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REPUBLIEK VAN SUID-AFRIKA

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## THE PRESIDENCY

No. 550 20 June 2001

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

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

## DIE PRESIDENSIE

No. 550 20 Junie 2001

Hierby word bekend gemaak dat die Waarnemende President sy goedkeuring geheg het aan die onderstaande Wet wat hierby ter algemene inligting gepubliseer word:—

No. 5 van 2001: Wysigingswet op Belastingwette, 2001.



**AIDS HELPLINE: 0800-123-22 Prevention is the cure**

**GENERAL EXPLANATORY NOTE:**

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

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

*(English text signed by the Acting President.)*  
*(Assented to 13 June 2001.)*

**ACT**

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: 5

“‘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 10
- (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 15
- (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: 20

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



**ALGEMENE VERDUIDELIKENDE NOTA:**

[                      ]    Woorden in vet druk tussen vierkantige hake dui schrappings uit  
bestaande verordeningen aan.

Woorde met 'n volstreep daaronder, dui invoegings in bestaande verordeninge aan.

(Engelse teks deur die Waarnemende President geteken.)  
(Goedgekeur op 13 Junie 2001.)

# WET

**Tot wysiging van die Wet op Hereregte, 1949, ten einde sekere woordomskrywings in te voeg; en om voorsiening te maak vir verdere uitsluitings; tot wysiging van die Boedelbelastingwet, 1955, ten einde 'n woordomskrywing te wysig; en om die koers van die belasting te verminder; tot wysiging van die Inkomstebelastingwet, 1962, ten einde vir die vasstelling van belasbare kapitaalwinste en vasgestelde kapitaalverliese voorsiening te maak; om die koers van belasting op geskenke te verminder; om vir die indiening van elektroniese opgawes en handtekeninge voorsiening te maak; om verder voorsiening te maak vir die hou van rekords vir belastingdoeleindes; en om die langtitel te hersien; tot wysiging van die Wet op Seëlregte, 1964, ten einde 'n woordomskrywing in te voeg; en om vir verdere uitsluitings voorsiening te maak; tot wysiging van die Wet op Belasting op Toegevoegde Waarde, 1991, ten einde vir die nulkoers van ligkeroseen vir gebruik as brandstof vir verligting of verhitting voorsiening te maak; en om vir die indiening van elektroniese opgawes en handtekeninge voorsiening te maak; tot wysiging van die uMthetho weZibizontela wokuThuthukisa aMakhono, 1999, ten einde vir die indiening van elektroniese opgawes en handtekeninge voorsiening te maak; en om vir aangeleenthede wat daarmee in verband staan voorsiening te maak.**

**D**AAR WORD BEPAAL deur die Parlement van die Republiek van Suid-Afrika, soos volg:—

### Wysiging van artikel 1 van Wet 40 van 1949

**1. Artikel 1 van die Wet op Hereregte, 1949, word hierby gewysig—**

(a) deur die woorde wat paragraaf (a) van die woordomskrywing van “eiendom” 5  
voorafgaan deur die volgende woorde te vervang:

“ ‘eiendom’ grond in die Republiek en enigiets wat daaraan geheg is, en ook—”;

(b) deur die volgende woordskrywing na die woordskrywing van "eiendom" in te voeg: 10

“ ‘gade’ met betrekking tot enige persoon, die maat van sodanige  
persoon—

(a) in 'n huwelik of gewoonteverbintenis ingevolge die wette van die Republiek erken;

(b) in 'n verbinteniss wat ingevolge die leerstellings van enige godsdiens as 'n huwelik erken word; of

(c) in 'n selfde-geslag of heteroseksuele verbintenis wat die Kommissaris oortuig is bedoel is om permanent te wees;

Met dien verstande dat, by gebrek aan bewys tot die teendeel, 'n huwelik

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

**Amendment of section 9 of Act 40 of 1949, as amended by section 3 of Act 31 of 1953, section 12 of Act 80 of 1959, section 3 of Act 70 of 1963, section 3 of Act 77 of 1964, section 1 of Act 81 of 1965, section 7 of Act 103 of 1969, section 2 of Act 89 of 1972, section 3 of Act 66 of 1973, section 5 of Act 88 of 1974, section 77 of Act 54 of 1976, section 2 of Act 95 of 1978, section 6 of Act 106 of 1980, section 2 of Act 99 of 1981, section 2 of Act 118 of 1984, section 3 of Act 81 of 1985, section 3 of Act 86 of 1987, section 4 of Act 87 of 1988, section 1 of Act 69 of 1989, section 36 of Act 9 of 1989, section 1 of Act 69 of 1989, section 79 of Act 89 of 1991, section 6 of Act 120 of 1992, section 4 of Act 136 of 1992, section 5 of Act 97 of 1993, section 2 of Act 37 of 1995 and section 3 of Act 32 of 1999** 20 25

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

- "(16) No duty shall be payable in respect of the acquisition by a natural person of a residence that will constitute that person's primary residence as defined in paragraph 44 of the Eighth Schedule to the Income Tax Act, 1962, from a company where— 35
- (a) that acquisition takes place on or after the date of promulgation of the Taxation Laws Amendment Act, 2001, but not later than 30 September 2002;
  - (b) that natural person alone or together with that person's spouse directly held all the share capital or members' interest in that company from 5 April 2001 to the date of the registration in the deeds registry of the residence in the name of the natural person or jointly in the name of that person and that person's spouse; 40
  - (c) that natural person or that person's spouse ordinarily resided in that residence and used it mainly for domestic purposes from 5 April 2001 to the date of that registration; and
  - (d) the registration in the deeds registry of that residence in the name of that natural person or jointly in the name of that person and that person's spouse takes place not later than 31 March 2003: 45
- Provided that this exemption shall apply only in respect of the portion of the property contemplated in paragraph 46 of the Eighth Schedule.

- of verbintenis in paragraaf (b) of (c) beoog, geag word 'n huwelik of verbintenis buite gemeenskap van goed te wees.”;
- (c) deur die volgende omskrywing na die omskrywing van “Kommissaris” in te voeg:
- “ ‘maatskappy’ ook—
- (a) ’n vereniging, korporasie of maatskappy (insluitend ’n beslote korporasie) wat deur of ingevolge ’n wet wat in die Republiek of in ’n deel daarvan van krag is of voorheen van krag was, ingelyf is of wat geag word aldus ingelyf te wees, of ’n regspersoon wat deur of ingevolge so ’n wet opgerig of ingestel is of wat geag word aldus opgerig of ingestel te wees; of
- (b) ’n vereniging, korporasie of maatskappy ingelyf ingevolge die reg van ’n land behalwe die Republiek, of ’n regspersoon opgerig of ingestel ingevolge sodanige reg; of
- (c) ’n vereniging (wat nie ’n in paragraaf (a) bedoelde vereniging is nie), wat in die Republiek gestig is om ’n bepaalde doel ten bate van die publiek of ’n deel van die publiek te dien;”;
- (d) deur die volgende omskrywing na die omskrywing van “registrasiekantoor” in te voeg:
- “ ‘Republiek’ die gebied van die Republiek van Suid-Afrika en sluit in die territoriale waters, die aangrensende sone en die vastelandsplat onderskeidelik in artikels 4, 5 en 8 van die Wet op Maritieme Sones, 1994 (Wet No. 15 van 1994), bedoel.”.

Wysiging van artikel 9 van Wet 40 van 1949, soos gewysig deur artikel 3 van Wet 31 van 1953, artikel 12 van Wet 80 van 1959, artikel 3 van Wet 70 van 1963, artikel 3 van Wet 77 van 1964, artikel 1 van Wet 81 van 1965, artikel 7 van Wet 103 van 1969, artikel 2 van Wet 89 van 1972, artikel 3 van Wet 66 van 1973, artikel 5 van Wet 88 van 1974, artikel 77 van Wet 54 van 1976, artikel 2 van Wet 95 van 1978, artikel 6 van Wet 106 van 1980, artikel 2 van Wet 99 van 1981, artikel 2 van Wet 118 van 1984, artikel 3 van Wet 81 van 1985, artikel 3 van Wet 86 van 1987, artikel 4 van Wet 87 van 1988, artikel 1 van Wet 69 van 1989, artikel 36 van Wet 9 van 1989, artikel 1 van Wet 69 van 1989, artikel 79 van Wet 89 van 1991, artikel 6 van Wet 120 van 1992, artikel 4 van Wet 136 van 1992, artikel 5 van Wet 97 van 1993, artikel 2 van Wet 37 van 1995 en artikel 3 van Wet 32 van 1999

2. Artikel 9 van die Wet op Hereregte, 1949, word hierby gewysig deur die volgende subartikels by te voeg:

- “(16) Geen hereregte is betaalbaar nie ten opsigte van die verkryging van ’n woning deur ’n natuurlike persoon wat daardie persoon se primêre woning soos omskryf in paragraaf 44 van die Agtste Bylae by die Inkomstebelastingwet, 1962, sal daarstel, vanaf ’n maatskappy waar—
- (a) daardie verkryging plaasvind op of na die datum van afkondiging van die Wysigingswet op Belastingwette, 2001, maar nie later nie as 30 September 2002;
- (b) daardie natuurlike persoon alleen of tesame met daardie persoon se gade direk al die aandeelkapitaal of ledebelang in daardie maatskappy gehou het vanaf 5 April 2001 tot die datum van registrasie in die aktesregistrasiekantoor van die woning in die naam van die natuurlike persoon of gesamentlik in die naam van daardie persoon en daardie persoon se gade;
- (c) daardie natuurlike persoon of daardie persoon se gade daardie woning gewoonlik bewoon het en dit hoofsaaklik vir huishoudelike doeleindes gebruik het vanaf 5 April 2001 tot die datum van daardie registrasie; en
- (d) die registrasie in die aktesregistrasiekantoor van daardie woning in die naam van daardie natuurlike persoon of gesamentlik in die naam van daardie persoon en daardie persoon se gade nie later nie as 31 Maart 2003 plaasvind:

Met dien verstande dat hierdie vrystelling slegs van toepassing is ten opsigte van die gedeelte van die eiendom in paragraaf 46 van die Agtste Bylae beoog.



(17) No duty shall be payable in respect of the acquisition by a natural person of a residence that will constitute that person's primary residence as defined in paragraph 44 of the Eighth Schedule to the Income Tax Act, 1962, from a trust where—

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

Provided that this exemption shall apply only in respect of the portion of the property contemplated in paragraph 46 of the Eighth Schedule.”.

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

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

- (a) by the substitution for paragraphs (a), (b) and (c) of the definition of “spouse” of the following paragraphs: 25

“(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 30

(c) in a [permanent] same-sex [life relationship] or heterosexual union which the Commissioner is satisfied is intended to be permanent.”; and

- (b) by the addition to the definition of “spouse” of the following proviso: 35

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

**Amendment of First Schedule to Act 45 of 1955, as substituted by section 9 of Act 92 of 1971 and amended by section 13 of Act 106 of 1980, section 3 of Act 71 of 1986, section 16 of Act 87 of 1988 and section 11 of Act 37 of 1996** 40

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

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

**Amendment of section 1 of Act 58 of 1962, as amended by section 3 of Act 90 of 1962, section 1 of Act 6 of 1963, section 4 of Act 72 of 1963, section 4 of Act 90 of 1964, section 5 of Act 88 of 1965, section 5 of Act 55 of 1966, section 5 of Act 95 of 1967, section 5 of Act 76 of 1968, section 6 of Act 89 of 1969, section 6 of Act 52 of 1970, section 4 of Act 88 of 1971, section 4 of Act 90 of 1972, section 4 of Act 65 of** 45

(17) Geen hereregte is betaalbaar nie ten opsigte van die verkryging van 'n woning deur 'n natuurlike persoon wat daardie persoon se primêre woning soos omskryf in paragraaf 44 van die Agtste Bylae by die Inkomste-belastingwet, 1962, sal daarstel, vanaf 'n trust waar—

- (a) daardie verkryging plaasvind op of na die datum van afkondiging van die Wysigingswet op Belastingwette, 2001, maar nie later nie as 30 September 2002; 5
  - (b) daardie persoon oor daardie woning aan daardie trust beskik het by wyse van 'n skenking, oormaking of ander beskikking of al die onkoste, soos in paragraaf 20 van die Agtste Bylae beoog, werklik deur die trust aangegaan om die woning te verkry en te verbeter, gefinansier het; 10
  - (c) daardie persoon of daardie persoon se gade gewoonlik daardie woning bewoon het en dit hoofsaaklik vir huishoudelike doeleindes gebruik het vanaf 5 April 2001 tot die datum van registrasie van die woning in die aktesregistrasiekantoor in naam van daardie persoon of gesamentlik in die name van daardie persoon en daardie persoon se gade; en 15
  - (d) daardie registrasie nie later nie as 31 Maart 2003 plaasvind: 20
- Met dien verstande dat hierdie vrystelling slegs van toepassing is ten opsigte van die gedeelte van die eiendom in paragraaf 46 van die Agtste Bylae beoog.”.

Wysiging van artikel 1 van Wet 45 van 1955, soos gewysig deur artikel 1 van Wet 59 van 1957, artikel 1 van Wet 65 van 1960, artikel 7 van Wet 77 van 1964, artikel 3 van Wet 92 van 1971, artikel 9 van Wet 106 van 1980, artikel 5 van Wet 86 van 1987, artikel 7 van Wet 87 van 1988, artikel 6 van Wet 97 van 1993, artikel 2 van Wet 140 van 1993, artikel 8 van Wet 88 van 1996, artikel 5 van Wet 27 van 1997, artikel 34 van Wet 34 van 1997, artikel 7 van Wet 53 van 1999, artikel 6 van Wet 30 van 2000 en artikel 1 van Wet 59 van 2000 25

3. Artikel 1 van die Boedelbelastingwet, 1955, word hierby gewysig— 30

- (a) deur paragrawe (a), (b) en (c) van die omskrywing van “gade” deur die volgende paragrawe te vervang:
  - “(a) in 'n huwelik of gewoonteverbintenis wat ingevolge die wette van die Republiek erken word;
  - (b) in 'n [huwelik wat aangegaan is ingevolge enige stelsel van godsdiensreg wat in die Republiek erken word] verbintenis wat ingevolge die leerstellings van enige godsdiens as 'n huwelik erken word; of
  - (c) in 'n [permanente] selfde-geslag [lewensverhouding] of heteroseksuele verbintenis wat die Kommissaris oortuig is bedoel is om permanent te wees.”; en 35
- (b) deur die volgende voorbehoudsbepaling by die omskrywing van “gade” te voeg:
 

“Met dien verstande dat, by gebrek aan bewys tot die teendeel, 'n huwelik of verbintenis in paragraaf (b) of (c) beoog geag word 'n huwelik of verbintenis buite gemeenskap van goed te wees.”. 40

Wysiging van Eerste Bylae by Wet 45 van 1955, soos vervang deur artikel 9 van Wet 92 van 1971 en gewysig deur artikel 13 van Wet 106 van 1980, artikel 3 van Wet 71 van 1986, artikel 16 van Wet 87 van 1988 en artikel 11 van Wet 37 van 1996

4. (1) Die Eerste Bylae by die Boedelbelastingwet, 1955, word hierby gewysig deur die uitdrukking “25 persent” deur die uitdrukking “20 persent” te vervang. 50

(2) Subartikel (1) is van toepassing ten opsigte van die boedel van enige persoon wat op of na 1 Oktober 2001 te sterwe kom.

Wysiging van artikel 1 van Wet 58 van 1962, soos gewysig deur artikel 3 van Wet 90 van 1962, artikel 1 van Wet 6 van 1963, artikel 4 van Wet 72 van 1963, artikel 4 van Wet 90 van 1964, artikel 5 van Wet 88 van 1965, artikel 5 van Wet 55 van 1966, artikel 5 van Wet 95 van 1967, artikel 5 van Wet 76 van 1968, artikel 6 van Wet 89 van 1969, artikel 6 van Wet 52 van 1970, artikel 4 van Wet 88 van 1971, artikel 4 55

1973, section 4 of Act 85 of 1974, section 4 of Act 69 of 1975, section 4 of Act 103 of 1976, section 4 of Act 113 of 1977, section 3 of Act 101 of 1978, section 3 of Act 104 of 1979, section 2 of Act 104 of 1980, section 2 of Act 96 of 1981, section 3 of Act 91 of 1982, section 2 of Act 94 of 1983, section 1 of Act 30 of 1984, section 2 of Act 121 of 1984, section 2 of Act 96 of 1985, section 2 of Act 65 of 1986, section 1 of Act 108 of 1986, section 2 of Act 85 of 1987, section 2 of Act 90 of 1988, section 1 of Act 99 of 1988, Government Notice No. R.780 of 14 April 1989, section 2 of Act 70 of 1989, section 2 of Act 101 of 1990, section 2 of Act 129 of 1991, section 2 of Act 141 of 1992, section 2 of Act 113 of 1993, section 2 of Act 21 of 1994, section 2 of Act 21 of 1995, section 2 of Act 36 of 1996, section 2 of Act 28 of 1997, section 19 of Act 30 of 1998, section 10 of Act 53 of 1999, section 13 of Act 30 of 2000 and section 2 of Act 59 of 2000

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

- (a) by the insertion after the definition of “agent” of the following definitions: 15  
“ ‘aggregate capital gain’ means an amount determined in terms of paragraph 6 of the Eighth Schedule;  
‘aggregate capital loss’ means an amount determined in terms of paragraph 7 of the Eighth Schedule;  
‘assessed capital loss’ means an amount determined in terms of paragraph 9 of the Eighth Schedule;”; 20
- (b) by the addition to the end of paragraph (c) of the definition of “assessment” of the word “or”;
- (c) by the addition to the definition of “assessment” of the following paragraph: 25  
(d) of any assessed capital loss determined in terms of paragraph 9 of the Eighth Schedule;”;
- (d) by the insertion after the definition of “business day” of the following definitions: 30  
“ ‘capital gain’ means an amount determined in terms of paragraph 3 of the Eighth Schedule;  
‘capital loss’ means an amount determined in terms of paragraph 4 of the Eighth Schedule;”;
- (e) by the deletion of the definition of “married”;
- (f) by the substitution for the definition of “married woman” of the following definition: 35  
“ ‘married woman’ does not include a married woman who is living apart from her husband in circumstances which indicate that the separation is likely to be permanent [nor, where any husband is at any time married to two or more wives, any wife other than the wife of his longest subsisting marriage];”; 40
- (g) by the insertion after the definition of “pension fund” of the following definition: 45  
“ ‘permanent establishment’ means a permanent establishment as defined from time to time in Article 5 of the Model Tax Convention on Income and on Capital of the Organisation for Economic Co-operation and Development;”;
- (h) by the addition to the definition of “representative taxpayer” of the following proviso: 50  
“Provided that for the purposes of this definition income includes any amount received or accrued or deemed to have been received or accrued in consequence of the disposal of any asset envisaged in the Eighth Schedule;”;
- (i) by the insertion after the definition of “shareholder” of the following definition:



van Wet 90 van 1972, artikel 4 van Wet 65 van 1973, artikel 4 van Wet 85 van 1974, artikel 4 van Wet 69 van 1975, artikel 4 van Wet 103 van 1976, artikel 4 van Wet 113 van 1977, artikel 3 van Wet 101 van 1978, artikel 3 van Wet 104 van 1979, artikel 2 van Wet 104 van 1980, artikel 2 van Wet 96 van 1981, artikel 3 van Wet 91 van 1982, artikel 2 van Wet 94 van 1983, artikel 1 van Wet 30 van 1984, artikel 2 van Wet 121 van 1984, artikel 2 van Wet 96 van 1985, artikel 2 van Wet 65 van 1986, artikel 1 van Wet 108 van 1986, artikel 2 van Wet 85 van 1987, artikel 2 van Wet 90 van 1988, artikel 1 van Wet 99 van 1988, Goewermentskennisgewing No. R.780 van 14 April 1989, artikel 2 van Wet 70 van 1989, artikel 2 van Wet 101 van 1990, artikel 2 van Wet 129 van 1991, artikel 2 van Wet 141 van 1992, artikel 2 van Wet 113 van 1993, artikel 2 van Wet 21 van 1994, artikel 2 van Wet 21 van 1995, artikel 2 van Wet 36 van 1996, artikel 2 van Wet 28 van 1997, artikel 19 van Wet 30 van 1998, artikel 10 van Wet 53 van 1999, artikel 13 van Wet 30 van 2000 en artikel 2 van Wet 59 van 2000

5. Artikel 1 van die Inkomstebelastingwet, 1962, (in hierdie Wet die Hoofwet genoem), word hierby gewysig—

- (a) deur die woord "of" aan die einde van paragraaf (c) van die omskrywing van "aanslag" by te voeg;
- (b) deur die volgende paragraaf by die omskrywing van "aanslag" te voeg:
 

"(d) van enige vasgestelde kapitaalverlies ingevolge paragraaf 9 van die Agtste Bylae bepaal,";
- (c) deur die omskrywing van "belasbare inkomste" deur die volgende omskrywing te vervang:
 

"'belasbare inkomste' die som van—

  - (a) die oorblywende bedrag na aftrekking van iemand se inkomste van al die bedrae wat ingevolge Deel I van Hoofstuk II van of teen daardie inkomste afgetrek of verreken kan word; en
  - (b) alle bedrae wat ingevolge hierdie Wet in enige persoon se belasbare inkomste ingesluit staan te word of geag word ingesluit te word;"
- (d) deur die volgende omskrywing na die omskrywing van "belasbare inkomste" in te voeg:
 

"'belasbare kapitaalwinst' 'n bedrag ingevolge paragraaf 10 van die Agtste Bylae vasgestel;"
- (e) deur die volgende omskrywing na die omskrywing van "dividend" in te voeg:
 

"'gade' met betrekking tot enige persoon, die maat van sodanige persoon—

  - (a) in 'n huwelik of gewoonteverbintenis ingevolge die wette van die Republiek erken;
  - (b) in 'n verbintenis wat ingevolge die leerstellings van enige godsdiens as 'n huwelik erken word; of
  - (c) in 'n selfde-geslag of heteroseksuele verbintenis wat die Kommissaris oortuig is bedoel is om permanent te wees, en 'getroud', 'man' of 'vrou' word dienooreenkomstig uitgelê: Met dien verstande dat, by gebrek aan bewys tot die teendeel, 'n huwelik of verbintenis in paragraaf (b) of (c) beoog geag word 'n huwelik of verbintenis buite gemeenskap van goed te wees;"
- (f) deur die omskrywing van "getroud" te skrap;
- (g) deur die omskrywing van "getroude vrou" deur die volgende omskrywing te vervang:
 

"'getroude vrou' nie ook 'n getroude vrou wat apart van haar man woon in omstandighede wat aandui dat die skeiding waarskynlik permanent sal wees nie [en ook nie, waar 'n man te eniger tyd met twee of meer vroue getroud is, 'n vrou behalwe die vrou uit sy langbestaande huwelik nie];"
- (h) deur na die omskrywing van "jaar van aanslag" die volgende omskrywings in te voeg:
 

"'kapitaalverlies' 'n bedrag vasgestel kragtens paragraaf 4 van die Agtste Bylae;

'kapitaalwinst' 'n bedrag vasgestel kragtens paragraaf 3 van die Agtste Bylae;"
- (i) deur na die omskrywing van "pensioenfonds" die volgende omskrywing in te voeg:

“ ‘special trust’ means a trust created solely for the benefit of a person who suffers from—

(i) any ‘mental illness’ as defined in section 1 of the Mental Health Act, 1973 (Act No. 18 of 1973); or

(ii) any serious physical disability,

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

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

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

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

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

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

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

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

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

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

“taxable income” means the aggregate of—

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

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

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

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

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

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

- “‘permanente saak’ ’n permanente saak soos van tyd tot tyd omskryf in Artikel 5 van die ‘Model Tax Convention on Income and on Capital of the Organisation for Economic Co-operation and Development’;”;
- (j) deur na die omskrywing van “Republiek” die volgende omskrywing in te voeg: 5
- “‘spesiale trust’ ’n trust geskep alleenlik tot voordeel van ’n persoon wat aan—
- (a) enige ‘geestesongesteldheid’ soos omskryf in artikel 1 van die Wet op Geestesgesondheid, 1973 (Wet No. 18 van 1973); of
- (b) enige ernstige liggaamsgebrek, 10
- ly, waar sodanige ongesteldheid of gebrek daardie persoon buite staat stel om genoegsame inkomste vir daardie persoon se onderhoud te verdien of om sy of haar eie finansiële sake te bestuur. Met dien verstande dat waar die persoon vir wie se voordeel die trust aldus geskep is te sterwe kom, sodanige trust geag word nie ’n spesiale trust te wees nie ten opsigte van jare van aanslag wat eindig op of na die datum van afsterwe van daardie persoon;”;
- (k) deur na die omskrywing van “Suid-Afrikaanse Inkomstediens” die volgende omskrywings in te voeg: 15
- “‘totale kapitaalverlies’ ’n bedrag vasgestel kragtens paragraaf 7 van die Agtste Bylae; 20
- ‘totale kapitaalwinst’ ’n bedrag vasgestel kragtens paragraaf 6 van die Agtste Bylae;”;
- (l) deur na die omskrywing van “uittredingfunderingsdiens” die volgende omskrywing in te voeg: 25
- “‘vasgestelde kapitaalverlies’ ’n bedrag vasgestel kragtens paragraaf 9 van die Agtste Bylae;”;
- (m) deur die volgende voorbehoudsbepaling by die omskrywing van “verteenwoordigende belastingpligtige” te voeg: 30
- “Met dien verstande dat by die toepassing van hierdie omskrywing inkomste enige bedrag insluit wat ontvang is of toegeval het of geag ontvang of toegeval te gewees het as gevolg van die beskikking oor enige bate in die Agtste Bylae beoog.”.

