

REPUBLIC OF SOUTH AFRICA

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# TAXATION LAWS AMENDMENT BILL

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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 17—2001]

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**GENERAL EXPLANATORY NOTE:**

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

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## **BILL**

**To amend the Transfer Duty Act, 1949, so as to insert certain definitions; and to provide for further exemptions; to amend the Estate Duty Act, 1955, so as to amend a definition; and to reduce the rate of duty; to amend the Income Tax Act, 1962, so as to provide for the determination of taxable capital gains and assessed capital losses; to reduce the rate of donations tax; to provide for the submission of electronic returns and signatures; to make fresh provision with regard to the keeping of records for tax purposes; and to revise the long title; to amend the Stamp Duties Act, 1968, so as to insert a definition; and to provide for further exemptions; to amend the Value-Added Tax Act, 1991, so as to provide for the zero rating of illuminating kerosene intended for use as fuel for illuminating or heating; and to provide for the submission of electronic returns and signatures; to amend the Skills Development Levies Act, 1999, so as to provide for the submission of electronic returns and signatures; and to provide for matters connected therewith.**

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

**Amendment of section 1 of Act 40 of 1949**

1. Section 1 of the Transfer Duty Act, 1949, is hereby amended—
  - (a) by the insertion after the definition of “Commissioner” of the following definition:  
“ ‘company’ includes—
    - (a) any association, corporation or company (including a close corporation) incorporated or deemed to be incorporated by or under any law in force or previously in force in the Republic or in any part thereof, or any body corporate formed or established or deemed to be formed or established by or under any such law; or
    - (b) any association, corporation or company incorporated under the law of any country other than the Republic or any body corporate formed or established under such law; or
    - (c) any association (not being an association referred to in paragraph (a)) formed in the Republic to serve a specified purpose, beneficial to the public or a section of the public;”;
  - (b) by the substitution for the words preceding paragraph (a) of the definition of “property” of the following words:

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“ ‘property’ means land in the Republic and any fixtures thereon, and includes—”;

- (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

- (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—

(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:

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**

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

“(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—

(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;

(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:

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;

(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;

- (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:
- 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**

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” 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 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:
- “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 198 and section 11 of Act 37 of 1996**

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 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:  
“ ‘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;”; 5
- (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: 10  
(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:  
“ ‘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;”; 15
- (e) by the deletion of the definition of “married”;
- (f) by the substitution for the definition of “married woman” of the following definition: 20  
“ ‘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**];”; 25
- (g) by the insertion after the definition of “pension fund” of the following definition:  
“ ‘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;”; 30
- (h) by the addition to the definition of “representative taxpayer” of the following proviso:  
“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;”; 35
- (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;”; 40
- (j) by the insertion after the definition of “specified period” of the following definition: 50  
“ ‘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; 55  
 (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;”; 60

- (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;” and
- (l) by the substitution for the definition of “taxable income” of the following definition: 5  
 “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;” 10

**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: 15

“(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.” 25

**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** 30

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: 40  
 “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—”; 45
- (b) by the substitution in subsection (10) for paragraph (b) of the following paragraph:  
 “(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;” 50
- (c) by the deletion in subsection (10)(d) of subparagraphs (iA) and (iv); 55
- (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—

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

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;
- (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
- (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**
- (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.

**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—

- (a) by the addition to subsection (1)(d) of the word “or”;
- (b) by the addition to subsection (1) of the following paragraph:
  - “(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:
  - “(ii) any dividend contemplated in subsection (1)(d); **[and] or**”;
- (e) by the addition to subsection (1A)(a) of the following subparagraph:
  - “(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:
  - “**[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 been payable by such resident.”;
- (g) by the substitution in subsection (1B) for paragraph (a) 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 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 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:
- “(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:
- “(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 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**

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);
- (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.” 5

**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** 10

12. Section 22 of the principal Act is hereby amended— 15

(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 relating to the acquisition of such trading stock; or 20

(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. 25

(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.”; 30 35

(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;” 40

(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:” 45 50

**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— 55

- (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.”.

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#### 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.”.

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#### 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— 15
- (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 40
- $$Y = \frac{(I + R + F)}{(I + 2,5R + 4,75F + 4,75L)} \times \frac{100}{1};$$
- (BB) in the case of the company policyholder fund, be determined in accordance with the formula 45
- $$Y = \frac{(I + R + F)}{(I + 2R + 3,5F + 3,5L)} \times \frac{100}{1};$$
- 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 (1) 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: 55

“(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

$$Y = \frac{(I + R + F)}{(I + 3R + 6L + 6F)} \times \frac{100}{1},$$

in which formula—

- (a) ‘Y’ represents the percentage to be determined; and
- (b) ‘I’, ‘R’, ‘L’ and ‘F’ shall bear the same meaning as the symbols contemplated in subsection (11)(a)(ii).”

(2) Subsections (1)(a) and (b) shall apply in respect of any year of assessment that commences on or after 1 October 2001.

(3) Subsections (1)(c), (d), (e), (f) and (g) shall apply in respect of years of assessment that commence on or after 1 January 2002.

**Amendment of section 31 of Act 58 of 1962, as substituted by section 23 of Act 21 of 1995 and amended by section 37 of Act 30 of 1998, section 31 of Act 53 of 1999 and section 37 of Act 59 of 2000**

16. Section 31 of the principal Act is hereby amended by the deletion in subsection (1) of the definition of “permanent establishment”.

**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:**

17. (1) Section 64 of the principal Act 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 any property disposed of under a donation which takes effect on or after 1 October 2001.

**Amendment of section 64B of Act 58 of 1962, as inserted by section 34 of Act 113 of 1993 and amended by section 12 of Act 140 of 1993, section 24 of Act 21 of 1994, section 29 of Act 21 of 1995, section 21 of Act 36 of 1996, section 13 of Act 46 of 1996, section 25 of Act 28 of 1997, section 35 of Act 53 of 1999, section 39 of Act 30 of 2000 and section 42 of Act 59 of 2000**

18. Section 64B of the principal Act is hereby amended by the addition to subsection (5) of the following paragraph:

- “(k) any dividend declared by a company to a natural person—
- (i) which constitutes the distribution *in specie* of ‘an interest’ as defined in paragraph 44 of the Eighth Schedule, of such person in a residence; or
  - (ii) out of any profits of a capital nature arising from the disposal to such person of any such an interest in a residence,
- where—
- (aa) such interest is so distributed to that person on or after the date of promulgation of the Taxation Laws Amendment Act, 2001, but before 30 September 2002 or such interest is so disposed of on or after the date of promulgation of the Taxation Laws Amendment Act, 2001, but before 30 September 2002 and any profit resulting from that disposal is distributed to that person on or before 31 March 2003;
  - (bb) that person alone or together with that person’s spouse held all the equity share capital or members’ interest in that company from 5 April 2001 to the date of registration in the deeds registry of that residence in the name of that person or that person’s spouse or their names jointly;
  - (cc) that person alone or together with that person’s spouse ordinarily resided in that residence and used it mainly for domestic purposes as his or her or their ordinary residence from 5 April 2001 to the date of that registration in the name of that person or that person’s spouse or their names jointly; and
  - (dd) such residence will after such distribution or disposal constitute that person’s or that person and that person’s spouse’s primary residence as defined in paragraph 44 of the Eighth Schedule:
- Provided that the provisions of this paragraph shall only apply to the portion of any dividend that relates to the portion of the property contemplated in paragraph 46 of the Eighth Schedule.”.

**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**

19. Section 66 of the principal Act is hereby amended—
- (a) by the addition to subsection (1)(b) of the following subparagraph:
 

“(v) any person whose aggregate capital gain or aggregate capital loss for the year of assessment exceeds an amount to be stated by the Commissioner in the notice referred to in paragraph (a).”; and
  - (b) by the insertion after subsection (7) of the following subsections:
 

“(7A) The Commissioner may, in the case of any return furnished by a taxpayer or a taxpayer’s authorised agent in electronic format, accept electronic or digital signatures as valid signatures for the purposes of subsection (7).

“(7B) The Minister may make rules and regulations prescribing the procedures for submitting any return in electronic format and the requirements for an electronic or digital signature contemplated in subsection (7A).”; and
  - (c) by the insertion after subsection (13<sup>quat</sup>) of the following subsection:
 

“(13<sup>quin</sup>) For the purposes of subsections (13), (13<sup>quat</sup>) and (14), the word ‘income’ shall be construed as including any aggregate capital gain or aggregate capital loss.”.

**Substitution of section 68 of Act 58 of 1962, as amended by section 26 of Act 90 of 1962, section 23 of Act 88 of 1965, section 39 of Act 101 of 1990 and section 33 of Act 129 of 1991**

20. The following section is hereby substituted for section 68 of the principal Act:

**“Income and capital gain of married [women] persons and minor children**

- 68.** (1) Any—
- (a) income received by or accrued to or in favour of any person married with or without community of property which in terms of section 7(2) is deemed to be income received by or accrued to such person’s spouse; or 5
- (b) capital gain which is in terms of paragraph 68 of the Eighth Schedule taken into account in the determination of the aggregate capital gain or aggregate capital loss of such person’s spouse, 10  
shall be included by such spouse in returns of income required to be rendered by that spouse under this Act.
- (2) In the event of the death of any person during any year in respect of which such income is chargeable or in which such capital gain is taken into account, the income or capital gain of such person’s spouse for the period elapsing between the date of such death and the last day of the year of assessment shall be returned as the separate income of such spouse. 15
- (3)(a) Every parent shall be required to include in his return—
- (i) any income received by or accrued to or in favour of any of [his] that parent’s minor children either directly or indirectly from [himself or his wife] that parent; or 20
- (ii) any capital gain or capital loss in respect of any transaction entered into directly or indirectly by that parent, which is taken into account in the determination of the aggregate capital gain or aggregate capital loss of any of that parent’s minor children, 25  
together with such particulars as may be required by the Commissioner.
- (b) Every parent shall be required to include in [his] that parent’s return any income deemed to be [his] that parent’s income in terms of subsection (3) or (4) of section 7 or any capital gain deemed to be that parent’s capital gain in terms of paragraph 69 of the Eighth Schedule.” 30

**Insertion of sections 70A and 70B in Act 58 of 1962**

21. The following sections are hereby inserted in the principal Act after section 70:

**“Return of information by Unit Portfolio**

- 70A.** (1) Any unit portfolio contemplated in paragraph (e)(i) of the definition of ‘company’ in section 1, and any unit portfolio comprised in any unit trust scheme in property shares authorised under the Unit Trust Control Act, 1981 (Act No. 54 of 1981), shall furnish to the Commissioner an annual return in such form and within such time as the Commissioner may prescribe, showing— 35
- (a) the names and addresses of all unit holders in that unit portfolio who have disposed of their units in that unit portfolio on or after the valuation date as contemplated in the Eighth Schedule; 40
- (b) the number of units so disposed of by each unit holder;
- (c) the weighted average of the valuation date value of units acquired before valuation date and held on such date and the cost of units acquired on or after that date and the amount of the proceeds received or accrued from the disposal of those units; 45
- (d) the gain derived from or loss incurred in respect of the disposal of those units determined with reference to the cost and proceeds contemplated in paragraph (c); 50
- (e) in the case of any natural person, his or her identification number and, if that person is not in possession of a South African identity document, any other form of identification; and
- (f) in the case of any person other than a natural person, that person’s registration number. 55

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

- 70B.** (1) Every person who administers a portfolio of financial instruments, as defined in the Eighth Schedule, on behalf of any other person and has the mandate of that other person to buy and sell any such financial instruments on such other person's behalf, shall 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 persons on behalf of whom such financial instruments have been disposed of on or after the valuation date contemplated in that Schedule;
  - (b) the number of such financial instruments so disposed of on behalf of each such other person;
  - (c) the weighted average of the valuation date value of such financial instruments acquired before valuation date and held on such date and the cost of such financial instruments acquired on or after that date and the amount of the proceeds received or accrued from the disposal of those financial instruments;
  - (d) the gain derived from or loss incurred in respect of the disposal of those financial instruments determined with reference to the cost and proceeds contemplated in paragraph (c);
  - (e) in the case of any natural person, his or her identification number and, if that person is not in possession of a South African identity document, any other form of identification; and
  - (f) in the case of any person other than a natural person, that person's registration number.
- (2) Subsection (1) shall not apply in respect of—
- (a) any pension fund, provident fund or retirement annuity fund; or
  - (b) any insurer contemplated in section 29A, in respect of any financial instruments of any person in that person's capacity as policyholder.”.

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

22. The following sections are hereby inserted in the principal Act after section 73:

**“Record keeping by persons deriving income other than remuneration**

- 73A.** (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' include—
- (a) ledgers, cash books, journals, cheque books, bank statements, deposit slips, paid cheques, invoices and stock lists and all other books of account; and
  - (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.

**Record keeping in relation to taxable capital gain or assessed capital loss**

- 73B.** (1) A person shall retain all records required to determine the taxable capital gain or assessed capital loss of that person for a period of four years from the date on which the return for that year of assessment was received by the Commissioner.

