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Tax Library, Juta's/STATUTES/Income Tax Acts/INCOME TAX ACT 58 OF 1962/CHAPTER III GENERAL PROVISIONS (ss 65-112)/Part VI Miscellaneous (ss 102 - 112)/Eighth Schedule DETERMINATION OF TAXABLE CAPITAL GAINS AND ASSESSED CAPITAL LOSSES

Eighth Schedule
DETERMINATION OF TAXABLE CAPITAL GAINS AND ASSESSED CAPITAL LOSSES

(Section 26A of this Act)

[Eighth Schedule added by s. 38 of Act 5 of 2001.]

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PART I
GENERAL (paras 1-2)

1 Definitions

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'

[Definition of 'active business asset' deleted by s. 63 (1) (a) of Act 74 of 2002.]

'aggregate capital gain'

[Definition of 'aggregate capital gain' deleted by s. 49 (a) of Act 3 of 2008.]

'aggregate capital loss'

[Definition of 'aggregate capital loss' deleted by s. 49 (b) of Act 3 of 2008.]

'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'

[Definition of 'financial instrument' deleted by s. 63 (1) (b) of Act 74 of 2002.]

'foreign currency'

[Definition of 'foreign currency' deleted by s. 63 (1) (c) of Act 74 of 2002.]

'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 has not been disposed of by that person before valuation date;

[Definition of 'pre-valuation asset' substituted by s. 65 (1) (a) of Act 60 of 2001.]

'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) an exchange licensed under the Financial Markets Act; or

[Para. (a) substituted by s. 51 (1) (a) of Act 32 of 2004 and by s. 78 (1) of Act 43 of 2014.]

- (b)

[Para. (b) deleted by s. 51 (1) (b) of Act 32 of 2004.]

- (c) an exchange in a country other than the Republic which is similar to an exchange contemplated in paragraph (a) and which has been recognised by the Minister for the purposes of the Schedule by notice in the *Gazette*;

[Para. (c) substituted by s. 63 (b) of Act 31 of 2005.]

'residence' means a residence contemplated in paragraph 44;

'ruling price' means-

- (a) in the case of a financial instrument listed on a recognised exchange in the Republic, the last sale price of that financial instrument at close of business of the exchange, unless there is a higher bid or a lower offer on that day subsequent to the last sale in which case the price of that higher bid or lower offer will prevail; or
- (b) in the case of a financial instrument listed on a recognised exchange outside the Republic, the ruling price of that financial instrument as determined in item (a) and if the ruling price is not determined in this manner by that exchange, the last price quoted in respect of that financial instrument at close of business of that exchange.

[Definition of 'ruling price' inserted by s. 65 (1) (b) of Act 60 of 2001.]

'special trust' means a trust contemplated in paragraph (a) of the definition of 'special trust' in section 1;

[Definition of 'special trust' inserted by s. 63 (1) (d) of Act 74 of 2002.]

'taxable capital gain'

[Definition of 'taxable capital gain' deleted by s. 49 (c) of Act 3 of 2008.]

'valuation date' means-

- (a) in the case of any person who after 1 October 2001 ceases to be an exempt person for purposes of paragraph 63, the date on which that person so ceases to be an exempt person; or

[Para. (a) substituted by s. 25 of Act 16 of 2004.]

- (b) in any other case, 1 October 2001;

[Definition of 'valuation date' substituted by s. 90 of Act 45 of 2003.]

'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 a connected person in relation to that person held directly or indirectly in that company, trust or partnership increases; or
- (b) a connected person in relation to that person acquires a direct or indirect interest in that company, trust or partnership.

[Sub-para. (a) substituted by s. 65 (1) (c) of Act 60 of 2001.]
[Sub-para. (b) substituted by s. 65 (1) (c) of Act 60 of 2001.]

2 Application

(1) Subject to paragraph 97, this Schedule applies to the disposal on or after valuation date of-

- (a) any asset of a resident; and
- (b) the following assets of a person who is not a resident, namely-
- (i) immovable property situated in the Republic held by that person or any interest or right of whatever nature of that person to or in immovable property situated in the Republic; or
 - (ii) any asset which is attributable to a permanent establishment of that person in the Republic.

[Item (b) substituted by s. 64 of Act 74 of 2002.]

[Sub-para. (1) amended by s. 91 of Act 45 of 2003 and by s. 52 of Act 32 of 2004.]

(2) For purposes of subparagraph (1) (b) (i), an interest in immovable property situated in the Republic includes any equity shares held by a person in a company or ownership or the right to ownership of a person in any other entity or a vested interest of a person in any assets of any trust, if-

- (a) 80 per cent or more of the market value of those equity shares, ownership or right to ownership or vested interest, as the case may be, at the time of disposal thereof is attributable directly or indirectly to immovable property held otherwise than as trading stock; and
- (b) in the case of a company or other entity, that person (whether alone or together with any connected person in relation to that person), directly or indirectly, holds at least 20 per cent of the equity shares in that company or ownership or right to ownership of that other entity.

[Item (b) substituted by s. 93 (1) of Act 7 of 2010.]

[Sub-para. (2) substituted by s. 25 (1) of Act 19 of 2001, by s. 66 (1) of Act 60 of 2001 and by s. 64 (1) of Act 31 of 2005.]

PART II

TAXABLE CAPITAL GAINS AND ASSESSED CAPITAL LOSSES (paras 3-10)

3 Capital gain

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 respect of that disposal exceed the base cost of that asset; or

[Sub-para. (a) substituted by s. 67 (1) of Act 60 of 2001.]

- (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-
 - (aa) during any year in determining the capital gain or capital loss in respect of that disposal; or
 - (bb) in the redetermination of the capital gain or capital loss in terms of paragraph 25 (2); or;

[Item (i) substituted by s. 53 (1) (a) of Act 32 of 2004.]

- (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, otherwise than by way of any reduction of any debt owed by that person, and which has not been taken into account in the redetermination of the capital gain or capital loss in terms of paragraph 25 (2); or

[Item (ii) substituted by s. 53 (1) (b) of Act 32 of 2004 and by s. 103 (1) of Act 22 of 2012.]

- (iii) the sum of-

- (aa) any capital gain redetermined in terms of paragraph 25 (2) in the current year of assessment in respect of that disposal; and
- (bb) any capital loss (if any) determined in respect of that disposal in terms of paragraph 25 for the last year of assessment during which that paragraph applied in respect of that disposal.

[Item (iii) added by s. 53 (1) (c) of Act 32 of 2004.]

4 Capital loss

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 respect of that disposal; or

[Sub-para. (a) substituted by s. 68 (1) (a) of Act 60 of 2001 and by s. 65 of Act 74 of 2002.]

- (b) in a previous year of assessment, is equal to-

- (i) so much of the proceeds received or accrued in respect 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;

- (bb) as has become irrecoverable during the current year of assessment; or

- (cc) as has been repaid or has become repayable during the current year of assessment,

and which have not been taken into account in the redetermination of the capital gain or capital loss in terms of paragraph 25 (2);

[Item (i) amended by s. 68 (1) (b) of Act 60 of 2001 and by s. 54 (1) (b) of Act 32 of 2004.]

- (ii) so much of any expenditure incurred during the current year of assessment in respect of that asset, which is allowable in terms of paragraph 20 and that has not been taken into account-

- (aa) during any year in determining the capital gain or capital loss in respect of that disposal; or

- (bb) in the redetermination of the capital gain or capital loss in terms of paragraph 25 (2); or

[Item (ii) substituted by s. 54 (1) (c) of Act 32 of 2004.]

- (iii) the sum of-

- (aa) any capital loss redetermined in terms of paragraph 25 (2) in the

current year of assessment in respect of that disposal; and

- (bb) any capital gain (if any) determined in respect of that disposal in terms of paragraph 25 for the last year of assessment during which that paragraph applied in respect of that disposal.

[Item (iii) added by s. 54 (1) (d) of Act 32 of 2004.]

5 Annual exclusion

(1) Subject to subparagraph (2), the annual exclusion of a natural person and a special trust in respect of a year of assessment is R30 000.

[Sub-para. (1) substituted by s. 8 (1) of Act 13 of 2012.]

(2) Where a person dies during a year of assessment, that person's annual exclusion for that year is R300 000.

[Sub-para. (2) substituted by s. 8 (1) of Act 13 of 2012.]

[Para. 5 amended by s. 32 (a) and (b) of Act 9 of 2006, by s. 2 (2) (b) of Act 8 of 2007, by s. 1 (2) (c) of Act 3 of 2008 and by s. 67 of Act 17 of 2009 and substituted by s. 107 (1) of Act 24 of 2011.]

6 Aggregate capital gain

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 and any other capital gains which are required to be taken into account in the determination of that person's aggregate capital gain or aggregate capital loss for that year, exceeds the sum of-

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

[Sub-para. (b) substituted by s. 69 (1) (b) of Act 60 of 2001.]

[Para. 6 amended by s. 69 (1) (a) of Act 60 of 2001.]

7 Aggregate capital loss

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 any other capital gains which are required to be taken into account in the determination of that person's aggregate capital gain or aggregate capital loss for that year; and

[Sub-para. (a) substituted by s. 70 (1) of Act 60 of 2001.]

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

[Sub-para. (b) substituted by s. 70 (1) of Act 60 of 2001.]

8 Net capital gain

A person's net capital gain for the year of assessment is the sum of-

- (a) 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; and
 (b) where paragraph 64B (3) becomes applicable during that year of assessment, the amount of the capital gain which was disregarded in terms of paragraph 64B (1) or (2) during that year or any previous year, as contemplated in paragraph 64B (3).

[Sub-para. (b) substituted by s. 104 (1) (a) and (b) of Act 22 of 2012.]

[Para. 8 substituted by s. 65 of Act 31 of 2005.]

9 Assessed capital loss

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;
 (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.

10 Taxable capital gain

A person's taxable capital gain for the year of assessment is-

- (a) in the case of a natural person or a special trust as defined in section 1 of the Act, 33,3 per cent;

[Sub-para. (a) substituted by s. 66 of Act 74 of 2002 and by s. 9 (1) of Act 13 of 2012.]

- (b) in the case of an insurer, in respect of its-

(i) individual policyholder fund, 33,3 per cent;

(ii) untaxed policyholder fund, 0 per cent; and

(iii) company policyholder fund, 66,6 per cent; or

[NB: An item (iv) has been added by s. 79 (1) (c) of the Taxation Laws Amendment Act 43 of 2014, a provision that will come into operation on 1 January 2016. See PENDLEX.]

[Sub-para. (b) substituted by s. 105 (1) of Act 22 of 2012.]

- (c) in any other case, 66,6 per cent,

[Sub-para. (c) substituted s. 9 (1) of Act 13 of 2012.]

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

PART III DISPOSAL AND ACQUISITION OF ASSETS (paras 11-14)

11 Disposals

(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 holder of shares;

[Item (e) substituted by s. 126 (1) (a) of Act 31 of 2013.]

- (f) the granting, renewal, extension or exercise of an option; or
- (g) the decrease in value of a person's interest in a company, trust or partnership as a result of a value shifting arrangement.

(2) There is no disposal of an asset-

- (a) by a person who transfers the asset as security for a debt or by a creditor who transfers that asset back to that person upon release of the security;

- (b) by a company in respect of-

(i) the issue, cancellation or extinction of a share in the company; or

(ii) the granting of an option to acquire a share in or certificate acknowledging or creating a debt owed by that company,

other than a share, option or certificate issued to any person by a company that is a resident in exchange, directly or indirectly, for shares in a foreign company;

[Item (b) substituted by s. 71 (1) (a) of Act 60 of 2001, by s. 44 of Act 20 of 2006 and by s. 106 (1) (b) of Act 22 of 2012, amended by s. 126 (1) (b) of Act 31 of 2013 and substituted by s. 126 (1) (c) of Act 31 of 2013.]

- (c) by a portfolio of a collective investment scheme in respect of the issue of a participatory interest in that portfolio, or by a portfolio in respect of the granting

- of an option to acquire a participatory interest in that portfolio;
 [Item (c) substituted by s. 67 (1) (a) of Act 74 of 2002.]
- (d) by a person in respect of the issue of any debt by or to that person;
 [Item (d) substituted by s. 106 (1) (c) of Act 22 of 2012.]
- (e)
 [Item (e) substituted by s. 67 (1) (b) of Act 74 of 2002 and deleted by s. 74 of Act 60 of 2008.]
- (f)
 [Item (f) deleted by s. 71 (1) (b) of Act 60 of 2001.]
- (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;
 [Item (g) substituted by s. 67 (1) (c) of Act 74 of 2002.]
- (h) by a lender to a borrower or by a borrower to a lender where any security has been lent by a lender to a borrower in terms of a securities lending arrangement;
 or
 [Item (h) amended by s. 67 (1) (d) of Act 74 of 2002 and substituted by s. 92 (1) of Act 45 of 2003.]
- (i) by a person where that asset vests in the Master of the High Court or in a trustee, in consequence of the sequestration of the estate of the spouse of that person, as contemplated in section 21 of the Insolvency Act, 1936 (Act 24 of 1936), and where that asset is subsequently released by the Master or that trustee as contemplated in that section;
 [Item (i) added by s. 71 (1) (c) of Act 60 of 2001.]
- (j) which constitutes an equity instrument contemplated in section 8C, which has not yet vested as contemplated in that section;
 [Item (j) added by s. 55 (1) of Act 32 of 2004.]
- (k) by a person on the cession or release of a right to acquire a marketable security in whole or in part for a consideration which consists of or includes another right to acquire a marketable security in the circumstances contemplated in section 8A (5);
 [Item (k) added by s. 66 (1) of Act 31 of 2005.]
- (l) by a person of shares held in a company where that company-
 (i) subdivides or consolidates those shares;
 (ii) converts shares of par value to no par value or of no par value to par value; or
 (iii) converts shares in terms of section 40A or 40B,
 solely in substitution of the shares held by that person, and-
 (aa) the proportionate participation rights and interests of that person in that company remain unaltered; and
 (bb) no other consideration whatsoever passes directly or indirectly in consequence of that subdivision, consolidation or conversion;
 [Item (l) added by s. 126 (1) (e) of Act 31 of 2013.]
- (m) by a person where that person exchanges a qualifying equity share for another qualifying equity share as contemplated in section 8B (2).
 [Item (m) added by s. 80 (1) (b) of Act 43 of 2014.]

