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THE PRESIDENCY

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It is hereby notified that the Acting President has assented to the following Act which is hereby published for general information:—

No. 5 of 2001: Taxation Laws Amendment Act, 2001



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- (c) by the insertion after the definition of "registration officer" of the following definition:
 " 'Republic' means the territory of the Republic of South Africa and includes the territorial waters, the contiguous zone and the continental shelf referred to respectively in sections 4, 5 and 8 of the Maritime Zones Act, 1994 (Act No. 15 of 1994);"; and 5
- (d) by the insertion after the definition of "South African Revenue Service" of the following definition:
 " 'spouse' in relation to any person, means the partner of such person— 10
- (a) in a marriage or customary union recognised in terms of the laws of the Republic;
- (b) in a union recognised as a marriage in accordance with the tenets of any religion; or
- (c) in a same-sex or heterosexual union which the Commissioner is satisfied is intended to be permanent; 15
- Provided that a marriage or union contemplated in paragraph (b) or (c) shall, in the absence of proof to the contrary, be deemed to be a marriage or union without community of property."

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 and section 3 of Act 32 of 1999 20 25

2. Section 9 of the Transfer Duty Act, 1949, is hereby amended by the addition of the following subsections: 30

- "(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 44 of the Eighth Schedule to the Income Tax Act, 1962, from a company where— 35
- (a) that acquisition takes place on or after the date of promulgation of the Taxation Laws Amendment Act, 2001, but not later than 30 September 2002;
- (b) that natural person alone or together with that person's spouse directly held all the share capital or members' interest in that company from 5 April 2001 to the date of the registration in the deeds registry of the residence in the name of the natural person or jointly in the name of that person and that person's spouse; 40
- (c) that natural person or that person's spouse ordinarily resided in that residence and used it mainly for domestic purposes from 5 April 2001 to the date of that registration; and
- (d) the registration in the deeds registry of that residence in the name of that natural person or jointly in the name of that person and that person's spouse takes place not later than 31 March 2003; 45
- Provided that this exemption shall apply only in respect of the portion of the property contemplated in paragraph 46 of the Eighth Schedule.

(17) 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 44 of the Eighth Schedule to the Income Tax Act, 1962, from a trust where—

- (a) that acquisition takes place on or after the date of promulgation of the Taxation Laws Amendment Act, 2001, but not later than 30 September 2002; 5
 - (b) that person disposed of that residence to that trust by way of donation, settlement or other disposition or financed all the expenditure, as contemplated in paragraph 20 of the Eighth Schedule, actually incurred by the trust to acquire and to improve the residence; 10
 - (c) that person or that person's spouse ordinarily resided in that residence and used it mainly for domestic purposes from 5 April 2001 to the date of registration in the deeds registry of the residence in the name of that person or jointly in the names of that person and that person's spouse; and
 - (d) that registration takes place not later than 31 March 2003: 15
- Provided that this exemption shall apply only in respect of the portion of the property contemplated in paragraph 46 of the Eighth Schedule.”.

Amendment of section 1 of Act 45 of 1955, as amended by section 1 of Act 59 of 1957, section 1 of Act 65 of 1960, section 7 of Act 77 of 1964, section 3 of Act 92 of 1971, section 9 of Act 106 of 1980, section 5 of Act 86 of 1987, section 7 of Act 87 of 1988, section 6 of Act 97 of 1993, section 2 of Act 140 of 1993, section 8 of Act 88 of 1996, section 5 of Act 27 of 1997, section 34 of Act 34 of 1997, section 7 of Act 53 of 1999, section 6 of Act 30 of 2000 and section 1 of Act 59 of 2000 20

3. Section 1 of the Estate Duty Act, 1955, is hereby amended—

- (a) by the substitution for paragraphs (a), (b) and (c) of the definition of “spouse” 25 of the following paragraphs:
 - “(a) in a marriage or customary union recognised in terms of the laws of the Republic;
 - (b) in a union recognised as a marriage [entered into] in accordance with [any system of religious law which is recognised in the Republic] the 30 tenets of any religion; or
 - (c) in a [permanent] same-sex [life relationship] or heterosexual union which the Commissioner is satisfied is intended to be permanent.”; and
- (b) by the addition to the definition of “spouse” of the following proviso: 35

“Provided that a marriage or union contemplated in paragraph (b) or (c) shall, in the absence of proof to the contrary, be deemed to be a marriage or union without community of property.”.