(2) Where a person has disposed of assets in respect of which the capital gain or capital loss is not disregarded or excluded in terms of the Eighth Schedule and all capital gains or capital losses determined in respect of the disposal of those assets exceed R10 000 in respect of the year of assessment, but that person is not required to render a return, that person must retain the records required to determine those capital gains or capital losses for a period of five years from the date of disposal of each of those assets. 5

(3) For the purposes of this section 'records' includes—

- (a) any agreement for the acquisition, disposal or lease of an asset together with related correspondence; 10
- (b) details of any asset transferred into a trust;
- (c) copies of valuations used in the determination of a taxable capital gain or assessed capital loss;
- (d) invoices or other evidence of payment records such as bank statements and paid cheques relating to any costs claimed in respect of the acquisition, improvement or disposal of any asset; 15
- (e) details supporting the proportional use of an asset for both private and business purposes;
- (f) details of any continuous absence of more than 6 months from a primary residence, as contemplated in the Eighth Schedule. 20

#### **Retention period of records where objection and appeal lodged**

73C. Notwithstanding sections 73A and 73B, where a person who is required in terms of those sections to retain records lodges an objection or appeal against an assessment, that person shall retain all records relevant to that objection or appeal until that assessment becomes final." 25

#### **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** 30

23. Section 75 of the principal Act is hereby amended by the substitution in subsection (1) for paragraph (f) of the following paragraph:

"(f) without just cause fails to comply with the provisions of section 70A, 70B, 73A, 73B or 73C;".

#### **Amendment of section 76 of Act 58 of 1962** 35

24. Section 76 of the principal Act is hereby amended by the substitution for subsections (5) and (6) of the following subsections:

"(5) Any taxpayer who in determining his taxable income as disclosed [by] in his return, deducts, [or] sets off, disregards or excludes any amount the deduction, [or] set-off, disregarding or exclusion whereof is not permissible under the provisions of this Act, or shows as an expenditure or loss any amount which he has not in fact expended or lost, shall be deemed for the purposes of this section to have omitted such amount from his return. 40

(6) Any taxpayer who wilfully fails to disclose in any return made by him any facts which should be disclosed and the disclosure of which would result in the taxation of the taxpayer's taxable income on an amount which is higher than the amount [upon] which [such income] would be taxable on such return, shall for the purposes of this section be deemed to have omitted from his return the amount by which the former amount exceeds the latter." 45

#### **Amendment of section 78 of Act 58 of 1962** 50

25. Section 78 of the principal Act is hereby amended by the substitution for subsection (2) of the following subsection:

"(2) Any such estimate of the taxable income shall be subject to objection and appeal: Provided that if it appears to the Commissioner that any person is unable from any cause to furnish an accurate return of his income, aggregate capital gain or aggregate capital loss, the Commissioner may agree with such person as to what 55

amount of such income, aggregate capital gain or aggregate capital loss shall be taxable income, net capital gain or assessed capital loss and any amount so agreed upon shall not be subject to any objection or appeal.”.

**Amendment of section 79 of Act 58 of 1962, as substituted by section 32 of Act 21 of 1995**

5

26. Section 79 of the principal Act is hereby amended by the substitution for subsection (2) of the following subsection:

“(2) For the purposes of this section any amount referred to in subsection (1)(a) shall include an amount the incorporation of which in an assessment would result in the reduction of any loss or assessed capital loss ranking for set-off or in only a portion of such amount becoming chargeable with tax.”.

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

27. The following section is hereby substituted for section 82 of the principal Act:

**“Burden of proof as to exemptions, deductions, [or] abatements, disregarding or exclusions**

15

82. The burden of proof that any amount is—

(a) exempt from or not liable to any tax chargeable under this Act; or

(b) subject to any deduction, abatement or set-off in terms of this Act; or

(c) 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, or that such amount must be disregarded or excluded, 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 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**

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28. Section 83A of the principal Act is hereby amended by the substitution in subsection (1) for paragraph (a) 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 89quat of Act 58 of 1962, as substituted by section 22 of Act 65 of 1986, and amended by section 18 of Act 70 of 1989, section 42 of Act 113 of 1993, section 33 of Act 21 of 1995 and section 24 of Act 36 of 1996**

35

29. Section 89quat of the principal Act is hereby amended by the substitution for subsection (3) of the following subsection:

“(3) Where the Commissioner having regard to the circumstances of the case is satisfied that any amount has been included in the taxpayer’s taxable income or that any deduction, [or] allowance, disregarding or exclusion claimed by the taxpayer has not been allowed, and the taxpayer has on reasonable grounds contended that such amount should not have been so included or that such deduction, [or] allowance, disregarding or exclusion should have been allowed, the Commissioner may, subject to the provisions of section 103(6), direct that interest shall not be paid by the taxpayer on so much of the said normal tax as is attributable to the inclusion of such amount or the disallowance of such deduction, [or] allowance, disregarding or exclusion.”.



**Amendment of section 90 of Act 58 of 1962, as amended by section 15 of Act 6 of 1963, section 23 of Act 95 of 1967, section 35 of Act 121 of 1984, section 20 of Act 96 of 1985, section 38 of Act 129 of 1991 and section 43 of Act 30 of 1998**

**30.** Section 90 of the principal Act is hereby amended by the substitution for the first proviso of the following proviso: 5

“Provided that any person may recover so much of the tax paid by him under this Act as is due to the inclusion in—

- (i) his income of any income deemed to have been received by him or to be his income, as the case may be, in terms of section 7(3), (4), (5), (6), [or] (7) or (8), from the person entitled, whether on his own behalf or in a representative capacity, to the receipt of the income so included; or 10
- (ii) his taxable income of any capital gain in terms of paragraph 68, 69, 70, 71 or 72 of the Eighth Schedule from the person entitled, whether personally or in a representative capacity, to the proceeds on the disposal of the asset, as contemplated in the Eighth Schedule, which gave rise to the capital gain.”. 15

**Amendment of section 91 of Act 58 of 1962, as amended by section 16 of Act 6 of 1963, section 26 of Act 55 of 1966, section 38 of Act 89 of 1969, section 36 of Act 121 of 1984, section 39 of act 129 of 1991 and section 26 of Act 36 of 1996**

**31.** Section 91 of the principal Act is hereby amended—

(a) by the substitution for subsection (4) of the following subsection: 20

“(4) So much of any tax payable by any person as is due to the inclusion in his income of any income deemed to have been received by him or to be his income, as the case may be, in terms of subsection (3), (4), (5), [or] (6), (7) or (8) of section 7, may be recovered from the assets by which the income so included was produced.”; 25

(b) by the insertion after subsection (4) of the following subsection:

“(4A) So much of any tax payable by any person as is due to the inclusion in the taxable income of such person of any capital gain in terms of paragraph 68, 69, 70, 71 or 72 of the Eighth Schedule, may be recovered from the proceeds on the disposal of the asset, as contemplated in the Eighth Schedule, which gave rise to the capital gain.”. 30

**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**

**32.** Section 95 is hereby amended—

(a) by the substitution for subsection (2) of the following subsection: 35

“(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.”; and

(b) by the addition of the following subsection: 40

“(5) For the purposes of this section the word ‘income’ shall be construed as including the amount received or accrued or deemed to have been received or accrued in consequence of the disposal of any asset contemplated in 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** 45

**33.** Section 103 of the principal Act is hereby amended—

(a) by the substitution in subsection (2)(b) for the words following subparagraph (iii) of the following words: 50

“as a direct or indirect result of which—

(A) income has been received by or has accrued to that company or trust during any year of assessment; or

(B) any proceeds received by or accrued to or deemed to have been received by or to have accrued to that company or trust in consequence of the disposal of any asset, as contemplated in the Eighth Schedule, result in a capital gain during any year of assessment, 55

has at any time [**before or after 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, [**or**] any balance of assessed loss, any capital loss or any assessed capital loss, as the case may be, 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—

(aa) the set-off of any such assessed loss or balance of assessed loss against any such income shall be disallowed;

(bb) the set-off of any such assessed loss or balance of assessed loss against any taxable capital gain, to the extent that such taxable capital gain takes into account such capital gain, shall be disallowed; or

(cc) the set off of such capital loss or assessed capital loss against such capital gain shall be disallowed.”; and

(b) by the substitution in subsection (4) for paragraph (b) 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**

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

(a) by the addition to subsection (1) of the following paragraph:

“(f) prescribing the method for the valuation of any fiduciary, usufructuary or other similar interests in property for the purposes of the Eighth Schedule,”; and

(b) 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.”.

**Amendment of paragraph 4 of First Schedule to Act 58 of 1962, as amended by section 17 of Act 72 of 1963, section 41 of Act 89 of 1969, section 42 of Act 94 of 1983, section 43 of Act 113 of 1993 and section 30 of Act 36 of 1996**

35. Paragraph 4 of the First Schedule to the principal Act is hereby amended—

(a) by the substitution for sub-item (ii) of item (a) of subparagraph (1) of the following sub-item:

“(ii) the market value of livestock or produce—

(aa) acquired by such farmer during the current year of assessment otherwise than by purchase or natural increase or in the ordinary course of farming operations; or

(bb) held by such farmer otherwise than for purposes of pastoral, agricultural or other farming operations, which such farmer during such year of assessment commenced to hold for purposes of pastoral, agricultural or other farming operations; or”;

(b) by the substitution for sub-item (ii) of item (b) of subparagraph (1) of the following sub-item:

“(ii) the market value of livestock or produce (other than livestock or produce to which sub-item (i) refers)—

(aa) acquired by such person during the year of assessment otherwise than by purchase or natural increase or in the ordinary course of farming operations; or

(bb) held by such person otherwise than for purposes of pastoral, agricultural or other farming operations, which such person during such year of assessment commenced to hold for purposes of pastoral, agricultural or other farming operations.”.

**Amendment of paragraph 5 of First Schedule to Act 58 of 1962, as amended by section 18 of Act 72 of 1963, section 23 of Act 52 of 1970, section 30 of Act 88 of 1971, section 28 of Act 103 of 1976, section 28 of Act 103 of 1976, section 28 of Act 103 of 1976, section 23 of Act 104 of 1980, section 26 of Act 96 of 1981, section 31 of Act 36 of 1996, section 31 of Act 36 of 1996** 5

36. Paragraph 5 of the First Schedule to the principal Act is hereby amended by the deletion of subparagraph (2).

**Amendment of paragraph 19 of Fourth Schedule to Act 58 of 1962, as amended by section 28 of Act 88 of 1965, 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 94 of 1983, section 52 of Act 101 of 1990 and section 44 of Act 21 of 1995** 10

37. 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, as assessed by the Commissioner, for the latest preceding year of assessment in relation to such estimate, less the amount of any taxable capital gain included therein in terms of section 26A; or 15
- (ii) as respects an estimate submitted by a company under item (b), the company’s taxable income, as assessed by the Commissioner, for the latest preceding year of assessment in relation to such estimate, less the amount of any taxable capital gain included therein in terms of section 26A.”. 20

**Insertion of Eighth Schedule in Act 58 of 1962** 25

38. 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 (Section 26A of this Act)		30
Part I:	General	
Part II:	Taxable capital gains and assessed capital losses	
Part III:	Disposal and acquisition of assets	35
Part IV:	Limitation of losses	
Part V:	Base cost	
Part VI:	Proceeds	
Part VII:	Primary residence exclusion	
Part VIII:	Other exclusions	40
Part IX:	Roll-overs	
Part X:	Attribution of capital gains	
Part XI:	Company distributions	
Part XII:	Trusts, trust beneficiaries and insolvent estates	
Part XIII:	Foreign Currency	45
Part XIV:	Miscellaneous	

