

### Rental periods

**38.** A natural person or a beneficiary of a special trust or a spouse of that person or beneficiary shall for purposes of paragraph 36 be treated as having been ordinarily resident in a residence during any continuous period of absence therefrom not exceeding five years while that residence was being let if—

- (a) that person or beneficiary or spouse resided in that residence as a primary residence for a continuous period of at least one year prior to and after any such period; and
- (b) no other residence was treated as the primary residence of that person or beneficiary during any such period.

### Non-residential use

**39.** Subject to paragraph 38?

- (a) where a natural person or special trust—
    - (i) disposes of an interest in a primary residence; or
    - (ii) disposes of an interest in a residence that was a primary residence for a part of the period on or after the valuation date during which that person or trust held that interest; and
  - (b) that person or a beneficiary of that trust used the residence referred to in subparagraph (a) or a part thereof for the purposes of carrying on a trade for any portion of the period on or after the valuation date during which that person or trust held that interest,
- then the portion of the capital gain or capital loss to be disregarded in terms of paragraph 34 shall be determined with reference to the period on or after the valuation date during which that person or beneficiary used that residence for domestic or private residential purposes as well as to the part of that residence used by that person or beneficiary mainly for purposes other than the carrying on of a trade.

#### 40. Transfer of a primary residence from a company

Where a residence has been transferred from a company to a natural person as that natural person's primary residence under the circumstances as contemplated section 9(16) of the Transfer Duty Act No. 40 of 1949?

- (a) that company shall be treated as having disposed of that residence at market value on the valuation date; and
- (b) that natural person shall be treated as having acquired that primary residence at market value on the valuation date.

### PART VII: OTHER EXCLUSIONS

#### General principle

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

#### Personal-use assets

42. (1) A personal-use asset is an asset of a natural person or a special trust, to the extent that that asset is used for purposes other than the carrying on of a trade, excluding—

- (a) a coin of which the intrinsic value is mainly attributable to the material from which it is minted or cast;
- (b) immovable property;
- (c) an aircraft the empty mass of which exceeds 450 kilograms;
- (d) a boat exceeding ten metres in length;
- (e) a financial instrument of whatever nature;
- (f) any fiduciary, usufructuary or other like interest; and
- (g) a right or interest of whatever nature to or in an asset envisaged in items (a) to (f);

(2) A natural person or a special trust must when determining an aggregate capital gain or aggregate capital loss disregard a capital gain or capital loss arising on the disposal of a personal-use asset.

### Assurance and retirement benefits

43. A person must when determining an aggregate capital gain or aggregate capital loss disregard a capital gain or capital loss arising in respect of a disposal that resulted in that person receiving—

- (a) a lump sum subject to the Second Schedule,
- (b) a life insurance benefit,
- (c) a lump sum in respect of an endowment policy, or
- (d) a lump sum in consideration of past employment outside the Republic from a fund or arrangement similar to a pension, provident or retirement annuity fund

where the recipient was the original beneficial owner or the nominee or dependent of the original beneficial owner of the relevant policy or instrument.

### Disposal of small business assets

44. (1) For purposes of this paragraph, 'small business' means a business of which the gross asset value does not exceed R5 000 000.

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

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

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

- (i) attained the age of 55 years; or
- (ii) not yet attained the age of 55 years but the disposal is in consequence of ill-health, other infirmity or death; or

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

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

(5) Where a natural person operates more than one small business either by way of a sole proprietorship, a partnership interest or a direct interest in the equity of a company consisting of at least 10 per cent, then he or she may subject to subparagraphs (3) and (4) include every such small business in the determination of the amount to be disregarded in terms of subparagraph (3) if each such small business differs substantially in nature from every other small business.

### **Compensation for personal injury, illness or defamation**

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

### **Prize money**

46. A natural person must when determining an aggregate capital gain or aggregate capital loss disregard a capital gain or capital loss arising in respect of a disposal that resulted in that person, as the case may be, receiving—

- (a) prize money won as a result of participation in any form of gambling, lottery, betting, gaming, any similar game or competition, or any commercial or promotional competition authorised by or conducted in terms of South African law or any disposition of a chance to win a prize; or
- (b) payment for a right to win a prize, or a right to receive a prize.