12 Events treated as disposals and acquisitions

(1) Where an event described in subparagraph (2) occurs, a person must, subject to paragraph 24, be treated for the purposes of this Schedule as having disposed of an asset described in subparagraph (2) for an amount received or accrued 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, which expenditure must be treated as an amount of expenditure actually incurred for the purposes of paragraph 20 (1) (a).

[Sub-para. (1) substituted by s. 72 (1) (a) of Act 60 of 2001, by s. 93 (1) (a) of Act 45 of 2003, by s. 50 (1) (a) of Act 3 of 2008 and by s. 81 (a) of Act 43 of 2014.]

(2) Subparagraph (1) applies, in the case of-

(a) a person-

(i) that commences to be a resident; or

[Sub-item. (i) substituted by s. 81 (b) of Act 43 of 2014.]

(ii) that is a foreign company that commences to be a controlled foreign company,

[Sub-item. (ii) substituted by s. 81 (b) of Act 43 of 2014.]

(iii)

[Sub-item. (iii) deleted by s. 81 (c) of Act 43 of 2014.]

in respect of all assets of that person other than-

(aa) assets in the Republic listed in paragraph 2 (1) (b) (i) and (ii);

(bb) any right to acquire any marketable security contemplated in section 8A;

[Item (a) substituted by s. 93 (1) (b) of Act 45 of 2003 and by s. 56 (1) of Act 32 of 2004, amended by s. 67 (1) (a) and (b) of Act 31 of 2005, by s. 50 (1) (b) of Act 3 of 2008, by s. 108 (1) (a) and (b) of Act 24 of 2011 and by s. 107 (1) (a) of Act 22 of 2012 and substituted by s. 107 (1) (b) of Act 22 of 2012.]

(b) an asset of a person that 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;

[Para. (b) amended by s. 50 (1) (c) of Act 3 of 2008.]

(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, which cost must be treated as an amount of expenditure actually incurred and paid for the purposes of paragraph 20 (1) (a).

[Sub-para. (3) substituted by s. 72 (1) (b) of Act 60 of 2001.]

(4) In the event of a person ceasing to be a controlled foreign company as a result of becoming a resident that person must, subject to paragraph 24, be treated for the purposes of this Schedule as having-

(a) disposed of each of that person's assets, other than-

(i) assets in the Republic listed in paragraph 2 (1) (b) (i) and (ii); and

(ii) assets held by that person if any amount received or accrued from the disposal of those assets would have been taken into account for purposes of determining the net income as contemplated in section 9D of that person; and

(b) immediately reacquired each of those assets at an expenditure equal to the market value of those assets immediately before the disposal, which expenditure must be treated as an amount of expenditure actually incurred and paid for the purposes of paragraph 20 (1) (a).

[Sub-para. (4) substituted by s. 72 (1) (b) of Act 60 of 2001, by s. 67 (1) (c) of Act 31 of 2005, by s. 50 (1) (d) of Act 3 of 2008 and by s. 75 (1) of Act 60 of 2008.]

(5)

[Sub-para. (5) amended by s. 72 (1) (c) of Act 60 of 2001, substituted by s. 68 (1) of Act 74 of 2002, amended by s. 93 (1) (c) of Act 45 of 2003, by s. 67 (1) (e) and (f) of Act 31 of 2005, by s. 71 (1) of Act 35 of 2007, by s. 50 (1) (e), (f) and (g) of Act 3 of 2008 and by s. 94 of Act 7 of 2010 and deleted by s. 107 (1) (c) of Act 22 of 2012.]

12A Reduction of debt

[Heading substituted by s. 127 (1) (a) of Act 31 of 2013.]

(1) For the purposes of this paragraph-

'allowance asset' means a capital asset in respect of which a deduction or allowance is allowable in terms of this Act for purposes other than the determination of any capital gain or capital loss;

'capital asset' means an asset that is not trading stock;

'debt' does not include a tax debt as defined in section 1 of the Tax Administration Act;

'reduction amount', in relation to a debt owed by a person, means any amount by which that debt is reduced less any amount applied by that person as consideration for that reduction.

[Sub-para. (1) amended by s. 82 (a) of Act 43 of 2014.]

(2) Subject to subparagraph (6), this paragraph applies where a debt that is owed by a person is reduced by any amount and-

(a) the amount of that debt was used, directly or indirectly, to fund any expenditure-

(i) other than expenditure in respect of which a deduction or allowance was granted in terms of this Act; or

(ii) incurred in respect of an allowance asset; and

[Subitem (ii) substituted by s. 127 (1) (b) of Act 31 of 2013.]

(b) the amount of that reduction exceeds any amount applied by that person as consideration for that reduction.

(3) Where-

(a) a debt owed by a person is reduced as contemplated in subparagraph (2); and

(b) the amount of that debt was used as contemplated in item (a) of that subparagraph to fund expenditure incurred in respect of an asset that is held by that person at the time of the reduction of the debt,

[Item (b) substituted by s. 127 (1) (c) of Act 31 of 2013.]

the amount of expenditure so incurred in respect of that asset must, for the purposes of paragraph 20, be reduced by the reduction amount in respect of that debt.

(4) Where-

(a) a debt owed by a person is reduced as contemplated in subparagraph (2); and

(b) the amount of that debt was used as contemplated in item (a) of that subparagraph to fund expenditure incurred in the acquisition, creation or improvement of an asset (other than an allowance asset) that is-

(i) held by that person at the time of the reduction of the debt, and subparagraph (3) has been applied to reduce any expenditure in respect of that asset to the full extent of that expenditure; or

(ii) no longer held by that person at the time of the reduction of that debt,

the reduction amount in respect of that debt, less any amount that has been applied to reduce any amount of expenditure as contemplated in subparagraph (3), must be applied to reduce any assessed capital loss of that person for the year of assessment in which the reduction takes place.

[Sub-para. (4) amended by s. 127 (1) (d) of Act 31 of 2013 and substituted by s. 82 (b) of Act 43 of 2014.]

(5) Where subparagraph (3) or (4) applies in respect of a debt that was used to fund

expenditure in respect of a pre-valuation date asset of a person, for the purposes of determining the date of acquisition of that asset and the expenditure incurred in respect of that asset, that person must be treated as having-

- (a) disposed of that asset at a time immediately before that debt is reduced as contemplated in subparagraph (3) (a) or (4) (a), as the case may be, for an amount equal to the market value of that asset at that time; and
- (b) immediately reacquired that asset at that time at an expenditure equal to that market value-
 - (i) less any capital gain, and
 - (ii) increased by any capital loss,
 that would have been determined had the asset been disposed of at market value at that time,

which expenditure must be treated as an amount of expenditure actually incurred at that time for the purposes of paragraph 20 (1) (a).

[Subpara. (5) amended by s. 127 (1) (e) of Act 31 of 2013.]

- (6) This paragraph must not apply to any debt owed by a person-
- (a) that is an heir or legatee of a deceased estate, to the extent that-
 - (i) the debt is owed to that deceased estate;
 - (ii) the debt is reduced by the deceased estate; and
 - (iii) the amount by which the debt is reduced by the deceased estate forms part of the property of the deceased estate for the purposes of the Estate Duty Act, 1955 (Act 45 of 1955);
 - (b) to the extent that the debt is reduced by way of-
 - (i) donation as defined in section 55 (1); or
 - (ii) any transaction to which section 58 applies;
 - (c) to an employer of that person, to the extent that the debt is reduced in the circumstances contemplated in paragraph 2 (h) of the Seventh Schedule;
 - (d) to another person where that person and that other person are companies that form part of the same group of companies as defined in section 41, unless, as part of any transaction, operation or scheme entered into to avoid any tax imposed by this Act-
 - (i) that debt (or any debt issued in substitution for that debt) was acquired directly or indirectly from a person who does not form part of that group of companies; or
 - (ii) that company or that other company became part of that group of companies after that debt (or any debt issued in substitution for that debt) arose; or
 - (e) that is a company, where-
 - (i) that debt is reduced in the course, or in anticipation, of the liquidation, winding up, deregistration or final termination of the existence of that company; and
 - (ii) the person to whom the debt is owed is a connected person in relation to that company,
 to the extent that reduction amount in respect of that debt does not, at the time that the debt is reduced, exceed the amount of expenditure contemplated in paragraph 20 incurred in respect of that debt by the connected person: Provided that this subitem must not apply-
 - (aa) if-
 - (A) the debt was reduced as part of any transaction, operation or scheme entered into to avoid any tax imposed by this Act; and

- (B) that company became a connected person in relation to the person to whom the debt is owed after the debt (or any debt issued in substitution of that debt) arose; or
- (bb) if that company-
- (A) has not, within 36 months of the date on which the debt is reduced or such further period as the Commissioner may allow, taken the steps contemplated in section 41 (4) to liquidate, wind up, deregister or finally terminate its existence;
- (B) has at any stage withdrawn any step taken to liquidate, wind up, deregister or finally terminate its corporate existence; or
- (C) does anything to invalidate any step contemplated in subparagraph (A), with the result that the company is or will not be liquidated, wound up, deregistered or finally terminate its existence.

(7) Any tax which becomes payable as a result of the application of paragraph (bb) of the proviso to subparagraph (6) (e) must be recovered from the company and the connected person contemplated in that subparagraph who must be jointly and severally liable for that tax.

[Para. 12A inserted by s. 108 (1) of Act 22 of 2012.]

13 Time of disposal

(1) The time of disposal of an asset by means of-

- (a) a change of ownership effected or to be effected from one person to another because of an event, act, forbearance or by the 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;
- (iiA) the distribution of an asset of a trust by a trustee to a beneficiary to the extent that the beneficiary has a vested interest in the asset, the date on which the interest vests;
- [Subitem (iiA) inserted by s. 76 (a) of Act 60 of 2008.]
- (iii) a donation of an asset, the date of compliance with all legal requirements for a valid donation;
- (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, participatory interest or debenture of that company, the date on which that option terminates; or
- [Subitem (viii) substituted by s. 57 (1) of Act 32 of 2004.]
- (ix) any other case, the date of change of ownership;
- [Item (a) amended by s. 69 (1) (b) of Act 74 of 2002.]
- (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)

[Item (d) deleted by s. 76 (b) of Act 60 of 2008.]

- (e) the distribution of an asset by a company to a holder of shares, is the date on which that asset is so distributed as contemplated in paragraph 75;

[Item (e) substituted by s. 128 of Act 31 of 2013.]

- (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) the happening of an event contemplated in-

- (i) paragraph 12 (2) (a), (b), (c), (d) or (e), 12 (3) or 12 (4), is the date immediately before the day that the event occurs;

[Subitem (i) substituted by s. 51 of Act 3 of 2008 and by s. 68 (1) of Act 17 of 2009.]

- (ii) paragraph 12 (2) (f), is the date that that event occurs.

[Subitem (ii) substituted by s. 109 (1)(b) of Act 22 of 2012.]

[Sub-para. (1) amended by s. 69 (1) (a) of Act 74 of 2002.]

(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).

14 Disposal by spouse married in community of property

For the purposes of this Schedule, in the case of spouses married in community of property, where any asset is disposed of by one of the spouses and that asset-

- (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.

[Para. 14 amended by s. 70 of Act 74 of 2002.]

PART IV

LIMITATION OF LOSSES (paras 15-19)

15 Personal-use aircraft, boats and certain rights and interests

A capital loss in respect of the following assets of a person must be disregarded in determining the aggregate capital gain or aggregate capital loss of a person, to the extent that the assets are used for purposes other than the carrying on of a trade:

- (a) An aircraft with an empty mass exceeding 450 kg;
- (b) a boat exceeding ten metres in length;
- (c) any fiduciary, usufructuary or other similar interest, the value of which decreases over time;
- (d) any lease of immovable property;
- (e) any-
- (i) time-sharing interest as defined in section 1 of the Property Time-sharing Control Act, 1983 (Act 75 of 1983); or
- (ii) share in a share block company, as defined in section 1 of the Share Blocks Control Act,

[Item (ii) substituted by s. 83 of Act 43 of 2014.]

with a fixed life, the value of which decreases over time; or

[Sub-para. (e) substituted by s. 73 (1) (b) of Act 60 of 2001.]

- (f) any right or interest of whatever nature to or in an asset contemplated in items (a), (b), (c), (d) or (e).

[Sub-para. (f) added by s. 73 (1) (c) of Act 60 of 2001.]

16 Intangible assets acquired prior to valuation date

(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 or any design as defined in the Designs Act or any trade mark as defined in the Trade Marks Act or any copyright as defined in the Copyright Act or any rights recognised under the Plant Breeders' Rights Act, 1976 (Act 15 of 1976), or any model, pattern, plan, formula or process or any other property or right of a similar nature;
[Item (b) substituted by s. 129 of Act 31 of 2013.]
- (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.

17 Forfeited deposits

(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.

(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).

18 Disposal of options

(1) Where a person who is entitled to exercise an option-

- (a) to acquire an asset not intended for use wholly and exclusively for business purposes; or
- (b) to dispose of an asset not used wholly and exclusively for business purposes,

has abandoned that option, allowed that option to expire, or in any other manner disposed of that option other than by way of the exercise thereof, any capital loss of that person determined in respect of that expiry shall be disregarded.