**PART I**  
**GENERAL**

**Definitions**

1. In this Schedule, unless the context indicates otherwise, any meaning ascribed to any word or expression in section 1 of this Act must bear the meaning so ascribed, and—
- ‘active business asset’ means an asset used or held wholly and exclusively for business purposes, but excludes—
- (a) a financial instrument; and
  - (b) an asset held in the course of carrying on a business mainly to derive any income in the form of an annuity, rental income, a foreign exchange gain or royalty or any income of a similar nature;
- ‘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 any currency, but including any coin made mainly from gold or platinum; 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 or capable of being used in, under or on the sea or internal waters, whether—
- (a) self-propelled or not; or
  - (b) equipped with an inboard or outboard motor;
- ‘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 an event, act, forbearance or operation of law envisaged in paragraph 11 or an event, act, forbearance or operation of law which is in terms of this Schedule treated as the disposal of an asset, and ‘dispose’ must be construed accordingly;
- ‘financial instrument’ includes—
- (a) a loan, advance, debt, stock, bond, debenture, bill, share, promissory note, banker’s acceptance, negotiable certificate of deposit, deposit with a financial institution, unit in a unit portfolio, a participatory interest in a portfolio of a collective investment scheme, or a similar instrument;
  - (b) any repurchase or resale agreement, forward purchase arrangement, forward sale arrangement, futures contract, option contract or swap contract;
  - (c) any other contractual right or obligation which derives its value from the value of a debt security, equity, commodity, rate index or a specified index;
  - (d) any interest-bearing arrangement; and
  - (e) any financial arrangement based on or determined with reference to the time value of money or cash flow or the exchange or transfer of an asset;
- ‘foreign currency’ means any currency which is not legal tender in the Republic;
- ‘individual policyholder fund’ means a fund contemplated in section 29A(4)(b);
- ‘insurer’ means an insurer as defined in section 29A(1);
- ‘net capital gain’ means the amount to be determined in terms of paragraph 8;
- ‘personal-use asset’ means an asset contemplated in paragraph 53;
- ‘pre-valuation date asset’ means an asset acquired prior to valuation date by a person and which is still held by that person on valuation date;
- ‘primary residence’ means a primary residence contemplated in paragraph 44;
- ‘proceeds’ means the amount to be determined in terms of Part VI;
- ‘recognised exchange’ means—
- (a) a stock exchange licensed under the Stock Exchanges Control Act, 1985 (Act No. 1 of 1985);
  - (b) a financial exchange licensed under the Financial Markets Control Act, 1989 (Act No. 55 of 1989); or
  - (c) an exchange in a country other than the Republic which is similar to an exchange contemplated in paragraph (a) or (b) and which has been recognised by the Minister for purposes of this Schedule by notice in the *Gazette*;
- ‘residence’ means a residence contemplated in paragraph 44;

- ‘taxable capital gain’ means the amount to be determined in terms of paragraph 10;  
‘valuation date’ means 1 October 2001;  
‘value shifting arrangement’ means an arrangement by which a person retains an  
interest in a company, trust or partnership, but following a change in the rights or  
entitlements of the interests in that company, trust or partnership (other than as a  
result of a disposal at market value as determined before the application of  
paragraph 38), the market value of the interest of that person decreases and— 5  
(a) the value of the interest of another person held directly or indirectly in that  
company, trust or partnership increases; or  
(b) another person acquires a direct or indirect interest in that company, trust or 10  
partnership.

### Application

2. (1) Subject to paragraph 86, this Schedule applies to the disposal on or after  
valuation date of— 15  
(a) any asset of a resident; and  
(b) the following assets situated in the Republic of a person who is not a resident,  
namely—  
(i) immovable property held by that person or any interest or right of  
whatever nature of that person to or in immovable property; or  
(ii) any asset of a permanent establishment of that person through which a 20  
trade is carried on in the Republic 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 of at least 20 per cent held by a  
person (alone or together with any connected person in relation to that person) in the  
equity share capital of a company or in any other entity, where 80 per cent or more of the 25  
value of the net assets of that company or other entity, determined on the market value  
basis, is, at the time of disposal of shares in that company or interest in that other entity,  
attributable to immovable property situated in the Republic.

## PART II

### TAXABLE CAPITAL GAINS AND ASSESSED CAPITAL LOSSES 30

#### Capital gain

3. A person’s capital gain for a year of assessment, in respect of the disposal of an  
asset—  
(a) during that year, is equal to the amount by which the proceeds received or  
accrued in consequence of that disposal exceed the base cost of that asset; or 35  
(b) in a previous year of assessment, is equal to—  
(i) so much of any amount received by or 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 any year in  
determining the capital gain or capital loss in respect of that disposal; or 40  
(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.

#### Capital loss

4. A person’s capital loss for a year of assessment in respect of the disposal of an 45  
asset—  
(a) during that year, is equal to the amount by which the base cost of that asset  
exceeds the proceeds received or accrued in consequence of that disposal; or  
(b) in a previous year of assessment, is equal to—  
(i) so much of the proceeds received or accrued in consequence of the 50  
disposal of that asset that have been taken into account during any 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 any other 55  
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; or
- (ii) so much of the base cost of that asset that has not been taken into account during any 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. 5

#### **Annual exclusion**

5. (1) Subject to subparagraph (2), the annual exclusion of a natural person and a special trust in respect of a year of assessment is R10 000.
- (2) Where a person dies during the year of assessment, that person's annual exclusion for that year is R50 000. 10

#### **Aggregate capital gain**

6. A person's aggregate capital gain for a year of assessment is the amount by which the sum of that person's capital gains for that year exceeds the sum of—
- (a) that person's capital losses for that year; and
  - (b) in the case of a natural person or a special trust, that person's or trust's annual exclusion for that year. 15

#### **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) that person's capital gains for that year; and
  - (b) in the case of a natural person or a special trust, that person's or trust's annual exclusion for that year. 20

#### **Net capital gain**

8. A person's net capital gain for the year of assessment is the amount by which that person's aggregate capital gain for that year exceeds that person's assessed capital loss for the previous year of assessment. 25

#### **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 that 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 that year; 30
  - (b) an aggregate capital loss for that 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 that year, is the amount of that person's assessed capital loss for the previous year. 35

#### **Taxable capital gain**

10. A person's taxable capital gain for the year of assessment is—
- (a) in the case of a natural person or a special trust, 25 per cent;
  - (b) in the case of an insurer, in respect of its—
    - (i) individual policyholder fund, 25 per cent; and
    - (ii) untaxed policyholder fund, 0 per cent; or
  - (c) in any other case, 50 per cent, 40
- of that person's net capital gain for that year of assessment. 45

### **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, exchange or any other alienation or transfer of ownership of an asset; 50

- (b) the forfeiture, termination, redemption, cancellation, surrender, discharge, relinquishment, release, waiver, renunciation, expiry or abandonment of an asset;
  - (c) the scrapping, loss, or destruction 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;
  - (f) the granting, renewal, extension or exercise of an option; or
  - (g) the decrease in value of a person's interest in a company, trust or partnership as a result of a value shifting arrangement.
- (2) There is no disposal of an asset—
- (a) by a person who transfers the asset as security for a debt or by a creditor who transfers that asset back to that person upon release of the security;
  - (b) by a company in respect of the issue of a share in the company, or by a company in respect of the granting of an option to acquire a share or debenture in that company;
  - (c) by a unit portfolio in respect of the issue of a unit in that portfolio, or by a unit portfolio in respect of the granting of an option to acquire a unit in that unit portfolio;
  - (d) by a person in respect of the issue of any bond, debenture, note or other borrowing of money or obtaining of 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;
  - (f) by a trustee, executor, curator or administrator in respect of a change in ownership in an asset as a result of the termination of the appointment of a trustee, executor, curator or administrator or the appointment of a new trustee, executor, curator or administrator;
  - (g) by a person where a disposal is made to correct an error in the registration in the deeds registry of immovable property in that person's name; or
  - (h) by a lender to a borrower or by a borrower to a lender, where 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 or will be returned by that borrower to that lender before the end of the 12 month period contemplated in that definition.

### Events treated as disposals and acquisitions

- 12.** (1) Where an event described in subparagraph (2) occurs, a person will be treated for the purposes of this Schedule as having disposed of an asset described in that subparagraph for proceeds equal to the market value of the asset at the time of the event and to have immediately reacquired the asset at an expenditure equal to that market value.
- (2) Subparagraph (1) applies, in the case of—
- (a) a person who ceases to be a resident, or a resident who is as a result of the application of any agreement entered into by the Republic for the avoidance of double taxation treated as not being a resident, in respect of all assets of that person other than assets in the Republic listed in paragraph 2(1)(b)(i) and (ii);
  - (b) an asset of a person who is not a resident, which asset—
    - (i) becomes an asset of that person's permanent establishment in the Republic otherwise than by way of acquisition; or
    - (ii) ceases to be an asset of that person's permanent establishment in the Republic otherwise than by way of a disposal contemplated in paragraph 11;
  - (c) assets that are held by a person otherwise than as trading stock, when they commence to be held by that person as trading stock;
  - (d) an asset which ceases to be held by a person as a personal-use asset otherwise than by way of a disposal contemplated in paragraph 11;
  - (e) an asset which is held by a person otherwise than as a personal-use asset, when that asset commences to be held by that person as a personal-use asset; or
  - (f) an asset transferred by an insurer contemplated in section 29A from one fund contemplated in section 29A(4) to any other such fund.

(3) Where assets that are held by a person as trading stock cease to be held by that person as trading stock, otherwise than by way of a disposal contemplated in paragraph 11, that person will be treated as having disposed of those assets for a 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 cost equal to that amount. 5

(4) A person who commences to be a resident must, subject to paragraph 24, be treated as having disposed of each of that person's assets, other than assets in the Republic listed in paragraph 2(1)(b)(i) and (ii), and as having acquired each of those assets at a cost equal to the market value of each of those assets.

(5) Where a debt owed by a person to a creditor has been reduced or discharged by that creditor without full consideration for that reduction or discharge, that person will be treated as having— 10

- (a) acquired a claim to so much of that debt as was reduced or discharged for no consideration, which claim shall have a base cost of nil; and
- (b) disposed of that claim for proceeds equal to that reduction or discharge. 15

### Time of disposal

13. (1) The time of disposal of an asset in consequence of—

- (a) a change of ownership from one person to another because of an event, act, forbearance or by operation of law is, in the case of— 20
  - (i) an agreement subject to a suspensive condition, the date on which the condition is satisfied;
  - (ii) any agreement which is not subject to a suspensive condition, the date on which the agreement is concluded;
  - (iii) a donation of an asset, the date of compliance with all legal requirements for a valid donation; 25
  - (iv) the expropriation of an asset, the date on which the person receives the full compensation agreed to or finally determined by a competent tribunal or court;
  - (v) the conversion of an asset, the date on which that asset is converted;
  - (vi) the granting, renewal or extension of an option, the date on which the option is granted, renewed or extended; 30
  - (vii) the exercise of an option, the date on which the option is exercised;
  - (viii) the termination of an option granted by a company to a person to acquire a share, unit or debenture of that company, the date on which that option terminates; or 35
  - (ix) any other case, the date of change of ownership;
- (b) the extinction of an asset including by way of forfeiture, termination, redemption, cancellation, surrender, discharge, relinquishment, release, waiver, renunciation, expiry or abandonment, the date of the extinction of the asset; 40
- (c) the scrapping, loss or destruction of an asset is the date—
  - (i) when the full compensation in respect of that scrapping, loss or destruction is received; or
  - (ii) if no compensation is payable, the later of the date when the scrapping, loss or destruction is discovered or the date on which it is established that no compensation will be payable; 45
- (d) the vesting of an interest in an asset of a trust in a beneficiary, is the date on which that interest vests;
- (e) the distribution of an asset by a company to a shareholder, is the date on which that asset is so distributed as contemplated in paragraph 75; 50
- (f) the decrease of a person's interest in a company, trust or partnership as a result of a value shifting arrangement, is the date on which the value of that person's interest decreases; or
- (g) an event contemplated in—
  - (i) paragraph 12(2)(a), (b), (c), (d) or (e), paragraph 12(3) or 12(4) is the date immediately before the day that the event occurs; or 55
  - (ii) paragraph 12(2)(f) or 12(5), is the date that that event occurs.

(2) A person to whom an asset is disposed of is treated as having acquired that asset at the time of disposal of that asset as contemplated in subparagraph (1). 60



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

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

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**PART IV****LIMITATION OF LOSSES****Personal-use aircraft, boats and certain rights and interests**

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**15.** A capital loss in respect of the following assets of a person must 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 a trade:

- (a) An aircraft with an empty mass exceeding 450 kg;
- (b) a boat exceeding ten metres in length;
- (c) any fiduciary, usufructuary or other similar interest, the value of which decreases over time;
- (d) any lease of immovable property; or
- (e) any right or interest of whatever nature to or in an asset contemplated in items (a), (b), (c) or (d).

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**Intangible assets acquired prior to valuation date**

**16.** (1) A person must, in determining the aggregate capital gain or aggregate capital loss of that person, disregard any capital loss determined in respect of the disposal of an intangible asset acquired prior to valuation date—

- (a) from a connected person in relation to that person; or
  - (b) which was associated with a business taken over by that person or any connected person in relation to that person.
- (2) For the purposes of subparagraph (1), ‘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), any rights recognised under the Plant Breeders’ Rights Act, 1996 (Act No. 15 of 1996), or any model, pattern, plan, formula or process or any other property or right of a similar nature;
  - (c) any intellectual property right or property or right of a similar nature in respect of which a proprietary interest may be established in terms of the common law of the Republic of South Africa; or
  - (d) any other intangible property except any financial instrument.

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**Forfeited deposits**

**17.** (1) Where—

- (a) a person has made a deposit for the purpose of acquiring an asset which is not intended for use wholly and exclusively for business purposes; and
- (b) that deposit has been forfeited,

the capital loss determined in respect of that forfeiture must be disregarded when determining that person’s aggregate capital gain or aggregate capital loss.