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 1988 and section 11 of Act 37 of 1996 40

4. (1) The First Schedule to the Estate Duty Act, 1955, is hereby amended by the substitution for the expression “25 per cent” of the expression “20 per cent”.

(2) Subsection (1) shall apply in respect of the estate of any person who dies on or after 1 October 2001.

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 45

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

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

- (a) by the insertion after the definition of “agent” of the following definitions: 15
“ ‘aggregate capital gain’ means an amount determined in terms of paragraph 6 of the Eighth Schedule;
‘aggregate capital loss’ means an amount determined in terms of paragraph 7 of the Eighth Schedule;
‘assessed capital loss’ means an amount determined in terms of paragraph 9 of the Eighth Schedule;”; 20
- (b) by the addition to the end of paragraph (c) of the definition of “assessment” of the word “or”;
- (c) by the addition to the definition of “assessment” of the following paragraph: 25
(d) of any assessed capital loss determined in terms of paragraph 9 of the Eighth Schedule;”;
- (d) by the insertion after the definition of “business day” of the following definitions: 30
“ ‘capital gain’ means an amount determined in terms of paragraph 3 of the Eighth Schedule;
‘capital loss’ means an amount determined in terms of paragraph 4 of the Eighth Schedule;”;
- (e) by the deletion of the definition of “married”;
- (f) by the substitution for the definition of “married woman” of the following definition: 35
“ ‘married woman’ does not include a married woman who is living apart from her husband in circumstances which indicate that the separation is likely to be permanent [nor, where any husband is at any time married to two or more wives, any wife other than the wife of his longest subsisting marriage];”; 40
- (g) by the insertion after the definition of “pension fund” of the following definition: 45
“ ‘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;”;
- (h) by the addition to the definition of “representative taxpayer” of the following proviso: 50
“Provided that for the purposes of this definition income includes any amount received or accrued or deemed to have been received or accrued in consequence of the disposal of any asset envisaged in the Eighth Schedule;”;
- (i) by the insertion after the definition of “shareholder” of the following definition:

“ ‘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, or from managing his or her own financial affairs: Provided that where the person for whose benefit the trust was so created dies, such trust shall be deemed not to be a special trust in respect of years of assessment ending on or after the date of such person’s death;”;

(j) by the insertion after the definition of “specified period” of the following definition:

“ ‘spouse’, in relation to any person, means a person who is the partner of such person—

(a) in a marriage or customary union recognised in terms of the laws of the Republic;

(b) in a union recognised as a marriage in accordance with the tenets of any religion; or

(c) in a same-sex or heterosexual union which the Commissioner is satisfied is intended to be permanent,

and ‘married’, ‘husband’ or ‘wife’ shall be construed accordingly: Provided that a marriage or union contemplated in paragraph (b) or (c) shall, in the absence of proof to the contrary, be deemed to be a marriage or union without community of property;”;

(k) by the insertion after the definition of “tax” of the following definition:

“ ‘taxable capital gain’ means an amount determined in terms of paragraph 10 of the Eighth Schedule;”;

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

“taxable income” means the aggregate of—

(a) the amount remaining after deducting from the income of any person all the amounts allowed under Part I of Chapter II to be deducted from or set off against such income; and

(b) all amounts to be included or deemed to be included in the taxable income of any person in terms of this Act;”.