(2) Subparagraph (1) does not apply in respect of an option to acquire or dispose of-

- (a) a coin made mainly from gold or platinum, of which the market value is mainly attributable to the material from which it is minted or cast;
- (b) immovable property, other than immovable property-
 - (i) in the case of subparagraph (1) (a), which is intended to be the primary

- residence of the person entitled to exercise the option; or
- (ii) in the case of subparagraph (1) (b), is the primary residence of the person entitled to exercise the option;
- (c) a financial instrument; or
- (d) any right or interest in those assets contemplated in items (a), (b) and (c).
- [Sub-para. (2) amended by s. 74 (1) of Act 60 of 2001.]

19 Losses on the disposal of certain shares

(1) Where a person disposes of a share in a company-

- (a) as a result of the acquisition by the company from that person of that share or as part of the liquidation, winding-up or deregistration of that company, that person must disregard so much of any capital loss resulting from the disposal as does not exceed any exempt dividends; or
- (b) in circumstances other than those contemplated in item (a), that person must disregard so much of any capital loss resulting from the disposal (other than a disposal deemed to have taken place in terms of section 29B) as does not exceed any extraordinary exempt dividends,
- [Item (b) substituted by s. 110 (1) of Act 22 of 2012.]

received by or accrued to that person in respect of that share within a period of 18 months prior to or as part of the disposal.

[Sub-para. (1) substituted by s. 72 (1) (a) of Act 35 of 2007, by s. 69 (1) (a) of Act 17 of 2009 and by s. 109 (1) (a) of Act 24 of 2011.]

(2)

[Sub-para. (2) substituted by s. 94 (a) of Act 45 of 2003 and deleted by s. 72 (1) (b) of Act 35 of 2007.]

(3) For the purposes of this paragraph-

- (a) the period of 18 months 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;
- [Item (a) amended by s. 69 (1) (b) of Act 17 of 2009.]
- (b) **'exempt dividend'** means any dividend or foreign dividend to the extent that the dividend or foreign dividend is-
- (i) not subject to any tax under Part VIII of Chapter II; and
- (ii) exempt from normal tax in terms of section 10 (1) (k) (i) or section 10B (2) (a) or (b);

[Item (b) amended by s. 94 (b) of Act 45 of 2003 and by s. 69 (1) (bC) of Act 17 of 2009 and substituted by s. 109 (1) (b) of Act 24 of 2011.]

- (c) **'extraordinary exempt dividends'** means so much of the amount of the aggregate of any exempt dividends received or accrued within the period of 18 months contemplated in subparagraph (1) as exceeds 15 per cent of the proceeds received or accrued from the disposal contemplated in that subparagraph.

[Item (c) substituted by s. 69 (1) (d) of Act 17 of 2009 and by s. 109 (1) (b) of Act 24 of 2011.]

(d)

[Item (d) deleted by s. 94 (c) of Act 45 of 2003.]

PART V

BASE COST (paras 20-34)**20 Base cost of asset**

(1) Despite section 23 (*b*) and (*f*), but subject to paragraphs 24, 25 and 32 and subparagraphs (2) and (3), the base cost of an asset acquired by a person is the sum of-

- (a) the expenditure actually incurred in respect of the cost of acquisition or creation of that asset;
- (b) the expenditure actually incurred in respect of the valuation of the asset for the purpose of determining a capital gain or capital loss in respect of the asset;
- (c) the following amounts actually incurred as expenditure directly related to the acquisition or disposal of that asset namely-
 - (i) the remuneration of a surveyor, valuer, auctioneer, accountant, broker, agent, consultant or legal advisor, for services rendered;
 - (ii) transfer costs;
 - (iii) stamp duty, transfer duty or similar duty;
 - (iv) advertising costs to find a seller or to find a buyer;
 - (v) the cost of moving that asset from one location to another;
 - (vi) the cost of installation of that asset, including the cost of foundations and supporting structures;
 - (vii) despite section 23 (*d*), in the case of a disposal of an asset by a person by way of a donation as contemplated in paragraph 38, so much of any donations tax payable by that person in respect of that donation, as determined in accordance with paragraph 22;
 - (viii) despite section 23 (*d*), 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
[Subitem (viii) substituted by s. 26 (1) (*a*) of Act 19 of 2001.]
 - (ix) if that asset was acquired or disposed of 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;
[Subitem (ix) substituted by s. 26 (1) (*a*) of Act 19 of 2001.]
- (d) the expenditure actually incurred for purposes of establishing, maintaining or defending a legal title to or right in that asset;
- (e) the expenditure actually incurred in effecting an improvement to or enhancement of the value of that asset, if that improvement or enhancement is still reflected in the state or nature of that asset at the time of its disposal;
- (f) if that asset was acquired or disposed of by the exercise on or after valuation date of an option acquired prior to the valuation date, the valuation date value of that option, which value must be treated as expenditure actually incurred in respect of that asset on valuation date for the purposes of this Part;
[Item (*f*) substituted by s. 75 (1) (*b*) of Act 60 of 2001 and by s. 71 (1) (*a*) of Act 74 of 2002.]
- (g) one-third of the interest as contemplated in section 24J excluding any interest contemplated in section 24O on money borrowed to finance the expenditure contemplated in items (*a*) or (*e*) in respect of a share listed on a recognised exchange or a participatory interest in a portfolio of a collective investment scheme (including money borrowed to refinance those borrowings):
[Item (*g*) amended by s. 26 (1) (*b*) of Act 19 of 2001, by ss. 71 (1) (*b*) and (*c*) of Act 74 of 2002, by s. 95 (1) (*a*) of Act 45 of 2003 and by s. 58 (1) (*a*) and (*b*) of Act 32 of 2004 and substituted by s. 130 (1) (*a*) of Act 31 of 2013.]
- (h) in the case of-

- (i) a marketable security or an equity instrument, the acquisition or vesting, as the case may be, of which resulted in the determination of any gain or loss to be included in or deducted from any person's income in terms of section 8A or 8C, the market value of that marketable security or equity instrument or amount received or accrued from the disposal thereof, as the case may be, that was taken into account in determining the amount of that gain or loss (including where the gain and loss so determined was nil);

[Item (i) substituted by s. 26 (1) (c) of Act 19 of 2001, by s. 58 (1) (c) of Act 32 of 2004 and by s. 68 (1) (a) of Act 31 of 2005.]

- (ii) any other asset-

- (aa) so much of an amount that has been included in that person's income in terms of section 8 (5), as having been applied towards the reduction of the purchase price of that asset;
- (bb) where an amount has been included in any person's gross income in terms of paragraph (i) of the definition of 'gross income' in section 1, the value placed on the asset under the Seventh Schedule for purposes of determining the amount so included in that person's gross income;

[Sub-subitem (bb) substituted by s. 73 (a) of Act 35 of 2007.]

- (cc) where an amount has been included in that person's gross income in terms of paragraph (h) of the definition of 'gross income' in section 1 in respect of that asset, so much of that amount so included as exceeds the amount of any allowance granted to that person in terms of section 11 (h); or
- (dd) where an amount has been included in that person's gross income in terms of paragraph (c) of the definition of 'gross income' in section 1, the value placed on the asset for the purposes of determining the amount so included in that person's gross income;

[Sub-subitem (dd) added by s. 68 (1) (c) of Act 31 of 2005.]

[Item (ii) substituted by s. 26 (1) (c) of Act 19 of 2001 and by s. 71 (1) (d) of Act 74 of 2002.]

- (iii) (aa) a right in a controlled foreign company held directly by a resident, an amount equal to the proportional amount of the net income (without having regard to the percentage adjustments contemplated in paragraph 10) of that company and of any other controlled foreign company in which that controlled foreign company and that resident directly or indirectly have an interest, which was included in the income of that resident in terms of section 9D during any year of assessment, less the amount of any foreign dividend distributed by that company to that resident during any year of assessment which was exempt from tax in terms of section 10B (2) (a) or (b); or

[Sub-subitem (aa) substituted by s. 77 (1) (a) of Act 60 of 2008 and by s. 110 (1) of Act 24 of 2011.]

- (bb) a right in a controlled foreign company held directly by another controlled foreign company, an amount equal to the proportional amount of the net income (without having regard to the percentage adjustments contemplated in paragraph 10) of that first-mentioned controlled foreign company and of any other controlled foreign company in which both the first- and second-mentioned controlled foreign companies directly or indirectly have an interest, which during any year of assessment would have been included in the income of that second-mentioned controlled foreign company in terms of section 9D had it been a resident, less the amount of any foreign dividend distributed by that first-mentioned controlled foreign company to the second-mentioned controlled foreign

company if that dividend would have been exempt from tax in terms of section 10B (2) (a) or (b) had that second-mentioned controlled foreign company been a resident;

[Sub-subitem (bb) substituted by s. 110 (1) of Act 24 of 2011.]

[Subitem (iii) substituted by s. 75 (1) (c) of Act 60 of 2001, by s. 71 (1) (d) of Act 74 of 2002, by s. 95 (1) (b) of Act 45 of 2003, by s. 68 (1) (d) of Act 31 of 2005, by s. 73 (b) of Act 35 of 2007 and by s. 52 of Act 3 of 2008.]

- (iv) a value shifting arrangement, an amount determined in accordance with paragraph 23;
- (v) an asset which was acquired by a resident by way of inheritance from the deceased estate of a person who at the time of his or her death was not resident-
 - (aa) the market value of that asset immediately before the death of that deceased person; and
 - (bb) any expenditure contemplated in this paragraph incurred by the executor of that deceased estate in respect of that asset in the process of liquidation or distribution of that deceased estate:

Provided that this subitem does not apply in respect of any asset so acquired which constituted an asset of that deceased person as contemplated in paragraph 2 (1) (b);

[Subitem (v) inserted by s. 45 (1) (a) of Act 20 of 2006.]

- (vi) an asset which was acquired on or after the valuation date by a person from a person who at the time of that acquisition was not a resident by means of a donation or for a consideration not measurable in money or where the person acquiring the asset is a connected person in relation to the person that is not a resident, for a consideration which does not reflect an arm's length price, the market value of that asset on the date of its acquisition:

[Subitem (vi) added by s. 77 (1) (c) of Act 60 of 2008 and substituted by s. 84 (1) of Act 43 of 2014.]

Provided that where subitem (i), (ii) (bb) or (dd) applies, that person must for purposes of this paragraph disregard any expenditure actually incurred by that person in respect of that asset prior to the date on which-

- (a) the market value or value placed on the asset under the Seventh Schedule, as the case may be, is determined; or
- (b) the asset was disposed of, where the amount received or accrued from the disposal is taken into account in determining the gain or loss in terms of section 8C,

[Item (h) amended by s. 26 (1) (d) of Act 19 of 2001, by s. 68 (1) (e) of Act 31 of 2005 and by s. 45 (1) (b) of Act 20 of 2006.]

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

[Sub-para. (1) amended by s. 75 (1) (a) of Act 60 of 2001.]

(2) The expenditure incurred by a person in respect of an asset does not include any of the following amounts-

- (a) borrowing costs, including any interest as contemplated in section 24J or raising fees;
- (b) expenditure on repairs, maintenance, protection, insurance, rates and taxes, or similar expenditure; and
- (c) the valuation date value of any option or right to acquire any marketable security contemplated in section 8A (1),

[Item (c) added by s. 26 (1) (h) of Act 19 of 2001.]

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

[Sub-para. (2) amended by s. 26 (1) (e) of Act 19 of 2001.]

(3) The expenditure contemplated in subparagraph (1) (a) to (g), incurred by a person in respect of an asset must be reduced by any amount which-

- (a) (i) is or was allowable or is deemed to have been allowed as a deduction in determining the taxable income of that person; and
- (ii) is not included in the taxable income of that person in terms of section 9C (5),

before the inclusion of any taxable capital gain; or

[Item (a) substituted by s. 77 (1) (d) of Act 60 of 2008 and by s. 95 of Act 7 of 2010.]

- (b) has for any reason been reduced or recovered or become recoverable from or has been paid by any other person (whether prior to or after the incurral of the expense to which it relates), to the extent that such amount is not-

- (i) taken into account as a recoupment in terms of section 8 (4) (a) or paragraph (j) of the definition of 'gross income';
- (ii) reduced in terms of section 12P; or
- (iii) applied to reduce an amount taken into account in respect of trading stock as contemplated in section 19; or

[Item (b) substituted by s. 75 (1) (e) of Act 60 of 2001, by s. 68 (1) (f) of Act 31 of 2005, by s. 45 (1) (c) of Act 20 of 2006, by s. 60 (1) (a) of Act 8 of 2007 and by s. 111 (1)(a) of Act 22 of 2012.]

- (c) is exempt from tax in terms of section 10 (1) (yA) and is granted or paid for purposes of the acquisition of that asset.

[Item (c) deleted by s. 58 (1) (e) of Act 32 of 2004, added by s. 45 (1) (d) of Act 20 of 2006 and substituted by s. 111 (1)(a) of Act 22 of 2012.]

[Sub-para. (3) amended by s. 26 (1) (i) of Act 19 of 2001, by s. 75 (1) (d) of Act 60 of 2001 and by s. 111 (1)(b) of Act 22 of 2012.]

(4)

[Sub-para. (4) added by s. 45 (1) (e) of Act 20 of 2006, substituted by s. 60 (1) (b) of Act 8 of 2007 and deleted by s. 130 (1) (b) of Act 31 of 2013.]

20A Provisions relating to farming development expenditure

(1) Despite the provisions of paragraph 20 (3) (a), where a person carrying on pastoral, agricultural or other farming operations as contemplated in section 26, incurred expenditure in respect of the matters referred to in items (c) to (i) of paragraph 12 (1) of the First Schedule (referred to in this paragraph as 'capital development expenditure') and that person-

- (a) ceased to carry on such pastoral, agricultural or other farming operations during any year of assessment; and
- (b) at any time thereafter disposes of immovable property on which those operations were carried on,

that person may elect that the amount of the capital development expenditure, or part thereof, which is carried forward and deemed in terms of paragraph 12 (3) of the First Schedule to be expenditure which has been incurred in the next succeeding year of assessment for purposes of paragraph 12 (1) of the First Schedule (as reduced in terms of paragraph 12 (3B) of the First Schedule, if applicable), must be treated as expenditure incurred and paid in respect of that immovable property for the purposes of this Part.