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(2) Subparagraph (1) does not apply in respect of—

- (a) a coin made mainly from gold or platinum, of which the market value is mainly attributable to the material from which it is minted or cast;

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- (b) immovable property, other than immovable property intended to be the primary residence of that person;
- (c) a financial instrument; or
- (d) any right or interest in any asset contemplated in items (a), (b) or (c).

### Disposal of options

18. (1) Where a person who is entitled to exercise an option—
- (a) to acquire an asset not intended for use wholly and exclusively for business purposes; or
  - (b) to dispose of an asset not used wholly and exclusively for business purposes, has abandoned that option, allowed that option to expire, or in any other manner disposed of that option other than by way of the exercise thereof, any capital loss of that person determined in respect of that expiry shall be disregarded.
- (2) Subparagraph (1) does not apply in respect of—
- (a) a coin made mainly from gold or platinum, of which the market value is mainly attributable to the material from which it is minted or cast;
  - (b) immovable property, other than immovable property—
    - (i) in the case of subparagraph (1)(a), which is intended to be the primary residence of the person entitled to exercise the option; or
    - (ii) in the case of subparagraph (1)(b), is the primary residence of the person entitled to exercise the option;
  - (c) a financial instrument; or
  - (d) any right or interest in those assets contemplated in items (a), (b) and (c).

### Losses on the disposal of certain shares

19. (1) Where a person disposes of a share in a company within two years after the acquisition by that person of that share, that person must disregard any capital loss resulting from the disposal to the extent of any extraordinary dividends received by or accrued to that person in respect of that share within that period.
- (2) The provisions of subparagraph (1) shall not apply to the extent that dividends were received by or accrued to a holding company or an intermediate company with respect to the company distributing the dividends.
- (3) For the purposes of this paragraph—
- (a) the period of two years does not include any days during which the person disposing of a share—
    - (i) has an option to sell, is under a contractual obligation to sell, or has made (and not closed) a short sale of, substantially similar financial instruments;
    - (ii) is the grantor of an option to buy substantially similar financial instruments; or
    - (iii) has otherwise diminished risk of loss with respect to that share by holding one or more contrary positions with respect to substantially similar financial instruments;
  - (b) ‘dividend’ means any dividend as defined in section 1, but excludes—
    - (i) any foreign dividend as defined in section 9E, that has been included in the income of the person disposing of the share and any foreign dividend which is exempt from tax in terms of section 9E(7)(e)(i);
    - (ii) any dividend declared by a company contemplated in paragraph (e) of the definition of company; and
    - (iii) any dividend contemplated in section 11(s);
  - (c) ‘extraordinary dividends’ means so much of any dividends received or accrued within the period of two years contemplated in subparagraph (1), as exceed 15 per cent of the proceeds received or accrued from the disposal of the share; and
  - (d) ‘holding company’ and ‘intermediary company’ means a ‘holding company’ and ‘intermediary company’ as defined in section 64B of this Act.

## PART V

## BASE COST

## Base cost of asset

20. (1) Despite section 23(*b*) and (*f*), but subject to paragraphs 24 and 25 and subparagraphs (2) and (3), the base cost of an asset acquired by a person is the sum of—
- (a) the expenditure actually incurred in respect of the cost of acquisition or creation of that asset;
  - (b) the expenditure actually incurred in respect of the valuation of the asset for the purpose of determining a capital gain or capital loss in respect of the asset;
  - (c) the following amounts actually incurred as expenditure directly related to the acquisition or disposal of that asset namely—
    - (i) the remuneration of a surveyor, valuer, auctioneer, accountant, broker, agent, consultant or legal advisor, for services rendered;
    - (ii) transfer costs;
    - (iii) stamp duty, transfer duty or similar duty;
    - (iv) advertising costs to find a seller or to find a buyer;
    - (v) the cost of moving that asset from one location to another;
    - (vi) the cost of installation of that asset, including the cost of foundations and supporting structures;
    - (vii) despite section 23(*d*), in the case of a disposal of an asset by a person by way of a donation as contemplated in paragraph 38, so much of any donations tax payable by that person in respect of that donation, as determined in accordance with paragraph 22;
    - (viii) if that person acquired that asset by way of a donation and the donations tax levied in respect of that donation was paid by that person, so much of the donations tax which bears to the full amount of the donations tax so payable the same ratio as the capital gain of the donor determined in respect of that donation, bears to the market value of that asset on the date of that donation; and
    - (ix) if that asset was acquired by the exercise of an option (other than the exercise of an option contemplated in item (*f*)), the expenditure actually incurred in respect of the acquisition of the option;
  - (d) the expenditure actually incurred for purposes of establishing, maintaining or defending a legal title to or right in that asset;
  - (e) the expenditure actually incurred in effecting an improvement to or enhancement of the value of that asset, if that improvement or enhancement is still reflected in the state or nature of that asset at the time of its disposal;
  - (f) if that asset was acquired by the exercise after valuation date of an option acquired prior to the valuation date, the valuation date value of that option, which value must be treated to be expenditure actually incurred in respect of that asset on valuation date for the purposes of this Part;
  - (g) the following amounts actually incurred as expenditure directly related to the cost of ownership of that asset, which is used wholly and exclusively for business purposes or which constitutes a share listed on a recognised stock exchange or an interest in a unit portfolio—
    - (i) the cost of maintaining, repairing, protecting or insuring that asset;
    - (ii) where the asset is immovable property, rates or taxes on that property; and
    - (iii) interest as contemplated in section 24J on money borrowed to finance directly the expenditure contemplated in items (*a*) or (*e*) in respect of that asset (including money borrowed to refinance those borrowings):  
Provided that if that asset constitutes a share listed on a recognised stock exchange or an interest in a unit portfolio, the expenditure in respect of that asset must for the purposes of this subparagraph be reduced by two-thirds;
  - (h) in the case of—
    - (i) a marketable security, any gain in respect of that acquisition that was included in that person's income in terms of section 8A, as has not otherwise been included in the cost of that acquisition;

- (ii) any other asset, so much of an amount in respect of that acquisition that has been included in that person's income in terms of section 8(5), or is included in that person's gross income in terms of paragraph (i) of the definition of 'gross income' in section 1, as has not otherwise been included in the cost of that acquisition; 5
- (iii) an interest in a controlled foreign entity as defined in section 9D, the proportional amount of the net income of that entity which was included in the income of that person in terms of section 9D during any year of assessment, less the amount of any foreign dividend distributed by that entity to that person during any year of assessment which was exempt from tax in terms of section 9E(7)(e)(i); or 10
- (iv) a value shifting arrangement, an amount determined in accordance with paragraph 23, 15

which must for the purposes of this Part be treated as expenditure incurred in respect of the acquisition of that asset.

(2) The base cost of an asset acquired by a person does not include any of the following amounts—

- (a) borrowing costs, including any interest as contemplated in section 24J or raising fees; and 20
- (b) expenditure on repairs, maintenance, protection, insurance, rates and taxes, or similar expenditure, 25

other than borrowing costs and expenditure contemplated in subparagraph (1)(g).

(3) The base cost of an asset acquired by a person must be reduced by any amount which has been included in terms of subparagraphs (1) and (2), and which—

- (a) is or was allowable as a deduction in determining the taxable income of that person before the inclusion of any taxable capital gain; 25
- (b) has for any reason been recovered or become recoverable from or has been paid by any other person (whether prior to or after the incurral of the expense to which it relates); 30
- (c) has not been paid and is not due and payable in a year of assessment; 35

#### Limitation of expenditure

21. (1) Where, but for the provisions of this subparagraph, an amount qualifies or has qualified as an allowable expenditure or may otherwise be taken into account in determining a capital gain or capital loss under more than one provision of this Schedule, that amount or portion thereof, shall not be allowed as expenditure or be taken into account more than once in determining that capital gain or capital loss. 35

(2) No expenditure shall be allowed under paragraph 20(1)(a) or (e) where any amount of that expenditure is allowable under any other provision of this Schedule, despite that that other provision imposes any limitation on the amount of the expenditure. 40

#### Amount of donations tax to be included in base cost

22. The amount of the donations tax payable by a person in respect of the disposal of an asset which may be taken into account in terms of paragraph 20(1)(c)(vii) must be determined in accordance with the formula— 45

$$Y = \frac{(M - A)}{M} \times D$$

where—

- (a) 'Y' represents the amount to be determined; 50
- (b) 'M' represents the market value of the asset donated in respect of which the donations tax is payable;
- (c) 'A' represents all amounts allowed to be taken into account in determining the base cost of the asset in terms of this Part (other than paragraph 20(1)(c)(vii)); and 55
- (d) 'D' represents the total amount of donations tax so payable:

Provided that where the amount included in 'A' is greater than the amount included in 'M', the amount of donations tax to be taken into account in terms of paragraph 20(1)(c)(vii) shall be nil.

### Base cost in respect of value shifting arrangement

23. In the case of a disposal by way of a value shifting arrangement— 5

- (a) the base cost of a person's interest to which paragraph 11(1)(g) applies, is determined in accordance with the formula

$$Y = \frac{(A - C)}{A} \times B \quad 10$$

where—

- (i) 'Y' represents the amount to be determined;
  - (ii) 'A' is the market value of that person's interests immediately prior to the disposal;
  - (iii) 'B' is the person's base cost in the interests calculated immediately prior to the disposal; and 15
  - (iv) 'C' is the market value of that person's interests immediately after the disposal.
- (b) the base cost of a person— 20
- (i) whose interests increased in value as a result of a value shifting arrangement contemplated in subparagraph (a) is increased by that proportion of the proceeds on disposal contemplated in paragraph 35(2) in respect of the value shifting arrangement which resulted in the increase in market value of that person's interest; or
  - (ii) who acquires a direct or indirect interest in the company, trust or partnership, is that proportion of the proceeds of disposal contemplated in paragraph 35(2) in respect of the value shifting arrangement which resulted in the acquisition of that interest. 25

### Base cost of asset of a person who becomes a resident

24. (1) The base cost of an asset, other than an asset situated in the Republic listed in paragraph 2(1)(b)(i) and (ii), acquired before a person became a resident is the sum of the value of that asset determined in terms of subparagraphs (2) or (3) and the expenditure allowable in terms of paragraph 20 incurred after the valuation date in respect of that asset. 30

(2) Where an asset of a person who becomes a resident as contemplated in paragraph 12(4), has been disposed of by a person after the date on which that person commenced to be a resident and the proceeds from that disposal and the expenditure allowable in terms of paragraph 20 incurred prior to that date in respect of that asset are each lower than the market value of that asset as at that date, that person must be treated as having acquired that asset at a cost equal to the higher of— 35

- (a) the expenditure allowable in terms of paragraph 20 incurred in respect of that asset prior to that date; or
- (b) those proceeds less the expenditure allowable in terms of paragraph 20 incurred after that date in respect of that asset. 40

(3) Where an asset contemplated in paragraph 12(4) has been disposed of by a person after the date on which that person commenced to be a resident and 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 each lower than the expenditure allowable in terms of paragraph 20 incurred prior to that date in respect of that asset, that person must be treated as having acquired that asset at a cost equal to the higher of— 45

- (a) that market value; or
- (b) those proceeds less the expenditure allowable in terms of paragraph 20 incurred after that date in respect of that asset. 50

### Determination of base cost of pre-valuation date assets

**25.** The base cost of a pre-valuation date asset is the sum of the valuation date value of that asset, as determined in terms of paragraph 26 or 27, and the expenditure allowable in terms of paragraph 20 incurred after the valuation date in respect of that asset.

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### Valuation date value where proceeds exceed expenditure or where expenditure in respect of an asset cannot be determined

**26.** (1) Subject to paragraph 32(5), where the proceeds from the disposal of a pre-valuation date asset (other than an asset contemplated in paragraph 28) exceed the expenditure allowable in terms of paragraph 20 incurred both before and after the valuation date in respect of that asset, the person who disposed of that asset must, subject to subparagraph (3), adopt any of the following as the valuation date value of that asset—

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- (a) the market value of the asset on the valuation date as contemplated in paragraph 29;
- (b) 20 per cent of the proceeds from disposal of the asset, after deducting from those proceeds an amount equal to the expenditure allowable in terms of paragraph 20 incurred after the valuation date; or
- (c) the time-apportionment base cost of the asset as contemplated in paragraph 30.

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(2) Where the expenditure incurred before valuation date in respect of a pre-valuation date asset cannot be determined by the person who disposed of that asset or the Commissioner, that person must adopt any of the following as the valuation date value of that asset—

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- (a) the market value of the asset on the valuation date as contemplated in paragraph 29; or
- (b) 20 per cent of the proceeds from disposal of the asset, after deducting from those proceeds an amount equal to the expenditure allowable in terms of paragraph 20 incurred after the valuation date.

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(3) Where a person has adopted the market value as the valuation date value of that asset as contemplated in subparagraph (1)(a) and the proceeds from the disposal of that asset do not exceed that market value, that person must substitute the higher of the following as the valuation date value of that asset—

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- (a) the expenditure allowable in terms of paragraph 20 incurred before the valuation date in respect of that asset; or
- (b) those proceeds less the expenditure allowable in terms of paragraph 20 incurred after the valuation date in respect of that asset.