### **Conversion of foreign currency**

47. A natural person or a special trust must when determining an aggregate capital gain or aggregate capital loss disregard a capital gain accruing to that person or the beneficiary of a special trust, as the case may be, as a result of the conversion of foreign currency, acquired by that person or beneficiary for personal expenditure outside the Republic, into South African legal tender upon returning from international travel.

**Insurance proceeds**

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

**Unit trust funds**

49. A unit portfolio contemplated in paragraph (e) of the definition of 'company' as defined in section 1 shall disregard any capital gain or capital loss in determining its taxable income.

**Donations to public benefit organisations**

50. Any capital gain arising from the donation of an asset to a public benefit organisation approved by the Commissioner under section 30 is to be disregarded when determining the aggregate capital gain or aggregate capital loss of the person who made that donation if the amount of that donation qualifies as an allowable deduction in that person's hands under section 18A.

**Asset used to produce exempt income**

51. A person must when determining an aggregate capital gain or aggregate capital loss disregard a capital gain or capital loss, as the case may be, in respect of the disposal of an asset used solely to produce income or receipts and accruals which are exempt in terms of section 10, other than receipts and accruals contemplated in paragraphs 0(1)(xv), 0(1)(xvi), 0(i)(iA), (k) and (m) of subsection (1) thereof.



## PART VIII: ROLL-OVERS AND ATTRIBUTION OF CAPITAL GAIN

### Involuntary disposal

52. (1) Subject to subparagraphs (2), (3) and (4), where—
- (a) a person disposes of an asset other than a financial instrument by way of expropriation, loss, destruction or damage;
  - (b) proceeds accrue to that person by way of compensation for that expropriation, loss, destruction or damage;
  - (c) those proceeds exceed the base cost of that asset; and
  - (d) that person satisfies the Commissioner that -
    - (i) substantially the whole of the proceeds will be expended in replacing that asset;
    - (ii) within a year of the disposal of that asset, a contract will be concluded to replace that asset with a similar asset; and
    - (iii) within three years of the disposal that asset, the replacement asset will be brought into use ;
- that person shall disregard the capital gain on that asset when determining his or her aggregate capital gain or aggregate capital loss until such time as the replacement asset is disposed of and that disregarded capital gain shall be treated as a capital gain on the disposal of the replacement asset when determining his or her aggregate capital gain or aggregate capital loss.
- (2) Where there is a disposal as contemplated in subparagraph (1) of an asset situated in the Republic by a person who is not a resident, an asset may only be considered to be a replacement asset where it is situated in the Republic.
- (3) The periods contemplated in subparagraph (1)(d) may be extended by a maximum of six months at the discretion of the Commissioner having regard to whether or not all reasonable steps were taken to conclude a contract or bring the replacement asset into use, as the case may be.
- (4) Where a person fails to conclude a contract within the prescribed period contemplated in subparagraph (1)(d)(ii) or fails to bring a replacement asset into use within the prescribed period contemplated in subparagraph (1)(d)(iii) or the longer period contemplated in subparagraph (2) that person shall—
- (a) treat the disregarded capital gain contemplated in subparagraph (1) as a capital gain on the date that that prescribed period or longer period ends when determining an aggregate capital gain or aggregate capital loss;

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

### Reinvestment in similar assets

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

- (a) a person disposes of an asset qualifying for a capital allowance or deduction in terms of section 12B, 12C, 14, or 14*bis*;
- (b) the proceeds accruing on that disposal exceed the base cost of that asset;
- (c) by the end of the year of assessment in which that disposal takes place, that person has concluded a contract to replace that asset with a replacement asset which will qualify for a deduction in terms of section 12B or 12C; and
- (d) that person satisfies the Commissioner that—
  - (i) substantially the whole of those proceeds will be expended in replacing that asset with that replacement asset; and
  - (ii) within a year of the disposal of that asset, that replacement asset will be brought into use;