(2) The amount of the capital development expenditure in respect of which the election may be made in terms of subparagraph (1) may not exceed the proceeds from the disposal of that immovable property contemplated in subparagraph (1), reduced by-

- (a) in the case of a pre-valuation date asset, any other amount allowable in terms of paragraph 25; or
- (b) in any other case, any amount allowable in terms of paragraph 20.

[Item (b) substituted by s. 59 of Act 32 of 2004.]

(3) Where a person adopts or determines the market value of immovable property on which pastoral, agricultural or other farming operations were carried on as the valuation date

value of that asset in terms of paragraph 29 (4), only capital development expenditure incurred by that person on or after 1 October 2001 must be taken into account for the purpose of calculating the amount in respect of which an election can be made in terms of subparagraph (1).

[Para. 20A inserted by s. 96 (1) of Act 45 of 2003.]

21 Limitation of expenditure

(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.

22 Amount of donations tax to be included in base cost

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.

23 Base cost in respect of value shifting arrangement

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;
 - (ii) 'A' is the market value of that person's interests immediately prior to the disposal;
 - (iii) 'B' is the person's base cost of the interests calculated immediately prior to the disposal; and
- [Item (iii) substituted by s. 27 (1) of Act 19 of 2001.]
- (iv) 'C' is the market value of that person's interests immediately after the disposal.

- (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) in respect of the value shifting arrangement which resulted in the increase in market value of that person's interest; or

- (ii) who acquires a direct or indirect interest in the company, trust or partnership, is that proportion of the proceeds of disposal contemplated in paragraph 35 (2) in respect of the value shifting arrangement which resulted in the acquisition of that interest.

24 Base cost of asset of a person who becomes a resident on or after valuation date

(1) The base cost of an asset, other than an asset situated in the Republic listed in paragraph 2 (1) (b) (i) and (ii) or an asset held by a person if any amount received or accrued from the disposal of the asset would be taken into account for purposes of determining the net income as contemplated in section 9D of that person, acquired by a person before the date on which that 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 on or after that date in respect of that asset.

[Sub-para. (1) substituted by s. 76 (1) (b) of Act 60 of 2001, by s. 72 (1) (a) of Act 74 of 2002 and by s. 78 (1) (a) of Act 60 of 2008.]

(2) Where an asset contemplated in paragraph 12 (2) or (4) has been disposed of by a person on or 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 (determined without regard to paragraph 12 (2) or (4)) in respect of that asset are each lower than the market value of that asset as contemplated in paragraph 12 (2) or (4), that person must be treated as having acquired that asset at a cost equal to the higher of-

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

[Item (b) substituted by s. 72 (1) (c) of Act 74 of 2002.]

[Sub-para. (2) amended by s. 72 (1) (b) of Act 74 of 2002, by s. 69 (a) of Act 31 of 2005, by s. 53 (1) (a) of Act 3 of 2008 and by s. 78 (1) (b) of Act 60 of 2008.]

(3) Where an asset contemplated in paragraph 12 (2) or (4) has been disposed of by a person on or 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 contemplated in paragraph 12 (2) or (4) are each lower than the expenditure allowable in terms of paragraph 20 incurred prior to that date (determined without regard to paragraph 12 (2) or (4)) in respect of that asset, that person must be treated as having acquired that asset at a cost equal to the higher of-

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

[Item (b) substituted by s. 72 (1) (e) of Act 74 of 2002.]

[Sub-para. (3) amended by s. 72 (1) (d) of Act 74 of 2002, by s. 69 (b) of Act 31 of 2005, by s. 53 (1) (b) of Act 3 of 2008 and by s. 78 (1) (c) of Act 60 of 2008.]

(4) The provisions of this paragraph do not apply in respect of any asset of a person who became a resident before 1 October 2001.

[Sub-para. (4) added by s. 76 (1) (c) of Act 60 of 2001 and substituted by s. 46 of Act 20 of 2006.]

[Para. 24 amended by s. 76 (1) (a) of Act 60 of 2001.]

25 Determination of base cost of pre-valuation date assets

(1) The base cost of a pre-valuation date asset (other than an identical asset in respect of which paragraph 32 (3A) has been applied), is the sum of the valuation date value of that

asset, as determined in terms of paragraph 26, 27 or 28 and the expenditure allowable in terms of paragraph 20 incurred on or after the valuation date in respect of that asset.

(2) If a person has determined the base cost as contemplated in subparagraph (1) of a pre-valuation date asset which was disposed of during any prior year of assessment and in the current year of assessment-

- (a) any amount of proceeds is received or accrued in respect of that disposal which has not been taken into account in any prior year in determining the capital gain or capital loss in respect of that disposal;
- (b) any amount of proceeds which was taken into account in determining the capital gain or capital loss in respect of that disposal has become irrecoverable, or has become repayable or that person is no longer entitled to those proceeds 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;
- (c) any amount of expenditure is incurred which forms part of the base cost of that asset which has not been taken into account in any prior year in determining the capital gain or loss in respect of that disposal; or
- (d) any amount of base cost of that asset that has been taken into account in any prior year in determining the capital gain or capital loss in respect of that disposal, has been recovered or recouped,

that person must redetermine the base cost of that asset in terms of subparagraph (1) and the capital gain or capital loss from the disposal of that asset, having regard to the full amount of the proceeds and base cost so redetermined.

[Sub-para. (2) added by s. 60 (1) (b) of Act 32 of 2004.]

(3) The amount of capital gain or capital loss redetermined in the current year of assessment in terms of subparagraph (2), must be taken into account in determining any capital gain or capital loss from that disposal in that current year, as contemplated in paragraph 3 (b) (iii) or 4 (b) (iii).

[Sub-para. (3) added by s. 60 (1) (b) of Act 32 of 2004 and substituted by s. 70 of Act 17 of 2009.]

[Para. 25 substituted by s. 77 (1) of Act 60 of 2001 and by s. 73 (1) of Act 74 of 2002.]

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

(1) Where the proceeds from the disposal of a pre-valuation date asset (other than an asset contemplated in paragraph 28 or in respect of which paragraph 32 (3A) has been applied) exceed the expenditure allowable in terms of paragraph 20 incurred before, on 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-

- (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 on or after the valuation date; or
[Item (b) substituted by s. 74 (1) (b) of Act 74 of 2002.]
- (c) the time-apportionment base cost of the asset as contemplated in paragraph 30.

[Sub-para. (1) amended by s. 78 (1) (a) of Act 60 of 2001 and by s. 74 (1) (a) of Act 74 of 2002.]

(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 on or after the valuation date.

[Item (b) substituted by s. 74 (1) (c) of Act 74 of 2002.]

(3) Where a person has adopted the market value as the valuation date value of an 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 as the valuation date value of that asset, those proceeds less the expenditure allowable in terms of paragraph 20 incurred on or after the valuation date in respect of that asset.

[Sub-para. (3) substituted by s. 78 (1) (b) of Act 60 of 2001 and by s. 74 (1) (d) of Act 74 of 2002.]

27 Valuation date value where proceeds do not exceed expenditure

(1) Subject to subparagraph (2), where the proceeds from the disposal of a pre-valuation date asset do not exceed the expenditure allowable in terms of paragraph 20 incurred before, on and after the valuation date in respect of that asset, the valuation date value of that asset must be determined in terms of this paragraph.

[Sub-para. (1) substituted by s. 75 (1) (a) of Act 74 of 2002.]

(2) This paragraph does not apply in respect of any asset contemplated in paragraph 28 or in respect of which paragraph 32 (3A) has been applied.

(3) Where a person has determined the market value of an asset on the valuation date, as contemplated in paragraph 29, or the market value of an asset has been published in terms of that paragraph, and-

- (a) the expenditure allowable in terms of paragraph 20 incurred before the valuation date in respect of that asset-
- (i) is equal to or exceeds the proceeds from the disposal of that asset; and
 - (ii) exceeds the market value of that asset on valuation date,

the valuation date value of that asset must be the higher of-

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

[Sub-subitem (bb) substituted by s. 75 (1) (b) of Act 74 of 2002.]

- (b) the provisions of item (a) do not apply, the valuation date value of that asset must be the lower of-
- (i) that market value; or
 - (ii) the time-apportionment base cost of that asset as contemplated in paragraph 30.

(4) Where the provisions of subparagraph (3) do not apply, the valuation date value of that asset, contemplated in subparagraph (1), is the time-apportionment base cost of that asset, as contemplated in paragraph 30.

[Sub-para. (4) substituted by s. 97 of Act 45 of 2003.]

[Para. 27 substituted by s. 79 (1) of Act 60 of 2001.]

28 Valuation date value of an instrument

(1) Despite paragraph 29, 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) the price which could have been obtained upon a sale of that instrument between a willing buyer and a willing seller dealing at arm's length in an open market-
 - (i) in the case of an instrument which is listed on a recognised exchange, on the last trading day before valuation date; or

- (ii) in any other case, on valuation date; and
 [Item (b) substituted by s. 80 (1) (b) of Act 60 of 2001.]
 [Sub-para. (1) amended by s. 80 (1) (a) of Act 60 of 2001.]

(2) Where a person has adopted the adjusted initial amount as the valuation date value of an instrument (other than an instrument listed on a recognised exchange), as contemplated in subparagraph (1) (a), and the proceeds from the disposal of that instrument are less than that adjusted initial amount, the valuation date value of that instrument must be the time-apportionment base cost of that instrument, as contemplated in paragraph 30.

[Sub-para. (2) added by s. 80 (1) (c) of Act 60 of 2001.]

29 Market value on valuation date

(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 valuation date is, subject to subparagraphs (2) and (2A), in the case of a financial instrument listed on an exchange-
- (i) in the Republic, the price published by the Commissioner in the *Gazette*, which is the aggregate value of all transactions in that financial instrument as traded on that recognised exchange during the five business days preceding the valuation date, divided by the total quantity of that financial instrument traded during the same period; and
 [Subitem (i) substituted by s. 81 (1) (b) of Act 60 of 2001.]
- (ii) outside the Republic, and is not listed on any exchange in the Republic, the ruling price in respect of that financial instrument on that recognised exchange on the last business day before valuation date;
 [Subitem (ii) substituted by s. 81 (1) (b) of Act 60 of 2001.]
 [Item (a) amended by s. 81 (1) (a) of Act 60 of 2001.]
- (b) an asset which is not listed on a recognised exchange and which constitutes a right of a unit holder or holder of a participatory interest, as the case may be, 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
- (ii) any arrangement or scheme contemplated in paragraph (e) (ii) of the definition of 'company', the last price published before the valuation date at which a participatory interest 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 on valuation date;
 [Subitem (ii) substituted by s. 61 (1) (b) of Act 8 of 2007.]
 [Item (b) amended by s. 61 (1) (a) of Act 8 of 2007.]
- (c) any other asset, the market value determined in terms of paragraph 31 on valuation date.

(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
- (b) the price per share for which that controlling interest has been so disposed of deviates from the ruling price in respect of that share on that date prior to the announcement of the transaction,

[Item (b) substituted by s. 81 (1) (c) of Act 60 of 2001.]

the valuation date market value of that share so disposed of, as determined in 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 deviation bears to that ruling price.

[Sub-para. (2) amended by s. 81 (1) (d) of Act 60 of 2001.]

(2A) Where-

- (i) a financial instrument listed on an exchange in the Republic was not traded during the last five business days preceding valuation date;
- (ii) a financial instrument listed on an exchange in the Republic is suspended for any period during September 2001; or
- (iii) the market value of a financial instrument determined in terms of subparagraph (1) (a) (i), exceeds the average of the ruling price of that financial instrument, determined for the first 14 business days of the month of September 2001, by five per cent or more,

the Commissioner must, after consultation with the recognised exchange and the Financial Services Board, determine the market value of that financial instrument having regard to the value of the financial instrument, circumstances surrounding the suspension of that financial instrument or reasons for the increase in the value of that financial instrument.

[Sub-para. (2A) inserted by s. 81 (1) (e) of Act 60 of 2001 and amended by s. 85 of Act 43 of 2014.]

(3) For the purposes of this paragraph, '**controlling interest**' in a company means an interest in more than 35 per cent of the equity shares in that company.

[Sub-para. (3) amended by s. 81 (1) (f) of Act 60 of 2001 and substituted by s. 47 (a) of Act 20 of 2006.]

[Sub-para. (3) substituted by s. 96 (1) of Act 7 of 2010.]

(4) For the purposes of paragraphs 26 (1) (a) and 27 (3), a person may only adopt or determine the market value as the valuation date value of that asset if-

- (a) in the case where the valuation date is 1 October 2001-
 - (i) that person has valued that asset on or before 30 September 2004;
 - (ii) the price of that asset has been published by the Commissioner in terms of this paragraph in the *Gazette*; or
 - (iii) that person has acquired that asset from that person's spouse as contemplated in paragraph 67 and the transferor spouse had adopted or determined a market value in terms of this paragraph, and for this purpose the transferee spouse must be treated as having adopted or determined that same market value; or
- (b) in the case where the valuation date is after 1 October 2001-
 - (i) that person has valued that asset within two years after valuation date; or
 - (ii) that asset is one contemplated in paragraph 31 (1) (a) or (c) (i) and the market value of that asset on valuation date is determined in terms of one of those paragraphs.

[Sub-para. (4) substituted by s. 38 (1) of Act 30 of 2002, amended by s. 76 (1) (c) of Act 74 of 2002 and substituted by s. 47 (b) of Act 20 of 2006.]