Amendment of section 3 of Act 58 of 1962, as amended by section 3 of Act 141 of 1992, section 3 of Act 21 of 1994, section 3 of Act 21 of 1995, section 20 of Act 30 of 1998 and section 3 of Act 59 of 2000

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

“(4) Any decision by the Commissioner under the definitions of ‘benefit fund’, ‘pension fund’, ‘provident fund’, [and] ‘retirement annuity fund’ and ‘spouse’ in section 1, section 6, section 8(4)(b), (c), (d) and (e), section 9D, section 9F, section 10(1)(cH), (cK), (e), (iA), (j) and (nB), section 11(e), (f), (g), (gA), (j), (l), (t), (u) and (w), section 12C, section 13, section 14, section 15, section 22(1), (3) and (5), section 24(2), section 24A(6), section 24C, section 24D, section 24I, section 25D, section 27, section 31, section 35(2), section 38(4), section 57, paragraphs 6, 7, 9, 13, 13A, 14, 19 and 20 of the First Schedule, paragraph (b) of the definition of ‘formula A’ in paragraph 1 and paragraph 4 of the Second Schedule, paragraphs 18, 19(1), 20, 21, 22, 24 and 27 of the Fourth Schedule, [and] paragraphs 2, 3, 6, 9 and 11 of the Seventh Schedule and paragraphs 29(7), 31(2), 65(1)(d) and 66(1)(c) of the Eighth Schedule, shall be subject to objection and appeal.”.

Amendment of section 5 of Act 58 of 1962, as amended by section 2 of Act 6 of 1963, section 5 of Act 90 of 1964, section 6 of Act 88 of 1965, section 7 of Act 55 of 1966, section 6 of Act 95 of 1967, section 6 of Act 76 of 1968, section 7 of Act 89 of 1969, section 7 of Act 52 of 1970, section 5 of Act 88 of 1971, section 5 of Act 90 of 1972, section 5 of Act 65 of 1973, section 5 of Act 103 of 1976, section 5 of Act 113 of 1977, section 3 of Act 104 of 1980, section 4 of Act 96 of 1981, section 4 of Act 91 of 1982, section 3 of Act 94 of 1983, section 3 of Act 121 of 1984, section 3 of Act 65 of 1986,

section 3 of Act 90 of 1988, section 3 of Act 129 of 1991, section 5 of Act 21 of 1994 and section 4 of Act 21 of 1995

7. (1) Section 5 of the principal Act is hereby amended—

- (a) by the substitution in subsection (10) for the words preceding the formula of the following words: 5
 “Where any taxpayer’s income includes any special remuneration, or where the provisions of section 7A(4A) or paragraph 15(3) or 17 or 19(1) of the First Schedule or paragraph 7 of the Second Schedule are applicable in the case of the taxpayer in respect of any year of assessment, the normal tax payable by the taxpayer in respect of such year (as determined before the deduction of any rebate [or the addition of any transition levy]) shall be determined in accordance with the formula—”;

- (b) by the substitution in subsection (10) for paragraph (b) of the following paragraph: 10
 “(b) ‘A’ represents the amount of normal tax (as determined before the deduction of any rebate [or the addition of any transition levy]) calculated at the full rate of tax chargeable for the said year in respect of a taxable income equal to the amount represented by the expression ‘B + D - (C + L)’ in the formula;”;

- (c) by the deletion in subsection (10)(d) of subparagraphs (iA) and (iv); 20
 (d) by the substitution in subsection (10) for paragraph (g) of the following paragraph:

“(g) ‘R’ represents the greater of the amounts determined by applying the formula—

$$R = \frac{F}{B + D - (C + L + G)} \quad 25$$

in respect of the said year of assessment, in which formula—

- (i) the amounts represented by the symbols [‘A’] ‘B’, ‘C’, ‘D’, and ‘L’ shall be determined in accordance with the foregoing provisions of this subsection as applicable in the said year or in the said preceding year, as the case may be; 30
 (ii) ‘F’ represents the amount of normal tax (as determined before the deduction of any rebate) calculated at the full rate of tax chargeable for the said year in respect of a taxable income equal to the amount represented by the expression ‘B + D - (C + L + G)’ in the formula; and 35
 (iii) ‘G’ represents an amount of the taxable capital gain included in the taxable income in terms of section 26A:

Provided that[—

- (a)] where, as a result of the death or insolvency of the taxpayer, the period assessed is less than 12 months, the symbol ‘R’ shall be determined with reference to the said year only: [and 40
 (b) where the said preceding year ended on 28 February 1995, the symbols ‘D’ and ‘L’ in the formula shall be disregarded:]”.