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

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

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

(4) Where a person fails to conclude a contract within the prescribed period contemplated in subparagraph (1)(c) or fails to bring a replacement asset into use within the prescribed period contemplated in subparagraph (1)(d)(ii) or the longer period contemplated in subparagraph (2) that person shall—

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

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

#### **Transfer of asset between spouses**

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

#### **Transfer of business to a company**

- 55.** (1) This paragraph applies where the following conditions are met—
- (a) a natural person or natural persons simultaneously dispose of active business assets to a company in exchange for at least ten percent interest each in the equity share capital or member's interest of the company;
  - (b) the company has no assessed loss or assessed capital loss at the date of the disposal of those assets to that company;
  - (c) the gross assets of the company immediately subsequent to the acquisition of those assets by that company do not exceed R5 000 000; and
  - (d) the assets of the company after their disposal by the natural person or persons referred to in subparagraph (a) to that company comprise of only the assets referred to in subparagraph (a).

- (2) Where the conditions in subparagraph (1) are satisfied—
- (a) a natural person who disposed of assets to the company as consideration for equity share capital or a member's interest in that company is treated as having—
    - (i) disposed of the assets for proceeds equal to the base cost of those assets; and
    - (ii) acquired the equity share capital or member's interest at the market value of that equity share capital or member's interest immediately subsequent to the disposal of those assets to that company; and
  - (b) the company is treated as having acquired the assets at a cost equal to the base cost of the assets to the natural person who disposed of them to that company; and
  - (c) the natural person who disposed of an asset to the company and the company are treated as one and the same person for purposes of any capital allowances, deductions or recoupments provided for in this Act in respect of that asset.

#### **Attribution of capital gain to spouse**

56. Any portion of a person's capital gain—
- (a) derived by reason of—
    - (i) a donation, settlement or other disposition; or
    - (ii) a transaction, operation or scheme made, entered into or carried out on or after the valuation date by that person's spouse mainly for purposes of reducing, postponing or avoiding that spouse's liability for any tax, duty or levy which would otherwise have become payable under any Act administered by the Commissioner; or
  - (b) derived from—
    - (i) any trade carried on by that person in partnership or association with that person's spouse or which is in any way connected with any trade carried on by that spouse; or
    - (ii) that person's spouse or from any partnership or private company at a time when that spouse was a member of that partnership or the sole, main or one of the principal shareholders of that company,
- and that exceeds the amount to which that person would reasonably be entitled having regard to the nature of the relevant trade, the extent of that person's participation therein, the services rendered by that person or any other relevant factor,

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

#### **Attribution of capital gain to parent of minor child**

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

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

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

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

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

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

- (2) Where—
- (a) a capital gain has arisen by reason of a donation, settlement or other disposition;

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

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

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

##### **59. Where?**

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

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

### **PART IX: Companies and shareholders**

#### **Definitions**

##### **60. In this Part?**

“dividend” means any distribution of profits or reserves of a company whether realised or unrealised and whether capitalised or not and includes any—

- (a) amount constituting a ‘dividend’ as defined in section 1; and
- (b) distribution of profits of a capital nature in the course of the winding up or liquidation of a company,

but does not include any foreign dividend that has been included in the taxable income of the shareholder to whom that dividend accrues.

'listed company' means a company listed on an recognised exchange, and 'non-listed company' has the opposite meaning;

'pre-acquisition dividend', in relation to any share acquired by a person?

- (a) on or after the valuation date; or
- (b) before the valuation date in respect of which the time-apportionment base cost has been adopted in terms of paragraph 23,

means a dividend declared after the date of acquisition of that share out of profits or reserves derived by the company in which that share is held prior to the date of acquisition by that person of that share;

'pre-valuation date dividend', in relation to any share acquired by a person prior to the valuation date in respect of which the valuation basis has been adopted in terms of paragraph 23, means a dividend declared after that date out of profits or reserves derived prior to that date by the company in which that share is held;

'pre-acquisition profits or reserves' in relation to any share in a company?