(5) Despite subparagraph (4), where a person has valued an asset and-

- (a) the market value of that asset exceeds R10 million;
- (b) that asset is an intangible asset (excluding financial instruments) and the market value thereof exceeds R1 million; or
- (c) that asset is an unlisted share in a company and the market value of all the shares held by that person in that company exceeds R10 million,

that person may only adopt the market value as the valuation date value of that asset if that person has furnished proof of that valuation to the Commissioner in the form as the Commissioner may prescribe, with the first return submitted by that person after the period

contemplated in subparagraph (4).

[Sub-para. (5) amended by s. 47 (c) of Act 20 of 2006 and by s. 13 (a) of Act 44 of 2014.]

(6) Where a person disposes of-

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

that person must retain proof of that valuation.

[Sub-para. (6) amended by s. 76 (1) (d) of Act 74 of 2002 and by s. 13 (b) of Act 44 of 2014.]

(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) Where the valuation date of a person is after 1 October 2001 the provisions of subparagraphs (1) (a), (1) (b) (i), (2), (2A), (3), (5) and (6) (a) do not apply.

[Sub-para. (8) substituted by s. 47 (d) of Act 20 of 2006 and by s. 61 (1) (c) of Act 8 of 2007.]

30 Time-apportionment base cost

(1) Subject to subparagraph (3), the time apportionment base cost of a pre-valuation date asset is determined in accordance with the formula-

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

where-

- (a) 'Y' represents the amount to be determined;
- (b) 'B' represents the amount of expenditure incurred prior to the valuation date in respect of that asset that is allowable before, on or after the valuation date in terms of paragraph 20;
[Item (b) substituted by s. 82 (1) (b) of Act 60 of 2001 and by s. 70 (1) (a) of Act 31 of 2005.]
- (c) 'P' represents the proceeds as determined in terms of paragraph 35, in respect 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);
[Item (c) substituted by s. 77 (1) (b) of Act 74 of 2002.]
- (d) 'N' represents the number of years determined from the date that the asset was acquired to the day before 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 2 assessment prior to the valuation date;
[Item (d) substituted by s. 82 (1) (c) of Act 60 of 2001.]
- (e) 'T' represents the number of years determined from valuation date until the date the asset was disposed of after valuation date:
[Item (e) substituted by s. 82 (1) (c) of Act 60 of 2001.]

Provided that for purposes of items (d) and (e) a part of a year must be treated as a full year.

[Sub-para. (1) amended by s. 82 (1) (a) and (d) of Act 60 of 2001 and by s. 77 (1) (a) of Act 74 of 2002.]

(2) Where a portion of the expenditure allowable in terms of paragraph 20 in respect of a pre-valuation date asset was incurred on or after the valuation date, 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-

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

where-

- (a) 'P' represents the proceeds attributable to B;
- (b) 'R' 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 incurred prior to the valuation date in respect of that asset that is allowable before, on or after the valuation date in terms of paragraph 20;

[Item (d) substituted by s. 70 (1) (b) of Act 31 of 2005.]

[Sub-para. (2) substituted by s. 77 (1) (c) of Act 74 of 2002.]

(3) A person must determine the time-apportionment base cost of a pre-valuation date asset in terms of subparagraph (4) where-

- (a) that person has incurred expenditure contemplated in paragraph 20 (1) (a), (c) or (e) on or after the valuation date;
- (b) any part of the expenditure contemplated in paragraph 20 (1) (a), (c) or (e) incurred before, on or after the valuation date is or was allowable as a deduction in determining the taxable income of that person before the inclusion of any taxable capital gain; and

[Item (b) substituted by s. 48 of Act 20 of 2006.]

- (c) the proceeds in respect of the disposal of that asset exceed the expenditure allowable in terms of paragraph 20 incurred before, on and after the valuation date in respect of that asset.

[Sub-para. (3) added by s. 77 (1) (d) of Act 74 of 2002 and substituted by s. 70 (1) (c) of Act 31 of 2005.]

(4) The time-apportionment base cost of a pre-valuation date asset referred to in subparagraph (3) is determined in accordance with the formulae-

$$Y = B + \frac{[(P_1 - B_1) \times N]}{T + N},$$

and

$$P_1 = \frac{R_1 \times B_1}{(A_1 + B_1)}$$

where-

- (a) 'Y' represents the time apportionment base cost of the asset;
- (b) 'P1' represents the proceeds attributable to the expenditure in B1;
- (c) 'A1' represents the sum of the expenditure allowable in terms of paragraph 20 in respect of the asset that is incurred on or after valuation date, and any amount of that expenditure that has been recovered or recouped as contemplated in paragraph 35 (3) (a);
- (d) 'B1' represents the sum of the expenditure allowable in terms of paragraph 20 in respect of the asset that is incurred before valuation date, and any amount of that expenditure that has been recovered or recouped as contemplated in paragraph 35 (3) (a).

[Item (d) substituted by s. 70 (1) (d) of Act 31 of 2005.]

- (e) 'B', 'N' and 'T' bear the same meanings ascribed to those symbols in

subparagraph (1); and

- (f) 'R1' represents the sum of the proceeds and any amount contemplated in paragraph 35 (3) (a) in respect of that asset.

[Item (f) substituted by s. 70 (1) (e) of Act 31 of 2005.]

[Sub-para. (4) added by s. 77 (1) (d) of Act 74 of 2002 and amended by s. 98 (1) of Act 45 of 2003.]

(5) For purposes of this paragraph-

- (a) any selling expenses incurred on or after the valuation date must be deducted from the following amounts-

- (i) in the case where subparagraph (2) or (3) applies, the amounts represented by the symbols 'R' and 'R1', respectively; and
 (ii) in any other case, the amount represented by the symbol 'P';

- (b) except for subparagraph (3) (c) any reference to expenditure allowable in terms of paragraph 20 must exclude selling expenses; and

- (c) **'selling expenses'** means expenditure-

- (i) contemplated in paragraph 20 (1) (c) (i) to (iv) incurred directly for the purposes of disposing of that asset; and
 (ii) which would, but for the provisions of item (b), have constituted expenditure allowable in terms of paragraph 20.

[Sub-para. (5) added by s. 70 (1) (f) of Act 31 of 2005.]

31 Market value

(1) The market value of an asset on a specified date is in the case of-

- (a) an asset which is a financial instrument listed on a recognised exchange and for which a price was quoted on that exchange, the ruling price in respect of that financial instrument on that recognised exchange at close of business on the last business day before that date;.

[Item (a) substituted by s. 83 (1) (a) of Act 60 of 2001, by s. 49 (b) of Act 20 of 2006 and by s. 62 (1) of Act 8 of 2007.]

- (b) an asset which is a long-term insurance policy, being a policy as defined in section 1 of the Long-term Insurance Act the greater of-

- (i) the amount which would be payable to the policyholder upon the surrender of that policy on that day; or
 (ii) the amount which according to the insurer is the fair market value of that policy should it run its remaining policy term as determined on that day;

[Item (b) amended by s. 131 (a) of Act 31 of 2013.]

- (c) an asset which is not listed on a recognised exchange which constitutes a right of a holder of a participatory interest in-

- (i) any portfolio of a collective investment scheme in securities, or any portfolio of a collective investment scheme in property, carried on in the Republic, the price at which a participatory interest can be sold to the management company of the scheme on that date; or

[Subitem (i) substituted by s. 49 (c) of Act 20 of 2006 and by s. 97 of Act 7 of 2010.]

- (ii) any arrangement or scheme contemplated in paragraph (e) (ii) of the definition of 'company', the price at which a participatory interest can be sold to the management company of the scheme on that date 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 on that date;

[Subitem (ii) substituted by s. 49 (c) of Act 20 of 2006.]

[Item (c) substituted by s. 78 (1) (a) of Act 74 of 2002.]

- (d) a fiduciary, usufructuary or other similar interest in any asset, an amount determined by capitalising at 12 per cent the annual value of the right of enjoyment of the asset subject to that fiduciary, usufructuary or other like

interest, as determined in terms of subparagraph (2), over the expectation of life of the person to whom that interest was granted, or if that right of enjoyment is to be held for a lesser period than the life of that person, over that lesser period;

[Item (d) substituted by s. 83 (1) (b) of Act 60 of 2001 and by s. 78 (1) (b) of Act 74 of 2002.]

- (e) any asset which is subject to a fiduciary, usufructuary or other similar interest in favour of any person, the amount by which the market value of the full ownership of that asset exceeds the value of that fiduciary, usufructuary or other like interest determined in accordance with item (d);

[Item (e) substituted by s. 78 (1) (b) of Act 74 of 2002.]

- (f) 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; or

[Sub-item (i) substituted by s. 86 (a) of Act 43 of 2014.]

- (ii) the price contemplated in item (g);

[Item (f) amended by s. 49 (d) of Act 20 of 2006.]

- (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.

[Sub-para. (1) amended by s. 49 (a) of Act 20 of 2006.]

- (2) For purposes of subparagraph (1) (d)-

- (a) the annual value of the right of enjoyment of any asset which is subject to any fiduciary, usufructuary or other like interest, means an amount equal to 12 per cent of the market value of the full ownership of the asset: Provided that where the Commissioner is satisfied that the asset 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 asset, the Commissioner may fix such sum as representing the annual yield as may seem 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 asset; and

- (b) the expectation of life of a person to whom an interest was granted-

- (i) in the case of a natural person, must be determined in accordance with the provisions applicable in determining the expectation of life of a person for estate duty purposes, as contemplated in the regulations issued in terms of section 29 of the Estate Duty Act; and

[Sub-item (i) substituted by s. 86 (b) of Act 43 of 2014.]

- (ii) in the case of a person other than a natural person, is a period of fifty years.

[Sub-para. (2) substituted by s. 78 (1) (c) of Act 74 of 2002.]

(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 an extent that is not in proportion to that person's holding of shares, the value of the shares held by that holder of shares must not be less than the amount to which that holder of shares 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.

[Item (b) substituted by s. 131 (b) of Act 31 of 2013.]

(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.

32 Base cost of identical assets

(1) This paragraph applies to assets which form part of a holding of identical assets.

[Sub-para. (1) substituted by s. 84 (1) (a) of Act 60 of 2001.]

(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) Subject to subparagraphs (3A) and (3B), the base cost of identical assets must be determined by using one of the following methods-

- (a) specific identification; or
- (b) the first in first out method

[Sub-para. (3) amended by s. 28 (1) of Act 19 of 2001, substituted by s. 84 (1) (b) of Act 60 of 2001 and amended by s. 113 (1) (a) of Act 22 of 2012.]

(3A) The weighted average method of determining base cost of assets, as contemplated in subparagraph (4), may be used for identical assets that do not constitute assets contemplated in subparagraph (3B) and which-

- (a) from the date of acquisition to the date of disposal constituted assets contemplated in paragraph 31 (1) (a), other than instruments contemplated in item (d);

[Item (a) substituted by s. 79 (1) (a) of Act 74 of 2002.]

(b) constitute participatory interests-

- (i) contemplated in paragraph 31 (1) (c), where the prices of these participatory interests or shares are regularly published in a national or international newspaper;
- (ii) in any portfolio comprised in any collective investment scheme managed or carried on by a company registered as a manager under section 42 of the Collective Investment Schemes Control Act for purposes of Parts IV and V of that Act; or
- (iii) in any arrangement or scheme contemplated in paragraph (e) (ii) of the definition of 'company' in section 1 of the Act, which is approved in terms of section 65 of the Collective Investment Schemes Control Act by the Registrar as defined in section 1 of the latter Act;

[Subitem (ii) substituted by s. 132 of Act 31 of 2013.]

[Item (b) substituted by s. 39 (1) of Act 30 of 2002 and by s. 79 (1) (b) of Act 74 of 2002.]

- (c) constitute coins made mainly from gold or platinum, where the prices of these coins are regularly published in a national or international newspaper, or
- (d) from the date of acquisition to the date of disposal constituted instruments as defined in section 24J that were listed on a recognised exchange and for which a price was quoted on that exchange,

[Item (d) inserted by s. 79 (1) (d) of Act 74 of 2002.]

and where a person uses the weighted average method for any identical asset contemplated in item (a), (b), (c) or (d), that method must be used for all identical assets, contemplated in that item, held by that person.

[Sub-para. (3A) inserted by s. 84 (1) (c) of Act 60 of 2001 and amended by s. 79 (1) (e) of Act 74 of 2002 and by s. 113 (1) (b) of Act 22 of 2012.]

(3B) The weighted average method of determining base cost of assets, as contemplated in subparagraph (4), must be used for identical assets that are, in terms of section 29A, allocated to all the policyholder funds of an insurer as defined in that section: Provided that this subparagraph must not apply to any asset-

- (a) that constitutes-
 - (i) an instrument as defined in section 24J (1);
 - (ii) an interest rate agreement as defined in section 24K (1);
 - (iii) a contractual right or obligation the value of which is determined directly or indirectly with reference to-
 - (aa) an instrument contemplated in subparagraph (i);
 - (bb) an interest rate agreement contemplated in subparagraph (ii); or
 - (cc) any specified rate of interest;
 - (iv) trading stock; or
 - (v) a policy of reinsurance; or
- (b) held by an insurer if that insurer is a Category III Financial Services Provider as defined in section 29B (1) and that asset is held by that insurer in its capacity as a Category III Financial Services Provider.

[Sub-para. (3B) inserted by s. 113 (1) (c) of Act 22 of 2012.]

(4) In applying the weighted average method of determining base cost-

- (a) the weighed average base cost, on valuation date, of identical assets acquired and not disposed of before valuation date is equal to the valuation date value of those identical assets, as contemplated in paragraph 28, or the market value of those identical assets, as contemplated in paragraph 29, divided by the number of those identical assets; and
- (b) the weighted average base cost, thereafter, of identical assets must be calculated by-
 - (i) adding expenditure allowable in terms of paragraph 20 in respect of identical assets to the base cost of identical assets acquired and not disposed of before that expenditure was incurred; and
 - (ii) dividing that amount by the number of identical assets acquired and not disposed of after that expenditure was incurred.