(2) Subsection (1) shall come into operation on 1 October 2001 and shall apply in respect of any year of assessment ending on or after that date. 45

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

8. Section 6quat is hereby amended— 50

- (a) by the addition to subsection (1)(d) of the word “or”;
- (b) by the addition to subsection (1) of the following paragraph: 55
 “(e) any taxable capital gain contemplated in section 26A, to the extent that it is attributable to any capital gain in respect of an asset situated outside the Republic.”;
- (c) by the substitution in subsection (1A) for the words preceding paragraph (a) of the following words:
 “For the purposes of subsection (1), the rebate shall be an amount equal to the sum of any taxes on income proved to be payable to the government of any

country other than the Republic, without any right of recovery by any person (other than a right of recovery in terms of any entitlement to carry back losses arising during any year of assessment to any year of assessment prior to such year of assessment), by—”;

- (d) by the substitution in subsection (1A)(a) for subparagraph (ii) of the following subparagraph: 5
“(ii) any dividend contemplated in subsection (1)(d); **[and] or**”;
- (e) by the addition to subsection (1A)(a) of the following subparagraph: 10
“(iii) any amount of taxable capital gain as contemplated in subsection (1)(e); and”;
- (f) by the substitution for the words following paragraph (d) of subsection (1A) of the following words: 15
“**[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),]** which is so included in that resident’s taxable income: Provided that where such resident is a member of any partnership or a beneficiary of any trust and such partnership or trust is liable for tax as a separate entity in such other country, a proportional amount of any tax payable by such entity, which is attributable to the interest of such resident in such partnership or **[participation right of such resident in such]** trust, shall be deemed to have 20
been payable by such resident.”;
- (g) by the substitution in subsection (1B) for paragraph (a) of the following paragraph: 25
“(a) the rebate or rebates of any tax proved to be payable to the government of any other country or countries as contemplated in subsection (1A), shall not in aggregate exceed an amount which bears to the total normal tax payable the same ratio as the total taxable income attributable to the income, **[or]** proportional amount contemplated in subsection (1)(b), foreign dividend or taxable capital gain, as the case may be, derived from such country or countries, which is included as contemplated in 30
subsection (1), bears to the total taxable income.”;
- (h) by the substitution in subsection (1B)(a) for the words preceding paragraph (i)(aa) of the proviso of the following words: 35
“(i) where **[such]** the sum of any such taxes payable to the government of any such other country or countries exceeds the rebate as so determined (hereinafter referred to as the excess amount), such excess amount may—”; and
- (i) by the substitution in subsection (1B)(a) for paragraph (i)(bb) of the proviso of the following subparagraph: 40
“(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 45
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)]** so included; and”.

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 50

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

- (a) by the deletion in the proviso to subsection (2A) of the word “and” at the end of paragraph (b); 55
- (b) by the addition to the proviso to subsection (2A) of the following paragraphs:

- “(d) any capital gain or capital loss of such entity shall, when applying paragraph 43 of the Eighth Schedule, be determined with reference to and in the currency in which it conducts the majority of its transactions: and
- (e) where a foreign entity becomes a controlled foreign entity after 1 October 2001, the valuation date for purposes of the determination of any taxable capital gain or assessed capital loss in terms of the Eighth Schedule, shall be the date that such entity becomes a controlled foreign entity.”; and
- (c) by the substitution in the proviso to subsection (9)(b) for the words preceding paragraph (iii)(aa) of the following words:
- “(iii) in the form of dividends, interest, royalties, rental, annuities, insurance premiums or income of a similar nature, or any proceeds derived from the disposal of any asset, as determined in accordance with the Eighth Schedule, from which any such income is earned, except where such receipts and accruals—”.