Wysiging van artikel 3 van Wet 58 van 1962, soos gewysig deur artikel 3 van Wet 141 van 1992, artikel 3 van Wet 21 van 1994, artikel 3 van Wet 21 van 1995, artikel 20 van Wet 30 van 1998 en artikel 3 van Wet 59 van 2000 35

6. Artikel 3 van die Hoofwet word hierby gewysig deur subartikel (4) deur die volgende subartikel te vervang:

“(4) Enige beslissing van die Kommissaris kragtens die omskrywings van ‘bystandsfonds’, ‘gade’, ‘pensioenfonds’, ‘uittredingannuïteitsfonds’ en ‘voorsorgfonds’ in artikel 1, artikel 6, artikel 8 (4)(b), (c), (d) en (e), artikel 9D, artikel 9F, artikel 10(1)(cH), (cK), (e), (iA), (j) en (nB), artikel 11(e), (f), (g), (gA), (j), (l), (t), (u) en (w), artikel 12C, artikel 13, artikel 14, artikel 15, artikel 22 (1), (3) en (5), artikel 24(2), artikel 24A(6), artikel 24C, artikel 24D, artikel 24I, artikel 25D, artikel 27, artikel 31, artikel 35(2), artikel 38(4), artikel 57, paragrawe 6, 7, 9, 13, 13A, 14, 19 en 20 van die Eerste Bylae, paragraaf (b) van die omskrywing van ‘formule A’ in paragraaf 1 en paragraaf 4 van die Tweede Bylae, paragrawe 18, 19(1), 20, 21, 22, 24 en 27 van die Vierde Bylae, [en] paragrawe 2, 3, 6, 9 en 11 van die Sewende Bylae en paragrawe 29(7), 31(2), 65(1)(d) en 66(1)(c) van die Agtste Bylae is aan beswaar en appèl onderhewig.”. 40 45

Wysiging van artikel 5 van Wet 58 van 1962, soos gewysig deur artikel 2 van Wet 6 van 1963, artikel 5 van Wet 90 van 1964, artikel 6 van Wet 88 van 1965, artikel 7 van Wet 55 van 1966, artikel 6 van Wet 95 van 1967, artikel 6 van Wet 76 van 1968, artikel 7 van Wet 89 van 1969, artikel 7 van Wet 52 van 1970, artikel 5 van Wet 88 van 1971, artikel 5 van Wet 90 van 1972, artikel 5 van Wet 65 van 1973, artikel 5 van Wet 103 van 1976, artikel 5 van Wet 113 van 1977, artikel 3 van Wet 104 van 1980, artikel 4 van Wet 96 van 1981, artikel 4 van Wet 91 van 1982, artikel 3 van Wet 94 van 1983, artikel 3 van Wet 121 van 1984, artikel 3 van Wet 65 van 1986, 50 55



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

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

- (a) by the substitution in subsection (10) for the words preceding the formula of the following words: 5  
 “Where any taxpayer’s income includes any special remuneration, or where the provisions of section 7A(4A) or paragraph 15(3) or 17 or 19(1) of the First Schedule or paragraph 7 of the Second Schedule are applicable in the case of the taxpayer in respect of any year of assessment, the normal tax payable by the taxpayer in respect of such year (as determined before the deduction of any rebate **[or the addition of any transition levy]**) shall be determined in accordance with the formula—”;
- (b) by the substitution in subsection (10) for paragraph (b) of the following paragraph: 10  
 “(b) ‘A’ represents the amount of normal tax (as determined before the deduction of any rebate **[or the addition of any transition levy]**) calculated at the full rate of tax chargeable for the said year in respect of a taxable income equal to the amount represented by the expression ‘B + D – (C + L)’ in the formula;”;
- (c) by the deletion in subsection (10)(d) of subparagraphs (iA) and (iv); 20
- (d) by the substitution in subsection (10) for paragraph (g) of the following paragraph: 20  
 “(g) ‘R’ represents the greater of the amounts determined by applying the formula—

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

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

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

Provided that[—

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

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

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

8. Section 6quat is hereby amended— 50

- (a) by the addition to subsection (1)(d) of the word “or”;
- (b) by the addition to subsection (1) of the following paragraph: 50  
 “(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: 55  
 “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

artikel 3 van Wet 90 van 1988, artikel 3 van Wet 129 van 1991, artikel 5 van Wet 21 van 1994 en artikel 4 van Wet 21 van 1995

7. (1) Artikel 5 van die Hoofwet word hierby gewysig—

- (a) deur die woorde wat die formule in subartikel (10) voorafgaan deur die volgende woorde te vervang: 5  
 “Waar ’n belastingpligtige se inkomste enige spesiale besoldiging insluit, of waar die bepalings van artikel 7A(4A) of paragraaf 15(3) of 17 of 19(1) van die Eerste Bylae of paragraaf 7 van die Tweede Bylae in die geval van die belastingpligtige van toepassing is ten opsigte van ’n jaar van aanslag, word die normale belasting wat deur die belastingpligtige ten opsigte van daardie 10  
 jaar betaalbaar is (soos vasgestel vóór die aftrekking van enige korting [of die byvoeging van enige oorgangsheffing]), ooreenkomstig die formule—”;
- (b) deur paragraaf (b) van subartikel (10) deur die volgende paragraaf te vervang: 15  
 “(b) ‘A’ die bedrag aan normale belasting voorstel (soos vasgestel vóór die aftrekking van enige korting [of die byvoeging van enige oorgangsheffing]) wat bereken word teen die volle skaal van belasting wat vir bedoelde jaar hefbaar is, ten opsigte van ’n belasbare inkomste gelyk aan die bedrag wat deur die uitdrukking ‘B + D – (C + L)’ in die formule voorgestel word;”;
- (c) deur subparagraawe (iA) en (iv) van subartikel (10)(d) te skrap; 20
- (d) deur paragraaf (g) van subartikel (10) deur die volgende paragraaf te vervang: 25  
 “(g) ‘R’ stel die grootste van die bedrae voor vasgestel deur die toepassing van die formule—

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

ten opsigte van bedoelde jaar van aanslag, in welke formule—

- (i) die bedrae deur die simbole [‘A’] ‘B’, ‘C’, ‘D’ en ‘L’ voorgestel, ooreenkomstig die voorafgaande bepalings van hierdie subartikel soos van toepassing in bedoelde jaar of in genoemde voorafgaande jaar, na 30  
 gelang van die geval, vasgestel word;
- (ii) ‘F’ die bedrag aan normale belasting voorstel (soos vasgestel vóór die aftrekking van enige korting) bereken teen die volle skaal van belasting wat vir bedoelde jaar hef kan word, ten opsigte van ’n belasbare inkomste gelyk aan die bedrag wat deur die uitdrukking ‘B + D – (C + L 35  
 + G)’ in die formule voorgestel word; en
- (iii) ‘G’ ’n bedrag van die belasbare kapitaalswins voorstel wat ingevolge artikel 26A in die belasbare inkomste ingesluit is:

Met dien verstande dat[—

- (a) waar, as gevolg van die dood of insolvensie van die belastingpligtige, die 40  
 tydperk aangeslaan minder as 12 maande is, die simbool ‘R’ alleenlik met verwysing na genoemde jaar vasgestel word: [en
- (b) waar genoemde voorafgaande jaar op 28 Februarie 1995 geëindig 45  
 het, geen ag op die simbole ‘D’ en ‘L’ in die formule geslaan word nie:]”.

(2) Subartikel (1) tree op 1 Oktober 2001 in werking en is van toepassing ten opsigte van enige jaar van aanslag wat op of na daardie datum eindig.

Wysiging van artikel 6quat van Wet 58 van 1962, soos ingevoeg deur artikel 5 van Wet 85 van 1987 en gewysig deur artikel 5 van Wet 28 van 1997, artikel 12 van Wet 53 van 1999 en artikel 16 van Wet 30 van 2000 en vervang deur artikel 4 van Wet 59 van 2000 50

8. Artikel 6quat word hierby gewysig—

- (a) deur die woord “of” by subartikel (1)(d) te voeg;
- (b) deur die volgende paragraaf by subartikel (1) te voeg: 55  
 “(e) enige belasbare kapitaalswins in artikel 26A beoog tot die mate wat dit toeskryfbaar is aan enige kapitaalswins ten opsigte van ’n bate wat buite die Republiek geleë is.”;
- (c) deur die woorde wat paragraaf (a) van subartikel (1A) voorafgaan deur die volgende woorde te vervang: 60  
 “Vir doeleindes van subartikel (1), is die korting gelyk aan die som van enige belastings op inkomste wat bewys word betaalbaar te wees aan die regering

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

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

**Amendment of section 9D of Act 58 of 1962, as amended by section 9 of Act 28 of 1997, amended by section 28 of Act 30 of 1998, section 17 of Act 53 of 1999, section 19 of Act 30 of 2000 and section 10 of Act 59 of 2000** 50

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

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



- van enige land anders as die Republiek sonder enige reg van verhaal deur 'n persoon (behalwe 'n reg van verhaal ingevolge 'n reg om enige verliese wat gedurende enige jaar van aanslag ontstaan na 'n jaar van aanslag wat bedoelde jaar van aanslag voorafgaan, terug te dra), deur—”;
- (d) deur subparagraaf (ii) van subartikel (1A)(a) deur die volgende subparagraaf te vervang: 5
- “(ii) enige dividend in subartikel (1)(d) bedoel; [en] of”;
- (e) deur die volgende subparagraaf by subartikel (1A)(a) by te voeg: 10
- “(iii) enige bedrag van belasbare kapitaalwins soos in subartikel (1)(e) beoog; en”;
- (f) deur die woorde wat op paragraaf (d) van subartikel (1A) volg deur die volgende woorde te vervang: 15
- “[aan die regering van enige land behalwe die Republiek betaalbaar is, ten opsigte van die bedrag aan inkomste of proporsionele bedrag in subartikel (1)(b) bedoel] wat aldus in daardie inwoner se belasbare inkomste ingesluit is: Met dien verstande dat waar bedoelde inwoner 'n lid van 'n vennootskap of 'n begunstigde van 'n trust is en daardie vennootskap of trust in bedoelde ander land as 'n aparte entiteit vir belasting aanspreeklik is, 'n proporsionele bedrag van enige belasting wat deur daardie entiteit betaalbaar is, wat toeskryfbaar is aan die belang van daardie persoon in daardie vennootskap of [die deelnemende reg van daardie persoon in bedoelde] trust, geag word deur bedoelde inwoner betaalbaar te wees.”;
- (g) deur paragraaf (a) van subartikel (1B) deur die volgende paragraaf te vervang: 25
- “(a) mag die korting of kortings van enige belasting wat bewys word aan die regering van enige ander land of lande betaalbaar is soos in subartikel (1A) beoog, nie in totaal 'n bedrag wat tot die totale normale belasting betaalbaar in dieselfde verhouding staan as wat die totale belasbare inkomste toeskryfbaar aan die inkomste, [of] proporsionele bedrag in subartikel (1)(b) bedoel, buitelandse dividend of belasbare kapitaalwins, na gelang van die geval, vanaf daardie land of lande verkry wat soos in subartikel (1) beoog, ingesluit is tot die totale belasbare inkomste staan, te bowe gaan nie.”;
- (h) deur die woorde wat paragraaf (i)(aa) van die voorbehoudsbepaling by subartikel (1B)(a) voorafgaan deur die volgende woorde te vervang: 35
- “(i) waar [bedoelde] die bedrag van enige bedoelde belasting betaalbaar aan die regering van enige bedoelde ander land of lande die korting aldus bepaal (hieronder die oorskotbedrag genoem), te bowe gaan bedoelde oorskotbedrag—”;
- (i) deur paragraaf (i)(bb) van die voorbehoudsbepaling by subartikel (1B)(a) deur die volgende subparagraaf te vervang: 40
- “(bb) verreken word teen die bedrag van enige normale belasting betaalbaar deur bedoelde inwoner gedurende bedoelde jaar van aanslag ten opsigte van enige bedrag vanaf 'n ander land verkry wat in die belasbare inkomste van bedoelde inwoner in bedoelde jaar ingesluit is, soos in paragraaf (a), (b), [of] (d) of (e) van subartikel (1) bedoel, na enige belasting betaalbaar aan die regering van 'n ander land gedurende bedoelde jaar van aanslag ten opsigte van enige bedrag aldus ingesluit in daardie jaar van aanslag, wat ingevolge subartikels (1) en (1A) afgetrek kan word, van die bedrag van bedoelde normale belasting betaalbaar ten opsigte van bedoelde bedrag [van inkomste of proporsionele bedrag in subartikel (1)(b) bedoel betaalbaar] aldus ingesluit, afgetrek is; en”.

Wysiging van artikel 9D van Wet 58 van 1962, soos gewysig deur artikel 9 van Wet 28 van 1997, gewysig deur artikel 28 van Wet 30 van 1998, artikel 17 van Wet 53 van 1999, artikel 19 van Wet 30 van 2000 en artikel 10 van Wet 59 van 2000 55

9. Artikel 9D van die Hoofwet word hierby gewysig—

- (a) deur die woord “en” aan die einde van paragraaf (b) van die voorbehoudsbepaling by subartikel (2A) te skrap;
- (b) deur die volgende paragrawe by die voorbehoudsbepaling by subartikel (2A) te voeg: 60

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

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

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

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

**Amendment of section 10A of Act 58 of 1962**

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

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

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

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

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

- “(d) enige kapitaalwins of kapitaalverlies van sodanige entiteit word, by die toepassing van paragraaf 43 van die Agtste Bylae, bepaal met verwysing na en in die geldeenheid waarin die entiteit die meerderheid van sy transaksies voer; en
- (e) waar ’n buitelandse entiteit na 1 Oktober 2001 ’n beheerde buitelandse entiteit word, is die waardasiedatum vir doeleindes van die berekening van enige belasbare kapitaalwins of vasgestelde kapitaalverlies ingevolge die Agtste Bylae, die datum waarop daardie entiteit ’n beheerde buitelandse entiteit word.”; en
- (c) deur die woorde wat paragraaf (iii)(aa) van die voorbehoudsbepaling by subartikel (9)(b) voorafgaan deur die volgende woorde te vervang: “
- (iii) in die vorm van dividende, rente, tantième, huurgeld, jaargelde, versekeringspremies of inkomste van ’n soortgelyke aard, of enige opbrengs verkry uit die beskikking oor enige bate, bereken ingevolge die Agtste Bylae, ten opsigte waarvan enige sodanige inkomste verdien word, behalwe waar daardie ontvangste en toevallings—”.

**Wysiging van artikel 9E van Wet 58 van 1962, soos ingevoeg deur artikel 20 van Wet 30 van 2000 en gewysig deur artikel 11 van Wet 59 van 2000**

10. Artikel 9E van die Hoofwet word hierby gewysig deur paragraaf (v) van die voorbehoudsbepaling by paragraaf (b) van die omskrywing van “buitelandse dividend” in subartikel (1) deur die volgende paragraaf te vervang:

- “(v) in die mate wat die opbrengs van die beskikking—
- (aa) by die vasstelling van die belasbare kapitaalwins of vasgestelde kapitaalverlies van sodanige persoon ingevolge die bepalinge van die Agtste Bylae in berekening gebring is; of
- (bb) andersins ingesluit is in die belasbare inkomste van bedoelde persoon; of”.

**Wysiging van artikel 10A van Wet 58 van 1962**

11. Artikel 10A van die Inkomstebelastingwet, 1962, word hierby gewysig deur die volgende subartikel by te voeg:

- “(11) Enige kontantvergoeding deur ’n koper kragtens ’n jaarkontrak gegee moet na die geldeenheid van die Republiek omgeskakel word deur die heersende wisselkoers op die dag waarop die vergoeding werklik betaal is, toe te pas.”.

**Wysiging van artikel 22 van Wet 58 van 1962, soos gewysig deur artikel 8 van Wet 6 van 1963, artikel 14 van Wet 90 van 1964, artikel 21 van Wet 89 van 1969, artikel 23 van Wet 85 van 1974, artikel 20 van Wet 69 van 1975, artikel 15 van Wet 103 van 1976, artikel 20 van Wet 94 van 1983, artikel 19 van Wet 121 van 1984, artikel 14 van Wet 65 van 1986, artikel 5 van Wet 108 van 1986, artikel 21 van Wet 101 van 1990, artikel 22 van Wet 129 van 1991, artikel 17 van Wet 113 van 1993, artikel 1 van Wet 168 van 1993, artikel 19 van Wet 21 van 1995, artikel 12 van Wet 36 van 1996, artikel 25 van Wet 53 van 1999 en artikel 27 van Wet 30 van 2000**

12. Artikel 22 van die Hoofwet word hierby gewysig—

- (a) deur paragrawe (a) en (b) van subartikel (3) deur die volgende paragrawe te vervang:
- “(a) By die toepassing van hierdie artikel is die kosprys van handelsvoorraad op enige datum met betrekking tot ’n persoon—
- (i) behoudens die bepalinge van subparagraaf (ii), die koste wat dié persoon óf in die lopende óf in ’n vorige jaar van aanslag, by die verkryging van bedoelde handelsvoorraad aangegaan het, plus, behoudens die bepalinge van paragraaf (b), enige verdere koste deur hom tot en met sodanige datum aangegaan om bedoelde handelsvoorraad in die toestand waarin en op die plek waar dit dan is, te kry, maar uitgesonderd ’n valutaverskil soos omskryf in artikel 24I(1) met betrekking tot die verkryging van bedoelde handelsvoorraad; of



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

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

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

**“Income of insolvent estates**

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

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

shall be deemed to be one and the same person.”.

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

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

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

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

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

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

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

- (ii) in die geval van enige handelsvoorraad wat ingevolge paragraaf 12(2)(c) van die Agtste Bylae geag word verkry te gewees het teen 'n koste gelyk aan die markwaarde, daardie markwaarde.
- (b) Die verdere koste wat ingevolge paragraaf (a)(i) in die kosprys van handelsvoorraad ingesluit moet word, is die koste wat ooreenkomstig enige deur die Kommissaris goedgekeurde algemeen aanvaarde rekeningkundige praktyk by die waardering van bedoelde handelsvoorraad ingesluit behoort te word.”; 5
- (b) deur die woord “of” na paragraaf (b)(iii) van subartikel (8) te skrap;
- (c) deur die woord “of” na paragraaf (b)(iv) van subartikel (8) in te voeg; 10
- (d) deur die volgende subparagraaf na paragraaf (b)(iv) van subartikel (8) by te voeg:
- “(v) bates wat as handelsvoorraad deur 'n belastingpligtige gehou is, ophou om as handelsvoorraad deur daardie belastingpligtige gehou te word,”; 15
- en
- (e) deur paragraaf (B) van subartikel (8) en die woorde wat op paragraaf (B) volg maar wat die voorbehoudsbepaling voorafgaan deur die volgende paragraaf en woorde te vervang:
- “(B) waar bedoelde handelsvoorraad aangewend, oor beskik of uitgekeer is op 'n wyse beoog in paragraaf (b) of ophou om as handelsvoorraad gehou te word, 'n bedrag gelyk aan die markwaarde van bedoelde handelsvoorraad, 20
- en bedoelde bedrag word in die inkomste van die belastingpligtige ingesluit vir die jaar van aanslag waarin bedoelde handelsvoorraad aldus aangewend, oor beskik of uitgekeer is, of ophou om as handelsvoorraad gehou te word.”. 25

**Vervanging van artikel 25C van Wet 58 van 1962, soos ingevoeg deur artikel 21 van Wet 28 van 1997**

13. Artikel 25C van die Hoofwet word hierby deur die volgende artikel vervang:

**“Inkomste van insolvente boedels**

**25C.** By die toepassing van hierdie Wet en behoudens enige sodanige 30  
aanpassings as wat nodig mag wees, word—

- (a) die boedel van 'n persoon voor sekwestrasie en daardie persoon se insolvente boedel; en
- (b) waar die sekwestrasiebevel tersyde gestel is, daardie persoon se insolvente boedel en daardie persoon se boedel nadat die 35  
sekwestrasiebevel tersyde gestel is,  
geag een en dieselfde persoon te wees.”.

**Invoeging van artikel 26A in Wet 58 van 1962**

14. Die volgende artikel word hierby na artikel 26 in die Hoofwet ingevoeg:

**“Insluiting van belasbare kapitaalwins in belasbare inkomste 40**

**26A.** Daar word by die belasbare inkomste van 'n persoon vir 'n jaar van aanslag ingesluit die belasbare kapitaalwins van daardie persoon vir daardie 45  
jaar van aanslag, soos kragtens die Agtste Bylae vasgestel.”.

**Wysiging van artikel 29A van Wet 58 van 1962, soos ingevoeg deur artikel 30 van Wet 53 van 1999 en gewysig deur artikel 36 van Wet 59 van 2000 45**

15. (1) Artikel 29A van die Hoofwet word hierby gewysig—

- (a) deur subartikel (8) deur die volgende subartikel te vervang:
- “(8) 'n Oorplasing van 'n bate tussen een fonds en 'n ander fonds [wat anders as ingevolge die bepalings van subartikel (6), (7) of (15)] deur 'n versekeraar bewerkstellig [word], geskied by wyse van 'n [verkoop van] 50  
beskikking oor bedoelde bate teen die markwaarde daarvan en word by die toepassing van hierdie Wet as 'n [aankoop of verkoop van] verkryging van of beskikking oor daardie bate, na gelang van die geval, in elke sodanige fonds behandel.”;
- (b) deur subartikel (10) deur die volgende subartikel te vervang: 55

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

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

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

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

“which percentage shall—

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

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

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

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

in which [formula] formulae—”;

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

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

- (f) by the addition in subsection (11) to paragraph (a)(ii) of the following item:

“(E) ‘F’ represents the taxable foreign dividends of such fund; and”; and

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

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

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

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

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

- “(10) Die belasbare inkomste deur ’n versekeraar verkry ten opsigte van sy individuele polishouerfonds, sy maatskappypolishouerfonds en sy korporatiewe fonds word afsonderlik ooreenkomstig die bepalings van hierdie Wet vasgestel asof elke bedoelde fonds ’n afsonderlike belastingpligtige was en die individuele polishouerfonds, maatskappypolishouerfonds, onbelaste polishouerfonds en korporatiewe fonds word geag afsonderlike persone te wees wat verbonde persone is met betrekking tot mekaar by die toepassing van subartikels (6), (7) en (8) en artikels 9B, 24I, 24J, 24K en 24L en die Agtste Bylae van hierdie Wet.”;
- (c) deur die woorde wat paragraaf (a)(i) van subartikel (11) voorafgaan, deur die volgende woorde te vervang:
- “(a) word die bedrag van enige onkoste, toelaes of oorplasings wat as ’n aftrekking in die polishouerfondse ingevolge hierdie Wet toegelaat word, behoudens subartikels (11A), (11B) en (11C), beperk tot die totaal van—”;
- (d) deur die woorde wat op paragraaf (a)(ii)(bb) van subartikel (11) volg deur die volgende woorde te vervang:
- “welke persentasie—
- (AA) in die geval van ’n individuele polishouerfonds, vasgestel word ooreenkomstig die formule
- $$Y = \frac{(I + R + F)}{(I + 2,5R + 4,75F + 4,75L)} \times \frac{100}{1};$$
- (BB) in die geval van ’n maatskappypolishouerfonds, vasgestel word ooreenkomstig die formule
- $$Y = \frac{(I + R + F)}{(I + 2R + 3,5F + 3,5L)} \times \frac{100}{1};$$
- in welke [formule] formules—”;
- (e) deur paragraaf (a)(ii)(D) van subartikel (11) deur die volgende item te vervang:
- “(D) [‘D’] ‘L’ die dividendinkomste (behalwe belasbare buitelandse dividende) van bedoelde fonds verteenwoordig; en”;
- (f) deur die volgende item by paragraaf (a)(ii) van subartikel (11) te voeg:
- “(E) ‘F’ die belasbare buitelandse dividende van daardie fonds verteenwoordig; en”; en
- (g) deur die volgende subartikels na subartikel (11) in te voeg:
- “(11A) By die toepassing van subartikel (11) moet die persentasie van die bedrag van onkoste en toelaes in subartikel (11)(a)(ii)(aa) en (bb) beoog wat toegestaan staan te word ten opsigte van die eerste vyf jare van aanslag wat op of na 1 Januarie 2002 ’n aanvang neem, deur die bedrag vasgestel ooreenkomstig die bepalings van subartikels (11B) en (11C), verminder word.
- (11B) Die bedrag in subartikel (11A) bedoel beteken—
- (a) ten opsigte van die jaar van aanslag wat op of na 1 Januarie 2002, maar voor 1 Januarie 2003 ’n aanvang neem, vyf-sesdes van die verskil tussen die persentasie ooreenkomstig subartikel (11)(a)(ii) vasgestel (hierna die nuwe persentasie genoem) en die persentasie ooreenkomstig subartikel (11C) vasgestel (hierna die ou persentasie genoem);
- (b) ten opsigte van die jaar van aanslag wat op of na 1 Januarie 2003, maar voor 1 Januarie 2004 ’n aanvang neem, vier-sesdes van die verskil tussen die nuwe persentasie en die ou persentasie;
- (c) ten opsigte van die jaar van aanslag wat op of na 1 Januarie 2004, maar voor 1 Januarie 2005 ’n aanvang neem, drie-sesdes van die verskil tussen die nuwe persentasie en die ou persentasie;
- (d) ten opsigte van die jaar van aanslag wat op of na 1 Januarie 2005, maar voor 1 Januarie 2006 ’n aanvang neem, twee-sesdes van die verskil tussen die nuwe persentasie en die ou persentasie; en
- (e) ten opsigte van die jaar van aanslag wat op of na 1 Januarie 2006, maar voor 1 Januarie 2007 ’n aanvang neem, een-sesde van die verskil tussen die nuwe persentasie en die ou persentasie.
- (11C) Die ou persentasie in subartikel (11B) bedoel moet vasgestel word ooreenkomstig die formule



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

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."

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

in welke formule—

- (a) 'Y' die persentasie vasgestel te word, verteenwoordig; en  
 (b) 'I', 'R', 'L' en 'F' dieselfde betekenis het as die simbole in subartikel (11)(a)(ii) beoog.”

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(2) Subartikels (1)(a) en (b) is van toepassing ten opsigte van enige jaar van aanslag wat op of na 1 Oktober 2001 'n aanvang neem.

(3) Subartikels (1)(c), (d), (e), (f) en (g) is van toepassing op jare van aanslag wat op of na 1 Januarie 2002 'n aanvang neem.

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**Wysiging van artikel 31 van Wet 58 van 1962, soos vervang deur artikel 23 van Wet 21 van 1995 en gewysig deur artikel 37 van Wet 30 van 1998, artikel 31 van Wet 53 van 1999 en artikel 37 van Wet 59 van 2000**

16. Artikel 31 van die Hoofwet word hierby gewysig deur die omskrywing van “permanente saak” in subartikel (1) te skrap.

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**Wysiging van artikel 64 van Wet 58 van 1962, soos vervang deur artikel 30 van Wet 90 van 1958 en gewysig deur artikel 19 van Wet 36 van 1996**

17. (1) Artikel 64 van die Hoofwet word hierby gewysig deur die uitdrukking “25 persent” deur die uitdrukking “20 persent” te vervang.

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(2) Subartikel (1) is van toepassing ten opsigte van enige eiendom waaroor beskik word by wyse van 'n skenking wat op of na 1 Oktober 2001 in werking tree.

**Wysiging van artikel 64B van Wet 58 van 1962, soos ingevoeg deur artikel 34 van Wet 113 van 1993, en gewysig deur artikel 12 van Wet 140 van 1993, artikel 24 van Wet 21 van 1994, artikel 29 van Wet 21 van 1995, artikel 21 van Wet 36 van 1996, artikel 13 van Wet 46 van 1996, artikel 25 van Wet 28 van 1997, artikel 35 van Wet 53 van 1999, artikel 39 van Wet 30 van 2000 en artikel 42 van Wet 59 van 2000.**

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18. Artikel 64B van die Hoofwet word hierby gewysig deur die volgende paragraaf by subartikel (5) te voeg:

“(k) enige dividend deur 'n maatskappy aan 'n natuurlike persoon verklaar—

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- (i) wat 'n uitkering *in specie* van 'n belang', soos in paragraaf 44 van die Agtste Bylae omskryf, van sodanige persoon in 'n woning daarstel; of  
 (ii) uit enige winste van 'n kapitale aard verkry uit die beskikking aan daardie persoon van enige so 'n belang in 'n woning,

waar—

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- (aa) daardie belang aldus uitgekeer is aan daardie persoon op of na die datum van afkondiging van die Wysigingswet op Belastingwette, 2001, maar voor 30 September 2002, of daardie belang aldus oor beskik is op of na die datum van afkondiging van die Wysigingswet op Belastingwette, 2001, maar voor 30 September 2002 en enige wins wat uit daardie beskikking voortspruit voor of op 31 Maart 2003 aan daardie persoon uitgekeer word;

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- (bb) daardie persoon alleen of tesame met daardie persoon se gade al die ekwiteitsaandelekapitaal of ledebelang in daardie maatskappy gehou het vanaf 5 April 2001 tot die datum van registrasie in die aktesregistrasiekantoor van die woning in die naam van daardie persoon of daardie persoon se gade of in hulle name gesamentlik;

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- (cc) daardie persoon alleen of tesame met daardie persoon se gade gewoonlik daardie woning bewoon het en dit hoofsaaklik vir huishoudelike doeleindes gebruik het as sy of haar of hulle gewone woning vanaf 5 April 2001 tot die datum van daardie registrasie in die naam van daardie persoon of daardie persoon se gade of in hulle name gesamentlik; en

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- (dd) daardie woning na daardie uitkering of beskikking daardie persoon of daardie persoon en daardie persoon se gade se primêre woning soos in paragraaf 44 van die Agtste Bylae omskryf, sal uitmaak:

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Met dien verstande dat die bepalinge van hierdie paragraaf slegs van toepassing is ten opsigte van die gedeelte van enige dividend wat verband hou met die gedeelte van die eiendom in paragraaf 46 van die Agtste Bylae beoog.”

**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~~quat~~) of the following subsection:
  - “(13~~quin~~) For the purposes of subsections (13), (13~~quat~~) 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
  - (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,
- 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.

(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
- (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,

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.”.

**Wysiging van artikel 66 van Wet 58 van 1962, artikel 10 van Wet 6 van 1963, artikel 19 van Wet 90 van 1964, artikel 27 van Wet 88 van 1971, artikel 22 van Wet 91 van 1982, soos gewysig deur artikel 19 van Wet 65 van 1986, artikel 23 van Wet 85 van 1987, artikel 37 van Wet 101 van 1990 en artikel 26 van Wet 21 van 1994**

19. Artikel 66 van die Hoofwet word hierby gewysig— 5
- (a) deur die volgende subparagraaf by subartikel (1)(b) te voeg: 5
- “(v) enige persoon wie se totale kapitaalwins of totale kapitaalverlies vir die jaar van aanslag ’n bedrag deur die Kommissaris vasgestel te word in die kennisgewing in paragraaf (a) bedoel, oorskry.”;
- (b) deur die volgende subartikels na subartikel (7) in te voeg: 10
- “(7A) Die Kommissaris kan, in die geval van enige opgawe deur ’n belastingpligtige of ’n belastingpligtige se gemagtigde agent in elektroniese formaat ingedien, elektroniese of digitale handtekeninge as geldige handtekeninge by die toepassing van subartikel (7) aanvaar.
- (7B) Die Minister kan reëls en regulasies maak wat die prosedures vir die indiening van enige opgawe in elektroniese formaat en die vereistes vir elektroniese of digitale handtekeninge in subartikel (7A) beoog, voorskryf.”; 15
- en
- (c) deur die volgende subartikel na subartikel (13<sup>quat</sup>) in te voeg: 20
- “(13<sup>quin</sup>) By die toepassing van subartikels (13), (13<sup>quat</sup>) en (14), word die woord ‘inkomste’ uitgelê om enige totale kapitaalwins of totale kapitaalverlies in te sluit.”.