- (a) acquired by a person on or after the valuation date; or
- (b) a share acquired by a person before the valuation date in respect of which the time-apportionment base cost has been adopted in terms of paragraph 23,

means profits or reserves of that company at the date of acquisition by that person of that share;

'pre-valuation date profits or reserves' in relation to any share in a company acquired by a person prior to the valuation date, in respect of which the valuation basis has been adopted in terms of paragraph 23, means profits or reserves of that company on the valuation date;

#### **Dividend declared by non-listed company**

**61.** A shareholder who receives a pre-valuation date or pre-acquisition dividend from a share held in a non-listed company shall on receipt or accrual of that dividend deduct the amount of that dividend from the base cost of that share.

**Dividend declared by listed company**

**62.** A shareholder who receives a pre-valuation date or pre-acquisition dividend from a share held in a listed company shall on receipt or accrual of that dividend deduct the amount of that dividend from the base cost of that share if?

- (a) that shareholder holds an effective interest in that company of 10 per cent or more;  
or
- (b) that shareholder together with any connected person holds an effective interest in that company of 10 per cent or more.

**Determination of pre-valuation date or pre-acquisition profit or reserve**

**63.** In determining whether a dividend has been declared out of pre-acquisition or pre-valuation date profits or reserves unless the shareholder is able to prove to the contrary—

- (a) the profits from which the dividend is declared must be reckoned on a last-in, first-out basis;
- (b) the pre-valuation date or pre-acquisition profits or reserves shall be apportioned evenly on a pro rata basis if the financial year of a company falls on a date other than the valuation date or the date of acquisition of the relevant shares;
- (c) unrealised pre-acquisition or pre-valuation date profits or reserves are deemed to have been earned evenly from the date of acquisition of the asset to which they relate.

**Reduction and redemption of share capital and share premium**

**64.** Where a company effects a reduction of its share capital or share premium account (including any redemption of redeemable preference shares)—

- (a) the base cost of any shares held by a shareholder in that company shall be reduced by the amount of the share capital or share premium reduction or redemption effected in relation to those shares;
- (b) the reduction in base cost referred to in subparagraph (a) shall occur when that return or redemption of share capital or share premium is received by or accrues to that shareholder.



### Negative base cost

65. Where the deduction referred to in paragraphs 61, 62 or 64 exceeds the base cost of a share?

- (a) the amount by which that base cost is so exceeded shall be treated as a capital gain in the year of assessment in which that deduction is made; and
- (b) the share shall thereafter be treated as having a base cost of nil.

### Liquidation or deregistration of companies

66. (1) A shareholder of a company that is being wound up, liquidated or deregistered, shall be treated as having disposed of his or her or its shares in that company at the earlier of—

- (a) the date of dissolution or deregistration of that company; or
- (b) in the case of a winding-up or liquidation, the date on which the liquidator declares in writing that he or she has no reasonable grounds to believe that there is any likelihood that the shareholders of that company or shareholders of the relevant class of shares, will receive any further distribution in the course of the winding-up of that company.

(2) Any amount distributed by a company in the course of or in anticipation of its liquidation or winding-up or deregistration that has not been—

- (a) subjected to secondary tax on companies; or
- (b) in the case of any foreign dividend as defined in section 9E, included in the income of that shareholder?

and which does not constitute a pre-acquisition or pre-valuation date dividend brought into account in terms of paragraphs 61 or 62, shall be taken into account in terms of subparagraphs (3) and (4).

(3) Any amount referred to in subparagraph (2) which is received by or accrues to a shareholder of that company during any year of assessment ending before the date on which the shares are treated as having been disposed of in terms of subparagraph (1) shall be deducted from the base cost of those shares: Provided that where such proceeds exceed the base cost of those shares, the excess shall be treated as a capital gain in respect of the year of assessment during which that excess is received or accrues.

(4) Any amount referred to in subparagraph (2) which is received by or accrues to a shareholder of that company during any year of assessment ending after the date of the deemed disposal of the shares referred to in subparagraph (1) shall be treated as the proceeds in consequence of that disposal.