[Sub-para. (4) substituted by s. 84 (1) (d) of Act 60 of 2001.]

(5)

[Sub-para. (5) deleted by s. 84 (1) (e) of Act 60 of 2001.]

(6) Once a person has adopted one of the methods specified in this paragraph in respect of a class of identical assets contemplated in subparagraph (3A), that method must be used until all those identical assets have been disposed of.

[Sub-para. (6) substituted by s. 84 (1) (f) of Act 60 of 2001.]

33 Part-disposals

- (1) Subject to subparagraphs (2), (3), (4) and (5), where part of an asset is disposed of-
 - (a) the proportion of the expenditure attributable to the part disposed of is an amount which bears to the expenditure allowable in terms of paragraph 20 in respect 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; and
 - (b) the market value on valuation date attributable to the part disposed of is an

amount which bears to the market value adopted or determined in terms of paragraph 29 (4) in respect 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) Subject to subparagraph (4), where a part of the expenditure allowable in terms of paragraph 20 or the market value adopted or determined in terms of paragraph 29 (4) in respect 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 that expenditure or market value as the case may be.

(3) For the purposes of subparagraph (1) and (2) there is no part-disposal of an asset by a person in respect of-

- (a) the granting of an option by that person in respect of an asset;
 - (b) the granting, variation or cession of a right of use or occupation of that asset by that person in respect of which no proceeds are received by or accrue to that person;
 - (c) the improvement or enhancement of immovable property which that person leases from a lessor; or
- [Item (c) deleted by s. 61 (1) (b) of Act 32 of 2004 and inserted by s. 71 (1) (b) of Act 31 of 2005.]
- (d) the replacement of part of that asset in repairing that asset.

(4) Where proceeds are received by or accrue to a person in respect of the granting, variation or cession of a right of use or occupation of an asset by that person, the portion of the expenditure allowable in terms of paragraph 20 or market value adopted or determined in terms of paragraph 29 (4) attributable to the part of the asset in respect of which those proceeds were received or accrued is an amount which bears to that expenditure or market value as the case may be of the entire asset the same proportion as those proceeds bear to the market value of the entire asset immediately prior to that disposal.

(5) Where a person has adopted the 20 per cent of proceeds method contemplated in paragraph 26 (1) (b) in determining the valuation date value of a part of an asset that has been disposed of, that person must adopt that method in determining the valuation date value of any remaining part of that asset.

[Para. 33 substituted by s. 80 of Act 74 of 2002 and by s. 99 of Act 45 of 2003.]

34 Debt substitution

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, which cost must be treated as an amount of expenditure actually incurred and paid for the purposes of paragraph 20 (1) (a).

[Para. 34 substituted by s. 85 (1) of Act 60 of 2001.]

PART VI PROCEEDS (paras 35-43B)

35 Proceeds from disposal

(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 respect 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.

[Sub-para. (1) amended by s. 86 (1) of Act 60 of 2001.]

(1A) The amount of proceeds from the disposal of a share, option or certificate issued to any person by a resident company in exchange, directly or indirectly, for shares in a foreign company as contemplated in paragraph 11 (2) (b) must be treated as an amount equal to the fair market value of the shares in the foreign company.

[Sub-para. (1A) inserted by s. 133 (1) of Act 31 of 2013.]

(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.

35A Disposal of certain debt claims

(1) This paragraph applies where-

- (a) a person has disposed of an asset during any year of assessment, all the proceeds of which will not accrue to that person in that year;
- (b) that person subsequently disposes of any right to claim payment in respect of that disposal; and
- (c) that claim includes any amount which has not yet accrued to that person at the time of the disposal of that claim.

(2) So much of any consideration received by or accrues to a person from the disposal of a claim contemplated in subparagraph (1) (b) as is attributable to any amount which has not yet accrued to that person as contemplated in subparagraph (1) (c), must be treated as an amount of consideration which accrues to that person in respect of the disposal of the asset contemplated in subparagraph (1) (a).

(3) So much of any capital gain or capital loss determined in respect of the disposal by the person of the right to claim payment as contemplated in subparagraph (1) (b), as is attributable to any amount which has not yet accrued to that person, must be disregarded.

[Para. 35A inserted by s. 62 (1) of Act 32 of 2004.]

36 Disposal of partnership asset

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.

37 Assets of trust and company

(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.

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

(1) Subject to subparagraph (2) and 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 an amount received or accrued equal to the market value of that asset as at the date of that disposal; and

[Item (a) substituted by s. 63 (1) (a) of Act 32 of 2004.]

- (b) the person who acquired that asset must be treated as having acquired that asset at a cost equal to that market value, which cost must be treated as an amount of expenditure actually incurred and paid for the purposes of paragraph 20 (1) (a).

[Item (b) substituted by s. 87 (1) (b) of Act 60 of 2001.]

[Sub-para. (1) amended by s. 87 (1) (a) of Act 60 of 2001, by s. 81 of Act 74 of 2002 and by s. 114 (1) of Act 22 of 2012.]

(2) Subparagraph (1) does not apply in respect of the disposal of-

- (a) a right contemplated in section 8A;
- (b) an asset in the circumstances contemplated in section 10 (1) (nE);
- (c) a qualifying equity share contemplated in section 8B by an employer, associated institution or any other person by arrangement with the employer, as contemplated in paragraph 1 of the Seventh Schedule, to an employee; or
- (d)

[Item (d) substituted by s. 72 (1) of Act 31 of 2005 and deleted by s. 98 of Act 7 of 2010.]

- (e) any asset in respect of which section 40CA applies.

[Item (e) substituted by s. 134 (c) of Act 31 of 2013.]

[Sub-para. (2) added by s. 87 (1) (c) of Act 60 of 2001 and substituted by s. 63 (1) (b) of Act 32 of 2004.]

39 Capital losses determined in respect of disposals to certain connected persons

(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 person-

- (a) who was a connected person in relation to that person immediately before that disposal; or
- (b) which is immediately after the disposal-
 - (i) a member of the same group of companies as that person; or
 - (ii) a trust with a beneficiary which is a member of the same group of companies as that person.

[Item (b) substituted by s. 26 (b) of Act 16 of 2004.]

[Sub-para. (1) substituted by s. 100 of Act 45 of 2003.]

(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 subparagraph (1), a connected person in relation to-
- (a) a natural person does not include a relative of that person other than a parent, child, stepchild, brother, sister, grandchild or grandparent of that person; or
 - (b) a fund of an insurer contemplated in section 29A does not include another such fund of that insurer in respect of the disposal of an asset by such fund to another such fund.

[Item (b) substituted by s. 73 (1) (a) of Act 31 of 2005.]

[Sub-para. (3) substituted by s. 88 (1) of Act 60 of 2001 and amended by s. 63 (1) of Act 8 of 2007.]

(4) Subparagraph (1) does not apply in respect of the disposal by a trust of any right, marketable security or equity instrument contemplated in section 8A or 8C to a beneficiary of that trust, if-

- (a) that right, marketable security or equity instrument is disposed of to that beneficiary-
 - (i) by virtue of that beneficiary's employment with an employer, directorship of a company or services rendered or to be rendered by that beneficiary as an employee to an employer; or
 - (ii) as a result of the exercise, cession, release, conversion or exchange by that beneficiary of the right, marketable security or equity instrument contemplated in subitem (i); and
- (b) that trust is an associated institution as contemplated in paragraph 1 of the Seventh Schedule in relation to that employer or company.

[Sub-para. (4) added by s. 73 (1) (b) of Act 31 of 2005.]

39A Disposal of asset for unaccrued amounts of proceeds

(1) Where a person during any year of assessment disposes of an asset and all the proceeds from the disposal of that asset will not accrue to that person during that year, that person must, when determining the aggregate capital gain or aggregate capital loss for that year or any subsequent year of assessment, disregard any capital loss determined in respect of that disposal.

(2) A person's capital loss which is disregarded during any year of assessment in terms of subparagraph (1) which has not otherwise been allowed as a deduction may be deducted from that person's capital gains determined in any subsequent year in respect of the disposal of the asset contemplated in subparagraph (1).

(3) If during any year of assessment a person shows that no further proceeds will accrue to that person from the disposal contemplated in subparagraph (1), so much of the capital loss contemplated in that subparagraph as has not been deducted from any subsequent capital gains as contemplated in subparagraph (2), may be taken into account in determining that person's aggregate capital gain or aggregate capital loss for that year of assessment.

[S. 39A inserted by s. 64 (1) of Act 32 of 2004.]

40 Disposal to and from deceased estate

(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)

[Item (b) deleted by s. 79 (1) (a) of Act 60 of 2008.]

- (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; or

- (d) an interest in a pension, pension preservation, provident, provident preservation or retirement annuity fund in the Republic or a fund, arrangement or instrument situated outside the Republic which provides benefits similar to a pension, pension preservation, provident, provident preservation or retirement annuity fund which if the proceeds thereof had been received by or accrued to the deceased, the capital gain or capital loss determined in respect of the disposal of the interest would have been disregarded in terms of paragraph 54,

[Item (d) added by s. 89 (1) (a) of Act 60 of 2001 and substituted by s. 54 of Act 3 of 2008.]

for an amount received or accrued equal to the market value of those assets at the date of that person's death.

[Sub-para. (1) amended by s. 89 (1) (b) of Act 60 of 2001, by s. 82 (a) and (b) of Act 74 of 2002, by s. 79 (1) (b) of Act 60 of 2008 and by s. 71 (1) (a) of Act 17 of 2009.]

(1A) If any asset of a deceased person is treated as having been disposed of as contemplated in subparagraph (1) and is transferred directly to-

- (a) the estate of the deceased person, the estate must be treated as having acquired that asset at a cost equal to the market value of that asset as at the date of death of that deceased person; or
- (b) an heir or legatee of the person, the heir or legatee must be treated as having acquired that asset at a cost equal to the market value of that asset as at the date of death of that deceased person,

which cost must be treated as an amount of expenditure actually incurred for the purposes of paragraph 20 (1) (a).

[Sub-para. (1A) inserted by s. 71 (1) (b) of Act 17 of 2009.]

(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))-

- (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 or legatee 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, which cost must be treated as an amount of expenditure actually incurred for the purposes of paragraph 20 (1) (a).

[Item (b) substituted by s. 89 (1) (c) of Act 60 of 2001 and by s. 71 (1) (c) of Act 17 of 2009.]

[Sub-para. (2) amended by s. 82 of Act 74 of 2002, by s. 50 of Act 20 of 2006, by s. 79 (1) (c) of Act 60 of 2008 and by s. 115 (1) of Act 22 of 2012.]

(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.

41 Tax payable by heir of a deceased estate

(1) Where-

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

[Item (a) substituted by s. 83 of Act 74 of 2002 and by s. 87 of Act 43 of 2014.]

- (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 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.

42 Short-term disposals and acquisitions of identical financial instruments

(1) Where a capital loss is determined in respect of the disposal by a person of a financial instrument, other than a disposal contemplated in section 29B, 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 the total of-
 - (i) any amount allowable in terms of paragraph 20; and
 - (ii) 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),

which cost must be treated as an amount of expenditure actually incurred and paid for the purposes of paragraph 20 (1) (a).

[Item (b) substituted by s. 90 (1) (a) of Act 60 of 2001 and amended by s. 74 of Act 35 of 2007 and by s. 55 of Act 3 of 2008.]

[Sub-para. (1) amended by s. 116 (1) (a) of Act 22 of 2012.]

(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 financial instrument by holding one or more contrary positions with respect to a financial instrument of the same kind and of the same or equivalent quality.

[Item (c) substituted by s. 99 of Act 7 of 2010.]

(3) For the purposes of this paragraph, a connected person in relation to-

- (a) a natural person does not include a relative of that person other than a parent, child, stepchild, brother, sister, grandchild or grandparent of that person; or
- (b) a fund of an insurer contemplated in section 29A does not include another such fund of that insurer in respect of the disposal of an asset by such fund to another such fund.

[Item (b) substituted by s. 74 (1) of Act 31 of 2005.]

[Sub-para. (3) substituted by s. 90 (1) (b) of Act 60 of 2001.]

(4) This paragraph must not apply to any asset-

- (a) in respect of which the weighted average method of determining base cost of assets, as contemplated in paragraph 32 (4), is used; and
- (b) if that asset is, in terms of section 29A, allocated to any policyholder fund of an insurer as defined in that section.

[Sub-para. (4) added by s. 116 (1) (b) of Act 22 of 2012.]

42A

[Para. 42A inserted by s. 75 (1) of Act 35 of 2007 and repealed by s. 135 of Act 31 of 2013.]

43 Assets disposed of or acquired in foreign currency

(1) Where, during any year of assessment, a person that is a natural person or a trust that is not carrying on a trade disposes of an asset for proceeds in a foreign currency after having incurred expenditure in respect of that asset in the same currency, that person must determine the capital gain or capital loss on the disposal in that currency and that capital gain or capital loss must be translated to the local currency by applying the average exchange rate for the year of assessment in which that asset was disposed of or by applying the spot rate on the date of disposal of that asset.

[Sub-para. (1) substituted by s. 101 (1) (a) of Act 45 of 2003, by s. 75 (1) (a) of Act 31 of 2005, by s. 76 (a) of Act 35 of 2007, by s. 117 (1) (a) of Act 22 of 2012 and by s. 136 (1) (a) of Act 31 of 2013.]

(1A) Where, during any year of assessment, a person disposes of an asset (other than a disposal contemplated in subparagraph (1)) for proceeds in a foreign currency or after having incurred expenditure in respect of that asset in a foreign currency, that person must, for the purposes of determining the capital gain or capital loss on the disposal of that asset, translate-

- (a) the proceeds into the local currency at the average exchange rate for the year of assessment in which that asset was disposed of or at the spot rate on the date of disposal of that asset; and
- (b) the expenditure incurred in respect of that asset into the local currency at the average exchange rate for the year of assessment during which that expenditure was incurred or at the spot rate on the date on which that expenditure was incurred.