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### Valuation date value where proceeds do not exceed expenditure

**27.** (1) Subject to paragraph 32(5), where the proceeds from the disposal of a pre-valuation date asset (other than an asset contemplated in paragraph 28) do not exceed the expenditure allowable in terms of paragraph 20 incurred before and after the valuation date in respect of that asset, and the person who disposed of the asset—

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- (a) did not determine the market value on the valuation date, as contemplated in paragraph 29, the valuation date value of that asset is the time-apportionment base cost of that asset as contemplated in paragraph 30;
- (b) determined the market value of the asset on the valuation date, as contemplated in paragraph 29, that person must, subject to subparagraph (2), adopt as the valuation date value of that asset, the lower of—
  - (i) that market value; or
  - (ii) the time-apportionment base cost of that asset as contemplated in paragraph 30.

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(2) Where the expenditure allowable in terms of paragraph 20 incurred before the valuation date in respect of an asset contemplated in subparagraph (1), exceeds each of the proceeds from the disposal of that asset and the market value of that asset on valuation date, that person must adopt the valuation date value of the asset as the higher of—

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- (a) the market value; or
- (b) those proceeds less the expenditure allowable in terms of paragraph 20 incurred after the valuation date in respect of that asset.

**Valuation date value of an instrument**

28. The valuation date value of an instrument as defined in section 24J must be—
- (a) the adjusted initial amount as determined in terms of that section on valuation date; or
  - (b) market value of that instrument determined in terms of paragraph 31. 5

**Market value on valuation date**

29. (1) The market value on the valuation date of—
- (a) a financial instrument listed on a recognised exchange and for which a price was quoted on that exchange both before and after the valuation date is, subject to subparagraph (2), in the case of a financial instrument listed on an exchange— 10
    - (i) in the Republic, the price published by the Commissioner in the *Gazette*, which 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; and 15
    - (ii) outside the Republic and which is not listed on any exchange in the Republic, the last price quoted in respect of that financial instrument on that recognised exchange on the last trading day before valuation date;
  - (b) an asset which is not listed on a recognised exchange and which constitutes a right of a unit holder in— 20
    - (i) any company contemplated in paragraph (e)(i) of the definition of ‘company’ in section 1 of the Act, or any unit portfolio comprised in any unit trust scheme in property shares carried on in the Republic, the price published by the Commissioner in the *Gazette*, which is the average of the price at which a unit could be sold to the management company of the scheme for the last five trading days before valuation date; or 25
    - (ii) any arrangement or scheme contemplated in paragraph (e)(ii) of the definition of ‘company’, the last price published before valuation date at which a unit could be sold to the management company of the scheme or where there is not a management company 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; 30
  - (c) any other asset, the market value determined in terms of paragraph 31 on valuation date. 35
- (2) Where— 35
- (a) a person holds a controlling interest in a company the shares of which are listed on a recognised exchange, and that entire controlling interest is disposed of to another person (who is not a connected person in relation to that person), who acquires that entire controlling interest; and
  - (b) the price per share for which that controlling interest has been so disposed of deviates from the last price quoted in respect of that share on the date prior to the announcement of the transaction, 40
- the valuation date market value of that share so disposed of, as determined in terms of subparagraph (1)(a), must be increased or decreased, as the case may be, by an amount which bears to that market value the same ratio as the amount of the deviation bears to that last price so quoted. 45
- (3) For the purposes of this paragraph—
- (a) the last price quoted for a specific day means the average of the buying and selling prices quoted at close of business on that day; and
  - (b) ‘controlling interest’ in a company, means an interest in more than 50 per cent of the equity share capital of that company. 50
- (4) For the purposes of paragraphs 26(1)(a) and 27(1)(b), a person may only adopt the market value as the valuation date value of that asset if that person has valued that asset within two years after valuation date.
- (5) Despite subparagraph (4), where a person has valued an asset and— 55
- (a) the market value of that asset exceeds R10 million;
  - (b) that asset is an intangible asset (excluding financial instruments) and the market value thereof exceeds R1 million, or

(c) that asset is an unlisted share in a company and the market value of all the shares held by that person in that company exceeds R10 million, that person may only adopt the market value as the valuation date value of that asset if that person has furnished proof of that valuation to the Commissioner in the form as the Commissioner may prescribe, with the first return submitted by that person after the period contemplated in subparagraph (4). 5

(6) Where a person disposes of—

(a) an asset contemplated in subparagraph (5)(a), (b) or (c) which has been valued before proof of valuation is submitted as contemplated in that subparagraph; or 10

(b) any other asset which has been valued, that person must submit proof of that valuation with the return for the year of assessment during which that asset was disposed of.

(7) The Commissioner may, notwithstanding any proof of valuation submitted by a person to the Commissioner as contemplated in subparagraph (5) or (6)— 15

(a) request any such further information or documents relating to that valuation; or

(b) where the Commissioner is not satisfied with any value at which an asset has been valued, the Commissioner may adjust the value accordingly. 20

(8) The period contemplated in subparagraph (4) may be extended by the Minister by notice in the *Gazette*.

#### **Time-apportionment base cost**

**30.** (1) The time-apportionment base cost of a pre-valuation date asset is determined in accordance with the formula—

$$Y = \frac{B + [(P - B) \times N]}{T + N},$$
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where—

(a) 'Y' represents the amount to be determined; 30

(b) 'B' represents the amount of expenditure allowable in terms of paragraph 20 in respect of that asset that is attributable to the period of ownership before valuation date;

(c) 'P' represents the proceeds as determined in terms of paragraph 35, in consequence of the disposal of that asset, or where subparagraph (2) applies, the amount of proceeds attributable to the expenditure in 'B' as determined in accordance with subparagraph (2); 35

(d) 'N' represents the number of years or part thereof the asset was owned prior to the valuation date, which number of years may not exceed 20 in the case where the expenditure allowable in terms of paragraph 20 in respect of that asset was incurred in more than one year of assessment prior to the valuation date; 40

(e) 'T' represents the number of years or part thereof the asset was owned after valuation date. 45

(2) Where the total amount of expenditure allowable in terms of paragraph 20 in respect of a pre-valuation date asset was incurred in more than one year of assessment, the proceeds to be used in the determination of the time apportionment base cost of the asset must be determined in accordance with the formula— 45

$$P = \frac{T \times B}{(A + B)}$$
 50

where—

(a) 'P' represents the amount to be determined;

(b) 'T' represents the total amount of proceeds as determined in terms of paragraph 35 in consequence of the disposal of the pre-valuation date asset;

(c) 'A' represents the amount of expenditure allowable in terms of paragraph 20 in respect of the asset that is incurred on or after valuation date; 55

(d) 'B' represents the amount of expenditure allowable in terms of paragraph 20 in respect of that asset that is incurred before valuation date. 60



**Market value**

- 31.** (1) The market value of—
- (a) an asset which is a financial instrument listed on a recognised exchange and for which a price was quoted on that exchange, is the average of the buying and selling prices in respect of that financial instrument on that recognised exchange quoted at close of business on the last trading day before disposal of that financial instrument; 5
  - (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 greater of— 10
    - (i) the amount which would be payable to the policyholder upon the surrender of that policy on that day; or
    - (ii) the amount which according to the insurer is the fair market value of that policy should it run its remaining policy term as determined on that day;
  - (c) an asset which is not listed on a recognised exchange which constitutes a right of a unit holder in— 15
    - (i) any company contemplated in paragraph (e)(i) of the definition of ‘company’ in section 1 of the Act, or any unit portfolio comprised in any unit trust scheme in property shares carried on in the Republic, the price at which a unit can be sold to the management company of the scheme on the date of disposal; or 20
    - (ii) any arrangement or scheme contemplated in paragraph (e)(ii) of the definition of ‘company’, the price at which a unit can be sold to the management company of the scheme on the date of disposal or where there is not a management company 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; 25
  - (d) a fiduciary, usufructuary or other similar interest in any property, an amount determined by capitalizing at 12 per cent the annual value of the right of enjoyment of the property subject to that fiduciary, usufructuary or other like interest, as determined in terms of subparagraph (2), over the expectation of life of the person entitled to that interest, or if that right of enjoyment is to be held for a lesser period than the life of that person, over that lesser period; 30
  - (e) any property which is subject to a fiduciary, usufructuary or other similar interest in favour of any person, the amount by which the fair market value of the full ownership of that property exceeds the value of that fiduciary, usufructuary or other like interest determined in accordance with item (d); 35
  - (f) in the case of any asset which constitutes immovable property on which a *bona fide* farming undertaking is being carried on, subject to subparagraph (4), either— 40
    - (i) the value of that property determined as contemplated in paragraph (b) of the definition of ‘fair market value’ in section 1 of the Estate Duty Act, 1955 (Act No. 45 of 1955); or
    - (ii) the price contemplated in item (g);
  - (g) 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. 45
- (2) For purposes of subparagraph (1)(d), the annual value of the right of enjoyment of any property which is subject to any fiduciary, usufructuary or other like interest, means an amount equal to 12 per cent of the fair market value of the full ownership of the property: Provided that where the Commissioner is satisfied that the property which is subject to that interest could not reasonably be expected to produce an annual yield equal to 12 per cent on that value of the property, the Commissioner may fix such sum as representing the annual yield as may seem to him to be reasonable, and the sum so fixed must for the purposes of subparagraph (1)(d) be treated as being the annual value of the right of enjoyment of that property. 50 55
- (3) The market value of any shares of a person in a company not listed on a recognised exchange must be determined at a value equal to the price which could have been obtained upon a sale of the share between a willing buyer and a willing seller dealing at arm’s length in an open market subject to the following— 60

- (a) no regard shall be had to any provision—
    - (i) restricting the transferability of the shares therein, and it shall be assumed that those shares were freely transferable; or
    - (ii) whereby or whereunder the value of the shares is to be determined;
  - (b) if upon the winding-up of the company that person would have been entitled to share in the assets of the company to a greater extent *pro rata* to shareholding than other shareholders, the value of the shares held by that shareholder must not be less than the amount to which that shareholder would have been so entitled if the company had been in the course of winding-up and the said amount had been determined as at valuation date.
- (4) The value contemplated in subparagraph (1)(f)(i) may only be used on the death of a person or when the immovable property is disposed of by way of donation or non-arm's length transaction, if—
- (a) that value was used for the purposes of paragraph 26 or 27; or
  - (b) the person acquired the immovable property by way of donation or inheritance or non-arm's length transaction at that value.

### Base cost of identical assets

- 32.** (1) This paragraph applies to the disposal of assets which form part of a holding of identical assets.
- (2) For the purposes of this paragraph "identical assets" means a group of similar assets which—
- (a) if any one of them were disposed of, would realise the same amount regardless of which of them was so disposed of; and
  - (b) are not able to be individually distinguished apart from any identifying numbers which they may bear.
- (3) The base cost of identical assets may be determined by using one of the following methods—
- (a) specific identification;
  - (b) first in first out; or
  - (c) weighted average.
- (4) In applying the weighted average method, the average cost of identical assets shall be calculated after each acquisition of an asset by adding the cost of newly acquired assets to the base cost of the assets on hand and dividing that amount by the new total number of assets.
- (5) A person may not adopt the time apportionment base cost of an asset where the weighted average method of determining the base cost of that asset is used.
- (6) Once a person has adopted one of the methods specified in subparagraph (3) in respect of a holding of identical assets, that method must be used until all those identical assets have been disposed of.

### Part-disposals

- 33.** (1) Subject to subparagraphs (2) and (3), where part of an asset is disposed of, the proportion of the base cost attributable to the part disposed of is an amount which bears to the base cost of the entire asset the same proportion as the market value of the part disposed of bears to the market value of the entire asset immediately prior to that disposal.
- (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 contemplated in subparagraph (1) does not apply in respect of that part of the base cost.
- (3) For the purposes of subparagraph (1), the granting of an option in respect of an asset must not be treated as a part-disposal of that asset.

### Debt substitution

- 34.** Where a person reduces or discharges a debt owed by that person to a creditor by disposing of an asset to that creditor, that asset must be treated as having been acquired by the creditor at a cost equal to the market value of that asset at the time of that disposal.

**PART VI**  
**PROCEEDS**

**Proceeds from disposal**

35. (1) Subject to subparagraphs (2), (3) and (4), the proceeds from the disposal of an asset by a person are equal to the amount received by or accrued to, or which is treated as having been received by, or accrued to or in favour of, that person in consequence of that disposal, and includes—

- (a) the amount by which any debt owed by that person has been reduced or discharged; and
- (b) any amount received by or accrued to a lessee from the lessor of property for improvements effected to that property.

(2) The amount of the proceeds from a disposal by way of a value shifting arrangement is determined as the market value of the person's interests to which subparagraph 11(1)(g) applies immediately prior to the disposal less the market value of the person's interests immediately after the disposal, which amount shall be treated as having been received or accrued to that person.