Amendment of section 9E of Act 58 of 1962, as inserted by section 20 of Act 30 of 2000 and amended by section 11 of Act 59 of 2000

10. Section 9E of the principal Act is hereby amended by the substitution in subsection (1) for paragraph (v) of the proviso to paragraph (b) of the definition of “foreign dividend” of the following paragraph:

- “(v) to the extent that the proceeds from the disposal—
- (aa) have been taken into account in the determination of the taxable capital gain or assessed capital loss of such person in terms of the provisions of the Eighth Schedule; or
- (bb) have otherwise been included in the taxable income of such person; or”.

Amendment of section 10A of Act 58 of 1962

11. Section 10A of the Income Tax Act, 1962, is hereby amended by the addition of the following subsection:

- “(11) Any cash consideration given by the purchaser under the annuity contract shall be converted to the currency of the Republic by applying the ruling exchange rate on the day the consideration is actually paid.”.

Amendment of section 22 of Act 58 of 1962, as amended by section 8 of Act 6 of 1963, section 14 of Act 90 of 1964, section 21 of Act 89 of 1969, section 23 of Act 85 of 1974, section 20 of Act 69 of 1975, section 15 of Act 103 of 1976, section 20 of Act 94 of 1983, section 19 of Act 121 of 1984, section 14 of Act 65 of 1986, section 5 of Act 108 of 1986, section 21 of Act 101 of 1990, section 22 of Act 129 of 1991, section 17 of Act 113 of 1993, section 1 of Act 168 of 1993, section 19 of Act 21 of 1995, section 12 of Act 36 of 1996, section 25 of Act 53 of 1999 and section 27 of Act 30 of 2000

12. Section 22 of the principal Act is hereby amended—

- (a) by the substitution in subsection (3) for paragraphs (a) and (b) of the following paragraphs:
- “(a) For the purposes of this section the cost price at any date of any trading stock in relation to any person shall—
- (i) subject to subparagraph (ii), be the cost incurred by such person, whether in the current or any previous year of assessment in acquiring such trading stock plus, subject to the provisions of paragraph (b), any further costs incurred by him up to and including the said date in getting such trading stock into its then existing condition and location, but excluding any exchange difference as defined in section 24I(1) relating to the acquisition of such trading stock; or

- (ii) in the case of any trading stock which is in terms of paragraph 12(2)(c) of the Eighth Schedule treated as having been acquired at a cost equal to the market value, be that market value.
- (b) The further costs which in terms of paragraph (a)(i) are required to be included in the cost price of any trading stock shall be such costs as in terms of any generally accepted accounting practice approved by the Commissioner should be included in the valuation of such trading stock.”;
- (b) by the deletion in subsection (8) after paragraph (b)(iii) of the word “or”;
- (c) by the insertion in subsection (8) after paragraph (b)(iv) of the word “or”;
- (d) by the insertion in subsection (8) after paragraph (b)(iv) of the following subparagraph:
“(v) assets which were held as trading stock by any taxpayer cease to be held as trading stock by such taxpayer.”; and
- (e) by the substitution in subsection (8) for paragraph (B) and the words following paragraph (B) but preceding the proviso of the following paragraph and words:
“(B) where such trading stock has been applied, disposed of or distributed in a manner contemplated in paragraph (b) or ceases to be held as trading stock, an amount equal to the market value of such trading stock, and such amount shall be included in the income of the taxpayer for the year of assessment during which such trading stock was so applied, disposed of, [or] distributed or ceased to be held as trading stock.”.

Substitution of section 25C of Act 58 of 1962, as inserted by section 21 of Act 28 of 1997

13. The following section is hereby substituted for section 25C of the principal Act:

“Income of insolvent estates

25C. For the purposes of this Act, and subject to any such adjustments as may be necessary—

- (a) the estate of a person prior to sequestration and that person’s insolvent estate; and
- (b) where the order of sequestration has been set aside, that person’s insolvent estate and that person’s estate after that order has been set aside.
- shall be deemed to be one and the same person.”.