[Sub-para. (1A) inserted by s. 117 (1) (b) of Act 22 of 2012 and substituted by s. 136 (1) (b) of Act 31 of 2013.]

(2)

[Sub-para. (2) substituted by s. 101 (1) (b) of Act 45 of 2003 and amended by s. 75 (1) (b) and (c) of Act 31 of 2005, by s. 51 of Act 20 of 2006, by s. 76 (b) and (c) of Act 35 of 2007 and by s. 100 (1) (a) of Act 7 of 2010 and deleted by s. 136 (1) (c) of Act 31 of 2013.]

(3)

[Sub-para (3) omitted by s. 84 (1) of Act 74 of 2002.]

(4)

[Sub-para. (4) amended by s. 101 (1) (c), (d) and (e) of Act 45 of 2003, by s. 75 (1) (d) of Act 31 of 2005, by s. 76 (d) of Act 35 of 2007 and by s. 111 (1) (a) and (b) of Act 24 of 2011 and deleted by s. 117 (1) (c) of Act 22 of 2012.]

(5) Where a person is treated as having derived an amount of proceeds from the disposal of any asset and the expenditure incurred to acquire that asset is determined in any foreign currency-

- (a) the amount of those proceeds must be treated as being denominated in the currency of the expenditure incurred to acquire that asset; and
- (b) the expenditure incurred by that person to acquire that asset must for purposes of paragraphs 12, 38 and 40 be treated as being denominated in that currency.

[Sub-para. (5) amended by s. 101 (1) (f) of Act 45 of 2003 and substituted by s. 88 (1) (a) of Act 43 of 2014.]

(5A)

[Sub-para. (5A) inserted by s. 101 (1) (g) of Act 45 of 2003 and deleted by s. 136 (1) (d) of Act 31 of 2013.]

(6) Where a person has adopted the market value as the valuation date value of any asset contemplated in this paragraph, that market value must be determined in the currency of the expenditure incurred to acquire that asset and translated to the local currency by applying the spot rate on valuation date.

[Sub-para. (6A) amended by s. 75 (1) (e) of Act 31 of 2005 and substituted by s. 136 (1) (e) of Act

31 of 2013 and by s. 88 (1) (b) of Act 43 of 2014.]

(6A) Subparagraph (1A) must not apply in respect of the disposal by a person of-

(a)

[Item (a) deleted by s. 136 (1) (g) of Act 31 of 2013.]

(b) any amount of a debt owed to that person denominated in a foreign currency; or

[Item (b) substituted by s. 136 (1) (h) of Act 31 of 2013.]

(c) any right of that person arising from any contractual agreement or arrangement to which that person and another party are parties where-

- (i) that contractual agreement or arrangement gives rise to that right and to a corresponding obligation of the other party; and
- (ii) the value of that right and the amount of that obligation are determined directly or indirectly with reference to an amount contemplated in item (b).

[Subitem (ii) substituted by s. 136 (1) (i) of Act 31 of 2013.]

[Sub-para. (6A) inserted by s. 117 (1) (d) of Act 22 of 2012 and amended by s. 136 (1) (f) of Act 31 of 2013.]

(7) For the purposes of this paragraph-

'foreign currency' means currency other than local currency; and

'local currency' means-

(a) in relation to a permanent establishment of a person, the functional currency of that permanent establishment (other than the currency of any country in the common monetary area);

(b) in relation to a headquarter company, in respect of amounts which are not attributable to a permanent establishment outside the Republic, the functional currency of that headquarter company;

[Item (b) substituted by s. 136 (1) (j) of Act 31 of 2013.]

(c) in relation to a domestic treasury management company, in respect of amounts which are not attributable to a permanent establishment outside the Republic, the functional currency of that domestic treasury management company;

[Item (c) substituted by s. 136 (1) (l) of Act 31 of 2013.]

(d) in relation to an international shipping company defined in section 12Q, in respect of amounts which are not attributable to a permanent establishment outside the Republic, the functional currency of that international shipping company; or

[Item (d) added by s. 136 (1) (l) of Act 31 of 2013.]

(e) in any other case, the currency of the Republic.

[Item (e) added by s. 136 (1) (l) of Act 31 of 2013.]

[Definition of 'local currency' amended by s. 101 (1) (h) of Act 45 of 2003 and substituted by s. 100 (1) (b) of Act 7 of 2010.]

[Para. 43 substituted by s. 84 (1) of Act 74 of 2002.]

43A Dividends treated as proceeds on disposal of certain shares

(1) For the purposes of this section, **'exempt dividend'** means any dividend or foreign dividend to the extent that the dividend or foreign dividend is-

- (a) not subject to any tax under Part VIII of Chapter II; and
- (b) exempt from normal tax in terms of section 10 (1) (k) (i) or section 10B (2) (a) or (b).

(2) The proceeds from the disposal by a taxpayer that is a company of shares in another company must be increased by an amount equal to the amount of any exempt dividend received by or accrued to that taxpayer in respect of any share held by the taxpayer in that other company-

- (a) to the extent that the exempt dividend is received by or accrues to the taxpayer within a period of 18 months prior to or as part of the disposal;
- (b) if the taxpayer immediately before the disposal-

- (i) held the shares disposed of as a capital asset (as defined in section 41); and
 - (ii) held more than 50 per cent of the equity shares in the other company; and
- (c) if the other company (or any company in which that other company directly or indirectly holds more than 50 per cent of the equity shares) has, within a period of 18 months prior to that disposal, by reason of or in consequence of the disposal, incurred any debt-
- (i) owing to the person acquiring the shares or any connected person in relation to that person; or
 - (ii) that is guaranteed or otherwise secured by the person acquiring the shares or any connected person in relation to that person.

[Sub-para. (2) amended by s. 118 (1) (b) of Act 22 of 2012 and substituted by s. 118 (1) (a) of Act 22 of 2012.]

(3) For the purposes of subparagraph (2), the amount by which the proceeds must be increased is limited to the amount of the debt contemplated in item (c) of that subparagraph.

[Sub-para. (3) substituted by s. 118 (1) (a) and (c) of Act 22 of 2012.]

[Para. 43A inserted by s. 72 (1) of Act 17 of 2009 and substituted by s. 112 (1) of Act 24 of 2011.]

43B Base cost of assets of controlled foreign companies

Where the functional currency of a controlled foreign company-

- (a) was the currency of a country which-
 - (i) abandoned its currency; and
 - (ii) had an official rate of inflation of 100 per cent or more for the foreign tax year preceding the abandonment of the currency; and
 - (b) the controlled foreign company adopted a new functional currency as a consequence of the abandonment contemplated in subparagraph (a) (i),
- [Sub-para. (b) substituted by s. 102 (1) (b) of Act 7 of 2010.]

the controlled foreign company must, for the purposes of determining the base cost of an asset of the controlled foreign company, be deemed to have acquired the asset in that new currency-

- (A) on the first day of the foreign tax year of the controlled foreign company in which; and
- (B) for an amount equal to the market value of the asset on the date on which,

the new currency was adopted by the controlled foreign company.

[Para. 43B added by s. 101 (1) of Act 7 of 2010 and amended by s. 102 (1) (a) of Act 7 of 2010.]

PART VII PRIMARY RESIDENCE EXCLUSION (paras 44-51A)

44 Definitions

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 or a share or interest in a similar entity which is not a resident; or
- [Para. (b) substituted by s. 89 of Act 43 of 2014.]
- (c) a right of use or occupation,

but excluding-

- (i) a right under a mortgage bond; or
- (ii) a right or interest of whatever nature in a trust or an asset of a trust, other than a right of a lessee who is not a connected person in relation to that trust;

[Definition of 'an interest' amended by s. 92 (1) (a) of Act 60 of 2001.]

'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 special 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;

[Sub-para. (b) amended by s. 92 (1) (b) of Act 60 of 2001.]

'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.

45 General principle

(1) Subject to subparagraphs (2), (3) and (4), a natural person or a special trust must, when determining an aggregate capital gain or aggregate capital loss, disregard-

- (a) so much of a capital gain or capital loss determined in respect of the disposal of the primary residence of that person or that special trust as does not exceed R2 million; or

[Item (a) substituted by s. 10 (1) of Act 13 of 2012.]

- (b) a capital gain determined in respect of the disposal of the primary residence of that person or that special trust if the proceeds from the disposal of that primary residence do not exceed R2 million.

[Item (b) substituted by s. 103 (1) of Act 7 of 2010.]

[Sub-para. (1) substituted by s. 93 (1) of Act 60 of 2001, amended by s. 33 of Act 9 of 2006, by s. 2 (2) (b) of Act 8 of 2007 and by s. 1 (2) (c) of Act 3 of 2008 and substituted by s. 73 (1) (a) of Act 17 of 2009.]

(2) Where more than one natural person or special trust jointly holds an interest in a 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.

[Sub-para. (2) substituted by s. 29 (1) of Act 19 of 2001.]

(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.

(4) Subparagraph (1) (b) does not apply where a natural person or a special trust disposes of an interest in a residence which is or was a primary residence, and that person or a beneficiary of that special trust or a spouse of that person or beneficiary-

- (a) was not ordinarily resident in that residence throughout the period commencing on or after the valuation date during which that person or special trust held that interest; or
- (b) used that residence or a part thereof for the purposes of carrying on a trade for any portion of the period commencing on or after the valuation date during which that person or special trust held that interest.

[Sub-para. (4) added by s. 73 (1) (b) of Act 17 of 2009.]

46 Size of residential property qualifying for exclusion

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 or private purposes together with that residence; and
- (c) is disposed of at the same time and to the same person as that residence.

[Sub-para. (b) substituted by s. 30 (1) of Act 19 of 2001.]

47 Apportionment in respect of periods where not ordinarily resident

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 special 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 special trust held that interest,

[Sub-para. (b) amended by s. 94 (1) of Act 60 of 2001.]

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.

48 Disposal and acquisition of primary residence

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.

49 Non-residential use

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 special trust held that interest; and
- (b) where that person or a beneficiary of that special 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 special trust held that interest,

[Subitem (ii) substituted by s. 95 (1) (a) of Act 60 of 2001.]

[Item (b) substituted by s. 95 (1) (b) of Act 60 of 2001.]

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.

50 Rental periods

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 kilometres from that residence.

51 Transfer of residence from company or trust

(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 deemed to have disposed of that interest for an amount equal to the base cost of that interest on the date of transfer thereof;
- (b) that company or trust and that natural person must, for purposes of determining any capital gain or capital loss in respect of the transfer of that interest, be deemed to be one and the same person with respect to-
 - (i) the date of acquisition of that interest by that company or trust and the amount and date of incurral by that company or trust of any expenditure in respect of that interest allowable in terms of paragraph 20; and
 - (ii) any valuation of that interest effected by that company or trust as contemplated in paragraph 29 (4);
- (c) no allowance or deduction allowed to that company or trust in respect of that interest must be recovered or recouped by that company or trust or be included in the income of that company or trust in the year in which the transfer takes place; and

[Item (c) substituted by s. 104 (1) (a) of Act 7 of 2010.]

- (d) that company or trust and that natural person must be deemed to be one and the same person for purposes of determining the amount of any allowance or deduction that is to be recovered or recouped by or included in the income of that natural person in respect of that interest.

[Item (d) substituted by s. 104 (1) (a) of Act 7 of 2010.]

(2) Subparagraph (1) applies where-

- (a) that natural person acquires that interest from the company or trust no later than 30 September 2010;

[Item (a) substituted by s. 104 (1) (b) of Act 7 of 2010.]
- (b) that natural person-
 - (i) alone or together with his or her spouse directly held all the share capital or members interest in that company from 11 February 2009 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; and
- (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 11 February 2009 to the date of the registration contemplated in item (b) (i);
- (d) the registration contemplated in item (b) (i) takes place not later than 31 December 2011:

Provided that this paragraph applies only in respect of the portion of the property contemplated in paragraph 46.

[Para. 51 amended by s. 96 (1) of Act 60 of 2001 and by s. 85 of Act 74 of 2002 and substituted by s. 74 (1) of Act 17 of 2009.]

51A Disposal of residence by company or trust and liquidation, winding up, deregistration or termination of company or trust

[Heading substituted by s. 113 (1) (a) of Act 24 of 2011.]

(1) Subject to subparagraph (6), this paragraph applies where a company or trust disposes of an interest in a residence and-

- (a) the disposal takes place on or before 31 December 2012;
- (b) the residence to which that interest relates is mainly used for domestic purposes during the period commencing on 11 February 2009 and ending on the date of the disposal contemplated in item (a) by one or more natural persons who are connected persons in relation to the company or trust at the time of that disposal; and

[Item (b) substituted by s. 113 (1) (b) of Act 24 of 2011.]

(c)

[Item (c) deleted by s. 113 (1) (c) of Act 24 of 2011.]

(d) within a period of six months commencing on the date of the disposal contemplated in item (a)-

- (i) in the case of a company making the disposal, that company has taken steps to liquidate, wind up or deregister as contemplated in section 41 (4); or
- (ii) in the case of a trust making the disposal, steps have been taken to terminate the trust.

[Subitem (ii) substituted by s. 113 (1) (d) of Act 24 of 2011.]

(2) Where a company or a trust makes a disposal of an interest in a residence as contemplated in subparagraph (1), that company or trust must be deemed to have made that disposal for an amount equal to the base cost of that interest as at the date of that disposal.