(3) The proceeds from the disposal of an asset by a person, as contemplated in subparagraph (1) must be reduced by—

- (a) any amount of the proceeds that must be or was included in the gross income of that person or that must be or was taken into account when determining the taxable income of that person before the inclusion of any taxable capital gain;
- (b) any amount of the proceeds 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.

(4) Where during any year of assessment a person has become entitled to any amount which is payable on a date or dates falling after the last day of that year, that amount must be treated as having accrued to that person during that year.

**Disposal of partnership asset**

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

**Assets of trust and company**

37. (1) Where—

- (a) an asset contemplated in paragraph 15 which is not used for purposes of carrying on a trade or an asset which, if owned by a natural person, would be a personal-use asset as contemplated in paragraph 53, is owned by a trust or a company any interest in which or any shares of which are held directly or indirectly by a natural person;
- (b) there is a decrease in the market value of that asset while held by that trust or company after that person acquired an interest in that trust or company; and
- (c) any interest in that trust or that company is thereafter disposed of by a person, that person must be treated as having disposed of that interest for proceeds equal to the market value of that interest, determined on the date of disposal, as if the market value of that asset had not decreased.

(2) Subparagraph (1) does not apply where more than 50 per cent of the assets of the trust or company consist of assets used wholly and exclusively for trading purposes.

**Disposal by way of donation, consideration not measurable in money and transactions between connected persons not at an arm's length price**

38. Subject to paragraph 67, where a person disposed of an asset by means of a donation or for a consideration not measurable in money or to a person who is a connected person in relation to that person for a consideration which does not reflect an arm's length price—

- (a) the person who disposed of that asset must 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 that asset must be treated as having acquired that asset at a cost equal to that market value.

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### **Capital losses determined in respect of disposals to certain connected persons**

**39.** (1) A person must, when determining the aggregate capital gain or aggregate capital loss of that person, disregard any capital loss determined in respect of the disposal of an asset to any connected person in relation to that person, subject to subparagraph (3).

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

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(3) For the purposes of this paragraph, a connected person in relation to a natural person does not include a relative of that person other than a spouse, parent, child, stepchild, brother, sister, grandchild or grandparent of that person.

### **Disposal to and from deceased estate**

**40.** (1) A deceased person must be treated as having disposed of his or her assets, other than—

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- (a) assets transferred to the surviving spouse of that deceased person as contemplated in paragraph 67(2)(a);
- (b) assets bequeathed to an approved public benefit organisation as contemplated in paragraph 62; or
- (c) a long-term insurance policy of the deceased which if the proceeds of the policy had been received by or accrued to the deceased, the capital gain or capital loss determined in respect of that disposal would be disregarded in terms of paragraph 55,

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to his or her deceased estate for proceeds equal to the market value of those assets at the date of that person's death, and the deceased estate must be treated as having acquired those assets at a cost equal to that market value.

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(2) Where an asset is disposed of by a deceased estate to an heir or legatee (other than the surviving spouse of the deceased person as contemplated in paragraph 67(2)(a) or an approved public benefit organisation as contemplated in paragraph 62) or a trustee of a trust—

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- (a) the deceased estate must be treated as having disposed of that asset for proceeds equal to the base cost of the deceased estate in respect of that asset; and
- (b) the heir, legatee or trustee must be treated as having acquired that asset at a cost equal to the base cost of the deceased estate in respect of that asset.

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(3) For the purposes of this Schedule, the disposal of an asset by the deceased estate of a natural person shall be treated in the same manner as if that asset had been disposed of by that natural person.

### **Tax payable by heir of a deceased estate**

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**41.** (1) Where—

- (a) the tax determined in terms of this Act, which relates to the taxable capital gain of a deceased person, exceeds 50 per cent of the net value of the estate determined for purposes of the Estate Duty Act, 1955, before taking into account the amount of that tax so determined; and
- (b) the executor of the estate is required to dispose of any asset of the estate for purposes of paying the amount of that tax,

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any heir or legatee of the estate, who would have been entitled to that asset contemplated in item (b), had there been no liability for tax, may elect that that asset be distributed to that heir or legatee upon the condition that the amount of tax which exceeds 50 per cent of that net value be paid by him or her within a period of three years after the date that the executor obtained permission to distribute the assets of the estate, as contemplated in section 35(12) of the Administration of Estates Act, 1965 (Act No. 66 of 1965). 5

(2) Any amount of tax payable by an heir as contemplated in subparagraph (1), becomes a debt due to the state and must be treated as an amount of tax chargeable in terms of this Act which is due by that person.

#### **Short-term disposals and acquisitions of identical financial instruments** 10

**42.** (1) Where a capital loss is determined in respect of the disposal by a person of a financial instrument and within a period beginning 45 days before the date of disposal and ending 45 days after that date, that person or a connected person in relation to that person, subject to subparagraph (3), acquires or has entered into a contract to acquire a financial instrument of the same kind and of the same or equivalent quality— 15

- (a) the person who disposed of the financial instrument must be treated as having disposed thereof for proceeds equal to the base cost thereof; and
- (b) the person who acquired the financial instrument of the same kind and of the same or equivalent quality must be treated as having acquired that financial instrument at a cost equal to any amount allowable in terms of paragraph 20, plus the amount of any capital loss which would have arisen in the hands of the person who disposed of the asset, were it not for the operation of item (a). 20

(2) For the purposes of subparagraph (1), there must not be taken into account in determining the period of 91 days any days in which the person disposing of the financial instrument— 25

- (a) has an option to sell, is under a contractual obligation to sell or has made (and not closed) a short sale of a financial instrument of the same kind and of the same or equivalent quality;
- (b) is the grantor of an option to buy a financial instrument of the same kind and of the same or equivalent quality; or 30
- (c) has otherwise diminished risk of loss in respect of that share by holding one or more contrary positions with respect to a financial instrument of the same kind and of the same or equivalent quality.

(3) For the purposes of this paragraph, a connected person in relation to a natural person does not include a relative of that person other than a spouse, parent, child, stepchild, brother, sister, grandchild or grandparent of that person. 35

#### **Assets disposed of or acquired in foreign currency**

**43.** (1) Where a person disposes of an asset for proceeds denominated in a foreign currency after having incurred expenditure in respect of that asset in the same currency, that person must determine the gain or loss on the disposal by translating both proceeds and the expenditure incurred into the currency of the Republic at the ruling exchange rate on the date of disposal. 40

(2) Where a person disposes of an asset for proceeds denominated in any currency (hereinafter referred to as the 'currency of disposal') after having incurred expenditure in respect of that asset in another currency (hereinafter referred to as the 'currency of expenditure'), that person must— 45

- (a) determine the gain or loss on the disposal by translating both proceeds and the expenditure incurred into the currency of expenditure at the ruling exchange rate on the date of disposal; and
- (b) determine a capital gain or capital loss in terms of Part XIII as if that person disposed of the currency of expenditure for the currency of disposal. 50

(3) For the purposes of this paragraph, the term 'ruling exchange rate' will have the same meaning as defined in section 24I.

## PART VII

## PRIMARY RESIDENCE EXCLUSION

## Definitions

44. In this Part, unless the context otherwise indicates— 5  
 ‘an interest’ means—  
 (a) any real or statutory right; or  
 (b) a share owned directly in a share block company as defined in the Share 10  
 Blocks Control Act, 1980 (Act No. 59 of 1980) or a share or interest 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 or an interest in a trust;  
 ‘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 15  
 beneficiary—  
 (i) ordinarily resides or resided in as his or her main residence; and  
 (ii) uses or used mainly for domestic 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 20  
 belonging thereto and enjoyed therewith.

## General principle

45. (1) Subject to subparagraphs (2) and (3), a natural person or a special trust must, 25  
 when determining an aggregate capital gain or aggregate capital loss, disregard so much  
 of a capital gain or capital loss determined in respect of the disposal of the primary  
 residence of that person or that trust as does not exceed R1 million.  
 (2) Where more than one natural person or special trust holds an interest in that  
 primary residence at the same time, the amount to be disregarded in terms of  
 subparagraph (1) must be apportioned in relation to each interest so held.  
 (3) Subject to paragraph 48, only one residence may be a primary residence of a 30  
 person or a special trust for any period during which that person or special trust held an  
 interest in more than one residence.

## Size of residential property qualifying for exclusion

46. Where a primary residence and the land on which it is situated is disposed of by 35  
 a person, the provisions of paragraph 45 apply in respect of so much of that land,  
 including unconsolidated adjacent land, as—  
 (a) does not exceed two hectares;  
 (b) is used mainly for domestic purposes together 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 where not ordinarily resident

47. Subject to paragraphs 48, where— 40  
 (a) a natural person or special trust disposes of an interest in a residence which is  
 or was a primary residence; and  
 (b) that person or a beneficiary of that trust or a spouse of that person or 45  
 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  
 45 must be determined with reference to the portion of that period during which that  
 person, beneficiary or spouse was so ordinarily resident. 50

## Disposal and acquisition of primary residence

48. A natural person or a beneficiary of a special trust must for purposes of paragraph  
 47 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 any of 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) that residence was being erected on land acquired for that purpose in order to be used as that person's primary residence;
- (c) the residence had been accidentally rendered uninhabitable; or
- (d) the death of that person.

#### **Non-residential use**

**49.** Subject to paragraph 50—

- (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) where 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,

the portion of the capital gain or capital loss to be disregarded in terms of paragraph 45 must be determined with reference to the period on or after the valuation date during which that person or beneficiary used that residence for domestic 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.

#### **Rental periods**

**50.** A natural person or a beneficiary of a special trust or a spouse of that person or beneficiary must for purposes of paragraph 49 be treated as having used a residence for domestic purposes 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;
- (b) no other residence was treated as the primary residence of that person or beneficiary during any such period; and
- (c) that person or beneficiary or spouse was—
  - (i) temporarily absent from the Republic; or
  - (ii) employed or engaged in carrying on business in the Republic at a location further than 250 kilometers from that residence.

#### **Transfer of a primary residence from a company or trust**

**51.** (1) Where an interest in a residence has been transferred from a company or a trust to a natural person as contemplated in subparagraph (2)—

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

(2) Subparagraph (1) applies where—

- (a) that natural person acquires that residence from the company or trust 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—
  - (i) alone or together with his or her spouse directly held all the share capital in that company from 5 April 2001 to the date of registration in the deeds registry of that residence in the name of that natural person or his or her spouse or in their names jointly; or
  - (ii) 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, actually incurred by the trust to acquire and to improve the residence;
- (c) that natural person alone or together with his or her spouse personally and ordinarily resided in that residence and used it mainly for domestic purposes as his or her or their ordinary residence from 5 April 2001 to the date of that registration; and
- (d) that registration in the deeds registry in the name of that person, his or her spouse or their names jointly takes place not later than 31 March 2003:
- Provided that the provisions of this paragraph apply only in respect of the portion of the property contemplated in paragraph 46.

## PART VIII

### OTHER EXCLUSIONS

#### General principle

**52.** Capital gains and capital losses must be 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

**53.** (1) A natural person or a special trust must disregard a capital gain or capital loss determined in respect of the disposal of a personal-use asset as contemplated in subparagraph (2).

(2) A personal-use asset is an asset of a natural person or a special trust that is used mainly for purposes other than the carrying on of a trade.

(3) Personal use assets do not include—

- (a) a coin made mainly from gold or platinum of which the market 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;
- (f) any fiduciary, usufructuary or other like interest, the value of which decreases over time; and
- (g) a right or interest of whatever nature to or in an asset envisaged in items (a) to (f).

#### Retirement benefits

**54.** A person must disregard any capital gain or capital loss determined in respect of a disposal that resulted in that person receiving—

- (a) a lump sum benefit as defined in the Second Schedule; or
- (b) a lump sum benefit paid from a fund, arrangement or instrument situated outside the Republic which provides similar benefits under similar conditions to a pension, provident or retirement annuity fund approved in terms of this Act.