**Vervanging van artikel 68 van Wet 58 van 1962, soos gewysig deur artikel 26 van Wet 90 van 1962, artikel 23 van Wet 88 van 1965, artikel 39 van Wet 101 van 1990 en artikel 33 van Wet 129 van 1991** 25

20. Artikel 68 van die Hoofwet word hierby deur die volgende artikel vervang:

**“Inkomste en kapitaalwins van getroude [vroue] persone en minderjarige kinders**

68. (1) Enige—
- (a) inkomste ontvang deur of toegeval aan of ten gunste van ’n persoon wat in of buite gemeenskap van goedere getroud is wat ingevolge artikel 7(2) geag word inkomste te wees wat deur bedoelde persoon se gade ontvang is of aan dié gade toegeval het; of 30
- (b) kapitaalwins wat ingevolge paragraaf 68 van die Agtste Bylae by die vasstelling van die totale kapitaalwins of totale kapitaalverlies van daardie persoon se gade in berekening gebring word, 35
- word deur bedoelde gade ingesluit in die opgawes van inkomste wat ingevolge hierdie Wet deur daardie gade verstrekk moet word.
- (2) Ingeval ’n persoon te sterwe kom gedurende ’n jaar ten opsigte waarvan sodanige inkomste belasbaar is of waarin sodanige kapitaalwins in berekening gebring word, word die inkomste of kapitaalwins van bedoelde persoon se gade vir die tydperk wat verstryk tussen die datum waarop bedoelde persoon te sterwe gekom het en die laaste dag van die jaar van aanslag opgegee as die afsonderlike inkomste van bedoelde gade.
- (3) (a) Elke ouer is verplig om in sy opgawe [inkomste] in te sluit— 45
- (i) enige inkomste wat ontvang is deur of toegeval het aan of ten gunste van enigeen van [sy] daardie ouer se minderjarige kinders, hetsy regstreeks of onregstreeks van [homself of sy vrou] daardie ouer; of
- (ii) enige kapitaalwins of kapitaalverlies ten opsigte van enige transaksie direk of indirek deur daardie ouer aangegaan, wat in berekening gebring is by die vasstelling van die totale kapitaalwins of totale kapitaalverlies van enige van daardie ouer se minderjarige kinders, 50
- tesame met die besonderhede wat die Kommissaris verlang.
- (b) Elke ouer is verplig om in [sy] daardie ouer se opgawe inkomste in te sluit wat ingevolge subartikel (3) of (4) van artikel sewe geag word [sy] daardie ouer se inkomste te wees of enige kapitaalwins wat ingevolge paragraaf 69 van die Agtste Bylae geag word daardie ouer se kapitaalwins te wees.”. 55



**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.** 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—

- (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; 10
- (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; 15
- (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); 20
- (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. 25

**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; 30
  - (b) the number of such financial instruments so disposed of on behalf of each such other person; 35
  - (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; 40
  - (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); 45
  - (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. 50
- (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.”. 55

**Invoeging van artikels 70A en 70B in Wet 58 van 1962**

21. Die volgende artikels word hierby na artikel 70 in die Hoofwet ingevoeg:

**“Opgawe van inligting deur Effektegroep**

- 70A.** Enige effektegroep beoog in paragraaf (e)(i) van die omskrywing van ‘maatskappy’ in artikel 1, en enige effektegroep vervat in enige effektrustskema in eiendomsaandeel gemagtig deur die Wet op Beheer van Effektrustskemas, 1981 (Wet No. 54 van 1981), moet aan die Kommissaris ’n jaarlikse opgawe verstrek in sodanige vorm en binne sodanige tydperk as wat die Kommissaris mag voorskryf, wat aandui—
- (a) die name en adresse van alle eenheidshouers in daardie effektegroep wat op of na waardasiedatum, soos in die Agtste Bylae beoog, oor hulle eenhede in daardie effektegroep beskik het; 10
  - (b) die aantal eenhede aldus deur elke eenheidshouer oor beskik;
  - (c) die geweegde gemiddelde van die waardasiedatumwaarde van eenhede voor die waardasiedatum verkry en gehou op daardie datum en die koste van eenhede verkry op of na daardie datum en die bedrag van die opbrengs ontvang of toegeval uit die beskikking oor daardie eenhede; 15
  - (d) die wins verkry uit of die verlies gely ten opsigte van die beskikking oor daardie eenhede bepaal met verwysing na die koste en opbrengs in paragraaf (c) beoog; 20
  - (e) in die geval van enige natuurlike persoon, sy of haar identiteitsnommer en indien daardie persoon nie oor ’n Suid-Afrikaanse identiteitsdokument beskik nie, enige ander vorm van identifikasie; en
  - (f) in die geval van ’n persoon anders as ’n natuurlike persoon, daardie persoon se registrasienommer. 25

**Opgawe van inligting ten opsigte van finansiële instrumente deur administrateurs van portefeuljes bestuur**

- 70B.** (1) Elke persoon wat ’n portefeulje van finansiële instrumente, soos in die Agtste Bylae omskryf, namens enige ander persoon bestuur en wat die mandaat van daardie ander persoon het om enige sodanige finansiële instrumente namens daardie ander persoon te koop of te verkoop, moet aan die Kommissaris ’n jaarlikse opgawe verstrek, in daardie vorm en binne daardie tydperk as wat die Kommissaris mag voorskryf, wat aantoon—
- (a) die name en adresse van alle persone namens wie daar op of na die waardasiedatum in daardie Bylae beoog, oor sodanige finansiële instrumente beskik is; 35
  - (b) die aantal finansiële instrumente aldus oor beskik namens elke sodanige ander persoon;
  - (c) die geweegde gemiddelde van die waardasiedatumwaarde van daardie finansiële instrumente voor die waardasiedatum verkry en gehou op daardie datum, en die koste van daardie finansiële instrumente op of na daardie datum verkry en die bedrag van die opbrengs ontvang of toegeval uit die beskikking oor sodanige finansiële instrumente; 40
  - (d) die wins verkry uit of the verlies gely ten opsigte van die beskikking oor daardie finansiële instrumente, bepaal met verwysing na die koste en opbrengs in paragraaf (c) beoog; 45
  - (e) in die geval van enige natuurlike persoon, sy of haar identiteitsnommer en indien daardie persoon nie in besit is van ’n Suid-Afrikaanse identiteitsdokument nie, enige ander vorm van identifikasie; en 50
  - (f) in die geval van ’n persoon anders as ’n natuurlike persoon, daardie persoon se registrasienommer.
- (2) Subartikel (1) is nie van toepassing nie ten opsigte van—
- (a) enige pensioenfonds, voorsorgsfonds of uitredingannuïteitsfonds; of 55
  - (b) enige versekeraar in artikel 29A beoog, ten opsigte van enige finansiële instrumente van enige persoon in daardie persoon se hoedanigheid as polishouer.”.

**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. 5

(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 10
  - (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, 15
- 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 20**

**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. 25

(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. 30

(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; 35
- (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; 40
- (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. 45

**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.”. 50

**Invoeging van artikel 73A in Wet 58 van 1962**

22. Die volgende artikels word hierby in die Hoofwet na artikel 73 ingevoeg:

**“Rekordhouding deur persone wat inkomste anders as besoldiging verkry**

**73A. (1)** 'n Persoon wie se bruto inkomste bestaan uit bedrae anders as daardie uitsluitlik by wyse van salaris, lone of soortgelyke vergoeding vir persoonlike dienste verkry, moet alle rekords vir 'n tydperk van vier jaar hou vanaf die datum waarop die opgawe wat betrekking het op die laaste inskrywing in daardie rekords, deur die Kommissaris ontvang is. 5

(2) By die toepassing van subartikel (1), sluit 'rekords' in— 10

(a) grootboeke, kasboeke, joernale, tjekboeke, bankstate, deposito-strokies, betaalde tjeks, fakture, inventarisse en alle ander rekeningboeke; en

(b) enige data deur 'n 'rekenaar' soos omskryf in artikel 1 van die Wet op Rekenaargetuïenis, 1983 (Wet No. 57 van 1983), geskep insluitende data in die elektroniese formaat waarin dit oorspronklik geskep is of waarin dit bewaar word vir doeleindes van die rugsteun van sodanige data, 15

wat betrekking het op 'n bedryf deur daardie persoon beoefen en waarin die besonderhede aangeteken is waarvolgens daardie persoon se opgawes vir die aanslag van belasting kragtens hierdie Wet voorberei is. 20

**Rekordhouding wat verband hou met belasbare kapitaalwins of vasgestelde kapitaalverlies**

**73B. (1)** 'n Persoon moet alle rekords behou wat benodig word om daardie persoon se belasbare kapitaalwins of vasgestelde kapitaalverlies vas te stel, vir 'n tydperk van vier jaar vanaf die datum waarop die opgawe vir daardie jaar van aanslag deur die Kommissaris ontvang is. 25

(2) Waar 'n persoon oor bates beskik het ten opsigte waarvan die kapitaalwins of kapitaalverlies nie kragtens die Agtste Bylae verontagsaam of uitgesluit word nie en alle kapitaalwinste of kapitaalverliese vasgestel ten opsigte van die beskikking oor daardie bates R10 000 vir die jaar van aanslag te bowe gaan, maar dit nie van daardie persoon vereis word om 'n opgawe in te dien nie, moet daardie persoon die rekords benodig vir die vasstelling van daardie kapitaalwinste of kapitaalverliese vir 'n tydperk van vyf jaar vanaf die datum van beskikking oor elk van daardie bates behou. 30 35

(3) By die toepassing van hierdie artikel sluit 'rekords' in—

(a) enige ooreenkoms vir die verkryging, beskikking of verhuring van 'n bate tesame met verbandhoudende korrespondensie;

(b) besonderhede van enige bate aan 'n trust oorgedra;

(c) afskrifte van waardasies gebruik by die vasstelling van 'n belasbare kapitaalwins of vasgestelde kapitaalverlies; 40

(d) fakture of ander bewys van betalingsrekords soos bankstate en betaalde tjeks met betrekking tot enige koste geëis ten opsigte van die verkryging, verbetering of beskikking oor enige bate;

(e) besonderhede wat die proporsionele gebruik van 'n bate vir beide private en besigheidsdoeleindes ondersteun; 45

(f) besonderhede van enige aaneenlopende afwesigheid van meer as ses maande van 'n primêre woning, soos beoog in die Agtste Bylae.

**Bewaringstydperk van rekords waar beswaar en appèl aangeteken is**

**73C.** Ondanks die bepalings van artikels 73A en 73B, waar 'n persoon van wie daar kragtens daardie artikels vereis word om rekords te bewaar, 'n beswaar of appèl teen 'n aanslag aanteken, moet daardie persoon alle rekords met betrekking tot daardie beswaar of appèl behou totdat daardie aanslag finaal word.” 50



**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**

**23.** Section 75 of the principal Act is hereby amended by the substitution in subsection (1) for paragraph (f) of the following paragraph: 5

“(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**

**24.** Section 76 of the principal Act is hereby amended by the substitution for subsections (5) and (6) of the following subsections: 10

“(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. 15

(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.”. 20

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

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

“(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 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.”. 30

**Amendment of section 79 of Act 58 of 1962, as substituted by section 32 of Act 21 of 1995** 35

**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.”. 40

**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** 45

**82.** The burden of proof that any amount is—

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

**Wysiging van artikel 75 van Wet 58 van 1962, soos gewysig deur artikel 40 van Wet 101 van 1990, artikel 34 van Wet 129 van 1991, artikel 30 van wet 141 van 1992, artikel 35 van Wet 113 van 1993, artikel 27 van Wet 21 van 1994, artikel 15 van Wet 46 van 1996 en artikel 39 van Wet 53 van 1999**

**23. Artikel 75 van die Hoofwet word hierby gewysig deur paragraaf (f) van subartikel (1) deur die volgende paragraaf te vervang:**

“(f) sonder goeie rede versuim om aan die bepalings van artikel 70A, 70B, 73A, 73B of 73C te voldoen;”.

**Wysiging van artikel 76 van Wet 58 van 1962**

**24. Artikel 76 van die Hoofwet word hierby gewysig deur subartikels (5) en (6) deur die volgende subartikels te vervang:**

“(5) ’n Belastingpligtige wat by die vasstelling van sy belasbare inkomste soos in sy opgawe aangegee, ’n bedrag aftrek, [of] in vergelyking bring, verontagsaam of uitsluit wat nie kragtens die bepalings van hierdie Wet afgetrek, [of] in vergelyking gebring, verontagsaam of uitgesluit kan word nie, of ’n bedrag as ’n uitgawe of ’n verlies aangee wat hy nie werklik uitgegee of verloor het nie, word by die toepassing van hierdie artikel geag sodanige bedrag uit sy opgawe weg te gelaat het.

(6) ’n Belastingpligtige wat opsetlik versuim om in ’n opgawe wat hy verstrek feite bloot te lê wat blootgelê behoort te word en waarvan die blootlegging tot gevolg sou hê dat die belasbare inkomste van die belastingpligtige belas word op ’n hoër bedrag as die bedrag [waarop sodanige inkomste] wat volgens bedoelde opgawe belasbaar sou wees, word by die toepassing van hierdie artikel geag die bedrag waarmee eersbedoelde bedrag laasbedoelde te bowe gaan, uit sy opgawe weg te gelaat het.”.

**Wysiging van artikel 78 van Wet 58 van 1962**

**25. Artikel 78 van die Hoofwet word hierby gewysig deur subartikel (2) deur die volgende subartikel te vervang:**

“(2) So ’n raming van die belasbare inkomste is behoudens beswaar en appèl: Met dien verstande dat indien dit vir die Kommissaris blyk dat ’n persoon om die een of ander rede nie in staat is om ’n juiste opgawe van sy inkomste, totale kapitaalwins of totale kapitaalverlies te verstrek nie, die Kommissaris met so ’n persoon kan ooreenkom omtrent die bedrag van dié inkomste, totale kapitaalwins of totale kapitaalverlies wat belasbare inkomste, netto kapitaalwins of vasgestelde kapitaalverlies is, en dié bedrag waaromtrent aldus ooreengekom word, is nie aan beswaar of appèl onderhewig nie.”.

**Wysiging van artikel 79 van Wet 58 van 1962, soos vervang deur artikel 32 van Wet 21 van 1995**

**26. Artikel 79 van die Hoofwet word hierby gewysig deur subartikel (2) deur die volgende subartikel te vervang:**

“(2) By die toepassing van hierdie artikel sluit ’n bedrag in subartikel (1)(a) bedoel ’n bedrag in waarvan die opname in ’n aanslag tot gevolg sal hê dat ’n verlies of vasgestelde kapitaalverlies wat in vergelyking gebring kan word, verminder word, of dat slegs deel van sodanige bedrag vir belasting aangeslaan kan word.”.

**Vervanging van artikel 82 van Wet 58 van 1962**

**27. Artikel 82 van die Hoofwet word hierby deur die volgende artikel vervang:**

**“Bewyslas van vrystellings, aftrekkings, [of] kortings, verontagsaming of uitsluiting**

**82. Die bewyslas dat ’n bedrag—**  
**(a) van ’n belasting hefbaar ingevolge hierdie Wet vrygestel is of nie daaraan onderhewig is nie; of**

(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, 5  
 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**

28. Section 83A of the principal Act is hereby amended by the substitution in 10  
 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” 15

**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**

29. Section 89quat of the principal Act is hereby amended by the substitution for  
 subsection (3) of the following subsection: 20

“(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] 25  
 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.” 30

**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: 35

“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 40  
 capacity, to the receipt of the income so included; or
- (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.” 45

(b) aan 'n aftrekking, korting of verrekening ooreenkomstig hierdie Wet onderhewig is; of

(c) kragtens die Agtste Bylae verontagsaam of uitgesluit moet word, rus op die persoon wat op dié vrystelling, nie-onderhewigheid, aftrekking, korting, of verrekening, of dat sodanige bedrag verontagsaam of uitgesluit moet word, aanspraak maak, en by die verhoor van 'n appèl teen 'n beslissing van die Kommissaris, word die beslissing nie tersyde gestel of verander nie tensy die appellant bewys dat die beslissing verkeerd is." 5

**Wysiging van artikel 83A van Wet 58 van 1962, soos gewysig deur artikel 37 van Wet 113 van 1993 en deur Goewermentskenningsgewing R1245 van 26 September 1997** 10

28. Artikel 83A van die Hoofwet word hierby gewysig deur paragraaf (a) van subartikel (1) deur die volgende paragraaf te vervang:

"(a) die bedrag van die belasting in geskil nie die bedrag wat die Minister van tyd tot tyd by kennisgewing in die *Staatskoerant* bepaal oorskry nie of, met inagneming van enige aangeslane verlies of vasgestelde kapitaalverlies wat oorgedra mag word, waarskynlik in totaal die bedrag nie sal oorskry nie; of"

 15

**Wysiging van artikel 89quat van Wet 58 van 1962, soos vervang deur artikel 22 van Wet 65 van 1986 en gewysig deur artikel 18 van Wet 70 van 1989, artikel 42 van Wet 113 van 1993, artikel 33 van Wet 21 van 1995 en artikel 24 van Wet 36 van 1996** 20

29. Artikel 89quat van die Hoofwet word hierby gewysig deur subartikel (3) deur die volgende subartikel te vervang:

"(3) Waar die Kommissaris met inagneming van die omstandighede van die geval oortuig is dat 'n bedrag in die belastingpligtige se belasbare inkomste ingesluit is of dat 'n aftrekking, [of] vermindering, verontagsaming of uitsluiting wat deur die belastingpligtige geëis is, nie toegelaat is nie, en die belastingpligtige op redelike gronde aangevoer het dat bedoelde bedrag nie aldus ingesluit moes gewees het nie of dat bedoelde aftrekking, [of] vermindering, verontagsaming of uitsluiting toegelaat moes gewees het, kan die Kommissaris, behoudens die bepalings van artikel 103(6), gelas dat rente nie deur die belastingpligtige betaal word nie op soveel van genoemde normale belasting as wat toeskryfbaar is aan die insluiting van bedoelde bedrag of die verwerping van bedoelde aftrekking, [of] vermindering, verontagsaming of uitsluiting."

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**Wysiging van artikel 90 van Wet 58 van 1962, soos gewysig deur artikel 15 van Wet 6 van 1963, artikel 23 van Wet 95 van 1967, artikel 35 van Wet 121 van 1984, artikel 20 van Wet 96 van 1985, artikel 38 van Wet 129 van 1991 en artikel 43 van Wet 30 van 1998** 35

30. Artikel 90 van die Hoofwet word hierby gewysig deur die eerste voorbehoudsbepaling deur die volgende voorbehoudsbepaling te vervang:

"Met dien verstande dat enige persoon soveel van die belasting ingevolge hierdie Wet deur hom betaal as wat toe te skryf is aan die insluiting by— 40

(i) sy inkomste van enige inkomste wat ooreenkomstig artikel 7(3), (4), (5), (6), [of] (7) of (8) geag word deur hom ontvang of sy inkomste te wees, na gelang van die geval, kan verhaal op die persoon wat, hetsy uit eie reg of in verteenwoordigende hoedanigheid, geregtig is om die inkomste wat aldus ingesluit is te ontvang; of 45

(ii) sy belasbare inkomste van enige kapitaalwins ingevolge paragraaf 68, 69, 70, 71 of 72 van die Agtste Bylae, mag verhaal van die persoon wat, hetsy in sy eie hoedanigheid of in 'n verteenwoordigende hoedanigheid, geregtig is op die opbrengs van die beskikking oor die bate, soos in die Agtste Bylae beoog, wat tot daardie kapitaalwins aanleiding gegee het." 50



**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: 5  
 “(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.”; 10
- (b) by the insertion after subsection (4) of the following subsection: 15  
 “(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.”. 15

**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: 20  
 “(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: 25  
 “(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** 30

**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: 35  
 “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,  
 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— 45
- (aa) the set-off of any such assessed loss or balance of assessed loss against any such income shall be disallowed; 50
- (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

Wysiging van artikel 91 van Wet 58 van 1962, soos gewysig deur artikel 16 van Wet 6 van 1963, artikel 26 van Wet 55 van 1966, artikel 38 van Wet 89 van 1969, artikel 36 van Wet 121 van 1984, artikel 39 van Wet 129 van 1991 en artikel 26 van Wet 36 van 1996

31. Artikel 91 van die Hoofwet word hierby gewysig—

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- (a) deur subartikel (4) deur die volgende subartikel te vervang:

“(4) Soveel van enige belasting deur enige persoon betaalbaar as wat toe te skryf is aan die insluiting by sy inkomste van enige inkomste wat ooreenkomstig subartikel (3), (4), (5), [of] (6), (7) of (8) van artikel 7 geag word deur hom ontvang of sy inkomste te wees, na gelang van die geval, kan verhaal word uit die bates wat die inkomste aldus ingesluit, afgewerp het.”;

- (b) deur die volgende subartikel na subartikel (4) in te voeg:

“(4A) Soveel van enige belasting deur enige persoon betaalbaar as wat toe te skryf is aan die insluiting by die belasbare inkomste van daardie persoon van enige kapitaalwins ingevolge paragraaf 68, 69, 70, 71 of 72 van die Agtste Bylae, mag verhaal word uit die opbrengs van die beskikking oor die bate, soos in die Agtste Bylae beoog, wat tot die kapitaalwins aanleiding gegee het.”.

Wysiging van artikel 95 van Wet 58 van 1962, soos gewysig deur artikel 27 van Wet 90 van 1962 en artikel 35 van Wet 28 van 1997

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32. Artikel 95 word hierby gewysig—

- (a) deur subartikel (2) deur die volgende subartikel te vervang:

“(2) ’n Korting, aftrekking, vrystelling, [of] reg om ’n verlies in vergelyking te bring, verontagsaming of uitsluiting waarop die persoon deur hom verteenwoordig aanspraak kan maak, word by die aanslag gedoen op die verteenwoordigende belastingpligtige, in dié hoedanigheid toegestaan.”; en

- (b) deur die volgende subartikel by te voeg:

“(5) By die toepassing van hierdie artikel word die woord ‘inkomste’ uitgelê om die bedrag ontvang of toegeval of geag ontvang of toegeval te gewees het as gevolg van die beskikking oor enige bate in die Agtste Bylae beoog, in te sluit.”.

Wysiging van artikel 103 van Wet 58 van 1962, soos gewysig deur artikel 14 van Wet 101 van 1978, artikel 37 van Wet 121 van 1984, artikel 19 van Wet 70 van 1989, artikel 29 van Wet 36 van 1996 en artikel 45 van Wet 30 van 1998

33. Artikel 103 van die Hoofwet word hierby gewysig—

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- (a) deur die woorde wat volg op subparagraaf (iii) van subartikel (2)(b) deur die volgende woorde te vervang:

“as ’n direkte of indirekte gevolg waarvan—

(A) inkomste gedurende ’n jaar van aanslag ontvang is deur of toegeval het aan sodanige maatskappy of trust; of

(B) enige opbrengste ontvang deur of toegeval aan of geag word ontvang te gewees het of toe te geval het aan daardie maatskappy of trust as gevolg van die beskikking oor enige bate, soos in die Agtste Bylae beoog, ’n kapitaalwins in enige jaar van aanslag tot gevolg het,

te eniger tyd [voor of na die inwerkingtreding van die Inkomste-belastingwet, 1946,] deur ’n persoon aangegaan of teweeggebring is uitsluitlik of hoofsaaklik met die oogmerk om ’n vasgestelde verlies, [of] ’n balans van vasgestelde verlies, ’n kapitaalverlies of ’n vasgestelde kapitaalverlies, na gelang van die geval, wat die maatskappy of trust gely het, aan te wend ten einde aanspreeklikheid aan die kant van daardie maatskappy of trust of ’n ander persoon vir die betaling van ’n belasting of heffing op inkomste te vermy of die bedrag daarvan te verminder, word—

(aa) die in vergelyking bring van so ’n vasgestelde verlies of balans van vasgestelde verlies teen bedoelde inkomste van die hand gewys;

(bb) die in vergelyking bring van so ’n vasgestelde verlies of balans van vasgestelde verlies teen enige belasbare kapitaalwins, tot die mate wat daardie belasbare kapitaalwins daardie kapitaalwins insluit, van die hand gewys; of

(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: 15

“(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— 25

(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 30

(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”; 35

(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 40

(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.”. 45

**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 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** 50

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



- (cc) die in vergelyking bring van daardie kapitaalverlies of vasgestelde kapitaalverlies teen daardie kapitaalswins van die hand gewys.”; en
- (b) deur paragraaf (b) van subartikel (4) deur die volgende paragraaf te vervang:
- “(b) in die geval van so ’n ooreenkoms of verandering in aandeelbesit of ledebelange of trustees of begunstigdes van daardie trust, dat dit aangegaan of teweeggebring is uitsluitlik of hoofsaaklik met die oogmerk om die onderhawige vasgestelde verlies, [of] balans van vasgestelde verlies, kapitaalverlies of vasgestelde kapitaalverlies aan te wend ten einde bedoelde aanspreeklikheid te vermy of uit te stel of die bedrag daarvan te verminder.”.

**Wysiging van artikel 107 van Wet 58 van 1962, soos gewysig deur artikel 26 van Wet 65 van 1973, artikel 46 van Wet 97 van 1986, artikel 29 van Wet 21 van 1994, artikel 37 van Wet 28 van 1997 en artikel 46 van Wet 30 van 1998**

**34. Artikel 107 van die Hoofwet word hierby gewysig—**

- (a) deur die volgende paragraaf by subartikel (1) te voeg:
- “(f) die wyse van waardasie van fidusiêre belange, vruggebruike of ander soortgelyke belange in eiendom by die toepassing van die Agtste Bylae, voorgeskryf word,”; en
- (b) deur subartikel (2) deur die volgende subartikel te vervang:
- “(2) Die regulasies kan strawwe voorskryf, wat ’n boete van [R1 000] R2 000 nie te bowe gaan nie, vir oortreding daarvan of versuim om daaraan te voldoen.”.

**Wysiging van paragraaf 4 van die Eerste Bylae by Wet 58 van 1962, soos gewysig deur artikel 17 van Wet 72 van 1963, artikel 41 van Wet 89 van 1969, artikel 42 van Wet 94 van 1983, artikel 43 van Wet 113 van 1993 en artikel 30 van Wet 36 van 1996**

**35. Paragraaf 4 van die Eerste Bylae by die Hoofwet word hierby gewysig—**

- (a) deur subitem (ii) van item (a) van subparagraaf (1) deur die volgende subitem te vervang:
- “(ii) die markwaarde van lewende hawe of produkte—
- (aa) wat so ’n boer gedurende die lopende jaar van aanslag op ’n ander wyse as deur aankoop of natuurlike aanwas of in die gewone loop van boerdery verkry het; of
- (bb) gehou deur daardie boer anders as vir doeleindes van veeboerdery, landbou- of ander boerderybedrywighede, wat daardie boer gedurende daardie jaar van aanslag begin hou het vir doeleindes van veeboerdery, landbou- of ander boerderybedrywighede; of”;
- (b) deur subitem (ii) van item (b) van subparagraaf (1) deur die volgende subitem te vervang:
- “(ii) die markwaarde van lewende hawe of produkte (behalwe lewende hawe of produkte in sub-item (i) bedoel)—
- (aa) wat so ’n persoon gedurende die jaar van aanslag op ’n ander wyse as deur aankoop of natuurlike aanwas of in die gewone loop van boerdery verkry het; of
- (bb) gehou deur daardie persoon anders as vir doeleindes van veeboerdery, landbou- of ander boerderybedrywighede, wat daardie persoon gedurende daardie jaar van aanslag begin hou het vir doeleindes van veeboerdery, landbou- of ander boerderybedrywighede.”.

**Wysiging van paragraaf 5 van Eerste Bylae van Wet 58 van 1962, soos gewysig deur artikel 18 van Wet 72 van 1963, artikel 23 van Wet 52 van 1970, artikel 30 van Wet 88 van 1971, artikel 28 van Wet 103 van 1976, artikel 23 van Wet 104 van 1980, artikel 26 van Wet 96 van 1981, artikel 31 van Wet 36 van 1996 en artikel 31 van Wet 36 van 1996**

**36. Paragraaf 5 van die Eerste Bylae van die Hoofwet word hierby gewysig deur subparagraaf (2) te skrap.**



**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**

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 taxpayer’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; or 10
- (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.”. 15

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

38. The following Schedule is hereby inserted after the Seventh Schedule to the principal Act: 20

#### **“Eighth Schedule**

#### **DETERMINATION OF TAXABLE CAPITAL GAINS AND ASSESSED CAPITAL LOSSES (Section 26A of this Act)**

Part I:	General	25
Part II:	Taxable capital gains and assessed capital losses	
Part III:	Disposal and acquisition of assets	
Part IV:	Limitation of losses	
Part V:	Base cost	30
Part VI:	Proceeds	
Part VII:	Primary residence exclusion	
Part VIII:	Other exclusions	
Part IX:	Roll-overs	
Part X:	Attribution of capital gains	35
Part XI:	Company distributions	
Part XII:	Trusts, trust beneficiaries and insolvent estates	
Part XIII:	Foreign Currency	
Part XIV:	Miscellaneous	

Wysiging van paragraaf 19 van Vierde Bylae by Wet 58 van 1962, soos gewysig deur artikel 28 van Wet 88 van 1965, artikel 46 van Wet 89 van 1969, artikel 43 van Wet 88 van 1971, artikel 50 van Wet 85 van 1974, artikel 49 van Wet 94 van 1983, artikel 52 van Wet 101 van 1990 en artikel 44 van Wet 21 van 1995

37. Paragraaf 19 van die Vierde Bylae by die Hoofwet word hierby gewysig deur items (i) en (ii) van paragraaf (d) van subparagraaf (1) deur die volgende items te vervang:

- “(i) met betrekking tot ’n skatting wat ’n voorlopige belastingpligtige (behalwe ’n maatskappy) ingevolge item (a) verstrek, die belastingpligtige se belasbare inkomste, soos deur die Kommissaris aangeslaan, vir die jongste voorafgaande jaar van aanslag met betrekking tot sodanige skatting, verminder met die bedrag van enige belasbare kapitaalwins kragtens artikel 26A daarby ingesluit; of
- (ii) met betrekking tot ’n skatting wat ’n maatskappy ingevolge item (b) verstrek, die maatskappy se belasbare inkomste, soos deur die Kommissaris aangeslaan, vir die jongste voorafgaande jaar van aanslag met betrekking tot sodanige skatting, verminder met die bedrag van enige belasbare kapitaalwins kragtens artikel 26A daarby ingesluit.”.