**PART X: TRUSTS, TRUST BENEFICIARIES AND INSOLVENT ESTATES****Trustee assets treated as assets of beneficiaries with vested interests**

**67.** Where a beneficiary of a trust has a vested interest in an asset of the trust, the asset shall be treated as an asset owned by the beneficiary and not by the trustee for the purposes of this Schedule and actions by the trustee with respect to the asset shall be treated as actions of the beneficiary.

**Interest in gains only**

**68.** Where a capital gain arises in a trust in a year of assessment during which a beneficiary of that trust has a vested interest or acquires a vested interest (including an interest caused by the exercise of a discretion) in that capital gain but not in the asset the disposal of which gave rise to the capital gain, the gain—

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

**Distributions of other amounts**

**69.** (1) The base cost of an interest in a trust shall be reduced, but not below zero, by the amount of any distribution by a trust to a beneficiary other than—

- (a) a distribution of an asset in which the beneficiary has a vested interest prior to the distribution;
- (b) a distribution to the extent that it is—
  - (i) included in the income of the beneficiary under section 25B;
  - (ii) taken into account for the purpose of calculating the beneficiary's aggregate capital gain or aggregate capital loss under paragraph 68; or
  - (iii) an amount that has been included in the income of the trust or taken into account for the purpose of calculating the trust's aggregate capital gain or aggregate capital loss in a previous year.

(2) Where the base cost of a person's interest in a trust is zero, the person will be treated as having a capital gain equal to the amount of any distribution from the trust other than a distribution described in item (a) and (b) of subparagraph (1).

### **Insolvent estates of natural persons**

**70.** Where the estate of any person has been voluntarily or compulsorily sequestrated and transferred to the trustee or administrator of that person's insolvent estate, then—

- (a) the estate of that person prior to sequestration and that person's insolvent estate shall for the purposes of this Schedule be treated as one and the same person;
- (b) that person shall not be entitled to take any assessed capital loss incurred prior to the date of sequestration into account when determining his or her aggregate capital gain or aggregate capital loss for any subsequent year of assessment; and
- (c) where the order of sequestration has been set aside, that person shall be entitled to take only that portion of an assessed capital loss incurred prior to the date of sequestration that was not taken into account when determining an aggregate capital gain or aggregate capital loss of the insolvent estate, into account when determining an aggregate capital gain or aggregate capital loss for a subsequent year of assessment.

## **PART XI: ANTI-AVOIDANCE MEASURES**

### **Value shifting**

**71. [To be considered.** Value shifting involves the effective transfer of value from one entity to another without constituting a disposal for capital gains tax purposes. The need for anti-avoidance provisions to counter these schemes is under consideration].

**PART XII: MISCELLANEOUS**

**Transactions during transitional period**

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

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

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

in order to replace the asset so disposed of.

(3) Any person who acquired or reacquired an asset in the circumstances set out in subparagraph (2) shall for purposes of subparagraph (9) and (10) of paragraph 23 be treated as having acquired or reacquired that asset—

- (a) at the time when the person who disposed of that asset or the substantially similar asset acquired that asset; and
- (b) for a base cost equal to the base cost of that asset or the substantially similar asset in the hands of the person who disposed of it."

**Amendment of section 9 of Act 40 of 1949, as amended by section 3 of Act 31 of 1953, section 12 of Act 80 of 1959, section 3 of Act 70 of 1963, section 3 of Act 77 of 1964, section 1 of Act 81 of 1965, section 7 of Act 103 of 1969, section 2 of Act 89 of 1972, section 3 of Act 66 of 1973, section 5 of Act 88 of 1974, section 77 of Act 54 of 1976, section 2 of Act 95 of 1978, section 6 of Act 106 of 1980, section 2 of Act 99 of 1981, section 2 of Act 118 of 1984, section**