#### Long-term assurance

**55.** A person must disregard any capital gain or capital loss determined in respect of a disposal that resulted in the receipt by or accrual to that person of an amount—

- (a) in respect of a policy as defined in section 29A with an insurer as defined in that section, where that person—
- (i) is the original beneficial owner or one of the original beneficial owners of the policy;
- (ii) is the spouse, nominee, dependant as contemplated in the Pension Funds Act, 1956 (Act No. 24 of 1956), or deceased estate of the original beneficial owner of the relevant policy and no amount was paid or is payable or will become payable, whether directly or indirectly, in respect



- of the cession of that policy from the beneficial owner of that policy to that spouse, nominee or dependant; or
- (iii) is the former spouse of the original beneficial owner and that policy was ceded to that spouse in consequence of a divorce order or, in the case of a union contemplated in paragraph (b) or (c) of the definition of “spouse” in section 1 of this Act, an agreement of division of assets which has been made an order of court; 5
- (b) in respect of any policy taken out on the life of an employee or director as contemplated in section 11(w);
- (c) in respect of a policy that was originally taken out on the life of any other person who was a partner of that person, or held any share or similar interest in a company in which that person held any share or similar interest, for the purpose of enabling that person to acquire, upon the death of that other person, the whole or part of— 10
- (i) that other person’s interest in the partnership concerned; or 15
- (ii) that other person’s share or similar interest in that company and any claim by that other person against that company, and no premium on the policy was paid or borne by that other person or any connected person in relation to that other person;
- (d) in respect of a policy originally taken out on the life of a person, where that policy is provided to that person or dependant by or in consequence of that person’s membership of a pension fund, provident fund or retirement annuity fund. 20

#### Debt defeasance

56. Where a creditor disposes of a claim owed by a debtor, who is a connected person in relation to that creditor, that creditor must disregard any capital loss determined in consequence of that disposal. 25

#### Disposal of small business assets

57. (1) For purposes of this paragraph, ‘small business’ means a business of which the market value of all its assets, as at the date of the disposal of the asset or interest contemplated in subparagraph (2), does not exceed R5 million. 30

(2) Subject to subparagraphs (3), (4) and (5), a natural person must, when determining an aggregate capital gain or aggregate capital loss, disregard a capital gain determined 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 35
- (b) an interest in each of the active business assets of a business, which qualifies as a small business, owned by a partnership, upon that natural person’s withdrawal from that partnership to the extent of his or her interest in that partnership; or 40
- (c) an entire direct interest in a company (which consists of at least 10 per cent of the equity of that company), to the extent that the interest relates to active business assets of the business, which qualifies as a small business, of that company, 45

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 and was substantially involved in the operations of the business of that small business during that period, and—

- (i) has attained the age of 55 years; or 50
- (ii) the disposal is in consequence of ill-health, other infirmity, superannuation or death.

(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 24 months commencing on the date of the first disposal contemplated in subparagraph (2). 55

(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 (4) and (6), include every such small business in the determination of the amount to be disregarded in terms of subparagraph (2). 5

(6) The provisions of this paragraph do not apply where a person owns more than one 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, and the total market value of all assets in respect of all those businesses exceeds R5 million.

#### **Exercise of options** 10

58. A capital gain or capital loss of a person determined in respect of the termination of the option as a result of the exercise by that person of an option must be disregarded.

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

59. A natural person or a special trust must disregard a capital gain or a capital loss determined 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 a beneficiary of that trust. 15

#### **Gambling, games and competitions**

60. (1) A person must disregard a capital gain or capital loss determined in respect of a disposal relating to any form of gambling, game or competition. 20

(2) Notwithstanding subparagraph (1), a capital gain may not be disregarded—

(a) by any person other than a natural person; or

(b) where that form of gambling, game or competition is not authorised by, or conducted in terms of, the laws of the Republic.

#### **Unit trust funds** 25

61. A unit portfolio comprised in any unit trust scheme managed or carried on by any company registered as a management company under section 4 or 30 of the Unit Trusts Control Act, 1981 (Act No. 54 of 1981), must disregard any capital gain or capital loss.

#### **Donations and bequests to public benefit organisations**

62. A person must disregard any capital gain or capital loss determined in respect of the donation or bequest of an asset by that person to a public benefit organisation approved by the Commissioner under section 30. 30

#### **Exempt persons**

63. A person must disregard any capital gain or capital loss in respect of the disposal of an asset where all the receipts and accruals of that person are exempt from tax in terms of section 10. 35

#### **Asset used to produce exempt income**

64. A person must disregard any capital gain or capital loss in respect of the disposal of an asset which is used solely to produce amounts which are exempt from tax in terms of section 10, other than receipts and accruals contemplated in paragraphs (i)(xv), (k) and (m) of subsection (1) thereof. 40

### **PART IX**

#### **ROLL-OVERS**

#### **Involuntary disposal**

65. (1) Subject to subparagraphs (2), (3) and (4), where— 45

- (a) a person disposes of an asset other than a financial instrument by way of expropriation, loss or destruction;
- (b) proceeds accrue to that person by way of compensation for that expropriation, loss or destruction;
- (c) those proceeds exceed the base cost of that asset; and
- (d) that person satisfies the Commissioner that—
  - (i) an amount equal to those proceeds has been or will be expended in replacing that asset;
  - (ii) a contract has been or will be concluded within a year from the date of the disposal of that asset to replace that asset with a similar asset; and
  - (iii) the replacement asset has been or will be brought into use within three years of the disposal of that asset,

that person must, when determining that person's aggregate capital gain or aggregate capital loss, disregard the capital gain determined in respect of that disposal and the amount of that disregarded capital gain must, in the year that the replacement asset is disposed of, be treated as a capital gain when determining that person's aggregate capital gain or aggregate capital loss.

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

(3) The Commissioner may extend the periods contemplated in subparagraph (1)(d) by a maximum of six months if 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 or fails to bring a replacement asset into use within the prescribed period that person must—

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

#### **Reinvestment in replacement assets**

**66.** (1) Subject to paragraph 65 and 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 11(e), 12B, 12C, 14 or 14bis;
- (b) the proceeds received or accrued from that disposal exceed the base cost of that asset; and
- (c) that person satisfies the Commissioner that—
  - (i) an amount equal to those proceeds has been or will be expended in replacing that asset;
  - (ii) a contract has been or will be concluded within a year from the date of the disposal of that asset to replace that asset with a replacement asset which will qualify for a deduction which is equivalent to the capital allowance or deduction for which the asset so replaced qualified; and
  - (iii) the replacement asset has been or will be brought into use within a year after the disposal of that asset,

that person must, when determining that person's aggregate capital gain or aggregate capital loss, disregard the capital gain on that asset and must treat 20 per cent of the disregarded capital gain as a capital gain when determining that person's aggregate capital gain or aggregate capital loss for 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), by a person who is not a resident, of an asset situated in the Republic, that asset can only be considered to be a replacement asset for the purposes of subparagraph (1), where the asset is an asset contemplated in paragraph 2(1)(b).

(3) The Commissioner may extend the periods contemplated in subparagraph (1)(c) by a maximum of six months if 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 or fails to bring a replacement asset into use within the prescribed period that person must—

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

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

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

67. (1) 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 spouse acquiring the asset must be treated as having acquired the asset at a cost of the same amount.

(2) For the purposes of subparagraph (1)—

- (a) a deceased person must be treated as having disposed of an asset to his or her surviving spouse, if that asset accrues to that surviving spouse upon the death of that person; or
- (b) a person must be treated as having disposed of an asset to his or her spouse, if that asset is transferred to that spouse in consequence of a divorce order or, in the case of a union contemplated in paragraph (b) or (c) of the definition of "spouse" in section 1 of this Act, an agreement of division of assets which has been made an order of court.

## **PART X**

### **ATTRIBUTION OF CAPITAL GAINS**

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

68. (1) Where a person's capital gain or a capital gain that has vested in or is treated as having vested in that person during the year of assessment in which it arose can be attributed wholly or partly to—

- (a) any donation, settlement or other disposition; or
- (b) any transaction, operation or scheme,

made, entered into or carried out 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, so much of the gain as can be so attributed must 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.

(2) Where a person's capital gain is derived from—

- (a) 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
- (b) that person's spouse or 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,

so much of that gain as 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, must 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. 5

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

**69.** Where a minor child's capital gain or a capital gain that has vested in or is treated as having vested in or that has been used for the benefit of that child during the year of assessment in which it arose can be attributed wholly or partly to any donation, settlement or other disposition— 10

- (a) made by a parent of that child; or
- (b) made by another person in return for any donation, settlement or other disposition or 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, 15

so much of that gain as can be so attributed must be disregarded when determining that child's aggregate capital gain or aggregate capital loss and must be taken into account in determining the aggregate capital gain or aggregate capital loss of that parent.

#### **Attribution of capital gain subject to conditional vesting**

**70.** Where— 20

- (a) a person has made a donation, settlement or other disposition that is subject to a stipulation or condition imposed by that person or anyone else in terms of which a capital gain or a portion of any capital gain attributable to that donation, settlement or other disposition shall not vest in the beneficiaries of that donation, settlement or other disposition or some of those beneficiaries until the happening of some fixed or contingent event; 25
- (b) a capital gain that is attributable to that donation, settlement or other disposition has arisen during a year of assessment throughout which the person who made that donation, settlement or other disposition has been a resident; and 30
- (c) that capital gain or a portion thereof has not vested during that year in any beneficiary who is a resident,

that capital gain or that portion thereof must be taken into account in determining the aggregate capital gain or aggregate capital loss of the person who made that donation, settlement or other disposition and disregarded when determining the aggregate capital gain or aggregate capital loss of any other person. 35

#### **Attribution of capital gain subject to revocable vesting**

**71.** Where—

- (a) a deed of donation, settlement or other disposition confers a right upon a beneficiary thereof who is a resident to receive a capital gain attributable to that donation, settlement or other disposition or any portion of that gain; 40
- (b) that right may be revoked or conferred upon another by the person who conferred it; and
- (c) a capital gain attributable to that donation, settlement or other disposition or a portion of that gain has in terms of that right vested in that beneficiary during a year of assessment throughout which the person who conferred that right has been a resident and has retained the power to revoke that right, 45

that capital gain or that portion thereof must be disregarded when determining the aggregate capital gain or aggregate capital loss of that beneficiary and be taken into account when determining the aggregate capital gain or aggregate capital loss of the person retaining the power of revocation. 50

**Attribution of capital gain vesting in non-resident****72. Where—**

- (a) a resident has made a donation, settlement or other disposition to any person (other than to a public benefit organisation contemplated in section 30 or a foreign entity, as defined in section 9D, of a similar nature); and 5
- (b) a capital gain attributable to that donation, settlement or other disposition has arisen during a year of assessment and has during that year vested in or is treated as having 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 must 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. 10

**Attribution of income and capital gain**

**73.** (1) Where both an amount of income and a capital gain are derived by reason of or are attributable to a donation, settlement or other disposition, the total amount of that income and gain— 15

- (a) that is deemed in terms of section 7 to be that of a person other than the one to whom it accrues or by whom it is received or for whose benefit it is expended or accumulated; and
- (b) that is attributed in terms of this Part to a person other than the one in whom it vests, 20

shall not exceed the amount of the benefit derived from that donation, settlement or other disposition.

(2) For purposes of this paragraph, the benefit derived from a donation, settlement or other disposition means the amount by which the person to whom that donation, settlement or other disposition was made, has benefited from the fact that it was made for no or an inadequate consideration, including consideration in the form of interest. 25

**PART XI****COMPANY DISTRIBUTIONS****Definitions**

**74.** For the purposes of this Part, unless the context otherwise dictates—

‘capital distribution’ means any distribution (or portion thereof) by a company that—

- (a) does not constitute a dividend; or 35
- (b) that constitutes a dividend which is exempt from secondary tax on companies by reason of section 64B(5)(c);

‘company’ means any ‘company’ as defined in section 1, except for any unit portfolio contemplated in paragraph (e) of that definition;

‘distribution’ means any transfer of cash or assets by a company to a shareholder in relation to a share held by that shareholder, including any issue of shares or debt in that company (or any option thereto), regardless of whether that transfer constitutes a dividend; 40

‘share’ means any issued share capital in relation to a company (or any fraction thereof) regardless of whether or not that issued share capital carries a right to participate in dividends or a capital distribution. 45

**Distributions *in specie* by company**

**75.** (1) Where a company makes a distribution of an asset *in specie* to a shareholder, that company must be treated as having disposed of that asset to that shareholder for proceeds equal to market value. 50

(2) The market value of any asset contemplated in subparagraph (1) must be its market value on the date the distribution is approved by the directors or by some other person with comparable authority conferred under the memorandum and articles of association of the company making the distribution.

### Distributions of cash or assets *in specie* received by shareholder

**76.** (1) Any shareholder receiving a capital distribution of cash or assets *in specie* in respect of a share prior to the disposal of that share must reduce the base cost of that share carrying a right to that capital distribution by the amount of that capital distribution. 5

(2) Where the capital distribution contemplated in subparagraph (1) exceeds the base cost of the share carrying the right to the distribution, the shareholder must add the excess to proceeds when the shareholder disposes of the share.

(3) Any distribution of an asset *in specie* received by a shareholder must be treated as having been acquired for an expenditure incurred at market value on the date contemplated in paragraph 75(2). 10

(4) Where a shareholder disposes of a share that qualifies as a pre-valuation date asset and has adopted the time-apportionment base cost for that share, the expenditure incurred in respect of that share must be reduced to the extent of any capital distribution of cash or assets *in specie* received by that shareholder in respect of that share before the valuation date. 15

### Distributions in liquidation or deregistration received by shareholder

**77.** (1) A shareholder of a company that is being wound up, liquidated or deregistered must be treated as having disposed of all the shares held by that shareholder in that company at the earlier of— 20

(a) the date of dissolution or deregistration; or

(b) in the case of a liquidation or winding-up, the date when the liquidator declares in writing that no reasonable grounds exist to believe that the shareholder of the company (or shareholders holding the same class of shares) will receive any further distributions in the course of the liquidation or winding-up of that company. 25

(2) Any capital distribution of cash or assets *in specie* received by or accrued to that shareholder in respect of those shares after the disposal of those shares must be treated as a capital gain in determining that shareholder's aggregate capital gain or aggregate capital loss for that year of assessment. 30

### Share distributions received by shareholder

**78.** (1) Where a company issues capitalisation shares, such capitalisation shares must be treated as having a base cost of nil, except to the extent that the issue of those shares constitutes a dividend.