Invoeging van Agtste Bylae in Wet 58 van 1962

38. Die volgende Bylae word hierby na die Sewende Bylae by die Hoofwet ingevoeg:

“Agtste Bylae

VASSTELLING VAN BELASBARE KAPITAALWINSTE EN VASGESTELDE KAPITAALVERLIESE  
(Artikel 26A van hierdie Wet)

Deel I:	Algemeen	
Deel II:	Belasbare kapitaalwinste en vasgestelde kapitaalverliese	
Deel III:	Beskikking en verkryging van bates	30
Deel IV:	Beperking van verliese	
Deel V:	Basiskoste	
Deel VI:	Opbrengste	35
Deel VII:	Primêre woning uitsluiting	
Deel VIII:	Ander uitsluitings	40
Deel IX:	Oorrolle	
Deel X:	Toerekening van kapitaalwinste	
Deel XI:	Maatskappy-uitkerings	45
Deel XII:	Trusts, trustbegunstigdes en insolvente boedels	
Deel XIII:	Buitelandse valuta	50
Deel XIV:	Diverse	

## 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;

## DEEL I

## ALGEMEEN

## Woordomskrywing

1. In hierdie Bylae, tensy uit die samehang anders blyk, moet enige betekenis aan enige woord of uitdrukking in artikel 1 van hierdie Wet toegeskryf die betekenis hê aldus toegeskryf, en beteken— 5
- ‘aktiewe besigheidsbate’ ’n bate geheel en uitsluitlik gebruik of gehou vir besigheidsdoeleindes maar uitgesluit—
- (a) ’n finansiële instrument; en
- (b) ’n bate in die loop van die bedryf van ’n besigheid gehou hoofsaaklik om enige inkomste in die vorm van ’n annuïteit, huurinkomste, wins op ’n buitelandse valutatransaksie of tantième of enige inkomste van ’n soortgelyke aard te verkry; 10
- ‘basiskoste’ die bedrag vasgestel te word kragtens Deel V;
- ‘bate’ sluit in— 15
- (a) eiendom van welke aard ookal, hetsy roerend of onroerend, ligaamlik of onliggaamlik, uitgesluit enige valuta, maar ingesluit enige munt wat hoofsaaklik van goud of platinum gemaak is; en
- (b) ’n reg of belang van welke aard ookal tot of in sodanige eiendom; 20
- ‘belasbare kapitaalwinst’ die bedrag vasgestel te word kragtens paragraaf 10;
- ‘beskikking’ enige gebeurtenis, daad, toegeeflikheid of werking van die reg beoog in paragraaf 11 of ’n gebeurtenis, daad, toegeeflikheid of werking van die reg wat ingevolge hierdie Bylae geag word ’n beskikking oor ’n bate te wees, en ‘beskik’ word dienoreenkomstig uitgelê;
- ‘boot’ enige vaartuig gebruik of wat gebruik kan word in, onder of op die see of binnelandse water, hetsy— 25
- (a) self-aangedrewe of nie; of
- (b) toegerus met ’n binne- of buiteboordenjin;
- ‘buitelandse geldeenheid’ enige geldeenheid wat nie ’n wettige betaalmiddel in die Republiek is nie; 30
- ‘erkende beurs’—
- (a) ’n aandeelbeurs gelisensieer kragtens die Wet op Beheer van Aandeelbeurse, 1985 (Wet No. 1 van 1985);
- (b) ’n finansiële beurs gelisensieer kragtens die Wet op Beheer van Finansiële Markte, 1989 (Wet No. 55 van 1989); of 35
- (c) ’n beurs in ’n land anders as die Republiek soortgelyk aan ’n beurs in paragrafe (a) en (b) beoog en wat deur die Minister vir doeleindes van hierdie Bylae by kennisgewing in die *Staatskoerant* erken word;
- ‘finansiële instrument’ sluit in—
- (a) ’n lening, voorskot, skuld, effek, skuldbrief, wissel, aandeel, promesse, bankaksep, verhandelbare depositosertifikaat, deposito by ’n finansiële instelling, eenheid in ’n effekegroep, ’n deelnemende belang in ’n portefeulje van ’n gesamentlike beleggingskema, of ’n soortgelyke instrument; 40
- (b) ’n terugkoop- of herverkoopsooreenkoms, vooruitkoopsooreenkoms, vooruitverkoopsooreenkoms, termynsooreenkoms, opsiekontrak of ruilsooreenkoms; 45
- (c) enige ander kontraktuele reg of verpligting wat sy waarde verkry van die waarde van ’n skuldsekuriteit, ekwiteit, kommoditeit, koersindekse of ’n gespesifiseerde indeks;
- (d) enige rentedraende reëling; en 50
- (e) enige finansiële ooreenkoms gebaseer op of bepaal met verwysing na die tydwaarde van geld of kontantvloei, of die uitruil of oordrag van ’n bate;
- ‘individuele polishouerfonds’ ’n fonds in artikel 29A(4)(b) beoog;
- ‘kapitaalverlies’ die bedrag vasgestel te word kragtens paragraaf 4;
- ‘kapitaalwinst’ die bedrag vasgestel te word kragtens paragraaf 3; 55
- ‘netto kapitaalwinst’ die bedrag vasgestel te word kragtens paragraaf 8;
- ‘opbrengs’ die bedrag vasgestel te word kragtens Deel VI;
- ‘persoonlike gebruiksbate’ ’n bate in paragraaf 53 beoog;
- ‘primêre woning’ ’n primêre woning in paragraaf 44 beoog;
- ‘totale kapitaalverlies’ die bedrag vasgestel te word kragtens paragraaf 7; 60



'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—

- (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 partnership.

### Application

2. (1) Subject to paragraph 86, this Schedule applies to the disposal on or after valuation date of—

- (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 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 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

#### 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
- (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
  - (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.

‘totale kapitaalwins’ die bedrag vasgestel te word kragtens paragraaf 6;  
 ‘versekeraar’ ’n versekeraar soos in artikel 29A(1) omskryf;  
 ‘voor-waardasiedatumbate’ ’n bate deur ’n persoon voor die waardasiedatum verkry wat steeds gehou word deur daardie persoon op die waardasiedatum;  
 ‘waardasiedatum’ 1 Oktober 2001. 5  
 ‘waardeverskuiwingsreëling’ ’n reëling waarvolgens ’n persoon ’n belang behou in ’n maatskappy, trust of vennootskap, maar wat na ’n verandering in die regte of aansprake van die belange van daardie maatskappy, trust of vennootskap (anders as gevolg van ’n beskikking teen markwaarde soos vasgestel voor die toepassing van paragraaf 38), die markwaarde van die belang van daardie persoon afneem en— 10  
 (a) die waarde van die belang van ’n ander persoon direk of indirek gehou in daardie maatskappy, trust of vennootskap toeneem; of  
 (b) ’n ander persoon ’n direkte of indirekte belang in daardie maatskappy, trust of vennootskap verkry;  
 ‘woning’ ’n woning beoog in paragraaf 44. 15

### Toepassing

2. (1) Behoudens paragraaf 86 is hierdie Bylae van toepassing op die beskikking op of na die waardasiedatum van—  
 (a) enige bate van ’n inwoner; en  
 (b) die volgende bates geleë in die Republiek van ’n persoon wat nie ’n inwoner is nie naamlik— 20  
 (i) onroerende eiendom deur sodanige persoon gehou of enige belang of reg van welke aard ookal van daardie persoon tot of in onroerende eiendom; of  
 (ii) enige bate van ’n permanente saak van daardie persoon waardeur ’n besigheid in die Republiek bedryf word gedurende die betrokke jaar van aanslag. 25  
 (2) By die toepassing van subparagraaf (1)(b)(i), sluit ’n belang in onroerende eiendom geleë in die Republiek in ’n direkte of indirekte belang van ten minste 20 persent gehou deur ’n persoon (alleen of tesame met enige verbonde persoon met betrekking tot daardie persoon) in die ekwiteitsaandelekapitaal van ’n maatskappy of in enige ander entiteit, waar 80 persent of meer van die waarde van die netto bates van die maatskappy of ander entiteit, op ’n markwaardebasis bepaal, ten tyde van die beskikking oor aandele in daardie maatskappy of belang in daardie ander entiteit, toeskryfbaar is aan onroerende eiendom in die Republiek geleë. 30 35

## DEEL II

### BELASBARE KAPITAALWINSTE EN VASGESTELDE KAPITAALVERLIESE

#### Kapitaalwins

3. ’n Persoon se kapitaalwins vir ’n jaar van aanslag is, ten opsigte van ’n bate waaroor beskik is— 40  
 (a) gedurende sodanige jaar, gelyk aan die bedrag waarmee die opbrengs ontvang of toegeval as gevolg van sodanige beskikking die basiskoste van sodanige bate oorskry; of  
 (b) in ’n vorige jaar van aanslag, gelyk aan—  
 (i) soveel van enige bedrag ontvang deur of toegeval aan sodanige persoon gedurende die huidige jaar van aanslag, wat deel uitmaak van die opbrengs van daardie beskikking wat nie in berekening gebring is nie gedurende enige jaar by die vasstelling van die kapitaalwins of kapitaalverlies ten opsigte van sodanige beskikking; of 45  
 (ii) soveel van die basiskoste van daardie bate wat in berekening gebring is by die vasstelling van die kapitaalwins of kapitaalverlies ten opsigte van daardie beskikking, as wat herwin of verhaal is gedurende die huidige jaar van aanslag. 50

**Capital loss**

4. A person's capital loss 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 base cost of that asset exceeds the proceeds received or accrued in consequence of that disposal; or 5
- (b) in a previous year of assessment, is equal to—
  - (i) so much of the proceeds received or accrued in consequence of the 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 event during the current year of assessment; 10
    - (bb) as has become irrecoverable during the current year of assessment; or 15
    - (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. 20

**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. 25

**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 30
- (b) in the case of a natural person or a special trust, that person's or trust's annual exclusion for that year.

**Aggregate capital loss**

7. A person's aggregate capital loss for a year of assessment is the amount by which the sum of a person's capital losses for the year exceeds the sum of—

- (a) that person's capital gains for that year; and 35
- (b) in the case of a natural person or a special trust, that person's or trust's annual exclusion for that year.

**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. 40

**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; 45

**Kapitaalverlies**

4. 'n Persoon se kapitaalverlies vir 'n jaar van aanslag ten opsigte van die beskikking oor 'n bate—
- (a) gedurende daardie jaar, is gelyk aan die bedrag waarmee die basiskoste van die bate die opbrengs verkry of toegeval as gevolg van sodanige beskikking, oorskry; of 5
  - (b) in 'n vorige jaar van aanslag, is gelyk aan—
    - (i) soveel van die opbrengs ontvang of toegeval as gevolg van die beskikking oor daardie bate wat in ag geneem is in enige jaar by die vasstelling van 'n kapitaalwins of kapitaalverlies ten opsigte van daardie beskikking— 10
    - (aa) waarop daardie persoon nie meer geregtig is nie as gevolg van die kansellasië, beëindiging of wysiging van 'n ooreenkoms, of vanweë die verjaring of afstanddoening van 'n eis of 'n kwytstelling van 'n verpligting of enige ander gebeurtenis gedurende die jaar van aanslag; 15
    - (bb) as wat onverhaalbaar gedurende die jaar van aanslag geword het; of
    - (cc) as wat terugbetaal is of terugbetaalbaar geword het gedurende die jaar van aanslag; of
    - (ii) soveel van die basiskoste van daardie bate as wat nie in ag geneem is nie gedurende enige jaar van aanslag by die vasstelling van die kapitaalwins of kapitaalverlies ten opsigte van daardie beskikking, as wat betaal is of wat verskuldig en betaalbaar geword het gedurende die lopende jaar van aanslag. 20

**Jaarlikse uitsluiting**

5. (1) Behoudens subparagraaf (2) is 'n natuurlike persoon en 'n spesiale trust se jaarlikse uitsluiting ten opsigte van 'n jaar van aanslag R10 000. 25
- (2) Waar 'n persoon te sterwe kom gedurende 'n jaar van aanslag is daardie persoon se jaarlikse uitsluiting vir daardie jaar R 50 000.

**Totale kapitaalwins**

6. 'n Persoon se totale kapitaalwins vir 'n jaar van aanslag is die bedrag waarmee die som van 'n persoon se kapitaalwinste vir daardie jaar die som oorskry van— 30
- (a) die persoon se kapitaalverliese vir daardie jaar; en
  - (b) in die geval van 'n natuurlike persoon of 'n spesiale trust, daardie persoon of trust se jaarlikse uitsluiting vir die jaar. 35

**Totale kapitaalverlies**

7. 'n Persoon se totale kapitaalverlies vir 'n jaar van aanslag is die bedrag waarmee die som van 'n persoon se kapitaalverliese vir die jaar die som oorskry van—
- (a) die persoon se kapitaalwinste vir daardie jaar; en
  - (b) in die geval van 'n natuurlike persoon of 'n spesiale trust, daardie persoon of trust se jaarlikse uitsluiting vir die jaar. 40

**Netto kapitaalwins**

8. 'n Persoon se netto kapitaalwins vir die jaar van aanslag is die bedrag waarmee daardie persoon se totale kapitaalwins vir die jaar daardie persoon se vasgestelde kapitaalverlies vir die vorige jaar van aanslag oorskry. 45

**Vasgestelde kapitaalverlies**

9. 'n Persoon se vasgestelde kapitaalverlies vir 'n jaar van aanslag, waar daardie persoon—
- (a) 'n totale kapitaalwins vir daardie jaar het, is die bedrag waarmee daardie persoon se vasgestelde kapitaalverlies vir die vorige jaar van aanslag die bedrag van daardie persoon se totale kapitaalwins vir die jaar oorskry; 50



- (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.

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### 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,

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of that person's net capital gain for that year of assessment.

## PART III

### DISPOSAL AND ACQUISITION OF ASSETS

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#### 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;
- (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.

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(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

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- (b) 'n totale kapitaalverlies vir die jaar het, is die som van daardie persoon se totale kapitaalverlies vir daardie jaar en daardie persoon se vasgestelde kapitaalverlies vir die vorige jaar; of
- (c) nóg 'n totale kapitaalwins nóg 'n totale kapitaalverlies vir die jaar het, is die bedrag van daardie persoon se vasgestelde kapitaalverlies vir die vorige jaar. 5

**Belasbare kapitaalwins**

10. 'n Persoon se belasbare kapitaalwins vir die jaar van aanslag is—
- (a) in die geval van 'n natuurlike persoon of 'n spesiale trust, 25 persent;
  - (b) in die geval van 'n versekeraar, ten opsigte van—
    - (i) sy individuele polishouersfonds, 25 persent; en 10
    - (ii) sy onbelaste polishouersfonds, 0 persent; of
  - (c) in enige ander geval, 50 persent,
- van die persoon se netto kapitaalwins vir daardie jaar van aanslag.

**DEEL III****BESKIKKING EN VERKRYGING VAN BATES 15****Beskikking**

11. (1) Behoudens subparagraaf (2), is 'n beskikking enige gebeurtenis, daad, toewyding of werking van die reg wat die skepping, wysiging, oordrag of vernietiging van 'n bate tot gevolg het en sluit in—
- (a) die verkoop, skenking, onteiening, omskakeling, verlening, sessie, uitruil of enige ander vervreemding of oordrag van eienaarskap van 'n bate; 20
  - (b) die verbeuring, beëindiging, aflossing, intrekking, afgee, ontheffing, opgee, kwytskelding, laatvaarding, afstanddoening, verstryking of prysgawe van 'n bate;
  - (c) die onttrekking as uitgedien, verlies of vernietiging van 'n bate; 25
  - (d) die vestiging van 'n belang in 'n bate van 'n trust in 'n begunstigde;
  - (e) die uitkering van 'n bate deur 'n maatskappy aan 'n aandeelhouer;
  - (f) die verlening, hernuwing, verlenging of uitoefening van 'n opsie; of
  - (g) die afname in waarde van 'n persoon se belang in 'n maatskappy, trust of vennootskap as gevolg van 'n waardeverskuiwingsreëling. 30
- (2) Daar is geen beskikking oor 'n bate nie—
- (a) deur 'n persoon wat die bate as sekuriteit vir 'n skuld oordra of deur 'n skuldeiser wat daardie bate terug oordra aan daardie persoon wanneer die sekuriteit opgehef word;
  - (b) deur 'n maatskappy ten opsigte van die uitreiking van 'n aandeel in die maatskappy of deur 'n maatskappy ten opsigte van die verlening van 'n opsie om 'n aandeel of skuldbrief in daardie maatskappy te verkry; 35
  - (c) deur 'n effektegroep ten opsigte van die uitreiking van 'n eenheid in daardie groep of deur 'n effektegroep ten opsigte van die verlening van 'n opsie om 'n eenheid in daardie effektegroep te verkry; 40
  - (d) deur 'n persoon ten opsigte van die uitreiking van enige verband, skuldbrief, nota of ander leen van geld of die verkryging van krediet van 'n ander persoon;
  - (e) deur 'n trustee ten opsigte van die uitkering van 'n bate van die trust aan 'n begunstigde wat 'n gevestigde belang in daardie bate voor die uitkering daarvan het; 45
  - (f) deur 'n trustee, eksekuteur, kurator of administrateur ten opsigte van die verandering in eienaarskap in 'n bate as gevolg van die beëindiging van die aanstelling van 'n trustee, eksekuteur, kurator of administrateur of die aanstelling van 'n nuwe trustee, eksekuteur, kurator of administrateur; 50
  - (g) deur 'n persoon waar 'n beskikking gemaak is om 'n fout reg te stel in die registrasie in die aktesregistrasiekantoor van onroerende eiendom in daardie persoon se naam; of
  - (h) deur 'n uitlener aan 'n lener of deur 'n lener aan 'n uitlener, waar enige handelseffekte geleen is deur 'n uitlener aan 'n lener kragtens 'n 'leningsreëling' soos omskryf in artikel 23(1) van die Wet op Seëlregte, 1968 (Wet No. 77 van 1968) en 'n ander handelseffek van dieselfde soort en van 55

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.

(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—

- (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.

#### 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—
  - (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;

dieselfde of gelyke hoeveelheid en gehalte terugbesorg is of sal word deur daardie lener aan daardie uitlener voor die einde van die 12 maande-periode in daardie omskrywing beoog.

### Gebeurtenisse as beskikkings en verkrygings geag

12. (1) Waar 'n gebeurtenis beskryf in subparagraaf (2) plaasvind, word 'n persoon by die toepassing van hierdie Bylae geag te beskik het oor 'n bate in daardie subparagraaf beskryf vir vergoeding gelyk aan die markwaarde van die bate op die tydstip van die gebeurtenis en onmiddellik die bate teen 'n koste gelyk aan daardie markwaarde herverkry het.

(2) Subparagraaf (1) is van toepassing, in die geval van—

- (a) 'n persoon wat ophou om 'n inwoner te wees, of 'n inwoner wat as gevolg van die toepassing van enige ooreenkoms deur die Republiek aangegaan vir die vermyding van dubbele belasting nie 'n inwoner geag word te wees nie, ten opsigte van alle bates van daardie persoon behalwe bates in die Republiek in paragraaf 2(1)(b)(i) en (ii) gelys; 10
- (b) 'n bate van 'n persoon wat nie 'n inwoner is nie, welke bate— 15
  - (i) 'n bate van daardie persoon se permanente saak in die Republiek word anders as by wyse van verkryging; of
  - (ii) ophou om 'n bate van daardie permanente saak in die Republiek te wees, anders as by wyse van beskikking in paragraaf 11 beoog; 20
- (c) bates wat nie as handelsvoorraad deur 'n persoon gehou word nie, wanneer hulle begin om as handelsvoorraad deur daardie persoon gehou te word;
- (d) 'n bate is wat ophou om as 'n persoonlike gebruiksbate deur daardie persoon gehou te word, anders as by wyse van 'n beskikking in paragraaf 11 beoog;
- (e) 'n bate is wat nie as 'n persoonlike gebruiksbate deur 'n persoon gehou word nie, wanneer daardie bate begin om as 'n persoonlike gebruiksbate deur daardie persoon gehou te word; of 25
- (f) 'n bate is wat deur 'n versekeraar in artikel 29A beoog van een fonds in artikel 29A(4) beoog aan enige ander sodanige fonds oorgedra is. 30

(3) Waar bates wat deur 'n persoon as handelsvoorraad gehou word ophou om as handelsvoorraad deur daardie persoon gehou te word, anders as by wyse van beskikking in paragraaf 11 beoog, word daardie persoon geag oor daardie bates te beskik het vir vergoeding gelyk aan die bedrag in daardie persoon se inkomste ingesluit kragtens artikel 22(8) en daardie bates onmiddellik teen 'n koste gelyk aan daardie bedrag herverkry het. 35

(4) 'n Persoon wat begin om 'n inwoner te wees, moet behoudens paragraaf 24 geag word te beskik het oor elk van daardie persoon se bates, anders as bates in die Republiek in paragraaf 2(1)(b)(i) en (ii) gelys, en daardie bates verkry het teen 'n koste gelyk aan die markwaarde van elk van daardie bates.

(5) Waar 'n skuld wat deur 'n persoon aan 'n skuldeiser verskuldig is deur daardie skuldeiser verminder of afgelos word sonder volle vergoeding vir daardie vermindering of aflossing, word daardie persoon geag— 40

- (a) 'n eis te verkry het op soveel van daardie skuld as wat verminder of afgelos is vir geen vergoeding, welke eis 'n basiskoste van nul het; en
- (b) oor daardie eis beskik het teen vergoeding gelyk aan daardie vermindering of aflossing. 45

### Tydstip van beskikking

13. (1) Die tydstip van beskikking oor 'n bate as gevolg van—

- (a) die verandering in eienaarskap van een persoon aan 'n ander as gevolg van 'n gebeurtenis, daad, toeweging of deur werking van die reg is, in die geval van— 50
  - (i) 'n ooreenkoms wat onderhewig aan 'n opskortende voorwaarde is, die datum waarop daardie voorwaarde nagekom word;
  - (ii) 'n ooreenkoms wat nie aan 'n opskortende voorwaarde onderhewig is nie, die datum waarop daardie ooreenkoms gesluit is; 55
  - (iii) 'n skenking van 'n bate, die datum waarop daar aan alle regsvereistes vir 'n geldige skenking voldoen is;



- (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;
  - (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
  - (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;
  - (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;
  - (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;
  - (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
    - (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).

#### **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.

### **PART IV**

#### **LIMITATION OF LOSSES**

##### **Personal-use aircraft, boats and certain rights and interests**

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;

- (iv) onteining van 'n bate, die datum waarop die persoon die volle vergoeding ontvang waartoe ingestem is of wat finaal deur 'n bevoegde tribunaal of hof bepaal is;
  - (v) die omskakeling van 'n bate, die datum waarop die bate omgeskakel word; 5
  - (vi) die verlening, hemuwing of verlenging van 'n opsie, die datum waarop daardie opsie verleen, hernu of verleng word;
  - (vii) die uitoefening van 'n opsie, die datum waarop die opsie uitgeoefen word;
  - (viii) die beëindiging van 'n opsie toegestaan deur 'n maatskappy aan 'n persoon om 'n aandeel, eenheid of skuldbrief van daardie maatskappy te verkry, die datum waarop daardie opsie beëindig word; of 10
  - (ix) in enige ander geval, die datum van verandering in eienskapskap;
  - (b) die uitwissing van 'n bate insluitende by wyse van verbeuring, beëindiging, aflossing, intrekking, afgee, ontheffing, opgee, kwytstelling, laatvaarding, afstanddoening, verstryking of prysgawe, is die datum van die uitwissing van daardie bate; 15
  - (c) die onttrekking as uitgedien, verlies of vernietiging van 'n bate, is die datum—
    - (i) wanneer die volle vergoeding ten opsigte van daardie onttrekking, verlies of vernietiging ontvang word; of
    - (ii) indien geen vergoeding betaalbaar is nie, die laatste van die datum waarop die onttrekking, verlies of vernietiging ontdek is of die datum waarop vasgestel word dat geen vergoeding betaalbaar is nie; 20
  - (d) die vestiging van 'n belang in 'n bate van 'n trust in 'n begunstigde, is die datum waarop daardie belang vestig; 25
  - (e) die uitkering van 'n bate deur 'n maatskappy aan 'n aandeelhouer, is die datum waarop daardie bate aldus uitgekeer word soos in paragraaf 75 beoog;
  - (f) die afname van 'n persoon se belang in die maatskappy, trust of vennootskap as gevolg van 'n waardeverskuiwingsreëling, is die datum waarop die waarde van daardie persoon se belang afneem; of 30
  - (g) 'n gebeurtenis beoog in—
    - (i) paragraaf 12(2)(a), (b), (c), (d) of (e), paragraaf 12(3) of 12(4) is die datum onmiddellik voor die dag waarop daardie gebeurtenis plaasvind; of 35
    - (ii) paragraaf 12(2)(f) of 12(5), is die datum waarop daardie gebeurtenis plaasvind.
- (2) 'n Persoon aan wie oor 'n bate beskik is, word geag daardie bate te verkry het op die tydstip van beskikking oor daardie bate soos in subparagraaf (1) beoog.

#### Beskikking deur gade in gemeenskap van goed getroud

14. By die toepassing van hierdie Bylae, in die geval van gades in gemeenskap van goed getroud, waar enige eiendom oor beskik word deur een van die gades en daardie eiendom—

- (a) binne die gemeenskaplike boedel van die gades val, word daardie beskikking geag in gelyke dele deur elke gade gemaak te wees; en 45
- (b) van die gemeenskaplike boedel van die gades uitgesluit is, word daardie beskikking geag uitsluitlik deur die gade wat die beskikking gemaak het, gemaak te wees.

### DEEL IV

#### BEPERKING VAN VERLIESE

#### Persoonlike-gebruik vliegtuig, bote en sekere regte en belange

15. 'n Kapitaalverlies ten opsigte van die volgende bates van 'n persoon moet verontagsaam word by die vasstelling van die totale kapitaalwinst of totale kapitaalverlies van 'n persoon, tot die mate wat die bates gebruik word vir doeleindes anders as die beoefening van 'n bedryf: 55

- (a) 'n Vliegtuig met 'n leë massa wat 450 kg oorskry;
- (b) 'n boot wat tien meter in lengte oorskry;

- (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;
- (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).

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#### Disposal of options

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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.

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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;
- (b) immovable property, other than immovable property—

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- (c) enige fidusiêre belang, vruggebruik of ander soortgelyke belang, waarvan die waarde met die verloop van tyd afneem;
- (d) enige huur van onroerende eiendom; of
- (e) enige reg of belang van welke aard ookal tot of in 'n bate in items (a), (b), (c) of (d) beoog.

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#### Ontasbare bates voor waardasiedatum verkry

16. (1) 'n Persoon moet, by die vasstelling van die totale kapitaalwins of totale kapitaalverlies van daardie persoon, enige kapitaalverlies verontagsaam wat vasgestel is ten opsigte van die beskikking oor 'n ontasbare bate voor die waardasiedatum verkry—

- (a) vanaf 'n verbonde persoon met betrekking tot daardie persoon; of
- (b) wat geassosieer is met 'n besigheid wat deur daardie persoon of 'n verbonde persoon met betrekking tot daardie persoon oorgeneem is.

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(2) By die toepassing van subparagraaf (1), beteken 'ontasbare bate'—

- (a) klandisiewaarde;
- (b) enige patent soos omskryf in die Wet op Patente, 1978 (Wet No. 57 van 1978), of enige model soos omskryf in die Wet op Modelle, 1993 (Wet No. 195 van 1993), of enige handelsmerk soos omskryf in die Wet op Handelsmerke, 1993 (Wet No. 194 van 1993), of enige outeursreg soos omskryf in die Wet op Outeursreg, 1978 (Wet No. 98 van 1978), enige regte erken kragtens die Wet op Planttelersregte, 1976 (Wet No. 15 van 1976), of enige ontwerp, patroon, plan, formule of proses of enige ander eiendom of reg van 'n soortgelyke aard;
- (c) enige intellektuele eiendomsreg of eiendom of reg van 'n soortgelyke aard ten opsigte waarvan 'n eienaarsbelang gevestig kan word kragtens die gemene reg van die Republiek van Suid-Afrika; of
- (d) enige ander ontasbare eiendom behalwe 'n finansiële instrument.