Insertion of section 26A in Act 58 of 1962

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

“Inclusion of taxable capital gain in taxable income

26A. There shall be included in the taxable income of a person for a year of assessment the taxable capital gain of that person for that year of assessment, as determined in terms of the Eighth Schedule.”.

Amendment of section 29A of Act 58 of 1962, as inserted by section 30 of Act 53 of 1999 and amended by section 36 of Act 59 of 2000

15. (1) Section 29A of the principal Act is hereby amended—

- (a) by the substitution for subsection (8) of the following subsection:
“(8) Any transfer of an asset effected by an insurer between one fund and another fund [otherwise than in terms of the provisions of subsection (6), (7) or (15)] shall be effected by way of a [sale] disposal of such asset at the market value thereof and shall for the purposes of this Act be treated as [a purchase or sale] an acquisition or disposal of such asset, as the case may be, in each such fund.”;
- (b) by the substitution for subsection (10) of the following subsection:

“(10) The taxable income derived by an insurer in respect of its individual policyholder fund, its company policyholder fund and its corporate fund shall be determined separately in accordance with the provisions of this Act as if each such fund had been a separate taxpayer and the individual policyholder fund, company policyholder fund, untaxed policyholder fund and corporate fund, shall be deemed to be separate persons which are connected persons in relation to each other for the purposes of subsections (6), (7) and (8) and sections 9B, 24I, 24J, 24K and 24L and the Eighth Schedule to this Act.”;

- (c) by the substitution in subsection (11) for the words preceding paragraph (a)(i) of the following words:

“(a) the amount of any expenses, allowances and transfers to be allowed as a deduction in the policyholder funds in terms of this Act shall, subject to subsections (11A), (11B) and (11C), be limited to the total of—”;

- (d) by the substitution in subsection (11) for the words following paragraph (a)(ii)(bb) of subsection (11) of the following words:

“which percentage shall—

(AA) in the case of the individual policyholder fund, be determined in accordance with the formula

$$Y = \frac{(I + R + F)}{(I + 2,5R + 4,75F + 4,75L)} \times \frac{100}{1};$$

(BB) in the case of the company policyholder fund, be determined in accordance with the formula

$$Y = \frac{(I + R + F)}{(I + 2R + 3,5F + 3,5L)} \times \frac{100}{1};$$

in which [formula] formulae—”;

- (e) by the substitution in subsection (11) for paragraph (a)(ii)(D) of the following item:

“(D) [‘D’]‘L’ represents the dividend income (other than taxable foreign dividends) of such fund; and”;

- (f) by the addition in subsection (11) to paragraph (a)(ii) of the following item: “(E) ‘F’ represents the taxable foreign dividends of such fund; and”;

- (g) by the insertion after subsection (11) of the following subsections:

“(11A) For the purposes of subsection (11), the percentage of the amount of expenses and allowances contemplated in subsection (11)(a)(ii)(aa) and (bb) to be allowed in respect of the first five years of assessment commencing on or after 1 January 2002, shall be reduced by an amount determined in accordance with the provisions of subsections (11B) and (11C).

(11B) The amount referred to in subsection (11A) means—

- (a) in respect of the year of assessment commencing on or after 1 January 2002, but before 1 January 2003, five-sixths of the difference between the percentage determined in accordance with subsection (11)(a)(ii) (hereinafter referred to as the new percentage) and the percentage determined in accordance with subsection (11C) (hereinafter referred to as the old percentage);
- (b) in respect of the year of assessment commencing on or after 1 January 2003, but before 1 January 2004, four-sixths of the difference between the new percentage and the old percentage;
- (c) in respect of the year of assessment commencing on or after 1 January 2004, but before 1 January 2005, three-sixths of the difference between the new percentage and the old percentage;
- (d) in respect of the year of assessment commencing on or after 1 January 2005, but before 1 January 2006, two-sixths of the difference between the new percentage and the old percentage; and
- (e) in respect of the year of assessment commencing on or after 1 January 2006, but before 1 January 2007, one-sixth of the difference between the new percentage and the old percentage.

(11C) The old percentage referred to in subsection (11B) shall be determined in accordance with the formula