(2) Where a company issues shares in substitution of previously held shares in that company by reason of a subdivision, consolidation, or similar arrangement, the shareholder must disregard any capital gain or capital loss determined in respect of that substitution and those newly issued shares must have an aggregate base cost equal to the aggregate base cost of the previously held shares with the aggregate base cost allocated among all those newly issued shares in proportion to their relative market values. 35 40

(3) Where a company issues shares in substitution of previously held shares as contemplated in subparagraph (2) and also makes a capital distribution of cash or assets *in specie* with respect to those previously held shares—

(a) the shareholder must disregard any capital gain or capital loss determined in respect of that substitution but not in respect of the transfer of those previously held shares exchanged for that capital distribution; and 45

(b) both the substitution and that capital distribution must be treated as separate transactions with the base cost of those previously held shares allocated between both transactions based on the relative market values of the newly issued shares and that capital distribution received in exchange therefor. 50

### Matching contributions and distributions

**79.** (1) Despite section 76, where a shareholder receives a capital distribution of cash or assets *in specie*, the amount of that capital distribution must be treated as a capital gain for the purposes of determining that shareholder's aggregate capital gain or aggregate capital loss, where— 55

- (a) the shareholder receiving the capital distribution is a connected person in relation to the company making that capital distribution;
  - (b) the company making the capital distribution received consideration from a new or different shareholder in respect of the issue of one or more shares by that company within two years prior to the capital distribution contemplated in (a); and
  - (c) the contribution and capital distribution contemplated in both (a) and (b) are part of a scheme to reduce, avoid, or postpone any tax payable under this Act or any other Act administered by the Commissioner on the disposal of shares by the shareholder contemplated in (a).
- (2) The reduction in base cost and addition to proceeds contemplated in subparagraphs (1) and (2) of paragraph 76 shall not apply in respect of any share that carries a right to a distribution contemplated in subparagraph (1).

## PART XII

### TRUSTS, TRUST BENEFICIARIES AND INSOLVENT ESTATES

#### Capital gain attributed to beneficiary

- 80.** (1) Subject to paragraphs 68, 69, 71 and 72, where a capital gain is determined in respect of the vesting by a trust of an asset in a trust beneficiary who is a resident, that gain—
- (a) must be disregarded for the purpose of calculating the aggregate capital gain or aggregate capital loss of the trust; and
  - (b) must be taken into account for the purpose of calculating the aggregate capital gain or aggregate capital loss of the beneficiary to whom that asset was so disposed of.
- (2) Subject to paragraphs 68, 69, 71 and 72, where a capital gain arises in a trust in a year of assessment during which a trust beneficiary who is a resident 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) must be disregarded for the purpose of calculating the aggregate capital gain or aggregate capital loss of the trust; and
  - (b) must 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.

#### Base cost of interest in discretionary trust

- 81.** (1) A person's interest in a discretionary trust must, subject to subparagraph (2), be treated as having a base cost of nil.
- (2) Where a trust asset is vested in a beneficiary of the trust as a result of the exercise of a discretion, the base cost of the beneficiary's interest in the trust must be increased by the beneficiary's cost of acquisition of that asset as determined in terms of paragraph 38(b).

#### Death of beneficiary of special trust

- 82.** Where a beneficiary of a special trust dies, that trust must continue to be treated as a special trust for the purposes of this Schedule until the earlier of the disposal of all assets held by that trust or two years after the date of death of that beneficiary.

#### Insolvent estate of person

- 83.** (1) For the purposes of this Schedule, the disposal of an asset by the insolvent estate of a person shall be treated in the same manner as if that asset had been disposed of by that person.
- (2) No person whose estate has been voluntarily or compulsorily sequestrated may carry forward any assessed capital loss incurred prior to the date of sequestration.



## PART XIII

## FOREIGN CURRENCY

## Regulations

- 84.** (1) The Minister must, by way of notice in the *Gazette*, issue regulations to determine a capital gain or capital loss in respect of—
- (a) a conversion of a foreign currency into another currency;
  - (b) a payment, settlement, prescription, or other transfer of a foreign debt, forward exchange contract or foreign currency option contract; and
  - (c) the foreign currency consequences of certain events and disposals contemplated in this Schedule.
- (2) In determining the capital gain or capital loss contemplated in subparagraph (1), the regulations may—
- (a) make certain provisions of this Act applicable *mutatis mutandis*;
  - (b) disregard any capital gain or capital loss arising from the conversion of certain expenditures of foreign currency held exclusively for purposes of subsistence and travel;
  - (c) provide rules for the interaction of this Part with section 24I; and
  - (d) disregard any capital gain or capital loss under this Part to the extent that the gain or loss has otherwise been taken into account in terms of this Act.
- (3) The regulations contemplated in subparagraph (1) will not treat a person as having a capital gain or capital loss under this Part to the extent that person is merely—
- (a) transferring funds within the same foreign currency;
  - (b) acquiring an asset or incurring an expenditure denominated in the same currency as the currency of acquisition or incurral; and
  - (c) disposing of an asset in the same foreign currency as was used to acquire that asset.
- (4) The regulations contemplated in subparagraph (1) must be—
- (a) issued on or before 1 July 2001; and
  - (b) incorporated in this Schedule on or before 31 December 2001.

## Limitation on foreign currency losses

- 85.** Where in any year of assessment a person's capital losses, determined in terms of the regulations issued under paragraph 84, exceed that person's capital gains determined in terms of those regulations, such excess loss must be disregarded and treated as a capital loss in the following year of assessment which must be dealt with in accordance with the regulations issued in terms of paragraph 84.

## PART XIV

## MISCELLANEOUS

## Transactions during transitional period

- 86.** (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 in relation to that 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 in relation to that 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 relation to that 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) must for purposes of paragraph 30 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) at a cost equal to the base cost of that asset or the substantially similar asset in the hands of the person who disposed of it."

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

- 39.** 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 related matters."

### **Amendment of section 1 of Act 77 of 1968, as amended by section 16 of Act 103 of 1969, section 5 of Act 66 of 1973, section 7 of Act 88 of 1974, section 19 of Act 106 of 1980, section 3 of Act 118 of 1984, section 17 of Act 87 of 1988, section 36 of Act 9 of 1989, section 3 of Act 69 of 1989, section 5 of Act 136 of 1991, section 4 of Act 20 of 1994, section 77 of Act 30 of 1998 and section 74 of Act 53 of 1999**

- 40.** Section 1 of the Stamp Duties Act, 1968, is hereby amended by the insertion after the definition of "Commissioner" of the following definition:
- "'company' includes—
- (a) any association, corporation or company (including a close corporation) incorporated or deemed to be incorporated by or under any law in force or previously in force in the Republic or in any part thereof, or any body corporate formed or established or deemed to be formed or established by or under any such law; or
  - (b) any association, corporation or company incorporated under the law of any country other than the Republic or any body corporate formed or established under such law; or
  - (c) any association (not being an association referred to in paragraph (a) formed in the Republic to serve a specified purpose, beneficial to the public or a section of the public;"

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

- 41.** Item 7 of Schedule 1 to the Stamp Duties Act, 1968, is hereby amended by the addition of the following paragraph under the heading "*Exemptions*":
- "(e) Any mortgage bond hypothecating immovable property or an interest in such property, any cession of such a bond or the substitution of a debtor in respect of such a bond, where such hypothecation, cession or substitution is pursuant to the acquisition, on or after the date of promulgation of the Taxation Laws Amendment Act, 2001, by a natural person of a residence contemplated in section 9(16) or (17) of the Transfer Duty Act, 1949 (Act No. 40 of 1949), and under the circumstances contemplated in that section."

**Amendment of item 15 of Schedule 1 to Act 77 of 1968, as substituted by section 13 of Act 89 of 1972 and amended by section 16 of Act 66 van 1973, section 21 of Act 88 of 1974, section 3 of Act 104 of 1976, section 20 of Act 114 of 1977, section 8 of Act 95 of 1978, section 8 of Act 102 of 1979, section 21 of Act 106 of 1980, section 9 of Act 99 of 1981, section 7 of Act 87 of 1982, section 14 of Act 92 of 1983, section 11 of Act 118 of 1984, section 11 of Act 81 of 1985, section 5 of Act 71 of 1986, section 13 of Act 108 of 1986, section 11 of Act 86 of 1987, section 33 of Act 87 of 1988, section 14 of Act 69 of 1989, section 9 of Act 136 of 1991, section 8 of Act 136 of 1992, section 17 of Act 97 of 1993, section 17 of Act 140 of 1993, section 8 of Act 20 of 1994, section 86 of Act 30 of 1998, section 79 of Act 53 of 1999, section 72 of Act 30 of 2000 and section 63 of Act 59 of 2000**

**42.** Item 15 of Schedule 1 to the Stamp Duties Act, 1968, is hereby amended by the substitution for paragraph (v) under the heading "*Exemptions from the duty under paragraph (3) of the following paragraph:*

- “(v) Any registration of transfer of any share in a share block company as defined in section 1 of the Share Blocks Control Act, 1980 (Act 59 of 1980), which confers a right to or an interest in the use of immovable property, where such registration is in consequence of a sale or disposal of such share—
- (i) which in terms of the Value-Added Tax Act, 1991 (Act 89 of 1991), constitutes a supply of such share and in terms of that Act value-added tax has been or will be paid by the transferor in respect of such supply or such supply is subject to the said tax at a rate of zero per cent; or
  - (ii) by a company or trust to a natural person where—
    - (aa) such sale or disposal takes place on or after the date of promulgation of the Taxation Laws Amendment Act, 2001, but not later than 30 September 2002;
    - (bb) such immovable property to which such shares relate will constitute the primary residence, as defined in paragraph 44 of the Eighth Schedule to the Income Tax Act, 1962, of that person;
    - (cc) that person—
      - (i) alone or together with his or her spouse held all the share capital in that company from 5 April 2001 to the date of registration of transfer of such shares in the name of that natural person or jointly in the name of that person and that person’s spouse; or
      - (ii) disposed of the share in the share block company 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 the share in the share block company;
    - (dd) that natural person alone or together with his or her spouse ordinarily resided in that residence and used it mainly for domestic purposes from 5 April 2001 to the date of registration of transfer of such shares; and
    - (ee) the registration of transfer of the shares 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.”.

**Amendment of section 11 of Act 89 of 1991, as amended by section 27 of Act 136 of 1991, section 17 of Act 136 of 1992, section 27 of Act 97 of 1993, section 13 of Act 20 of 1994, section 28 of Act 27 of 1997 and section 85 of Act 53 of 1999**

- 43.** (1) Section 11 of the Value-Added Tax Act, 1991 is amended—
- (a) by the addition in subsection (1) of the word “or” at the end of paragraph (k); and
  - (b) by the addition to subsection (1) of the following paragraph:
 

“(l) the goods consist of illuminating kerosene intended for use as fuel for illuminating or heating, and are not mixed or blended with another substance:”.
- (2) Subsection (1) is deemed to have come into operation on 1 April 2001.

**Amendment of section 28 of Act 89 of 1991, as amended by section 29 of Act 136 of 1992 and section 79 of Act 30 of 2000**

44. Section 28 of the Value-Added Tax Act, 1991, is hereby amended by the addition of the following subsections:

“(5) A return furnished as contemplated—

- (a) in this section, must be signed by the vendor or by the vendor’s authorised representative;
- (b) in section 29, must be signed by the person selling the goods or that person’s authorised representative; and
- (c) in section 30, must be signed by the person furnishing the return, and a person signing a return is deemed for all purposes in connection with this Act to know and understand the meaning of all statements made in that return.

(6) The Commissioner may, in the case of any return furnished by a person or a person’s authorised representative in electronic format, accept electronic or digital signatures as valid signatures for the purposes of subsection (5).

(7) The Minister may make rules and regulations prescribing the procedures for submitting any return in electronic format and the requirements for an electronic or digital signature contemplated in subsection (6).”.

**Insertion of section 6B in Act 9 of 1999**

45. The following section is hereby inserted in the Skills Development Levies Act, 1999, after section 6:

**“Electronic filing of statement**

**6B.** (1) The Commissioner may, in the case of any statement submitted by an employer or his or her authorised agent in electronic format, accept electronic or digital signatures as valid signatures.

(2) The Minister may make rules and regulations prescribing the procedures for submitting any statement in electronic format and setting out the requirements for an electronic or digital signature contemplated in subsection (1).”.

**Short title**

46. This Act is called the Taxation Laws Amendment Act, 2001.