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#### Verbeurde deposito's

17. (1) Waar—

- (a) 'n persoon 'n deposito gemaak het vir doeleindes van die verkryging van 'n bate wat nie bedoel is vir gebruik geheel en uitsluitlik vir besigheidsdoeleindes nie; en
- (b) daardie deposito verbeur is,

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moet die kapitaalverlies wat vasgestel word ten opsigte van daardie verbeuring verontagsaam word by die vasstelling van daardie persoon se totale kapitaalwins of totale kapitaalverlies.

(2) Subparagraaf (1) is nie van toepassing nie ten opsigte van—

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- (a) 'n muntstuk hoofsaaklik van goud of platinum gemaak, waarvan die markwaarde hoofsaaklik toe te skryf is aan die materiaal waarvan dit gemunt of gegiet is;
- (b) onroerende eiendom, behalwe onroerende eiendom bedoel om die primêre woning van daardie persoon te wees;
- (c) 'n finansiële instrument; of
- (d) enige reg of belang in enige bate in items (a), (b) of (c) beoog.

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#### Beskikking oor opsies

18. (1) Waar 'n persoon wat geregtig is om 'n opsie uit te oefen—

- (a) om 'n bate wat nie bedoel is om geheel en uitsluitlik vir besigheidsdoeleindes gebruik te word nie, te verkry; of
- (b) om oor 'n bate wat nie geheel en uitsluitlik vir besigheidsdoeleindes gebruik word nie, te beskik,

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daardie opsie prysgegee het, toegelaat het dat daardie opsie verstryk, of op enige ander wyse oor daardie opsie beskik het, anders as by wyse van die uitoefening daarvan, moet enige kapitaalverlies van daardie persoon wat vasgestel is ten opsigte van daardie verstryking verontagsaam word.

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(2) Subparagraaf (1) is nie van toepassing nie ten opsigte van—

- (a) 'n muntstuk hoofsaaklik van goud of platinum gemaak, waarvan die markwaarde hoofsaaklik toe te skryf is aan die materiaal waarvan dit gemunt of gegiet is;
- (b) onroerende eiendom, behalwe onroerende eiendom—

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- (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;

- (i) in die geval van subparagraaf (1)(a), wat bedoel is om die primêre woning te wees van die persoon wat geregtig is om die opsie uit te oefen; of
- (ii) in die geval van subparagraaf (1)(b), wat die primêre woning is van die persoon wat geregtig is om die opsie uit te oefen;
- (c) 'n finansiële instrument; of
- (d) enige reg of belang in daardie bates in items (a), (b) en (c) beoog.

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#### Verliese ten opsigte van beskikking oor sekere aandele

19. (1) Waar 'n persoon oor 'n aandeel in 'n maatskappy beskik binne twee jaar na die datum van verkryging deur daardie persoon van daardie aandeel, moet daardie persoon enige kapitaalverlies wat uit die beskikking voortvloei verontagsaam, tot die mate van enige buitengewone dividende ontvang deur of toegeval aan daardie persoon binne daardie tydperk ten opsigte van daardie aandeel.

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(2) Die bepalings van subparagraaf (1) is nie van toepassing nie tot die mate wat dividende ontvang is deur of toegeval het aan 'n houermaatskappy of tussenmaatskappy met betrekking tot die maatskappy wat die dividende uitkeer.

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(3) By die toepassing van hierdie paragraaf—

(a) sluit die tydperk van twee jaar nie enige dae in nie waartydens die persoon wat oor 'n aandeel beskik—

(i) 'n opsie het om te verkoop, onder 'n kontraktuele verpligting is om te verkoop, of 'n kortverkoop gemaak het (wat nie afgesluit is nie) van wesenlik soortgelyke finansiële instrumente;

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(ii) die verlener is van 'n opsie om wesenlik soortgelyke finansiële instrumente te koop; of

(iii) andersins die risiko van verlies met betrekking tot daardie aandeel verminder het deur een of meer teenoorgestelde posisies ten opsigte van wesenlik soortgelyke finansiële instrumente te hou;

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(b) beteken 'dividend' enige dividend soos in artikel 1 omskryf, maar sluit uit—

(i) enige buitelandse dividend soos in artikel 9E omskryf, wat in die belasbare inkomste van die persoon wat oor die aandeel beskik ingesluit is en enige buitelandse dividend wat van belasting vrygestel is kragtens artikel 9E(7)(e)(i);

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(ii) enige dividend deur 'n maatskappy in paragraaf (e) van die omskrywing van maatskappy beoog, verklaar; en

(iii) enige dividend in artikel 11(s) beoog;

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(c) beteken 'buitengewone dividende' soveel van enige dividende ontvang of toegeval binne die tydperk van twee jaar in subparagraaf (1) beoog, as wat 15 persent van die opbrengs ontvang of toegeval weens die beskikking oor die aandeel, te bowe gaan; en

(d) beteken 'houermaatskappy' en 'tussenmaatskappy', 'n 'houermaatskappy' en 'tussenmaatskappy' soos in artikel 64B van hierdie Wet omskryf.

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### DEEL V

#### BASISKOSTE

##### Basiskoste van bate

20. (1) Ondanks artikel 23(b) en (f), maar behoudens paragrawe 24 en 25 en subparagrawe (2) en (3), is die basiskoste van 'n bate verkry deur 'n persoon die som van—

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(a) die onkoste werklik aangegaan ten opsigte van die koste van verkryging of skepping van daardie bate;

(b) die onkoste werklik aangegaan ten opsigte van die waardasie van die bate vir doeleindes van die vasstelling van 'n kapitaalwinst of kapitaalverlies ten opsigte van die bate;

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(c) die volgende bedrae werklik aangegaan as onkoste wat direk verband hou met die verkryging van of beskikking oor daardie bate naamlik—

(i) die besoldiging van 'n landmeter, waardeerder, afslaer, rekenmeester, makelaar, agent, konsultant of regsadviseur, vir dienste gelewer;

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(ii) oordragkoste;

- (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; 5
- (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; 10
- (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 15
- (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; 20
- (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; 25
- (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— 30
  - (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); 35
 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; 40
- (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; 45
  - (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 50

- (iii) seëlregte, hereregte of soortgelyke regte;
- (iv) advertensiekoste om 'n verkoper of 'n koper te vind;
- (v) die koste om daardie bate van een plek na 'n ander te verskuif;
- (vi) die koste van installasie van daardie bate, insluitend die koste van fondasies en ondersteunende strukture; 5
- (vii) ondanks artikel 23(d), in die geval van die beskikking oor 'n bate deur 'n persoon by wyse van 'n skenking soos in paragraaf 38 beoog, soveel van enige belasting op geskenke betaalbaar deur daardie persoon ten opsigte van daardie skenking, soos ooreenkomstig paragraaf 22 bepaal;
- (viii) indien daardie persoon daardie bate by wyse van skenking verkry het en die belasting op geskenke ten opsigte van daardie skenking gehef deur daardie persoon betaal is, soveel van die belasting op geskenke wat in dieselfde verhouding tot die volle bedrag van die belasting op geskenke aldus betaalbaar staan, as wat die kapitaalwinst van die skenker vasgestel ten opsigte van die skenking in die verhouding tot die markwaarde van daardie bate op die datum van daardie skenking staan; 10 15
- (ix) indien daardie bate verkry is deur die uitoefening van 'n opsie (behalwe die uitoefening van 'n opsie in item (f) beoog), die onkoste werklik aangegaan ten opsigte van die verkryging van die opsie;
- (d) die onkoste werklik aangegaan vir doeleindes van die daarstelling, onderhoud of verdediging van 'n regstitel tot of in daardie bate; 20
- (e) die onkoste werklik aangegaan om 'n verbetering aan of verhoging in die waarde van daardie bate aan te bring, indien daardie verbetering of verhoging steeds in die toestand of aard van daardie bate op die tydstip van beskikking weergegee word; 25
- (f) indien daardie bate verkry is deur middel van die uitoefening na die waardasiedatum van 'n opsie voor die waardasiedatum verkry, die waardasiedatumwaarde van daardie opsie, welke waarde geag moet word as onkoste werklik aangegaan op waardasiedatum ten opsigte van daardie bate vir doeleindes van hierdie Deel; 30
- (g) die volgende bedrae werklik aangegaan as onkoste wat direk verband hou met die koste van eienaarskap van daardie bate, wat geheel en uitsluitlik vir besigheidsdoeleindes gebruik word of wat 'n aandeel genoteer op 'n erkende aandelebeurs of 'n belang in 'n effektegroepe daarstel—
  - (i) die koste om daardie bate in stand te hou, te herstel, te beveilig of te verseker; 35
  - (ii) waar die bate onroerende eiendom is, heffings of belasting op daardie eiendom;
  - (iii) rente soos in artikel 24J beoog ten opsigte van geld geleen om die onkoste in items (a) of (e) beoog ten opsigte van daardie bate direk te finansier (insluitende geld geleen om sodanige lenings te herfinansier): 40
 

Met dien verstande dat indien daardie bate 'n aandeel genoteer op 'n erkende aandelebeurs of 'n belang in 'n effektegroepe daarstel, die onkoste ten opsigte van daardie bate by die toepassing van hierdie subparagraaf met twee-derdes verminder moet word; 45
- (h) in die geval van—
  - (i) 'n handelseffek, enige wins ten opsigte van daardie verkryging wat in daardie persoon se inkomste kragtens artikel 8A ingesluit is, wat nie andersins in die koste van daardie verkryging ingesluit is nie;
  - (ii) enige ander bate, soveel van 'n bedrag ten opsigte van daardie verkryging as wat kragtens artikel 8(5) in daardie persoon se inkomste ingesluit is, of wat ingevolge paragraaf (i) van die omskrywing van 'bruto inkomste' in artikel 1 in daardie persoon se bruto inkomste ingesluit is, as wat nie andersins by die koste van daardie verkryging ingesluit is nie; 50 55
  - (iii) 'n belang in 'n beheerde buitelandse entiteit soos in artikel 9D omskryf, die proporsionele bedrag van die netto inkomste van daardie entiteit wat kragtens artikel 9D gedurende enige jaar van aanslag in die inkomste van daardie persoon ingesluit was, verminder met die bedrag van enige buitelandse dividend deur daardie entiteit aan daardie persoon gedurende enige jaar van aanslag uitgekeer wat kragtens artikel 9E(7)(e)(i) van belasting vrygestel was; of 60



- (iv) a value shifting arrangement, an amount determined in accordance with paragraph 23,

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  
(b) expenditure on repairs, maintenance, protection, insurance, rates and taxes, or similar expenditure,

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;  
(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 incurrance of the expense to which it relates);  
(c) has not been paid and is not due and payable in a year of assessment;

#### 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.

(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.

#### 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—

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

where—

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

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

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

where—

- (i) 'Y' represents the amount to be determined;

- (iv) 'n waardeverskuiwingsreëling, 'n bedrag ooreenkomstig paragraaf 23 vasgestel,

wat by die toepassing van hierdie Deel geag moet word as onkoste aangegaan ten opsigte van die verkryging van daardie bate.

(2) Die basiskoste van 'n bate deur 'n persoon verkry sluit nie enige van die volgende bedrae in nie— 5

(a) leenkoste, insluitende enige rente soos in artikel 24J beoog of leningskommissie; en

(b) onkoste aan herstelwerk, onderhoud, beskerming, versekering, heffings en belastinge of soortgelyke onkoste, 10

behalwe leenkoste en onkoste in subparagraaf (1)(g) beoog.

(3) Die basiskoste van 'n bate deur 'n persoon verkry moet verminder word met enige bedrag wat kragtens subparagrafe (1) en (2) ingesluit is, wat—

(a) as 'n aftrekking toelaatbaar is of was by die vasstelling van belasbare inkomste van daardie persoon voor die insluiting van enige belasbare kapitaalwins; 15

(b) wat vir enige rede verhaal is of verhaalbaar geword het van of wat betaal is deur enige ander persoon (hetsy voor of na die aangaan van die onkoste waarmee dit verband hou);

(c) nie betaal is nie en nie in 'n jaar van aanslag verskuldig en betaalbaar is nie.

#### Beperking van onkoste 20

21. (1) Waar, as dit nie was vir die bepalinge van hierdie subparagraaf nie, 'n bedrag as 'n toelaatbare onkoste kwalifiseer of gekwalifiseer het of andersins in ag geneem mag word by die vasstelling van 'n kapitaalwins of kapitaalverlies kragtens meer as een bepaling van hierdie Bylae, word daardie bedrag of gedeelte daarvan nie as 'n onkoste toegelaat of meer as een keer in ag geneem by die vasstelling van daardie kapitaalwins of kapitaalverlies nie. 25

(2) Geen onkoste word kragtens paragraaf 20(1)(a) of (e) toegelaat nie waar enige bedrag van daardie onkoste kragtens enige ander bepaling van hierdie Bylae toelaatbaar is, ongeag of daardie ander bepaling 'n beperking op die bedrag van die onkoste plaas.

#### Bedrag van belasting op geskenke in basiskoste ingesluit te word 30

22. Die bedrag van die belasting op geskenke betaalbaar deur 'n persoon ten opsigte van die beskikking oor 'n bate wat kragtens paragraaf 20(1)(c)(vii) in ag geneem kan word, word vasgestel ooreenkomstig die formule—

$$Y = \frac{(M - A)}{M} \times D \quad 35$$

waar—

(a) 'Y' die bedrag wat vasgestel moet word, verteenwoordig;

(b) 'M' die markwaarde verteenwoordig van die bate wat geskenk is ten opsigte waarvan die belasting op geskenke betaalbaar is; 40

(c) 'A' alle bedrae verteenwoordig wat in ag geneem mag word by die vasstelling van die basiskoste van die bate kragtens hierdie Deel (behalwe paragraaf 20(1)(c)(vii)); en

(d) 'D' die totale bedrag van die belasting op geskenke wat aldus betaalbaar is verteenwoordig. 45

Met dien verstande dat waar die bedrag in 'A' ingesluit groter is as die bedrag in 'M' ingesluit, sal die bedrag van die belasting op geskenke wat kragtens paragraaf 20(1)(c)(vii) in ag geneem word nul wees.

#### Basiskoste ten opsigte van waardeverskuiwingsreëling

23. In die geval van 'n beskikking by wyse van 'n waardeverskuiwingsreëling— 50

(a) word die basiskoste van 'n persoon se belang waarop paragraaf 11(1)(g) van toepassing is, bereken ingevolge die formule

$$Y = \frac{(A - C)}{A} \times B \quad 55$$

waar—

(i) 'Y' die bedrag wat vasgestel moet word verteenwoordig;

- (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
- (iv) 'C' is the market value of that person's interests immediately after the disposal. 5
- (b) the base cost of a person—
  - (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) 10 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 15 resulted in the acquisition of that interest.

#### 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. 20

(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— 25

- (a) the expenditure allowable in terms of paragraph 20 incurred in respect of that asset prior to that date; or 30
- (b) those proceeds less the expenditure allowable in terms of paragraph 20 incurred after that date in respect of that asset.

(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— 35

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

#### 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. 45

#### 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— 50



- (ii) 'A' die markwaarde van daardie persoon se belange onmiddellik voor die beskikking verteenwoordig;
- (iii) 'B' die persoon se basiskoste in die belange bereken onmiddellik voor die beskikking verteenwoordig; en
- (iv) 'C' die markwaarde van die persoon se belange onmiddellik na die beskikking verteenwoordig; 5
- (b) word die basiskoste van 'n persoon—
  - (i) wie se belange as gevolg van 'n waardeverskuiwingsreëling in subparagraaf (a) beoog in waarde toeneem het, vermeerder met daardie gedeelte van die opbrengs van die beskikking in paragraaf 35(2) beoog ten opsigte van die waardeverskuiwingsreëling wat die toename in die markwaarde van daardie persoon se belang tot gevolg gehad het; of 10
  - (ii) wat 'n direkte of indirekte belang in die maatskappy, trust of vennootskap verkry, bepaal as daardie gedeelte van die opbrengs van die beskikking in paragraaf 35(2) beoog ten opsigte van die waardeverskuiwingsreëling wat die verkryging van daardie belang tot gevolg gehad het. 15

#### Basiskoste van bate van persoon wat 'n inwoner word

24. (1) Die basiskoste van 'n bate, behalwe 'n bate in die Republiek geleë wat in paragraaf 2(1)(b)(i) en (ii) gelys is, wat verkry is voor 'n persoon 'n inwoner geword het, is die som van die waarde van daardie bate ingevolge subparagrafe (2) of (3) vasgestel en die onkoste ingevolge paragraaf 20 toelaatbaar wat na die waardasiedatum ten opsigte van daardie bate aangegaan is. 20

(2) Waar 'n bate van 'n persoon wat 'n inwoner word soos in paragraaf 12(4) beoog, oor beskik is deur 'n persoon na die datum waarop daardie persoon begin het om 'n inwoner te wees en beide die opbrengs van daardie beskikking en die onkoste kragtens paragraaf 20 toelaatbaar wat voor daardie datum ten opsigte van die bate aangegaan is minder is as die markwaarde van die bate op daardie datum, moet daardie persoon geag word asof die persoon die bate verkry het teen 'n koste gelyk aan die hoogste van— 25

- (a) die onkoste kragtens paragraaf 20 toelaatbaar wat voor daardie datum ten opsigte van daardie bate aangegaan is; of 30
- (b) daardie opbrengs verminder met die onkoste kragtens paragraaf 20 toelaatbaar wat na daardie datum ten opsigte van daardie bate aangegaan is.

(3) Waar 'n bate in paragraaf 12(4) beoog oor beskik is deur 'n persoon na die datum waarop daardie persoon begin het om 'n inwoner te wees en beide die opbrengs van die beskikking oor daardie bate en die markwaarde van daardie bate op die datum waarop daardie persoon begin het om 'n inwoner te wees minder is as die onkoste kragtens paragraaf 20 toelaatbaar wat voor daardie datum ten opsigte van daardie bate aangegaan is, moet daardie persoon geag word daardie bate te verkry het teen 'n koste gelyk aan die hoogste van— 35

- (a) daardie markwaarde; of 40
- (b) daardie opbrengs verminder met die onkoste kragtens paragraaf 20 toelaatbaar wat na daardie datum ten opsigte van daardie bate aangegaan is.

#### Vasstelling van basiskoste van voor-waardasiedatumbates

25. Die basiskoste van 'n voor-waardasiedatumbate is die som van die waardasiedatumwaarde van daardie bate, soos vasgestel kragtens paragraaf 26 of 27, en die onkoste kragtens paragraaf 20 toelaatbaar wat na die waardasiedatum ten opsigte van daardie bate aangegaan is. 45

Waardasiedatumwaarde waar opbrengs onkoste te bowe gaan of waar onkoste ten opsigte van 'n bate nie vasgestel kan word nie 50

26. (1) Behoudens paragraaf 32(5), waar die opbrengs van die beskikking oor 'n voor-waardasiedatumbate (behalwe 'n bate in paragraaf 28 beoog) die onkoste kragtens paragraaf 20 toelaatbaar, wat beide voor en na die waardasiedatum ten opsigte van daardie bate aangegaan is, te bowe gaan, moet die persoon wat oor daardie bate beskik het, behoudens subparagraaf (3), enige van die volgende as die waardasiedatumwaarde van daardie bate aanneem— 55



- (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.
- (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—
- (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.
- (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—
- (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.

#### 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—
- (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.
- (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—
- (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.

#### 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—

- (a) die markwaarde van die bate op die waardasiedatum soos in paragraaf 29 beoog;
  - (b) 20 persent van die opbrengs van die beskikking oor die bate, na aftrekking van daardie opbrengs van 'n bedrag gelyk aan die onkoste kragtens paragraaf 20 toelaatbaar wat na waardasiedatum aangegaan is; of
  - (c) die tydtoedelingsbasiskoste van die bate soos in paragraaf 30 beoog.
- (2) Waar die onkoste wat voor die waardasiedatum ten opsigte van 'n voor-waardasiedatumbate aangegaan is nie deur die persoon wat oor daardie bate beskik het of deur die Kommissaris vasgestel kan word nie, moet daardie persoon enige van die volgende as die waardasiedatumwaarde van daardie bate aanneem—
- (a) die markwaarde van die bate op die waardasiedatum soos in paragraaf 29 beoog; of
  - (b) 20 persent van die opbrengs van die beskikking oor die bate, na aftrekking van daardie opbrengs van 'n bedrag gelyk aan die onkoste kragtens paragraaf 20 toelaatbaar wat na waardasiedatum aangegaan is.
- (3) Waar 'n persoon die markwaarde as die waardasiedatumwaarde van daardie bate aangeneem het soos in subparagraaf (1)(a) beoog en die opbrengs van die beskikking oor daardie bate nie daardie markwaarde oorskry nie, moet daardie persoon die waardasiedatumwaarde van die bate vervang met die hoogste van—
- (a) die onkoste kragtens paragraaf 20 toelaatbaar wat voor die waardasiedatum ten opsigte van daardie bate aangegaan is; of
  - (b) daardie opbrengs verminder met die onkoste kragtens paragraaf 20 toelaatbaar wat na die waardasiedatum ten opsigte van daardie bate aangegaan is.

#### Waardasiedatumwaarde waar opbrengs nie onkoste oorskry nie

27. (1) Behoudens paragraaf 32(5), waar die opbrengs van die beskikking oor 'n voor-waardasiedatumbate (anders as 'n bate in paragraaf 28 beoog) nie die onkoste kragtens paragraaf 20 toelaatbaar wat voor en na die waardasiedatum ten opsigte van daardie bate aangegaan is, oorskry nie, en die persoon wat oor die bate beskik het—
- (a) nie die markwaarde op die waardasiedatum in paragraaf 29 beoog bepaal het nie, is die waardasiedatumwaarde van daardie bate die tydtoedelingsbasiskoste van daardie bate soos in paragraaf 30 beoog;
  - (b) die markwaarde van die bate op die waardasiedatum bepaal het soos in paragraaf 29 beoog, moet daardie persoon, behoudens subparagraaf (2), die waardasiedatumwaarde van die bate aanneem, synde die laagste van—
    - (i) die markwaarde; of
    - (ii) die tydtoedelingsbasiskoste van daardie bate soos in paragraaf 30 beoog.
- (2) Waar die onkoste kragtens paragraaf 20 toelaatbaar, wat voor die waardasiedatum ten opsigte van 'n bate in subparagraaf (1) beoog aangegaan is, beide die opbrengs van die beskikking oor daardie bate en die markwaarde van daardie bate op waardasiedatum oorskry, moet daardie persoon die waardasiedatumwaarde van die bate aanneem, synde die hoogste van—
- (a) die markwaarde; of
  - (b) daardie opbrengs verminder met die onkoste kragtens paragraaf 20 toelaatbaar wat na die waardasiedatum ten opsigte van daardie bate aangegaan is.

#### Waardasiedatumwaarde van 'n instrument

28. Die waardasiedatumwaarde van 'n instrument soos in artikel 24J omskryf is—
- (a) die aangepaste aanvangsbedrag soos kragtens daardie artikel op die waardasiedatum vasgestel is; of
  - (b) die markwaarde van daardie instrument kragtens paragraaf 31 vasgestel.

#### Markwaarde op waardasiedatum

29. (1) Die markwaarde op die waardasiedatum van—
- (a) 'n finansiële instrument op 'n erkende beurs genoteer en waarvoor 'n prys gekwoteer is op daardie beurs beide voor en na die waardasiedatum is, behoudens subparagraaf (2), in die geval van 'n finansiële instrument genoteer op 'n beurs—

- (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
- (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; 5
- (b) an asset which is not listed on a recognised exchange and which constitutes a right of a unit holder in—
  - (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 10
  - (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; 15
- (c) any other asset, the market value determined in terms of paragraph 31 on valuation date. 20
- (2) Where—
  - (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 25
  - (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, 30

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. 35

- (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. 40- (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—
  - (a) the market value of that asset exceeds R10 million; 45
  - (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, 50

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).

- (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; 55
  - or
  - (b) any other asset which has been valued,



- (i) in die Republiek, die prys deur die Kommissaris in die *Staatskoerant* gepubliseer, wat die gemiddeld daarstel van die laaste prys gekwoteer ten opsigte van daardie finansiële instrument op die erkende beurs op elk van die vyf dae van handel wat die waardasiedatum voorafgaan; en
- (ii) buite die Republiek en wat nie op enige beurs in die Republiek genoteer is nie, die laaste prys gekwoteer ten opsigte van daardie finansiële instrument op daardie erkende beurs op die laaste dag van handel wat die waardasiedatum voorafgaan; 5
- (b) 'n bate wat nie op 'n erkende beurs genoteer is nie en wat 'n reg van 'n effekthouer daarstel in— 10
- (i) enige maatskappy in paragraaf (e)(i) van die omskrywing van 'maatskappy' in artikel 1 van die Wet beoog, of enige effektegroepe bevat in enige effektrustskema in eiendomsaandeel in die Republiek bedryf, die prys deur die Kommissaris in die *Staatskoerant* gepubliseer, wat die gemiddeld daarstel van die prys waarteen 'n eenheid aan die bestuursmaatskappy van die skema verkoop kon word vir die laaste vyf dae van handel wat die waardasiedatum voorafgaan; 15
- (ii) enige reëling of skema in paragraaf (e)(ii) van die omskrywing van 'maatskappy' beoog, die laaste koopprys voor die waardasiedatum gepubliseer waarteen 'n effek aan die bestuursmaatskappy van die skema verkoop kon word of waar daar nie 'n bestuursmaatskappy is nie, die prys wat behaal kon word met die verkoop van die bate tussen 'n gewillige koper en 'n gewillige verkoper wat onder uiterste voorwaardes in 'n ope mark beding is; 20
- (c) enige ander bate, die markwaarde op die waardasiedatum kragtens paragraaf 31 vasgestel. 25
- (2) Waar—
- (a) 'n persoon 'n beherende belang in 'n maatskappy hou waarvan die aandeel op 'n erkende beurs genoteer is, en daardie totale beherende belang oor beskik word aan 'n ander persoon (wat nie 'n verbonde persoon met betrekking tot daardie persoon is nie), wat die totale beherende belang verkry; en 30
- (b) die prys per aandeel waarvoor daardie beherende belang oor beskik is afwyk van die laaste gekwoteerde prys ten opsigte van daardie aandeel op die datum voor die aankondiging van die transaksie, 35
- moet die waardasiedatummarkwaarde van daardie aandeel aldus oor beskik soos ooreenkomstig subparagraaf (1)(a) vasgestel, vermeerder of verminder word, na gelang van die geval, met 'n bedrag wat in dieselfde verhouding tot die markwaarde staan as wat die bedrag van die afwyking tot die laaste prys aldus gekwoteer staan.
- (3) By die toepassing van hierdie paragraaf—
- (a) is die laaste prys gekwoteer vir 'n spesifieke dag die gemiddelde van die aankoops- en verkoopspryse by die afsluiting van besigheid op daardie dag gekwoteer; en 40
- (b) beteken 'beherende belang' in 'n maatskappy 'n belang in meer as 50 persent van die ekwiteitsaandelekapitaal van daardie maatskappy.
- (4) By die toepassing van paragrafe 26(1)(a) en 27(1)(b) kan 'n persoon slegs die markwaarde as die waardasiedatumwaarde van daardie bate aanneem indien daardie persoon daardie bate binne twee jaar na die waardasiedatum waardeur het. 45
- (5) Ondanks subparagraaf (4), waar 'n persoon 'n bate waardeur het en—
- (a) die markwaarde van daardie bate R10 miljoen te bowe gaan; of
- (b) daardie bate 'n ontasbare bate is (behalwe finansiële instrumente) en die markwaarde daarvan R1 miljoen te bowe gaan; of 50
- (c) daardie bate 'n ongenoteerde aandeel in 'n maatskappy is en die markwaarde van al die aandeel deur daardie persoon in daardie maatskappy gehou R10 miljoen te bowe gaan,
- kan daardie persoon slegs die markwaarde as die waardasiedatumwaarde van daardie bate aanneem indien daardie persoon bewys van daardie waardasie aan die Kommissaris verskaf het in die vorm wat die Kommissaris mag voorskryf, met die eerste opgawe deur daardie persoon na die tydperk in subparagraaf (4) beoog ingedien. 55
- (6) Waar 'n persoon beskik oor—
- (a) 'n bate in subparagraaf (5)(a), (b) of (c) beoog wat waardeur is voordat bewys van die waardasie ingedien is soos in daardie subparagraaf beoog; of 60
- (b) enige ander bate wat waardeur is,



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)—

(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.

(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—

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

where—

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

(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);

(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;

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

(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—

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

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;

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

#### 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;

(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—

(i) the amount which would be payable to the policyholder upon the surrender of that policy on that day; or

moet daardie persoon bewys indien van daardie waardasie met die opgawe vir die jaar van aanslag waartydens daar oor daardie bate beskik is.

(7) Die Kommissaris kan, ondanks enige bewys van waardasie deur 'n persoon by die Kommissaris ingedien soos in subparagraaf (5) of (6) beoog—

- (a) enige verdere inligting of dokumente met betrekking tot daardie waardasie aanvra; of 5
- (b) waar die Kommissaris nie tevrede is met enige waarde waarteen 'n bate gewaardeer is nie, kan die Kommissaris die waarde dienooreenkomstig aanpas.