**3 of Act 81 of 1985, section 3 of Act 86 of 1987, section 4 of Act 87 of 1988, section 1 of Act 69 of 1989, section 36 of Act 9 of 1989, section 1 of Act 69 of 1989, section 79 of Act 89 of 1991, section 6 of Act 120 of 1992, section 4 of Act 136 of 1992, section 5 of Act 97 of 1993, section 2 of Act 37 of 1995, section 3 of Act 32 of 1999**

**20.** Section 9 of the Transfer Duty Act, 1949 (Act No. 40 of 1949) is hereby amended by the insertion after subsection (15) of the following subsection:

“(16) No duty shall be payable in respect of the acquisition by a natural person of a residence that will constitute that person’s primary residence as defined in paragraph 33 of the Eighth Schedule to the Income Tax Act, 1962, from a company or close corporation where—

- (a) that acquisition took place on or after 1 April 2001, but not later than 31 March 2002;
- (b) that natural person and his or her spouse held all the equity share capital or members’ interest in that company or close corporation, as the case may be, from 1 April 2001 to the date of that acquisition; and
- (c) that natural person and his or her spouse personally and ordinarily resided in that residence and used it for domestic or private residential purposes as his or her or their main residence from 1 April 2001 to the date of that acquisition:

Provided that this exemption shall apply only in respect of the portion of the property contemplated in paragraph 35 of the Eighth Schedule.”

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

**21.** (1) The First Schedule to the Estate Duty Act is hereby amended by the substitution for the expression “25 per cent” where it appears in the words preceding the proviso, of the expression “X per cent”;

(2) The provisions of subsection (1) shall come into operation on 1 April 2001 and shall apply in respect of the estate of any person who dies on or after that date.

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

22. Item 7 of Schedule 1 to the Stamp Duties Act, 1968 (Act No. 77 of 1968) is hereby amended by the addition of the following paragraph to the heading "Exemptions"

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

**Amendment of section 60 of Act 113 of 1993, as amended by section 20 of Act 140 of 1993, section 4 of Act 168 of 1993, section 34 of Act 20 of 1994, section 6 of Act 37 of 1995, section 34 of Act 37 of 1996, section 55 of Act 27 of 1997 and section 107 of Act 53 of 1999**

23. Section 60 of the Income Tax Act, 1993 (Act No. 113 of 1993) is hereby amended by the insertion—

- (1) after subparagraph (ii) of paragraph (a) of subsection (5) of the following subparagraph:

"(iii) not to be a disposal of an asset for purposes of the Eighth Schedule of the Income Tax Act, 1962;"

- (2) after paragraph (c) of but before the proviso to subsection (5) of the following paragraph:

"(d) where any person who holds shares (other than shares contemplated in paragraphs (b) and (c)) in an unbundling company or intermediate company, has pursuant to an unbundling transaction acquired distributable shares—

- (i) that person shall be deemed to have disposed of such firstmentioned shares for proceeds equal to the base cost of the shares for purposes of the Eighth Schedule of the Income Tax Act, 1962; and
- (ii) acquired such distributable shares for a base cost equal to the base cost of such firstmentioned shares:".

**Amendment of section 39 of Act 20 of 1994, as amended by section 7 of Act 37 of 1995, section 35 of Act 37 of 1996, section 28 of Act 46 of 1996, section 56 of Act 27 of 1997 and section 108 of Act 53 of 1999**

**24.** Section 39 of the Taxation Laws Amendment Act, 1994 (Act No. 20 of 1994) is hereby amended?

(1) by the substitution in subsection (2) in the definition of "holding company" for the expression "R75 million" of the expression "R50 million"; and

(2) by the insertion in subsection (6) after paragraph (b) of the of the following paragraph:

"(bA) the transferor company shall be deemed to have disposed of any asset not referred to in the preceding paragraphs for proceeds equal to the base cost of the asset and the transferee company shall be deemed to have acquired those assets for a base cost equal to the base cost of the transferor company in the transferred assets;".

**Short title and commencement**

**25.** This Act is called the Taxation Laws Amendment Act, 2001 and comes into operation on 1 April 2001.