(3) Where-

- (a) an interest in a residence has been acquired by a person as a result of a disposal by a company of that interest to that person as contemplated in subparagraph (1);
- (b) that person (together with all other persons holding shares in that company) acquired all the shares in the company subsequent to the date of acquisition by the company of that interest; and
- (c) 90 per cent or more of the market value of the assets held by the company during the period commencing on 11 February 2009 and ending on the date of the disposal contemplated in subparagraph (1) (a) is attributable to that interest,

that person must-

- (i) disregard the disposal of all shares held by that person in that company for purposes of determining his or her taxable income, assessed loss, aggregate capital gain or aggregate capital loss if that disposal is made in anticipation of or in the course of the liquidation, winding up or deregistration of that company; and
- (ii) be deemed to have acquired that interest at a cost equal to the base cost of the shares contemplated in subitem (i) as at the date of the acquisition by the person of those shares plus the cost of any improvements effected in respect of that interest subsequent to that date of acquisition.

[Subitem (ii) substituted by s. 113 (1) (e) of Act 24 of 2011.]

(4) Where an interest in a residence has been acquired by a person as a result of a disposal by a company of that interest to that person as contemplated in subparagraph (1) and where subparagraph (3) does not apply-

- (a) that person must disregard the disposal of any share in that company for purposes of determining his or her taxable income, assessed loss, aggregate capital gain or aggregate capital loss if that disposal is made in anticipation of or in the course of the liquidation, winding up or deregistration of that company; and
- (b) that person and that company must be deemed to be one and the same person

with respect to-

- (i) the date of acquisition of that interest by that company;
- (ii) the amount and date of incurral by that company of any expenditure in respect of that interest allowable in terms of paragraph 20; and
- (iii) any valuation of that interest effected by that company as contemplated in paragraph 29 (4).

[Subitem (iii) substituted by s. 113 (1) (f) of Act 24 of 2011.]

(5) Where an interest in a residence has been acquired by a person as a result of a disposal by a trust of that interest to that person as contemplated in subparagraph (1), that person and that trust must for purposes of determining any capital gain or capital loss in respect of the disposal by that person of that interest so acquired be deemed to be one and the same person with respect to-

- (a) the date of acquisition of that interest by that trust;
- (b) the amount and date of incurral by that trust of any expenditure in respect of that interest allowable in terms of paragraph 20; and
- (c) any valuation of that interest effected by that trust as contemplated in paragraph 29 (4).

(6) This paragraph does not apply to any disposal made to a person unless-

- (a) within a period of six months commencing on the date of that disposal-
 - (i) where that person is a company, that company has taken steps to liquidate, wind up or deregister as contemplated in section 41 (4); or
 - (ii) where that person is a trust, steps have been taken to terminate the trust; and
- (b) one or more natural persons contemplated in subparagraph (1) (b) acquire the residence contemplated in that subparagraph on or before 31 December 2012.

[Sub-para. (6) amended by s. 113 (1) (g) of Act 24 of 2011.]

(7)

[Sub-para. (7) deleted by s. 113 (1) (i) of Act 24 of 2011.]

[Para. 51A added by s. 105 (1) of Act 7 of 2010.]

PART VIII OTHER EXCLUSIONS (paras 52-64B)

52 General principle

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.

53 Personal-use assets

(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;
- (g) any contract in terms of which a person, in return for payment of a premium, is entitled to policy benefits upon the happening of a certain event and includes a reinsurance policy in respect of such a contract, but excludes any short-term policy contemplated in the Short-term Insurance Act;
[Item (g) substituted by s. 86 (1) (b) of Act 74 of 2002 and by s. 137 of Act 31 of 2013.]
- (h) any short-term policy contemplated in the Short-term Insurance Act to the extent that it relates to any asset which is not a personal-use asset; and
[Item (h) added by s. 86 (1) (c) of Act 74 of 2002 and substituted by s. 137 of Act 31 of 2013.]
- (i) a right or interest of whatever nature to or in an asset envisaged in items (a) to (h).

[Item (i) added by s. 86 (1) (c) of Act 74 of 2002.]

(4) For the purposes of subparagraph (2), an asset of a natural person or a special trust to whom an allowance is or was paid or payable in respect of the use of that asset for business purposes, must be treated as being used mainly for purposes other than the carrying on of a trade.

[Sub-para. (4) added by s. 97 (1) of Act 60 of 2001.]

54 Retirement benefits

A person must disregard any capital gain or capital loss determined in respect of a disposal that resulted in that person receiving-

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

[Sub-para. (b) substituted by s. 56 of Act 3 of 2008.]

55 Long-term assurance

(1) A person must disregard any capital gain or capital loss determined in respect of a disposal that resulted in the receipt by or an accrual to that person of an amount-

- (a) in respect of a policy, 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 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 any cession of that policy from the beneficial owner of that policy to that spouse, nominee or dependant; or
[Subitem (ii) substituted by s. 98 (1) of Act 60 of 2001.]
 - (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;

[Item (a) amended by s. 31 (b) of Act 19 of 2001.]

- (b) in respect of any policy, where that person is or was an employee or director whose life was insured in terms of that policy and any premiums paid by that person's employer were deducted in terms of section 11 (w);

[Item (b) substituted by s. 87 (a) of Act 74 of 2002 and by s. 102 (a) of Act 45 of 2003.]

- (c) in respect of a policy that was taken out to insure against the death, disability or severe illness of that person by any other person who was a partner of that

person, or held any shares or similar interest in a company in which that person held any shares or similar interest, for the purpose of enabling that other person to acquire, upon the death, disability or severe illness of that person, the whole or part of-

- (i) that person's interest in the partnership concerned; or
- (ii) that person's share or similar interest in that company and any claim by that person against that company,

and no premium on the policy was paid or borne by that person while that other person was the beneficial owner of the policy;

[Item (c) substituted by s. 87 (b) of Act 74 of 2002 and amended by s. 102 (b) of Act 45 of 2003 and by s. 76 (1) of Act 31 of 2005.]

- (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, pension preservation fund, provident fund, provident preservation fund or retirement annuity fund;

[Item (d) substituted by s. 57 of Act 3 of 2008.]

- (e) in respect of a risk policy with no cash value or surrender value; or

[Item (e) added by s. 114 (1) (c) of Act 24 of 2011.]

- (f) if the amount received or accrued constitutes an amount contemplated in section 10 (1) (gG) or (gH).

[Item (f) added by s. 114 (1) (c) of Act 24 of 2011.]

(2) For the purposes of subparagraph (1), **'policy'** means a policy as defined in section 29A with an insurer.

[Sub-para. (2) added by s. 31 (c) of Act 19 of 2001.]

[Para. 55 amended by s. 31 (a) of Act 19 of 2001.]

56 Disposal by creditor of debt owed by connected person

(1) Where a creditor disposes of a debt 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.

[Sub-para. (1) substituted by s. 119 (1) (a) of Act 22 of 2012.]

(2) Despite paragraph 39, subparagraph (1) does not apply in respect of any capital loss determined in consequence of the disposal by a creditor of a debt owed by a debtor, to the extent that the amount of that debt so disposed of represents-

- (a) an amount which is applied to reduce-
 - (i) the expenditure in respect of an asset of the debtor in terms of paragraph 12A; or

[Subitem (i) substituted by s. 138 (1) (a) of Act 31 of 2013.]
 - (ii) any assessed capital loss of the debtor in terms of paragraph 12A;

[Subitem (ii) substituted by s. 138 (1) (a) of Act 31 of 2013.]

[Item (a) substituted by s. 119 (1) (c) of Act 22 of 2012.]
- (b) an amount which the creditor proves must be or was included in the gross income of any acquirer of that debt;

[Item (b) substituted by s. 119 (1) (d) of Act 22 of 2012.]
- (c) an amount that must be or was included in the gross income or income of the debtor or taken into account in the determination of the balance of assessed loss of the debtor in terms of section 20 (1) (a); or

[Item (c) substituted by s. 138 (1) (b) of Act 31 of 2013.]
- (d) a capital gain which the creditor proves must be or was included in the determination of the aggregate capital gain or aggregate capital loss of any acquirer of the debt.

[Item (d) added by s. 65 (b) of Act 32 of 2004 and substituted by s. 119 (1) (e) of Act 22 of 2012.]

[Sub-para. (2) substituted by s. 88 (1) of Act 74 of 2002 and amended by s. 119 (1) (b) of Act 22 of 2012.]

[Para. 56 substituted by s. 99 (1) of Act 60 of 2001.]

57 Disposal of small business assets

(1) For purposes of this paragraph-

'active business asset' means-

- (a) an asset which constitutes immovable property, to the extent that it is used for business purposes; or
- (b) an asset (other than immovable property) used or held wholly and exclusively for business purposes,

but excludes-

- (i) a financial instrument; and
- (ii) 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;

[Definition of 'active business asset' inserted by s. 89 (1) of Act 74 of 2002.]

'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 R10 million.

[Definition of 'small business' amended by s. 2 (2) (b) of Act 8 of 2007 and by s. 1 (2) (c) of Act 3 of 2008 and substituted by s. 11 (1) (a) of Act 13 of 2012.]

(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 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 R1,8 million during that natural person's lifetime.

[Sub-para. (3) amended by s. 34 of Act 9 of 2006, by s. 2 (2) (b) of Act 8 of 2007 and by s. 1 (2) (c) of Act 3 of 2006 and substituted by s. 115 (1) of Act 24 of 2011 and by s. 11 (1) (b) of Act 13 of 2012.]

(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 R10 million.

[Sub-para. (6) substituted by s. 139 (1) of Act 31 of 2013.]

57A Disposal of micro business assets

A registered micro business as defined in terms of the Sixth Schedule must disregard any capital gain or capital loss in respect of the disposal by that business of-

- (a) any asset which constitutes immovable property mainly used for business purposes; and

[Sub-para. (a) substituted by s. 140 (1) of Act 31 of 2013.]

- (b) any asset (other than immovable property) used mainly for business purposes.

[Para. 57A inserted by s. 80 (1) of Act 60 of 2008.]

58 Exercise of an option

Where, as a result of the exercise by a person of an option, that person acquires or disposes of an asset in respect of which that option was granted, that person must disregard any capital gain or capital loss determined in respect of the exercise of that option.

[Para. 58 substituted by s. 100 (1) of Act 60 of 2001.]

59 Compensation for personal injury, illness or defamation

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 special trust, as the case may be, receiving compensation for personal injury, illness or defamation of that person or a beneficiary of that special trust.

[Para. 59 substituted by s. 101 (1) of Act 60 of 2001.]

60 Gambling, games and competitions

(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) by any natural person, unless that form of gambling, game or competition is authorised by, and conducted in terms of, the laws of the Republic.

[Item (b) substituted by s. 32 (1) of Act 19 of 2001.]

61 Portfolios of collective investment schemes other than portfolios of collective investment schemes in property

[Heading substituted by s. 141 (1) (a) of Act 31 of 2013.]

(1) A holder of a participatory interest in a portfolio of a collective investment scheme, other than a portfolio of a collective investment scheme in property, must determine a capital gain or capital loss in respect of the participatory interest only upon the disposal of that participatory interest.

[Sub-para. (1) substituted by s. 141 (1) (b) of Act 31 of 2013.]

(2) The capital gain or capital loss to be determined in terms of subparagraph (1) must be determined with reference to the proceeds from the disposal of that participatory interest and its base cost.

(3) Any capital gain or capital loss in respect of a disposal by a portfolio of a collective investment scheme, other than a portfolio of a collective investment scheme in property, must be disregarded.

[Sub-para. (3) added by s. 120 (1) of Act 22 of 2012 and substituted by s. 141 (1) (c) of Act 31 of 2013.]

[Para. 61 substituted by s. 102 (1) of Act 60 of 2001, by s. 90 (1) of Act 74 of 2002, by s. 75 (1) of Act 17 of 2009 and by s. 106 (1) of Act 7 of 2010.]

62 Donations and bequests to public benefit organisations and exempt persons

A person must disregard a capital gain or capital loss determined in respect of the donation or bequest of an asset by that person to-

- (a) the government of the Republic in the national, provincial or local sphere, as contemplated in section 10 (1) (a); and
[Sub-para. (a) substituted by s. 107 (a) of Act 7 of 2010.]
- (b) a public benefit organisation contemplated in paragraph (a) of the definition of 'public benefit organisation' in section 30 (1) that has been approved by the Commissioner in terms of section 30 (3);
[Sub-para. (b) substituted by s. 52 (a) of Act 20 of 2006.]
- (c) a person contemplated in section 10 (1) (cA) or (d) (iv);
[Sub-para. (c) substituted by s. 142 of Act 31 of 2013.]
- (d) a person referred to in section 10 (1) (cE) or (e); or
[Sub-para. (d) substituted by s. 107 (b) of Act 7 of 2010.]
- (e) a recreational club which is a company, society or other organisation as contemplated in the definition of 'recreational club' in section 30A (1) that has been approved by the Commissioner in terms of section 30A.
[Sub-para. (e) added by s. 52 (c) of Act 20 of 2006.]
[Para. 62 substituted by s. 103 (1) of Act 45 of 2003.]

63 Exempt persons

A person must disregard any capital gain or capital loss in respect of the disposal of an asset where any amount constituting gross income of whatever nature would be exempt from tax in terms of section 10 were it to be received by or to accrue to that person.

[Para. 63 substituted by s. 91 of Act 74 of 2002 and by s. 104 of Act 45 of 2003.]

63A Public benefit organisations

A public benefit organisation approved by the Commissioner in terms of section 30 (3) must disregard any capital gain or capital loss determined in respect of the disposal of an asset if-

- (a) that public benefit organisation did not use that asset on or after valuation date in carrying on any business undertaking or trading activity; or
- (b) substantially the whole of the use of that asset by that public benefit organisation on and after valuation date was directed at-
 - (i) a purpose other than carrying on a business undertaking or trading activity; or
 - (ii) carrying on a business undertaking or trading activity contemplated in section 10 (1) (cN) (ii) (aa), (bb) or (cc).

[Sub-para. (b) amended by s. 64 (1) (b) of Act 8 of 2007.]

[Para. 63A inserted by s. 53 of Act 20 of 2006.]

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