(8) Die tydperk in subparagraaf (4) beoog kan deur die Minister by kennisgewing in die *Staatskoerant* verleng word. 10

### Tydtoedelingsbasiskoste

30. (1) Die tydtoedelingsbasiskoste van 'n voor-waardasiedatumbate word vasgestel ooreenkomstig die formule

$$Y = \frac{B + [(P - B) \times N]}{T + N}, \quad 15$$

waar—

- (a) 'Y' die bedrag vasgestel te word, verteenwoordig;
- (b) 'B' die bedrag van die onkoste kragtens paragraaf 20 toelaatbaar ten opsigte van daardie bate wat aan die periode van eienaarskap voor die waardasiedatum toeskryfbaar is, verteenwoordig; 20
- (c) 'P' die opbrengs kragtens paragraaf 35 vasgestel, as gevolg van die beskikking oor daardie bate, of waar subparagraaf (2) van toepassing is, die bedrag van die opbrengs aan die onkoste in 'B' toeskryfbaar soos ingevolge subparagraaf (2) vasgestel, verteenwoordig; 25
- (d) 'N' die aantal jare of deel daarvan van eienaarskap van die bate voor die waardasiedatum, welke aantal jare nie 20 mag oorskry nie in die geval waar die toelaatbare onkoste kragtens paragraaf 20 ten opsigte van daardie bate in meer as een jaar voor die waardasiedatum aangegaan is, verteenwoordig; 30
- (e) 'T' die aantal jare of deel daarvan van eienaarskap van die bate na die waardasiedatum, verteenwoordig.

(2) Waar die totale bedrag van onkoste kragtens paragraaf 20 toelaatbaar ten opsigte van die voor-waardasiedatumbate aangegaan is gedurende meer as een jaar van aanslag, moet die opbrengs wat by die vasstelling van die tydtoedelingsbasiskoste van die bate gebruik word, vasgestel word ooreenkomstig die formule— 35

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

waar— 40

- (a) 'P' die bedrag vasgestel te word, verteenwoordig;
- (b) 'T' die totale bedrag van die opbrengs ingevolge paragraaf 35 vasgestel as gevolg van die beskikking oor die voor-waardasiedatumbate, verteenwoordig;
- (c) 'A' die bedrag van onkoste kragtens paragraaf 20 toelaatbaar ten opsigte van die bate wat op of na die waardasiedatum aangegaan is, verteenwoordig; 45
- (d) 'B' die bedrag van onkoste kragtens paragraaf 20 toelaatbaar ten opsigte van die bate wat voor die waardasiedatum aangegaan is, verteenwoordig.

### Markwaarde

31. (1) Die markwaarde van—

- (a) 'n bate wat 'n finansiële instrument is wat op 'n erkende beurs genoteer is en waarvoor daar 'n prys op daardie beurs gekwoteer is, is die gemiddelde van die aankoop- en verkooppryse ten opsigte van daardie finansiële instrument op daardie erkende beurs gekwoteer by die afsluiting van besigheid op die laaste dag van handel voor die beskikking oor daardie finansiële instrument; 50
- (b) 'n bate wat 'n langtermynversekeringspolis is, synde 'n polis soos in artikel 1 van die Wet op Langtermynversekering, 1998 (Wet No. 52 van 1998), omskryf, die grootste van— 55
  - (i) die bedrag wat aan die polishouer by die aflossing van daardie polis op daardie dag betaalbaar sou gewees het; of

- (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—
- (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
  - (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;
- (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;
- (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);
- (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—
- (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.
- (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.
- (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—
- (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



- (ii) die bedrag wat volgens die versekeraar die billike markwaarde is van daardie polis indien dit vir die oorblywende polisteryn sou voortbestaan soos vasgestel op daardie dag;
- (c) 'n bate wat nie op 'n erkende beurs genoteer is nie en wat 'n reg van 'n eenheidshouer daarstel in— 5
- (i) enige maatskappy in paragraaf (e)(i) van die omskrywing van 'maatskappy' in artikel 1 van die Wet beoog, of enige effektegroepe wat deel uitmaak van 'n effekterustskema in eiendomsaandeel in die Republiek bedryf, die prys waarteen 'n eendeel aan die bestuursmaatskappy van die skema op die dag van beskikking verkoop kan word; of 10
- (ii) enige reëling of skema in paragraaf (e)(ii) van die omskrywing van 'maatskappy' beoog, die prys waarteen 'n eendeel aan die bestuursmaatskappy van die skema op die dag van beskikking verkoop kan word of waar daar nie 'n bestuursmaatskappy is nie die prys wat verkry sou kon word vir 'n verkoop van die bate tussen 'n gewillige koper en 'n gewillige verkoper wat onder uiterste voorwaardes in 'n ope mark beding is; 15
- (d) 'n fidusiële reg, vruggebruik of ander soortgelyke reg in enige eiendom, 'n bedrag vasgestel deur die kapitalisering teen 12 persent van die jaarlikse waarde van die reg van genot van die eiendom onderhewig aan sodanige fidusiële reg, vruggebruik of ander soortgelyke reg, soos ingevolge subparagraaf (2) bepaal, oor die verwagte lewensduur van die persoon wat op daardie belang geregtig is, of indien daardie reg van genot vir 'n korter tydperk as die lewe van die persoon gehou word, oor daardie korter tydperk; 20
- (e) enige eiendom wat aan 'n fidusiële reg, vruggebruik of ander soortgelyke reg ten gunste van enige persoon onderhewig is, die bedrag waarmee die billike markwaarde van die volle eiendomsreg van sodanige eiendom die waarde van daardie fidusiële reg, vruggebruik of ander soortgelyke reg vasgestel ooreenkomstig item (d), te bowe gaan; 25
- (f) in die geval van enige bate wat onroerende eiendom daarstel waarop 'n *bona fide* boerderyonderneming bedryf word, behoudens subparagraaf (4), of— 30
- (i) die waarde van die eiendom vasgestel soos in paragraaf (b) van die omskrywing van 'billike markwaarde' in artikel 1 van die Boedelbelastingwet, 1955 (Wet No. 45 van 1955), beoog; of 35
- (ii) die prys in item (g) beoog;
- (g) enige ander bate, die prys wat verkry sou kon word met die verkoop van die bate tussen 'n gewillige koper en gewillige verkoper wat onder uiterste voorwaardes in 'n ope mark beding is.
- (2) By die toepassing van subparagraaf (1)(d) beteken die jaarlikse waarde van die reg van genot van enige eiendom wat aan 'n fidusiële reg, vruggebruik of ander soortgelyke reg in enige eiendom onderhewig is, 'n bedrag gelyk aan 12 persent van die billike markwaarde van die volle eiendomsreg van die eiendom: Met dien verstande dat waar die Kommissaris tevrede is dat die eiendom wat aan daardie belang onderhewig is nie redelikerwys verwag kan word om 'n jaarlikse opbrengs van 12 persent van die waarde van die eiendom te behaal nie, kan die Kommissaris sodanige som vasstel wat die jaarlikse opbrengs verteenwoordig as wat vir hom redelik mag voorkom, en die som aldus vasgestel moet by die toepassing van subparagraaf (1)(d) geag word as synde die jaarlikse waarde van die reg van genot van sodanige eiendom te wees. 40
- (3) Die markwaarde van enige aandele van 'n persoon in 'n maatskappy wat nie op 'n erkende beurs genoteer is nie, moet vasgestel word teen 'n waarde gelyk aan die prys wat verkry sou kon word met die verkoop van die aandeel tussen 'n gewillige koper en gewillige verkoper wat onder uiterste voorwaardes in 'n ope mark beding is, behoudens die volgende— 45
- (a) geen ag geslaan moet word op enige bepaling— 50
- (i) wat die oordraagbaarheid van die aandele daarin beperk, en daardie aandele word beskou vryelik oordraagbaar te wees;
- (ii) waarmee of waarkragtens die waarde van die aandele vasgestel moet word nie; 55
- (b) indien by likwidasië van die maatskappy daardie persoon op 'n groter deel van die bates van die maatskappy geregtig sou gewees het *pro rata* volgens aandeelbesit as ander aandeelhouers, moet die waarde van die aandele deur daardie aandeelhouer gehou nie minder wees nie as die bedrag waarop die 60



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.

aandeelhouer aldus geregtig sou gewees het indien die maatskappy in 'n proses van likwidasië was en daardie bedrag vasgestel was soos op waardasiedatum.

(4) Die waarde in subparagraaf (1)(f)(i) beoog mag slegs gebruik word by die afsterwe van 'n persoon of wanneer daar oor die onroerende eiendom beskik word by wyse van 'n skenking of 'n transaksie nie onder uiterste voorwaardes in 'n ope mark beding nie, indien—

(a) daardie waarde vir doeleindes van paragraaf 26 of 27 gebruik is; of

(b) die persoon die onroerende eiendom by wyse van skenking of erfenis of 'n transaksie wat nie onder uiterste voorwaardes in 'n ope mark beding is nie, teen daardie waarde verkry het.

### Basiskoste van identiese bates

32. (1) Hierdie paragraaf is van toepassing op die beskikking oor bates wat deel uitmaak van 'n besit van identiese bates.

(2) By die toepassing van hierdie paragraaf beteken 'identiese bates' 'n groep van soortgelyke bates wat—

(a) indien daar oor een van hulle beskik is, dieselfde bedrag sou gerealiseer het ongeag watter een van hulle aldus oor beskik is; en

(b) nie individueel onderskei kan word nie buiten enige identifiserende nommers wat hulle mag dra.

(3) Die basiskoste van identiese bates kan vasgestel word deur die gebruik van een van die volgende metodes—

(a) spesifieke identifikasie;

(b) eerste in eerste uit; of

(c) geweegde gemiddelde.

(4) By die toepassing van die geweegde gemiddelde-metode, word die gemiddelde koste van identiese bates bereken na elke verkryging van 'n bate deur die koste van die nuutverkreë bates te tel by die basiskoste van die bates op hande en daardie bedrag deur die nuwe totale aantal bates te deel.

(5) 'n Persoon kan nie die tydtoedelingsbasiskoste van 'n bate aanneem nie waar die geweegde gemiddelde-metode om die basiskoste van daardie bate vas te stel, gebruik word.

(6) Sodra 'n persoon een van die metodes in subparagraaf (3) voorgeskryf ten opsigte van die besit van identiese bates aangeneem het, moet daardie metode gebruik word totdat daar oor al daardie identiese bates beskik is.

### Gedeeltelike beskikkings

33. (1) Behoudens subparagrafe (2) en (3), waar oor 'n gedeelte van 'n bate beskik word, is die gedeelte van die basiskoste toeskryfbaar aan die gedeelte waaroor beskik is 'n bedrag wat in dieselfde verhouding tot die basiskoste van die totale bate staan as wat die markwaarde van die gedeelte waaroor beskik is in die verhouding tot die markwaarde van die totale bate onmiddellik voor daardie beskikking staan.

(2) Waar 'n gedeelte van die basiskoste van 'n bate direk toegeskryf kan word aan die gedeelte van die bate waaroor beskik is of wat behou is, dan is die toedeling in subparagraaf (1) beoog nie van toepassing nie ten opsigte van daardie gedeelte van die basiskoste.

(3) By die toepassing van subparagraaf (1), moet die verlening van 'n opsie ten opsigte van 'n bate nie geag word 'n gedeeltelike beskikking oor daardie bate te wees nie.

### Skuldvervanging

34. Waar 'n persoon 'n skuld deur daardie persoon aan 'n krediteur verskuldig verminder of aflos deur oor 'n bate aan daardie krediteur te beskik, word die bate geag verkry te gewees het deur die krediteur teen 'n koste gelyk aan die markwaarde van daardie bate op die tydstip van daardie beskikking.

## 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.

## DEEL VI

## OPBRENGS

## Opbrengs van beskikking

35. (1) Behoudens subparagrafe (2), (3) en (4), is die opbrengs van die beskikking oor 'n bate deur 'n persoon gelyk aan die bedrag ontvang deur of toegeval aan, of wat geag word ontvang te gewees het deur of toe te geval het aan of ten gunste van, daardie persoon as gevolg van daardie beskikking, en sluit dit in— 5
- (a) die bedrag waarmee enige skuld deur daardie persoon verskuldig verminder of afgelos is; en
  - (b) enige bedrag ontvang deur of toegeval aan 'n huurder vanaf die verhuurder van eiendom vir verbeterings aan sodanige eiendom aangebring. 10
- (2) Die bedrag van die opbrengs van 'n beskikking by wyse van 'n waardeverskuiwingsreëling word vasgestel as die markwaarde van die persoon se belange ten opsigte waarvan subparagraaf 11(1)(g) van toepassing is onmiddellik voor die beskikking, verminder met die markwaarde van die persoon se belange onmiddellik na die beskikking, welke bedrag geag word ontvang te gewees het deur of toe te geval het aan daardie persoon. 15
- (3) Die opbrengs van die beskikking oor 'n bate deur 'n persoon, soos in subparagraaf (1) beoog, moet verminder word met—
- (a) enige bedrag van die opbrengs wat ingesluit moet word of was in die bruto inkomste van daardie persoon of wat in ag geneem moet word of was by die vasstelling van die belasbare inkomste van daardie persoon voor die insluiting van enige belasbare kapitaalwins; 20
  - (b) enige bedrag van die opbrengs wat terugbetaal is or wat terugbetaalbaar geword het aan die persoon aan wie oor die bate beskik is; of 25
  - (c) enige vermindering, as gevolg van die kansellasië, beëindiging or wysiging van 'n ooreenkoms of weens die verjaring of afstanddoening van 'n eis of onthefing van 'n verpligting of enige ander gebeurtenis, van 'n toegevalle bedrag wat deel uitmaak van die opbrengs van daardie beskikking.
- (4) Waar 'n persoon gedurende enige jaar van aanslag geregtig geword het op enige bedrag wat betaalbaar is op 'n datum of datums wat na die laaste dag van daardie jaar val, moet daardie bedrag geag word aan daardie persoon toe te geval het gedurende daardie jaar. 30

## Beskikking oor vennootskapsbate

36. Die opbrengs van die beskikking oor 'n vennoot se belang in 'n bate van die vennootskap moet geag word toe te geval het aan daardie vennoot op die tydstip van daardie beskikking. 35

## Bates van trust en maatskappy

37. (1) Waar—
- (a) 'n bate in paragraaf 15 beoog wat nie gebruik word vir doeleindes van die beoefening van 'n bedryf nie of 'n bate wat, indien dit deur 'n natuurlike persoon besit sou gewees het, 'n persoonlike gebruiksbate in paragraaf 53 beoog sou wees, deur 'n trust of 'n maatskappy besit word waarvan enige belang of die aandeel direk of indirek deur 'n natuurlike persoon gehou word; 40
  - (b) daar 'n afname is in die markwaarde van daardie bate terwyl dit deur daardie trust of maatskappy gehou word nadat daardie persoon 'n belang in daardie trust of maatskappy verkry het; en 45
  - (c) enige belang in daardie trust of daardie maatskappy daarna deur 'n persoon oor beskik word, 50
- moet daardie persoon geag word asof die persoon oor daardie belang beskik het vir 'n opbrengs gelyk aan die markwaarde van daardie belang, vasgestel op die datum van beskikking, asof die markwaarde van daardie bate nie afgeneem het nie.
- (2) Subparagraaf (1) is nie van toepassing nie waar meer as 50 persent van die bates van die trust of maatskappy uit bates bestaan wat geheel en uitsluitlik vir bedryfsdoeleindes gebruik word. 55



**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.

**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).

(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.

(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—

- (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,

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.

(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—

- (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.

(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**

41. (1) Where—

**Beskikking by wyse van skenking, vergoeding nie meetbaar in geld nie en transaksies tussen verbonde persone teen prys nie onder uiterste voorwaardes beding nie**

38. Behoudens paragraaf 67, waar 'n persoon oor 'n bate beskik het by wyse van 'n skenking of teen vergoeding wat nie in geld meetbaar is nie of aan 'n persoon wat 'n verbonde persoon is met betrekking tot daardie persoon teen vergoeding wat nie onder uiterste voorwaardes in 'n ope mark beding is nie—

- (a) moet die persoon wat oor daardie bate beskik het geag word oor daardie bate te beskik het vir 'n opbrengs gelyk aan die markwaarde van daardie bate soos op die datum van daardie beskikking; en
- (b) moet die persoon wat daardie bate verkry het geag word daardie bate te verkry het teen 'n koste gelyk aan daardie markwaarde.

**Kapitaalverlies vasgestel ten opsigte van beskikkings aan sekere verbonde persone**

39. (1) 'n Persoon moet, by die vasstelling van daardie persoon se totale kapitaalwinst of totale kapitaalverlies, enige kapitaalverlies vasgestel ten opsigte van die beskikking oor 'n bate aan enige verbonde persoon met betrekking tot daardie persoon, behoudens subparagraaf (3), verontagsaam.

(2) 'n Persoon se kapitaalverlies wat kragtens subparagraaf (1) verontagsaam word mag afgetrek word van daardie persoon se kapitaalwinst vasgestel ten opsigte van die beskikkings oor bates gedurende daardie jaar of daaropvolgende jare aan dieselfde persoon aan wie die beskikking wat tot daardie kapitaalverlies aanleiding gegee het gemaak is, indien op die tydstip van daardie daaropvolgende beskikkings, daardie persoon steeds 'n verbonde persoon met betrekking tot daardie persoon is.

(3) By die toepassing van hierdie paragraaf, sluit 'n verbonde persoon met betrekking tot 'n natuurlike persoon nie in 'n familielid van daardie persoon nie behalwe 'n gade, ouer, kind, stiefkind, broer, suster, kleinkind of grootouer van daardie persoon.

**Beskikking aan en van bestorwe boedel**

40. (1) 'n Oorlede persoon moet geag word oor sy of haar bates te beskik het, behalwe—

- (a) bates oorgedra aan die langselewende gade van daardie oorlede persoon soos in paragraaf 67(2)(a) beoog;
- (b) bates bemaak aan 'n goedgekeurde openbare weldaadsorganisasie soos in paragraaf 62 beoog; of
- (c) 'n langtermynversekeringspolis van die oorledene wat indien die opbrengs van die polis ontvang sou gewees het deur of toegeval het aan die oorledene, die kapitaalwinst of kapitaalverlies vasgestel ten opsigte van daardie beskikking kragtens paragraaf 55 verontagsaam sou word,

aan sy of haar bestorwe boedel vir 'n opbrengs gelyk aan die markwaarde van daardie bates soos op die datum van daardie persoon se dood, en die bestorwe boedel moet geag word as daardie bates te verkry het teen 'n koste gelyk aan daardie markwaarde.

(2) Waar 'n bestorwe boedel oor 'n bate aan 'n erfgenaam of legataris beskik (behalwe die langselewende gade van daardie oorlede persoon soos in paragraaf 67(2)(a) beoog of 'n goedgekeurde weldaadsorganisasie soos in paragraaf 62 beoog) of 'n trustee van 'n trust, moet—

- (a) die bestorwe boedel geag word oor daardie bate te beskik het vir 'n opbrengs gelyk aan die basiskoste van die bestorwe boedel ten opsigte van daardie bate; en
- (b) die erfgenaam, legataris of trustee geag word daardie bate te verkry het vir 'n koste gelyk aan die basiskoste van die bestorwe boedel ten opsigte van daardie bate.

(3) By die toepassing van hierdie Bylae, moet die beskikking oor 'n bate deur die bestorwe boedel van 'n natuurlike persoon behandel word op dieselfde wyse asof oor daardie bate beskik is deur daardie natuurlike persoon.

**Belasting betaalbaar deur erfgenaam van bestorwe boedel**

41. (1) Waar—

- (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,
- 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).
- (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

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—
- (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).
- (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—
- (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
- (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.

#### 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.
- (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—
- (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



- (a) die belasting kragtens hierdie Wet vasgestel, wat verband hou met die belasbare kapitaalwins van 'n oorlede persoon, 50 persent van die netto waarde van die boedel vasgestel vir doeleindes van die Boedelbelastingwet, 1955, te bowe gaan, voor die bedrag van daardie belasting aldus vasgestel in berekening gebring is; en

- (b) die eksekuteur van die boedel oor enige bate van die boedel moet beskik ten einde die bedrag van daardie belasting te betaal,

kan enige erfgenaam of legataris van die boedel, wat op daardie bate in item (b) beoog geregtig sou wees indien daar geen aanspreeklikheid vir belasting was nie, kies dat daardie bate aan daardie erfgenaam of legataris oorgemaak word op voorwaarde dat die bedrag belasting wat 50 persent van daardie netto waarde te bowe gaan deur hom of haar betaal word binne 'n tydperk van drie jaar na die datum waarop die eksekuteur toestemming verkry het om die bates van die boedel te verdeel soos in artikel 35(12) van die Boedelwet, 1965 (Wet No. 66 van 1965), beoog.

(2) Enige bedrag belasting deur 'n erfgenaam betaalbaar soos in subparagraaf (1) beoog, is 'n skuld aan die staat verskuldig en moet geag word as 'n bedrag belasting kragtens hierdie Wet hefbaar wat deur daardie persoon verskuldig is.

#### Korttermynbeskikkings en -verkrygings van identiese finansiële instrumente

42. (1) Waar 'n kapitaalverlies vasgestel word ten opsigte van die beskikking deur 'n persoon oor 'n finansiële instrument en daardie persoon of 'n verbonde persoon met betrekking tot daardie persoon, behoudens subparagraaf (3), binne 'n tydperk wat 45 dae voor die datum van daardie beskikking begin en 45 dae na daardie datum eindig, 'n finansiële instrument van dieselfde soort of van dieselfde of gelyke gehalte verkry of 'n ooreenkoms aangaan om te verkry—

- (a) moet die persoon wat oor die finansiële instrument beskik het geag word daarvoor te beskik het vir 'n opbrengs gelyk aan die basiskoste daarvan; en

- (b) moet die persoon wat die finansiële instrument van dieselfde soort of dieselfde of gelyke gehalte verkry het geag word daardie finansiële instrument te verkry het teen 'n koste gelyk aan enige bedrag kragtens paragraaf 20 toelaatbaar, tesame met die bedrag van enige kapitaalverlies wat sou ontstaan het in die hande van die persoon wat oor die bate beskik het, was dit nie vir die werking van item (a) nie.

(2) By die toepassing van subparagraaf (1) moet daar nie by die vasstelling van die tydperk van 91 dae in ag geneem word nie enige dae waarin die persoon wat oor die finansiële instrument beskik—

- (a) 'n opsie het om te verkoop, onder 'n kontraktuele verpligting is om te verkoop of 'n kortverkoop gemaak het (wat nie afgesluit is nie) van 'n finansiële instrument van dieselfde soort en van dieselfde of gelyke gehalte;

- (b) die verlener is van 'n opsie om 'n finansiële instrument van dieselfde soort en van dieselfde of gelyke gehalte te koop; of

- (c) andersins die risiko van verlies ten opsigte van daardie aandeel verminder het deur een of meer teenoorgestelde posisies te hou ten opsigte van 'n finansiële instrument van dieselfde soort en van dieselfde of gelyke gehalte.

(3) By die toepassing van hierdie paragraaf, sluit 'n verbonde persoon met betrekking tot 'n natuurlike persoon nie 'n familielid van daardie persoon in nie behalwe 'n gade, ouer, kind, stiefkind, broer, suster, kleinkind of grootouer van daardie persoon.

#### Bates oor beskik of verkry in buitelandse geldeenheid

43. (1) Waar 'n persoon oor 'n bate beskik vir 'n opbrengs wat in 'n buitelandse geldeenheid aangetoon word nadat 'n onkoste ten opsigte van daardie bate in dieselfde geldeenheid aangegaan is, moet daardie persoon die wins of verlies by die beskikking vasstel deur beide daardie opbrengs en die onkoste aangegaan na die geldeenheid van die Republiek om te skakel teen die heersende wisselkoers op die datum van beskikking.

(2) Waar 'n persoon oor 'n bate beskik vir 'n opbrengs wat in enige geldeenheid aangetoon word (hierna die 'geldeenheid van beskikking' genoem) nadat onkoste ten opsigte van daardie bate in 'n ander geldeenheid (hierna die 'geldeenheid van onkoste' genoem) aangegaan is, moet daardie persoon—

- (a) die wins of verlies by die beskikking vasstel deur beide die opbrengs en die onkoste aangegaan na die geldeenheid van die Republiek om te skakel teen die heersende wisselkoers op die datum van beskikking; en



- (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.
- (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—

'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 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 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 belonging thereto and enjoyed therewith.

#### General principle

45. (1) Subject to subparagraphs (2) and (3), a natural person or a special trust must, 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 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 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—

- (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 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,

- (b) die kapitaalwins of kapitaalverlies kragtens Deel XIII vasstel asof daardie persoon oor die geldeenheid van onkoste beskik het vir die geldeenheid van die beskikking.
- (3) By die toepassing van hierdie paragraaf het die term 'heersende wisselkoers' dieselfde betekenis soos in artikel 241 omskryf.

## DEEL VII

### PRIMÊRE WONING-UITSLUITING

#### Woordomskrywing

44. In hierdie Deel, tensy die samehang anders aandui, beteken—

- 'n belang'—
- (a) enige saaklike of statutêre reg; of
  - (b) 'n aandeel direk besit in 'n aandeelblokmaatskappy soos omskryf in die Wet op die Beheer van Aandeelblokke, 1980 (Wet No. 59 van 1980), of 'n aandeel in 'n soortgelyke entiteit wat nie 'n inwoner is nie; of
  - (c) 'n reg van gebruik of okkupasie, maar uitgesluit 'n reg kragtens 'n huisleningsverband of 'n belang in 'n trust.
- 'primêre woning' 'n woning—
- (a) waarin 'n natuurlike persoon of 'n spesiale trust 'n belang hou; en
  - (b) wat daardie persoon of 'n begunstigde van daardie trust of 'n gade van daardie persoon of begunstigde—
    - (i) gewoonlik in woonagtig is of was as sy of haar hoofwoning; en
    - (ii) hoofsaaklik vir huishoudelike doeleindes gebruik of gebruik het.
- 'woning' enige struktuur, insluitende 'n boot, woonwa of mobiele woning, wat as 'n plek van bewoning deur 'n natuurlike persoon gebruik word, tesame met enige aanhangsels wat daartoe behoort en wat daarmee geniet word.

#### Algemene beginsel

45. (1) Behoudens subparagrafe (2) en (3), moet 'n natuurlike persoon of 'n spesiale trust by die vasstelling van 'n totale kapitaalwins of totale kapitaalverlies, soveel van 'n kapitaalwins of kapitaalverlies ten opsigte van die beskikking oor die primêre woning van daardie persoon of daardie trust vasgestel verontagsaam as wat nie R1 miljoen te bowe gaan nie.
- (2) Waar meer as een natuurlike persoon of spesiale trust op dieselfde tydstip 'n belang in 'n primêre woning hou, moet die bedrag wat ingevolge subparagraaf (1) verontagsaam moet word, toegedeel word in verhoudig tot elke belang aldus gehou.
- (3) Behoudens paragraaf 48, kan slegs een woning 'n primêre woning van 'n persoon of 'n spesiale trust wees vir enige tydperk waartydens daardie persoon of daardie trust 'n belang in meer as een woning gehou het.

#### Grootte van residensiële eiendom wat vir uitsluiting kwalifiseer

46. Waar deur 'n persoon oor 'n primêre woning beskik word tesame met die grond waarop dit geleë is, is die bepalings van paragraaf 45 van toepassing ten opsigte van soveel van daardie grond, insluitende ongekonsolideerde aangrensende grond, wat—
- (a) nie twee hektaar oorskry nie;
  - (b) hoofsaaklik vir huishoudelike doeleindes tesame met daardie woning gebruik word; en
  - (c) op dieselfde tydstip en aan dieselfde persoon as daardie woning oor beskik is.

#### Toedeling ten opsigte van tydperke nie gewoonlik woonagtig nie

47. Behoudens paragraaf 48, waar—
- (a) 'n natuurlike persoon of spesiale trust oor 'n belang in 'n woning wat 'n primêre woning is of was beskik; en
  - (b) daardie persoon of 'n begunstigde van daardie trust of 'n gade van daardie persoon of begunstigde, nie deurgaans gedurende die tydperk op of na die waardasiedatum waartydens daardie persoon of trust daardie belang gehad het gewoonlik in daardie woning woonagtig was nie,

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.

#### **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

moet die gedeelte van die kapitaalwins of kapitaalverlies wat kragtens paragraaf 45 verontagsaam moet word, vasgestel word met verwysing na die gedeelte van daardie tydperk waartydens daardie persoon, begunstigde of gade aldus gewoonlik woonagtig was.

#### Beskikking oor en verkryging van primêre woning

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48. 'n Natuurlike persoon of 'n begunstigde van 'n spesiale trust moet by die toepassing van paragraaf 47 geag word gewoonlik woonagtig te gewees het in 'n woning vir 'n aaneenlopende tydperk (wat nie twee jaar oorskry nie), indien daardie persoon nie in daardie woning gedurende daardie tydperk gewoon het nie vir enige van die volgende redes—

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- (a) op die tydstip waarop die woning daardie persoon se primêre woning was, was dit te koop aangebied en ontruim weens die verkryging of voorgenome verkryging van 'n nuwe primêre woning;
- (b) daardie woning is opgerig op grond wat vir daardie doel verkry is ten einde gebruik te word as daardie persoon se primêre woning;
- (c) die woning is weens 'n ongeluk onbewoonbaar gemaak; of
- (d) die dood van daardie persoon.

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#### Nie-residensiële gebruik

49. Behoudens paragraaf 50—

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- (a) waar 'n natuurlike persoon of spesiale trust—
  - (i) oor 'n belang in 'n primêre woning beskik; of
  - (ii) oor 'n belang in 'n woning beskik wat 'n primêre woning was vir 'n gedeelte van die tydperk op of na die waardasiedatum waartydens daardie persoon of trust daardie belang gehou het; en
- (b) waar daardie persoon of 'n begunstigde van daardie trust die woning in subparagraaf (a) bedoel of 'n gedeelte daarvan vir enige gedeelte van die tydperk op of na die waardasiedatum waartydens daardie persoon of trust daardie belang gehou het gebruik het vir doeleindes om 'n bedryf te beoefen,

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moet die gedeelte van die kapitaalwins of kapitaalverlies wat kragtens paragraaf 45 verontagsaam moet word, vasgestel word met verwysing na die tydperk op of na die waardasiedatum waartydens daardie persoon of begunstigde daardie woning vir huishoudelike doeleindes gebruik het asook na die deel van daardie woning wat deur daardie persoon of begunstigde hoofsaaklik vir doeleindes anders as die beoefening van 'n bedryf gebruik is.

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#### Huurtydperke

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50. 'n Natuurlike persoon of 'n begunstigde van 'n spesiale trust of 'n gade van daardie persoon of begunstigde moet by die toepassing van paragraaf 49 geag word as 'n woning vir huishoudelike doeleindes te gebruik het gedurende enige aaneenlopende tydperk van afwesigheid daarvan (wat nie vyf jaar oorskry nie) terwyl daardie woning verhuur was, indien—

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- (a) daardie persoon of begunstigde of gade daardie woning bewoon het as 'n primêre woning vir 'n aaneenlopende tydperk van minstens een jaar voor en na enige sodanige tydperk;
- (b) geen ander woning as die primêre woning van daardie persoon of begunstigde gedurende enige sodanige tydperk geag was nie; en
- (c) daardie persoon of begunstigde of gade—
  - (i) tydelik van die Republiek afwesig was; of
  - (ii) in diens was of betrokke was in die dryf van 'n besigheid in die Republiek op 'n plek verder as 250 kilometer vanaf daardie woning.

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#### Oordrag van 'n primêre woning van 'n maatskappy of trust

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51. (1) Waar 'n belang in 'n woning vanuit 'n maatskappy of trust aan 'n natuurlike persoon oorgedra is soos in subparagraaf (2) beoog, moet—

- (a) daardie maatskappy of trust geag word oor daardie woning te beskik het teen markwaarde op die waardasiedatum; en

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- (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) daardie natuurlike persoon geag word daardie primêre woning te verkry het teen markwaarde op die waardasiedatum.
- (2) Subparagraaf (1) is van toepassing waar—
- (a) daardie natuurlike persoon daardie woning vanaf daardie maatskappy of trust op of na die datum van afkondiging van die Wysigingswet op Belastingwette, 2001, maar nie later nie as 30 September 2002, verkry het; 5
- (b) daardie natuurlike persoon—
- (i) alleen of tesame met sy of haar gade direk al die aandeelkapitaal in daardie maatskappy gehou het vanaf 5 April 2001 tot die datum van registrasie in die aktesregistrasiekantoor van daardie woning in die naam van daardie natuurlike persoon of sy of haar gade of gesamentlik in hulle name; of 10
- (ii) oor daardie woning aan daardie trust beskik het by wyse van 'n skenking, oormaking of ander beskikking of al die onkoste, soos in paragraaf 20 beoog, werklik deur die trust aangegaan om die woning te verkry en te verbeter, befonds het; 15
- (c) daardie natuurlike persoon alleen of tesame met sy of haar gade persoonlik en gewoonlik in daardie woning woonagtig was en dit hoofsaaklik vir huishoudelike doeleindes gebruik het as sy of haar of hulle gewone woning vanaf 5 April 2001 tot die datum van daardie registrasie; en 20
- (d) daardie registrasie in die aktesregistrasiekantoor in die naam van daardie persoon, sy of haar gade of gesamentlik in hulle name nie later nie as 31 Maart 2003 plaasvind:
- Met dien verstande dat die bepalings van hierdie paragraaf slegs van toepassing is ten opsigte van dié gedeelte van die eiendom in paragraaf 46 beoog. 25

## DEEL VIII

### ANDER UITSLUITINGS

#### Algemene beginsel

52. Kapitaalwinste en kapitaalverliese moet by die vasstelling van die totale kapitaalwinst of totale kapitaalverlies van 'n persoon verontagsaam word in die omstandighede en in die mate soos in hierdie Deel uiteengesit. 30

#### Persoonlike gebruiksates

53. (1) 'n Natuurlike persoon of 'n spesiale trust moet 'n kapitaalwinst of kapitaalverlies soos vasgestel ten opsigte van die beskikking oor 'n persoonlike gebruiksate in subparagraaf (2) beoog, verontagsaam. 35
- (2) 'n Persoonlike gebruiksate is 'n bate van 'n natuurlike persoon of 'n spesiale trust wat hoofsaaklik gebruik word vir doeleindes anders as die beoefening van 'n bedryf.
- (3) Persoonlike gebruiksates sluit nie in nie—
- (a) 'n muntstuk hoofsaaklik van goud of platinum gemaak waarvan die markwaarde hoofsaaklik toeskryfbaar is aan die materiaal waarvan dit gemunt of gegiet is; 40
- (b) onroerende eiendom;
- (c) 'n vliegtuig waarvan die leë massa 450 kilogram oorskry;
- (d) 'n boot langer as tien meter in lengte;
- (e) 'n finansiële instrument; 45
- (f) enige fidusiêre reg, vruggebruik of ander soortgelyke reg, waarvan die waarde met verloop van tyd afneem; en
- (g) 'n reg of belang van welke aard ookal tot of in 'n bate in items (a) tot (f) beoog.

#### Aftrevoordele

54. 'n Persoon moet 'n kapitaalwinst of kapitaalverlies verontagsaam wat vasgestel is ten opsigte van 'n beskikking wat die ontvangs deur daardie persoon tot gevolg het van— 50

- (a) 'n enkelbedragvoordeel soos in die Tweede Bylae omskryf;

- (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;
- (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—
- (i) that other person's interest in the partnership concerned; or
  - (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.

### 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.

### 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.

(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
- (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

- (b) 'n enkelbedragvoordeel betaal vanuit 'n fonds, reëling of instrument buite die Republiek geleë wat soortgelyke voordele onder soortgelyke voorwaardes as 'n pensioen-, voorsorgs- of uittredingsannuïteitfondse kragtens hierdie Wet goedgekeur voorsien.

### Langtermynversekering

55. 'n Persoon moet enige kapitaalwins of kapitaalverlies verontagsaam wat vasgestel is ten opsigte van 'n beskikking wat die ontvangs deur of toevalling aan daardie persoon tot gevolg het van 'n bedrag—

- (a) ten opsigte van 'n polis in artikel 29A omskryf, aangegaan met 'n versekeraar soos in daardie artikel omskryf, waar daardie persoon—
- (i) die oorspronklike voordelige eienaar of een van die oorspronklike voordelige eienaars van die polis is;
  - (ii) die gade, genomineerde of afhanklike soos in die Wet op Pensioenfondse, 1956 (Wet No. 24 van 1956), beoog, of die bestorwe boedel van die oorspronklike voordelige eienaar van die relevante polis is en geen bedrag betaal was of betaalbaar is of betaalbaar sal word nie, hetsy direk of indirek, ten opsigte van die sessie van daardie polis vanaf die voordelige eienaar van daardie polis aan daardie gade, genomineerde of afhanklike;
  - (iii) die voormalige gade van die oorspronklike voordelige eienaar is en daardie polis aan daardie gade gesedeer is as gevolg van 'n egskeidingsbevel of, in die geval van 'n verbintenis in paragraaf (b) of (c) van die omskrywing van 'gade' in artikel 1 van hierdie Wet beoog, 'n ooreenkoms vir die verdeling van bates wat 'n bevel van die hof gemaak is;
- (b) ten opsigte van enige polis uitgeneem op die lewe van 'n werknemer of direkteur beoog in artikel 11(w);
- (c) ten opsigte van 'n polis wat oorspronklik uitgeneem is op die lewe van enige ander persoon wat die vennoot van daardie persoon was, of wat enige aandeel of soortgelyke belang gehou het in 'n maatskappy waarin daardie persoon enige aandeel of soortgelyke belang gehou het, met die doel om daardie persoon in staat te stel om, na die afsterwe van daardie ander persoon, die geheel of 'n gedeelte te verkry van—
- (i) daardie ander persoon se belang in die betrokke vennootskap; of
  - (ii) daardie ander persoon se aandeel of soortgelyke belang in daardie maatskappy en enige eis van daardie ander persoon teen daardie maatskappy,
- en geen premie op die polis betaal of gedra was deur daardie ander persoon of enige verbonde persoon met betrekking tot daardie ander persoon nie;
- (d) ten opsigte van 'n polis oorspronklik op die lewe van 'n persoon uitgeneem, waar daardie polis aan daardie persoon of afhanklike voorsien is deur of as gevolg van sy of haar lidmaatskap van 'n pensioen-, voorsorgs- of uittredingsannuïteitfondse.

### Skuldnetigverklaring

56. Waar 'n skuldeiser oor 'n eis wat deur 'n skuldenaar, wat 'n verbonde persoon met betrekking tot daardie skuldeiser is, verskuldig is beskik, moet daardie skuldeiser enige kapitaalverlies ten gevolge van daardie beskikking verontagsaam.

### Beskikking oor kleinbesigheidsbates

57. (1) By die toepassing van hierdie paragraaf, beteken 'kleinbesigheid' 'n besigheid waarvan die markwaarde van al sy bates, soos op die datum van die beskikking oor die bate of belang in subparagraaf (2) beoog, nie R5 miljoen te bowe gaan nie.

(2) Behoudens subparagrafe (3), (4) en (5), moet 'n natuurlike persoon by die vasstelling van 'n totale kapitaalwins of totale kapitaalverlies, 'n kapitaalwins vasgestel verontagsaam ten opsigte van die beskikking oor—

- (a) 'n aktiewe besigheidsbate van 'n kleinbesigheid deur daardie natuurlike persoon as 'n alleeneienaar besit; of
- (b) 'n belang in elk van die aktiewe besigheidsbates van 'n besigheid, wat as 'n kleinbesigheid kwalifiseer, deur 'n vennootskap besit, by daardie natuurlike



withdrawal from that partnership to the extent of his or her interest in that partnership; or

- (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,

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  
(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).

(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).

(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**

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.

#### **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.

(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**

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.

- persoon se onttrekking van daardie vennootskap tot die mate van sy of haar belang in daardie vennootskap; of
- (c) 'n totale direkte belang in 'n maatskappy (wat bestaan uit minstens 10 persent van die ekwiteit van daardie maatskappy), tot die mate wat die belang verband hou met die aktiewe besigheidsbates van die besigheid, wat as 'n kleinbesigheid kwalifiseer, van daardie maatskappy, 5
- indien daardie persoon op die tydstip van daardie beskikking daardie aktiewe besigheidsbate, belang in die vennootskap of belang in die maatskappy (na gelang van die geval) vir 'n aaneenlopende tydperk van ten minste vyf jaar voor daardie beskikking vir sy of haar eie voordeel gehou het en wesenlik by die bedrywighede van die besigheid van daardie kleinbesigheid betrokke was gedurende daardie tydperk, en— 10
- (i) die ouderdom van 55 jaar bereik het; of
- (ii) die beskikking geskied as gevolg van swak gesondheid, ander gebrek, ouderdom of afsterwe.
- (3) Die som van die bedrae wat deur 'n natuurlike persoon verontagsaam mag word soos in subparagraaf (2) beoog, mag nie R500 000 gedurende daardie natuurlike persoon se lewe oorskry nie. 15
- (4) 'n Natuurlike persoon moet alle kapitaalwinste wat kragtens subparagraaf (2) kwalifiseer binne 'n tydperk van 24 maande wat op die datum van die eerste beskikking in subparagraaf (2) beoog begin, realiseer. 20
- (5) Waar 'n natuurlike persoon meer as een kleinbesigheid bedryf hetsy by wyse van 'n alleeneienaarskap, 'n vennootskapsbelang of 'n direkte belang in die ekwiteit van 'n maatskappy bestaande uit minstens 10 persent, dan kan hy of sy behoudens subparagraaf (4) en (6), elke sodanige kleinbesigheid insluit by die vasstelling van die bedrag wat kragtens subparagraaf (2) verontagsaam moet word. 25
- (6) Die bepalinge van hierdie paragraaf is nie van toepassing nie waar 'n persoon meer as een besigheid besit hetsy by wyse van 'n alleeneienaarskap, 'n vennootskapsbelang of 'n direkte belang in die ekwiteit van 'n maatskappy bestaande uit minstens 10 persent, en die totale markwaarde van alle bates ten opsigte van al daardie besighede R5 miljoen te bowe gaan. 30

#### Uitoefening van opsies

58. 'n Kapitaalwins of kapitaalverlies van 'n persoon vasgestel ten opsigte van die beëindiging van die opsie as gevolg van die uitoefening deur daardie persoon van 'n opsie, moet verontagsaam word.

#### Vergoeding vir persoonlike besering, siekte of naamskending

59. 'n Natuurlike persoon of 'n spesiale trust moet 'n kapitaalwins of 'n kapitaalverlies verontagsaam vasgestel ten opsigte van 'n beskikking wat tot gevolg het dat daardie persoon of daardie trust, na gelang van die geval, vergoeding vir 'n persoonlike besering, siekte of naamskending van daardie persoon of 'n begunstigde van daardie trust ontvang. 40

#### Dobbel, spele en wedstryde

60. (1) 'n Persoon moet 'n kapitaalwins of kapitaalverlies vasgestel ten opsigte van 'n beskikking wat verband hou met enige vorm van dobbel, spel of wedstryd, verontagsaam.

- (2) Ondanks subparagraaf (1), mag 'n kapitaalwins nie verontagsaam word nie— 45
- (a) deur 'n persoon anders as 'n natuurlike persoon; of
- (b) waar die vorm van dobbel, spel of wedstryd nie gemagtig is of bedryf word, kragtens die wette van die Republiek nie.

#### Effektetrustfondse

61. 'n Effektegroep bevat in 'n effekte-trustskema bestuur of bedryf deur enige maatskappy geregistreer as 'n bestuursmaatskappy kragtens artikel 4 of 30 van die Wet op Beheer van Effekte-trustskemas, 1981 (Wet No. 54 van 1981), moet enige kapitaalwins of kapitaalverlies verontagsaam. 50

**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.

**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.

**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.

**PART IX****ROLL-OVERS****Involuntary disposal**

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

- (a) a person disposes of an asset other than a financial instrument by way of expropriation, loss 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.

**Skenkings en bemakings aan openbare weldaadsorganisasies**

62. 'n Persoon moet enige kapitaalwins of kapitaalverlies vasgestel ten opsigte van die skenking of bemaking van 'n bate deur daardie persoon aan 'n openbare weldaadsorganisasie deur die Kommissaris kragtens artikel 30 goedgekeur, verontagsaam.

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**Vrygestelde persone**

63. 'n Persoon moet enige kapitaalwins of kapitaalverlies ten opsigte van die beskikking oor 'n bate waar al die ontvangstes en toevallings van daardie persoon kragtens artikel 10 van belasting vrygestel is, verontagsaam.

**Bate gebruik om vrygestelde inkomste voort te bring**

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64. 'n Persoon moet enige kapitaalwins of kapitaalverlies ten opsigte van die beskikking oor 'n bate, wat uitsluitlik gebruik word om bedrae voort te bring wat kragtens artikel 10 vrygestel is, anders as ontvangstes en toevallings in paragrawe (i)(xv), (k) en (m) van subartikel (1) daarvan beoog, verontagsaam.

**DEEL IX**

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**OORROLLE****Onvrywillige beskikking**

65. (1) Behoudens subparagrafe (2), (3) en (4), waar—

(a) 'n persoon oor 'n bate, behalwe 'n finansiële instrument, beskik by wyse van onteiening, verlies of vernietiging;

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(b) opbrengs toeval aan daardie persoon by wyse van vergoeding vir daardie onteiening, verlies of vernietiging;

(c) daardie opbrengs die basiskoste van daardie bate te bowe gaan; en

(d) daardie persoon die Kommissaris tevrede stel dat—

(i) 'n bedrag gelyk aan daardie opbrengs aangewend is of sal word om daardie bate te vervang;

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(ii) 'n kontrak binne 'n jaar vanaf die datum van beskikking oor daardie bate aangegaan is of sal word om daardie bate met 'n soortgelyke bate te vervang; en

(iii) die vervangingsbate binne drie jaar na die beskikking oor daardie bate, in gebruik geneem is of sal word,

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moet daardie persoon, by die vasstelling van daardie persoon se totale kapitaalwins of totale kapitaalverlies, die kapitaalwins ten opsigte van daardie beskikking verontagsaam en die bedrag van daardie verontagsaamde kapitaalwins word, gedurende die jaar waarin oor die vervangingsbate beskik word, geag 'n kapitaalwins te wees by die vasstelling van daardie persoon se totale kapitaalwins of totale kapitaalverlies.

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(2) Waar daar 'n beskikking plaasvind, soos in subparagraaf (1) beoog, deur 'n persoon wat nie 'n inwoner is nie van 'n bate in die Republiek geleë, kan 'n bate slegs geag word 'n vervangingsbate te wees by die toepassing van subparagraaf (1), waar daardie bate 'n bate soos in paragraaf 2(1)(b) beoog is.

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(3) Die Kommissaris kan die tydperke in subparagraaf (1)(d) beoog met 'n maksimum van ses maande verleng indien alle redelike stappe geneem is om 'n kontrak te sluit of om die vervangingsbate in gebruik te neem, na gelang van die geval.

(4) Waar 'n persoon versuim om 'n kontrak aan te gaan of versuim om 'n vervangingsbate in gebruik te neem binne die voorgeskrewe tydperk moet daardie persoon—

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(a) die verontagsaamde kapitaalwins in subparagraaf (1) beoog ag as 'n kapitaalwins op die datum waarop daardie voorgeskrewe tydperk verstyk, by die vasstelling van daardie persoon se totale kapitaalwins of totale kapitaalverlies;

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(b) rente bereken teen die voorgeskrewe koers op daardie kapitaalwins vanaf die datum van daardie beskikking tot op die datum in item (a) beoog; en

(c) daardie rente 'n kapitaalwins op die datum in item (a) beoog ag te wees by die vasstelling van daardie persoon se totale kapitaalwins of totale kapitaalverlies.

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**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

**Herbelegging in vervangingsbates**

66. (1) Behoudens paragraaf 65 en subparagrafe (2), (3), (4) en (5), waar—
- (a) 'n persoon oor 'n bate beskik wat vir 'n kapitaalvermindering of aftrekking kragtens artikel 11(e), 12B, 12C, 14 of 14bis kwalifiseer;
  - (b) die opbrengs ontvang of toegeval as gevolg van daardie beskikking die basiskoste van daardie bate te bowe gaan; 5
  - (c) daardie persoon die Kommissaris tevrede stel dat—
    - (i) 'n bedrag gelyk aan daardie opbrengs aangewend is of sal word om daardie bate te vervang;
    - (ii) 'n kontrak binne 'n jaar vanaf die datum van die beskikking oor daardie bate aangegaan is of sal word om daardie bate met 'n vervangingsbate te vervang wat sal kwalifiseer vir 'n aftrekking wat soortgelyk is aan die kapitaalvermindering of aftrekking waarvoor daardie bate aldus vervang gekwalifiseer het; en 10
    - (iii) die vervangingsbate binne 'n jaar na die beskikking oor daardie bate in gebruik geneem is of sal word, 15
 

moet daardie persoon, by die vasstelling van daardie persoon se totale kapitaalwins of totale kapitaalverlies, die kapitaalwins op daardie bate verontagsaam en moet 20 persent van die verontagsaamde kapitaalwins as 'n kapitaalwins geag word by die vasstelling van daardie persoon se totale kapitaalwins of totale kapitaalverlies vir die jaar van aanslag waarin daardie vervangingsbate in gebruik geneem word en in elk van die daaropvolgende vier jare van aanslag. 20
- (2) Waar daar 'n beskikking, soos in subparagraaf (1) beoog, is deur 'n persoon wat nie 'n inwoner is nie, van 'n bate in die Republiek geleë, kan daardie bate slegs beskou word as 'n vervangingsbate by die toepassing van subparagraaf (1) waar die bate 'n bate in paragraaf 2(1)(b) beoog is. 25
- (3) Die Kommissaris kan die tydperke in subparagraaf (1)(c) beoog met 'n maksimum van ses maande verleng indien alle redelike stappe geneem is om 'n kontrak te sluit of om die vervangingsbate in gebruik te neem, na gelang van die geval. 30
- (4) Waar 'n persoon versuim om 'n kontrak aan te gaan of versuim om 'n vervangingsbate in gebruik te neem binne die voorgeskrewe tydperk moet daardie persoon—
- (a) 'n verontagsaamde kapitaalwins in subparagraaf (1) beoog, ag 'n kapitaalwins te wees op die datum waarop daardie voorgeskrewe tydperk verstryk wanneer daardie persoon se totale kapitaalwins of totale kapitaalverlies vasgestel word; 35
  - (b) rente bereken teen die voorgeskrewe koers op daardie kapitaalwins vanaf die datum van daardie beskikking tot op die datum in item (a) beoog; en
  - (c) daardie rente ag 'n kapitaalwins te wees op die datum in item (a) beoog by die vasstelling van daardie persoon se totale kapitaalwins of totale kapitaalverlies. 40
- (5) Waar 'n persoon gedurende enige jaar van aanslag oor 'n vervangingsbate beskik of ophou om 'n vervangingsbate te gebruik vir doeleindes van daardie persoon se bedryf en enige gedeelte van die verontagsaamde kapitaalwins, in subparagraaf (1) beoog, nie as 'n kapitaalwins by die vasstelling van daardie persoon se totale kapitaalwins of totale kapitaalverlies vir daardie jaar van aanslag of enige vorige jaar van aanslag geag was nie, moet daardie gedeelte geag word 'n kapitaalwins te wees by die vasstelling van daardie persoon se totale kapitaalwins of totale kapitaalverlies vir daardie jaar van aanslag. 45

**Oordrag van bate tussen gades**

67. (1) Waar 'n persoon oor 'n bate beskik aan sy of haar gade, moet die persoon wat oor daardie bate beskik geag word oor die bate te beskik het vir 'n opbrengs gelyk aan die basiskoste van die bate en die gade wat die bate verkry moet geag word die bate te verkry het teen 'n koste van dieselfde bedrag.
- (2) By die toepassing van subparagraaf (1)— 55
- (a) moet 'n oorlede persoon geag word oor 'n bate aan sy of haar langselewende gade beskik het, indien daardie bate toeval aan die langselewende gade by die afsterwe van daardie persoon; of

- (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.

#### 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—

- (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,

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—

- (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



- (b) moet 'n persoon geag word oor 'n bate aan sy of haar gade te beskik het, indien daardie bate aan daardie gade oorgedra is as gevolg van 'n egskeidingsbevel, of in die geval van 'n verbintenis in paragraaf (b) of (c) van die omskrywing van 'gade' in artikel 1 van hierdie Wet beoog, 'n ooreenkoms ten aansien van die verdeling van bates wat 'n bevel van die hof gemaak is. 5

## DEEL X

### TOEREKENING VAN KAPITAALWINSTE

#### Toerekening van kapitaalwins aan gade

68. (1) Waar 'n persoon se kapitaalwins of kapitaalwins wat vestig in of wat geag word gevestig te wees in daardie persoon gedurende die jaar van aanslag waarin dit ontstaan, in die geheel of gedeeltelik toegereken kan word aan— 10

(a) enige skenking, oormaking of ander beskikking; of

(b) enige transaksie, handeling of skema,

aangegaan, verrig of uitgevoer deur daardie persoon se gade hoofsaaklik vir die doeleindes van die vermindering, uitstel of vermyding van daardie gade se aanspreeklikheid vir enige belasting, heffing of reg wat andersins betaalbaar sou geword het kragtens enige Wet deur die Kommissaris geadministreer, moet soveel van die wins as wat aldus toegereken kan word verontagsaam word by die vasstelling van daardie persoon se totale kapitaalwins of totale kapitaalverlies en in berekening gebring word by die vasstelling van die totale kapitaalwins of totale kapitaalverlies van daardie persoon se gade. 15 20

(2) Waar 'n persoon se kapitaalwins verkry is uit—

(a) enige bedryf deur daardie persoon in vennootskap of assosiasie met daardie persoon se gade beoefen of wat op enige wyse verbonde is aan enige bedryf deur daardie gade beoefen; of 25

(b) daardie persoon se gade of enige vennootskap of privaatmaatskappy op 'n tydstop toe daardie gade 'n lid van daardie vennootskap of die enigste, die hoof- of een van die hoofaandeelhouders van daardie maatskappy was,

moet soveel van daardie wins as wat die bedrag waarop daardie persoon redelikerwys geregtig sou wees met inagneming van die aard van die betrokke besigheid, die mate van daardie persoon se deelname daarin, die dienste gelewer deur daardie persoon en enige ander tersaaklike faktor, te bowe gaan, verontagsaam word by die vasstelling van daardie persoon se totale kapitaalwins of totale kapitaalverlies en in berekening gebring word by die vasstelling van die totale kapitaalwins of totale kapitaalverlies van daardie persoon se gade. 30 35

#### Toerekening van kapitaalwins aan ouer van minderjarige kind

69. Waar 'n minderjarige kind se kapitaalwins of 'n kapitaalwins wat vestig in of geag word gevestig te gewees het in of wat gebruik is tot voordeel van daardie kind gedurende die jaar van aanslag waarin dit ontstaan het, in sy geheel of gedeeltelik toegereken kan word aan enige skenking, oormaking of ander beskikking— 40

(a) deur 'n ouer van daardie kind gemaak; of

(b) deur 'n ander persoon gemaak in ruil vir enige skenking, oormaking of ander beskikking of vir enige ander vergoeding gemaak of gegee deur 'n ouer van daardie kind direk of indirek ten gunste van daardie persoon of sy of haar familie, 45

moet soveel van daardie wins as wat daaraan aldus toegereken kan word verontagsaam word by die vasstelling van daardie kind se totale kapitaalwins of totale kapitaalverlies en moet in berekening gebring word by die vasstelling van die totale kapitaalwins of totale kapitaalverlies van daardie ouer.

#### Toerekening van kapitaalwins wat onderhewig is aan voorwaardelike vestiging 50

70. Waar—

(a) 'n persoon 'n skenking, oormaking of ander beskikking gemaak het wat onderhewig is aan 'n beding of voorwaarde ingestel deur daardie persoon of enigiemand anders waarkragtens 'n kapitaalwins of 'n gedeelte van enige kapitaalwins toerekenbaar aan daardie skenking, oormaking of ander 55



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;

- (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

- (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.

#### 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;

- (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,

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.

#### 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

- (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.

#### 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—

- (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,

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,

beskikking nie in die begunstigdes of sommige van daardie begunstigdes van daardie skenking, oormaking of ander beskikking vestig nie, tot die plaasvind van 'n sekere of onsekere gebeurtenis;

- (b) 'n kapitaalwins wat toerekenbaar is aan daardie skenking, oormaking of ander beskikking ontstaan het gedurende die jaar van aanslag waartydens daardie persoon wat daardie skenking, oormaking of ander beskikking gemaak het deurgaans 'n inwoner was; en

- (c) daardie kapitaalwins of gedeelte daarvan nie gedurende daardie jaar in enige begunstigde wat 'n inwoner is, gevestig het nie,

moet daardie kapitaalwins of gedeelte daarvan in ag geneem word by die vasstelling van die totale kapitaalwins of totale kapitaalverlies van die persoon wat die skenking, oormaking of ander beskikking gemaak het en verontagsaam word by die vasstelling van die totale kapitaalwins of totale kapitaalverlies van enige ander persoon.

#### **Toerekening van kapitaalwins wat onderhewig is aan herroepbare vestiging**

##### **71. Waar—**

- (a) 'n akte van skenking, oormaking of ander beskikking 'n reg aan 'n begunstigde daarvan wat 'n inwoner is verleen om 'n kapitaalwins toerekenbaar aan daardie skenking, oormaking of ander beskikking of enige gedeelte van daardie wins te ontvang;

- (b) daardie reg ingetrek kan word of aan 'n ander verleen kan word deur die persoon wat dit verleen het; en

- (c) 'n kapitaalwins toerekenbaar aan daardie skenking, oormaking of ander beskikking of gedeelte van daardie wins kragtens daardie reg gevestig het in daardie begunstigde gedurende 'n jaar van aanslag waartydens die persoon wat die reg verleen het deurgaans 'n inwoner was en die reg voorbehou het om daardie reg in te trek,

moet daardie kapitaalwins of daardie gedeelte daarvan verontagsaam word by die vasstelling van die totale kapitaalwins of totale kapitaalverlies van daardie begunstigde en in ag geneem word by die vasstelling van die totale kapitaalwins of totale kapitaalverlies van die persoon wat die reg van intrekking voorbehou.

#### **Toerekening van kapitaalwins wat vestig in persoon wat nie inwoner is nie**

##### **72. Waar—**

- (a) 'n inwoner 'n skenking, oormaking of ander beskikking aan 'n persoon gemaak het (behalwe 'n openbare weldaadsorganisasie in artikel 30 beoog of 'n buitelandse entiteit, soos in artikel 9D omskryf, van 'n dergelike aard); en

- (b) 'n kapitaalwins toerekenbaar aan daardie skenking, oormaking of ander beskikking ontstaan in 'n jaar van aanslag en dit gedurende daardie jaar vestig in of geag word te vestig het in enige persoon wat nie 'n inwoner is nie (behalwe 'n beheerde buitelandse entiteit, soos in artikel 9D omskryf, met betrekking tot daardie inwoner),

moet daardie kapitaalwins verontagsaam word by die vasstelling van die totale kapitaalwins of totale kapitaalverlies van die persoon in wie dit vestig en in berekening gebring word by die vasstelling van die totale kapitaalwins of totale kapitaalverlies van daardie inwoner.

#### **Toerekening van inkomste en kapitaalwins**

73. (1) Waar beide 'n bedrag aan inkomste en 'n kapitaalwins verkry is as gevolg van of wat toerekenbaar is aan 'n skenking, oormaking of ander beskikking, mag die totale bedrag van daardie inkomste en wins—

- (a) wat ingevolge artikel 7 geag word te wees die van 'n persoon anders as die een aan wie dit toeval of deur wie dit ontvang is of vir wie se voordeel dit bestee of opgehoop is; en

- (b) wat ingevolge hierdie Deel toegereken word aan 'n persoon anders as die een in wie dit vestig,

nie die bedrag van die voordeel uit daardie skenking, beskikking of ander oormaking verkry, te bowe gaan nie.

(2) By die toepassing van hierdie paragraaf, beteken die voordeel verkry uit 'n skenking, oormaking of ander beskikking die bedrag waarmee die persoon aan wie die

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.

## 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
- (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;

‘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.

#### 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.

(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.

(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).

(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.

#### 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—

- (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.



skenking, oormaking of ander beskikking gemaak is, bevoordeel is weens die feit dat dit gemaak is vir geen of onvoldoende vergoeding, ingesluit vergoeding in die vorm van rente.

## DEEL XI

### MAATSKAPPY-UITKERINGS

#### Woordomskrywing

74. By die toepassing van hierdie Deel, tensy die samehang anders bepaal, beteken—
- ‘aandeel’ enige uitgereikte aandelekapitaal met betrekking tot ’n maatskappy (of enige breukdeel daarvan) ongeag of daardie uitgereikte aandelekapitaal die reg bevat om aan dividende of ’n kapitaaluitkering deel te neem of nie;
  - ‘kapitaaluitkering’ enige uitkering (of gedeelte daarvan) deur ’n maatskappy wat—
    - (a) nie ’n dividend daarstel nie; of
    - (b) ’n dividend daarstel wat weens artikel 64B(5)(c) van sekondêre belasting op maatskappye vrygestel is;
  - ‘maatskappy’ enige ‘maatskappy’ soos in artikel 1 omskryf, behalwe vir enige effektegroepe in paragraaf (e) van daardie omskrywing beoog;
  - ‘uitkering’ enige oordrag van kontant of bates deur ’n maatskappy aan ’n aandeelhouer ten opsigte van ’n aandeel deur daardie aandeelhouer gehou, insluitende enige uitgifte van aandele of skuld in daardie maatskappy (of enige opsie daartoe), ongeag of daardie oordrag ’n dividend uitmaak.

#### Uitkerings in specie deur maatskappy

75. (1) Waar ’n maatskappy ’n uitkering van ’n bate in specie aan ’n aandeelhouer maak, moet daardie maatskappy geag word oor daardie bate te beskik het aan daardie aandeelhouer vir ’n opbrengs gelyk aan markwaarde.

(2) Die markwaarde van enige bate in subparagraaf (1) beoog moet sy markwaarde wees op die datum waarop die uitkering goedgekeur is deur die direkteur of deur een of ander persoon met vergelykbare magtiging verleen kragtens die Akte van Oprigting en Statute van die maatskappy wat die uitkering maak.

#### Uitkerings van kontant of bates in specie ontvang deur aandeelhouer

76. (1) ’n Aandeelhouer wat ’n kapitaaluitkering van kontant of bates in specie ontvang ten opsigte van ’n aandeel voor die beskikking oor daardie aandeel, moet die basiskoste van daardie aandeel wat ’n reg tot daardie kapitaaluitkering hou verminder met die bedrag van daardie kapitaaluitkering.

(2) Waar die kapitaaluitkering in subparagraaf (1) beoog die basiskoste van die aandeel wat die reg tot die uitkering bevat te bowe gaan, moet die aandeelhouer die oorskot by die opbrengs bytel wanneer die aandeelhouer oor die aandeel beskik.

(3) Enige uitkering van ’n bate in specie wat deur ’n aandeelhouer ontvang is moet geag word verkry te gewees het vir ’n onkoste aangegaan teen markwaarde op die datum in paragraaf 75(2) beoog.

(4) Waar ’n aandeelhouer oor ’n aandeel wat as ’n voor-waardasiedatumbate kwalifiseer beskik en die tydtoedelingbasiskoste vir daardie aandeel aangeneem het, moet die onkoste aangegaan ten opsigte van daardie aandeel verminder word tot die mate van enige kapitaaluitkering in kontant of bates in specie wat deur daardie aandeelhouer ten opsigte van daardie aandeel voor die waardasiedatum ontvang is.

#### Uitkerings in likwidasië of deregistrasie deur aandeelhouer ontvang

77. (1) ’n Aandeelhouer van ’n maatskappy wat gelikwideer of gederegistreer word, moet geag word oor al die aandele deur daardie aandeelhouer in daardie maatskappy gehou te beskik het op die vroegste van—

- (a) die datum van ontbinding of deregistrasie; of
- (b) in die geval van ’n likwidasië, die datum wanneer die likwidateur skriftelik verklaar dat geen redelike gronde bestaan om te glo dat die aandeelhouer van die maatskappy (of aandeelhouders wat dieselfde klas aandele hou) enige verdere uitkerings in die loop van die likwidasië van die maatskappy sal ontvang nie.



(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.

#### 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.

(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
- (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.

#### 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—

- (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) Enige kapitaaluitkering van kontant of bates *in specie* ontvang deur of toegeval aan daardie aandeelhouer ten opsigte van daardie aandele na die beskikking oor daardie aandele moet geag word 'n kapitaalwins te wees by die vasstelling van daardie aandeelhouer se totale kapitaalwins of totale kapitaalverlies vir daardie jaar van aanslag.

#### Aandeeluitkerings deur aandeelhouer ontvang

78. (1) Waar 'n maatskappy kapitalisasie-aandele uitreik, word daardie kapitalisasie-aandele geag 'n basiskoste van nul te hê, behalwe tot die mate wat die uitreiking van daardie aandele 'n dividend uitmaak.

(2) Waar 'n maatskappy aandele uitreik ter vervanging van aandele voorheen in daardie maatskappy gehou weens die onderverdeling, konsolidasie of soortgelyke reëling, moet die aandeelhouer enige kapitaalwins of kapitaalverlies vasgestel ten opsigte van daardie vervanging verontagsaam, en daardie nuut-uitgereikte aandele moet 'n totale basiskoste hê wat gelyk is aan die totale basiskoste van die aandele voorheen gehou met die totale basiskoste toegedeel tussen al daardie nuut-uitgereikte aandele in die verhouding tot hulle relatiewe markwaardes.

(3) Waar 'n maatskappy aandele uitreik ter vervanging van aandele voorheen gehou soos in subparagraaf (2) beoog en daarbewens 'n kapitaaluitkering van kontant of bates *in specie* maak ten opsigte van daardie aandele voorheen gehou—

(a) moet die aandeelhouer enige kapitaalwins of kapitaalverlies vasgestel ten opsigte van daardie vervanging verontagsaam, maar nie ten opsigte van die oordrag van daardie aandele voorheen gehou nie wat vir daardie kapitaaluitkering verruil is; en

(b) moet beide die vervanging en daardie kapitaaluitkering geag word aparte transaksies te wees met die basiskoste van daardie aandele voorheen gehou toegedeel tussen beide transaksies gebaseer op die relatiewe markwaardes van die nuut-uitgereikte aandele en daardie kapitaaluitkering in ruil daarvoor ontvang.

#### Ooreenstemmende hydraes en uitkerings

79. (1) Ondanks artikel 76, waar 'n aandeelhouer 'n kapitaaluitkering in kontant of bates *in specie* ontvang, moet die bedrag van daardie kapitaaluitkering geag word 'n kapitaalwins te wees vir doeleindes van die vasstelling van daardie aandeelhouer se totale kapitaalwins of totale kapitaalverlies, waar—

(a) die aandeelhouer wat die kapitaaluitkering ontvang 'n verbonde persoon is met betrekking tot die maatskappy wat daardie kapitaaluitkering maak;

(b) die maatskappy wat die kapitaaluitkering maak vergoeding ontvang het van 'n nuwe of ander aandeelhouer ten opsigte van die uitreiking van een of meer aandele deur daardie maatskappy binne twee jaar voor die kapitaaluitkering in (a) beoog; en

(c) die hydrae en kapitaaluitkering in beide (a) en (b) beoog deel is van 'n skema om enige belasting betaalbaar kragtens hierdie Wet of enige ander Wet deur die Kommissaris geadministreer, te verminder, te vermy of uit te stel by die beskikking oor aandele deur die aandeelhouer in (a) beoog.

(2) Die vermindering in die basiskoste en byvoeging by opbrengs in subparagraawe (1) en (2) van paragraaf 76 beoog, is nie van toepassing nie ten opsigte van enige aandeel wat die reg tot 'n uitkering soos in subparagraaf (1) beoog bevat.

## DEEL XII

### TRUSTS, TRUSTBEGUNSTIGDES EN INSOLVENTE BOEDEL

#### Kapitaalwins aan begunstigde toegereken

80. (1) Behoudens paragraawe 68, 69, 71 en 72, waar 'n kapitaalwins vasgestel word ten opsigte van die vestiging deur 'n trust van 'n bate in 'n trustbegunstigde wat 'n inwoner is, moet daardie wins—

(a) vir doeleindes van die vasstelling van die trust se totale kapitaalwins of totale kapitaalverlies, verontagsaam word; en

(b) in berekening gebring word vir doeleindes van die vasstelling van die totale kapitaalwins of totale kapitaalverlies van die begunstigde aan wie oor daardie bate aldus beskik is.

(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 sequestered 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—

(2) Behoudens paragrawe 68, 69, 71 en 72, waar 'n kapitaalwins in 'n trust ontstaan in 'n jaar van aanslag waartydens 'n trustbegunstigde wat 'n inwoner is 'n gevestigde belang het of 'n gevestigde belang verkry (ingesluit 'n belang wat ontstaan weens die uitoefening van 'n diskresie) in daardie kapitaalwins maar nie in die bate, die beskikking waaroor tot die kapitaalwins aanleiding gegee het, nie, moet die wins—

- (a) vir doeleindes van die vasstelling van die trust se totale kapitaalwins of totale kapitaalverlies verontagsaam word; en
- (b) in berekening gebring word vir doeleindes van die vasstelling van die totale kapitaalwins of totale kapitaalverlies van die begunstigde in wie daardie belang vestig.

#### Basiskoste van belang in diskresionêre trust

81. (1) 'n Persoon se belang in 'n diskresionêre trust moet, behoudens subparagraaf (2), geag word 'n nul-basiskoste te hê.

(2) Waar 'n trustbate in die begunstigde van 'n trust vestig as gevolg van die uitoefening van 'n diskresie, moet die basiskoste van die begunstigde se belang in die trust vermeerder word met die begunstigde se koste van verkryging van daardie bate soos kragtens paragraaf 38(b) vasgestel.

#### Afsterwe van die begunstigde van 'n spesiale trust

82. Waar die begunstigde van 'n spesiale trust te sterwe kom, moet die trust steeds geag word 'n spesiale trust by die toepassing van hierdie Bylae te wees tot die vroegste van of die beskikking oor al die bates deur daardie trust gehou of twee jaar na die datum van afsterwe van daardie begunstigde.

#### Insolvente boedel van persoon

83. (1) By die toepassing van hierdie Bylae, moet die beskikking oor 'n bate deur 'n insolvente boedel van 'n persoon behandel word op dieselfde manier asof oor die bate beskik is deur daardie persoon.

(2) Geen persoon wie se boedel vrywillig of gedwonge gesekwestreer is mag enige vasgestelde kapitaalverlies voor die datum van sekwestrasie gely vorentoe oordra nie.

### DEEL XIII

#### BUITELANDSE GELDEENHEID

##### Regulasies

84. (1) Die Minister moet, by wyse van kennisgewing in die *Staatskoerant*, regulasies uitvaardig om die kapitaalwins of kapitaalverlies vas te stel ten opsigte van—

- (a) die omskakeling van enige buitelandse geldeenheid na 'n ander geldeenheid;
- (b) 'n betaling, aflossing of verjaring, of ander oordrag van enige buitelandse skuld, valutatermykontrak of buitelandse valuta-opsiekontrak; en
- (c) die buitelandse valuta-gevolge van sekere gebeurtenisse en beskikkings in hierdie Bylae beoog.

(2) By die vasstelling van die kapitaalwins of kapitaalverlies in subparagraaf (1) beoog, kan die regulasies—

- (a) sekere van die bepalings van hierdie Wet *mutatis mutandis* van toepassing maak;
- (b) enige kapitaalwins of kapitaalverlies wat ontstaan uit die omskakeling van sekere uitgawes van buitelandse valuta uitsluitlik gehou vir doeleindes van verblyf en reis verontagsaam;
- (c) vir reëls voorsiening maak vir die wisselwerking tussen hierdie Deel en artikel 24I; en
- (d) enige kapitaalwins of kapitaalverlies in hierdie Deel verontagsaam tot die mate wat die wins of verlies andersins kragtens hierdie Wet in berekening gebring is.

(3) Die regulasies in subparagraaf (1) beoog sal nie ag dat 'n persoon 'n kapitaalwins of kapitaalverlies ingevolge hierdie Deel het nie, tot die mate wat daardie persoon slegs—



- (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

- (a) fondse in dieselfde geldeenheid oordra;
  - (b) 'n bate verkry of 'n onkoste aangaan wat in dieselfde geldeenheid aangetoon word as die geldeenheid van die verkryging of onkoste; en
  - (c) oor 'n bate beskik in dieselfde buitelandse geldeenheid as wat gebruik is om die bate te verkry.
- (4) Die regulasies in subparagraaf (1) beoog moet—
- (a) voor of op 1 Julie 2001 uitgevaardig word; en
  - (b) voor of op 31 Desember 2001 by hierdie Bylae ingesluit word.

#### Beperking op verliese in buitelandse geldeenheid

85. Waar 'n persoon se kapitaalverliese, vasgestel ingevolge die regulasies kragtens paragraaf 84 uitgevaardig, in enige jaar van aanslag daardie persoon se kapitaalwinste vasgestel ingevolge daardie regulasies te bowe gaan, moet daardie oorskot van die verlies verontagsaam word en geag word 'n kapitaalverlies te wees in die volgende jaar van aanslag waarmee gehandel moet word ingevolge die regulasies kragtens paragraaf 84 uitgereik.

### DEEL XIV

#### DIVERSE

#### Transaksies gedurende oorgangstydperk

86. (1) By die toepassing van hierdie paragraaf beteken 'oorgangstydperk' die tydperk vanaf 23 Februarie 2000 tot en met die dag voor die waardasiedatum.
- (2) Die bepalings van subparagraaf (3) is van toepassing waar 'n persoon—
- (a) 'n bate gedurende die oorgangstydperk verkry het by wyse van 'n transaksie wat nie onder uiterste voorwaardes in 'n ope mark beding is nie; of
  - (b) 'n bate gedurende die oorgangstydperk verkry het direk of indirek van 'n persoon wat 'n verbonde persoon met betrekking tot daardie persoon is op—
    - (i) die tydstip van daardie verkryging; of
    - (ii) enige tydstip gedurende die tydperk vanaf die datum van daardie verkryging tot 'n daaropvolgende beskikking oor daardie bate deur daardie persoon binne drie jaar van daardie verkryging; of
  - (c) 'n bate herverkry het binne 'n tydperk van negentig dae na sy beskikking gedurende die oorgangstydperk—
    - (i) by wyse van 'n transaksie wat nie onder uiterste voorwaardes in 'n ope mark beding is nie; of
    - (ii) direk of indirek aan 'n verbonde persoon met betrekking tot daardie persoon; of
  - (d) 'n bate verkry het binne 'n tydperk van negentig dae na die beskikking, gedurende die oorgangstydperk, van 'n wesenlik soortgelyke bate waaroor beskik is—
    - (i) by wyse van 'n transaksie wat nie onder uiterste voorwaardes in 'n ope mark beding is nie; of
    - (ii) direk of indirek aan 'n verbonde persoon ten opsigte van daardie persoon, ten einde die bate aldus oor beskik te vervang.
- (3) Enige persoon wat 'n bate verkry of herverkry onder die omstandighede in subparagraaf (2) uiteengesit, moet by die toepassing van paragraaf 30 geag word daardie bate te verkry of herverkry het—
- (a) op die tydstip wanneer die persoon wat oor daardie bate of die wesenlik soortgelyke bate beskik het, daardie bate verkry het; en
  - (b) teen 'n koste gelyk aan die basiskoste van daardie bate of die wesenlik soortgelyke bate in die hande van die persoon wat daarvoor beskik het.”.

#### Vervanging van lang titel van Wet 58 van 1962

39. Die lang titel van die Hoofwet word hierby deur die volgende lang titel vervang: “Tot samevatting van die wetsbepalings met betrekking tot die belasting van inkomstes en geskenke, om voorsiening te maak vir die verhaal van belastinge op persone [en die inkomstes van persone deur die provinsies op inkomstebelastingbetalers gehêf, om

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,



voorsiening te maak vir die betaling van rente op agterstallige betalings van bedoelde provinsiale belastinge, om voorsiening te maak vir die toepassing van sekere bepalinge vir die doeleindes van enige ordonnansie van 'n provinsiale raad wat 'n belasting op persone of die inkomste van persone hef], om voorsiening te maak vir die aftrek deur werkgewers van die besoldiging van werknemers van bedrae ten opsigte van die aanspreeklikheid van werknemers vir sekere belastinge, en om voorsiening te maak vir voorlopige belastingbetalings en vir die betaling aan die [Gekonsolideerde] Nasionale Inkomstefonds [en die onderskeie provinsiale inkomstefondse] van gedeeltes van die normale belasting [en bedoelde provinsiale belastinge (behalwe die normale belasting op maatskappye gehef)] en die rente en ander heffings ten opsigte van bedoelde belastinge, en om voorsiening te maak vir aangeleenthede wat daarmee in verband staan.”.

Wysiging van artikel 1 van Wet 77 van 1968, soos gewysig deur artikel 16 van Wet 103 van 1969, artikel 5 van Wet 66 van 1973, artikel 7 van Wet 88 van 1974, artikel 19 van Wet 106 van 1980, artikel 3 van Wet 118 van 1984, artikel 17 van Wet 87 van 1988, artikel 36 van Wet 9 van 1989, artikel 3 van Wet 69 van 1989, artikel 5 van Wet 136 van 1991, artikel 4 van Wet 20 van 1994, artikel 77 van Wet 30 van 1998 en artikel 74 van Wet 53 van 1999

40. Artikel 1 van die Wet op Seëlregte, 1964, word hierby gewysig deur die volgende omskrywing na die omskrywing van “lewensversekeringpolis” in te voeg:

“ ‘maatskappy’ ook—

- (a) 'n vereniging, korporasie of maatskappy (ingesluit 'n beslote korporasie) wat deur of ingevolge 'n wet wat in die Republiek of in 'n deel daarvan van krag is of voorheen van krag was, ingelyf is of wat geag word aldus ingelyf te wees, of 'n regspersoon wat deur of ingevolge so 'n wet opgerig of ingestel is of wat geag word aldus opgerig of ingestel te wees; of
- (b) 'n vereniging, korporasie of maatskappy ingelyf ingevolge die reg van 'n land behalwe die Republiek, of 'n regspersoon opgerig of ingestel ingevolge sodanige reg; of
- (c) 'n vereniging (wat nie 'n in paragraaf (a) bedoelde vereniging is nie), wat in die Republiek gestig is om 'n bepaalde doel ten bate van die publiek of 'n deel van die publiek te dien;”.

Wysiging van item 7 van Bylae 1 by Wet 77 van 1968, soos gewysig deur artikel 18 van Wet 88 van 1974, artikel 12 van Wet 66 van 1973, en artikel 15 van Wet 114 van 1977

41. Item 7 van Bylae 1 van die Wet op Seëlregte, 1968, word hierby gewysig deur die volgende paragraaf onder die opskrif ‘Vrystellings’ by te voeg:

“(e) Enige huisleningsverband wat onroerende eiendom of 'n belang in sodanige eiendom verhipotekeer, enige sessie van so 'n verband of die vervanging van 'n skuldenaar ten opsigte van so 'n verband, waar daardie verhipotekering, sessie of vervanging gevolglik is weens die verkryging, op of na die datum van afkondiging van die Wysigingswet op Belastingwette, 2001, deur 'n natuurlike persoon van 'n woning in artikel 9(16) of (17) van die Wet op Hereregte, 1949 (Wet No. 40 van 1949), beoog en in die omstandighede in daardie artikel beoog.”.

Wysiging van item 15 van Bylae 1 van Wet 77 van 1968, soos vervang deur artikel 13 van Wet 89 van 1972 and gewysig deur artikel 16 van Wet 66 van 1973, artikel 21 van Wet 88 van 1974, artikel 3 van Wet 104 van 1976, artikel 20 van Wet 114 van 1977, artikel 8 van Wet 95 van 1978, artikel 8 van Wet 102 van 1979, artikel 21 van Wet 106 van 1980, artikel 9 van Wet 99 van 1981, artikel 7 van Wet 87 van 1982, artikel 14 van Wet 92 van 1983, artikel 11 van Wet 118 van 1984, artikel 11 van Wet 81 van 1985, artikel 5 van Wet 71 van 1986, artikel 13 van Wet 108 van 1986, artikel 11 van Wet 86 van 1987, artikel 33 van Wet 87 van 1988, artikel 14 van Wet 69 van 1989, artikel 9 van Wet 136 van 1991, artikel 8 van Wet 136 van 1992, artikel 17 van Wet 97 van 1993, artikel 17 van Wet 140 van 1993, artikel 8 van Wet 20 van 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.

artikel 86 van Wet 30 van 1998, artikel 79 van Wet 53 van 1999, artikel 72 van Wet 30 van 2000 en artikel 63 van Wet 59 van 2000

42. (1) Item 15 van Bylae 1 van die Wet op Seëlregte, 1968, word hierby gewysig deur paragraaf (v) onder die opskrif "*Vrystelling van die seëlreg ingevolge paragraaf (3)*" deur die volgende paragraaf te vervang:

“(v) ’n Registrasie van oordrag van ’n aandeel in ’n aandeelblokmaatskappy soos in artikel 1 van die Wet op die Beheer van Aandeelblokke, 1980 (Wet No. 59 van 1980), omskryf, wat ’n reg op of belang in die gebruik van vaste eiendom verleen, waar dié registrasie volg op ’n verkoop of vervreemding van daardie aandeel—

(i) wat ingevolge die Wet op Belasting op Toegevoegde Waarde, 1991 (Wet No. 89 van 1991), ’n lewering van daardie aandeel uitmaak en ingevolge daardie Wet deur die oordraggewer ten opsigte van daardie lewering betaal is of betaal sal word of waar bedoelde lewering teen die koers van nul persent aan daardie belasting onderhewig is; of

(ii) deur ’n maatskappy of trust aan ’n natuurlike persoon waar—

(aa) daardie verkoop of beskikking op of na die datum van afkondiging van die Wysigingswet op Belastingwette, 2001, maar nie later nie as 30 September 2002 plaasvind;

(bb) daardie onroerende eiendom waarmee daardie aandeel verband hou die primêre woning, soos omskryf in paragraaf 44 van die Agtste Bylae by die Inkomstebelastingwet, 1962, van daardie persoon sal daarstel;

(cc) daardie persoon—

(i) alleen of tesame met sy of haar gade al die aandeelkapitaal in daardie maatskappy gehou het vanaf 5 April 2001 tot die datum van die registrasie of oordrag van daardie aandeel in die naam van daardie natuurlike persoon of gesamentlik in die name van daardie persoon en daardie persoon se gade; of

(ii) oor daardie aandeel in die aandeelblokmaatskappy aan daardie trust beskik het by wyse van ’n skenking, oormaking of ander beskikking of al die onkoste, soos in paragraaf 20 van die Agtste Bylae beoog, werklik deur die trust aangegaan om die aandeel in die aandeelblok te verkry, befonds het;

(dd) daardie natuurlike persoon alleen of tesame met sy of haar gade daardie woning gewoonlik bewoon het en dit hoofsaaklik vir huishoudelike doeleindes gebruik het vanaf 5 April 2001 tot die datum van registrasie van oordrag van daardie aandeel; en

(ee) die registrasie van oordrag van die aandeel in die naam van daardie natuurlike persoon of gesamentlik in die name van daardie persoon en daardie persoon se gade nie later nie as 31 Maart 2003 plaasvind.”.

Wysiging van artikel 11 van Wet 89 van 1991, soos gewysig deur artikel 27 van Wet 136 van 1991, artikel 17 van Wet 136 van 1992, artikel 27 van Wet 97 van 1993, artikel 13 van Wet 20 van 1994, artikel 28 van Wet 27 van 1997 en artikel 85 van Wet 53 van 1999

43. (1) Artikel 11 van die Wet op Belasting op Toegevoegde Waarde, 1991, word gewysig—

(a) deur die woord “of” aan die einde van paragraaf (k) van subartikel (1) by te voeg; en

(b) deur die volgende paragraaf by subartikel (1) by te voeg:

“(l) die goed bestaan uit ligkeroseen bedoel vir gebruik as brandstof vir verligting of verhitting, en nie met ’n ander stof gemeng of vermeng is nie.”.

(2) Subartikel (1) word geag op op 1 April 2001 in werking te getree het.

**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.

**Wysiging van artikel 28 van Wet 89 van 1991, soos gewysig deur artikel 29 van Wet 136 van 1992 en artikel 79 van Wet 30 van 2000**

44. Artikel 28 van die Wet op Belasting op Toegevoegde Waarde, 1991, word hierby gewysig deur die volgende subartikels by te voeg:

“(5) ’n Opgawe ingedien soos beoog—

- (a) in hierdie artikel, moet deur die ondernemer of die ondernemer se gemagtigde verteenwoordiger onderteken word;
- (b) in artikel 29, moet deur die persoon wat die goed verkoop of daardie persoon se gemagtigde verteenwoordiger onderteken word;
- (c) in artikel 30, moet deur die persoon wat die opgawe indien onderteken word, en ’n persoon wat ’n opgawe onderteken word vir alle doeleindes in verband met hierdie Wet geag omtrent alle stellings in daardie opgawe gemaak kundig te wees en dit te verstaan.

(6) Die Kommissaris kan, in die geval van ’n opgawe in elektroniese formaat deur ’n persoon of ’n persoon se gemagtigde verteenwoordiger ingedien, elektroniese of digitale handtekeninge as geldige handtekeninge vir doeleindes van subartikel (5) aanvaar.

(7) Die Minister kan reëls en regulasies maak wat die prosedures vir die indiening van enige opgawe in elektroniese formaat en die vereistes vir ’n elektroniese of digitale handtekening in subartikel (6) beoog, voorskryf.”.

**Invoging van artikel 6B in Wet 9 van 1999**

45. Die volgende artikel word hierby na artikel 6 in die Zoeloe teks van die uMthetho weZibizontela wokuThuthukisa aMakhono, 1999 (Skills Development Levies Act, 1999), ingevoeg:

“Ukufayila izitatimende ngomshini

6B. (1) UKhomishana angamukela umsayino ongokomshini njengomsayino obophezelayo nowamukelekayo laphe umqashi noma i-ijenti egunyazwe ukuthumela noma isiphi isitatimende esibunjwe ngomshini.

(2) UNGqongqoshe angazisa ngemitheshwana nezimiselo ezinquma inqubo yokuthumela noma ngabe isiphi isitatimende esibunjwe ngomshini futhi angabeka nemiyalo enqunyiwe yomsayino ongokomshini ocatshangwe kusigatsana (1).”.

**Kort titel**

46. Hierdie Wet heet die Wysigingswet op Belastingwette, 2001.





